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January 16, 2024
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January 16, 2024

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration,
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Massachusetts Coastal Railroad, LLC - Acquisition and
Operation Exemption – Bay Colony Railroad Corporation and
Massachusetts Bay Transportation Authority
Petition for Exemption
Docket No. FD 36747
Expedited Consideration Requested

Dear Ms. Brown:

Enclosed for filing in the above referenced docket on behalf of Massachusetts Coastal Railroad, LLC is a petition for exemption under 49 USC 10502 and 49 CFR 1150.23. The filing fee has been paid via PAY.GOV.

Sincerely,

CLARK HILL

/s/ Eric M. Hocky

Eric M. Hocky

EMH:e
Enclosure

cc: All parties shown on the Certificate of Service

FILED
January 16, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 16, 2024
SURFACE
TRANSPORTATION BOARD

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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36747

MASSACHUSETTS COASTAL RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION –
BAY COLONY RAILROAD CORPORATION AND
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PETITION FOR EXEMPTION

Expedited Consideration Requested

(includes color images)

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*Attorneys for Massachusetts Coastal
Railroad, LLC*

Dated: January 16, 2024

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36747

MASSACHUSETTS COASTAL RAILROAD, LLC
– ACQUISITION AND OPERATION EXEMPTION –
BAY COLONY RAILROAD CORPORATION AND
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PETITION FOR EXEMPTION

Massachusetts Coastal Railroad, LLC (“Mass Coastal”), a Class III railroad, hereby petitions the Surface Transportation Board (the “Board”) under 49 U.S.C. §10502 and 49 C.F.R. §1121 for exemptions from the provisions of 49 U.S.C. §10902 to allow Mass Coastal to acquire and operate as a common carrier approximately 3.5 miles of rail line comprised of (a) the “Millis Industrial Track” (sometimes referred to as the “Millis Branch”) between the northeast side of the Framingham Secondary right of way in Medfield Junction at Milepost 0.0 and the end of the line in Millis at Milepost 3.4, and (b) the “Remaining Dover Secondary” beginning near Milepost 7.2 located at the south edge of Ice House Road and terminating at Milepost 7.3 at Medfield Junction (connection with Millis Industrial Track) in Norfolk County, Massachusetts.¹ A map of the Millis Industrial Track and the Remaining Dover Secondary is attached hereto as Exhibit A. Mass Coastal is seeking this authority contingent on the Board granting the petition for exemption filed today by Bay Colony Railroad Corporation (“Bay Colony”) in Docket No. FD 36746 (the “Bay

¹ Mass Coastal originally sought authority to acquire and operate the Millis Industrial Track pursuant to a notice of exemption filed on November 15, 2023, in Docket No. FD 36738. However, in a decision issued by the Director of the Office of Proceedings on December 15, 2023 (the “Mass Coastal Rejection Decision”), the notice of exemption was rejected on the basis that there was sufficient ambiguity over the existing ownership and operations of the Rail Line so as to make Mass Coastal’s use of the notice process inappropriate. Mass Coastal Rejection Decision at 3.

Colony Petition”) which seeks after-the-fact authority for Bay Colony to acquire and operate the Millis Industrial Track as a full common carrier and to clarify the other ownership and operation questions raised in the Mass Coastal Rejection Decision.

In support of its petition for exemption, Mass Coastal represents as follows:

BACKGROUND

The Bay Colony Petition sets forth in great detail the history and operations of the Millis Industrial Track, and clarifies the matters raised by the Board in the Mass Coastal Rejection Decision and accordingly Mass Coastal will not repeat that history in full here.

A. The Millis Industrial Track

As set forth in the Bay Colony Petition, the Millis Industrial Track was conveyed to Massachusetts Bay Transportation Authority (“MBTA”) from Penn Central in 1973 subject to Penn Central’s reservation of a freight easement (the “Retained Freight Easement”). Freight service was continued by Penn Central and then by Conrail until Conrail discontinued operation of service over the Retained Freight Easement. Following Conrail’s discontinuance, MBTA and Bay Colony entered into an agreement for Bay Colony to operate under a modified rail certificate that was issued by the Interstate Commerce Commission (“ICC”). Ownership of the discontinued Retained Freight Easement eventually passed to CSX Transportation, Inc. (“CSXT”).

In April 2005 some disputes arose at the Board between MBTA and Bay Colony over MBTA’s right to terminate Bay Colony’s modified rail certificate. In the course of settlement negotiations between Bay Colony and MBTA, Bay Colony acquired by assignment from CSXT the discontinued Retained Freight Easement (a copy of which is attached as Exhibit B). Bay Colony and MBTA also entered into a Trackage Rights and Operating Agreement dated May 4,

2006 (the “2006 Operating Agreement”, a copy of which is attached as Exhibit C) to govern ongoing operations and allocations of responsibilities with respect to the Millis Industrial Track.

In the Bay Colony Petition, Bay Colony seeks after-the-fact exemption authority (1) to acquire the discontinued Retained Freight Easement, and (2) to reactivate common carrier service over the discontinued Retained Freight easement so as to provide Bay Colony the right to operate the Millis Industrial Track pursuant to the 2006 Operating Agreement under a full common carrier certificate. If Bay Colony is granted the exemptions it has requested in the Bay Colony Petition, Bay Colony will be the owner of the Retained Freight Easement and the common carrier operator of the Millis Industrial Track. Mass Coastal proposes to acquire by assignment from Bay Colony the Retained Freight Easement and the 2006 Operating Agreement.²

B. Remaining Dover Secondary

The Dover Secondary Track is a separate line owned by MBTA that Bay Colony operated under a modified rail certificate issued by the ICC in 1982. The 2006 Operating Agreement covered Bay Colony’s operations over the Dover Secondary Track under the applicable modified rail certificate.³ In 2013, Bay Colony filed to partially terminate its modified rail certificate with respect to the Dover Secondary Track, terminating its authority to operate all but the portion of the Dover Secondary Track between Milepost 7.2 located at the south edge of Ice House Road and the end of the track at Milepost 7.3 at Medfield Junction (the “Remaining Dover Secondary”). As

² Under Section 10.10 of the 2006 Operating Agreement, MBTA’s consent to the assignment of the agreement is not required. Notwithstanding that no consent is required, Mass Coastal and Bay Colony gave notice to MBTA of the proposed assignment and of Mass Coastal’s anticipated filing for authority from the Board. A copy of the notice acknowledged by MBTA is attached hereto as Exhibit D. (The information related to other assignments not related to the Millis Industrial Track, and Remaining Dover Secondary have been redacted.)

³ See 2006 Operating Agreement, Recitals (f) and (g), p. 1 and Exhibit A thereto. Exhibit A to the 2006 Operating Agreement describes the Dover Secondary Track as beginning at Milepost 0.0 in Needham and continuing to Milepost 7.3 known as Medfield Junction.

noted in the Bay Colony Petition, the Remaining Dover Secondary was retained to facilitate interchange between the Millis Industrial Track and CSXT.

With respect to the Remaining Dover Secondary, the Bay Colony Petition seeks only to have the Board (1) confirm the redesignated end point at Medfield Junction where the track connects to the Millis Industrial Track as being Milepost 7.3 and that the Remaining Dover Secondary continues to be covered by the Dover Secondary modified rail certificate, or (2) if deemed necessary by the Board, issue an amended modified rail certificate covering the Remaining Dover Secondary to extend to Milepost 7.3 at Medfield Junction. As noted above, Mass Coastal proposes to acquire by assignment the 2006 Operating Agreement which would provide Mass Coastal with the authority from MBTA to operate the Remaining Dover Secondary.

C. Additional Information

To facilitate the Board's review of this Petition as it relates to the requested exemption to acquire and operate the Retained Freight Easement for the Millis Industrial Track, and to operate the Remaining Dover Secondary, as a full common carrier, Mass Coastal provides in Exhibit E hereto the additional information that would be required under 49 C.F.R. §1150.43 if Mass Coastal were seeking the exemption under Board's class exemption procedures.⁴

If the Board were to determine despite the provisions of 49 C.F.R. §1150.21 (giving operators the option of operating under a full common carrier certificate) that Mass Coastal can only be issued a modified rail certificate for the Remaining Dover Secondary, then Mass Coastal provides in Exhibit F hereto the additional information that would be required under 49 C.F.R. §1150.23 in order to be issued a modified rail certificate.

⁴ This basic information was provided in the Mass Coastal notice of exemption filed with the Board in Docket No. FD 36738 on November 15, 2023.

SUMMARY OF RELIEF REQUESTED

The relief requested by Mass Coastal is contingent on the Board granting Bay Colony the exemptions it has requested in the Bay Colony Petition.

With respect to the Millis Industrial Track, Mass Coastal seeks a straightforward exemption for authority to acquire a line of railroad under 49 U.S.C. § 10902 by assignment of the Retained Freight Easement, and to operate the line pursuant to the assigned 2006 Operating Agreement.

With respect to the Remaining Dover Secondary, under the assignment of the 2006 Operating Agreement, Mass Coastal would have the right to operate the line under a modified rail certificate. However, Mass Coastal herein seeks an exemption to operate the line under 49 U.S.C. §10902 as permitted under the Board's modified rail certificate regulations at 49 CFR §1150.21.⁵

DISCUSSION

A. The Bay Colony Petition

The Bay Colony Petitions addresses and clarifies matters raised by the Board in the Mass Coastal Rejection Decision. In addition, the Bay Colony Petition seeks after-the-fact authority for its acquisition of the Retained Freight Easement, and to operate the Millis Industrial Track pursuant to the 2006 Operating Agreement. The Bay Colony Petition also seeks to confirm its modified certificate for the Remaining Dover Secondary and the redesignated end point of Milepost 7.3, and its continued operation of the Remaining Dover Secondary pursuant to the 2006 Operating Agreement.

⁵ In the event that the Board determines that Mass Coastal cannot apply to operate the Remaining Dover Secondary under a Section 10902 certificate of authority, the Mass Coastal requests that the Board treat this Petition as a notice of modified rail certificate and issue Mass Coastal a modified rail certificate to operate the Remaining Dover Secondary.

B. The Board should exempt Mass Coastal's acquisition by assignment from Bay Colony of the Retained Freight Easement and 2006 Operating Agreement and Mass Coastal's operation of both the Millis Secondary Track and the Remaining Dover Secondary under a Section 10902 common carrier certificate.

1. Exemption Standards.

The acquisition and operation of a line of railroad by a Class III rail carrier such as Mass Coastal is subject to the prior approval and authorization of the Board under 49 U.S.C. §10902. Thus, unless the exemption requested herein is granted, the proposed authority (1) to acquire and operate the Millis Industrial Track through the acquisition by assignment of the Retained Freight Easement and the 2006 Operating Agreement, and (2) to operate the Remaining Dover Secondary pursuant to the 2006 Operating Agreement under a full common carrier certificate, would require that Mass Coastal to file an application under 49 C.F.R. Part 1150. However, the Board is required to approve applications under Section 10902 unless it finds that the covered activities “are inconsistent with the public convenience and necessity.” 49 U.S.C. §10902(c).

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (“RTP”) of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. In enacting the Staggers Rail Act, Congress made it clear that it intended for the ICC (and now the Board as its successor) to use the exemption authority broadly. See H.R. Rep. No. 96-1430, at 105 (1980) (the ICC is capable (and expected) through the administrative process of deregulating specific provisions and practices consistent with the policies of Congress and the Act).

2. Regulation of the requested authority for the proposed acquisition of the Retained Freight Easement and operation of the Millis Industrial Track, and for the operation of the Remaining Dover Secondary, under full common carrier certificates is not necessary to satisfy the requirements of the RTP.

Grant of the requested exemptions would be consistent with the standards of 49 U.S.C. §10502.⁶ This Petition provides the Board with all of the information necessary to evaluate the requested authority and to determine that the requested authority is not “inconsistent with the public convenience and necessity.” The Board should find that detailed scrutiny through a full application is not required to carry out the transportation policy of 49 U.S.C. §10101. Assuming the Bay Colony Petition is granted, the proposed transfer of the Retained Freight Easement and the right to operate the Millis Industrial Track under the 2006 Operating Agreement is a straightforward transfer of a line of railroad that would provide for the assumption and continuation of Section 10902 common carrier service over the line by Mass Coastal. Similarly, granting Mass Coastal authority to operate the Remaining Dover Secondary pursuant to the assigned 2006 Operating Agreement under a Section 10902 common carrier certificate instead of a modified rail certificate is a straightforward exercise of the operator’s option under 49 C.F.R. §1150.21 and will provide for continued common carrier operation of the line (with enhanced requirements for abandonment / termination of service). As such the grants of the exemptions to Mass Coastal would minimize the need for Federal regulatory control (49 U.S.C. §10101(2)), ensure the development of a sound rail transportation system with effective competition among

⁶ Mass Coastal originally sought the authority pursuant to the Board’s class exemption proceedings at 49 C.F.R. §1150.41 et seq. by filing a notice of exemption in Docket No. FD 36738. In the Mass Coastal Rejection Decision, the Director of the Office of Proceedings determined that there was sufficient ambiguity over Bay Colony’s existing ownership and operations of the rail lines so as to make the notice of exemption process inappropriate. The Bay Colony Petition addresses those ambiguities, and if Bay Colony is granted the authority that it seeks therein, no ambiguities would remain to preclude Mass Coastal’s use of a notice of exemption. However, in an abundance of caution, Mass Coastal has decided to seek authority through this petition for exemption.

rail carriers and other modes to meet the needs of the public (49 U.S.C. §10101(4)), reduce regulatory barriers to entry to the industry (49 U.S.C. §10101(7)), and provide for expeditious handling and resolution of all proceedings (49 U.S.C. §10101(15)). Moreover, the grant of the exemptions will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101. *See Grand Trunk Western Railroad Company – Acquisition of Operating Easement – CSX Transportation, Inc.*, STB Docket No. FD 35661 (served February 8, 2013) (“GTW/CSXT”), slip op at 3-4. *See also Buffalo & Pittsburgh Railroad Inc. – Lease and Operation Exemption – Norfolk Southern Railway Company and CSX Transportation, Inc.*, STB Finance Docket No. 34955 (served September 25, 2007), slip op at 2; *St. Lawrence & Atlantic Railroad Company – Lease and Operation Exemption – Rail Lines of Fraser N.H. LLC*, STB Finance Docket No. 34239 (served September 5, 2002), slip op. at 2.

3. Regulation is not needed to protect shippers from an abuse of market power.

As indicated, there will be no adverse impacts on rail transportation or lessening of competition as a result of the proposed exemptions. The exemptions will allow/require Mass Coastal to continue to provide common carrier service over the Millis Industrial Track and the Remaining Dover Secondary (both under Section 10902 common carrier certificates) that Bay Colony has been providing. The change in operators will not adversely affect any customers or the shipping public.

There is no threat to shippers of any abuse of market power. Shippers received common carrier service from a single carrier, Bay Colony, and will continue to receive service from a single carrier, Mass Coastal. As such, the Board should find that regulation of the proposed exemptions is not necessary to protect shippers from the abuse of market power since there be no change in or to the service that shippers received or were entitled to, and by facilitating the transfer to Mass

Coastal, the exemptions will provide for the continuing availability of common carrier service to and from the Millis Industrial Track.

4. The proposed acquisition and operation are of limited scope.

If the Board finds that there is no probable adverse effect on market power, the Board need not determine whether the transaction is limited in scope. However, if the Board were to consider the scope of the proposed acquisition of the Retained Freight Easement and the operation of the Millis Industrial Track and the Remaining Dover Secondary under the 2006 Operating Agreement by Mass Coastal under Section 10902 common carrier authority, Mass Coastal believes that the Board should find the scope to be limited. The Millis Industrial Track is only 3.4 miles long and is located in a single county in Massachusetts. The Remaining Dover Secondary is only 0.1 miles long, is located in the same county, and is used primarily to facilitate interchange between the Millis Secondary Track and CSXT. The acquisition and proposed operations by Mass Coastal will continue to make full common carrier service available over the lines that cannot be abandoned or terminated without prior abandonment authority from the Board. Under these circumstances, a finding of limited scope is clearly warranted.

C. If the Board were to determine the Mass Coastal cannot obtain exemption authority to operate the Remaining Dover Secondary under a Section 10902 common carrier certificate, then the Board should issue Mass Coastal a modified rail certificate.

In the event that the Board determines that Mass Coastal cannot apply to operate the Remaining Dover Secondary under a Section 10902 certificate of authority, the Mass Coastal requests that the Board treat this Petition as a notice of modified rail certificate and issue Mass Coastal a modified rail certificate to operate the Remaining Dover Secondary. An exemption is

not technically be required for a modified rail certificate, but Mass Coastal has provided in this Petition all of the information required under 40 C.F.R. §1150.23.

D. Additional exemption requirements.

1. Interchange commitments.

In accordance with the requirements of 49 C.F.R. §1121.3(d), Mass Coastal certifies that neither the Retained Freight Easement nor the 2006 Operating Agreement include an interchange commitment.

2. Environmental and historic reports.

Under 49 C.F.R. §1121.2(b) petitions for exemption must comply with environmental or historic reporting and notice requirements; however, no environmental or historic report is required with respect to the exemptions sought in this Petition.

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required because the requested exemptions involve authority that will allow for continued rail operations without any change in the level of operations that will not exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because the transaction merely involves a transfer and operation of the Millis Industrial Track and operation of the Remaining Dover Secondary with no changes in the level of rail operations, and further Board approval is required for Mass Coastal to abandon or discontinue service over the lines that it operates under a Section 10902 common carrier certificate. Mass Coastal has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

3. Labor protection.

Under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, Mass Coastal is a Class III carrier and pursuant to 49 U.S.C. §10902(d), approval of this exemptions requested herein may not be subject to labor protection conditions.

VOLUNTARY NOTICE / SERVICE

Although Mass Coastal is not required by 49 C.F.R. Part 1121 to provide specific notice of the filing of this Petition, Mass Coastal is serving a copy of the Petition on MBTA as shown on the attached certificate of service given that the Board served a copy of its Mass Coastal Rejection Decision in Docket No. FD 36738 on MBTA.

EXPEDITED CONSIDERATION

Based on its original notice of exemption and anticipated effective date, Mass Coastal and Bay Colony had anticipated closing on the assignment / transfer of the Millis Industrial Track easement and 2006 Operating Agreement on or about December 18, 2023. The parties still intend to complete the transaction once the issues raised by the Board have been addressed through the consideration (and hopefully grant) of the Bay Colony Petition, and the requested grant of authority by Mass Coastal in this Petition for appropriate authority to acquire and operate the Millis Industrial Track and to operate the Remaining Dover Secondary Track. Mass Coastal was able to extend its financing for the transaction for a limited period of time. In order to allow the transaction to be completed, Mass Coastal requests that the Board consider this Petition on a more expedited

schedule than might otherwise be required, and that the Board issue a decision within 60 - 90 days, with any authority granted to Mass Coastal to be effective upon the issuance of the decision.

CONCLUSION

For the foregoing reasons, Mass Coastal requests that the Board, under 49 U.S.C. §10502, exempt from regulation under 49 U.S.C. §10902 (1) Mass Coastal's acquisition by assignment of the Retained Freight Easement covering the Millis Industrial Track, and the operations thereof under the 2006 Operating Agreement; and (2) Mass Coastal's operation as a full common carrier of the Remaining Dover Secondary under the 2006 Operating Agreement.⁷

Respectfully submitted,

/s/ Eric M. Hocky

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*Attorneys for Massachusetts Coastal Railroad,
LLC*

Dated: January 16, 2024

⁷ As discussed above, if the Board were to determine that Mass Coastal cannot operate the Remaining Dover Secondary under a Section 10902 common carrier certificate, then the Board is requested to treat this Petition as a notice of modified rail certificate for the Remaining Dover Secondary.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Petition for Exemption was served on the following by U.S. first class mail, postage pre-paid, and by email where indicated:

Phillip Eng
General Manager and CEO
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3830
Boston, MA 02116
peng@mbta.com

/s/ Eric M. Hocky

Eric M. Hocky

Dated: January 16, 2024

VERIFICATION

I hereby verify on behalf of Massachusetts Coastal, Railroad, LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

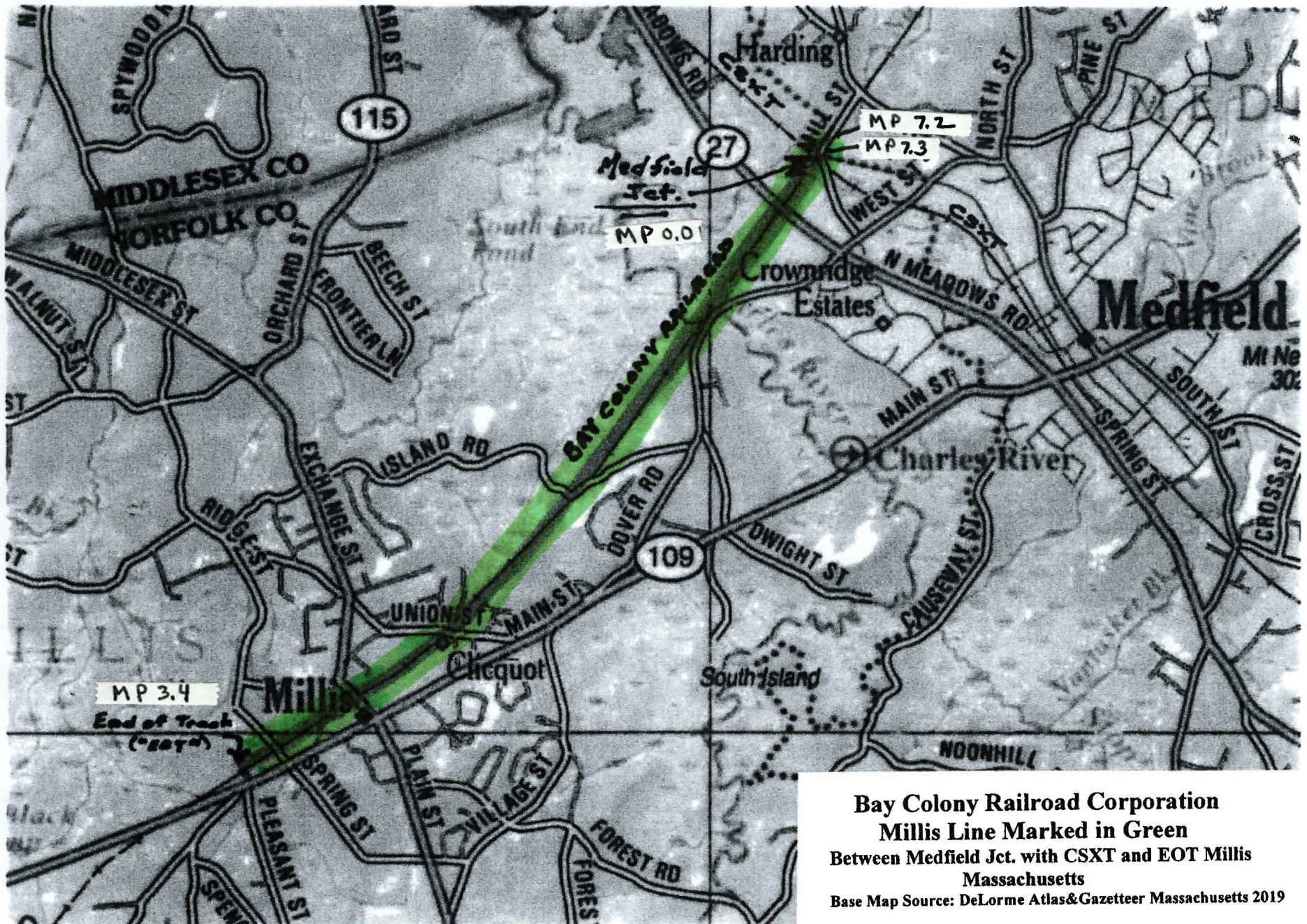
Executed on January 16, 2024.

A handwritten signature in black ink, appearing to read 'P. Christopher Podgurski', is written over a horizontal line.

P. Christopher Podgurski, President

EXHIBIT A

MAP



Bay Colony Railroad Corporation
Millis Line Marked in Green
Between Medfield Jct. with CSXT and EOT Millis
Massachusetts
Base Map Source: DeLorme Atlas & Gazetteer Massachusetts 2019

EXHIBIT B

RETAINED FREIGHT EASEMENT

ASSIGNMENT OF TRANSPORTATION EASEMENT AND RIGHTS

A N

A N

RECEIVED AND RECORDED
NORFOLK COUNTY
REGISTRY OF DEEDS
DEDHAM, MA

THIS ASSIGNMENT, made this 3rd day of October, 2005 between CSX Transportation, Inc., successor by merger to New York Central Lines, LLC, a Virginia corporation, having a principal address of 500 Water St., Jacksonville, FL ("Assignor"), and Bay Colony Railroad Corporation, a corporation organized and existing under the laws of the Commonwealth of Massachusetts having a principal address of 420 Washington Street, Braintree, MA ("Assignee")

WITNESSETH:

WHEREAS, by deed dated January 17, 1973, which is recorded in Norfolk County Registry of Deeds, Book 4907, Page 630, the Trustees of the Property of Penn Central Transportation Company, Debtor ("Penn Central") conveyed certain rail lines and other property to the Massachusetts Bay Transportation Authority ("MBTA"), a body politic organized and existing under the laws of the Commonwealth of Massachusetts; and

WHEREAS, as part of the 1973 deed to the MBTA, Penn Central reserved unto itself and its successors and assigns certain transportation easements and rights relating to and affecting the rail lines conveyed in the 1973 deed, all as described in such deed (the "1973 Transportation Easement"); and

WHEREAS, the property conveyed by Penn Central to the MBTA, and as to which Penn Central reserved the 1973 Transportation Easement, included the portion of the line formerly known as the Cliquot Secondary Track between Railroad Valuation Station 849+30 (also referred to as Medfield Junction) and Railroad Valuation Station 999+ 50.9 (also referred to as Millis), which portion is more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, by deed dated March 30, 1976, which deed is recorded in Norfolk County Registry of Deeds, Book 5519, Page 688, Penn Central conveyed to Consolidated Rail Corporation ("Conrail") the fee interest in, and appurtenant easement rights related to, the portion of the Cliquot Secondary Track between Railroad Valuation Station 999 +50.9 and Railroad Valuation Station 1018+50, all as more particularly described in Exhibit B attached hereto and made a part hereof, and assigned and by operation of law transferred its rights under the 1973 Transportation Easement, thereby enabling Conrail to operate over the Cliquot Secondary Track (the former Cliquot Secondary Track between Railroad Valuation Station 849+30 and Railroad Valuation Station 1018+50 being hereinafter referred to as the "Millis Industrial Track"); and

WHEREAS, by a deed dated June 1, 1999, Conrail conveyed to Assignor all of Conrail's right, title and interest, including the fee in and to .36 miles of right of way constituting that portion of the Millis Industrial Track between Railroad Valuation Station 999 +50.9 and Railroad Valuation Station 1018+50, being the same property described in Exhibit B, and also including any permanent easements for rail carriage, rail

use or purposes located within such right-of-way and appurtenant rights including the 1973 Transportation Easement as it relates to the Millis Industrial Track; and

WHEREAS, freight rail service has been continuously provided on the Millis Industrial Track, first by Penn Central, then by Conrail and thereafter and currently by Assignee, with the knowledge of Assignor; and

WHEREAS, Conrail has transferred and conveyed to Assignor all of Conrail's right, title and interest in the 1973 Transportation Easement as it relates to the Millis Industrial Track; and

WHEREAS, Assignor desires that all of its rights in the 1973 Transportation Easement as it relates only to the Millis Industrial Track and any related rights in and to the Millis Industrial Track, but excluding the fee interest in the property described in Exhibit B, be transferred to Assignee;

NOW, THEREFORE, Assignor, for the consideration of \$1.00, the receipt and sufficiency of which is hereby acknowledged, does hereby assign, grant and convey, release and remise forever unto Assignee all of Assignor's right, title and interest in and to the 1973 Transportation Easement as it relates only to the Millis Industrial Track and any related rights and obligations and liabilities in or to the Millis Industrial Track, but excluding the fee interest in the property described in Exhibit B.

TO HAVE AND TO HOLD such 1973 Transportation Easement and all of the rights described therein and herein and all of the estate, right, title, interest, claim and obligations and liabilities whatsoever of Assignor, either in law or equity, unto the use, benefit and enjoyment of Assignee and its successors and assigns forever.

IN WITNESS WHEREOF, CSX Transportation, Inc., in accordance with due authority, has caused its name to be signed hereto by its officers hereunto duly authorized and its corporate seal, duly attested, to be hereunto affixed.

Signed, sealed and delivered
in the presence of:

Betty D. Jones
Betty D. Jones

Carmen Benitez
Carmen Benitez

CSX Transportation, Inc.

By: [Signature]

Stephen A. Crosby
President-CSX Real Property, Inc.
Its: signing for CSX Transportation, Inc.

Attest: Donna W. Melton
Donna W. Melton
Corporate Secretary

N O T
A N
State of Florida I C I) A L
C O P Y) ss.
County of Duval)

N O T
A N
O F F I C I A L
C O P Y

Before me, a Notary Public of the State of Florida, on the date below, in the County of Duval, came STEPHEN A. CROSBY, to me known, who, being by me first duly sworn, did make oath and acknowledged that he is President-CSX Real Property, Inc., signing on behalf of CSX Transportation, Inc., the company described in and which executed the foregoing Assignment, that he is fully informed of the contents of such Assignment, that he knows the seal of the company, that the seal affixed to such instrument is such seal, that it was so affixed by authority of the Board of Directors of the company, that he signed his name thereto for such company pursuant to authority of the Board of Directors and that such instrument is the voluntary and free act and deed of the company.

In witness whereof, I hereunto set my hand and official seal this 3rd day of October, 2005.

Betty D. Jones
Notary Public
 Betty D. Jones
My Commission DD252025
Expires October 18, 2007

N O T
A N**EXHIBIT A**N O T
A N

O F F I C I A L C O P Y O F F I C I A L C O P Y
All that certain line of railroad formerly known as the Cliquot Secondary Track and identified as Line Code 4197 in the records of the United States Railway Association, situate in the towns of Medfield and Millis, County of Norfolk and Commonwealth of Massachusetts, originating at Medfield Junction and terminating at Millis.

The line is depicted as commencing on a certain trackage plan entitled Right of Way and Track Map, The New York, New Haven and Hartford Railroad from Cook St. to Woonsocket, Station 810+10 to 862+90, commencing at Station 849.30.50 and designated on the plan has Medfield Junction. The line continues in a southwesterly direction on said plan to the end and continues at the beginning of a plan entitled Right of Way and Track Map, The New York, New Haven and Hartford Railroad from Cook St. to Woonsocket, Station 862+90 to Station 915+70, in a southwesterly direction to the end and continues at the beginning of a plan entitled Right of Way and Track Map, The New York, New Haven and Hartford Railroad from Cook St. to Woonsocket, Station 915+70 to Station 968+50, in a southwesterly direction to the and continues at the beginning of a plan entitled Right of Way and Track Map, The New York, New Haven and Hartford Railroad from Cook St. to Woonsocket, Station 968+50 to Station 1021+30 in a southwesterly direction and ends at Station 999 +50.9 on said plan. The foregoing plans are recorded with Norfolk Registry of Deeds in Plan Book 236 as Plan Nos. 219, 220, 221 and 222, respectively.

Being a portion of the premises conveyed to Consolidated Rail Corporation by deed dated March 30, 1976 and recorded with Norfolk Registry of Deeds, Book 5519, Page 688.

N O T
A N**EXHIBIT B**N O T
A N

O F F I C I A L O F F I C I A L
 BEGINNING at the west line of lands conveyed to the Massachusetts Bay Transportation Authority by deed dated January 26, 1973, at Railroad Valuation Station 999+50.9, being 550 feet more or less southwest of the intersection of the centerline of the railroad track with the centerline of Exchange Street; thence extending in a general southwesterly direction to the ENDING POINT at Railroad Valuation Station 1018+50, being the same premises conveyed in a certain deed from Consolidated Rail Corporation to New York Central Lines, LLC dated June 1, 1999 and recorded with Norfolk Registry of Deeds, Book 14594, Page 452.

The foregoing line is also shown as a portion of trackage designated on a plan entitled Right of Way and Track Map, The New York, New Haven and Hartford Railroad from Cook St. to Woonsocket, Station 968+50 to Station 1021+30, recorded with Norfolk Registry of Deeds in Plan Book 236, Plan No. 222 and commences on that portion of designated trackage marked as 999+50.9 and terminates on that portion of designated trackage corresponding with Station 1018+50.

Being the same premises conveyed to New York Central Lines, LLC by Consolidated Rail Corporation by deed dated June 1, 1999 and recorded with Norfolk Registry of Deeds, Book 14594, Page 452.

AMERICAN
 YAWANZAN
 NO. 1000
 AM. 1000

EXHIBIT C

2006 OPERATING AGREEMENT

**TRACKAGE RIGHTS AND
OPERATING AGREEMENT**

This Trackage Rights and Operating Agreement (the "Agreement") made as of 4th day of May 2006 by and between Massachusetts Bay Transportation Authority ("MBTA"), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts created by and acting pursuant to M.G.L. Chapter 161A, and Bay Colony Railroad Corporation ("Bay Colony"), a Massachusetts corporation created by the General Court pursuant to Chapter 84 of the Acts of 1977.

Recitals

(a) On January 17, 1973, the Trustees of the property of Penn Central Transportation Company ("Penn Central") in proceedings in reorganization in the United States District Court for Eastern District of Pennsylvania conveyed by deed (the "1973 Deed") for the consideration of \$19,500,000 their interest in certain railroad rights-of-way to the MBTA.

(b) The rights-of-way conveyed to the MBTA included the following lines, which are more fully described in Exhibit A attached hereto: the Millis Industrial Track; the Needham Secondary Track; and the Dover Secondary Track.

(c) Penn Central reserved from the conveyance, for itself and its successors and assigns, a transportation easement (the "1973 Transportation Easement") "to use such portions of the

premises [therein] granted, together with the existing buildings, structures, railroad track, facilities and appurtenances thereon as may be necessary, as shall be mutually agreed upon between the parties, for transportation purposes, in common with [MBTA's] use thereof". The parties also covenanted that in cases of joint use of rights-of-way, costs of operations and maintenance would be apportioned on a "fair and reasonable" basis; that Penn Central, as Grantor under the 1973 Deed, would "bear the cost of necessary maintenance, repair and alteration of all buildings, structures, tracks, facilities and appurtenances, used solely by Grantors"; and that MBTA would assume such cost "to the extent of such joint use, provided, however, that neither party shall be obligated to pay more than the amount which would have been required had there been a separate rather than a joint use."

(d) In 1976, pursuant to the terms of the Regional Rail Reorganization Act of 1973 and the Final System Plan adopted by the United States Railway Association and approved pursuant to said Act, as amended, Penn Central conveyed to Consolidated Rail Corporation ("Conrail") all of Penn Central's rights and obligations under the under the 1973 Transportation Easement. Conrail conveyed and assigned to CSX Transportation, Inc. ("CSX") all of Conrail's rights and obligations under the 1973

Transportation Easement.

(e) By Assignment dated October 3, 2005, CSX conveyed and assigned to Bay Colony all of CSX's rights and obligations under the 1973 Transportation Easement relating to the Millis Industrial Track. Bay Colony is, therefore, the successor to Penn Central in respect of the 1973 Transportation Easement as it applies to the Millis Industrial Track.

(f) Bay Colony provides freight rail transportation service on the Needham Secondary Track and the Dover Secondary Track in accordance with a modified certificate issued by the Interstate Commerce Commission on June 21, 1982 in Finance Docket No. 29963.

(g) The parties desire to supplement the 1973 Transportation Easement and the 1982 modified certificate in order to address their respective operating and maintenance obligations, their charges to each other, their joint and separate liabilities for accidents and other matters affecting their relationship with respect to the lines described in Exhibit A.

ARTICLE 1

DEFINITIONS

Unless the context otherwise requires, the following terms shall have the meanings provided below.

"Bay Colony" shall mean Bay Colony Railroad Corporation, a charter corporation of the Commonwealth of Massachusetts.

"Car Mile" shall mean a locomotive or a car, whether or not loaded, whether or not carrying freight, moved one mile in for-hire or revenue service.

"Effective Date" shall mean the effective date of this Agreement as provided in Section 8.01 hereof.

"FRA" shall mean the Federal Railroad Administration.

"FRA Track Safety Regulations" shall mean the regulations promulgated by FRA, codified at 49 C.F.R. Parts 200-268 and in effect as of the Effective Date, as amended from time to time.

"MBTA" shall mean the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, C. 563, as amended.

"MBTA Rail Properties" shall mean the rail properties listed and identified in Exhibit A, which is incorporated by reference herein, including, except as otherwise specifically provided in this Agreement, additions and betterments thereto, and turnout or sidetracks used for freight service which connect with the lines listed in Exhibit A, up to but not beyond the point of clearance. Category A Properties shall be those which are identified as such in Exhibit A which are used jointly by the parties for their respective operations. Category B

Properties shall be those which are identified as such in Exhibit A and which are used exclusively by Bay Colony for its freight service. It is agreed by the parties that under certain circumstances properties may change in status from Category B to Category A Properties, or from Category A to Category B Properties, or may be deleted from Exhibit A altogether, as provided in Section 2.02; to the extent of such changes, references to properties in this Agreement at Exhibit A shall be deemed to include such properties as changed from time to time by MBTA or to exclude such properties as appropriate.

"1973 Deed" shall mean the deed from the Trustees of the property of Penn Central Transportation Company to the MBTA, dated January 17, 1973 and recorded in the Suffolk Registry of Deeds at Book 8601, Page 179.

"Operating Contractors" shall mean those entities contracted with by either of the parties to operate rail service on such party's behalf.

"Parties" shall mean Bay Colony and the MBTA.

"1973 Transportation Easement" shall mean the easement for transportation purposes reserved by the Grantor in the 1973 Deed including the covenants, limitations and other provisions as set forth with respect to such easement in the 1973 Deed.

ARTICLE 2

ACCESS RIGHTS

Section 2.01. Access to MBTA Rail Properties

(a) MBTA grants to Bay Colony, subject to the provisions of this Agreement and, without derogation of the rights of Bay Colony pursuant to the 1973 Transportation Easement, the exclusive right to enter upon and to utilize the existing tracks and related operating facilities located on the MBTA Rail Properties included in Exhibit A for the purpose of performing freight service. Without limitation of the foregoing, Bay Colony's access rights as just described are for the purpose of permitting Bay Colony to operate road and local freight trains, and related switching movements, special trains, locomotives, work trains and other on-track equipment, and Bay Colony shall have access to all running, side, switching, yard, and interchange tracks included in the MBTA Rail Properties and necessary for the provision of Bay Colony's freight service, including for the purpose of storing equipment, provided that such access rights shall not unreasonably interfere with MBTA's current or future uses of its Rail Properties for passenger service.

(b) Nothing in this Agreement shall derogate from MBTA's right to utilize, directly or through its Operating Contractors, or to permit other carriers to utilize the MBTA Rail Properties

for the provision of intercity or commuter passenger services, provided that such utilization does not interfere unreasonably with the access rights of Bay Colony pursuant to the 1973 Transportation Easement or granted to Bay Colony pursuant to the provisions of this Agreement.

(c) Except as expressly provided herein, nothing in this Agreement shall be construed to grant to Bay Colony a right to approve actions by MBTA affecting the MBTA Rail Properties, including, without limitation, alterations and improvements thereto, relocations, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that MBTA shall provide Bay Colony reasonable prior notice of those actions affecting Bay Colony's use contemplated hereunder and that such actions shall not unreasonably interfere with the access rights granted to Bay Colony.

Section 2.02. Changes in Status of MBTA Rail Properties

(a) Nothing in this Agreement shall derogate from MBTA's right to determine which portions of the MBTA Rail Properties may be used for intercity or commuter passenger service. In the event that passenger services are instituted by MBTA or its Operating Contractor on the MBTA Rail Properties shown in Exhibit A as Category B Properties, such properties shall be

designated as Category A Properties. In the event that MBTA discontinues passenger services over any of the Category A Properties, such properties shall be designated as Category B Properties for purposes of this Agreement. In each case, the change in designation of the status of the property shall be effective upon the date specified by MBTA in a written notice provided in advance thereof to Bay Colony.

(b) Without limitation of the foregoing, in the event that the rights of Bay Colony under the 1973 Transportation Easement, or the use by Bay Colony of any of the MBTA Rail Properties, shall terminate, whether in accordance with the provisions of the 1973 Deed, abandonment or otherwise, the property affected by any such termination shall be deemed deleted from Exhibit A without the need for written notice thereof by either party to the other. Termination shall be deemed to mean a permanent cessation of use, and abandonment shall be deemed to mean abandonment pursuant to final authority of the Surface Transportation Board or other regulatory agency having jurisdiction.

ARTICLE 3

MANAGEMENT AND OPERATIONS

Section 3.01. MBTA Rail Properties

(a) Except as otherwise provided in this Agreement or as the parties may otherwise agree, MBTA retains the right to exercise and to perform management and operational control of all rail service over the MBTA Rail Properties, including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not interfere unreasonably with the exercise by Bay Colony of its access rights to the MBTA Rail Properties under this Agreement or the 1973 Transportation Easement. Unless MBTA exercises its rights as outlined above, Bay Colony shall exercise such operational control and perform dispatching on all Category B Properties, and MBTA shall exercise operational control and perform dispatching on all Category A Properties.

(b) It is understood by the parties that the scheduling, dispatching and control of MBTA passenger trains on MBTA Rail Properties shall take preference over all other train scheduling, dispatching and control, including, without limitation, scheduling, dispatching and control of freight service on the MBTA Rail Properties.

(c) Bay Colony, upon sixty (60) days' written notice in advance thereof, shall have the right to amend and, in particular, to increase the level of its freight service on the MBTA Rail Properties beyond that existing as of the Effective

Date of this Agreement, which amendments to, or increase in, service shall be subject to the provisions of this Agreement, including, without limitation, Section 4.01(b), provided that the character, scheduling or extent of its freight service shall not interfere unreasonably with MBTA's current or future use of the MBTA Rail Properties for intercity or commuter passenger service.

(d) Bay Colony may operate overhead, special or emergency trains on the MBTA Rail Properties provided that such operations shall not interfere unreasonably with MBTA's current or future uses of the MBTA Rail Properties for intercity or commuter passenger service.

(e) Nothing in this Agreement shall derogate from MBTA's right to operate special or emergency trains over Category B Properties, provided that, except as the status of such properties may change in accordance with Section 2.02, MBTA shall pay the car mile charges otherwise assessable in connection with such operations by Bay Colony in accordance with ARTICLE 5.

Section 3.04. General Provisions

(a) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto such expression means the

trains, locomotives, cars or equipment in the possession of or operated by or on behalf of one of the parties and includes such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party.

(b) Each party shall comply with the provisions of applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment. Each of the parties shall indemnify, protect, defend, and save the other and its officers, agents, and employees harmless from all fines and penalties imposed under such laws, rules, and regulations by any public agency, authority or court having jurisdiction in the premises, when any such imposition is attributable to the failure of a party to comply with its obligations in this regard.

(c) In its use of the Category A Properties, Bay Colony shall comply in all respects with the operating rules and regulations of MBTA, and the movement of Bay Colony's trains, locomotives, cars and equipment over the Category A Properties shall be subject at all times to the orders of the transportation officers of MBTA.

(d) Bay Colony shall make such arrangements with MBTA as may be required to have all of Bay Colony's employees who shall

operate its trains, locomotives, cars and equipment over the Category A Properties qualified for operation thereover. Bay Colony shall compensate MBTA for any and all direct costs incurred by MBTA in connection with the qualification of such employees of Bay Colony, as well as the cost of pilots furnished by MBTA, until such time as such employees are deemed by the appropriate examining officer of MBTA to be properly qualified for operation as herein contemplated, provided that MBTA shall not be required to administer more than three qualifying attempts for any such employee.

(e) MBTA may conduct an investigation or hearing concerning the alleged violation of any operating rule or practice of MBTA by an employee or employees, except officers, of Bay Colony. Bay Colony shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by Bay Colony and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to such employee or employees.

(f) MBTA shall have the right to exclude forthwith from the Category A Properties any employee of Bay Colony, except officers, whom MBTA determines, based on the investigation or hearing described above, to be in violation of MBTA's rules, regulations, orders, practices or instructions issued by

timetable or otherwise, provided that MBTA may exclude any employee of Bay Colony (except officers) from the Category A Properties prior to such determination for alleged violations of MBTA's rules regarding use of intoxicating beverages or drugs, or for alleged insubordination. Bay Colony shall release, indemnify, defend and save harmless MBTA and its officers, agents and employees from and against any and all claims and expenses arising from such exclusion.

(g) If by reason of any mechanical failure or any other cause not resulting from an accident or derailment, a train or locomotive of Bay Colony becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by MBTA on the Category A Properties, or if in emergencies crippled or otherwise defective cars are separated from Bay Colony's trains on the Category A Properties, MBTA shall have the option of allowing Bay Colony 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 the Category A Properties or MBTA may perform or arrange for the performance of the necessary functions provided that if MBTA elects to perform or arrange for performance of such functions, MBTA shall do so as expeditiously as possible.

Bay Colony shall reimburse MBTA for direct costs incurred in rendering any such assistance.

(h) 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 Category A Properties, such work shall, at the option of MBTA, be done by Bay Colony or MBTA or by the parties' respective contractors. Bay Colony shall reimburse MBTA for direct costs incurred in rendering any such assistance.

(i) It is understood and agreed that neither party shall charge or seek payment from the other for the performance of the party's responsibility for dispatching or control of trains or equipment as set forth in this Agreement beyond the charges or payments for which the parties are otherwise responsible pursuant to ARTICLE 5.

ARTICLE 4

MAINTENANCE AND CONSTRUCTION

Section 4.01. MBTA Rail Properties

(a) Nothing in this Agreement shall derogate from MBTA's right solely to perform all maintenance, construction, alterations or improvements of any kind which are determined to be necessary by MBTA with respect to its Rail Properties or with respect to its own operations thereon. Such work shall be

performed by MBTA at its own expense except as provided in Sections 4.02 and 4.04.

(b) In addition to maintenance or other work performed by MBTA on its Rail Properties for its own account, MBTA agrees to perform maintenance work on Bay Colony's account with respect to Bay Colony's freight operations on Category A Properties in accordance with the FRA Track Safety Regulation classification listed in Exhibit A and for the compensation set forth in ARTICLE 5. If at any time Bay Colony determines that such maintenance work has not been performed by MBTA at a level required under the FRA Standards for the class of track in question, Bay Colony may notify MBTA in writing and MBTA shall within thirty (30) days of receipt of such notice take such action as may be necessary to bring such track to the standard so required. If Bay Colony desires construction, alterations or improvements on Category A Properties it shall submit a request to MBTA in writing which specifies the work which Bay Colony wants MBTA to perform on Bay Colony's account. Subject to agreement by the parties on apportionment of the costs of such improvements, the MBTA shall perform such work, or, if MBTA elects, allow Bay Colony, at its sole expense, to enter upon such Category A Properties to perform such work.

(c) Without limiting the generality of the foregoing, MBTA (1) shall have the right exclusively to secure such approvals of regulatory or governmental bodies for such work as may be necessary, including, without limitation, the Surface Transportation Board, FRA and Massachusetts Department of Public Utilities, and no approval of Bay Colony shall be required for the performance of any work on Category A Properties except as maybe expressly provided herein and (2) shall perform such work in accordance with the standards applicable to a particular property, as designated in Exhibit A, under the classification set forth therein and subject to the terms and provisions set forth in applicable FRA Track Safety Regulations.

Section 4.02. Category B MBTA Rail Properties

(a) Notwithstanding the provisions of Section 4.01, Bay Colony shall have responsibility and control of, and shall perform at its sole expense all such maintenance and shall perform, with the prior written concurrence of MBTA as provided in Section 4.04, at its sole initial expense and except as otherwise provided in Section 4.04, all Capital Improvements, as defined in Section 4.04, on Category B Properties, including, without limitation, construction, reconstruction, alteration or improvement of any yard, track, signal, communication or other solely freight facility on such Category B Properties, provided

that if Bay Colony reasonably determines that any bridge facility is in need of major structural repair, reconstruction or replacement, without which the continued utility of such facility cannot be maintained in accordance with the standards applicable to the Rail Property of which such facility is a part, as designated in Exhibit A, Bay Colony shall promptly notify MBTA of such determination in writing and may, at the election of Bay Colony, either (1) undertake such repair, replacement or reconstruction in accordance with Section 4.04, or (2) terminate its use of that portion of the Rail Property occupied by such bridge facility.

(b) It is understood that, without limitation of the foregoing, Bay Colony shall, in each particular instance, (1) obtain MBTA's approval in writing, which approval shall not be unreasonably conditioned, withheld or delayed, of any material change to, or removal without replacement of, track, signal systems, buildings or equipment on such Category B Properties including, without limitation, approval of applications to the FRA Railway Safety Board, and that upon any removal of any such items, unless such items are replaced in kind or with upgraded materials, all such items shall remain the property of MBTA and if any such items are replaced by Bay Colony in kind or with upgraded materials, Bay Colony shall retain the material removed

for reuse or for sale for the account of Bay Colony; (2) during the period of its performance of responsibilities hereunder for Category B Properties, perform all responsibilities and obligations of "track owners" under the FRA Track Safety Regulations, and shall do all things necessary to apply for and obtain, subject to MBTA's approval in writing, which approval shall not be unreasonably conditioned, withheld or delayed, any approvals of regulatory or governmental bodies (including the Surface Transportation Board, FRA and Massachusetts Department of Public Utilities) which may be required in the performance of such responsibilities and obligations, at Bay Colony's sole cost and expense, including, without limitation, filing the petition called for under FRA Track Safety Regulations, Section 213.5; provided that any "RS&I" applications, so-called, to the FRA shall be jointly filed; and (3) perform all such work as provided in Section 4.02 (a) in accordance with the standards applicable to a particular property, as designated in Exhibit A, under the classification set forth in such Exhibit A and subject to the terms and provisions set forth in the applicable FRA Track Safety Regulations.

(c) All licenses, easements or other rights or interests for purposes of crossing at grade, over or under or otherwise of using the Category B Properties referred to in this Section

4.02, including, without limitation, air, subsurface, transverse, longitudinal or other rights or interests for development, commercial or other purposes, shall be subject to the following understandings:

(1) All licenses, permits or other non-property rights or interests with respect to such Category B Properties (hereafter in this paragraph called "licenses") shall be issued by Bay Colony subject to the review and approval in advance of MBTA, except as provided expressly below, and all revenues paid by the licensee thereof to Bay Colony shall be shared with MBTA as provided in sub-paragraphs (3) and (4) below.

(2) Bay Colony may issue licenses for transverse pipe and wire occupancies without prior review or approval of MBTA, subject to the provisions of subparagraph (3) below.

(3) With respect to licenses issued under subparagraph (2) above, Bay Colony shall charge the preparation, issuance and rental fees as set forth in Exhibit B attached, as amended from time to time in accordance with the provisions of Section 11.10 hereof. To the extent of revenue from payments by such licensee, Bay Colony and MBTA shall share such revenues as follows:

(i) Bay Colony shall be reimbursed one-hundred (100) percent of the Standard Preparation Fee as shown in Exhibit B.

(ii) If annual rental fees are paid with respect to such license, Bay Colony shall be paid the Base Rate. The Base Rate shall be \$179 (September 2005 base), and shall be adjusted annually based on the Consumer Price Index, for Urban Wage Earners and Clerical Workers (CPI-W) (1967=100) specified for All Items-United States compiled by the Bureau of Labor Statistics of the United States Department of Labor, provided that the Base Rate shall not be less than \$179.

(iii) Bay Colony shall be paid one-half of any revenues from payments by such licensee in excess of the amount provided at clauses (i) and (ii) above, the remaining one-half share to be paid by Bay Colony to MBTA upon receipt from the licensee.

(4) With respect to licenses issued by Bay Colony other than those described at sub-paragraph (2), Bay Colony shall charge such amounts and shall share revenues from payments by any such licensee in accordance with such understandings as MBTA and Bay Colony may agree to in writing with respect to each such license, provided that to the extent of such revenues Bay

Colony's share shall not be less than the amount referred to at clauses (i) and (ii) above.

(5) All applications for rights or interests described at this subsection with respect to the use of Category B Properties other than those expressly subject to subparagraphs (1) through (4) shall be submitted to MBTA for its approval and issuance.

(d) Bay Colony shall carry out its responsibilities under Section 4.02(a) in a manner which will not unreasonably interfere with any future intercity or commuter passenger services which MBTA may undertake or authorize on Category B Properties.

(e)(1) In the event that MBTA initiates intercity or commuter passenger service or the rights of Bay Colony terminate in accordance with Section 2.2(b) on any of the Category B Properties, and if it is determined that Bay Colony has failed, on or before the date of such termination, or ninety (90) days after the date written notice is sent by MBTA to Bay Colony that it intends to initiate passenger service in joint use with Bay Colony on such property, to maintain such properties at, or to bring such properties to, the level of maintenance required under the FRA class designation shown in Exhibit A for such property, MBTA shall have the right otherwise provided under

Section 4.01 to perform such work, and to charge Bay Colony therefor, in which event Bay Colony shall reimburse such charges incurred by MBTA as a payment additional to those otherwise provided in ARTICLE 5. All facilities or improvements thereto which are constructed by Bay Colony under Section 4.02(a), which are properly accounted for as a capital expense, and which can be removed without causing permanent damage to such Rail Property and without interfering with any use by MBTA of such Rail Properties, shall be the property of Bay Colony and may be removed by Bay Colony at its sole expense in accordance with the foregoing. At MBTA's option, MBTA may require by written notice to Bay Colony and at Bay Colony's sole expense, that Bay Colony remove such facilities or improvements which are no longer used and restore the property to its pre-existing condition, and in the event such facilities or improvements are not so removed within ninety (90) days following the date of such notice, they shall be the property of MBTA.

Section 4.03. Installation of Industrial Sidetracks

(a) In addition to, and without limitation of, the requirements set forth above in this ARTICLE 4, the provisions of this Section 4.03 shall apply to the construction, alteration or removal of industrial sidetracks (referred to in this Section as "sidetracks") located on the Rail Properties.

(b) In order to use Category A Properties for sidetrack purposes, Bay Colony shall submit to MBTA for its review and written approval, which approval shall not be unreasonably condition, withheld or delayed, the engineering plans and specifications for such work and an application by Bay Colony or the industrial user for a license.

(c) Bay Colony shall have full responsibility for negotiations with industrial users in connection with the development of such plans and specifications for sidetracks on Category A Properties and with the preparation of applications for licenses for submission to MBTA.

(d) The license between MBTA and Bay Colony or MBTA and the industrial user for sidetracks on Category A Properties shall define the location and use of the sidetrack, the use and maintenance charge, the term of the license, the obligation to remove the sidetrack under certain circumstances, and such other terms as may reasonably be required by MBTA, including, without limitation, provisions for indemnification of MBTA for liability for death or injury to persons or loss or damage to property with respect to the construction, alteration, repair, removal or use of such sidetrack. In the event the license is between MBTA and Bay Colony, the term shall not be greater than the term of this Agreement under Section 8.01 and shall be subject to the

termination provisions of ARTICLE 8 of this Agreement unless the parties otherwise expressly agree.

(e) Except as provided below at subparagraph (g), construction, alteration, repair, or removal of sidetracks on Category A Properties shall be performed by MBTA's employees or contractors at Bay Colony's sole cost and expense.

(f) Except as provided in paragraph (g) below, following MBTA's written approval of plans and specifications for the construction, alteration or removal of sidetracks on Category A Properties, MBTA shall, within 30 days, submit a force account estimate for work to be done and a time and payment schedule which, when approved by Bay Colony, will constitute an order to begin work. Payment shall be required in advance of the performance of the work either, at the election of the MBTA, in one payment or a series of payments. If it appears that the cost of such work will exceed the estimate, MBTA will notify Bay Colony to secure authority for such additional costs. Upon completion of work done on behalf of Bay Colony by MBTA, Bay Colony shall promptly pay any authorized costs which exceed the advance payments; provided, however, that MBTA shall not be authorized or obligated to incur costs in excess of those approved in writing by Bay Colony. The unexpended balance of

any advance payments shall be returned by MBTA to Bay Colony promptly upon completion of work.

(g) Construction, alteration or removal of sidetracks on Category B Properties shall be performed, in a manner that will not unduly interfere with potential future use of such Category B Properties by MBTA and in accordance with plans and specifications developed by Bay Colony, by Bay Colony employees or contractors at Bay Colony's sole cost and expense.

(h) Maintenance of sidetracks on the MBTA Rail Properties shall be performed by MBTA's employees or contractors at Bay Colony's sole cost and expense, except that maintenance of sidetracks on Category B Properties shall be performed by Bay Colony's employees or contractors at Bay Colony's sole cost and expense. It is expressly understood that the compensation charged to Bay Colony under ARTICLE 5 does not cover such cost and expense of maintenance of sidetracks on Category A Properties, which shall be paid as additional compensation in accordance with the provisions of this Section 4.03.

(i) MBTA shall bear no portion of the cost or expense of and shall have no responsibility with respect to construction and maintenance of that portion of any sidetracks located off the MBTA Rail Properties.

(j) In the event that use of any sidetracks located on Category A Properties has ceased for a period of twenty-four (24) consecutive months, MBTA shall have the option, upon ninety (90) days' written notice to Bay Colony, to remove the sidetrack and any other facilities or appurtenances connected therewith which are located upon such Rail Properties.

(k) In the event of removal of a sidetrack located on MBTA's Rail Property, Bay Colony shall be entitled to the return of all sidetrack materials which Bay Colony provided to MBTA or otherwise installed in accordance with this Section, which are properly accounted for as a capital expense, which can be removed without causing permanent damage to the MBTA Rail Property, and without interfering with any use by MBTA of such Rail Property, provided that the cost of removal is borne by Bay Colony. All other materials shall be removed by MBTA at MBTA's expense and shall be retained by MBTA. MBTA shall notify Bay Colony of the removal and availability for disposition of all materials belonging to Bay Colony hereunder.

Section 4.04. Capital Improvements.

MBTA acknowledges and agrees that Bay Colony has made and in the future will need to make Capital Improvements, as defined below, necessary to enable it to provide rail freight service on the MBTA Rail Properties and that such Capital Improvements may

not be fully amortized or depreciated at the termination of this Agreement. Capital Improvements that have been made by Bay Colony and their respective costs and amortization schedules are listed in Exhibit C attached hereto. Bay Colony may propose additional Capital Improvements that may have amortization schedules that may extend beyond the termination of this Agreement. Provided that a proposed Capital Improvements does not compromise or reduce the level or standards for the MBTA Rail Properties and does not conflict with any future plans of MBTA for the MBTA Rail Properties and is of a standard which is generally accepted in the industry and is to the benefit freight railroad operations and improved service, then MBTA shall approve such proposed Capital Improvement and associated amortization schedule. Failure of MBTA to provide approval within 90 days shall constitute approval of the proposal. If Bay Colony no longer operates the line on which a Capital Improvement is located after the termination of this Agreement, MBTA shall require any person that, within one year of the termination of this Agreement (other than as a result of a default by Bay Colony), becomes the operator of any such line to pay to Bay Colony any unamortized net book value remaining on any such Capital Improvement. The obligation of MBTA pursuant to the preceding sentence shall survive the termination of this

Agreement. For purposes of this Agreement, "Capital Improvement" shall mean any addition, installation, improvement, replacement or construction that is capitalized by railroads in accordance with generally accepted accounting principles.

ARTICLE 5

COMPENSATION

Section 5.01. Base Charge

(a) Subject to revision from time to time as provided in Section 5.03, the Base Charge for the use by Bay Colony of the Category A Properties shall be as follows:

Number of Car	Car Mile
<u>Miles Annually</u>	<u>Charge</u>
First Eight Hundred Thousand	\$.3646
Over Eight Hundred Thousand	\$.2734

Section 5.02. Payment

(a) Bay Colony will pay to MBTA, care of Director of Railroad Operations, an amount computed by multiplying the Base Charge, as revised from time to time pursuant to Section 5.03, by the number of car miles traveled on each segment of the

Category A Properties in any calendar month (the "applicable month").

(b) Bay Colony shall be responsible for calculating the amount of the payment due to MBTA for the applicable month in accordance with this Section, and shall pay such amount within ninety (90) calendar days after the close of such applicable month. Any such payments shall be accompanied by a statement prepared by Bay Colony which shall show the number of car miles traveled during the applicable month by each segment.

Section 5.03. Revision of the Base Charge

Beginning July 1, 2006, and each July 1 thereafter, the Base Charge shall be increased or decreased on a cumulative basis by the same percentage by which the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Recovery Index" and supplements thereto, issued by the Association of American Railroads (or, if such index ceases to be published a generally recognized index which is substantially equivalent to same), has increased or decreased in the preceding calendar year. Such increase or decrease will become effective July 1st of each calendar year.

ARTICLE 6

LIABILITY INDEMNIFICATION

Section 6.01. General

(a) Financial responsibility for liability for personal injury or property damage which may result from activities conducted hereunder shall be allocated as provided in this ARTICLE 6.

(b) For the purpose of this ARTICLE 6, the following terms shall have the meanings provided below unless otherwise expressly provided in this ARTICLE:

"Bay Colony Employees" shall mean the employees and agents of Bay Colony, and Bay Colony's Operating Contractors and any such Contractors' employees.

"MBTA Employees" shall mean the employees and agents of MBTA, and MBTA's Operating Contractors and any such Contractors' employees.

"Person" shall mean any person, including, without limitation, passengers and third parties, as well as the respective employees, agents or contractors of the parties.

Section 6.02. Bay Colony Employees

Bay Colony shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, MBTA or MBTA Employees, or howsoever incurred or

caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any Bay Colony Employee or arising out of loss of, damage to, or destruction of any property of any such Bay Colony Employee. Bay Colony Employees who are involved in Bay Colony's provision of services to MBTA under this Agreement shall be regarded as Bay Colony Employees, and not as MBTA Employees.

Section 6.03. MBTA Employees

MBTA shall defend, indemnify, and save harmless Bay Colony and Bay Colony Employees, irrespective of any negligence or fault of, or control by, Bay Colony or Bay Colony Employees, or howsoever incurred or caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any MBTA Employee or arising out of loss of, damage to, or destruction of any property of any such MBTA Employee. MBTA Employees who are involved in MBTA's provision of services to Bay Colony under this Agreement shall be regarded as MBTA Employees and not as Bay Colony Employees.

Section 6.04. Bay Colony Property

Bay Colony shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault, of,

or control by MBTA or MBTA Employees, or howsoever incurred or caused, from any and all liability, damage or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of loss of, damage to, or destruction of any property, real or personal, owned by, leased to or otherwise under the control of Bay Colony, including, without limitation, Bay Colony trains, loadings and all other contents thereof and the Category B Properties.

Section 6.05. MBTA Property

MBTA shall defend, indemnify, and save harmless Bay Colony and Bay Colony Employees, irrespective of any negligence or fault of, or control by Bay Colony or Bay Colony Employees, or howsoever incurred or caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of loss of, damage to, or destruction of any property owned by, leased to, or otherwise under the control of MBTA, including without limitation, MBTA trains and all other contents thereof, but expressly not including the Category B Properties.

Section 6.06. Liabilities Arising from Hazardous Materials

Any other provision of this ARTICLE 6 to the contrary notwithstanding:

(1) Bay Colony shall defend, indemnify and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, MBTA or MBTA Employees, or howsoever incurred or caused, from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of the property of MBTA, MBTA Employees or any Person, resulting from the transportation or use of hazardous materials by Bay Colony or Bay Colony Employees; and

(2) MBTA shall defend, indemnify and save harmless Bay Colony and Bay Colony Employees, irrespective of any negligence or fault of, or control by, Bay Colony or Bay Colony Employees, or howsoever incurred or caused, from any and all liability, damage, or expense of any kind whatsoever, including, reasonable attorneys' fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of the property of Bay Colony, Bay Colony Employees or any Person, resulting from the transportation or use of hazardous materials by MBTA or MBTA Employees.

For purposes of this Section, hazardous materials shall be deemed to be all materials listed by the United States Department of Transportation in the Hazardous Materials Table

found at 49 CFR 172.01, as the same may be amended from time to time, without regard to any special designation or limitation noted in the Table.

Section 6.07. Other Apportionment of Liability

Except as otherwise provided in Section 6.01 through 6.06, of this ARTICLE 6:

(a) Bay Colony shall defend, indemnify, and save harmless MBTA and MBTA Employees from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of any property of any Person, resulting from the negligence or fault of Bay Colony or Bay Colony Employees.

(b) MBTA shall defend, indemnify and save harmless Bay Colony and Bay Colony Employees from any and all liability, damage, or expense of any kind whatsoever, including reasonable attorneys' fees, arising out of injury to or death of any Person, or arising out of loss of, damage to, or destruction of any property of any Person, resulting from the negligence or fault of MBTA or MBTA Employees.

(c) If liability, damage or expense of any kind whatsoever arises as a result of the negligence or fault of both parties, or their respective Employees, the obligations of the parties to

indemnify each other pursuant to Sections 6.07(a) and 6.07(b), above, shall be apportioned on the same basis as would arise under applicable common law and statutory principles of law concerning tort liability, contribution and indemnification, provided that for the purposes of this contractual provision insofar as it relates to the right to contribution of one party to another, and notwithstanding any contrary principle of law, the party against whom contribution is sought shall be responsible for the negligence or fault of its Employees or other contractors.

ARTICLE 7

DISPUTE RESOLUTION

Section 7.01. Informal Procedures

(a) Whenever an issue of interpretation or application of this Agreement arises between the parties, the parties agree to make every possible effort to resolve the matter expeditiously through the procedures set forth in this Section, and without resort either to arbitration (see Section 7.02) or to other remedies available under this Agreement pursuant to Section 8.03.

(b) For technical operating issues, the parties will establish an operating committee consisting of one or more representatives from each party. The operating committee shall

meet as often as required by the MBTA Director of Rail Operations and Bay Colony General Manager. Either party may submit issues to the operating committee for review and the operating committee shall give its opinion on any issue within a reasonable time but not later than fifteen (15) working days from the date of the meeting at which the issue was presented.

(c) In the event any party believes that the other party is in default regarding a matter of substantial importance which, if not corrected immediately, will substantially prejudice the party's ability to protect its interests under this Agreement or will cause other irreparable injury, such party may request a meeting to be held between the General Manager of MBTA and the General Manager for Bay Colony at a convenient time and place within seven (7) working days of the request. The other party shall forthwith respond to the request and the meeting shall be held within the above time period.

(d) If a dispute remains outstanding following the use of the appropriate method or methods outlined above, the aggrieved party shall notify the other party in writing of the nature of the dispute or alleged default, the grounds why the other party is responsible, and the specific relief desired. Within ten (10) business days of the receipt of such notice, such other party shall respond in writing and shall either propose an

adequate course of action to correct such default within a stated period of time, or provide a detailed objection to the grounds listed in such notice. In the event that the parties agree on the course of action proposed by the responding party, or an alternative course of action to correct such dispute or default, the parties shall countersign a letter incorporating such agreed upon course of action or, where applicable, shall agree to an amendment to this Agreement. In the event that such letter agreement or amendment is not executed within thirty (30) days of receipt of such notice (originally sent by the aggrieved party), or within such other reasonable period of time as the parties may agree, the aggrieved party may, except as otherwise provided in this Agreement, proceed with formal methods of dispute resolution outlined in Section 7.02 or may proceed with other remedies available under this Agreement.

Section 7.02. Arbitration

(a) Arbitration for purposes of resolving a dispute shall follow exhaustion of the informal procedures under Section 7.01 and shall be available only at the option of both parties. If a party elects arbitration and the other party declines to have the dispute resolved by arbitration under this Section, or if the parties undertake arbitration and one of the parties unreasonably delays the expeditious conclusion of the

arbitration proceeding, the aggrieved party may proceed with other remedies available under this Agreement.

(b) If arbitration is undertaken, the matter in dispute shall be submitted to a disinterested arbitrator. In the event that the parties are unable to agree upon the appointment of an arbitrator, the arbitrator shall be appointed, upon the application of either party hereto and upon reasonable notice to the other party, by the American Arbitration Association.

(c) If either party claims the arbitrator's decision is based upon an error of law, it may within thirty (30) days after receipt of such decision, institute an action at law to determine such legal issue. For this purpose, the sufficiency of the evidence to support the arbitrator's conclusions of law shall be considered a question of law.

(d) All arbitrations hereunder shall be conducted in accordance with the rules and procedures of the American Arbitration Association unless the parties otherwise agree.

(e) During the pendency of such arbitration proceedings, the operations to be conducted, and physical plant to be used under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted and used in the manner and form existing prior to the time such controversy

arose, unless the arbitrator shall make a preliminary ruling to the contrary.

(f) Each party hereto shall bear the costs and expenses incurred by it and the parties shall share equally the costs and expenses attributable to the services of the arbitrator which they may jointly appoint under paragraph (d) or whom may be appointed under paragraph (b).

ARTICLE 8

DURATION OF AGREEMENT AND DEFAULT

Section 8.01. Term

The Effective Date of this Agreement shall be May 4, 2006 and the term hereof, unless sooner terminated as provided below, shall continue from that date until December 31, 2035.

Thereafter, this Agreement may be extended for one successive thirty (30) year term at the election of both parties, provided that both parties execute a written election to renew not later than June 30, 2035. Notwithstanding any other provision of this Agreement, Bay Colony may at any time discontinue operation of all or any portion of any line subject to this Agreement, including taking action in its discretion to obtain regulatory authority to abandon or discontinue operations.

Section 8.02. MBTA Budget Approval

This Agreement is subject to annual budget approval by the MBTA Advisory Board of budgetary provisions for rail costs or services under Mass. General Laws, Chapter 161A, Section 5(i). In the event that financial participation by MBTA in costs or services related to any or all of the Rail Properties is not approved, MBTA shall provide written notice to Bay Colony, which notice shall specify the end of the fiscal period for which an approved budget exists. Effective at the end of such fiscal period (called for purposes of this paragraph the "Termination Date") the provisions of this Agreement shall terminate and shall be null and void and without further effect except that claims or disputes of the parties with respect to matters arising under this Agreement prior to such Termination Date shall be governed by this Agreement and except that Bay Colony may elect to continue to use MBTA Rail Properties in accordance with the 1973 Easement and such reasonable terms and conditions as the parties may agree upon in advance of such Termination Date.

Section 8.03. Default

(a) Each of the following shall constitute an Event of Default under this Agreement:

(i) Any late payment of compensation under ARTICLE 5 or other provisions of this Agreement remaining outstanding for more than four (4) months;

(ii) The commencement of any proceeding by or against either party which might result in any modification of the obligations of such party hereunder under any bankruptcy, insolvency or similar law, unless all of the obligations of such party under this Agreement shall have been duly assumed by a trustee, or successor to such party within sixty (60) days after such proceeding shall have commenced;

(iii) The failure to perform any other covenant or obligation in this Agreement, which failure shall have continued for more than thirty (30) days following the date of a notice of alleged default sent pursuant to Section 7.01(d).

(b) If an Event of Default shall occur, the party not in default ("aggrieved party"), upon written notice to the defaulting party, may make a Declaration of Default hereunder, and may exercise any or all of the following remedies:

(i) Terminate this Agreement by and upon sixty (60) days' written notice to the defaulting party;

(ii) Continue this Agreement in effect notwithstanding the Event of Default and set off against amounts owed to the

defaulting party any late payments duly noticed by the aggrieved party in the Declaration of Default; or

(iii) Regardless whether a remedy described above is exercised, pursue any other remedy at law or in equity in any court of competent jurisdiction.

(c) Notwithstanding any contrary provisions of Section 7.01(d) or of Section 8.03(a) or (b), if any party believes that the other party is in default regarding a matter of substantial importance which, if not corrected immediately, will substantially prejudice the aggrieved party's ability to protect its interests under this Agreement or will cause irreparable injury, the aggrieved party may file immediately any and all pleadings which it deems appropriate before any court of competent jurisdiction to secure judicial review of such matter, accompanied by an affidavit demonstrating the nature of the need for immediate relief, without following the provisions of Section 7.01(d) and without waiting for the thirty (30) day period specified therein or in Section 8.03(a) or (b) to expire. The parties agree that to the extent permitted by the rules of procedure applicable to judicial review in the court or courts in which proceedings under this Agreement are invoked, pursuit of judicial review as described in this Paragraph shall be without prejudice to the pursuit of other remedies described in

this Section, including, without limitation, pursuit of judicial relief as to other issues between the parties under this Agreement.

(d) An Event of Default shall not be waived or satisfied by failure of a party to make a Declaration of Default with respect thereto, nor shall a failure of a party to make a Declaration of Default be considered a waiver of any other remedies available to it under this Agreement or otherwise.

ARTICLE 9

AFFIRMATIVE DUTIES, REPRESENTATIONS AND WARRANTIES

Section 9.01. Operating Duties in Regard to Safety

Each party shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, death or loss to all employees and passengers, Operating Contractors, all tracks, bridges and other equipment and all adjoining utilities and other equipment in the rights-of-way. Unless otherwise provided by law, each party will be responsible to give all notices and comply with all applicable laws, rules, regulations and lawful orders of any public agency or authority in connection with its operations under this Agreement bearing on the safety of persons or property or their protection from damage, injury, death or loss. Without limitation, this shall include observance of all applicable

safety rules and regulations administered by the Surface Transportation Board, FRA or Massachusetts Department of Public Utilities, all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U. S. Department of Transportation and by the U. S. Environmental Protection Agency and all other applicable safety rules and other operating procedures of general applicability.

Section 9.02. Mutual Representations and Warranties

When this Agreement is executed by the parties, the parties shall have represented and warranted to each other that: (a) the parties have the corporate power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (b) the parties have taken all legal action necessary to authorize them to enter into and perform their respective obligations hereunder; (c) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or violate any agreement by which a party is bound; (d) there is no known litigation or proceeding pending or threatened against a party which could materially or adversely affect the performance of this Agreement; and (e) the parties have obtained all approvals as may be required to permit

their respective performance of the obligations of this Agreement.

ARTICLE 10

GENERAL PROVISIONS

Section 10.01. Labor Rights

(a) Bay Colony agrees that its entrance upon and use of the MBTA Rail Properties is for its corporate purpose of providing rail service pursuant to appropriate authority and that such use is not intended to create or continue any rights on the part of Bay Colony Employees or its contractors with respect to any other current or future use of the MBTA's properties, including without limitation, maintenance, operation, rehabilitation, and improvement thereof by MBTA or MBTA's contractors.

(b) Nothing contained in this Agreement shall require either party to perform any service or take any action which would violate any term or condition of any then current labor agreement between the respective parties and any organization representing any of their respective employees or applicable to the respective parties by reason of operation of law.

Section 10.02. Status As Independent Contractor

In connection with all maintenance or other work performed by MBTA on Bay Colony's account in furtherance of Bay Colony's

freight operation on MBTA Rail Properties under Section 4.01 and any other work performed by MBTA on behalf of Bay Colony under this Agreement, the parties intend that the MBTA shall act as an independent contractor and not as the agent for Bay Colony.

Section 12.03. Clearing Wrecks

(a) When, as a result of Bay Colony's sole use of Category B Properties, rerailing, wrecking service or wrecking train service is required, Bay Colony shall perform or arrange to have performed such service at Bay Colony's sole cost and expense, including without limitation, removal of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right of way structures.

(b) With respect to incidents on Category A Properties the following provisions shall apply:

(1) When, as a result of Bay Colony's sole use of Category A Properties, rerailing, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of Bay Colony, shall have the option of requesting Bay Colony to perform such service or of performing such service by itself or by its contractor, all at Bay Colony's sole cost and expense, including without limitation, removal of damaged equipment, repair of damaged equipment, repair and

restoration of roadbed, track, signals, communication systems and all other right of way structures.

(2) When, as a result of MBTA's sole use of Category A Properties, rerailing, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of Bay Colony, shall have the option of requesting Bay Colony to perform such service at MBTA's sole cost and expense or of performing such service by itself or by its contractor, including without limitation, removal of and restoration of roadbed, track, signals, communication systems, and all other right of way structures.

(3) When, as a result of joint use of Category A Properties by MBTA and Bay Colony, rerailing, wrecking service or wrecking train service is required, the provisions of Section 10.03(b)(1) will apply except that all costs, including without limitation liability costs, will be apportioned in accordance with the provisions of ARTICLE 6.

(c) Unless the parties otherwise agree in writing, all repairs and restorations performed pursuant to this Section shall be to the condition existing immediately preceding the wreck.

(d) All Bay Colony locomotives, cars, equipment, lading (including loss thereof) and salvage from any such wreck or

derailment under the management or control of MBTA shall remain the property of Bay Colony. Any MBTA locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property of MBTA.

Section 10.04. Force Majeure

(a) MBTA will be excused from any obligation under this Agreement where non-performance is occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or any other event which is beyond its reasonable control including, without limitation, the disapproval, in whole or in part, of the MBTA's budget for its operations or maintenance of, or other use of the MBTA Rail Properties. Except as otherwise provided expressly in the Agreement, performance shall be excused only so long as and to the extent that any such event shall prevent performance.

(b) Bay Colony will be excused from any obligations under this Agreement where non-performance is occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or any other event which is beyond its reasonable control. Performance shall be excused only so long as and to the extent that any such event shall prevent performance.

Section 10.05. Notices

(a) Any notices required in this Agreement shall be sent in writing to the parties at the addresses listed below, unless either party shall inform the other party in writing of any change in that address:

Bay Colony: Bay Colony Railroad Corporation
Attn: Bernard M. Reagan
420 Washington Street
Braintree, MA 02180

MBTA: Massachusetts Bay Transportation Authority
Attn: General Counsel
10 Park Plaza
Boston, MA 02116

Copy: Director of Railroad Operations
45 High Street
Boston, MA 02110

(b) All approvals and consents required under this Agreement shall be in writing and signed by an Officer identified in this section.

Section 10.06. No Third Party Rights

This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and, to the extent provided in this Agreement, their respective Employees and not for the benefit of any third party. Nothing herein contained

shall be construed or interpreted as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 10.07. Headings

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 10.08. Entire Agreement

This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto with respect to the matters described in this Agreement, and supersede any and all agreements or understandings whether oral or written, between the parties. However, nothing in this Agreement shall be deemed to diminish the rights of Bay Colony as the assignee under, or adversely affect or extinguish, the 1973 Transportation Easement retained under the provisions of the 1973 Deed, which rights and 1973 Transportation Easement shall survive the termination of this Agreement.

Section 10.9. Amendments

No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

Section 10.10. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties. For this purpose, any party hereunder shall enter into an agreement with any such successor or assign obligating such successor or assign to all the terms and conditions of this Agreement. Any party to this Agreement shall remain liable jointly and severally with any successor or assign for any event of default or other breach of this Agreement which occurred, and any charges or obligation which accrued, prior to the date of the assignment notwithstanding the assumption by the successor or assign of such liabilities, charges, or obligations.

Section 10.11. Regulatory Approval

Each party shall have the obligation to obtain all necessary regulatory and other approvals for it to enter into this Agreement, any modification or amendment of this Agreement, or to comply with any of the provisions of this Agreement. Neither party shall be under any obligation to comply with any provision of this Agreement if it determines that such modification or amendment or proposed action under this Agreement requires the approval of any regulatory body unless and until the other party provides sufficient evidence that such approval has been obtained or is not required.

Section 10.12. Records

Each party shall maintain appropriate operating and accounting records which record the locomotives and cars and the mileage of such locomotives and cars moving on Category A Properties. Each party shall have the right, upon reasonable notice, to inspect, examine and audit all operating and accounting records and supporting documents of the other party, including, without limitation, dispatching records, and all other books and records that relate to the performance of this Agreement. Nothing in this Agreement shall be construed as obligating either party to retain books or records beyond the period specified in regulations of the Surface Transportation Board or of the FRA.

Section 10.13. No Representation and Waivers

Except as expressly provided herein, the parties make no representations or warranties and waive no rights or remedies.

Section 10.14. Non-Discrimination

The parties shall comply with the terms and conditions contained in Exhibit D.

Section 10.15. Past Claims

Each party hereby releases the other from any and all claims, disputes, or causes of action, known or unknown, as of the Effective Date, which arise out of or may be connected in

any way with use by Bay Colony of any of the MBTA Rail Properties prior to the Effective Date including, without limitation, with respect to charges for use or maintenance of such MBTA Rail Properties, or with respect to losses to property or damages with respect to use or maintenance of the MBTA Rail Properties by either party; provided, however, that claims, defenses, disputes or causes of action relating to Capital Improvements and arising under or based upon section 4.04 shall not be released.

Section 10.16. No Personal Liability

No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person, unless such claim is based upon the bad faith, fraud or deceit of such person.

Section 10.17. Effect of Invalidity

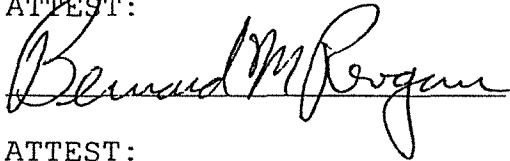
In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid or unenforceable provision was originally deleted.

Section 10.18. Massachusetts Law

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 4th day of May 2006.

ATTEST:



BAY COLONY RAILROAD CORPORATION

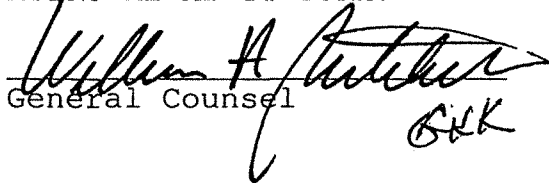
BY:



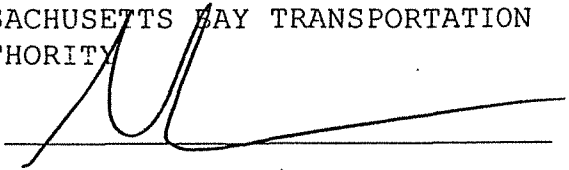
ATTEST:

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

APPROVAL AS TO FORM:


General Counsel
BKK

BY:



**EXHIBIT A TO TRACKAGE RIGHTS AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND BAY COLONY RAILROAD CORPORATION**

1. The Needham secondary track - the line of railroad beginning at Control Point Heights, Railroad Milepost 13.6, Needham, Middlesex County, Massachusetts and continuing through Needham and Newton to its point of termination at Railroad Milepost 15.5, known as Cook Street, Newton, Middlesex County, Massachusetts and including the Wye track and that portion of the Needham branch from Needham Junction to Control Point Land. The MBTA operates passenger service from Railroad milepost 13.6 to Railroad Milepost 13.9 and this portion of the Needham Secondary track is in Category A. The balance of the Needham Secondary Track is in Category B.
2. The Dover Secondary Track - the line of railroad beginning at Railroad Milepost 0 in Needham, Middlesex County, Massachusetts and continuing through Needham, Dover and Medfield to its point of termination at Railroad Milepost 7.3 known as Medfield Junction. This track currently has no passenger service and is in Category B.
3. The Millis industrial track - all that line of railroad beginning at the point of clearance of the switch connecting the Millis Line with CSX Transportation's line of railroad between Framingham and Walpole, Massachusetts, at a point known as Medfield Junction, at approximately Railroad Milepost 0, then running southwesterly through the town of Medfield into the town of Millis, ending approximately 100 feet after Exchange Street. This track currently has no passenger service and is in Category B.

EXHIBIT B TO TRACKAGE RIGHTS AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND BAY COLONY RAILROAD CORPORATION

CE-3 R2 1-85
Printed In USA MU

**RENTAL SCHEDULE
FOR
UTILITY OCCUPATIONS OF
CONSOLIDATED RAIL CORPORATION
PROPERTY**

(IN EFFECT JANUARY 1, 1985)

SCOPE

1. The following are charges for wires, cables, poles and electrical conduits and for pipe crossings, including longitudinal occupation, on, over, across or under the Railroad Company's right of way and property and for attachments to or occupation of railroad facilities.
2. A proportionate additional rental calculated to the nearest dollar shall be made for any crossing in excess of 200 feet in length.
3. All annual licenses shall have a clause included providing for an automatic yearly increase or decrease based on the Consumer Price Index outlined in the Agreement.
4. The total annual rental for any one Agreement shall not be less than \$100.00.
5. Note of exception: The charges herein are not intended to extend to operating agreements covering use of joint facilities.

I

The Railroad Company will be reimbursed for:

1. All labor and material furnished by it in connection with the construction, reconstruction, repair, relocation or removal, etc. of any overhead or undergrade crossing, or any occupation of its property.
2. The services of such watchmen, flagmen, inspectors or any other employees as may, in the opinion of the Railroad Company, be necessary to safeguard its interests or to maintain traffic.
3. The cost of all drawings and engineering furnished.
4. The cost of all insurance which may be deemed necessary by the Railroad Company. (See Page 2)

NOTE: The above costs shall include the current percentages for overhead and fringe benefits.

II

PREPARATION FEES

The following charges are intended to cover the cost of processing of papers and other incidental expenses incurred by the Railroad Company, and are in addition to the rentals shown hereafter in this schedule.

PUBLIC HIGHWAYS — No charge will be made for the processing of agreements for any overhead or undergrade crossing of the right of way of the Railroad Company within the limits of any public highway to those holding franchise rights. (See Item 1 as to incidental charges).

RAILROAD RIGHT OF WAY: Charges will be made as follows:

1. Wire and Cable Crossings and Longitudinal Occupations over or under Railroad Company right of way and property:
 - (a) Not exceeding 300 volts to one individual service \$50.00
 - (b) All other transverse crossings 200.00
 - (c) All longitudinal occupations, and any agreement regardless of voltage NOT prepared on a standard printed form, not less than 350.00
2. Pipe and Sewer Crossings and Longitudinal Occupations over or under Railroad Company right of way and property:
 - (a) Pipe not exceeding 3" inside diameter to one individual service \$50.00
 - (b) All other transverse crossings 200.00
 - (c) All longitudinal occupations, and any agreement regardless of size of pipe NOT prepared on a standard printed form, not less than 350.00

NOTE: Crossing of right of way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe under inert oil pressure, and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.

- (e) Spare or unoccupied ducts or pipes, each (When the duct shall be occupied in the future by a cable, the annual rental charge shall govern and the \$5.00 charge cease) \$5.00
- (f) Ducts or pipes carrying conductors NO CHARGE
- (g) Manholes, each 25.00

NOTE: (1) Attachments of wires, cables, etc. to bridges, buildings, poles or structures of Railroad Company subject to special consideration in each case.

- (2) A proportionate additional rental calculated to the nearest dollar shall be made for any crossing in excess of 200 feet.

SECTION C — POLES, TOWERS, GUYS AND ANCHORS

- 1. Single wooden pole (per pole) \$20.00
- 2. All other supporting structures other than the auxiliary facilities and appurtenances listed in Items 3, 4, 5 and 6 below 25.00 ea.
- 3. Each brace, stub pole or anchor 20.00 ea.
- 4. Each guy anchored on or crossing railroad property 5.00
- 5. Each span guy wire crossing 30.00
- 6. Guys, stubs, anchors and push or pull braces not definitely required by specification for the support of a crossing pole, placed on Railroad right of way at the request of the Railroad Company, shall be considered as a part of the crossing pole and no charges made therefor.

NOTE: The above charges are in addition to the wire or cable occupation charges provided for in Sections "A" and "B".

SECTION D — PIPES AND SEWERS

- 1. PUBLIC HIGHWAYS — Crossings wholly within the limits of a public highway and not supported by or attached to structures of the Railroad Company for those holding proper franchise rights. NO RENTAL.
- 2. RAILROAD RIGHT OF WAY AND PROPERTY — Crossings not exceeding 200 feet in length. Annual rental will be as follows:
 - (a) Circular Lines Carrying No Pressure;
\$1.00 per inch of inside nominal diameter per pipe
Minimum charge for any one crossing \$100.00
 - (b) Circular Lines Under Pressure and Carrying Non-Flammable, Non-Explosive or Non-Combustible Supporting Materials, except Coal and Water Slurry:
\$1.50 per inch of inside nominal diameter per pipe
Minimum charge for any one crossing 100.00
 - (c) Circular Lines Under Pressure and Carrying Flammable, Explosive or Combustible Supporting Materials, except Coal and Water Slurry:
 - Pipe not exceeding 3" inside nominal diameter
Minimum charge for any one crossing 100.00
 - Pipe over 3" inside nominal diameter and not exceeding 12" inside diameter
Minimum charge for any one crossing 125.00
 - Pipe over 12" inside diameter and not exceeding 24" inside diameter
Minimum charge for any one crossing 175.00
 - Pipe exceeding 24" in diameter — \$6.00 per inch
Minimum charge for any one crossing 300.00
 - (d) Rental for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.
 - (e) Rental for pipe tunnels or other special underground construction shall be subject to special consideration.
 - (f) Pipe lines carried over Railroad Company's property on bridges or other supports subject to special consideration in each case if permitted by Consolidated Rail Corporation's current specifications.

- (g) Manholes, Each \$25.00
- (h) Charges for attachments of pipes to bridges, buildings or structures of the Railroad Company subject to special consideration in each case,
- (i) Where pipe or pipes are encased in a protective pipe of larger diameter, no charge shall be made for the protective encasement.

LONGITUDINAL OCCUPATIONS*

SECTION A — AERIAL AND UNDERGROUND WIRES

(COMMUNICATION AND POWER)

*NOTE: Recognizing the many variables and intangibles involved in each longitudinal occupation of Railroad property, each application shall be considered on its own merits, with suggested minimum annual rentals being applied as set out below.

1. AERIAL WIRES

- (a) Pole line, highest voltage not exceeding 7,500 volts \$500.00 per circuit per mile
- (b) Pole line, over 7,500 volts up to but not including 33,000 volts 900.00 per circuit per mile
- (c) Pole line 33,000 volts and over. The Formula marked Exhibit "A", and made a part of this Schedule, will be used.

NOTE: The above charges cover the complete pole line occupation and additional charges are not to be made unless there are attachments to Railroad Company facilities. For purpose of determining voltage, guy wires, messengers, and grounded conductors shall be considered as zero voltage. All other conductors shall be rated at voltage to ground, or to other conductors, whichever is higher.

2. AERIAL AND UNDERGROUND CABLES

- (a) Telephone communication cables (not including composite coaxial cables, nor fiber optic cables):
 - Cable containing not more than 1100 pairs \$500.00 per cable per mile
 - Cable containing 1101 to 1800 pairs 900.00 per cable per mile
 - Cable containing over 1800 pairs. The Formula marked Exhibit "A" and made a part of this Schedule will be used employing a 10-foot distance under Item "A".

For underground communication cables the minimum charge is \$1000.00 per cable per mile.

- (b) Composite coaxial — Subject to negotiation but not less per mile than 1,300.00
- (c) Overhead power cables:
 - Cable not exceeding 7,500 volts 500.00 per cable per mile
 - Cable over 7,500 volts up to but not including 33,000 volts 900.00 per cable per mile
 - Cable 33,000 volts and over. The Formula marked Exhibit "A" and made a part of this Schedule will be used employing a 10-foot distance under Item "A".
- (d) Underground power cables:
 - When cable is buried in an open trench and covered with soil:
 - Minimum charge 800.00 per circuit per mile
 - When cable is buried in an open trench and surrounded with from 6 to 12 inches of thermal sand:
 - Minimum charge 1,600.00 per circuit per mile
 - When cable is encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand:
 - \$2.50 per inch of nominal diameter of the largest pipe per 100 feet of occupation or fraction thereof with a minimum charge of \$1,600.00 per mile.
- (e) CATV facility \$825.00 per line per mile.

- (f) Spare or unoccupied ducts or pipes, each per mile 125.00
- (g) Manholes, splicing chambers or pull boxes, each 25.00
- (h) An additional charge shall be made for use of Railroad duct lines based on the value of the facility.

NOTE: Charges shown under (f), (g) and (h) are in addition to the charges shown under (a) to (e) inclusive.

NOTE: For occupations less than one mile in length, the rental shall be a proportionate amount of the above rates calculated to the nearest dollar but no rental for any wire, cable, duct or pipe occupation shall be less than the charge for one-quarter mile of such occupation.

SECTION B — ATTACHMENTS

Annual rentals will be charged as follows when higher rates are not fixed:

1. Attachments of aerial wires and cables to poles or other structures of the Railroad Company used in wire line construction.
 - (a) Up to but not including 33,000 volts for each wire attached to Railroad Company's cross-arm or bracket \$2.00
 - (b) Up to but not including 33,000 volts for each wire attached to Licensee's cross-arm or bracket 1.00
 - (c) For each cross-arm or bracket attached to Railroad Company's poles 1.00
 - (d) Wires of 33,000 volts and over attached to the Railroad Company's cross-arms or brackets 2.00
 - (e) Wires of 33,000 volts and over attached to Licensee's cross-arms or brackets 1.50
2. Attachments of aerial wires and cables to buildings or other structures.
 - (a) Each wire or cable attached to Railroad Company's building or structure, including Railroad or highway bridges, per attachment 3.00
3. Attachments of cable terminals to poles, buildings, or structures including highway bridges, railroad bridges over highways or other bridges of the Railroad Company.
 - (a) Each cable terminal, loading coil, transformer or like device subject to special consideration in each case, but not less than 25.00

NOTE: The above charges are to be made in addition to those under Section "A".

SECTION C — GUY WIRE CROSSINGS AND OVERHANGING CROSSARMS AND POWER WIRES AND CABLES OF POLE LINES OUTSIDE OF RAILROAD RIGHT OF WAY

1. Each guy wire crossing railroad property but not anchored thereon \$3.00
2. Cross-arms overhanging railroad property from poles located outside thereof, one or more cross-arms on any pole .. 2.00
3. Power wires and cables overhanging Railroad property from poles located outside thereof shall be calculated at the rates specified in Section "A", Paragraphs 1 and 2, and on a prorated basis, depending upon the number of overhanging wires, excluding the neutral; ground, static or lightning wires, but in no case less than 165.00 per mile

SECTION D — PIPES AND SEWERS

Annual rentals will be charged as follows:

1. Circular Lines Carrying No Pressure;
 - \$1.50 minimum charge per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof. (See Item 10 below)
2. Circular lines under Pressure and Carrying Non-Flammable, Non-Explosive and Non-Combustible Supporting Materials, except Coal and Water Slurry;
 - \$2.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof. (See Item 10 below)
3. Circular Lines under Pressure and Carrying Flammable, Explosive and Combustible Supporting Materials, and Coal and Water Slurry;
 - \$3.00 minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof, plus a negotiated figure based on volume of product transported. (See Item 10 below)

4. Rental for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.
5. Rental for pipe tunnels or other special underground construction shall be subject to special consideration.
6. Pipelines carried along Railroad Company's property on bridges or other supports subject to special consideration in each case if permitted by Consolidated Rail Corporation's current specifications.
7. Manholes — each \$25.00
8. Charges for attachments of pipes to bridges, buildings or structures of the Railroad Company subject to special consideration in each case.
9. Where pipe or pipes are encased in a protective type of larger diameter, no charge shall be made for the protective encasement.
10. For pipe occupations, there will be a minimum annual rental of \$100.00 and will cover occupations up to 1/10 mile (528'), and an additional minimum annual rental of \$100.00 shall be assessed for each subsequent 1/10 mile (528').

SPECIAL CONSIDERATION

Occupation charges for overhead or underground conveyors, pipe bridges, pedestrian tunnels, or any other facility not covered by this Schedule will be subject to special consideration.

DEFINITIONS

For the purpose of this Schedule the following definitions shall apply:

1. A WIRE is a solid or stranded single conductor, either bare or insulated.
2. COMMUNICATION WIRES include wires used for telegraph, telephone, fire alarm, police and signal circuits, for public or private communication or signal service, which operate at not exceeding 400 volts to ground or 750 volts between any two points of the circuit and the transmitted power of which does not exceed 150 watts.
3. POWER WIRES include all wires used for transmitting a supply of electrical energy except those defined as communication wires under item 2.
4. MESSANGER WIRES shall be considered as part of the wires or cables supported and no rental shall be assessed therefor.
5. A CABLE consists of more than two conductors insulated from each other, with or without a protective covering, either self supporting or having a common support.
6. A CROSSING is that part of any overhead or undergrade line spanning a track or tracks of the Railroad Company within the limits of that portion of its right of way used for railroad purposes.
7. LONGITUDINAL OCCUPATION is any occupation of railroad property other than a direct crossing over or under railroad tracks and right of way as defined under Item 6.
8. A COMPOSITE COAXIAL CABLE is a cable made up of one or more transmission lines in which one conductor is centered inside a metallic tube that serves as a second conductor. Other standard insulated conductors may be included in the same overall sheath.
9. INDIVIDUAL SERVICE is a service to a single individual dwelling.
10. CATV FACILITY consists of one (1) 3/4" cable plus one (1) 1/2" cable bundled together with a single supporting strand.

EXHIBIT "A"

The following Formulas will be used for the computation of annual rentals for longitudinal occupations of Railroad property by aerial or underground power lines or communication lines as outlined in the appropriate sub-paragraphs on Pages 4 and 5 of this Schedule.

FORMULA 1

For Rental Where Line(s) Is On Utility Structures.

Annual Right of Way Rental Per Mile = $(N \times V \times R \times U) + (P \text{ at } S \text{ rates})$

Where N = Number of acres subtended by power circuit

$$\text{Per Mile} = \frac{5280 (A + 2C)}{43560}$$

- A = Distance between outside conductors in feet.
- C = NESC (Current Edition) building clearance in feet (overhead occupations only).
(Where there are two or more circuits of different or same voltages on the same structures, use A and C for circuit requiring greatest width).
- V = Value of right of way land in dollars per acre based upon value of land adjacent to right of way inflated for increased value of cleared right of way.
- R = Rental rate of 10 percent in States with no land taxes and 10 percent in States with land taxes.
- U = Utility percent usage of right of way.
(For one circuit per structure = 50% (0.5), two circuits = 66 2/3% (0.67), three circuits = 75% (0.75), etc.
- S = Scheduled power rate per mile of circuit.
 - First 50 kw = \$2.00 per kw.
 - Next 250 kw = \$0.20 per kw.
 - Next 9700 kw = \$0.02 per kw.
 - Balance = \$0.002 to \$0.01 per kw.
- P = Power capacity of line in kilowatts, (not applicable to communication lines). For single phase = $0.48 \times \text{kilovolts} \times \text{current}$ (ampere capacity per conductor), ($0.48 = 0.8 \text{ (power factor)} \times 0.6 \text{ (utilization or load factor)}$). For three phase = $0.83 \times \text{kilovolts} \times \text{current}$ (ampere capacity per conductor) ($0.83 = 1.73 \times 0.8 \times 0.6$).

FORMULA 2

For Rental Where Line(s) Is On Railroad Structures.

The annual rental shall be the rental as determined by Formula 1 for use of right of way plus rental as determined below for use of structures.

The first part of rental should be figured as above except U would equal P/E where P = number of utility circuits on structures involved and E = number of railroad high voltage circuits plus number of utility circuits (P) plus, in electrified area, the catenary system counted as one, or in non-electrified territory the tracks or land counted as one.

Annual Structure Rental Per Mile = $F \times B \times D \times G$

Where F = fixed charges = 25 percent:

- B = Present day replacement value of structures per mile = $L \times M \times T$.
 - Where L = Original installed ledger value per mile.
 - M = ICC multiplier (latest ICC index for 31 Account less ICC index on date of installation).
 - T = Multiplier to increase (L x M) figure to calculated present day replacement value.
- D = Depreciated value of structure based on 100-year life in percent. (If 32 years old D = 0.68).
- G = Percent of entire structure used by utility based upon moments. (Sum of moments of utility wires divided by sum of moments of all wires on structure).

**EXHIBIT C TO TRACKAGE RIGHTS AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND BAY COLONY RAILROAD CORPORATION**

Exhibit C

**Bay Colony Capital Costs
and
Amortization Schedules
(as of 12/31/05)**

(a) The Needham Secondary Track

<u>Date</u>	<u>Item</u>	<u>Total Original Amount</u>	<u>Amortization Schedule</u>	<u>12/31/05 Unamortized Balance</u>
Nil	Nil	Nil	Nil	Nil

(b) The Dover Secondary Track

<u>Date</u>	<u>Item</u>	<u>Total Original Amount</u>	<u>Amortization Schedule</u>	<u>12/31/05 Unamortized Balance</u>
5/31/92	Trk, Med Jct	\$2,481.70	SL-31.5	\$ 1,410.43
9/30/98	Track	\$23,868.10	SL-31.5	\$ 19,482.09

(c) The Millis Industrial Track

<u>Date</u>	<u>Item</u>	<u>Total Original Amount</u>	<u>Amortization Schedule</u>	<u>12/31/05 Unamortized Balance</u>
12/1/89	Runaround Trk	\$572,968.38	SL-31.5	\$ 281,940.61
12/31/95	Track	\$63,295.44	SL-39	\$ 47,065.76
1/02/01	Bridge	\$339,631.95	SL-39	\$ 296,089.39
10/15/04	Line Improve	\$24,905.23	SL-39	\$ 24,905.23

**EXHIBIT D TO TRACKAGE RIGHTS AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND BAY COLONY RAILROAD CORPORATION**

NONDISCRIMINATION AND AFFIRMATIVE ACTION

The parties, for themselves, their agents, contractors, successors or assigns, do hereby agree, as a part of the consideration of this Agreement, as follows:

(1) The Use shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, physical handicap or national origin, and shall take affirmative action to insure the applicants are employed and employees are treated during their employment without regard to the factors described above. Such action shall include, without limitation, employment upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) In the event that facilities are constructed, maintained or otherwise operated, whether by User or Owner, on Rail Properties under this Agreement, for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the parties shall construct, maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title VI of the Civil Rights Act of 1964, Title

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 11

(2 of 2)

49, Code of Federal Regulations, Part 21 (Nondiscrimination in federally-assisted DOT programs), as such Act or regulations may be amended from time to time.

(3) The parties shall comply with any and all laws, rules or regulations which may be applicable thereto in connection with nondiscrimination and affirmative action.

EXHIBIT D

ASSIGNMENT NOTICE TO MBTA

Bay Colony Railroad Corporation
c/o Seminole Gulf Railway
Attn G. Bruce Fay
4110 Center Pointe Drive, Suite 207
Fort Myers, FL 33916

Massachusetts Coastal Railroad LLC
Attention: P. Christopher Podgurski
200 Myles Standish Blvd
Taunton MA 02780

Via email and FedEx

December 4, 2023

Monica Tibbits-Nutt
Secretary and CEO, Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116

Phillip Eng
General Manager and CEO, Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3830
Boston, MA 02116

Re: Joint Notice of Transfer of Operating Rights and Related Agreements

Dear Secretary Tibbits-Nutt and General Manager Eng:

We are writing jointly to notify you that Bay Colony Railroad Corporation (“Bay Colony”) and Massachusetts Coastal Railroad LLC (“Mass Coastal”) have entered into an agreement under which Mass Coastal will be acquiring by purchase or assignment all of Bay Colony’s remaining rail assets including tracks, property interests, operating rights and related agreements. The parties expect the transaction to close on or about December 18, 2023. In particular as relates to the interests of the Commonwealth, we are writing to advise you of the proposed transfer / assignment of the following:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

2. Millis Branch. Bay Colony has been operating the approximately 3.5-mile Millis Branch rail line between the northeast side of the Framingham Secondary right of way in Medfield Junction (Milepost 0.0) and the end of the line in Millis (Milepost 3.4), together with a portion of the Dover Secondary beginning near BCLR Milepost 7.2 located at the south edge of Ice House Road and terminating at Milepost 7.3 at Medfield Junction (connection with Millis Branch) (the “Rail Line”) in Norfolk County, Massachusetts, under a modified rail certificate since 1982. In 2005, Bay Colony acquired by assignment from CSXT, CSXT’s (formerly Penn Central’s) retained permanent freight easement over the Branch. In 2006, to address this change in ownership and other issues between the parties relating to the operation of the Rail Line, Bay Colony and MBTA entered into a Trackage Rights and Operating Agreement (“Operating Agreement”).

Mass Coastal will be acquiring by assignment from Bay Colony, the retained permanent freight easement and the Operating Agreement. Because of the nature of the rights being acquired by Mass Coastal, Mass Coastal has elected to file a notice of exemption with the STB to operate under a common carrier certificate instead of a modified rail certificate. Mass Coastal filed its notice of exemption on November 16, 2023.

Under Section 10.10 of the Operating Agreement, the Agreement is binding upon the respective successors and assigns of the parties, subject to a party entering into an assignment obligating the successor or assign to all of the terms and conditions of the agreement. Accordingly, no consent is required for the assignment, but Bay Colony by this letter is giving MBTA notice of the upcoming assignment.

3. [REDACTED]

[REDACTED]

Like Bay Colony, Mass Coastal has a long history of working with MassDOT and MBTA, and thus we anticipate an easy transition.

Please let us know if you have any questions or concerns. If not, we would appreciate it if you would countersign and return a copy of this letter acknowledging receipt of notice of the various assignments, and granting your consent to the extent required. If you would like to countersign via DocuSign and would like us to facilitate that, please provide the email address of the person who will countersign and we will make the arrangements. We would appreciate receipt of a countersignature within ten days, as the parties intend to close the transaction on December 18, 2023

Respectfully,

P. Christopher Podgurski

P. Christopher Podgurski

President

Massachusetts Coastal Railroad LLC

G. Bruce Fay

G. Bruce Fay

President

Bay Colony Railroad Corporation

cc: Meredith Slesinger, Rail & Transit Administrator
MassDOT Rail & Transit Division

Massachusetts Realty Group
20 Park Plaza, Suite 1120
Boston, MA 02116

The undersigned hereby confirms notice of the assignments described above, and to the extent required, consents to the assignments.

Massachusetts Bay Transportation Authority

By: *Phillip Eng*
[Phillip Eng \(Dec 6, 2023 09:08 EST\)](#)
Phillip Eng, General Manager & CEO

Dated: 12/06/2023

EXHIBIT E

SECTION 10902 EXEMPTION INFORMATION

Mass Coastal hereby provides the following information that would be required under 49 C.F.R. §1150.43:

(a) The full name and address of Applicant: Mass Coastal Railroad, LLC, 200 Myles Standish Boulevard, Suite 3, Taunton, MA 02780.

(b) Applicant's Representatives:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

(c) Mass Coastal has entered into an agreement with Bay Colony (the "Agreement") under which Mass Coastal will acquire by assignment both the Retained Freight Easement and the 2006 Operating Agreement.

(d) The current operator of the Millis Industrial Track and the Remaining Dover Secondary is Bay Colony.

(e) Brief Summary of the Proposed Transaction:

Mass Coastal is acquiring the Retained Freight Easement and 2006 Operating Agreement through assignments which together will provide Mass Coastal with the right to provide freight service on the Millis Industrial Track. The assignment of the 2006 Operating Agreement also will provide Mass Coastal with the right to provide freight

service on the Remaining Dover Secondary. The Millis Industrial Track is owned by MBTA subject to the Retained Freight Easement, and the Remaining Dover Secondary is also owned by MBTA (but is not subject to the Retained Freight Easement). The two tracks are connected to each other, and both are connected to the freight rail network through an interchange with CSXT.

(1) The name of the transferor is Bay Colony Railroad Corporation. The address of Bay Colony is c/o Seminole Gulf Railway, L.P., 4110 Centerpointe Drive, Suite 207, Fort Myers, FL 33916.

(2) Mass Coastal will consummate the transaction on or after the effective date of the requested exemption authority (and following closing of the transaction with Bay Colony with regard to the Millis Industrial Track and Remaining Dover Secondary).

(3) The mileposts of the Millis Industrial Track are from the northeast side of the Framingham Secondary right of way in Medfield Junction at Milepost 0.0 and the end of the line in Millis at Milepost 3.4. The Remaining Dover Secondary begins near Milepost 7.2 located at the south edge of Ice House Road and terminating at Milepost 7.3 at Medfield Junction (the connection with Millis Industrial Track).

(4) The total route miles to be acquired and operated is approximately 3.5 miles.

(f) Attached as Exhibit A to the petition for exemption is a map of the Millis Industrial Track and the Remaining Dover Secondary showing the general locations of the tracks.

(g) Mass Coastal certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.

(h) In addition to the information set forth above, Mass Coastal certifies that its annual operating revenues after the transaction will not exceed \$5,000,000.

EXHIBIT F

MODIFIED RAIL CERTIFICATE INFORMATION

Mass Coastal hereby provides the following information that would be required under 49 C.F.R. §1150.23:

(1) The full name and address of operator: Mass Coastal Railroad, LLC, 200 Myles Standish Boulevard, Suite 3, Taunton, MA 02780. Mass Coastal is an existing Class III carrier that has been operating as a carrier since 2007. Accordingly, it is not required to provide (i) articles of incorporation, (ii) the names and addresses of its officers and directors, or (iii) financial information.

(2) As set forth in the Bay Colony Application for a Modified Certificate filed on June 10, 1982, in ICC Finance Docket No. 29963 at pp. 7-8, the Dover Secondary Track (including the Remaining Dover Secondary) was acquired from Penn Central by MBTA subject to an operating easement in Conrail. Conrail applied to abandon the Rail Line under Section 308(b) of the 3R Act in ICC Docket No. AB 167 (Sub-no. 388), and an operating subsidy was offered by the Commonwealth of Massachusetts under agreement filed with the Interstate Commerce Commission ("ICC") on February 24, 1982. The subsidy ended May 26, 1982, and an abandonment certificate was to be issued to Conrail no later than June 11, 1982. The ICC found that the Dover Secondary Track qualified for operation under a modified rail certificate. *See Bay Colony Railroad Corporation – Modified Rail Certificate*, ICC Finance Docket No. 29963 (served June 29, 1982).

On August 12, 2013, in ICC Finance Docket No. 29963, Bay Colony filed a notice to partially terminate its modified certificate with respect to the Dover Secondary Track. Bay Colony made clear that it would continue to operate the Remaining Dover Secondary between Milepost 7.2 located at the South edge of Ice House Road in Medfield, and continuing to a point of termination at redesignated Milepost 7.3 where it connects to the

Millis Industrial Track at Medfield Junction. Notice of Partial Termination, at 3, n. 1.

(3) Mass Coastal proposes to assume the responsibility for providing freight rail service over the Remaining Dover Secondary upon the assignment of the 2006 Operating Agreement by Bay Colony to Mass Coastal once permitted by the Board (and following closing of the transaction with Bay Colony with regard to the Remaining Dover Secondary).

(4) Mass Coastal will provide common carrier freight service over the Rail Line on the reasonable request of shipper(s). Mass Coastal also provides the following information:

(i) The Remaining Dover Secondary extends between Milepost 7.2 located at the South edge of Ice House Road in Medfield, and continuing to a point of termination at redesignated Milepost 7.3 where it connects to the Millis Industrial Track at Medfield Junction.

(ii) The Remaining Dover Secondary connects with CSXT and with the Millis Industrial Track at Medfield Junction, MA.

(iii) As an operating Class III carrier, Mass Coastal maintains the liability insurance shown on the certificate of insurance provided as part of this Exhibit F.

(iv) There are no preconditions that shippers must meet to receive rail service on the Remaining Dover Secondary.

(5) There will be no subsidizers of Mass Coastal's service on the Remaining Dover Secondary.

(6) Not applicable as there will be no subsidizers.

In accordance with 49 CFR §1150.23(c), Mass Coastal acknowledges that as a common carrier the services it offers and the applicable rates, charges and conditions of service will need to be

described in tariffs adopted and published by Mass Coastal in accordance with the Board's rules.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Starkweather & Shepley (WW) Insurance Corp. of MA PO Box 549 Providence, RI 02901-0549	CONTACT NAME: Lisa Lee PHONE (A/C, No, Ext): 781 320-9660 FAX (A/C, No): 508-718-2407 E-MAIL ADDRESS: llee@starshep.com														
INSURED Massachusetts Coastal Railroad LLC Coastal Rail LLC; Cape Rail Inc 200 Myles Standish Blvd #3 Taunton, MA 02780	<table border="1"> <thead> <tr> <th data-bbox="815 426 1437 451">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1437 426 1568 451">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="815 451 1437 478">INSURER A : Aspen Specialty Insurance Company</td> <td data-bbox="1437 451 1568 478">10717</td> </tr> <tr> <td data-bbox="815 478 1437 506">INSURER B : Underwriters at Lloyd's, London</td> <td data-bbox="1437 478 1568 506">1122</td> </tr> <tr> <td data-bbox="815 506 1437 533">INSURER C : Arbella Mutual Insurance Company</td> <td data-bbox="1437 506 1568 533">17000</td> </tr> <tr> <td data-bbox="815 533 1437 560">INSURER D :</td> <td data-bbox="1437 533 1568 560"></td> </tr> <tr> <td data-bbox="815 560 1437 588">INSURER E :</td> <td data-bbox="1437 560 1568 588"></td> </tr> <tr> <td data-bbox="815 588 1437 615">INSURER F :</td> <td data-bbox="1437 588 1568 615"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Aspen Specialty Insurance Company	10717	INSURER B : Underwriters at Lloyd's, London	1122	INSURER C : Arbella Mutual Insurance Company	17000	INSURER D :		INSURER E :		INSURER F :	
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR ☒ Railroad Liability ☒ Retro Date: 7/23/2022 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			RL00HK923	07/23/2023	07/23/2024	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 10,000,000 GENERAL AGGREGATE \$ 20,000,000 PRODUCTS - COMP/OP AGG \$ \$
C	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			1020077879	10/17/2023	10/17/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Excess Auto Liabi			SCT1387123	10/17/2023	10/17/2024	\$1M XS \$1M Occ \$1M XS \$1M Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**** Named Insureds Schedule: Coastal Rail LLC; Cape Rail Inc; Massachusetts Coastal Railroad LLC; Cape Cod Central Railroad LLC**

CERTIFICATE HOLDER

CANCELLATION

Surface Transportation Board
395 E St., SW
Washington, DC 20423

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

