

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

301680

FD 36472 (Sub-No. 2)

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February 25, 2021
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Public Record

**NORFOLK SOUTHERN RAILWAY COMPANY –
TRACKAGE RIGHTS EXEMPTION – PROVIDENCE AND WORCESTER RAILROAD
COMPANY**

NOTICE OF EXEMPTION

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February 25, 2021

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NOTICE OF EXEMPTION

Norfolk Southern Railway Company (“NS”) submits this Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), seeking approximately 2.90 miles of overhead trackage rights pursuant to a draft written trackage rights agreement (the “Agreement”) between NS and Providence and Worcester Railroad Company (“P&W”).¹ Per the Agreement, NS is acquiring trackage rights over P&W’s mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W’s Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of B&M at Barbers Station at milepost 2.90, all such track

¹ In a related transaction, CSX Transportation, Inc. (“CSX”) seeks to acquire all of the railroads in the PAR corporate family. See Docket No. FD 36472, *CSX Corporation and CSX Transportation, Inc., Et. AL. – Control and Merger – Pan Am Systems, Inc., Pan Am Railways, Inc., Boston & Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railroad Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*. The trackage rights being acquired pursuant to this Notice of Exemption will not take effect until the transaction, which is the subject of Docket No. FD 36472 is consummated.

located in the City of Worcester, MA, Commonwealth of Massachusetts (“P&W Trackage”). The trackage rights to be obtained herein are intended by the Parties to be connective with those to be obtained by NS pursuant to notices of exemption filed in STB FD 36472 (Sub-No. 1), STB FD 36472 (Sub-No. 3) and STB FD 36472 (Sub-No. 4).

SECTION 1180.2(d)(7)
GROUNDS FOR EXEMPTION

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are: (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights at issue in this proceeding are based upon a draft written agreement, a redacted version of which is attached hereto as Exhibit 2, and are not being sought in a responsive application in a rail consolidation proceeding.² Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include the information required in § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicate the level of labor protection to be imposed.³

² Pursuant to 49 C.F.R. §1180.6(a)(7)(ii), NS will submit, within 10 days of its execution, an executed copy of the Agreement.

³ See 49 C.F.R. § 1180.4(g).

SECTION 1180.6(a)(1)(i)
SUMMARY OF PROPOSED TRANSACTION

Pursuant to the Agreement between NS and P&W (attached hereto as Exhibit 2), NS is acquiring approximately 2.90 miles of trackage rights over P&W's mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W's Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of B&M at Barbers Station at milepost 2.90, all such track located in the City of Worcester, MA, Commonwealth of Massachusetts to allow NS's movement of one train pair (that is one train in each direction) carrying intermodal and automotive vehicles traffic per day no longer than 9,000-feet plus locomotives meeting the clearance requirements of CSX, not exceeding the siding capacity between CSX's line between Schenectady and Harvard, and sufficiently powered to maintain maximum track speed on the Subject Trackage between approximately Worcester, MA and Barbers Station, MA ("Subject Traffic").

Name, business address, and telephone number of Applicant:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
Tel: (570) 471-5208

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

SECTION 1180.6 (a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

NS intends to consummate this transaction no sooner than March 27, 2021 (the anticipated effective date of the transaction), or when the related proceeding filed in FD 36472 is approved and consummated, whichever is later.

SECTION 1180.6 (a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION

The Agreement is one element of a larger transaction whereby CSX is seeking to acquire the railroads in the PAR corporate family. The trackage rights proposed herein are necessary to improve NS's ability to move intermodal traffic and automotive vehicles into the greater Boston marketplace, by adding a second route for this traffic upon CSX's acquisition of the PAR corporate family.⁴

SECTION 1180.6 (a)(5)
STATES IN WHICH PROPERTY OF THE APPLICANT IS SITUATED

NS owns rail lines in the following 22 states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

SECTION 1180.6 (a)(6)
MAP

A map of the line subject to this transaction is attached hereto as Exhibit 1.

⁴ The trackage rights proposed here are one of four sets of trackage rights that are intended to be connective. The other related trackage rights arrangements filed concurrently include: (1) Norfolk Southern Railway Company – Trackage Rights Exemption – CSX Transportation Inc., FD 36472 (Sub-No. 1); (2) Norfolk Southern Railway Company – Trackage Rights Exemption – Boston and Maine Corporation, FD 36472 (Sub-No. 3); and, (3) Norfolk Southern Railway Company – Trackage Rights Exemption – Pan Am Southern, LLC, FD 36472 (Sub-No. 4).

SECTION 1180.6 (a)(7)(ii)
AGREEMENT

A redacted version of the draft Agreement is attached as Exhibit 2, with highly confidential material redacted. An unredacted version of the draft Agreement will be provided to any party requesting it and upon issuance of an appropriate protective order. Consistent with 49 CFR § 1180.2(d)(7), NSR will submit an executed Agreement within 10 days of the Agreement being executed.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIONS

NS does not anticipate any adverse labor impacts as a result of this transaction. However, NS agrees to the imposition of the employee protective conditions established in Norfolk & Western Railway - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway - Lease & Operate - California Western Railroad, 360 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto as Exhibit 3.

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3), the proposed acquisition of trackage rights is exempt from environmental reporting requirements, and historic preservation reporting requirements.

SECTION 1180.4(g)(4)
TRANSACTIONS IMPOSING INTERCHANGE COMMITMENTS

The trackage rights herein granted over the P&W Trackage are for overhead purposes only. NS shall not perform any local freight service whatsoever at any point on the P&W Trackage. Thus, the Agreement does not contain any interchange commitments.

Respectfully submitted,

/s/ William A. Mullins

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SURFACE TRANSPORTATION BOARD**

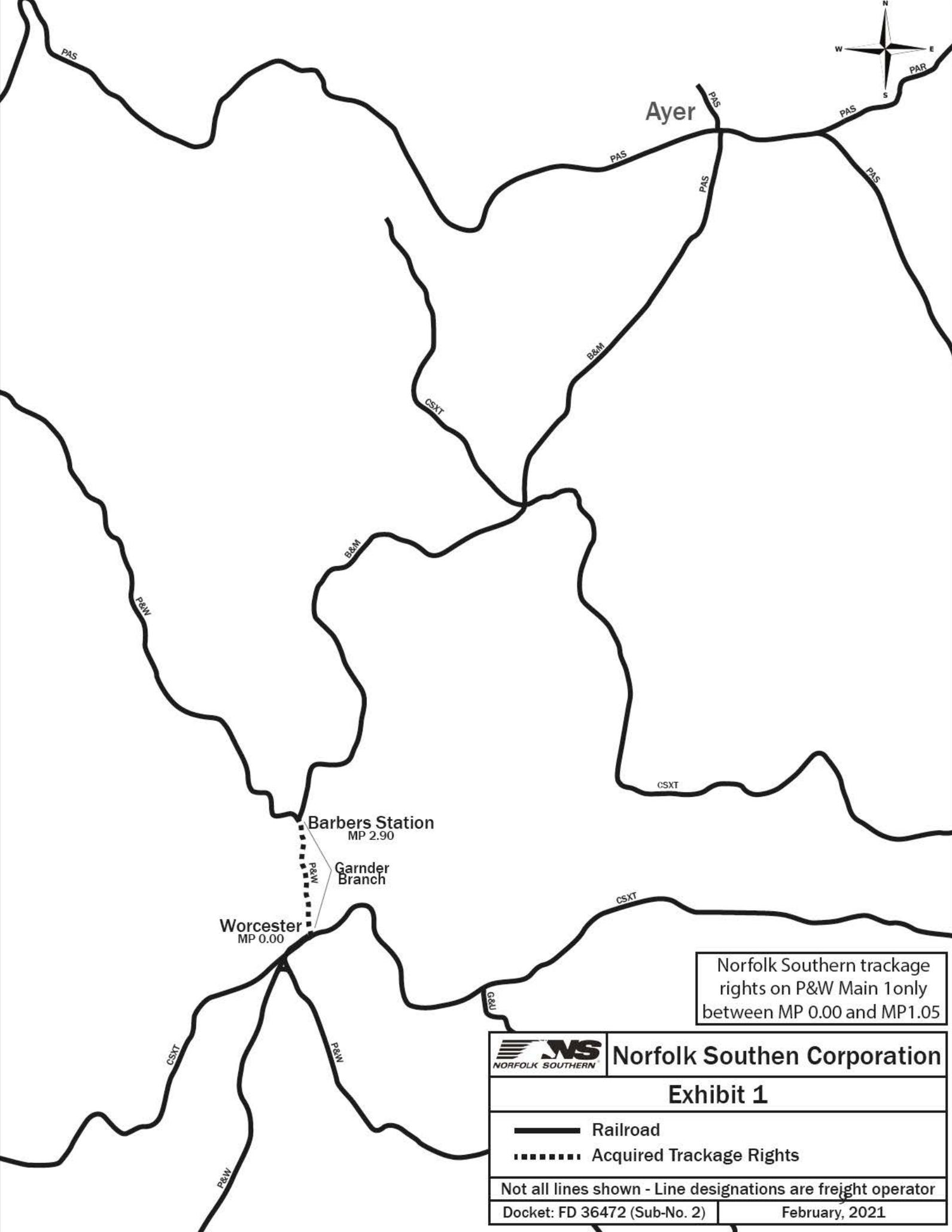
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TRACKAGE RIGHTS EXEMPTION – PROVIDENCE AND WORCESTER RAILROAD
COMPANY**

NOTICE OF EXEMPTION

EXHIBIT 1

MAP



Norfolk Southern trackage rights on P&W Main 1 only between MP 0.00 and MP1.05



Norfolk Southern Corporation

Exhibit 1

-  Railroad
-  Acquired Trackage Rights

Not all lines shown - Line designations are freight operator

Docket: FD 36472 (Sub-No. 2)

February, 2021

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COMPANY**

NOTICE OF EXEMPTION

EXHIBIT 2

AGREEMENT (REDACTED)

TRACKAGE RIGHTS AGREEMENT
Between
PROVIDENCE AND WORCHESTER RAILROAD COMPANY
and
NORFOLK SOUTHERN RAILWAY COMPANY

THIS TRACKAGE RIGHTS AGREEMENT (the “Agreement”) entered into as of this ____ day of _____, 2021, between Providence and Worcester Railroad Company, a Rhode Island corporation, (“P&W”), and Norfolk Southern Railway Company, a Virginia corporation (“NSR” and collectively with P&W, the “Parties”).

WHEREAS, the Parties desire to enter into a formal Trackage Rights Agreement to allow NSR’s movement of one train pair (that is one train in each direction) carrying intermodal and automotive vehicles traffic per day no longer than 9,000-feet plus locomotives meeting the clearance requirements of CSX Transportation, Inc. (“CSXT”), not exceeding the siding capacity between CSXT’s line between Schenectady and Harvard, and sufficiently powered to maintain maximum track speed on the Subject Trackage as defined in Article 1 (the “Subject Traffic”) between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W’s Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of Boston and Maine Corporation (“B&M”) at Barbers Station at milepost 2.90, all such track located in the City of Worcester, Commonwealth of Massachusetts, as part of a route between approximately Voorheesville, NY, and Ayer, MA.

WHEREAS, NSR and CSXT have entered a Trackage Rights Agreement dated as of _____, 2021 to allow NSR’s movement of the Subject Traffic between approximately Voorheesville, NY, at or near milepost QG 22.5, and Worcester, MA, at or near milepost QB 44.5, as part of a route between approximately Voorheesville, NY, and Ayer, MA.

WHEREAS, NSR, B&M and CSXT, as owner of B&M and Springfield Terminal Railroad Company (“ST”), have entered into a Trackage Rights Agreement dated as of _____, 2021 to allow NSR’s movement of the Subject Traffic between Barbers Station, MA, milepost 2.92 and Harvard, MA, milepost 25.0, as part of a route between approximately Voorheesville, NY and Ayer, MA .

WHEREAS, NSR and Pan Am Southern Railway LLC (“PAS”) have entered into a Trackage Rights Agreement dated as of _____, 2021 to allow NSR’s movement of the Subject Traffic between Harvard, MA, milepost 25.0 and Ayer, MA, milepost 28.01.

NOW, THEREFORE, P&W and NSR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, P&W hereby grants to NSR the right to operate the Subject Traffic (locomotives, cars, and equipment in NSR's revenue waybill account) with its own crews over the following segments of P&W's railroad (hereinafter referred to as the "Trackage Rights"):

Over P&W's mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W's Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of B&M at Barbers Station at milepost 2.90, all such track located in the City of Worcester, MA, Commonwealth of Massachusetts (the "Subject Trackage") (a total distance of approximately 2.90 miles). The grant of Trackage Rights to NSR will be limited to handling the Subject Traffic to/from and across the Subject Trackage.

ARTICLE 2. USE OF SUBJECT TRACKAGE

A. NSR's use of the Subject Trackage shall be in common with P&W and any other user of the Subject Trackage, and P&W's right to use the Subject Trackage shall not be diminished by this Agreement. P&W shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage; provided that the rights granted to such other users do not unreasonably interfere with the exercise of NSR's rights hereunder.

B. NSR may use the Subject Trackage solely for the purpose of the overhead movement of its own trains between the end points of the Subject Trackage.

C. NSR shall not use any part of the Subject Trackage for the purpose of providing haulage to a third party, crew changes, switching, storage, or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of P&W, preclude the emergency use by NSR of such auxiliary tracks as may be designated by P&W for such purposes.

D. P&W shall have exclusive control of the management and operation of the Subject Trackage. NSR shall not have any claim against P&W for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by NSR is interrupted or delayed at any time from any cause. NSR's entry to and exit from the Subject Trackage shall be governed by the instructions of P&W's dispatcher.

E. NSR shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 3. RESTRICTION ON USE

A. The Trackage Rights herein granted are granted for the sole purpose of NSR using

same for transporting the Subject Traffic across the Subject Trackage.

B. NSR shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

A. When operating over the Subject Trackage, NSR’s locomotives and crews shall be equipped to communicate with P&W on radio frequencies normally used by P&W in directing train movements on the Subject Trackage.

B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of P&W’s representative or his designee.

C. Prior to commencing operations over the Trackage Rights, NSR shall prepare in good faith consultation with P&W and provide to P&W for approval, which shall not be unreasonably withheld, plans pursuant to the specifications in Attachment A to this Agreement, including the costs, to upgrade (i) the Subject Trackage to handle the Subject Traffic, (ii) the connection of the CSXT track at Worcester with the P&W track at Worcester and (c) the connection of the Subject Trackage at Barbers Station with the B&M track at Barbers Station, which shall be able to handle the Subject Traffic (collectively referred to as the “Improvements”). Construction of the Improvements shall occur as follows: (x) P&W shall furnish all labor and material and shall construct, at NSR’s sole cost and expense, such portions of the tracks located on the right-of-way of P&W that connect to the respective lines of CSXT and B&M; and (y) NSR shall fund, at its sole cost and expense, the design, purchase and, except as provided in clause (x), construction of, and undertake or cause to perform, the Improvements, which shall be designed and constructed so that there is seamless connectivity when the Improvements meet at the connections of P&W, CSXT and B&M’s respective rights of way. Upon termination of this Agreement, P&W may, at its option, remove the portion of the Improvements as may be located on property of P&W, at the sole cost and expense of NSR. The salvage material removed shall be released to NSR or, as otherwise agreed upon by the Parties, P&W shall credit NSR the current fair market value for said salvage against the cost of removal.

ARTICLE 5. COMPENSATION

A. {{

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ARTICLE 6. REVISION OF COMPENSATION

- A. The Initial Rates shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Initial Rates shall be revised upward or downward each year, beginning with the bill rendered for the month of _____, 2023 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Initial Rates shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2022 Index for the first annual adjustment) as related to the index for the previous calendar year (2021 Index for the first annual adjustment) and applying that percent to the Initial Rates.
- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2022; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2021; "C" to be the Initial Rates; and "D" to be the percent of increase or decrease; the revised Initial Rates stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (D \times C) + C = \text{revised Initial Rates rounded to the third decimal place, effective April 1 of the year } \text{being revised}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties hereto. In the absence of agreement, the Parties shall submit the matter to binding arbitration as provided hereinafter.
- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the Parties fail to reach

agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the Parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by NSR within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by P&W at the time any work is performed by P&W for NSR.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. P&W shall maintain, repair and renew the Subject Trackage with its own supervision and labor. P&W shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but P&W does not guarantee the condition of the Subject Trackage at any time during the term hereof or that operations thereover shall not be interrupted. P&W shall use commercially reasonable efforts to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, NSR shall not by reason of failure or neglect on the part of P&W to maintain, repair or renew the Subject Trackage, have or make any claim or demand against P&W or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by NSR resulting from any such failure or neglect.
- B. P&W shall perform, at the expense of NSR, such additional maintenance as NSR may reasonably require or request.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the Parties shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under the relevant

agreements.

- B. Any additional connections to the Subject Trackage beyond those addressed in Article 4.C that may be required shall be subject to P&W's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). NSR or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of CSXT or B&M that connect the respective lines of P&W, CSXT and B&M.
 - (ii). P&W shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of NSR such portions of the additional track and structure upgrades located on the right-of-way of P&W which connect the respective lines of P&W, CSXT and B&M and/or enables clearance for double-stack containers hereto.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Except to the extent inconsistent with Article 4, P&W, from time to time and at its sole cost and expense may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- B. Except as otherwise provided in Article 4, if the Parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate NSR's operations beyond that required by P&W to accommodate its operations, P&W shall construct the additional or altered facilities and NSR shall pay to P&W the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. NSR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. NSR shall indemnify, protect, defend, and save harmless P&W and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon P&W or its parent corporation, subsidiaries or affiliates, or their respective

directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of NSR to comply with its obligations in this regard.

- B. NSR in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, airbrake and train handling rules, and hazardous materials instructions. While using the Subject Trackage, NSR shall comply in all respects with the operating rules, timetables, equipment handling rules and special instructions of P&W, and the movement of NSR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of P&W; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of P&W shall not unjustly discriminate between the Parties. P&W will not make any rule or restriction applying to NSR's trains that does not apply equally to P&W's trains. NSR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by P&W's operating rules and regulations, without the prior consent of P&W. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All NSR trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.
- C. NSR shall make such arrangements with P&W as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereover, and NSR shall pay to P&W, upon receipt of bills therefor, any reasonable cost incurred by P&W in connection with the qualification of such employees of NSR, as well as the reasonable cost of pilots furnished by P&W, until such time as such employees are deemed by the appropriate examining officer of P&W to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- D. The trains, locomotives, cars and equipment of NSR, P&W, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- E. In the event that a train of NSR shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among NSR's crew, or due to mechanical failure of NSR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of NSR fails to maintain the speed required by P&W on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of NSR's trains on the Subject Trackage, P&W shall have the option to furnish motive power or such other

assistance (including but not limited to the right to recrew NSR's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and NSR shall reimburse P&W for the actual cost of rendering any such assistance.

F. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, P&W shall have the option to perform such work, and NSR shall reimburse P&W for the actual cost thereof.

G. {{

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H. P&W shall have the right to exclude from its tracks any employee of NSR, except officers, determined by P&W to be in violation of P&W's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by P&W in its timetable or otherwise, and provided in advance to NSR. The decision to bar any employee of NSR from its tracks will not be interpreted as a request for NSR to fire the individual(s). NSR shall release, indemnify, defend, and save harmless P&W from and against any and all claims and expenses resulting from such exclusion.

ARTICLE 12. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in NSR's trains on the Subject Trackage shall be assumed by NSR and reported and paid by it directly to the owner of such cars.

ARTICLE 13. CLEARING OF WRECKS

Whenever NSR's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, P&W shall perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on P&W and NSR operations. The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by NSR at the time of such wreck, shall be promptly delivered to NSR.

ARTICLE 14. LIABILITY

- A. Without changing the responsibility for the provision of emergency services as set forth in Article 13, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and reasonable attorneys' fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:
1. If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in this Article 14, "Locomotives"), cars, and/or equipment of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
 2. Losses involving the trains, Locomotives, cars, and/or equipment of both Parties.
 - a. Except as otherwise provided in Subarticle 14.A.2.b, below, if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment of both P&W and NSR, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its own account including lading and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
 - b. If any damage to the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both P&W's and NSR's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) P&W shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in P&W's cars and equipment and/or P&W's Locomotive(s) from which there is a release, (B) NSR shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results solely from a substance transported in NSR's cars and equipment and/or NSR's

Locomotive(s) from which there was a release, and (C) P&W and NSR shall be responsible, in proportion to the total number of Locomotives, cars, and/or equipment of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results from one or more substances transported in cars or equipment in the revenue waybill and car hire accounts or Locomotives of both P&W and NSR from which there were releases.

3. If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment only one of the Parties and one or more third parties, then such Party shall be solely responsible for such Loss as between the Parties.
- B. If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars, and/or equipment of either P&W or NSR, then each of P&W and NSR is solely responsible for any Loss to its own employees, trains, Locomotives, cars, and/or equipment, even if caused partially or completely by the other Party.
 - C. Except as provided in Subarticle 11.G and Subarticle 18.B, each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.
 - D. Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall (i) forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss (including without limitation attorney's fees and expenses and court or regulatory expenses) assumed by that Party or apportioned to it, and (ii) shall

- defend at its cost such indemnified Party against any claims for such liabilities, loss and expenses with counsel selected by the indemnifying Party and reasonably acceptable to the indemnified Party, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either NSR or P&W, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
 - F. For purposes of determining liability, pilots furnished by P&W to NSR pursuant to this Agreement shall be considered as the employees of NSR while such employees are on duty as pilots for NSR.
 - G. If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
 - H. In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
 - I. Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 14, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
 - J. Notwithstanding any and all of the forgoing provisions of this Article 14, in the event a Loss occurs while the Subject Trackage is being used by P&W and/or NSR, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other

disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.

- K. Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), in no event shall either Party be liable to the other Party for any incidental, special, indirect, consequential or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses, lost use of equipment, liability to a Party's customers for liquidated damages or other damages) arising out of or related to the activities contemplated by this Agreement, even if advised of the possibility of such damages. Except as otherwise provided in Subarticle 14.G and 15.D hereof, under no circumstances shall either Party be entitled to recover its attorneys' fees and legal cost and expenses from the other Party for a dispute arising out of this Agreement.

ARTICLE 15. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, and property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each Party shall investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against P&W or NSR which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds {{ }}.
- F. Each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including

benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 14.

ARTICLE 16. INSURANCE

During the term hereof, NSR shall be self-insured.

ARTICLE 17. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of NSR to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from P&W, P&W shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by P&W of any prior breach thereof, to terminate the Trackage Rights and NSR's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by P&W shall not impair its rights under this Agreement or any cause or causes of action it may have against NSR for the recovery of damages.

ARTICLE 18. REGULATORY APPROVAL

- A. Should the Trackage Rights require the prior approval of the U.S. Surface Transportation Board ("STB"), NSR at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. P&W shall assist and support efforts of NSR to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, NSR, solely, shall be responsible for any and all payments in satisfaction of such conditions, including paying labor protection costs for adversely impacted employees, specifically NSR employees and any ST employee on a PAS rail line adversely impacted as a result of rerouting the Subject Traffic off of PAS and onto P&W.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Article 20, P&W may abandon or discontinue service over the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving NSR not less than ninety (90) days' notice of P&W's intent to abandon or discontinue service. In the event regulatory authority is required to effect such abandonment or discontinuance, NSR shall not interfere with P&W's actions to seek and to exercise such authority. In the event regulatory authority is required for NSR to discontinue its own operations over the Subject Trackage, NSR shall seek and exercise such regulatory authority at the same time that P&W seeks regulatory authority to abandon or discontinue service over the Subject Trackage. P&W and NSR shall exercise the abandonment and discontinuance authority within thirty (30) days from the date P&W and NSR obtain the aforementioned regulatory authority. Upon the date established by P&W for discontinuance of the Subject Trackage by its aforesaid notice to NSR or upon the above specified date of exercise of the regulatory authority to discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either Party from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the Parties notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law. As used in this Article 19, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Article 19 result in an obligation imposed by any competent authority on either or both Parties to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 20. TERM

- A. This Agreement shall be effective on the later of the day and year first above written or the date an STB decision granting or exempting the Trackage Rights becomes effective, and shall remain in effect until terminated in accordance with Articles 17 or 19, or by NSR upon sixty (60) days advance written notice to P&W of its intent to terminate this Agreement or until NSR receives authority to discontinue the rights herein granted, whichever occurs first.
- B. NSR shall be liable for complying with the requirements and costs of any labor protection imposed by the STB as a condition to the discontinuance.
- C. Termination of this Agreement shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.

ARTICLE 21. FORCE MAJEURE

P&W shall not be responsible to NSR for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties, embargoes or AAR service orders, Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 22. RESERVED

ARTICLE 23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the Parties. Neither Party shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other Party.

ARTICLE 24. NOTICE

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

If to P&W: Providence and Worcester Railroad Company
 200 Meridian Centre, Suite 300
 Rochester, NY 14618
 Attention: President

With copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel

If to NSR: Norfolk Southern Railway Company
 c/o Norfolk Southern Corporation
 Attn: Senior Director Interline Services
 1200 Peachtree Street NE
 Box 158
 Atlanta, GA 30309

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

ARTICLE 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- B. This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or any combination thereof.
- G. 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 and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of such other Party.
- H. This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

- I. The recitals to this Agreement are, by this reference, incorporated into and made a part of this Agreement.
- J. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the Commonwealth of Massachusetts.
- K. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- L. Neither Party may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company or its counsel, auditors and accountants, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

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

PROVIDENCE AND WORCESTER
RAILROAD COMPANY

By: _____
Name:
Title:

NORFOLK SOUTHERN
RAILWAY COMPANY

By: _____
Name:
Title:

ATTACHMENT A
DESIGN SPECIFICATIONS FOR IMPROVEMENTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36472 (Sub-No. 2)

**NORFOLK SOUTHERN RAILWAY COMPANY –
TRACKAGE RIGHTS EXEMPTION – PROVIDENCE AND WORCESTER RAILROAD
COMPANY**

NOTICE OF EXEMPTION

EXHIBIT 3

**DRAFT CAPTION SUMMARY
FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36472 (Sub-No. 2)

NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
PROVIDENCE AND WORCESTER RAILROAD COMPANY

Providence and Worcester Railroad Company (“P&W”) has agreed to grant overhead trackage rights to the Norfolk Southern Railway Company (“NS”) over approximately 2.90 miles of P&W mainline track between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W’s Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of B&M at Barbers Station at milepost 2.90, all such track located in the City of Worcester, MA, Commonwealth of Massachusetts (“P&W Trackage”). The trackage rights proposed here are one of four sets of trackage rights necessary to improve NS’s ability to move intermodal and automotive vehicles into the greater Boston marketplace, by adding a second route for this traffic. The other related trackage rights arrangements filed concurrently include (1) Norfolk Southern Railway Company – Trackage Rights Exemption – CSX Transportation Inc., FD 36472 (Sub-No. 1); (2) Norfolk Southern Railway Company – Trackage Rights Exemption – Boston and Maine Corporation, FD 36472 (Sub-No. 3); and, (3) Norfolk Southern Railway Company – Trackage Rights Exemption – Pan Am Southern LLC, FD 36472 (Sub-No. 4). In a related transaction, CSX Transportation, Inc. (“CSX”) seeks to acquire ownership and control over all of the railroads in the PAR corporate family. Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., Et. AL. – Control and Merger – Pan Am Systems, Inc., Pan Am Railways, Inc., Boston & Maine Corporation, Maine Central Railroad Company, Northern

Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railroad Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company.

The trackage rights will be effective no sooner than March 27, 2021 (the anticipated effective date of the transaction), or when the related proceeding filed in FD 46472 is approved and consummated, whichever is later.

This Notice is filed pursuant to 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____

By the Board, Allison C. Davis, Director, Office of Proceedings.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36472 (Sub-No. 2)

**NORFOLK SOUTHERN RAILWAY COMPANY –
TRACKAGE RIGHTS EXEMPTION – PROVIDENCE AND WORCESTER RAILROAD
COMPANY**

NOTICE OF EXEMPTION

VERIFICATION

VERIFICATION

I, Michael R. McClellan, Vice President for Norfolk Southern Railway Company (“NS”), hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NS in connection with this proceeding before the Surface Transportation Board.

Executed this 24th day of February 2021.



Michael R. McClellan
Vice President Strategic Planning