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**AGREEMENT**

Dated as of May 1, 1991

between

CONSOLIDATED RAIL CORPORATION ("Conrail" or "Owner")

and

MICHIGAN SOUTHERN RAILROAD COMPANY, INC. ("MSO" or "User")

Relating to interchange between Conrail  
and MSO at Sturgis, MI with related Operating Rights over  
Conrail's Quincy Secondary between  
Milepost 406.5± and Milepost 408.8±

542.4

MSO

located between Milepost 407.6± and Milepost 408.6±,  
Sturgis, MI.

**SECTION 2. USE OF SUBJECT TRACKAGE**

Operating Rights herein granted are granted for the sole purpose of MSO using same for the delivery and receipt of interchange traffic between the parties hereto, and MSO shall not perform any local freight service whatsoever at any point located on the Subject Trackage, nor is MSO permitted to ingress or egress at any point other than that specified in Section 1 hereof.

**SECTION 3. INTERCHANGE PROVISIONS**

(a) MSO shall deliver interchange cars on the easterly end of Conrail's passing siding, and pull from the westerly end of Conrail's main track(s) respectively, (hereinafter referred to as the "Interchange Tracks"), as shown on Exhibit "I", attached hereto and made a part hereof, or on other track(s) so designated by the Conrail representative having jurisdiction over the Sturgis, MI area. Such cars shall be placed on the minimum number of Interchange Track(s) required to hold them. If "doubling over" of cars is required, it shall be accomplished by MSO's locomotive and MSO's train and engine crew, and the cost and expense thereof shall be assumed and borne by MSO.

(b) The interchange of traffic covered by this Agreement shall be governed by the applicable AAR Interchange Rules and the Car Service and Car Hire Rules and any supplements or amendments thereto promulgated from time to time by the Association of American Railroads, and cars together with containers and/or trailers loaded thereon (hereinafter referred to as "Cars") shall be considered as interchanged from the account of one party to the other when placed on the Interchange Track(s) on Conrail's property at Sturgis, MI and the engine consist is uncoupled therefrom.

**SECTION 4. COMPENSATION**

There will be no charge for MSO's use of the Subject Trackage as such use is granted for the sole purpose of accessing the Interchange Track(s).

**SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE AND INTERCHANGE TRACK(S)**

Conrail shall maintain, repair and renew the Subject Trackage and the Interchange Track(s) at its own expense with its own supervision and labor. Conrail shall keep and maintain the Subject Trackage and the Interchange Tracks(s) in reasonably good condition for the use herein contemplated, but Conrail does not guarantee the condition of the Subject Trackage or the Interchange Track(s) or that operation thereover will not be interrupted.

**SECTION 6. MANAGEMENT AND OPERATION**

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage and the Interchange Track(s). User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage and Interchange Track(s) will comply in all respects with the operating rules and regulations of Owner, and the movement of

User's trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track(s) shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage or the Interchange Track(s) as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable solely to the failure of User to comply with the provisions of this subsection.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track(s) qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the

territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

(e) If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

(f) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

(g) If Owner conducts an investigation, its officer will conduct the investigation, but an officer of User may be present to assure compliance with the User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

(h) It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(i) The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or the Interchange Track(s) or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(j) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage or the Interchange Track(s), or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage or the Interchange Track(s), Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off such trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(k) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, or the Interchange Track(s) such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(l) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

#### **SECTION 7. CLEARING OF WRECKS**

Whenever User's use of Subject Trackage or the Interchange Track(s) requires rerailing, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, cars and equipment and salvage from same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

#### **SECTION 8. LIABILITY**

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Operating Rights or

the interchange operations set forth in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 7 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of, User being involved, Owner shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 7 hereof, and shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense,



regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage and the Interchange Track(s)) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Section 7 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 7 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any

of the respective dates upon which any such future installments are to be paid.

(f) For purposes of this Section 8, pilots furnished by Owner to User pursuant to Section 6(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(g) For the purposes of this Section 8, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage or the Interchange Track(s), and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or the Interchange Track(s), or their rights-of-way, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

#### **SECTION 9. INVESTIGATION**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contracts filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed,

such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 8 hereof.

#### SECTION 10. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

#### **SECTION 11. EMPLOYEE PROTECTION**

User shall assume and hold Owner harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the Interstate Commerce Commission or are predicated on the Railway Labor Act or labor agreements.

#### **SECTION 12. INSURANCE**

During the term and any continued term of this Agreement User shall provide and maintain in effect a policy of public liability insurance, including contractual liability assumed by User under the provisions of this Agreement, which names Owner as an additional insured and provides for a minimum of forty (40) days advance notice to Owner before any changes or cancellation. Said insurance shall be in limits of not less than three (3) million dollars single limit bodily injury and/or property damage and shall be in companies and form acceptable to Owner. User shall forward annually to Conrail's Director of Insurance located at Six Penn Center, Room 1310, Philadelphia, PA 19103-2959, evidence of the amount of public liability insurance currently in effect.

#### **SECTION 13. TERM**

This Agreement shall take effect as of the date first above written and shall continue in force and effect until terminated by either party upon thirty (30) days written notice to the other party. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any

obligation which may have accrued under any provisions of this Agreement prior to the effective date of termination.

**SECTION 14. ASSIGNMENT**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, MSO shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of Conrail.

**SECTION 15. NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

- (a) If to Conrail:  
c/o Senior Vice President - Operations  
Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, PA 19103-2959
  
- (b) If to MSO:  
c/o President  
Michigan Southern Railroad Company, Inc.  
P. O. Box 239  
White Pigeon, MI 49099

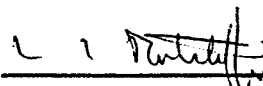
(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

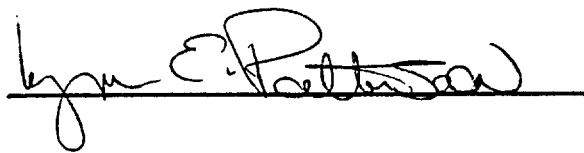
  
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CONSOLIDATED RAIL CORPORATION

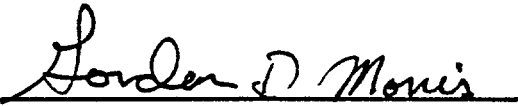
BY:   
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General Superintendent  
Contracts

WITNESS:

  
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MICHIGAN SOUTHERN RAILROAD CO., INC.

BY:   
\_\_\_\_\_

President

Sheet 4

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# STURGIS MI

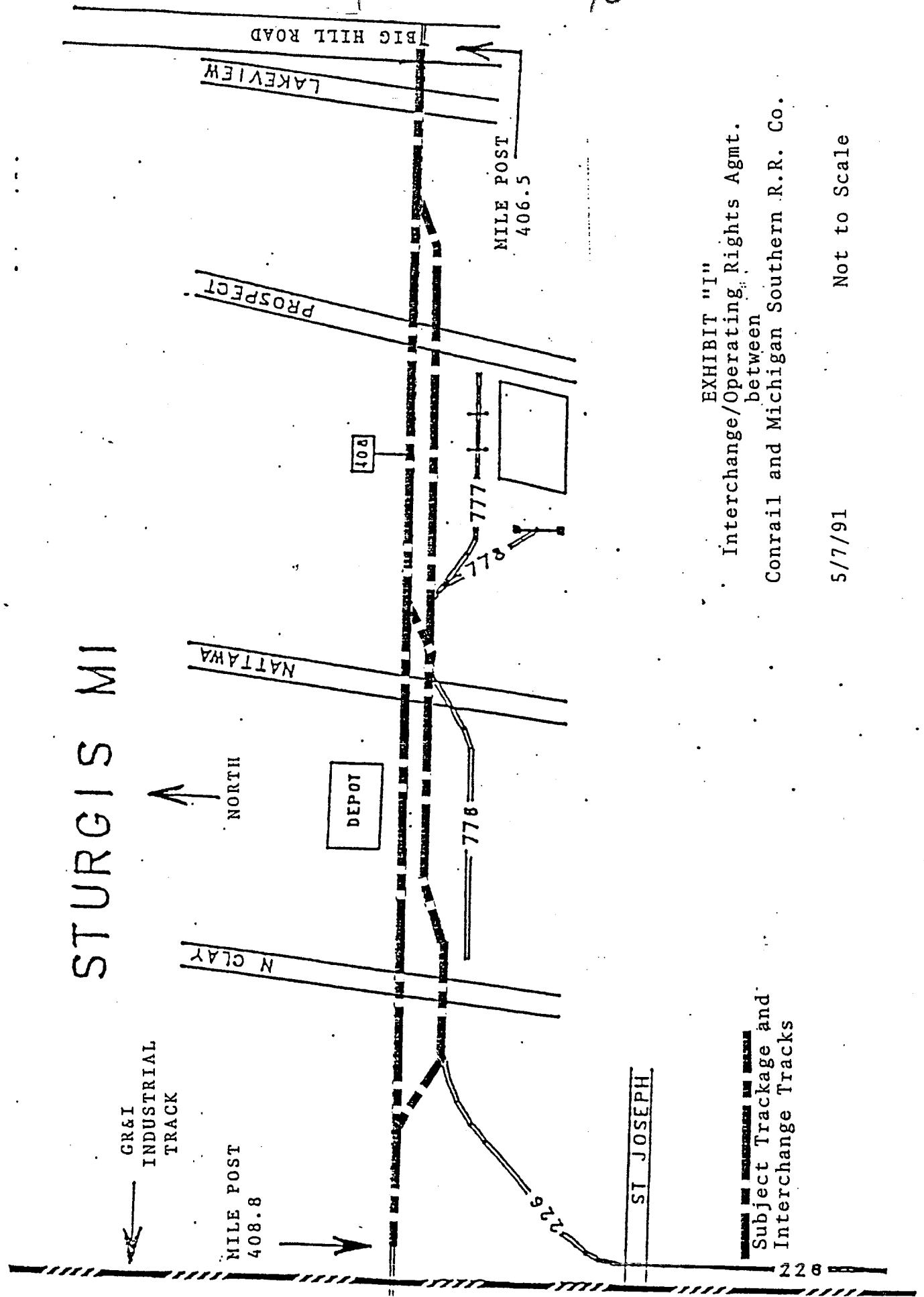


EXHIBIT "I"  
 Interchange/Operating Rights Agmt.  
 between  
 Conrail and Michigan Southern R.R. Co.

5/7/91

Not to Scale

Subject Trackage and  
 Interchange Tracks

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