

EXPEDITED CONSIDERATION REQUESTED  
BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
February 13, 2023  
Part of  
Public Record

---

FD 36669

---

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

MOTION TO DISMISS

---

**I. OVERVIEW**

The Massachusetts Bay Transportation Authority (“MBTA”) has filed a Notice of Exemption (the “Notice”) in the above-captioned proceeding to acquire certain railroad assets from CSX Transportation, Inc. (“CSXT”). Specifically, upon effect, the Notice would authorize MBTA to acquire interests in approximately 8.86 miles of track, namely: (1) an 8.4-mile segment of railroad track generally known as the Milford Secondary Line (the “Milford Secondary”) between milepost QVG 0.0, at Franklin, Norfolk County, MA, and milepost QVG 8.4, at Milford, Worcester County, MA; and (2) a 0.46-mile portion of the Franklin Industrial Track (the “Franklin Industrial”), contiguous to the Milford Secondary,<sup>1</sup> extending between

---

<sup>1</sup> The Milford Secondary commences at milepost QVG 0.0 from a direct connection with the Franklin Industrial (attached as Exhibit A). Also as shown on the Exhibit A map, the Franklin Industrial runs parallel to a portion of the Milford Secondary for most of the Franklin Industrial’s length.

valuation station 1456+00 and valuation station 1480+40, all within Franklin, Norfolk County, MA (collectively, the interests to be acquired will be referred to as the “Assets”).

MBTA moves to dismiss the Notice because the transactions and proposed operational arrangements for the Assets conform to the standards of the well-established *State of Maine*<sup>2</sup> legal construct often raised in railroad asset purchases undertaken (as is the case here) by state subdivisions. CSXT will sell the Assets to MBTA and retain a perpetual freight easement over them. Concurrent with the closing of the Assets sale transaction with MBTA, CSXT will transfer the Milford Secondary easement<sup>3</sup> to the Grafton & Upton Railroad Company (“G&U”), a Class III carrier, and G&U will provide freight common carrier service over the Milford Secondary pursuant to – (a) the retained freight service easement;<sup>4</sup> and (b) an operating agreement with MBTA (referred to herein as the “Milford Operating Agreement”).<sup>5</sup> CSXT will

---

<sup>2</sup> *State of Me., Dep’t of Transp.—Acquisition Exemption—Me. Cent. R.R. Co.*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”).

<sup>3</sup> G&U currently holds an easement in the Milford Secondary pursuant to a transaction authorized by *Grafton & Upton R.R. Co.—Acquisition and Operation Exemption—CSX Transp., Inc.*, FD 36444 (STB served Sept. 28, 2020). However, as part of the sequence of events to occur at the time of the closing on the present Assets transaction, G&U’s current easement will terminate; CSXT, in turn, will sell the Assets to MBTA subject to CSXT’s retention of a permanent, exclusive easement as part of the deed to MBTA; and then CSXT simultaneously will assign to G&U its retained easement, but only with respect to the Milford Secondary (CSXT will keep its easement interest in the Franklin Industrial). For ease of reference, this Motion will refer to the “Milford Freight Easement” as the portion of the retained easement that CSXT will assign to G&U at closing, and to the “Franklin Freight Easement” as the portion of the retained easement which CSXT will keep. In order to secure Board authorization to acquire from CSXT the CSXT-retained easement on the Milford Secondary contemporaneous to MBTA’s proposed Assets purchase, G&U will be filing concurrently with this present Notice and the Motion its own notice of exemption pursuant to 49 C.F.R. part 1150, subpart E.

<sup>4</sup> Release Deed, Milford Secondary and Franklin Industrial (the “Release Deed”) (attached as Exhibit B); *see also* n. 6, *infra*.

<sup>5</sup> Operating Agreement between the Massachusetts Bay Transportation Authority and the Grafton & Upton Railroad Company (the “Milford Operating Agreement”) (attached as Exhibit C).

remain responsible for freight common carrier service via the retained freight easement<sup>6</sup> on the Franklin Industrial, and will, as detailed below, coordinate operations on that track segment with MBTA in accordance with a 1985 agreement (originally as between MBTA and Consolidated Rail Corporation – “Conrail”) that governs CSXT operations (and has governed those of CSXT’s predecessors) in similar circumstances.<sup>7</sup>

As more fully addressed below, the easements and operating arrangements conform to *State of Maine* such that MBTA will not assume a common carrier status with respect to the Assets, and such that the transaction encompassed by the Notice will not require authorization under 49 U.S.C. § 10902 (or the corresponding class exemption regulations at 49 C.F.R. Part 1150, subpart E).<sup>8</sup> MBTA also asks for expedited consideration of this Motion, so

---

<sup>6</sup> Release Deed at 2-3 (defining the extent of retained freight rail easement).

<sup>7</sup> Trackage Rights Agreement, as amended (the “1985 Agreement”) (attached as Exhibit D).

<sup>8</sup> MBTA is rail carrier by virtue of its ownership of various active railroad lines over which third-parties provide freight common carrier service pre-dating the advent of the *State of Maine* construct. See, e.g., *Boston & Me. Corp.—Discontinuance of Service Exemption—In Middlesex Cty., Mass.*, AB-32 (Sub-No. 56X) (STB served Feb. 10, 1994). MBTA does not provide freight common carrier service and does not hold itself out to do so. Existing carriers such as MBTA are eligible to seek *State of Maine* determinations for new transactions structured such as the present one is. Cf. *State of Vt.—Acquisition Exemption—Certain Assets of Boston & Me. Corp.*, FD 33830 (STB served June 8, 2000). In that case, the State of Vermont noted it might possess a “residual common carrier obligation” on another line resulting from a previous *State of Maine* transaction. *Id.* Without ruling directly on the State of Vermont’s status as a common carrier, the Board noted as follows:

Typically, the transfer of an active rail line and the related common carrier obligation require Board approval under 49 U.S.C. [§] 10901, if the acquiring entity is a noncarrier, or under 49 U.S.C. [§§] 10902 or 11323, if the acquiring entity is a carrier. But we have no need to exercise jurisdiction over the transfer for just a right-of-way and fixed assets if the transferor retains an easement that allows it to comply fully with the common carrier obligation to provide rail freight service.

*Id.*

that the proposed transaction may be consummated on or before April 11, 2023, the outside closing date for the transaction under the governing Definitive Agreement between CSXT and the MBTA, dated as of April 11, 2022 (the “PSA”). Expedited Board consideration and favorable action on the present Motion would facilitate the orderly acquisition of the Assets: namely permitting the Assets to be considered during MBTA’s upcoming budget planning cycle, and ensuring available funding to improve the Assets.

## II. BACKGROUND

MBTA is a public authority and a division of the Massachusetts Department of Transportation (“MassDOT”). It provides an array of multi-modal passenger transportation services to numerous cities and towns in Massachusetts and Rhode Island. MassDOT is a department of the Commonwealth of Massachusetts, and is its chief authority for the development and implementation of state-level transportation policy, planning, and programs.<sup>9</sup> MassDOT has acquired other railroad assets in the Commonwealth (including various CSXT-owned railroad assets) pursuant to previous *State of Maine* proceedings.<sup>10</sup> Where, as here, a public agency has requested a *State of Maine* determination for a proposed railroad asset transaction, the Board customarily will assess the transaction in the context of a class exemption

---

<sup>9</sup> See Comments, Commonwealth of Mass., Exec. Off. of Transp. and Pub. Works, *Norfolk S. Ry. Co., Pan Am Rys., Inc., et al.—Joint Control and Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 (STB filed Aug. 11, 2008), at 3 (describing MassDOT’s predecessor agency and its role in Massachusetts government).

<sup>10</sup> E.g., *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943 (STB served Dec. 4, 2015); *Mass. Dep’t of Transp.—Acquisition and Operation Exemption—Certain Assets of Housatonic R.R. Co., Inc.*, FD 35866 (STB served May 22, 2015); and *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35982 (STB served Mar. 16, 2015).

proceeding coupled with a motion to dismiss, as has been the case in the MassDOT transactions cited in footnote 10.<sup>11</sup>

MBTA is purchasing the Assets as part of the Commonwealth's plan to extend its passenger service footprint and to further integrate the lines of MBTA's existing commuter operations. Through its purchase, MBTA will secure ownership of strategic assets critical to its Franklin/Foxborough passenger service. MBTA intends that the route improvements expected from the proposed transaction would alleviate road congestion and impacts by attracting commuters who at this time must otherwise drive from Franklin, Bellingham, or Milford into Boston, or to other outlying MBTA stations. This transaction could also be a step toward enabling MBTA to re-deploy locomotives and rolling stock along three of its southern and western service routes by interconnecting certain of those service routes through future railroad asset transactions. Further, purchase of the Assets will allow MBTA greater latitude in planning and implementing infrastructure and service improvements throughout its network, in the joint interest of freight and commuter rail service.

CSXT is a Class I rail carrier with a system network spanning the eastern United States, including Massachusetts. On the lines involved here, CSXT is the successor-in-interest to Conrail. CSX will retain a freight easement<sup>12</sup> and will operate the Franklin Industrial under the 1985 Agreement<sup>13</sup> after MBTA's purchase.

---

<sup>11</sup> See also *Reg'l Transp. Dist.—Acquisition Exemption—Union Pac. R.R. Co. in Adams, Denver, and Jefferson Counties, Colo.*, FD 35294 (STB served Dec. 21, 2010); *Dallas Area Rapid Transit—Acquisition Exemption—Certain Assets of Reg'l Right of Way Co.*, FD 34346 (STB served Nov. 12, 2003); and *State of Vt.—Acquisition Exemption—Certain Assets of Newport & Richford R.R. Co., N. Vt. R.R. Co., and Can. Am. R.R. Co.*, FD 34294 (STB served May 22, 2003).

<sup>12</sup> See Release Deed at 2-3 (describing limits and nature of easement).

<sup>13</sup> See *id.* at 3 (describing terms and conditions of conveyance of Franklin Industrial to MBTA, including incorporation of 1985 Agreement). The 1985 Agreement would also govern

G&U is a Class III rail carrier operating within Massachusetts. It is a well-established freight rail carrier in continuous operation since 1873. It currently operates a northern segment of railroad contiguous to the Milford Secondary, interchanging traffic with CSXT at North Grafton, Massachusetts. CSXT will assign to G&U CSXT's exclusive freight easement over the Milford Secondary; the MBTA-G&U Milford Operating Agreement will further govern operations on the Milford Secondary post-transaction.

#### **A. The Rail Assets**

The PSA describes the conveyed (contiguous) assets as consisting of the right of way; all "included fixtures" (tracks, rails, ties, switches, and ballast, etc.); other "personal property;" and certain permits along the Milford Secondary and Franklin Industrial.<sup>14</sup> The PSA excludes certain easements and other property interests third parties hold relative to the Assets.

#### **B. G&U's Operating Rights on the Milford Secondary**

G&U will continue its operations on the Milford Secondary consistent with the newly-assigned Milford Freight Easement from CSXT as described above. The Milford Freight Easement carefully defines terms such as "Trackage," "Railroad Purposes," and "Rail Freight Service" to guarantee to G&U the "right to use all Trackage and the Property for the exclusive provision of Rail Freight Service."<sup>15</sup> To that end, the Milford Freight Easement broadly defines "Rail Freight Service as "[t]he transportation by rail of property and movable articles of every kind, character and description over the property, including but not limited to rail freight

---

CSXT's operations on the Milford Secondary were CSXT to reacquire the Franklin Freight Easement from G&U. *Id.*; *see also* Subsection III, C, 3, *infra*.

<sup>14</sup> Definitive Agreement at 3 (attached as Exhibit E).

<sup>15</sup> Release Deed at 4-5.

transportation service to current and future industries, customers, and facilities located along the Property, and supporting activities . . .”<sup>16</sup>

The Milford Freight Easement is perpetual until “abandoned or terminated . . .”<sup>17</sup> But CSXT’s assignment of the Milford Freight Easement to G&U is for a term of years, such that CSXT will hold the right to reacquire the easement from G&U at some future date pursuant to then-applicable Board authorization. This potential CSXT reacquisition of the Milford Freight Easement is discussed in Motion Subsection II, C, 3, below.

G&U’s exercise of its rights under the Milford Freight Easement would be governed by the aforementioned Milford Operating Agreement (Exhibit B), which, among other things, allows G&U to pursue and serve additional freight business. This agreement contains provisions under which, for example, MBTA may install railroad infrastructure (such as switches, siding tracks, and roadside signals) intended to improve or expand commuter and/or freight service on the Milford Secondary.<sup>18</sup> As noted in the Verified Statement of Jon Delli Priscolli, who owns and serves as Chief Executive Officer of G&U, this agreement has provisions which are specifically designed to protect G&U’s post-transaction ability and rights to conduct freight service without unreasonable interference from MBTA, thereby protecting common carrier service on the Milford Secondary.<sup>19</sup>

### **C. CSXT’s Operating Rights on the Franklin Industrial**

CSXT will convey the Franklin Industrial portion of the Assets to MBTA subject to CSXT’s retention of the Franklin Freight Easement. CSXT operations under its retained

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4.

<sup>18</sup> Milford Operating Agreement, art. 8(B)(2).

<sup>19</sup> V.S. Jon Delli Priscolli at 2 (attached as Exhibit F).

easement rights will be governed by the 1985 Agreement that has long governed CSXT operations over other MBTA-owned railroad assets (and, in so doing, has fairly balanced the interests of freight and passenger service over those railroad assets).<sup>20</sup> The Franklin Freight Easement will continue in perpetuity until “abandoned or terminated, as may be provided in” the 1985 Agreement.<sup>21</sup> The 1985 Agreement grants CSXT considerable discretion over any future abandonment or discontinuance of rail freight service on the Assets, sets forth specific terms and conditions under which CSXT’s interests may be terminated, and provides that MBTA oversight, dispatching, maintenance, and capital improvement projects all be conducted so as not to unreasonably interfere with CSXT’s provision of common carrier service.

#### **D. Future CSXT Operations on the Milford Secondary**

In the event that CSXT were to reacquire the Milford Freight Easement (as its assignment arrangement with G&U contemplates), then CSXT’s operations over that track segment also would be governed by the terms of the 1985 Agreement.<sup>22</sup> MBTA submits that if the Motion has proven that the Franklin Industrial Easement and 1985 Agreement sufficiently protect CSXT’s freight service over the Franklin Industrial assets from MBTA intrusion, then the Board should agree that CSXT’s potential reacquisition of the Milford Secondary easement from G&U subject to the governing terms of the 1985 Agreement and any applicable regulatory requirements, would also satisfy the *State of Maine* criteria, obviating the need for a supplemental, downstream Board determination.<sup>23</sup>

---

<sup>20</sup> Release Deed at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> MBTA understands that CSXT would need to require Board authorization to displace G&U on the Milford Freight Easement.



### **E. Closing/Consummation**

MBTA is mindful of the Board's expectation in a proposed transaction such as this one that the transaction's proponent would present its case for a favorable Board *State of Maine* determination (and would await that Board determination) prior to taking ownership of the targeted assets. To that end, MBTA is presenting this transaction in advance of an anticipated April 11, 2023 closing deadline. Accordingly, MBTA requests expedited Board action to allow for a merits decision on this Motion by March 31, 2023, thereby allowing MBTA, CSXT and G&U adequate time to coordinate closing arrangements.

### **III. DISCUSSION**

*State of Maine* established, and its progeny consistently have reinforced, the proposition that a public entity may, under certain circumstances, acquire railroad assets and manage them without the need for the Board's authorization. In cases where the seller (CSXT) or a designated third-party entity (G&U in the case of the Milford Secondary) would hold an exclusive common carrier obligation and would be extended sufficient post-transaction rights to enable it to conduct freight rail operations without undue interference, the public entity acquirer would not require Board authorization for the transaction, and would not become a regulated-carrier with respect to the acquired assets. Such is the circumstance here, and, accordingly, the Notice should be dismissed.

#### **A. The Modern-Day *State of Maine* Construct and 49 U.S.C. § 10902(a)**

A Class II or Class III rail carrier generally must obtain authorization from the Board under 49 U.S.C. § 10902 to acquire an additional rail line. However, Board precedent, beginning with *State of Maine*, has established a clear distinction between – (1) rail line purchases requiring Board authorization; and (2) railroad right-of-way and track asset purchases by public agencies *that are necessarily subject to the seller's (or a third party's) retention of a*

*permanent, exclusive common carrier easement*, which requires Board examination, but for which the Board may determine its authorization is unnecessary, because the transaction does not entail the conveyance of a “rail line” under 49 U.S.C. § 10902(a). Transactions falling within this latter category are known as “*State of Maine* transactions” after the namesake 1991 decision.

*State of Maine* transactions are hardly novel.<sup>24</sup> As the Board observed over a decade ago, “[S]ince 1991, the ICC and the Board have followed *State of Maine* in more than 60 cases, mostly involving the acquisition of the physical assets of rail lines for commuter transportation, and regional, state, and local agencies responsible for commuter transportation have come to rely on this precedent.”<sup>25</sup> The Interstate Commerce Commission (the “ICC”) and the Board have repeatedly, and consistently, explained that a railroad asset transaction does not involve the acquisition of a “railroad line” requiring authorization under 49 U.S.C. § 10901(a)(4) or, as applicable here, 49 U.S.C. § 10902(a) where – (1) a key element of the bundle of assets (*i.e.*, the rights and obligations of the freight carrier) are retained by the seller or a designated easement-holder common carrier; and (2) the railroad retaining the common carrier rights, typically by way of a permanent easement, cannot be forced to discontinue or abandon service without advance Board authorization under governing standards and requirements.<sup>26</sup>

The judiciary has ratified this legal construct. The federal Court of Appeals for the District of Columbia determined that the acquisition of “a portion of a railroad” consisting of the “physical assets,” divorced from the common carrier rights and obligations affixed to those

---

<sup>24</sup> *E.g.*, *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35312 (STB served May 3, 2010) (“*MassDOT—CSXT Assets*”), 4-8, *aff’d sub nom. Bhd. of R.R. Signalmen v. S.T.B.*, 638 F.3d 807 (D.C. Cir. 2011) (“*Brotherhood*”).

<sup>25</sup> *MassDOT—CSXT Assets*, at 6 (footnote omitted).

<sup>26</sup> *State of Maine*, 835 I.C.C.2d at 837.

assets, need not constitute the sale of a railroad line under § 10901 or § 10902.<sup>27</sup> It rejected the appellant’s argument that the statutes governing the sale of railroad lines require – every time – that the Board either authorize or exempt a non-carrier’s acquisition of railroad assets, such that the purchaser becomes a regulated common carrier.<sup>28</sup> Instead, the court affirmed that the term “railroad line” is not “necessarily limited to a portion of a railroad’s assets; it may refer to a railroad’s entire railroad operation,” adding that the Board reasonably applied the concept of a “railroad line” to “the interstate freight transportation authority attached to the physical property” rather than to the physical assets themselves.<sup>29</sup> The *Brotherhood* court also observed that focusing on the physical assets transaction in isolation “ignores the [purchaser’s] intended use of the [r]ailroad [a]ssets, which is the key to determining whether [the purchaser would become] a rail carrier subject to the Board’s jurisdiction.”<sup>30</sup>

The *Brotherhood* court further acknowledged that in *State of Maine* transactions “the seller does not relinquish its rights and obligations with respect to providing rail freight transportation,” so that the “non-carrier that purchases the physical assets of a rail line does not thereby assume any common carrier obligation” and does not become “a rail carrier providing transportation and the acquisition is not subject to [S]ection 10901(a)(4)’s [or Section 10902(a)]’s authorization requirement.”<sup>31</sup> The Board has consistently relied upon *Brotherhood*,

---

<sup>27</sup> *Brotherhood*, 638 F.3d at 811-13.

<sup>28</sup> *Id.* at 812.

<sup>29</sup> *Id.* (internal citations omitted).

<sup>30</sup> *Id.* at 813 (quotation marks omitted).

<sup>31</sup> *Id.* at 812.

and the ICC and Board precedents effectively also upheld by *Brotherhood*, in subsequent proceedings involving transactions meant to satisfy the Board’s *State of Maine* criteria.<sup>32</sup>

## **B. The *State of Maine* Standard Generally**

For a transaction to meet *State of Maine* requirements, the agreements governing the sale and post-transaction operations must protect the freight carrier from undue interference in its provision of common carrier freight rail service.<sup>33</sup> Again, “the sale of the physical assets of a rail line by a carrier to a state or other public agency does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901, *if certain conditions are met.*”<sup>34</sup> In practice, these conditions are that – (1) a designated freight rail carrier must retain an exclusive, perpetual

---

<sup>32</sup> See, e.g., *Va. Passenger Rail Auth.—Acquisition and Operation of Certain Assets of Norfolk S. Ry. Co. in Montgomery and Roanoke Counties, and the Cities of Salem and Roanoke, Va.*, FD 36588 (STB served May 31, 2022) (“*Virginia Passenger Rail*”); *Common-wealth of Va.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 36441 (STB served Dec. 14, 2020); *N.J. Transit Corp.—Acquisition Exemption—Consol. Rail Corp. in the Cty. of Middlesex, N.J.*, FD 36195 (STB served Aug. 30, 2018); *Wis. Dep’t of Transp.—Pet. for Declaratory Order—Reedsburg Line Near Madison, Wis.*, FD 35854 (STB served Nov. 6, 2014); *Cent. Puget Sound Reg’l Transit Auth.—Acquisition Exemption—Certain Assets of City of Tacoma in Pierce Cty., Wash.*, FD 35812 (STB served Oct. 27, 2014); *Fla. Dep’t of Transp.—Pet. for Declaratory Order—Rail Line of CSX Transp., Inc., between Riviera Beach and Miami, Fla.*, FD 35783 (STB served Oct. 1, 2014) (“*FlaDOT—Riviera Beach*”); *N.J. Transit Corp.—Acquisition Exemption—Norfolk S. Ry. Co.*, FD 35638 (STB Mar. 27, 2013) (“*NJT—NSR*”); *Santa Cruz Reg’l Transp. Comm’n—Pet. for Declaratory Order*, FD 35653 (STB served Sept. 27, 2012); *Wis. Dep’t of Transp.—Pet. for Declaratory Order—Gibson Line in Milwaukee, Wis.*, FD 35401 (STB served Aug. 15, 2012) (“*WisDOT—Gibson Line*”); *State of Mich. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Norfolk S. Ry. Co.*, FD 35606 (STB served May 8, 2012) (“*MichDOT—NSR Assets*”); *Santa Cruz Reg’l Transp. Comm’n—Pet. for Declaratory Order*, FD 35491 (STB served Dec. 15, 2011); *Wis. Dep’t of Transp.—Pet. for Declaratory Order—Rail Lines in Almena, Cameron, and Rice Lake, Barron Cty., Wis.*, FD 35455 (STB served Nov. 20, 2011) (“*WisDOT—Almena Line*”); and *Va. Port Auth.—Acquisition Exemption—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 35532 (STB served Aug. 1, 2011) (“*Virginia Port Authority*”).

<sup>33</sup> *MichDOT—NSR Assets*, at 2 (citing *MassDOT—CSXT Assets*).

<sup>34</sup> *Fla. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, FD 35110 (STB served Dec. 15, 2010), at 3 (“*FlaDOT—CSXT Assets*”) (emphasis added).

freight easement, or similar rights, in the assets in question; and (2) that freight rail carrier must possess the ability to fulfil its common carrier obligations to all freight rail customers without undue interference from the asset-purchasing entity.<sup>35</sup>

In this two-part analysis, the Board “looks to whether [the selling railroad] would obtain a permanent, exclusive freight easement and would have sufficient interest in and control over the [railroad line at issue] to permit it to carry out its common carrier freight rail obligation” without unreasonable interference.<sup>36</sup> In certain *State of Maine* cases in the past, the agreements controlling post-transaction operations contained language that could have been construed to enable the state subdivision to control (and terminate) the provision of freight service without authorization from the Board, in spite of language elsewhere purporting to grant the rail carrier a permanent and exclusive freight easement. Yet even in those circumstances, which MBTA is confident do not exist here, the Board has construed contract terms in the manner necessary to support a *State of Maine* determination, as should be done here in the event of any inadvertent ambiguity.<sup>37</sup>

### **C. This Transaction Meets the *State of Maine* Standard**

The parties have carefully modeled this transaction after others the Board has found to have satisfied the *State of Maine* standards. The freight easements are permanent and exclusive, and, as described below, the terms of the Milford Operating Agreement and the 1985

---

<sup>35</sup> *Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Ry. Co.*, FD 35128 (STB served Oct. 27, 2008), at 3 (“*Port of Seattle*”).

<sup>36</sup> *MichDOT—NSR Assets*, at 3; *Akron Metro Reg’l Transit Auth.—Acquisition Exemption—CSX Transp., Inc.*, FD 33838 (STB served Oct. 10, 2003), at 4; *N.J. Transit Corp.—Acquisition Exemption—Certain Assets of Conrail*, 4 S.T.B. 512, 514 (2000).

<sup>37</sup> *See WisDOT—Gibson Line*, at 4-5 (discussing construction of contract terms); *see also WisDOT—Almena Line*, at 4-5 (same).

Agreement preclude MBTA from providing, or unduly interfering with, common carrier freight service. MBTA's purchase of the Assets follows the *State of Maine* rules.

To that end, and building upon G&U's easement rights, the Milford Operating Agreement contains provisions protecting G&U's post-transaction freight rail common carrier operations, as indicated in preceding sections of this Motion. These factors, taken together with the understandings that MBTA will not (and cannot) hold itself out as a freight common carrier and will not acquire any freight common carrier rights or obligations, establish that MBTA's purchase of the Milford Secondary would not involve a transfer of a common carrier obligation, and thus does not require Board authorization.<sup>38</sup>

MBTA's purchase of the Franklin Industrial also follows the *State of Maine* rules. The Release Deed and the 1985 Agreement include terms protecting CSXT's post-transaction freight common carrier rights and obligations. Also, because MBTA will not (and cannot) hold itself out as a freight common carrier, MBTA's purchase of the Franklin Industrial would not involve a transfer of a common carrier obligation, and therefore does not require authorization from the Board.<sup>39</sup>

Beyond these protections for common carrier freight service, MBTA is purchasing the Assets for purposes of enhancing service on its commuter rail system, and "the Board does not have jurisdiction . . . over mass transportation provided by a [State or subdivision

---

<sup>38</sup> *Cent. Puget Sound Reg'l Transit Auth.—Acquisition Exemption—BNSF Ry. Co.*, FD 34747 (STB served Nov. 18, 2005), at 2 ("*Puget Sound*"); *Metro-North Commuter R.R. Co.—Acquisition and Operation Exemption—Line of Norfolk S. Ry. Co. and Pa. Assets LLC*, FD 34293 (STB served May 13, 2003) ("*Metro-North*"), at 2-3.

<sup>39</sup> *See WisDOT—Gibson Line*; *see also WisDOT—Almena Line*.

of a State].”<sup>40</sup> The present transaction is structured to enable freight and commuter rail service to coexist on the lines in question.

### **1. The Milford Secondary under G&U Operation**

The parties anticipate no significant post-transaction changes in freight service demand on the Milford Secondary, and they expect that G&U will be able to provide the current level of freight service going forward. Under the terms of the Milford Operating Agreement discussed below, MBTA will perform dispatching and maintenance subject to carefully-crafted provisions that prevent discrimination against freight service,<sup>41</sup> and MBTA will undertake appropriate and timely upkeep of the trackage so as to prevent undue freight service disruption.<sup>42</sup> The Milford Secondary’s light-density freight service characteristics make it unlikely that commuter rail service, which will be implemented with due regard for the Milford Freight Easement and G&U’s attendant freight common carrier obligations, will not present a meaningful obstacle to freight rail service.

---

<sup>40</sup> 49 U.S.C. § 10501(c)(2). *See also* *Mass. Bay Commuter R.R. Co. LLC—Pet. for Declaratory Order*, FD 34332 (STB served June 5, 2003); *Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control*, EP 574, FRA Docket No. 1999-4985, Notice No. 4 (STB served Mar. 8, 2002), at 58 n. 14 (“Under 49 U.S.C. § 10501(c), the Board does not have jurisdiction over [commuter rail service] provided by a local government entity. Thus, a transaction involving a railroad subject to the Board’s jurisdiction and a commuter railroad ‘is . . . a one railroad transaction over which [the Board] does not have jurisdiction[.]’”) (quoting *Norfolk & W. Ry. Co.—Pet. for Declaratory Order—Lease of Line in Cook and Will Counties, Ill., to Commuter Rail Div. of the Reg’l Transp. Auth. of Ne. Ill.*, FD 32279 (STB served Feb. 3, 1999)).

<sup>41</sup> *See* Milford Operating Agreement, art. 10(H) (requiring dispatching of trains without prejudice against or partiality for users of the line).

<sup>42</sup> *See id.*, art. 7(C) (providing for self-help in the event MBTA has not met its maintenance requirements under the agreement); *see also id.*, art. 7(A) (providing for infra-structure improvements designed to maintain track conditions to FRA Class 1 standards).

a. The Freight Easement

In keeping with the structure of previous *State of Maine* transactions involving MassDOT, the Milford Freight Easement is a permanent and exclusive easement entitling the holder of the easement to provide freight rail service on that portion of the Assets. G&U's Milford Secondary freight service would terminate on all or any given portion of the Milford Secondary only if G&U were to obtain the Board's authority to discontinue service or abandon the easement on all or the relevant part of the Milford Secondary, or if CSXT were to reacquire the reserved freight easement interest in the Milford Secondary in place of G&U, subject to appropriate advance Board authorization.<sup>43</sup> Accordingly, because this is not a case where the freight easement is subject to periodic renewal at the MBTA's direction, or where MBTA has the contractual right to compel the carrier's abandonment of freight service, the MBTA's motion to dismiss should be granted in keeping with *State of Maine* precedent.<sup>44</sup> Taken with the fact that MBTA will not (and cannot under the Milford Operating Agreement) hold itself out as a freight carrier, this transaction does not involve the transfer of a rail freight common carrier obligation to MBTA, and, as such, does not require Board authorization.<sup>45</sup>

b. Contractual Protections against Unreasonable Interference with Common Carrier Freight Service

The Milford Operating Agreement provides a single standard to govern MBTA stewardship of the Milford Secondary: in all cases MBTA may not unreasonably interfere with

---

<sup>43</sup> *Id.*, art. 20.

<sup>44</sup> *Cf. Wis. Dep't of Transp.—Pet. for Declaratory Order*, FD 34764 (STB served Dec. 2, 2005), at 2; and *S. Pac. Transp. Co.—Abandonment*, 8 I.C.C.2d 495 (1992), *recons. denied*, 9 I.C.C.2d 385 (1993); *see also Sacramento-Placerville Transp. Corridor Joint Powers Auth.—Acquisition Exemption—Certain Assets of S. Pac. Transp. Co.*, FD 33046 (STB served Oct. 28, 1996), at 2 (“*Sacramento-Placerville*”).

<sup>45</sup> *Metro-North*, at 2-3; *Puget Sound*, at 2.



G&U's operating rights.<sup>46</sup> What's more, the Milford Operating Agreement specifically accounts for G&U's ongoing operations, provides equitable standards for dispatching, and requires MBTA to adequately maintain the Assets.<sup>47</sup> These arrangements balance the sometimes-competing interests of freight and passenger operations and may in fact lead to the improvement of both types of rail service. The transaction is an example of a successful public-private partnership designed to accomplish two important objectives – (1) to preserve and promote freight common carrier service on a lower-density branch line; and (2) to provide for expanded commuter rail service.

The parties anticipate no significant post-transaction changes in freight service demand on the Assets, and they expect that G&U will be able to meet the existing and reasonably foreseeable needs of freight customers in light of the protective terms of the conveyance of the property, the Assignment of Freight Easement Agreement, and the Milford Operating Agreement. Accordingly, CSXT's or G&U's freight service obligations on the Milford Secondary can and will be easily accommodated now and into the future.

MBTA takes very seriously its commitments to CSXT and G&U, and its assurances to respect and protect freight rail service over the Assets. MBTA has committed to protect that service, and G&U'S leadership is convinced these assurances are sufficient for these purposes.<sup>48</sup> MBTA anticipates that the Board may hold it to the assurances set forth in this

---

<sup>46</sup> Milford Operating Agreement, art. 1(A).

<sup>47</sup> *Id.*, art. 7(A), art. 10(H).

<sup>48</sup> *See* V.S. Delli Priscoli at 2.

Motion, consistent with the stated objectives and outcomes of the transaction as set forth in the involved agreements.<sup>49</sup>

c. Key Operating Agreement Provisions

The Milford Operating Agreement has specific terms protecting G&U's freight service in nearly every facet of the railroad, including: maintenance and infrastructure, dispatching, operations, and capital expansions for the Milford Secondary.

i. *Maintenance and Infrastructure*

MBTA will be solely responsible for maintaining the tracks, and has committed to doing so without unreasonably interfering with freight operations.<sup>50</sup> Moreover, MBTA will be responsible for maintaining and inspecting the Assets on both track segments to (or above) the standards set forth in the Milford Operating Agreement (FRA Class 1 track standards at a minimum). Finally, the Milford Operating Agreement contains robust procedures governing the highly unlikely situation in which MBTA were to fail to perform its maintenance obligations, entitling G&U to conduct necessary and required maintenance to protect its own operations.<sup>51</sup>

It should be noted that MBTA has long maintained the tracks that comprise the Assets, and that it also currently handles dispatching duties, all under lease terms with CSXT. As such, the subject transaction will not disrupt the maintenance and dispatching *status quo* for the Assets, but will accomplish the long-planned-for transfer of Assets ownership to the majority user of the Assets.

---

<sup>49</sup> *Port of Seattle*, at 5.

<sup>50</sup> See Milford Operating Agreement, art. 7(F) (placing responsibility for costs on MBTA); see also *id.*, art. 1(B), art. 1(D) (prohibiting MBTA from “unreasonably interfer[ing]” with G&U's rights).

<sup>51</sup> *Id.*, art. 7(C).

A public entity’s assumption of the “responsibility for track maintenance by itself does not constitute an acquisition of a railroad line requiring Board authorization.”<sup>52</sup> In fact, the Board repeatedly has found a proposed transaction satisfies the *State of Maine* criteria where a public agency acquiring railroad assets assumes responsibility for their maintenance, and where the transaction and operating agreements – (1) protect freight service; (2) require that the public agency maintain the line to specified FRA track safety standards; and (3) grants the freight carrier the right to undertake necessary repairs if the public agency fails to do so.<sup>53</sup>

Accordingly, MBTA requests the Board find that MBTA’s assumption of control over maintenance of the Milford Secondary does not impose a common carrier status or obligation upon it and would not unduly interfere with G&U’s freight railroad operations.

*ii. Dispatching*

The Board repeatedly has embraced the public benefits driving public agencies to assume control over dispatching responsibilities for railroad assets they purchase under *State of Maine* analyses.<sup>54</sup> The Board has stated also that “while a permanent easement to provide freight service is still required . . . the public agency may assume responsibility for . . . dispatching

---

<sup>52</sup> *Virginia Port Authority*, at 4.

<sup>53</sup> *FlaDOT—Riviera Beach*, at 5.

<sup>54</sup> *E.g., FlaDOT—Riviera Beach; Virginia Port Authority; MichDOT—NSR Assets; FlaDOT—CSXT Assets; NJT—NSR; Sacramento-Placerville*, at 2; and *Los Angeles Cty. Transp. Comm’n—Pet. for Exemption—Acquisition from Union Pac. R.R. Co.*, FD 34374 (STB served July 23, 1996), at 3 (needs of passenger service giving agency added incentive to fulfill track maintenance obligation).

freight operations if the operating procedures are reasonable and do not discriminate against freight . . . .”<sup>55</sup>

The Board has stated that, “dispatching control has less importance in its own right, rather than as a means of enforcing the service priorities in the operating agreement. If the operating agreement, considered as a whole, is not likely to impair freight service, the passenger operator’s control over dispatching will not by itself create such an obstacle, because the latter merely implements the former.”<sup>56</sup>

Here, the Milford Operating Agreement requires MBTA to dispatch trains “without prejudice or partiality to any user and in such manner as shall afford the most reasonable, economical, and efficient manner of movement of all traffic,” while affording a modest priority to MBTA trains operating within 15 minutes of schedule.<sup>57</sup> Similar dispatching arrangements have been found to satisfy the *State of Maine* dismissal criteria.<sup>58</sup>

MBTA already dispatches trains on multiple rail routes where both freight and passenger trains share Commonwealth-owned railroad facilities. As one major example, MassDOT owns railroad assets extending between Framingham and Worcester, having purchased them previously from CSXT, and MBTA dispatches train operations over the route.<sup>59</sup>

---

<sup>55</sup> *MassDOT—CSXT Assets*, at 9-10.

<sup>56</sup> *Id.*

<sup>57</sup> Milford Operating Agreement, art. 10(H).

<sup>58</sup> See *FlaDOT—Riviera Beach*, at 9 (finding the eventual transfer of dispatching duties from freight carrier to public agency is permissible where specific protocols for the movement of passenger trains and freight trains were mutually agreed to by the parties); *Virginia Port Authority*, at 4 (noting agency control of dispatching permissible where dispatching will not impair or interfere with freight services); and *MichDOT—NSR Assets*, at 3 (permitting state department control of dispatching because it will take into account needs of both freight and passenger rail service).

<sup>59</sup> *MassDOT—CSXT Assets*, at 6-10.

That line segment hosted, and continues to host, CSXT freight trains, Amtrak intercity passenger service, and MBTA commuter trains. In the proceeding involving that transaction, the Board determined that the dispatching provisions of the Operating Agreement adequately balanced and protected the interests of all users of the rail corridor.<sup>60</sup>

The dispatching protocols here are comparable to those in the Framingham-Worcester transaction that the Board has found satisfies *State of Maine*. Critically, continued MBTA dispatching over the Milford Secondary (as is the case now) will assure fluidity in the movement of commuter trains and equipment. Under those circumstances, MBTA has a legitimate business justification for securing responsibility for dispatching over the Milford Secondary.

MBTA submits that its dispatching record speaks for itself. MBTA has proven more than capable of dispatching trains on lines over which freight and passenger service regularly operate (and over the Assets themselves), balancing and accommodating the needs of freight shippers and passengers, as it has done for decades. That experience will continue to be applied to the Milford Secondary, and this consideration also militates for favorable Board action on this Motion. There is no basis to presume that MBTA would deviate from such a well-recognized, admirable “track record” to compromise freight rail service in a way that raises questions about its ability to adhere to the essential requirements of a *State of Maine* transaction.<sup>61</sup>

---

<sup>60</sup> *Id.*

<sup>61</sup> The Board has considered probative the acquiring state agency’s experience with hosting freight and passenger service on state agency-owned tracks. *See, e.g., NJT—NSR*, at 4 n. 10 (observing the “parties’ [intent] that NJ Transit shall not be able to conduct [maintenance and dispatching] in a manner that unreasonably interferes with [the freight railroad’s] ability to provide common carrier rail service,” and noting that New Jersey Transit had nearly thirty years’ worth of experience in coordinating passenger operations with freight railroads).

*iii. Operations*

The Milford Operating Agreement also provides a single standard to govern MBTA stewardship of the Milford Secondary: MBTA may not unreasonably interfere with G&U's rights under the Milford Freight Easement.<sup>62</sup> Adherence to this governing standard ensures that the entirety of the rail operations on the Milford Secondary will be managed in keeping with the expectations of *State of Maine*.<sup>63</sup>

*iv. Spur Tracks and Capital Improvements*

The Milford Operating Agreement does not mandate the removal of spur track or switches connecting the lines' main trackage to sidings or spur tracks serving freight customers. Also, the Milford Operating Agreement contemplates growth, and provides for expanding on-line traffic opportunities. Thus, G&U may undertake or request and fund the installation of switches, sidings, and other such physical plant additions or improvements permitting G&U to access shippers located (or to be located) along the Milford Secondary.<sup>64</sup>

**2. The Franklin Industrial under CSXT Operation**

MBTA's acquisition of the Franklin Industrial will not unreasonably interfere with CSXT's freight common carrier operations. CSXT and MBTA anticipate no significant post-transaction changes in freight service demand on the line, and they expect that CSXT will be able to provide the current level of freight service going forward. Under the terms of the 1985 Agreement discussed below, MBTA will perform dispatching and maintenance subject to

---

<sup>62</sup> Milford Operating Agreement, art. 1(A).

<sup>63</sup> *Id.*; see also *MichDOT—NSR Assets*, at 2 (providing that terms of sale agreement must protect freight carrier's common carrier obligation from undue interference).

<sup>64</sup> Milford Operating Agreement, art. 8(B).

carefully-crafted provisions that prevent discrimination against freight service,<sup>65</sup> and MBTA will undertake appropriate and timely upkeep of the trackage so as to prevent unreasonable freight service disruption.<sup>66</sup> The Franklin Industrial's light-density freight service characteristics make it unlikely that MBTA management and operations (implemented with due regard for the Franklin Freight Easement and CSXT's attendant freight common carrier obligations) will present an obstacle to freight rail service.

a. The Freight Easement

In keeping with the structure of previous *State of Maine* transactions in the Commonwealth of Massachusetts (and in keeping with the Milford Freight Easement), the Franklin Freight Easement is permanent and exclusive. The Release Deed specifically provides that CSXT would retain a perpetual easement in gross for the exclusive provision of rail freight service, and that MBTA would not assume any common carrier rights or obligations as a consequence of its proposed purchase of the assets on the Franklin Industrial. CSXT's easement is reserved in perpetuity, and is therefore not subject to MBTA revocation or cancellation. Accordingly, because this is not a case where the freight easement is subject to periodic renewal at MBTA's direction, or where an agency of the Commonwealth has the contractual right to compel a carrier's abandonment of freight service, this Motion should be granted, in keeping with *State of Maine* precedent.

---

<sup>65</sup> See 1985 Agreement at 14-19 (describing parties' rights and obligations regarding operation of commuter and freight trains).

<sup>66</sup> See *id.* at 24-39 (describing parties' rights and obligations regarding maintenance of right-of-way).

b. Contractual Protections against Unreasonable Interference with Common Carrier Freight Service

CSXT's and MBTA's post-transaction operations on the Franklin Freight Easement would be governed by the terms of the 1985 Agreement.<sup>67</sup> This agreement and its amendments provide equitable standards for dispatching, and for MBTA to adequately maintain the track. These standards balance the interests of freight and commuter passenger operations, and may in fact lead to improvements in both types of rail service. This element of the transaction also is an example of a successful public-private partnership designed to accomplish two objectives: (1) to preserve and promote freight common carrier service on a low-density line; and (2) to provide for expanded commuter rail service.

MBTA's acquisition of the Franklin Industrial will not adversely affect CSXT's operations. The parties anticipate no significant post-transaction changes in freight service demand, and they expect that CSXT will be able to meet the existing, and reasonably foreseeable, needs of freight customers under the agreements. Accordingly, the freight service obligations will be easily accommodated, now and in the future. As with the Milford Secondary arrangements with G&U, MBTA takes seriously its obligations to CSXT, and its assurances to respect and protect CSXT's freight service obligations on the Franklin Industrial. Here, also, MBTA anticipates the Board may hold it to its assurances as stated in this Motion, consistent with past agency practice.<sup>68</sup>

c. Key Operating Agreement Provisions

Consistent with *State of Maine*, CSXT will retain a permanent and exclusive rail freight easement over the Franklin Industrial, subject to the terms and conditions of the 1985

---

<sup>67</sup> Release Deed at 3.

<sup>68</sup> *Port of Seattle*, at 5.



Agreement.<sup>69</sup> These terms would not subject CSXT freight service to any unreasonable impairment, and CSXT's common carrier rights and obligations on the Franklin Industrial would terminate only if CSXT were to transfer the easement or abandon the easement through appropriate Board processes. Accordingly, the 1985 Agreement provides that CSXT may not seek to abandon the easement without providing written notice to MBTA, clarifying that any abandonment of those easements may only occur with the Board's regulatory approval.<sup>70</sup>

*i. Maintenance and Infrastructure*

Since the Franklin Industrial would become MBTA property under the terms of the conveyance, MBTA will be responsible for maintaining and inspecting these assets, just as it is responsible for maintenance and inspection of the tracks under its current lease agreement.<sup>71</sup> Further, MBTA will be responsible for maintaining the track to compliance with FRA Class 1 track safety standards at a minimum, and has committed to doing so without interfering unreasonably with CSXT's freight operations.<sup>72</sup> Moreover, the 1985 Agreement contains robust procedures governing the highly unlikely instance in which MBTA might fail to perform its obligations to maintain the Franklin Industrial, and it entitles CSXT to (1) either provide written notice to MBTA to perform those obligations or (2) enter the property as may be required to conduct maintenance to protect its operations.<sup>73</sup> Accordingly, MBTA's assumption of control of maintenance of the Franklin Industrial does not require advance Board authorization, this arrangement would not unduly interfere with CSXT's freight railroad operations, and, the

---

<sup>69</sup> Release Deed at 3.

<sup>70</sup> 1985 Agreement at 63.

<sup>71</sup> *See id.* at 24-36 (describing parties' rights regarding maintenance on subject property).

<sup>72</sup> *Id.* at 24-25.

<sup>73</sup> *Id.*

maintenance arrangements permit the requested finding that the proposed transaction does not fall within the scope of the Board’s regulatory authority.

*ii. Dispatching*

The 1985 Agreement provides that MBTA will continue with Franklin Industrial dispatching, adding that MBTA must dispatch trains “in a manner which does not interfere unreasonably with the exercise by [CSXT] of its access rights to MBTA Rail Properties under this Agreement.”<sup>74</sup> Similar arrangements have been found to satisfy *State of Maine* dismissal criteria.<sup>75</sup>

As noted above, MBTA dispatches trains on several routes where both freight and passenger trains share railroad Commonwealth-owned facilities. These examples have been discussed at some length above with respect to the Milford Easement, and the arguments presented there are equally valid here. MBTA again submits that its record in dispatching trains speaks for itself. MBTA has dispatched freight trains over other MBTA-owned railroad assets for decades, and this experience will be carried forward to MBTA’s dispatching of trains on the Franklin Industrial – an additional basis for favorable action on the present Motion.

*iii. Operations*

In the event the foregoing measures were insufficient to support this Motion, the 1985 Agreement assures that MBTA may not interfere with CSXT’s provision of common carrier service pursuant to the Franklin Industrial Easement. Specifically, the 1985 Agreement states that MBTA oversight of the Franklin Industrial (as with other MBTA-owned railroad assets) “shall be exercised in a manner which does not interfere unreasonably with the exercise

---

<sup>74</sup> 1985 Agreement at 14.

<sup>75</sup> *E.g., FlaDOT—Riviera Beach*, at 9; *MichDOT—NSR Assets*, at 3.

by [CSXT] of its access rights . . . under this Agreement.”<sup>76</sup> As with the arrangements which have been made with respect to the Milford Secondary, this assures that MBTA’s management of freight and passenger rail operations on the Franklin Industrial will be managed in a manner consistent with the expectations of *State of Maine*.<sup>77</sup>

*iv. Spur Tracks and Capital Improvements*

The 1985 Agreement does not mandate the removal of spurs or switches connecting the Franklin Industrial to sidings or spurs. Rather, it provides that if CSXT wants to add, alter, or improve sidings or spurs along the Franklin Industrial, it may accomplish its objective pursuant to a written request to MBTA either to (1) conduct such construction on CSXT’s behalf or (2) permit CSXT to enter the property to undertake such construction itself.<sup>78</sup> This provision not only protects existing CSXT common carrier service, but permits the expansion and improvement of the same in concert with prospective MBTA commuter operations.

**3. CSXT Operations on the Milford Secondary (Request for Advance State of Maine Determination)**

As discussed in the foregoing sections of this Motion, CSXT intends, upon closing of the subject Assets transaction, to assign its retained easement in the Milford Secondary to G&U to facilitate G&U’s continued common carrier service over that line dating back to 2020. However, CSXT has agreed to assign the retained Milford Freight Easement to G&U for a term of years, contemplating that at some future date CSXT may reacquire the easement pursuant to appropriate Board authorization processes. CSXT and MBTA already

---

<sup>76</sup> 1985 Agreement at 14.

<sup>77</sup> *MichDOT—NSR Assets*, at 2.

<sup>78</sup> 1985 Agreement at 25.

have contemplated CSXT's possible downstream reacquisition of the Milford Freight Easement. They have agreed that, were such an easement transfer to happen, CSXT's common carrier operations over that railroad asset segment would be governed by the terms of the 1985 Agreement, just as would be the case for the Franklin Freight Easement.<sup>79</sup>

MBTA is aware that the Board has advised parties to past *State of Maine* transactions to return to the Board should the substantive terms of the agreements governing common carrier operations on the involved lines change.<sup>80</sup> However, in this case, MBTA respectfully submits that return to the Board in the event of a CSXT reacquisition of the Milford Freight Easement may be unnecessary, given the Board's review here of the terms of CSXT's retained Franklin Freight Easement and of the 1985 Agreement that would govern CSXT operations on that track segment going forward. That is, MBTA requests a prospective Board finding that MBTA need not return to the Board for a supplemental State of Maine determination should CSXT, through appropriate Board advance authorization procedures, reacquire the Milford Freight Easement, provided that CSXT's operations on that track segment are governed by the terms of the 1985 Agreement.

#### **IV. REQUEST FOR EXPEDITED CONSIDERATION**

MBTA and CSXT (along with G&U) have long been engaged in reaching terms to conclude the proposed transaction, and, accordingly, MBTA and CSXT have committed to a timetable for this transaction, under which MBTA plans to close on its purchase of the Assets no later than April 11, 2023. As stated in the introduction to this Motion, failure to consummate the sale by then would be detrimental to the Commonwealth initiatives linked to the orderly

---

<sup>79</sup> Release Deed at 4.

<sup>80</sup> See, e.g., *MassDOT—CSXT Assets*, at 11 (requiring agency to notify Board of any change to material terms of agreement with freight carrier).

acquisition of the Assets, potentially preventing the Assets from being considered during the upcoming budget planning cycle or result in loss of the funding currently planned for the improvement of the Assets.

MBTA therefore respectfully requests that the Board expeditiously act on this Motion on or before March 31, 2023, effective as of its service date, in keeping with its review of other, past cases.<sup>81</sup> A favorable decision on or before March 31, 2023 would facilitate orderly steps toward closing by or before the transactional deadline of April 11, 2023.

### **CONCLUSION**

For the foregoing reasons, MBTA respectfully requests the Board dismiss its concurrently-filed notice of exemption in this docket effective no later than March 31, 2023.

Respectfully submitted,

/s/ *R.A. Wimbish*

Robert A. Wimbish

Bradon J. Smith

Stephen J. Foland

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, IL 60606-3268

Telephone: (312) 252-1504

Facsimile: (312) 252-2400

**ATTORNEYS FOR MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

Dated: February 13, 2023

---

<sup>81</sup> See *Virginia Passenger Rail*, at 3, 6 (STB granting motion to dismiss effective on service date in light of agency's request for expedited consideration); see also *State of Me.—Pet. for Declaratory Order*, FD 35440 (STB served Dec. 29, 2010), at 3 (requiring prompt submission of additional evidence from parties in light of agency's request for expedited consideration, to enable swift decision).

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

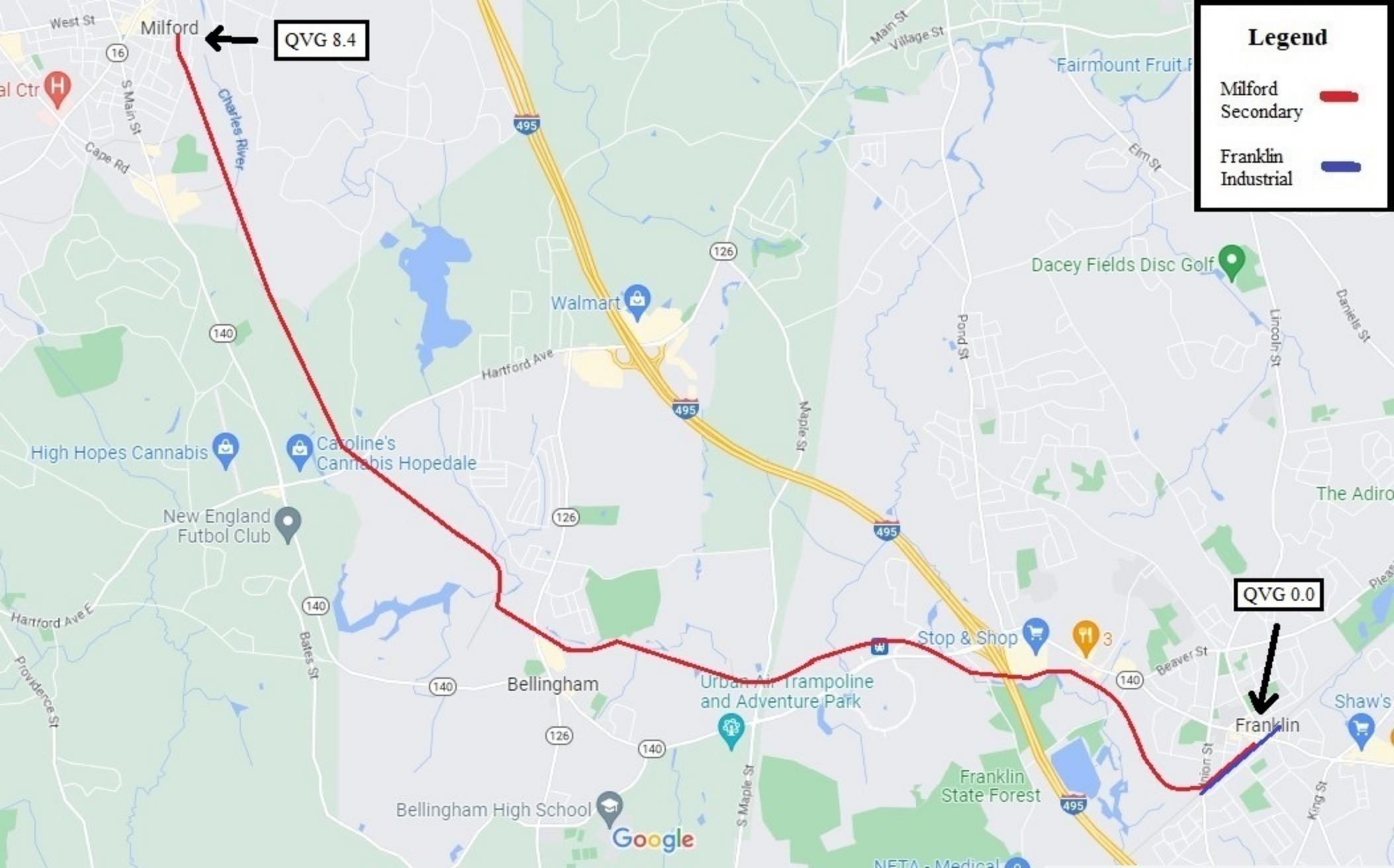
FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.



---

**EXHIBIT A**

**MAPS**

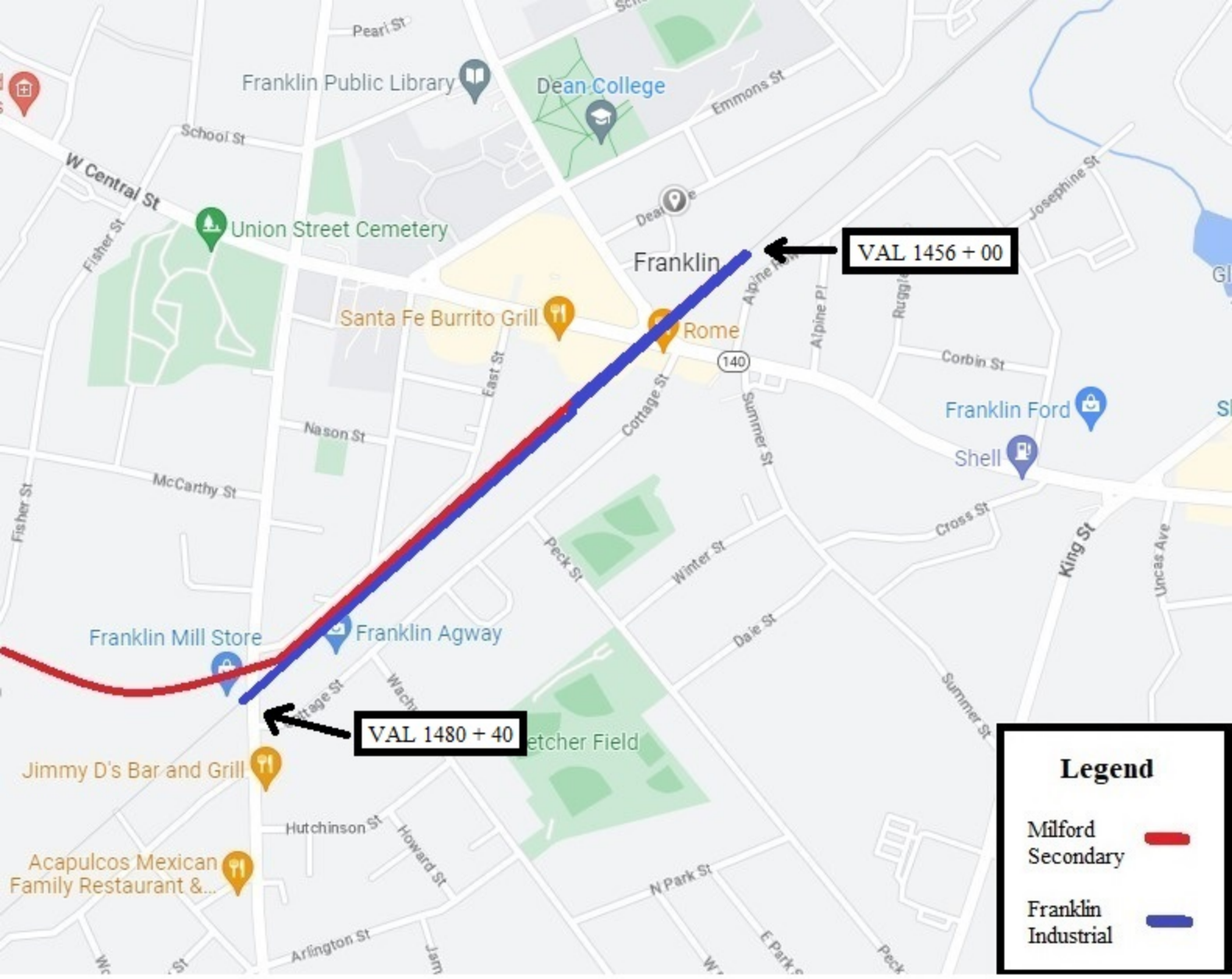


### Legend

- Milford Secondary 
- Franklin Industrial 

QVG 8.4



QVG 0.0



VAL 1456 + 00

VAL 1480 + 40

**Legend**

- Milford Secondary 
- Franklin Industrial 



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

**EXHIBIT B**

**RELEASE DEED**

**THIS INSTRUMENT HAS BEEN PREPARED IN  
TWO (2) COUNTERPARTS FOR SIMULTANEOUS  
RECORDING IN TWO (2) REGISTRIES OF DEEDS**

This instrument prepared by  
or under the direction of:

Philip S. Lapatin, Esquire  
Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116

**RELEASE DEED**

**THIS RELEASE DEED** (this “Deed”), made as of the \_\_ day of \_\_\_\_\_, 2022, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called “Grantor”, and the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, whose mailing address is 10 Park Plaza, Boston, Massachusetts 02116, hereinafter called “Grantee,”

(Wherever used herein, the terms “Grantor” and “Grantee” may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations or state agencies.)

**WITNESSETH:**

**WHEREAS**, Grantor has interests in a line of railroad over which rail freight, commuter rail and intercity rail passenger service are presently conducted, consisting of: (i) an 8.4-mile portion of the so-called Milford Secondary line from [Engineering Station 1458+2 (0+00) as shown on Val Map V4.16, Map 29] to [Engineering Station 445+02 as shown on Val Map V4.33,

Map 9], and (ii) certain specified properties contiguous to such line (collectively, the “Milford Secondary”); and

**WHEREAS**, Grantor has certain interests in a line of railroad consisting of a 0.46-mile portion of the so-called Franklin Industrial from [Engineering Station 1456+00] as shown on Val Map V4.16, Map 29] to [Engineering Station 1480+40 as shown on Val Map V4.16, Map 29] (the “Conveyed Franklin Industrial”); and

**WHEREAS**, pursuant to a certain Definitive Agreement dated as of April 11, 2022, between Grantee and Grantor (as the same may be amended, the “Definitive Agreement”), Grantee agreed to acquire Grantor’s interests in such properties and such lines of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight service by Grantor, and commuter rail service; and

**WHEREAS**, the parties desire that Grantee acquire Grantor’s interest in such properties and lines of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and lines of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the terms and conditions set forth herein, it being the intention of the parties that Grantor (and any Trackage Rights Grantee, as that term is hereinafter defined) remain, and the Grantee not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties; and

**WHEREAS**, this conveyance is made under threat of and in lieu of condemnation by Grantee of the real property of Grantor;

**NOW THEREFORE**, that Grantor, in consideration of the sum of Thirteen Million Dollars (\$13,000,000.00) paid, does hereby grant to Grantee all right, title and interest of Grantor, if any, in and to those certain tracts or parcels of land situate, lying and being in Worcester County, Massachusetts, or Norfolk County<sup>1</sup>, Massachusetts being the “Land” as defined and more particularly described in **Exhibit A** attached hereto and incorporated herein;

**BUT EXCLUDING** and excepting unto Grantor those parcels, rights and interests listed or shown on **Exhibit B** attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Milford Easement (as hereinafter defined) (the “Excluded Property”);

**TOGETHER WITH** (i) all tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements (collectively, “Fixtures”) which are (or a portion of which are) affixed as of the date hereof to the Land, and (ii) all privileges, hereditaments

---

<sup>1</sup> **NTD**: Need Title Company to confirm Counties.

and appurtenances appertaining to the Land or any of the foregoing (other than the Excluded Property) (the “Ancillary Property” and together with the Land, the “Property”).

**THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO:** (a) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described on **Exhibit C** attached hereto and incorporated herein; (b) the CSXT Milford Easement (as hereinafter defined); (c) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the date of this Deed; (d) taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Property on or after the date of this Deed; (e) reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the date of this Deed; (f) encroachments or any other state of facts existing as of the date of this Deed which might be revealed from an accurate survey, title search or personal inspection of the Property; and (g) the rights of others in existing roads, streets, ways, alleys and party walls.

**RESERVING** unto Grantor, its successors and assigns, an EASEMENT IN GROSS (the “CSXT Milford Easement”) IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of that certain 1985 Trackage Rights Agreement effective July 1, 1985 between Consolidated Rail Corporation and the Grantee, recorded with the Suffolk Registry of Deeds in Book 15379, Page 10, as currently amended, including as set forth in that certain Amendment #13 to CONRAIL/MBTA Trackage Rights Agreement entered into by Grantor and Grantee as of the date hereof, and as may be from time to time amended, supplemented, modified, renewed or replaced, being herein referred to as the “TRA”.

2. The terms, conditions and limitations of that certain Assignment of Permanent Freight Easement Agreement] dated as of the date hereof, by and between Grantor and Grafton and Upton Railroad Company (“GU”) as from time to time amended, supplemented, modified, renewed or replaced, being herein referred to as the “Assignment of Easement”; provided, however, that the MBTA’s and GU’s respective rights and obligations with respect to GU’s use of the Milford Secondary shall be as set forth in that certain Operating Agreement by and between Grantee and GU to be entered into and dated as of the date hereof (the “MBTA/GU Operating Agreement”), notwithstanding any amendment, supplement, modification, renewal or replacement of the Assignment of Easement.

3. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in **Exhibit A** or to reflect any full or partial release of any rights or property hereunder.

4. Transfer of the CSXT Milford Easement shall be governed by the provisions of **Exhibit D** and **Exhibit E** attached hereto.

5. Grantor and Grantee agree that the CSXT Milford Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor (and any Trackage Rights Grantee) shall be the exclusive common carriers and the exclusive providers of Rail Freight Service (as hereinafter defined), and as otherwise set forth in the TRA. In addition, Grantee represents that Grantee does not currently plan to utilize, or allow another entity to utilize, the Property to provide Intercity Rail Passenger Transportation (as that term is defined in 49 U.S.C. Section 24202). Other than as may be required by law, Grantor and Grantee agree that the utilization of Intercity Rail Passenger Transportation over the Property will occur only upon the prior mutual consent of Grantor and Grantee, which consent may not be unreasonably withheld, conditioned or delayed. It shall not be unreasonable for either Grantor or Grantee to condition its consent to allow the National Railroad Passenger Corporation (commonly known as Amtrak) to provide such Intercity Rail Passenger Transportation, upon reaching acceptable liability arrangements consistent with existing liability arrangements related to existing Intercity Rail Passenger Transportation on the Boston Main Line (“Existing Liability Arrangements”). The term Existing Liability Arrangements shall mean, with respect to Grantor, the provisions of the existing agreement dated June 1, 1999, between Grantor and Amtrak as such agreement is from time to time supplemented and is in effect at the time of the request for Grantor’s consent to such utilization for Intercity Rail Passenger Transportation. The term “Boston Main Line” shall be deemed to be the property described in a deed dated October 2, 2012 from Grantor to Grantee and recorded in the Suffolk Registry of Deeds in Book 50271, Page 152, the Middlesex (S.D.) Registry of Deeds in Book 60154, Page 273, the Norfolk Registry of Deeds in Book 30513 Page 458, and the Worcester District Registry of Deeds in Book 49729, Page 1.

6. Grantor shall have the right to grant rights to use all or any part of the Conveyed Franklin Industrial for Freight Rail Service to any owner or lessee (“User”) of all or any part of the Retained Franklin Industrial Track, provided that such User also has rights to provide Freight Rail Service over all or a portion of the CSXT Milford Easement pursuant to an agreement with Grantee that governs (or will govern upon such grant of rights) the Conveyed Franklin Industrial (an “MBTA-User Operating Agreement”); and provided further, however, that any such User’s rights to use all or any part of the Conveyed Franklin Industrial shall be subject to the terms and conditions of such MBTA-User Operating Agreement. For the avoidance of doubt, except for the Conveyed Franklin Industrial, no other portion of the Franklin Industrial Track is conveyed by this Deed.

7. Definitions of CSXT Milford Easement Terms:

- (a) Franklin Industrial Track: The railroad line shown on **Exhibit A-1** hereto.
- (b) Retained Franklin Industrial Track: All portions of the Franklin Industrial Track other than the Conveyed Franklin Industrial.
- (c) Perpetuity: From the date of this Deed until the CSXT Milford Easement is abandoned or terminated, as provided in the TRA. In the event of abandonment or termination of any portion of this CSXT Milford Easement as provided in the TRA, such portion thereof shall automatically be extinguished.

(d) Rail Freight Service: The transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities, over the Property, but excluding detour movements of other railroads permitted by Grantee pursuant to the TRA.

(e) Railroad Purposes: The right to use all Trackage on the Property for the exclusive provision of Rail Freight Service, together with the right of ingress and egress over the Property and any adjacent property owned by Grantee to and from said Trackage and facilities located within the Property, provided, however, Grantee may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee, but not common or contract carriage of freight.

(f) Trackage: The railway tracks now or hereafter located on, in or below the Property, and all supporting materials, facilities and structures appurtenant thereto (all rails, ties, tie plates, ballast, drainage structures), together with existing or future control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, spur, siding or sidetrack(s); those existing items being the items hereinabove conveyed to Grantee.

(g) Trackage Rights Grantee: Any owner or lessee of all or any part of the Retained Franklin Industrial Track to whom Grantor has granted trackage rights in the Conveyed Franklin Industrial as set forth in Section 6 above. In addition, the term "Trackage Rights Grantee" shall include, without limitation, GU for such time as GU retains rights to operate over the Milford Secondary under the Assignment of Easement.

GRANTEE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY IS TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE DATE HEREOF, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, TITLE THERETO, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO GRANTEE BY GRANTOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

In the event of a conflict between the provisions of this Deed, the Definitive Agreement and/or the TRA (with respect to the Conveyed Franklin Industrial, and with respect to the rest of the Property from and after the termination of the MBTA/GU Operating Agreement), the provisions of the TRA shall control over the provisions of either this Deed or the Definitive Agreement, and the provisions of this Deed shall control over the Definitive Agreement. The TRA and the Definitive Agreement are retained at the offices of the Grantor.

By the recording of this Deed, Grantee agrees that the covenants of Grantee herein shall run with title to the Property conveyed, and bind Grantee, Grantee's successors and assigns, and anyone claiming title to or holding Property through Grantee, for the continuing benefit of, and remaining enforceable by, Grantor, its successors and assigns.

Plans prepared for Grantee are referred to in the Exhibits to this Deed (the "Plans"). Notwithstanding such reference, Grantor has not reviewed and is not obligated to review the Plans, Grantor does not and shall not warrant the accuracy, correctness or legal sufficiency of the Plans, nor shall reference to the Plans create any covenant or warranty of title with respect to the property shown thereon.

No deed excise stamps are affixed hereto as none are required by law.

This conveyance does not constitute the sale or transfer of all or substantially all of the assets of the Grantor in Massachusetts.

[signature page to follow]

**IN WITNESS WHEREOF**, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public, personally appeared the above-named \_\_\_\_\_ proved to me by satisfactory evidence of identification, being (check whichever applies): [ ] driver's license or other state or federal governmental document bearing a photographic image; [ ] oath or affirmation of a credible witness known to me who knows the above signatory; or [ ] my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by \_\_\_\_\_ as \_\_\_\_\_ free act and deed, voluntarily for its stated purpose, as \_\_\_\_\_ of CSX Transportation, Inc.

\_\_\_\_\_  
Notary Public (print name)  
My Commission Expires: \_\_\_\_\_  
Qualified in the Commonwealth of Massachusetts



## **EXHIBIT A**

### Milford Secondary:

(Val Plans and Description to be inserted by Title Company), together with the following appurtenant rights:

1. [Deletion to be confirmed by Title Company]
2. Notice to prevent easement, dated September 18, 1894 and recorded in Book 721, Page 128.

### Conveyed Franklin Industrial:

(Val Plans and Description to be inserted by Title Company), together with the following appurtenant rights:

1. [Deletion to be confirmed by Title Company]
2. Notice to prevent easement, dated September 18, 1894 and recorded in Book 721, Page 128.

**EXHIBIT A-1**

**Franklin Industrial Track**

## **EXHIBIT B**

### **Excluded Property Description**

1. The rights of Grantor under and pursuant to the TRA (as defined in the Deed to which this exhibit is attached).
2. The rights of Grantor under and pursuant to the CSXT Milford Easement (as defined in the Deed to which this exhibit is attached).

## **EXHIBIT C**

### **Title Exceptions**

The premises conveyed hereby are conveyed, in addition to matters set forth in the Deed to which this Exhibit C is attached, subject to, and, as the case may be, with the benefit of the following matters to the extent in force and applicable to the premises conveyed hereby:

#### **TITLE EXCEPTIONS:**

1. Taking of an easement for a public way, Grove Street, by the Norfolk County Commissioners dated September 24, 1940, and recorded in Book 2305, Page 376.
2. Taking of an easement for public way, Beaver Street, by the Norfolk County Commissioners, dated November 5, 1940, and recorded in Book 2311, Page 553.
3. Taking of slope easements in Grove Street by the Norfolk County Commissioners which excepts the railroad right of way, dated October 8, 1957, and recorded in Book 3599, Page 501.
4. Taking of easement for the alteration of the grade crossing in Grove Street by the Norfolk County Commissioners dated December 20, 1960, and recorded in Book 3870, Page 237.
5. Taking of utility right of way by New England Power Company and Worcester County Electric Company dated July 13, 1960, and recorded in Book 3916, Page 220.
6. Deed out of excepted parcel by the Trustees of the New York, New Haven and Hartford Railroad Company, debtor to T. E. Barnicle Macaroni Co. Inc., dated April 4, 1963, and recorded in Book 4065, Page 466.
7. Taking of easement for highway purposes, Layout 5511, by the Department of Public Works, Commonwealth of Massachusetts, dated September 29, 1965, and recorded in Book 4295, Page 251, as affected by Alteration, Layout 7121, dated November 8, 2000, and recorded in Book 14576, Page 61.
8. Easement for sewer pipeline granted to the Town of Franklin, dated January 14, 1970, and recorded in Book 4652, Page 525.
9. Agreement between the Department of Public Works, Commonwealth of Massachusetts and the Trustees in Reorganization of the Penn Central

Transportation Company dated August 16, 1972, and recorded in Book 4878, Page 388.

10. Deed of Easement from Consolidated Rail Corporation to New England Power Company dated December 4, 1981 and recorded in Book 5962, Page 653, as amended by Amendment dated August 18, 1992, and recorded in Book 9575, Page 513.
11. Deed of Easement from Consolidated Rail Corporation to Massachusetts Electric Company dated March 13, 1986, and recorded in Book 7265, Page 375.
12. Order of Taking for water pollution abatement facilities by Charles River Pollution Control District Commission dated May 11, 1989, and recorded in Book 8319, Page 1.
13. Order of Taking in fee by the Massachusetts Bay Transportation Authority dated July 26, 1989, and recorded in Book 8404, Page 734.
14. License Agreement by and between Consolidated Rail Corporation and Charles River Pollution Control District, Licensee, dated October 24, 1989, and recorded in Book 8540, Page 475.
15. Indenture between Consolidated Rail Corporation and CRC Properties, Inc. related to communication, fiber optic and telecommunication lines et al dated March 25, 1996, and recorded in Book 11297, Page 490.
16. Fee taking of land at corner of Union and Cottage Streets by the Town of Franklin dated July 6, 2004, and recorded in Book 21684, Page 438.
17. Covenant to build and maintain an open driveway as set forth in deed from Charles J. McKenzie to the Milford, Franklin and Providence Railroad Company, dated June 13, 1885, and recorded in Book 586, Page 166.
18. Covenant to make and forever maintain a farm crossing as set forth in the deed from William Rockwood to the Milford Franklin and Providence Railroad Company dated February 10, 1885, and recorded in Book 602, Page 231.
19. Covenant to furnish and maintain two farm crossings as set forth in the deed from James P. Ray et ux to Milford, Franklin and Providence Railroad Company dated March 9, 1885, and recorded in Book 602, Page 232.
20. Reservation of farm crossings and cattle pass over railroad as set forth in deed from James P. Ray to the Milford, Franklin and Providence Railroad Company, dated March 9, 1885, and recorded in Book 602, Page 234.

21. Covenant and reservation of farm crossing over railroad as set forth in deed from James P. Ray et al, to the Milford, Franklin and Providence Railroad Company, dated March 9, 1885, and recorded in Book 602, Page 235.
22. Covenant and reservation of farm crossing over railroad as set forth in deed from James P. Ray et al, to the Milford, Franklin and Providence Railroad Company, dated March 9, 1885, and recorded in Book 602, Page 236.
23. Covenant and reservation of farm crossing over railroad as set forth in deed from Edgar R. Ray to the Milford, Franklin and Providence Railroad Company, dated March 9, 1885 and recorded in Book 602, Page 237.
24. Order of Conditions, Mass DEP. File No. SE-159-701, issued by the Franklin Conservation Commission dated September 28, 2000, and recorded in Book 14455, Page 74, as affected by Certificate of Compliance recorded in Book 15478, Page 503.
25. Deed of Easement dated April 24, 2020, and recorded in Book 37819, Page 219.

## EXHIBIT D

### Provisions Relating to Transfer of CSXT Milford Easement

1. The CSXT Milford Easement shall be assignable in whole or in part, and, in addition, Grantor may grant rights in the CSXT Milford Easement to Trackage Rights Grantees as previously set forth in this deed, provided that only (i) the entirety of that portion of the CSXT Milford Easement relating to the Milford Secondary and /or (ii) the entirety of that portion of the CSXT Milford Easement relating to the Conveyed Franklin Industrial may be transferred such that at any time only one party may benefit from the CSXT Milford Easement with respect to the Milford Secondary and only one party (which need not be the same party benefiting from the CSXT Milford Easement with respect to the Milford Secondary) may benefit from the CSXT Milford Easement with respect to the Conveyed Franklin Industrial. Except as hereinafter set forth with respect to the Assignment of Easement, and transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party (as hereinafter defined), nor any subsequent holder of the benefit of part or all of the CSXT Milford Easement (each of Grantor, a Related Party and any subsequent holder thereof, collectively a “**Benefitted Holder**”), shall sell, lease, license or otherwise transfer (each such transaction being a “**Transfer**”) the benefit of the CSXT Milford Easement, in whole or in part, or any interest therein (any such interest being an “**Easement Interest**”) to a third party who fails to meet the Transferee Standards set forth on **Exhibit E**. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Grantee’s consent for a Transfer of an Easement Interest to a Related Party of the Benefitted Holder which is making the Transfer, and such Related Party shall be deemed to have met the Transferee Standards (a “**Related Party Transfer**”). Grantor, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Grantee written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Grantee shall either (i) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (ii) state in detail the reasons for denial of consent or why Grantee contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to each Transfer by Grantor, a Related Party and by each Benefitted Holder; provided, however, that Grantee shall not have any right to approve a transfer to a Related Party.
2. If<sup>2</sup> at any time Grantor, or a party that is a Related Party of Grantor (a “**Grantor Related Party**”), makes a Transfer of an Easement Interest to a third party (who is not a Grantor

---

<sup>2</sup> Note to CSX: These payment obligations would be easier to track with a recorded document, this approach is consistent with the Framingham Secondary Deed, and the Definitive Agreement is not intended to control beyond the Closing. **Note to MBTA: Although we have retained the addition of paragraphs 2 and 3, we do not agree that the Definitive Agreement is not intended to control beyond the Closing (See Section 18.7). Certain provisions certainly will control beyond the Closing, such as, among others, the environmental provisions.**

Related Party), Grantor, or a Grantor Related Party, shall promptly pay to Grantee a transfer fee of five (5%) percent of the consideration (the “**Easement Transfer Payment**”) paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Grantor, or a Grantor Related Party, makes a Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Grantor or a Grantor Related Party be responsible for paying an Easement Transfer Payment to Grantee for transactions that are (x) in the ordinary course of Grantor’s or the Grantor Related Party’s business as a freight rail service provider, including without limitation, freight revenue and other income from freight service, or (y) transfer to Grantor or to a Grantor Related Party. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Grantor or a Grantor Related Party.

3. No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, in whole or in part, to any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or in connection with a merger, reorganization, or sale of all or substantially all of such Benefitted Holder’s assets (collectively, a “**Related Party**”); provided, however, that a Grantor Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Grantee's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

The provisions of this Exhibit D and of Exhibit E shall not apply to the assignment of the portion of the CSXT Milford Easement relating to the Milford Secondary<sup>3</sup> to GU pursuant to the terms of the Assignment of Easement. For the avoidance of doubt, Grantee acknowledges and agrees that GU is hereby deemed to meet the Transferee Standards.

---

<sup>3</sup> **Note to CSXT:** This language is consistent with the language of the Definitive Agreement, but it does not cover a future transfer to GU of rights in the Conveyed Franklin Industrial portion of the CSXT Milford Easement (for example, pursuant to Section 6 of this Deed). In other words, MBTA could assert that (i) the 60-day notice/approval process in Section 1 of this Exhibit D applies (which would not be too onerous since MBTA must approve the transfer if the transferee meets the Transferee Standards, and by virtue of the last sentence of this Exhibit D, GU is deemed to have met them) and (ii) it is due a 5% Easement Transfer Payment in connection with such transfer. CSXT input, especially on the latter point, would be helpful.



## EXHIBIT E

### Transferee Standards

In accordance with the provisions set forth in Exhibit D of this Deed (“**Exhibit D**”), no Benefitted Holder (as defined in Exhibit D) shall sell, lease, license or otherwise transfer (each such transaction being a “**Transfer**”) the benefit of the CSXT Milford Easement, in whole or in part, or any interest therein (any such interest being an “**Easement Interest**”) to any person other than a Related Party (as defined in Exhibit D) unless such person (a “**Transferee**”) meets all of the following criteria (collectively, the “**Transferee Standards**”):

1. The Transferee has a minimum of two (2) years prior experience conducting freight rail operations in the United States, or is owned or controlled by a company that owns or controls at least one other rail carrier that has a minimum of two (2) years prior experience conducting freight rail operations in the United States. Any such company, rail carrier owned by such holding company, and any other entity that owns or controls the Transferee, or is owned or controlled by the Transferee, is referred to herein as an “**Affiliate**” of the Transferee.
2. The Transferee demonstrates, by providing to the Grantee the information described in Paragraph 3 below, as well as audited financial statements for the previous two (2) years and a business plan for the property to be acquired, that the Transferee has the financial security required to satisfy the financial obligations described in the then-current trackage rights or operating agreement between the Benefitted Holder and the Grantee.
3. The Transferee has disclosed to the Grantee all material litigation, arbitration, mediation, contract dispute, or other disputes submitted to any dispute resolution procedure within the last five (5) years which involved, or arose from, a claim against the Transferee or any Affiliate regarding any of the following: the death or serious injury of any person; business, contract or other commercial disputes; employment, employment discrimination or labor disputes. As used in this Exhibit E, the term “material” means that the item would be considered material in the course of an audit of the firm under Generally Accepted Accounting Principles as expounded by the Financial Accounting Standards Board, or that the item, in the reasonable judgment of the Grantee, calls into question the ability of the Transferee to perform the obligations of the then-current trackage rights or operating agreement between the Benefitted Holder and the Grantee in compliance with such agreement and applicable law.
4. Neither the Transferee nor any Affiliate has filed a bankruptcy petition or made a general assignment for the benefit of creditors, and no other party has filed a bankruptcy petition against the Transferee or any Affiliate in the preceding seven (7) years that has not been dismissed.
5. Neither the Transferee nor any Affiliate has applied for or consented to the appointment of a receiver, trustee or liquidator of Transferee or any Affiliate for all or substantially all of the assets of the Transferee or Affiliate and no order, judgment or decree has been entered by any court of competent jurisdiction on the application of a creditor appointing a receiver,

trustee or liquidator of Transferee or Affiliate for all or substantially all of the assets of the Transferee or Affiliate within the preceding seven (7) years.

6. The Transferee has supplied the Grantee with the records of any accident or other incident occurring in the preceding five (5) years that the Transferee or any Affiliate has reported, or was required to report, to the Federal Railroad Administration (the “FRA”) under 49 CFR Part 225. The Transferee has disclosed to the Grantee, with respect to all freight rail operations conducted by the Transferee or any Affiliate within the preceding three (3) years, a list of FRA or state violation notices issued with respect to the regulatory compliance of such freight rail operations, together with a brief description and resolution thereof, and demonstrated that it has complied with any penalties, sanctions, or other obligation relating thereto.
7. Neither the Transferee nor any Affiliate is in violation of any law which has the potential to have a material adverse effect on its freight rail operations over the Freight Easement.
8. Neither the Transferee nor any Affiliate, nor any officer, director or department head of the Transferee or any Affiliate within the preceding five (5) years:
  - a. has been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity.
  - b. has had filed against it in a state or federal proceeding any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity and such charge has not been finally resolved.
  - c. has had filed against it, in a state or federal court, any civil complaint (including, but not limited to, a cross-complaint), counter claim, or other claim arising out of a contract, alleging fraud, bribery, collusion, conspiracy, or any action in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract with any public entity and such civil complaint, counter claim, or other claim has been found substantially meritorious or has not been finally resolved.
  - d. has within the preceding three (3) years been found, adjudicated, or determined (which finding, adjudication or determination has not been subsequently overturned) by any federal or state court or agency, including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, and the Massachusetts Commission Against Discrimination, to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended; the

Equal Pay Act; Executive Order 11246; or the Massachusetts Law Against Discrimination (Mass. Gen. Laws c. 151B) which violation was of a material nature.

- e. has within the preceding three (3) years been found, adjudicated or determined (which finding, adjudication or determination has not been subsequently overturned) by any state court, state administrative agency, federal court or federal agency to have violated or failed to comply with any applicable law or regulation of the United States or any state governing prevailing wages (including, but not limited to, payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation, which violation or failure to comply was of a material nature.
  - f. has been terminated or debarred on any contract issued by any public entity, including, but not limited to, the Grantee, or otherwise declared ineligible to contract with any public entity and such debarment remains in effect; or
  - g. is at the time of the proposed Transfer in default under or otherwise failing to perform any material obligations contained in any contract or agreement with the Grantee, and the Grantee has noticed the Transferee about such default or material nonperformance and otherwise exercised its contractual rights under such contract or agreement with respect to the same.
9. In the event that the Benefitted Holder's interest in the trackage rights agreement or operating agreement between the Benefitted Holder and the Grantee is to be assigned to the Transferee, and if such agreement requires the Benefitted Holder to maintain certain insurance coverage, the Transferee shall demonstrate the ability to secure and maintain insurance coverage in the amounts and on the terms required by such agreement.
10. All Interchange Commitments with the Transferee, if any, shall at all times comply with all applicable STB rules and regulations, if any.

Notwithstanding any provision of this Exhibit E to the contrary, Grantee may, upon the request of the Transferee or the Benefitted Holder, in its sole and absolute discretion, waive, in whole or in part, any or all of the foregoing Transferee Standards, except that Section 10 of this Exhibit E shall not be waived. No such waiver shall be effective unless evidenced by a written instrument executed by a duly authorized representative of Grantee.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

## **EXHIBIT C**

# **MILFORD OPERATING AGREEMENT**

**EXECUTION VERSION**

**OPERATING AGREEMENT**  
**Between**  
**THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**  
**And**  
**GRAFTON AND UPTON RAILROAD COMPANY**

THIS OPERATING AGREEMENT (“**Agreement**”), entered into as of this \_\_\_ day of \_\_\_\_\_, 2022, by and between the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended (“**MBTA**”), and Grafton and Upton Railroad Company, a Massachusetts corporation (hereinafter referred to as “**User**”) (the MBTA and User each a “**Party**”, and collectively the “**Parties**”).

**RECITALS**

A. On or about the date hereof, the MBTA acquired from CSXT Transportation, Inc. (“**CSXT**”) pursuant to that certain Release Deed recorded with the [ ] Registry of Deeds in Book [ ], Page [ ] (the “**Deed**”) that certain 8.4 mile railroad right of way known and commonly referred to as the Milford Secondary, between mileposts QVG 0 and QVG 8.4 (herein referred to as the “**Milford Secondary**”); and

B. The Deed reserves to CSXT a permanent, exclusive freight easement over the Milford Secondary (as more specifically described in the Deed, the “**Milford Freight Easement**”); and

C. CSXT has assigned to User, with the consent of the MBTA, CSXT’s rights pursuant to the Milford Freight Easement, for a limited term and as otherwise set forth in that certain Assignment of Permanent Freight Easement between CSXT and User of even date herewith (the “**Assignment of Milford Easement**”), and concurrently with the effective date of the Assignment of Milford Easement, that certain [Easement Agreement] between CSXT and User dated January 28, 2021 (the “**Pre-Closing Easement Agreement**”) terminated and is of no further force and effect; and

D. The MBTA and User intend that User’s rights and obligations with respect to its exercise of the Milford Freight Easement shall be subject to the operating provisions and other terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties hereto, intending to be legally bound, agree as follows:

**ARTICLE 1**  
**GENERAL OPERATING RIGHTS**

A. Consistent with the Milford Freight Easement and subject to the terms and conditions of this Agreement, herein provided, the MBTA acknowledges User’s right to enter upon and utilize the tracks and related operating facilities on the Milford Secondary for the purpose of being the exclusive provider of freight rail service (User’s full range of services and activities performed by it in connection with its provision of such freight rail service over the Milford Secondary, as described in the Deed, is referred to herein as the “**GU Freight Rail Service**”). User acknowledges and agrees to, and nothing in this Agreement shall derogate from, the MBTA’s right to utilize,

directly or through its operating contractors or other agents, or to permit others to utilize the Milford Secondary including, without limitation, the real property, track and related improvements, and all other property for the provision of common or contract carrier passenger services, including without limitation, long-haul, intercity service as well as commuter service, or for any other purpose, provided that such utilization does not unreasonably interfere with the access rights granted to User pursuant to the provisions of this Agreement and is otherwise consistent with this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall the MBTA's use of the Milford Secondary for the construction, operation, and maintenance of stations, station platforms, or other facilities required to conduct passenger service be deemed to unreasonably interfere with the access rights granted to User pursuant to this Agreement, so long as such construction, operation, or maintenance does not preclude or unreasonably interfere with User's ability to access freight customers served by User. User also acknowledges that MBTA has the right to move, transport, load, and unload any materials (except materials owned by or in the possession of User) removed from, to be used on, or stored on or along the Milford Secondary, sidings, adjacent property, or other property owned by the MBTA.

- B. Nothing in this Agreement shall be construed to grant to User a right to approve actions by the MBTA affecting the Milford Secondary, including, without limitation, alterations and improvements to the Milford Secondary, relocations, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that the MBTA shall provide User with reasonable prior notice of those actions affecting or potentially affecting User's access to or use of the Milford Secondary contemplated hereunder and that such actions shall not unreasonably interfere with the access and utilization rights granted to User. User acknowledges and agrees that MBTA projects or other use of the Milford Secondary may require temporary changes to User's operations and scheduling. User agrees to cooperate in the implementation of such temporary changes, and the MBTA agrees to use its best efforts to minimize the duration and extent of any such changes to the operations or scheduling of User.
- C. User's right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "**Operating Rights**") in connection with the GU Freight Rail Service is subject to the terms, rights, conditions, and obligations hereinafter set forth in this Agreement.
- D. The MBTA retains the exclusive right to exercise and to perform, or to delegate or subcontract to another entity, the performance of the management and operational control of any and all rail service over the Milford Secondary, including without limitation, dispatching and control of all trains provided that such exercise or performance shall not unreasonably interfere with the access and utilization rights granted to User herein. The MBTA shall cause its agents, contractors, subcontractors, and other third parties entering upon the Milford Secondary to comply with the terms of this Agreement and, in particular, to comply with the terms that preclude unreasonable interference with the access and use rights granted to User pursuant to this Agreement.

## **ARTICLE 2**

### **RESTRICTION ON USE**

The Milford Freight Easement may only be used by User for the sole purpose of User's performance of GU Freight Rail Service.

## **ARTICLE 3**

### **MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Milford Secondary, at User's cost, User's locomotives and crews shall be equipped to communicate with the MBTA on radio frequencies and with all train control devices and signal systems now in effect or as may be installed, adjusted, or modified in the future that may be used by the MBTA in directing train movements on the Milford Secondary.
- B. Procedures for qualification of User's crews and occupancy or use of the Milford Secondary shall be arranged by the local supervision of the MBTA and User.

**ARTICLE 4**  
**COMPENSATION**

- A. The factor to be used in calculating payments to be made by User for use of the Milford Freight Easement shall be \$0.607 (hereinafter referred to as the "**Current Charge**").
- B. User shall pay the MBTA a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 5 hereof, by (ii) the number of Car Miles. For purposes hereof, the term "**Car Mile**" shall mean a railroad car (loaded or empty) or locomotive unit moved by User with its own crews and power one mile over the Milford Secondary. Each locomotive unit, for the purpose of this Agreement, shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "8566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Numbers.)
- C. On or before the 15<sup>th</sup> day of each calendar month during the Term hereof, User shall provide the MBTA with an accurate count of loaded and empty cars and all locomotives using the Milford Secondary during the preceding calendar month along with the number of Car Miles traveled on the Milford Secondary during such month. The MBTA shall on or about the tenth day of the following month render billing to User for User's use of the Milford Secondary computed in accordance with the terms and conditions of this Agreement.
- D. User shall furnish the MBTA information concerning Car Miles for all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements. The MBTA shall have the right to conduct an audit of User's records relating to the amount of compensation due under this Agreement, in which event User shall cooperate in providing to the MBTA all relevant records or additional detail reasonably requested.

**ARTICLE 5**  
**REVISION OF CURRENT CHARGE**

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July, 2021 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 Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2020 Index for the first annual adjustment) as related to the index for the previous calendar year (2019 Index for the first annual adjustment) and applying that percent to the Current Charge.

- C. By way of example, assuming “A” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index figure for 2019; “B” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index figure for 2020; “C” to be the Current Charge; and “D” to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \frac{B-A}{A} = D \text{ (rounded to the third decimal place)}$$

$$(2) (D \times C) + C = \text{revised Current Charge (rounded to the third decimal place), effective July 1 of the year being revised.}$$

- 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 6**  
**PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent month. The records of each Party hereto, insofar as they pertain to payments 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 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals based upon the MBTA rates in effect at the time of the rendering of any such bills.



**ARTICLE 7**  
**MAINTENANCE OF MILFORD SECONDARY; TAXES**

- A. The MBTA, its operating contractor, or other contractor or designee, will maintain, repair and renew the Milford Secondary rights-of-way, tracks, bridges, culverts, signals, communications equipment and all appurtenances in compliance with standards to be set from time to time by the MBTA, which in all instances shall be appropriate for passenger service (for such portions of the Milford Secondary over which the MBTA is operating passenger service), and which in all events shall meet or exceed the FRA Class 1 standard. On all bridges on the Milford Secondary, the MBTA shall maintain the weight capacity existing as of the date of this Agreement and shall maintain AAR Plate F clearances on all bridges where Plate F clearances currently exist. In no event shall the rating of any bridge replaced by the MBTA after the Effective Date be less than “315 standard”.
- B. If User requests that the MBTA maintain all or a portion of the Milford Secondary to a standard that exceeds the standard described above, the MBTA shall perform all work required to meet such standard (an “**Increased Standard**”), and User shall be responsible for all incremental costs and expenses of maintaining such property to the standard requested by User. As used in this Agreement, the terms “incremental costs” or “annual incremental cost” shall mean direct and actual costs incurred or expenditures made by the MBTA, such as material and labor, to perform increased levels or additional maintenance requested by User, which costs or expenditures exceed those that would otherwise be incurred by the MBTA and excluding any part of any cost or expenditure that would otherwise be incurred by the MBTA for the levels of maintenance that the MBTA is already required to perform pursuant to this Agreement.
- C. In the event that the MBTA fails or neglects to perform the maintenance work described in Section 7(A) above after written notice from User and the expiration of the cure period described in Section 18 below, and due to such failure User is unable to safely operate on the Milford Secondary, then User shall so notify the MBTA in writing (which notification may be via email to the MBTA [(\_\_\_\_\_.com)] and/or via such other notification method as may be provided by the MBTA) in which case the MBTA will as soon as possible, but in no case more than twenty-four (24) hours, respond to User in writing (which writing may be via email) and inform User if the MBTA intends to perform such maintenance work, and if so, when the MBTA will perform and complete such maintenance work. If the MBTA disagrees with User that the maintenance work at issue is the obligation of the MBTA, or if User reasonably believes it is able to perform necessary maintenance work sooner than the date proposed by the MBTA, User shall have the right, but not the obligation, immediately upon written notice to the MBTA (which writing may be via email to the MBTA [(\_\_\_\_\_.com)] and/or via such other notification method as may be provided by the MBTA), to enter the Milford Secondary to perform the maintenance work in accordance with applicable operating rules and at the expense of the MBTA.
- D. User shall pay, in addition to all other amounts payable under this Agreement, all real estate taxes and all assessments of any nature imposed upon or assessed against (i) the Milford Freight Easement (but not such taxes or assessments imposed upon or assessed against the MBTA’s fee interest in the Milford Secondary); (ii) any improvements constructed or funded by User for User’s sole use, or (iii) any trade fixtures or other property of User, real or personal, located on the Milford Secondary. The MBTA shall promptly forward any such bills from taxing authorities to User. Such payments shall be made by User to the MBTA within ten (10) days after receipt of invoices from the MBTA, unless the MBTA directs payment be made to the taxing or assessing authority. Notwithstanding any other provision of this Agreement, User shall have the right to contest any such tax bills in accordance with the procedures of any taxing authority rendering such bills.

- E. The MBTA shall provide and furnish all labor, administrative, professional, and supervisory personnel necessary for the performance of its obligations under this Agreement. All MBTA personnel or MBTA contractor personnel involved in any aspect of providing services under this Agreement shall be subject to the direction, supervision, and control of the MBTA, and not User. The MBTA and the MBTA's contractors shall be solely responsible for all labor relations issues relating to their respective employees that arise in connection with the performance of services under this Agreement.
- F. Unless otherwise stated explicitly in this Agreement, the MBTA shall be responsible for the costs of materials, equipment, management, and other expenses required for the performance of its maintenance responsibilities under this Article 7, provided however that capital work outside of the MBTA's maintenance responsibilities shall be performed by the MBTA pursuant to Article 9 herein.
- G. Notwithstanding anything herein to the contrary, the MBTA shall have the exclusive right to secure such approvals of regulatory or governmental bodies as may be necessary for such work on the Milford Secondary, including, without limitation, the FRA and the Massachusetts Department of Public Utilities, and no approval of User shall be required for the performance of any work on the Milford Secondary except as may be expressly provided herein.
- H. Subject to and consistent with the other provisions of this Agreement, the MBTA may grant access to the Milford Secondary to third parties, including but not limited to utilities providers, to perform work on such third parties' own behalf. The MBTA shall provide at least fourteen (14) days prior written notice (or with respect to emergency services, such lesser notice as is reasonable in the circumstances) to User of all such work that is reasonably likely to have an impact on User's operations. The MBTA shall require any such third party to schedule and perform such work in a manner that minimizes any unreasonable interference with User's access to or use of the Milford Secondary.
- I. The MBTA shall maintain the Milford Secondary so as to provide vertical clearances no lower than the clearances in effect as of the Commencement Date.

## **ARTICLE 8**

### **CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS REQUESTED BY USER**

- A. Existing connections, track, facilities, or other improvements that are jointly used by User and the MBTA shall be inspected, maintained, repaired, and renewed by and at the expense of the MBTA up to but not beyond the point of clearance. The MBTA shall have the right, but shall not be obligated, to inspect the track beyond the point of clearance. In the event that the MBTA's inspection reveals that such track does not meet Class 1 standard, the MBTA may notify User in writing of such condition, and User shall upon receipt of such notice suspend use of such track until User or a third party restores Class 1 condition.
- B. Any additional connections or other improvements to the Milford Secondary which may be requested by User shall be subject to the MBTA's approval (including design), which approval shall not be unreasonably conditioned, delayed or withheld, and shall be constructed, maintained, repaired and renewed as follows:
  - 1. User 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 connections or other improvements

located on the right-of-way or other property of User or others which connect to the Milford Secondary.

2. MBTA, at User's written request, shall improve the track and facilities User uses or may use on the Milford Secondary (including, without limitation, installing switches and siding, including any associated signaling to service any new locations), all in accordance with any written specifications set forth by User in such written request, provided that:
  - a. the MBTA and User have agreed upon a reasonable allocation of the costs of any such improvements, based on whether and to what extent (if any) the MBTA would benefit from such improvements. Nothing in this Section 8(B) shall obligate the MBTA to contribute to the cost of rebuilding or restoring any improvements after a casualty except to the extent as may be provided in Article 14 of this Agreement;
  - b. any such requested improvements shall be subject to the prior written approval of the MBTA, which shall be given, without unreasonable conditions or delays, if the MBTA determines that neither such improvements nor the construction required for such improvements will unreasonably interfere with or unduly limit the MBTA's present or anticipated reasonable future operations or unreasonably impair the current usefulness of trackage and facilities;
  - c. any such improvements shall be made by the MBTA with as little disruption as reasonably possible to the MBTA's passenger rail operations and to User's access to and use of the Milford Secondary; provided however that the scheduling and other aspects of such work shall be consistent with the MBTA passenger rail service's schedule priority over freight service as set forth in Section 10(H) below;
  - d. any such improvements or modifications to the Milford Secondary shall become the property of the MBTA upon completion. The MBTA's acceptance of ownership of improvements prior to completion of the improvements shall be at the sole discretion of the MBTA;
  - e. in the event that the MBTA engages a third party to perform such improvements, the MBTA shall submit design plans for work to be performed (if such work necessitates design plans) to User for its review and approval (which shall not be unreasonably withheld, conditioned, or delayed) no fewer than forty-five (45) days before the commencement of such work, and the MBTA shall require any such third party to complete such work in accordance with all applicable terms of this Agreement;
  - f. in the event that User determines that it no longer requires improvements, modifications or connections that were made solely for the benefit of User, User may notify the MBTA, and User shall assume full responsibility for the cost of removing or relocating any such improvements, modifications or connections, or the MBTA shall have the right to remove such improvements, modifications or connections and charge User the costs of such removal as set forth in Section 8(B)(4) below;

- g. in the event that the MBTA performs any capital work or maintenance work at the request of User pursuant to this Section 8(B), User shall reimburse the MBTA for the actual, auditable costs of such work (except for costs to be borne by the MBTA pursuant to Section 8(B)(2)(a) above), plus a management fee equal to 16% of the amount of such costs; and
  - h. User shall pay to the MBTA the incremental annual expense, as defined in Article 7(B) above, of maintaining, repairing and renewing such additional or improved facilities.
3. At the election of the MBTA in its sole discretion, the MBTA, as an alternative to performing the work described in Paragraph 2 above itself or through a third party, may grant permission to User to perform such work itself, or, if such work is funded in part by the MBTA, as Force Account Work pursuant to the provisions of Article 13 herein.
  4. The MBTA shall maintain and be responsible for the costs of maintaining any connections, switches or other improvements, equipment or facilities existing as of the Commencement Date of this Agreement and serving User's freight customers, or constructed or installed pursuant to Section 8(B)(2) above, up to the point of clearance; provided, however, that in the event that User ceases using any such improvements for a period of one (1) year, because User no longer provides freight service to the customer(s) that the improvements were installed to serve or for any other reason, the MBTA may provide written notice to User of its intention to remove such improvements. The MBTA shall have the right to remove such improvements, at User's sole cost and expense as set forth in Section 8(B)(2)(g) above, unless User elects, by written notice to the MBTA delivered within thirty (30) days of User's receipt of the MBTA's notice of its intent to remove such improvements, to pay to the MBTA a maintenance charge determined by the MBTA in its reasonable discretion and reflecting the actual costs incurred by the MBTA for such maintenance.

**ARTICLE 9**  
**ADDITIONS, RETIREMENTS AND ALTERATIONS BY MBTA**

- A. The MBTA, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Milford Secondary in connection with current and future passenger rail service or other use of the Milford Secondary as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof, except that any such retirements shall not unreasonably interfere with User's rights under this Agreement, or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments, which may include stations or other improvements necessary to extend or expand passenger service on the Milford Secondary, shall become a part of the Milford Secondary, and such retirements shall be excluded from the Milford Secondary.
- B. User may propose changes in or additions and betterments to the Milford Secondary, including changes in communication or signal facilities, that are required to accommodate User's operations beyond that required by the MBTA to accommodate its operations, in which event the MBTA's approval of such change in, additions and betterments to the Milford Secondary shall be subject to the same approval, construction, and compensation processes as set forth in Section 8(B) above.
- C. In the event that a change in applicable law or regulations, or the application of existing law or regulations to the operations of User and/or MBTA, requires new track, signal, train equipment, or

other equipment or facilities, or modifications to existing equipment or facilities, each Party shall be responsible for the costs of such new or modified equipment or facilities to the extent that such law or regulations relate to such Party's operations.

**ARTICLE 10**  
**MANAGEMENT AND OPERATIONS**

- A. User 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 and cars) while such trains, locomotives, cars, and equipment are being operated over the Milford Secondary. User shall indemnify, protect, defend, and save harmless the MBTA, its affiliates, and its respective directors, officers, agents, contractors, and employees (the "**Indemnitees**") from and against all fines, penalties and liabilities imposed upon Indemnitees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Milford Secondary shall comply in all respects with such safety rules, operating rules and other regulations of the MBTA as the MBTA has provided in writing to User, and the movement of User's trains (locomotives and cars) over the Milford Secondary shall at all times be subject to the orders of the transportation officers of the MBTA. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Milford Secondary as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the MBTA's operating rules and regulations without the prior consent of the MBTA. In the event that User objects to any MBTA operating rules and regulations as being more restrictive than applicable FRA rules or regulations, User may request that the MBTA review such rules and regulations, and the MBTA shall consider, in its reasonable judgment, whether to allow revisions, amendments, or waivers of the specific rules and regulations to which User objects.
- C. User shall make such arrangements with the MBTA as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Milford Secondary qualified for operation thereover, and User shall pay to the MBTA, in accordance with Article 6 above, any cost incurred by the MBTA in connection with the qualification of such employees of User, as well as the cost of pilots furnished by the MBTA, until such time as such employees are deemed by the appropriate examining officer of the MBTA, to be properly qualified for operation as herein contemplated.
- D. The MBTA may conduct an investigation at its option of any incident on the Milford Secondary in which User is alleged to have violated the MBTA's safety rules, operating rules, regulations, orders, or instructions. To exercise its option, the MBTA shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to any of User's employee(s) of the investigation. The MBTA shall provide its operating rules, regulations, orders, instructions, supplements, and safety rules to User at no cost.
- E. If the MBTA conducts an investigation, the MBTA shall have the right to require User to exclude from the Milford Secondary any employee of User except officers, determined by the MBTA as the result of the MBTA's investigation or hearing described below, to have violated the MBTA's rules, regulations, orders, or instructions in connection with the incident that is the subject of the investigation or hearing.

- F. In connection with an alleged major offense, such as violation of Rule “G”, dishonesty, insubordination, or a substantial violation of operating rules, the MBTA shall inform User of such alleged offense pending an investigation by the MBTA, and User shall provide proper written notice to the employee and exclude such employee from the Milford Secondary pending such investigation.
- G. If the MBTA conducts an investigation into an incident, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User’s rules with respect to investigation procedures. After the investigation is concluded, the MBTA shall promptly furnish User with two copies of the transcript and the MBTA’s findings. User’s Transportation Officer shall arrange to assess such discipline as User deems appropriate, within the applicable time limits. Notwithstanding User’s assessment of such discipline as User deems appropriate, the MBTA reserves the right to exclude the individual from operating on the Milford Secondary.
- H. The trains, locomotives, cars and equipment of User, the MBTA, and any other present or future user of the Milford Secondary or any portion thereof, shall be operated and dispatched without prejudice or partiality to any user and in such manner as shall afford the most economical and efficient manner of movement of all traffic. The MBTA shall have the right to schedule all MBTA passenger trains, and shall issue all such schedules to User. Movement of scheduled MBTA passenger trains, but not the trains of any other user, shall have priority over User’s freight service trains, provided that such MBTA passenger trains are operating within fifteen (15) minutes of their scheduled time. If MBTA passenger trains are not operating within fifteen (15) minutes of their scheduled times, the MBTA shall dispatch the trains of User and the MBTA without prejudice or partiality to any user and in such manner as shall afford the most reasonable, economical, and efficient manner of movement of all traffic. User understands and agrees that certain maintenance and construction activities of the MBTA will require a temporary cessation of rail service. Any periods of cessation shall be the subject of prior notice by the MBTA to User and shall be coordinated to the extent possible to minimize impacts to all train movements during the maintenance or construction period.
- I. In the event that a train of User shall be forced to stop on such portion of the Milford Secondary that is at the time of the stoppage being used by both the MBTA and User, and such stoppage is due to insufficient hours of service remaining among User’s crew, or due to mechanical failure of User’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 User fails to maintain the speed required by the MBTA on the Milford Secondary, or if in emergencies, crippled or otherwise defective cars are set out of User’s trains on the Milford Secondary, the MBTA shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User’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 Milford Secondary, and User shall reimburse the MBTA for the cost of rendering any such assistance.
- J. 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 Milford Secondary, the MBTA shall have the option to perform such work and User shall reimburse the MBTA for the cost thereof.
- K. In the event the MBTA and User agree that the MBTA should retain employees or provide additional employees for the sole benefit of User, the Parties shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective

payments which are made by the MBTA and which would not have been incurred had the retained or additional employees not been provided.

- L. Subject to and consistent with the other provisions of this Agreement, the MBTA may grant access to the Milford Secondary to third parties, including but not limited to utilities providers, to perform work on such third parties' own behalf.
- M. User agrees that in any work performed in or about the Milford Secondary, it will employ only labor which can work in harmony with all elements of labor being employed by the MBTA, the MBTA's passenger rail operator, and their contractors.

## ARTICLE 11

*[Intentionally omitted.]*

## ARTICLE 12 CLEARING OF WRECKS

Whenever User's use of the Milford Secondary requires re-railing, wrecking service or wrecking train service, the MBTA shall have the right but not the obligation to perform or provide such service, including the repair and restoration of roadbed, track and structures. 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 therefrom, shall be apportioned between User and the MBTA 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 User at the time of such wreck, shall be promptly delivered to it.

## ARTICLE 13 FORCE ACCOUNT WORK

The MBTA may, to the extent permitted by applicable law and in its sole discretion, request that User perform work on the Milford Secondary not otherwise required by this Agreement ("Force Account Work") or other work on facilities or equipment other than the Milford Secondary customarily performed by railroads, including maintenance of way, maintenance of equipment and locomotive repair. All Force Account Work shall be performed pursuant to a Force Account Work Agreement reasonably acceptable to both Parties.

**ARTICLE 14**  
**LIABILITY**

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 attorneys' fees resulting from the use of the Milford Secondary by either Party as described herein, all of which are collectively referred to as a "**Loss**", shall be borne or divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the Parties, then the involved Party will be solely responsible for the Loss, even if caused partially or completely by the other Party.
- B. If a Loss occurs involving the trains and locomotives of both the MBTA and User, then: (i) each is solely responsible for any Loss to its own employees, passengers, locomotives and equipment in its own account including lading and (ii) the Parties are equally responsible for any Loss to the facilities, equipment, and property comprising the Milford Secondary and Loss sustained by other third Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the Parties hereto, a Loss involving either the MBTA or User and a third party or Parties shall be construed as being the sole responsibility of the MBTA or User, as applicable.
- D. Whenever any Loss is assumed by or apportioned to a Party hereto under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from, and against that Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.
- E. In every case of death or injury suffered by an employee of either User or the MBTA, 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 this Article 14, pilots furnished by the MBTA to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of assuming or apportioning Loss associated with construction, maintenance, repair and renewal of connections or improvements as provided in Section 8(B), all work performed by the MBTA or User shall be deemed performed for the sole benefit of User, and User shall be fully liable for any and all Loss resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such Loss is caused by the



sole negligence of the MBTA, in which case the MBTA shall be fully liable for any such Loss. The responsible Party in accordance with this Article 14 G shall protect, indemnify, and save harmless the other Party, and its respective subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all Loss.

- H. If any suit or action shall be brought against either Party for a Loss 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 be obligated to take part in the defense of such suit and shall pay all or a proportionate part of any Loss incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as defined herein, the Parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- J. Notwithstanding any other provisions of this Agreement, in the event a Loss occurs that is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

#### **ARTICLE 15** **ENVIRONMENTAL**

- A. Without limiting the generality of Article 14, beginning on the Commencement Date, and throughout the Term, User shall:
  - 1. Exercise the rights granted by the Milford Freight Easement and make use of and conduct its operations on the Milford Secondary in compliance in all material respects with any applicable Environmental Laws as hereinafter defined and be responsible for making any notification or report concerning the Milford Secondary or operating thereon required of it to be made by any applicable Environmental Laws;
  - 2. not enter into any assignment or other agreement allowing the use of the Milford Secondary or the conduct of any operations thereon by any third party, except on terms and conditions concerning environmental, health, and safety matters which are satisfactory to the MBTA in the sole discretion of the MBTA;
  - 3. maintain in full force and effect all permits or approvals required of it by any applicable Environmental Laws for its use of and operation on the Milford Secondary or the exercise of any rights granted by the Milford Freight Easement;
  - 4. expeditiously cure, at its own expense to the reasonable satisfaction of the MBTA, any material violation of Environmental Laws to the extent applicable to the Milford Secondary to the extent such violation is attributable to User in connection with events or conditions which arose on or after the Commencement Date and prior to the end of the Term;
  - 5. not create or operate at the Milford Secondary any (A) nuisance, as understood and interpreted in accordance with the common law of Massachusetts, (B) landfill or dump, or (C) hazardous waste management facility or solid waste disposal facility as defined by Environmental Laws;

6. not manufacture, use, generate, treat, release, or dispose of any Hazardous Substance on or in connection with its use of the Milford Freight Easement except in the ordinary course of its business and in accordance with applicable law, without the written permission of the MBTA; provided however that User shall have the right to transport and handle Hazardous Substances as permitted by federal law;
7. not subsidize, promote, or encourage any business that would ship or receive products by rail service over User characterized by the U. S. Department of Transportation as "Toxic Inhalation Hazards" or "Poison Inhalation Hazards" to facilities located adjacent to or served by User on the Milford Secondary; provided, however, that nothing in this Agreement shall prevent User from transporting or handling such Hazards for any such business in order to fulfill User's common carrier obligation to provide transportation on reasonable request;
8. without regard to the foregoing subsections, not use or store any chemicals, solvents or cleaners (including, without limitation, Trichloroethane [TCE], Trichloroethylene [TCA], Perchloro-ethylene [PERC], mineral spirits or similar materials identified by any other trade or brand name) that generate a hazardous waste when used;
9. notify the MBTA in writing of, and provide any documents reasonably requested by the MBTA, within ten (10) business days after learning of any of the following which arise in connection with the User's exercise of rights granted by the Milford Freight Easement or its use of or operation over the Milford Secondary: any liability for response or corrective action, natural resource damage, or other harm pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), RCRA, or any comparable state law; any Environmental Claim; any violation of an Environmental Laws or Release, threatened Release, or disposal of a Hazardous Substance; any restriction on the ownership, occupancy, use, or transferability of the Milford Secondary arising pursuant to any (A) Release, threatened Release, or disposal of a Hazardous Substance or (B) Environmental Laws; or any environmental, natural resource, health, or safety condition which could materially impair the condition of the Milford Secondary;
10. conduct expeditiously at its expense to the reasonable satisfaction of the MBTA and in accordance with any applicable Environmental Laws any response action necessary to remove, remediate, clean up, or abate any material Release, threatened Release, or disposal of a Hazardous Substance attributable to User in connection with events or conditions which arose on or after the Commencement Date (it being understood that any removal, remediation, clean up or abatement may be done to the least stringent standards allowed under applicable Environmental Laws and need not be done to residential standards); upon the written request of the MBTA, provide, within seventy-five (75) days after receipt of the MBTA's request and at User's expense, an environmental assessment of reasonable scope, form, and depth (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably approved by the MBTA as to (A) any matter to the extent such matter arises during the Term and for which notice is provided pursuant to the above requirements; and (B) the general environmental condition of the Milford Secondary within three hundred and sixty-five (365) days of the expiration or termination date of this Agreement. If such a requested environmental assessment is not delivered within the prescribed time period, then the MBTA may arrange therefor. The reasonable cost of any assessment arranged for by the MBTA pursuant to this provision shall be payable by User on demand. In no event shall User commission or conduct any environmental assessments

unless and until the MBTA requests such assessment pursuant to the provisions of this paragraph (10);

11. allow the MBTA or its representatives, from time to time at the MBTA's reasonable discretion, and at the MBTA's expense and liability, to inspect the Milford Secondary and conduct an environmental audit or assessment (including invasive soil or groundwater sampling), for any purpose, and allow User to perform "split sampling" if it so chooses; and
  12. remove from the Milford Secondary at User's expense by the expiration or termination date of this Agreement any Hazardous Substances or equipment used to manufacture, generate, treat, store, transport, handle or dispose any Hazardous Substance used by User or in the course of User's business (it being understood that any removal, remediation, clean up or abatement may be done to the least stringent standards allowed under applicable Environmental Laws and need not be done to residential standards).
- B. User shall exercise due care in its exercise of rights granted by the Milford Freight Easement and its use of and operation on the Milford Secondary, including, without limitation, taking precautions against foreseeable acts or omissions of any third party, to prevent the Release of a Hazardous Substance.
- C. User shall be responsible to the MBTA and shall defend, indemnify and hold harmless the MBTA and its subsidiaries and affiliates, and all of its directors, officers, agents or employees, from and against any costs which at any time or from time to time may be claimed, suffered or incurred by the MBTA but only to the extent caused by User or its employees, agents, contractors, or subcontractors, or for which User is otherwise directly or indirectly responsible, in connection with (A) Environmental Contamination that occurs on or after the Commencement Date and before expiration or termination of this Agreement; (B) any Environmental Claim arising from conditions that occur or activities conducted on or after the Commencement Date and before expiration or termination of this Agreement, or (C) violation on or after the Commencement Date and before expiration or termination of this Agreement of any Environmental Law, or the breach of any provision of Sections 14(A) or 14(B). This obligation to indemnify the MBTA shall survive the Term of this Agreement.
- D. As to the provisions of this Article 15 only, User and the MBTA waive any statute of limitations defense, provided, however, that if one Party gives the other Party written notice of Environmental Contamination of the Milford Secondary, the waiver of the statute of limitations shall cease, but only as to the Environmental Contamination which is the subject of the written notice, and as to such contamination, the parties shall then be subject from the date of receipt of such written notice to the times then provided in the then-applicable statute of limitations. The waiver of statute of limitations for any matter not covered in said written notice shall continue.
- E. For purposes of this Section,
1. "Costs" means all liabilities, losses, costs, damages, punitive damages, Natural Resource damages, expenses, claims, diminution in value, attorneys' fees, experts' fees, consultants' fees, penalties, fines, obligations, judgments and disbursements, as well as expenses of Remediation and any other remedial, removal, response, abatement, cleanup, legal, investigative, monitoring, or record keeping costs and all expenses related thereto, whether incurred voluntarily or mandated by Requirements of Environmental Laws.

2. **“Disposal”** (or **“disposed”**) shall have the meaning specified in RCRA.
3. **“Environmental Claim”** means any claim, loss, injury, demand, action, cause of action, suit or other legal or administrative proceeding which seeks to impose or leads to the imposition of any Cost, damage assessment, punitive damage assessment, Natural Resource damage, fine, penalty, expense, liability, lien, criminal liability, judgment, or investigation, whether governmental or private, relating in any way to: (A) the improper use of wetlands or other protected land or wildlife; (B) noise; (C) pollution, contamination, damage, impairment, preservation, protection, Remediation or clean-up (on-site or off-site) of air, surface water, ground water, sediments, soil, wetlands or other Natural Resources; (D) the generation, handling, discharge, Release, threatened Release, treatment, storage, disposal or transportation of solid, gaseous or liquid waste; (E) the exposure, injury to, death of or threat to the health or safety of any person or persons or damage to the Milford Secondary caused directly or indirectly by Hazardous Substances; (F) the manufacture, processing, distribution in commerce, use, treatment, storage, disposal or Remediation of Hazardous Substances; (G) destruction caused directly or indirectly by Hazardous Substances or the Release of any Hazardous Substance; (H) the implementation of spill prevention plans relating to Hazardous Substances; (I) community right-to-know and other disclosure laws; (J) maintaining, disclosing or reporting information to governmental authorities under any Environmental Laws; (K) proceedings to issue, modify, revoke or terminate an Environmental Permit; (L) failure to hold, maintain or comply with any Environmental Permit; or (M) compliance with Requirements of Environmental Laws, whether threatened, sought, brought, or imposed, that is related to or that in any way arises from the Milford Secondary or use of or operations conducted on the Milford Secondary.
4. The term **“Environmental Claim”** shall also include any Cost incurred in responding to efforts to require Remediation and any claim based upon any asserted or actual breach or violation of any Requirements of Environmental Laws, or upon any event, occurrence or condition as a consequence of which, any owner, operator or person having any interest in the Milford Secondary, including, without limitation, any mortgagee of the Milford Secondary or the beneficiary of any deed of trust of the Milford Secondary, shall be liable with respect to any Environmental Claim or otherwise suffer any loss or disability, including, without limitation, any restriction on use, ownership or transferability of the Milford Secondary.
5. **“Environmental Contamination”** means any land, sediment, surface water, ground water, structure or location that has been contaminated or adversely affected by Hazardous Substances.
6. **“Environmental Laws”** or **“Requirements of Environmental Laws”** means any and all laws, rules, permits, regulations, ordinances, judgments, or orders now or hereafter in effect of any federal, state or local executive, legislative, judicial, regulatory or administrative agency, board or authority or any judicial or administrative decision relating thereto that could give rise to or form the basis for any Environmental Claim.
7. **“Environmental Matters”** means any matter, dispute, proceeding or obligation of any nature falling within the scope of this Article 14.
8. **“Environmental Permits”** means any permit, license, registration, waste identification number, approval or other authorization relating to business activities or operations on the Milford Secondary required by any Environmental Laws.

9. **“Governmental Authority”** means any federal, state or local government or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof or any federal, state or local court or tribunal.
10. **“Hazardous Substances”** means (A) those substances included within the statutory and/or regulatory definitions of “hazardous substance,” “hazardous waste,” “extremely hazardous substance,” “regulated substance,” “contaminant,” “hazardous materials” or “toxic substances,” under any Environmental Laws, (B) those substances listed in 49 C.F.R. 172.101 and in 40 C.F.R. Part 302; (C) any material, waste or substance which is (i) petroleum, oil or a fraction thereof, (ii) asbestos or asbestos containing material, (iii) polychlorinated biphenyls, (iv) formaldehyde, (v) designated as a “hazardous substance” pursuant to 33 U.S.C. §321 or listed pursuant to 33 U.S.C. §317, (vi) explosives, (vii) radioactive materials (including naturally occurring radioactive materials), (viii) chemicals used to treat or coat wood or wood that has been so treated or coated, or (ix) Solid Wastes; (D) radon gas in an ambient air concentration exceeding four picocuries per liter (4 pCi/l); (E) such other substances, materials, or wastes that are or become classified or regulated as hazardous or toxic under any federal, state or local law or regulation.
11. **“Natural Resources”** shall have the meaning specified in CERCLA.
12. **“RCRA”** means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq.
13. **“Release”** (or **“released”**) shall have the meaning specified in CERCLA.
14. **“Remediation”** means a type of action required by a Governmental Authority or necessary to ensure compliance with the Requirements of Environmental Laws, including by way of example (A) the removal and disposal or containment (if containment is practical under the circumstances and is permissible within Requirements of Environmental Law) or monitoring of any and all Hazardous Substances at the Milford Secondary; (B) the taking of reasonably necessary precautions to protect against the Release or threatened Release of Hazardous Substances at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor at the Milford Secondary or any public domain affected by operations on the Milford Secondary or any surrounding areas thereof; (C) any action necessary to mitigate damage to wetlands, pinelands or other protected land or reclaim the same or to protect and preserve wildlife species; (D) any action necessary to meet the requirements of an Environmental Permit; (E) any action required to satisfy Requirements of Environmental Laws; and (F) any action required to redress or restore damages to or achieve restoration of Natural Resources as a result of Releases from the operation over the Milford Secondary.
15. **“Solid Waste”** shall have the meaning ascribed to it in RCRA.

## **ARTICLE 16**

### **CLAIMS**

- A. Except as provided in Subarticle B below, all claims, injuries, death, 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. User 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 the MBTA or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time 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. 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 THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- 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 employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 16 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

**ARTICLE 17**  
**INSURANCE**

- A. During the term of this Agreement User agrees to procure and maintain at its sole cost and expense railroad operating and liability insurance, hereinafter called "**Insurance**", naming User as the insured and covering the liability assumed by it and its agents under the terms of this Agreement and by virtue of User's usage of the Milford Freight Easement. The MBTA and the MBTA's passenger rail operator shall be listed as additional insureds on a primary and non-contributory basis. The Insurance shall include liability for foreign rolling stock and cargo in the care, custody or control of User and contain a contractual liability endorsement in accordance with endorsement CG 24 17 10 01 for commercial general liability coverage for railroads. The Insurance shall be in an amount not less than Seven Million Five Hundred Thousand Dollars (\$7,500,000) combined single limit for personal injury and property damage per occurrence.
- B. The Insurance shall contain provisions obligating the insurer to provide the MBTA with notice of cancellation, material modification or non-renewal at least thirty (30) days prior to the effective date thereof.
- C. The Insurance shall be evidenced by a current certificate of insurance, naming the MBTA and the MBTA's passenger rail operator as additional insureds, and addressed to the MBTA (Risk

Management Department Finance Suite, 10 Park Plaza, Boston, MA 02116, which certificate shall be subject to the prior approval of the MBTA's Risk Management Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to the MBTA. User shall subsequently furnish annual renewal certificates of insurance to the MBTA's Risk Management Department.

- D. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to the MBTA. In addition, User shall provide the MBTA Risk Management Department notice of any claim and any other correspondence dealing with insurance and insurance matters.
- E. The MBTA shall procure and maintain during the Term of this Agreement liability insurance with respect to the Milford Secondary as prescribed by Mass. Gen. Laws c.161A, Section 43 or any successor statute requiring the MBTA to provide liability insurance in connection with rail facilities over which the MBTA and a freight railroad jointly operate.
- F. In connection with any work or activity permitted or subcontracted by the MBTA to any third party in respect of the Milford Secondary, the MBTA shall require any such third party to secure and maintain in effect Railroad Protective Liability Insurance.

## **ARTICLE 18**

### **DEFAULT AND TERMINATION**

#### A. Default

- 1. Each of the following shall constitute an “**Event of Default**” under this Agreement:
  - a. Any late payment of compensation under Articles 4 or 6 or other provisions of this Agreement remaining outstanding for more than thirty (30) days from its due date;
  - b. The commencement of any proceeding by or against User that might result in any modification of the obligations hereunder under any bankruptcy, insolvency or similar law, unless all of the obligations of such Party shall have been duly assumed by a trustee or successor to such Party within sixty (60) days after such proceeding shall have commenced;
  - c. The failure to perform any other material covenant or obligation in this Agreement, (a “**default**”), including User's material failure to comply with all applicable laws and governmental regulations, or with any MBTA operating rules and operating procedures provided in writing to User and concerning operations on the Milford Secondary, which default shall have continued for more than thirty (30) days following the date of written notice thereof, *provided however*, that if such default by its nature cannot be cured within such thirty (30) day period, and such default is likely to be cured within a reasonable time, then the defaulting Party shall have an additional reasonable period (not to exceed thirty (30) days) to cure such default; *provided further however*, that if such default involves User's material failure to comply with applicable safety laws, regulations, or operating rules, User shall cure such default as promptly as possible, and the thirty (30)-day cure period described above shall not apply.

2. If an Event of Default shall occur, the Party not in default may exercise any or all of the following remedies:
  - a. Terminate this Agreement by and upon sixty (60) days written notice to the defaulting Party, in which event User's rights to exercise the Milford Freight Easement shall terminate. Upon the effective date of such termination, User shall (1) promptly arrange to transfer User's interests in the Milford Freight Easement back to CSXT or to a third party approved by the MBTA, which approval shall not be unreasonably delayed, conditioned, or withheld, to assume and perform the GU Freight Rail Service in place of User (collectively, the "**Replacement User**"); (2) cooperate with efforts by the Replacement User to secure federal regulatory authorization to replace User as the provider of common carrier rail freight service over the Milford Secondary; and (3) at the time of such replacement to assign its rights and obligations under this Agreement to the Replacement User (unless the Replacement User and MBTA have reached terms under a substitute operating agreement). User shall transfer its interests in the Milford Freight Easement to the Replacement User upon the effective date of any decision, order or exemption from the Surface Transportation Board authorizing the Replacement User to assume the Milford Freight Easement in place of User.
  - b. Notwithstanding paragraph (a) above, if this Agreement is terminated by either Party pursuant to the provisions of this Article 18, then immediately upon such termination User, at its sole cost and expense, shall take all actions necessary to facilitate the transfer of its rights to exercise the Milford Freight Easement to the Replacement User (the "**Requisite Easement Transfer Actions**").
  - c. Regardless of whether this Agreement is terminated pursuant to clause (a), pursue any other remedy at law or in equity in any state or federal court in Massachusetts, subject to the provisions of Article 23.
  - d. If this Agreement is terminated and the User's rights to exercise the Milford Freight Easement also are terminated pursuant to the provisions of either subsection 18(A)(2)(a) or (b) above, the Parties nevertheless acknowledge that User shall remain subject to the rights and obligations set forth under federal law to offer common carrier service over the railroad line that is the subject of the Milford Freight Easement unless and until such time as (i) the Surface Transportation Board authorizes a change in common carrier operator (the installation of a Replacement User) on that line under the processes prescribed in subsections 18(A)(2)(a) and/or (b); and (ii) the Replacement User commences operations pursuant to such a Surface Transportation Board-authorized change in common carrier operator, at which point User's common carrier status with respect to the line will terminate.
3. The Parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring, and that equitable relief, such as injunction, mandatory or otherwise, including specific performance, may be necessary in the event a Party fails to cure a breach or default so occurring; in such case, the aggrieved Party may take such legal action as it deems appropriate and may file immediately any and all pleadings in any state or federal court in Massachusetts to secure an injunction of the action or inaction resulting in such default or breach, pending resolution of the matter pursuant to the arbitration procedures set forth in



Article 23 below; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach so occurring shall be resolved exclusively by arbitration in accordance with the provisions of Article 23 hereof. Nothing contained in this Article 18A shall be construed to limit or restrict the Parties' rights and obligations under Article 18B.

4. An Event of Default shall not be waived or satisfied by the failure of a Party to provide written notice thereof to another Party, nor shall a failure to provide written notice be considered a waiver of any other remedies available to any Party under this Agreement or otherwise.

**B. Termination; Effect of Termination**

1. In addition to termination as provided in Section 18(A), User's rights under this Agreement and the Milford Freight Easement may also be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree to. Such mutually agreed termination shall be effective in accordance with a written agreement by the Parties, and shall not constitute a waiver of the rights of any Party to damages or other remedies related to this Agreement, except to the extent that the mutual agreement terminating this Agreement so specifies.
2. This Agreement shall terminate (i) at such time as User secures regulatory authority to and thereafter does discontinue all GU Freight Rail Service on the Milford Secondary, or (ii) in the event that such regulatory authority is unnecessary or not required for User's termination of common carrier rail freight service, at such time as User designates in a written notice of termination of this Agreement, which written notice shall be given to the MBTA at least six (6) months in advance of the date so designated for termination.

**ARTICLE 19**  
**REGULATORY APPROVAL**

- A. Should User's acquisition of rights pursuant to the Milford Freight Easement or the provisions of this Agreement require the prior authorization of the Surface Transportation Board ("STB"), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application, petition, or notice of exemption to secure such authorization. The MBTA shall assist and support efforts of User to secure any necessary STB authorization of the assignment to User by CSXT of CSXT's rights under the Milford Freight Easement or the provisions of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the approval or exemption of the assignment of CSXT's rights under the Milford Freight Easement or the assignment of User's rights and obligations under this Agreement, the MBTA shall have no responsibility for any payments in satisfaction of such conditions.

**ARTICLE 20**  
**ABANDONMENT OF THE MILFORD FREIGHT EASEMENT**

Notwithstanding the provisions of Article 21, and subject to any consents required from CSXT, User, at its sole cost and expense, may pursue authorization or exemption from the STB to discontinue its provision of GU Freight Rail Service over all or a portion of the Milford Secondary or to abandon some or all of the Milford Freight Easement. User shall provide to the MBTA written notice of User's intent to seek discontinuance or abandonment authorization no less than thirty (30) days before initiating any proceeding

at the STB for such authorization or exemption. Upon the date on which User consummates its abandonment of all or any portion of the Milford Freight Easement pursuant to STB authorization or exemption, takes effect, this Agreement shall terminate and be of no further force and effect to the extent consistent with the scope of the STB-authorized easement abandonment or exemption, except that termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. In the event of any abandonment, User shall cooperate with the MBTA and (if necessary) CSXT in executing any documents required to terminate the Milford Freight Easement. In the event of an abandonment of a portion but not all of the Milford Secondary, this Agreement shall remain in full force and effect as to the portion of the Milford Secondary not abandoned.

## **ARTICLE 21** **TERM**

- A. Unless terminated earlier pursuant to Section 18 hereof, this Agreement shall be effective (the “**Commencement Date**”) on the day and year first above written, and shall remain in effect (the “**Term**”) until the earlier to occur of (i) the termination or expiration the Assignment of Milford Freight Easement, or (ii) User’s receipt of regulatory authority or exemption to abandon, and consummation of the abandonment of, the Milford Freight Easement.
- B. Termination of this Agreement (whether as a result of expiration of the Term, termination pursuant to Article 18, or otherwise) 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 22** **FORCE MAJEURE**

Neither party shall be responsible to the other for delays or failure to perform under this Agreement if such delays or failure to perform are caused by circumstances beyond its control, including, but not limited to, Acts of God, terrorism or threatened acts of terrorism, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, pandemic or other public health emergency, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck derailment, washout or explosion. strike, lockout or labor disputes experienced by either of the Parties hereto, embargoes or AAR service orders, Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

## **ARTICLE 23** **DISPUTE RESOLUTION**

Either Party may commence litigation in a state or federal court in Massachusetts, or the Parties may jointly agree to submit the matter to arbitration as set forth below.

- A. If the Parties jointly agree in writing to submit an unresolved dispute to arbitration, the following process shall govern.
- B. Any controversy that the Parties refer to arbitration shall be submitted to the American Arbitration Association under and in accordance with the then-prevailing Commercial Arbitration Rules. Such arbitration shall be conducted by a single arbitrator chosen in the manner and within the time frames provided by such rules. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and

expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. The arbitration shall take place in Boston, Massachusetts and shall be governed by the federal transportation law and the law of the Commonwealth of Massachusetts without regard to conflicts of law principles.

- C. During the pendency of such arbitration proceedings, the business, the operations to be conducted, physical facilities to be used, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

#### **ARTICLE 24** **SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, by merger or otherwise, of the Parties hereto. User may not sell, lease, convey, or otherwise transfer or assign User's rights to the Milford Freight Easement, to any person, firm, or corporation without obtaining the prior written consent of the MBTA, which consent may be given or withheld at the sole and absolute discretion of the MBTA. User shall not 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 MBTA, which consent may be given or withheld at the sole and absolute discretion of the MBTA. Notwithstanding any other provision of this Article 24, the MBTA may assign this Agreement without the consent of User to the Massachusetts Department of Transportation ("MassDOT") or any other public agency succeeding to the responsibilities of the MBTA and MassDOT. Upon giving User reasonable notice, the MBTA may delegate the performance of any or all of its obligations under this Agreement to its passenger rail operator or to one or more other contractor or agent, in which event the MBTA will cause such passenger rail operator, agent, or contractor to comply with the terms and conditions of this Agreement.

#### **ARTICLE 25** **NOTICES**

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 the MBTA:                   Massachusetts Bay Transportation Authority  
  10 Park Plaza  
  Boston, MA 02116  
  Attn: John D. Ray, Assistant General Manager for  
  Railroad and Ferry Operations

And a copy to:

  Office of General Counsel  
  Massachusetts Bay Transportation Authority  
  10 Park Plaza, Suite 3510  
  Boston, MA 02116  
  Attn: General Counsel

And a copy to:

Goulston & Storrs P.C.  
400 Atlantic Ave.  
Boston MA 02110  
Attn: Peter N. Kochansky, Esq.

If to User:

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

**ARTICLE 26**  
**GENERAL PROVISIONS**

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto 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 hereto.
- B. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts and applicable federal law.
- C. This Agreement contains the entire understanding of the Parties hereto the subject matter hereof and supersedes any and all oral understandings between the Parties.
- D. 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 to this Agreement.
- E. 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.
- F. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 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 to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- H. This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- I. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company and the respective counsel for each party, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

*(Signatures on following pages(s))*

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

GRAFTON AND UPTON RAILROAD  
COMPANY

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

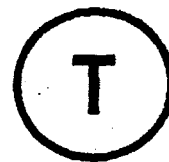
**EXHIBIT D**

**1985 AGREEMENT**



# TRACKAGE RIGHTS AGREEMENT

Effective July 1, 1985



MASSACHUSETTS  
BAY  
TRANSPORTATION  
AUTHORITY



TABLE OF CONTENTS

MBTA/CONRAIL AGREEMENT

PA

|   |   |
|---|---|
| ARTICLE 1 - INTRODUCTION AND RECITALS.....                  |   |
| Section 1.01 - Introduction.....                            |   |
| Section 1.02 - Recitals.....                                |   |
| ARTICLE 2 - DEFINITIONS.....                                |   |
| ARTICLE 3 - ACCESS RIGHTS.....                              |   |
| Section 3.01 - Access to MBTA Rail Properties.....          |   |
| Section 3.02 - Changes in Status of MBTA Rail Properties..  | 1 |
| Section 3.03 - Access to CONRAIL Rail Properties.....       | 1 |
| ARTICLE 4 - MANAGEMENT AND OPERATIONS.....                  | 1 |
| Section 4.01 - MBTA Rail Properties.....                    | 1 |
| Section 4.02 - CONRAIL Rail Properties.....                 | 1 |
| Section 4.03 - CONRAIL Responsibility for Certain Property  | 1 |
| Section 4.04 - General Provisions.....                      | 1 |
| ARTICLE 5 - MAINTENANCE AND CONSTRUCTION.....               | 2 |
| Section 5.01 - MBTA Rail Properties.....                    | 2 |
| Section 5.02 - Category B MBTA Rail Properties.....         | 2 |
| Section 5.03 - CONRAIL Rail Properties.....                 | 3 |
| Section 5.04 - CONRAIL Responsibility for Certain Property  | 3 |
| Section 5.05 - Installation of Industrial Sidetracks.....   | 4 |
| ARTICLE 6 - COMPENSATION.....                               | 4 |
| Section 6.01 - Base Charge.....                             | 4 |
| Section 6.02 - Payment.....                                 | 4 |
| Section 6.03 - Revision of the Base Charge.....             | 4 |
| Section 6.04 - Special Provision for Certain Property.....  | 4 |
| ARTICLE 7 - LIABILITY INDEMNIFICATION.....                  | 4 |
| Section 7.01 - General.....                                 | 4 |
| Section 7.02 - CONRAIL Employees.....                       | 4 |
| Section 7.03 - MBTA Employees.....                          | 4 |
| Section 7.04 - CONRAIL Property.....                        | 4 |
| Section 7.05 - MBTA Property.....                           | 4 |
| Section 7.06 - Liabilities Arising from Hazardous Materials | 5 |
| Section 7.07 - Other Apportionment of Liability.....        | 5 |

|  | <u>Page</u> |
|--|-------------|
| ARTICLE 8 - DISPUTE RESOLUTION.....  | 53          |
| Section 8.01 - Informal Procedures.....  | 53          |
| Section 8.02 - Arbitration.....  | 55          |
| ARTICLE 9 - DURATION OF AGREEMENT AND DEFAULT.....                                     | 57          |
| Section 9.01 - Term.....   | 57          |
| Section 9.02 - MBTA Budget Approval.....   | 57          |
| Section 9.03 - Default.....  | 58          |
| ARTICLE 10 - ABANDONMENT OF FREIGHT OPERATIONS AND<br>TRANSFER OF PROPERTY RIGHTS..... | 63          |
| Section 10.01 - Abandonment of CONRAIL Rail Properties...                              | 63          |
| Section 10.02 - Transfer of Easements  | 64          |
| Section 10.03 - Framingham Yard.....   | 64          |
| ARTICLE 11 - AFFIRMATIVE DUTIES, REPRESENTATIONS<br>AND WARRANTIES.....                | 68          |
| Section 11.01 - Operating Duties In Regard to Safety.....                              | 68          |
| Section 11.02 - Mutual Representations and Warranties....                              | 69          |
| Section 11.03 - Certain Duties and Representations.....                                | 70          |
| ARTICLE 12 - GENERAL PROVISIONS.....   | 71          |
| Section 12.01 - Labor Rights.....  | 71          |
| Section 12.02 - Status as Independent Contractor.....                                  | 72          |
| Section 12.03 - Clearing Wrecks - MBTA Rail Properties...                              | 72          |
| Section 12.04 - Clearing Wrecks - CONRAIL Rail Properties                              | 74          |
| Section 12.05 - Force Majeure.....   | 75          |
| Section 12.06 - Notices.....   | 76          |
| Section 12.07 - No Third Party Rights.....   | 78          |
| Section 12.08 - Headings.....  | 78          |
| Section 12.09 - Entire Agreement.....  | 78          |
| Section 12.10 - Amendments.....  | 79          |
| Section 12.11 - Successors and Assigns.....  | 79          |
| Section 12.12 - Regulatory Approval.....   | 79          |
| Section 12.13 - Records.....   | 80          |
| Section 12.14 - No Representation and Waivers.....                                     | 81          |
| Section 12.15 - Non-Discrimination.....  | 81          |
| Section 12.16 - Past Claims.....   | 81          |
| Section 12.17 - Past Liabilities.....  | 82          |
| Section 12.18 - No Personal Liability.....   | 82          |
| Section 12.19 - Effect of Invalidity.....  | 82          |
| Section 12.20 - Massachusetts Law.....   | 82          |
| ADDENDUM 1, CATEGORY A MBTA PROPERTIES.....  | 86          |
| ADDENDUM 1, CATEGORY B MBTA PROPERTIES.....  | 87          |
| ADDENDUM 2, CONRAIL PROPERTIES.....  | 88          |

- EXHIBIT 1 - Deed Conveying Grand Junction Secondary Parcels to MBTA
- EXHIBIT 2 - Deed Releasing South Station Terminal Area Rights and Interest to MBTA
- EXHIBIT 3 - CONRAIL Rates and Charges for Third Party Licenses to Use Rail Property
- EXHIBIT 4 - Specifications for Certain Improvements by CONRAIL on Boston Line
- EXHIBIT 5 - Specifications for Improvements Permitting Certain Operating Speeds Along Boston Line
- EXHIBIT 6 - Specifications for Pedestrian Bridges at Certain Locations on Boston Line
- EXHIBIT 7 - Dorchester Branch Easement and Right of First Refusal
- EXHIBIT 8 - Grand Junction Secondary Easement and Right of First Refusal
- EXHIBIT 9 - Deed Conveying Mansfield Parcels to MBTA
- EXHIBIT 10- Map of Framingham Yard
- EXHIBIT 11- Non-Discrimination
- EXHIBIT 12- CONRAIL EA-1 - Schedule of Rates and Surcharges Covering Billing of Railroads

ARTICLE 1.

INTRODUCTION AND RECITALS

Section 1.01. Introduction

The Massachusetts Bay Transportation Authority (MBTA) and the Consolidated Rail Corporation (CONRAIL) enter into this Agreement for the purpose of granting to each other certain rights to conduct passenger or freight services on property which they separately own or control, and for the purposes of defining their respective rights and obligations with respect to same.

Section 1.02. Recitals

(a) On January 17, 1973, the Trustees of the property of the Penn Central Transportation Company ("Penn Central") in proceedings in reorganization in the United States District Court for Eastern District of Pennsylvania conveyed by deed for the consideration of \$19,500,000 all their interest in certain described railroad rights-of-way to the MBTA, a public authority having responsibility for conducting mass transportation services in Greater Boston. The purpose of the sale was to insure that important rail corridors were preserved for commuter as well as intercity passenger and freight service.

(b) The rights-of-way conveyed to the MBTA as provided in paragraph (a) above included the following lines, among others: the Boston & Albany Main Line from

Riverside to Framingham; the former Boston & Providence Main (Shore) Line from Boston to the boundary line between Massachusetts and Rhode Island; the so-called Plymouth, Needham, Dedham, Franklin, and Stoughton Branches; and a portion of the Middleboro Branch from Milepost 0.0 in Braintree to Milepost 11.4 in Brockton.

(c) Penn Central reserved from the conveyance a 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 the 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

(U.S.R.A.) and approved pursuant to said Act, as amended, the Penn Central conveyed to CONRAIL all of Penn Central's rights and obligations under the conveyance described above to MBTA.

(e) On February 19, 1976, the U.S.R.A. Board of Directors, acting pursuant to the Final System Plan, resolved to designate MBTA as transferee from Penn Central of an additional railroad right-of-way known as the Dorchester Branch, with the provision that CONRAIL would retain all freight rights. On March 30, 1976, Penn Central conveyed by deed to the MBTA all the interest of Penn Central in such right-of-way without reserving transportation easements.

(f) In addition to those rights-of-way acquired from Penn Central, MBTA also owns or controls other right-of-way segments which CONRAIL desires to use, including the Braintree to South Braintree portion of the former Old Colony Line, and the East Route Main Line.

(g) In addition to those rights-of-way owned or controlled by MBTA which CONRAIL desires to use, CONRAIL owns or controls portions of a right-of-way segment known as the Grand Junction Secondary Branch from the vicinity of the Beacon Park Yard to the junction with the MBTA East Route Main Line at Tower C. CONRAIL also has been assigned a grant of easement created by instrument dated December 27, 1962 from the Massachusetts Turnpike Authority to the New York Central Railroad Company over the right-of-way

owned by the Turnpike Authority and known as the Boston & Albany Main Line from a point outside of South Station, Boston, to Riverside. Use of both of these segments of right-of-way is desired by MBTA jointly with CONRAIL.

(h) MBTA desires to define the scope of the use and of the operating rights which CONRAIL shall have on MBTA rights-of-way in order to insure continuing commuter services, both now and in the future on such rights-of-way, and to provide for other joint uses of such rights-of-way on a continuing basis, including the intercity passenger services conducted by AMTRAK, as well as CONRAIL'S freight service and desires further to define the scope of its use and operating rights on CONRAIL rights-of-way to facilitate its commuter services.

(i) CONRAIL, in accordance with the general purposes of the Regional Rail Reorganization Act of 1973, as amended, the Railroad Revitalization and Regulatory Reform Act of 1976, and the Northeast Rail Service Act of 1981, desires to define the scope of the use and of the operating rights which MBTA shall have on rights-of-way owned or controlled by CONRAIL to facilitate the operation of commuter service and other passenger service and desires further to define the scope of its use and operating rights on MBTA rights-of-way to facilitate its own interstate freight service.

(j) The parties also desire 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 rail properties defined herein.

(k) Although the parties have sought to provide a comprehensive agreement with respect to their relationship as described herein, CONRAIL has agreed, at the request of MBTA, to defer resolution of certain issues related to their respective rights and obligations as to the former Boston and Providence Main (Shore) Line right-of-way, concerning which the parties intend to conclude as expeditiously as possible a supplement to the within Agreement.

(l) Although the parties have sought to provide a comprehensive agreement with respect to their relationship as described herein, MBTA has agreed, at the request of CONRAIL, to defer resolution of certain issues relating to MBTA's use of the Framingham, MA Station area, more specifically that area, identified as Parcel No. 3 on Exhibit 10 attached hereto as part of this Agreement, located between the east and west leg of the Wye desired by MBTA to provide patron parking, concerning which the parties intend to conclude as expeditiously as possible a supplement to the within Agreement. CONRAIL, in recognition of MBTA's need to protect the operating integrity of passenger service, has agreed to include provisions for certain other MBTA requirements at Framingham, MA and these provisions are included within this Agreement at Section 10.03..



ARTICLE 2

DEFINITIONS

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

"CONRAIL", the Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, as established in Title III of the Regional Rail Reorganization Act of 1973, as amended.

"CONRAIL Rail Properties", the rail properties listed and identified in ADDENDUM 2 to this Agreement, 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 passenger service which connect with the through lines listed in ADDENDUM 2, up to but not beyond the point of clearance.

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

"Effective Date", the effective date of this Agreement as provided in Section 9.01 hereof.

"FRA", the Federal Railroad Administration.

"FRA Track Safety Regulations", the regulations promulgated by FRA, codified at 49 C.F.R. Parts 200-268 and in effect as of November 1, 1982, as amended from time to time.

"MBTA", 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", the rail properties listed and identified in ADDENDUM 1, 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 through lines listed in ADDENDUM 1, up to but not beyond the point of clearance. Category A MBTA Rail Properties shall be those which are identified as such in ADDENDUM 1 which are used jointly by the parties for their respective operations. Category B MBTA Rail Properties shall be those which are identified as such in ADDENDUM 1 which are used exclusively by CONRAIL 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 ADDENDUM 1 altogether, as provided in Section 3.02; to the extent of such changes, references to properties in this Agreement at ADDENDUM 1 shall be deemed to include such properties as changed from time to time by MBTA or to exclude such properties as appropriate.

"1973 Deed", the deed from the Trustees of the property of the Penn Central Transportation Company, in the proceedings for reorganization of same as Debtor in the

United States Court for the Eastern District of Pennsylvania, to the MBTA, dated January 17, 1973 and recorded in the Suffolk Registry of Deeds at Book 8601, Page 179.

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

"Owner" shall mean CONRAIL when referring to CONRAIL Rail Properties and shall mean MBTA when referring to MBTA Rail Properties.

"Parties" shall mean CONRAIL and MBTA.

"Rail Properties", either the MBTA Rail Properties, or the CONRAIL Rail Properties, or both, as appropriate.

"Transportation Easement", 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 said deed.

"User" shall mean CONRAIL when referring to MBTA Rail Properties and shall mean MBTA when referring to CONRAIL Rail Properties.

"direct charges" includes appropriate surcharges generally accepted as standard throughout the Railroad Industry and as enumerated in CONRAIL's EA-1 "Schedule of Rates and Surcharges Covering Billing Railroads For Use Of Facilities, Services and Equipment, a copy of which is attached hereto as EXHIBIT 12, dated July 1, 1986, and as amended from time to time in accordance with the provisions of Section 12.10 hereof.

ARTICLE 3

ACCESS RIGHTS

Section 3.01. Access to MBTA Rail Properties

(a) MBTA grants to CONRAIL, subject to the provisions of this Agreement, the non-exclusive right to enter upon and to utilize the existing tracks and related operating facilities located on MBTA Rail Properties included in ADDENDUM 1 for the purpose of performing CONRAIL's freight service and of securing CONRAIL Rail Properties and equipment. Without limitation of the foregoing, CONRAIL's access rights as just described are for the purpose of permitting CONRAIL to operate road and local freight trains, and related switching movements, special trains, locomotives, work trains and other on-track equipment, and CONRAIL shall have access to all running, side, switching, yard, and interchange tracks included in MBTA Rail Properties necessary for the provision of CONRAIL'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.

(b) Nothing in this Agreement shall derogate from MBTA's right to utilize, directly or through its operating contractors, or to permit other carrier(s) to utilize the MBTA Rail Properties for the provision of common or contract carrier passenger services, including without limi-

tation, long-haul, intercity service as well as commuter service, provided that such utilization does not interfere unreasonably with the access rights granted to CONRAIL pursuant to the provisions of this Agreement.

(c) Except as expressly provided herein, nothing in this Agreement shall be construed to grant to CONRAIL a right to approve actions by MBTA affecting 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 keep CONRAIL reasonably informed of those actions affecting CONRAIL's use contemplated hereunder and that such actions shall not unreasonably interfere with the access rights granted to CONRAIL.

(d) With respect to the properties owned or controlled by MBTA which are described below and which generally are used exclusively by MBTA but which CONRAIL desires from time to time to use on an emergency basis, MBTA grants to CONRAIL the right to enter upon and to utilize such properties on such emergency basis at the direction and control of MBTA, provided that such use shall be subject to all other provisions of this Agreement and shall be considered for such purposes to be MBTA Rail Properties. Said properties are: Franklin and East Junction (Attleboro) layover facilities, and all terminal tracks along the Boston Line approaches to South Station between Mileposts

0.45 and 0.00, provided that any such use of areas adjacent to passenger platforms or facilities shall only be with equipment that does not impact upon or damage such platforms or facilities.

Section 3.02. Changes in Status of MBTA Rail Properties

(a) Nothing in this Agreement shall derogate from MBTA's right to determine which category its Rail Properties shall fall within, as shown in ADDENDUM 1. In the event that passenger services are instituted by MBTA or a carrier authorized by MBTA on MBTA Rail Properties shown in ADDENDUM 1 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 MBTA Rail 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 rail property shall be effective upon the date specified by MBTA in a written notice provided in advance thereof to CONRAIL.

(b) Without limitation of the foregoing, in the event that CONRAIL's easement rights over, or use of, any of the MBTA Rail Properties shall terminate, whether in accordance with the provisions of the 1973 Deed, or through abandonment, transfer or otherwise, such property shall be deemed deleted from ADDENDUM 1 without the need for written notice thereof by either party to the other. Abandonment

shall be deemed to mean a permanent cessation of use pursuant to authority of the Interstate Commerce Commission or other regulatory agency having jurisdiction.

Section 3.03. Access to CONRAIL Rail Properties

(a) CONRAIL grants to MBTA, subject to the provisions of this Agreement, the non-exclusive right to enter upon and to utilize the tracks and related operating facilities located on CONRAIL Rail Properties included in ADDENDUM 2 for the purpose of performing MBTA's passenger service and of securing MBTA Rail Properties and equipment. Without limitation of the foregoing, MBTA's access rights as just described are for the purpose of permitting MBTA to operate passenger cars or trains in revenue or non-revenue service, as well as special trains, locomotives, work trains and other on-track equipment, and MBTA shall have access to all running, side, switching, yard, and interchange tracks included in CONRAIL Rail Properties necessary for the provision of MBTA's passenger service, including for the purpose of storing equipment; provided that such access rights shall not unreasonably interfere with CONRAIL's current or future uses of its Rail Properties.

(b) Nothing in this Agreement shall derogate from CONRAIL's right to permit other carrier(s) to utilize the CONRAIL Rail Properties for the provision of common or contract freight rail services, provided that any such utilization does not interfere unreasonably with the access rights

granted to MBTA pursuant to the provisions of this Agreement.

(c) Except as expressly provided herein, nothing in this Agreement shall be construed to grant to MBTA a right to approve actions by CONRAIL affecting CONRAIL 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 CONRAIL shall keep MBTA reasonably informed of those actions affecting MBTA's use contemplated hereunder and that such actions shall not unreasonably interfere with the access rights granted to MBTA.

(d) With respect to the properties owned or controlled by CONRAIL which are described below and which generally are used exclusively by CONRAIL but which MBTA desires from time to time to use on an emergency basis, CONRAIL grants to MBTA the right to enter upon and to utilize such properties on an emergency basis at the direction and control of CONRAIL, provided that such use shall be subject to all other provisions of this Agreement and shall be considered for such purposes to be CONRAIL Rail Properties. Said properties are: Framingham Yard and Braintree Yard.



ARTICLE 4

MANAGEMENT AND OPERATIONS

Section 4.01. MBTA Rail Properties

(a) Except as otherwise provided in Section 4.03 of this Agreement, MBTA retains the right to exercise and to perform management, regulatory and operational control of all rail service over 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 CONRAIL of its access rights to MBTA Rail Properties under this Agreement.

(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 MBTA Rail Properties.

(c) CONRAIL, 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 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 its Rail Properties.

(d) CONRAIL may operate overhead, special, or emergency trains on MBTA Rail Properties provided that such operations shall not interfere unreasonably with MBTA's current or future uses of its Rail Properties.

(e) Nothing in this Agreement shall derogate from MBTA's right to operate special or emergency trains over Category B Rail Properties, provided that, except as the status of such properties may change in accordance with Section 3.02, MBTA shall pay the car mile charges otherwise assessable in connection with such operations by Owner on User in accordance with ARTICLE 6.

Section 4.02. CONRAIL Rail Properties

(a) CONRAIL retains the right to exercise and to perform management, regulatory and operational control of all rail service over CONRAIL 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 MBTA of its access rights to CONRAIL Rail Properties under this Agreement.

(b) It is understood by the parties that the scheduling of passenger trains on CONRAIL Rail Properties shall take preference over all other train scheduling. With respect to the matter of priorities of dispatching and

control of train movements, it is agreed that passenger trains shall have priority over freight trains, and further, that with respect to priorities among passenger trains (AMTRAK intercity or MBTA commuter), a passenger train operating on schedule will be given priority over a passenger train operating five (5) or more minutes late.

(c) MBTA, upon sixty (60) days written notice in advance thereof, shall have the right to amend and, in particular, to increase the level of its passenger service on CONRAIL Rail Properties beyond that existing as of the Effective Date of this Agreement, which amendments and increases in the levels of service shall be subject to the provisions of this Agreement, including, without limitation, Section 4.02(b), provided that the character, scheduling or extent of the passenger service shall not interfere unreasonably with CONRAIL's current or future uses of its Rail Properties.

(d) MBTA may operate its regular work or inspection trains and maintenance equipment as well as overhead or special or emergency trains on CONRAIL Rail Properties provided that such operations shall not interfere unreasonably with CONRAIL's current or future use of its Rail Properties.

Section 4.03. CONRAIL Responsibility for Certain Property

(a) Notwithstanding anything to the contrary in Sections 4.01 or 4.02, CONRAIL shall dispatch and control

all trains along the Rail Properties included within ADDEN-  
DA 1 and 2 and known collectively as the Boston Line -- to  
Framingham -- Mileposts 1.1 (West End of "COVE" Inter-  
locking) to 22.4 in accordance with the provisions of this  
Section 4.03.

(b) The scheduling of MBTA passenger trains on  
the above-referenced property shall take preference over  
all other train scheduling. With respect to the matter of  
priorities of dispatching and control of train movements,  
it is agreed that passenger trains shall have priority over  
freight trains, and further, that with respect to priori-  
ties among passenger trains (AMTRAK intercity or MBTA com-  
muter), a passenger train operating on schedule will be  
given priority over a passenger train operating five (5) or  
more minutes late.

(c) Without limitation of the foregoing, it is  
understood as follows:

(1) CONRAIL shall dispatch MBTA passenger  
trains for operations on Tracks 1 and 2 along the Boston  
Line, from the "COVE" Control Point in Boston at Milepost  
1.1 to a point in Framingham at Milepost 22.4. Trains  
operating on the segment between Milepost 10.83 and  
Milepost 21.38 on Number 2 Track must be prepared to stop  
clear of passenger stations Wellesley Farms (Milepost  
12.5), Wellesley Hills (Mile Post 13.5) and West Natick  
(Mile Post 19.9) in those instances when passenger

trains are scheduled and may be operating on Number 1 Track. Not later than thirty (30) days after receipt of written notification from CONRAIL, as required by Section 5.04(f) of this Agreement, that installation of pedestrian bridge at the aforementioned passenger stations has been completed in accordance with Exhibit 6, hereto attached, MBTA will replace removable fence sections with permanent contiguous sections, remove wooden crosswalks, and will, at such time, post adequate notices instructing passengers to use Pedestrian Bridges. Within thirty (30) days after posting such notices, CONRAIL shall consider that proper safeguards are provided, and trains will be free to pass passenger trains stopped in passenger stations while moving in either direction.

(2) CONRAIL shall dispatch and control MBTA passenger trains on the above-referenced Rail Properties in a manner which prevents delays to any such trains, it being understood that on-time performance is critical to the retention and expansion of MBTA's commuter service ridership. For purposes of this sub-section, "delay" shall be a delay of more than five (5) minutes in scheduled running time between West End of "COVE" Interlocking and Framingham Interlocking, but shall not include delays which are not under Conrail's control. Without limitation of any other

provision of this Agreement, it is further understood that in the event of a labor-management dispute which causes any disruption in maintenance or train control on said Rail Properties, and as long as any trains are being moved along such Properties during such dispute, CONRAIL shall use its best efforts to move MBTA passenger trains so as to prevent such delays, including, for example, using CONRAIL supervisory or management personnel as necessary.

(d) Except to the extent specifically provided to the contrary in this Section 4.03, all other provisions of this ARTICLE 4 shall apply to the above-referenced Rail Properties.

#### Section 4.04. 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) User 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 when such trains, locomotives, cars and equipment are being operated over the Owner's Rail Properties. User shall indemnify, protect, defend, and save Owner and its officers, agents, and employees harmless from all fines, penalties, and liabilities imposed upon Owner under such laws, rules, and regulations by any public agency, authority or court having jurisdiction in the premises, when the imposition of same is attributable to the failure of User to comply with its obligations in this regard.

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

(d) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Rail Properties qualified for operation thereover. User shall compensate Owner for any and all direct costs incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be

properly qualified for operation as herein contemplated, provided that Owner shall not be required to administer more than three qualifying attempts for any such employee.

(e) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees, except officers, of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(f) Owner shall have the right to exclude forthwith from the Rail Properties any employee of User, except officers, which the Owner determines, based on the investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by timetable or otherwise, provided that Owner may exclude any employee of User (except officers) from the Rail Properties prior to such determination for alleged violations of Owner's rules regarding use of intoxicating beverages or drugs, or for alleged insubordination. User shall release, indemnify, defend and save harmless Owner 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 User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Rail Properties, or if in emergencies crippled or otherwise defective cars are separated from User's trains on the Rail Properties, Owner shall have the option of allowing the User 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 Rail Properties or the Owner may perform or arrange for the performance of the necessary functions provided that if Owner elects to perform or arrange for performance of such functions, Owner shall do so as expeditiously as possible. User shall reimburse Owner 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 Rail Properties, such work shall, at the option of the Owner, be done by the User or the Owner or by the parties' respective contractors. User shall reimburse Owner 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 6.

(j) Subject to the provisions of Sections 4.03, 5.04, and 9.03, and notwithstanding the definitions of "Owner" and "User" as set forth at ARTICLE 2, CONRAIL, shall be considered "Owner" and MBTA "User" for purposes of this Section 4.04 with reference to the Rail Properties referred to in Section 4.03.

\*\*\*\*\*

ARTICLE 5.

MAINTENANCE AND CONSTRUCTION

Section 5.01. 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 paragraph (d) below, and in Sections 5.02 and 5.04.

(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 CONRAIL's account with respect to CONRAIL's freight operations on Category A MBTA Rail Properties in accordance with the FRA Track Safety Regulation classification listed in ADDENDUM 1 and for the compensation set forth in ARTICLE 6. If at any time CONRAIL 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, CONRAIL shall 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 CONRAIL desires construction, alterations or improvements on MBTA Rail Properties it shall submit a request to MBTA in writing which specifies the work which CONRAIL wants MBTA to perform on CONRAIL'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 CONRAIL, at its sole expense to enter upon such MBTA Rail 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 Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities, and no approval of CONRAIL shall be required for the performance of any work on MBTA Rail Properties except as may be expressly provided herein; and (2) shall perform such work in accordance with the standards applicable to a particular property, as designated in ADDENDUM 1, under the classification set forth in said ADDENDUM and subject to the terms and provisions set forth in applicable FRA Track Safety Regulations.

(d) (1) ~~With respect to the facility known as~~ ~~located in the vicinity of the Mystic River~~ ~~Route Main Line at MP 2.22, the parties~~ ~~shall pay to MBTA one-third (1/3) of the~~

annual costs of operations and maintenance of Drawbridge 7 for the period commencing on the Effective Date and ending on the date on which CONRAIL's use of such facility ceases, as such date is specified in a written notice by CONRAIL to MBTA in advance thereof, or on December 31, 1988, whichever date is earlier (called in this paragraph (d) the "applicable period"). MBTA shall provide to CONRAIL within sixty (60) days following the close of each calendar quarter a statement showing the maintenance cost for such facility in accordance with accounting standards under the Interstate Commerce Commission Uniform System of Accounts, and the amount of CONRAIL's share of same as provided above. CONRAIL shall pay such amount to MBTA within thirty (30) days of receipt of such statement, which payment shall be additional to the payments otherwise required under ARTICLE 6.

(2) In consideration of this Agreement and for other good and valuable consideration to be paid to CONRAIL by MBTA as provided below, CONRAIL agrees to convey to MBTA such parcel(s) of real property on the Grand Junction Secondary Branch (duly authorized and executed in a form substantially equivalent to that attached hereto at EXHIBIT 1) as may be necessary to permit construction of a new bridge to replace said Drawbridge 7, provided that within a reasonable time following the execution of this Agreement, the parties have agreed on the fair value to be

paid by MBTA for such parcel(s), and the other appropriate terms and conditions of such transfer.

(e) With respect to a facility to be constructed in the vicinity of South Station, Boston, and known as the South Station WYE connector, the parties agree that in consideration of this Agreement, including, without limitation, Section 3.01(d), and for other good and valuable consideration, receipt of which is acknowledged by the parties, (1) MBTA will construct without further charge to CONRAIL such WYE connector and, upon completion of same, will permit CONRAIL to use same in accordance with this Agreement, and (2) CONRAIL, subject to Section 3.01(d) hereof, hereby releases and assigns any and all rights it may hold to enter upon or use the South Station terminal area or the approaches thereto, except that CONRAIL may park in said area its business cars at such reasonable times and locations therein as may be approved by MBTA, which approval shall not be unreasonably withheld, as evidenced by the instruments duly authorized and executed in a form substantially equivalent to that attached hereto at EXHIBIT 2.

Section 5.02. Category B MBTA Rail Properties

(a) Notwithstanding the provisions of Section 5.01, CONRAIL shall have responsibility and control of, and shall perform at its sole expense and with the prior writ-

ten concurrence of MBTA, which concurrence shall not be unreasonably withheld, all such maintenance, construction, reconstruction, alterations or improvements on MBTA Rail Properties within Category B at ADDENDUM 1, including, without limitation, construction, reconstruction, alteration or improvement of any yard, track, signal, communication or other solely freight facility on such Rail Properties, provided that if CONRAIL 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 at ADDENDUM 1, Category B, CONRAIL shall promptly notify MBTA of such determination in writing and shall either (1) undertake such repair, replacement or reconstruction at its sole expense and in accordance with such standards, or (2) terminate its use of that portion of the Rail Property occupied by such bridge facility, in which event the parties shall promptly execute an appropriate amendment to this Agreement which reflects the deletion of such portion of Rail Property and which shall include provisions requiring CONRAIL to take reasonable steps: (i) to secure such bridge facility; (ii) to prevent unauthorized access thereto; and (iii) to protect against loss, damage, injury or death to third

parties or to the property of such third parties as a result of the termination of such use of such facility by CONRAIL.

(b) It is understood that without limitation of the foregoing, CONRAIL shall, in each particular instance, (1) obtain MBTA's approval in writing of any removal of, retirement in place of, addition to, or modification of, track, signal systems, buildings or equipment on such Rail Properties including, without limitation, approval of applications to the FRA Railway Safety Board, and that upon any such removal, all such items shall remain the property of MBTA and shall be delivered to same at a materials yard designated by MBTA within the MBTA's operating area at CONRAIL's sole expense and risk; (2) during the period of its performance of responsibilities hereunder for Category B MBTA Rail 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, any approvals of regulatory or governmental bodies (including the Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities) which may be required in the performance of such responsibilities and obligations, at CONRAIL'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 5.02(a) in accordance with the standards applicable to a particular property, as designated in ADDENDUM 1, Category B, under the classification set forth in said ADDENDUM 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 MBTA Rail Properties referred to in this Section 5.02, 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 Rail Properties (hereafter in this paragraph called "licenses") shall be issued by CONRAIL subject to the review and approval in advance of MBTA, except as provided expressly below, and all revenues paid by the licensee thereof to CONRAIL shall be shared with MBTA as provided in sub-paragraphs (3) and (4) below.

(2) CONRAIL may issue licenses for transverse pipe and wire occupancies without prior review or approval

of MBTA, subject to the provisions of sub-paragraph (3) below.

(3) With respect to licenses issued under sub-paragraph (2) above, CONRAIL shall charge the preparation, issuance and rental fees as set forth in EXHIBIT 3, "RENTAL SCHEDULE FOR UTILITY OCCUPATIONS OF CONSOLIDATED RAIL PROPERTY", dated January 1, 1985, and as amended from time to time in accordance with the provisions of Section 12.10 hereof. To the extent of revenue from payments by such licensee, CONRAIL and MBTA shall share such revenues as follows:

(1) CONRAIL shall be reimbursed one-hundred (100) percent of the Standard Preparation Fee as shown at said EXHIBIT 3.

(2) If annual rental fees are paid with respect to such license, CONRAIL shall be paid the Base Rate. The Base Rate shall be \$100 dollars, 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 \$100.

(3) CONRAIL 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 CONRAIL to MBTA forthwith upon receipt from the licensee.

(4) With respect to licenses issued by CONRAIL other than those described at sub-paragraph (2), CONRAIL shall charge such amounts and shall share revenues from payments by any such licensee in accordance with such understandings as MBTA and CONRAIL may agree to in writing with respect to each such license, provided that to the extent of such revenues CONRAIL's share of same 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 MBTA Rail Properties other than those expressly subject to sub-paragraphs (1) through (4) shall be submitted to MBTA for its approval and issuance.

(d) CONRAIL shall carry out its responsibilities under Section 5.02(a) in a manner which will not unreasonably interfere with any future passenger services which MBTA may undertake or authorize on MBTA Rail Properties which are designated as Category B properties at ADDENDUM 1 and whose status would change to Category A in accordance with Section 3.02 upon the institution of such services, or with MBTA passenger services then being provided on Category A MBTA Rail Properties which would otherwise be adverse-

ly affected by CONRAIL's activities under this Section 5.02.

(e) (1) In the event that MBTA initiates passenger service or CONRAIL discontinues freight service on any of the properties within Category B at ADDENDUM 1, and if it is determined that CONRAIL has failed, on or before the date of such discontinuance, or ninety (90) days after the date written notice is sent by MBTA to CONRAIL that it intends to initiate passenger service in joint use with CONRAIL 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 at ADDENDUM 1 for such property (except with respect to the Middleboro Branch, Braintree to Campello, as to which the provisions of Section 5.02(e) (2) shall apply), MBTA shall have the right otherwise provided under Section 5.01 to perform such work, and to charge CONRAIL therefor, in which event CONRAIL shall reimburse such charges incurred by MBTA as a payment additional to those otherwise provided in ARTICLE 6. It is understood that all facilities or improvements thereto which are constructed by CONRAIL under Section 5.02(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 prop-

erty of CONRAIL and may be removed by CONRAIL at its sole expense in accordance with the foregoing. At MBTA's option, MBTA may require by written notice to CONRAIL and at CONRAIL's sole expense, that CONRAIL 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.

(2) Notwithstanding the FRA class designation otherwise called for at Section 5.02(e)(1) above, the FRA class designation "Class III" shall apply for purposes of Section 5.02(e)(1) for the Middleboro Branch, Braintree to Campello.

#### Section 5.03. CONRAIL Rail Properties

(a) Nothing in this Agreement shall derogate from CONRAIL's right solely to perform all maintenance, construction, reconstruction, alterations, or improvements of any kind on CONRAIL Rail Properties, provided that such work shall be performed by CONRAIL subject to the provisions of this Agreement and at its sole expense. Without limiting the generality of the foregoing, CONRAIL shall (1) secure such approvals of regulatory or governmental bodies for such work as may be necessary, including, without limita-

tion, the Interstate Commerce Commission, FRA, and Massachusetts Department of Public Utilities, and no approval of MBTA shall be required in the exercise of such right or responsibility except as may be expressly provided herein; and (2) shall perform such work in accordance with the standards applicable to a particular property, as designated in ADDENDUM 2, under the classification and subject to the terms and provisions set forth in applicable FRA Track Safety Regulations.

(b) In addition to maintenance or other work performed by CONRAIL on its Rail Properties for its own account, CONRAIL agrees to perform maintenance work on MBTA's account with respect to MBTA's operations on CONRAIL Rail Properties in accordance with the FRA Track Safety Regulation classification listed in ADDENDUM 2 and for the compensation set forth in ARTICLE 6. If at any time MBTA determines that such maintenance work has not been performed by CONRAIL at a level required under the FRA Standards for the class of track in question, MBTA shall notify CONRAIL in writing and CONRAIL 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 MBTA desires construction, alterations or improvements on CONRAIL Rail Properties it shall submit a request to CONRAIL in writing which specifies the work which MBTA

wants CONRAIL to perform on MBTA's account. Subject to agreement by the parties on apportionment of the costs of such improvements, CONRAIL shall perform such work, or, if CONRAIL elects, allow MBTA, at its sole expense to enter upon such Rail Properties to perform such work.

(c) CONRAIL shall perform its responsibilities under this Section with respect to its Rail Properties in a manner which does not interfere unreasonably with MBTA's passenger services, as provided as of the Effective Date of this Agreement, or as may be provided by MBTA in the future during the term hereof, as to which MBTA has given notice in writing to CONRAIL from time to time.

(d) MBTA shall operate, including provision of police protection, maintain and make any improvements or alterations it may determine to be necessary or appropriate on all passenger stations, platforms, overhead pedestrian bridges and other solely passenger facilities, at its sole expense.

Section 5.04. CONRAIL Responsibility for Certain Property

Without limitation of the provisions of this Agreement and notwithstanding any contrary provision thereof, the parties agree as follows with respect to the Rail Properties included within ADDENDA 1 and 2 and known collectively as the Boston Line - West End of "COVE" Interlocking to Framingham - Mileposts 1.1 to 22.4:

(a) CONRAIL shall maintain such Rail Properties in accordance with the provisions of this Agreement otherwise applicable thereto, including, without limitation, the FRA Track Safety standards shown in connection therewith at APPEND A 1 and 2, and shall keep such properties reasonably clean and free from waste or debris.

(b) CONRAIL shall not perform programmed major maintenance (e.g. tie, rail or signal system replacement) in a manner which unreasonably interferes with MBTA commuter service. Without limitation it is understood that any such maintenance which is conducted in a manner which delays MBTA morning or evening services during peak hours for more than ten (10) minutes for any train, unless MBTA otherwise agrees in writing prior to the start of such maintenance, shall be considered unreasonable for purposes of this paragraph.

(c) On or before July 1, 1987, CONRAIL, at its sole expense, shall provide and install continuous welded rail in accordance with the specifications at EXHIBIT 4 and on the track sections shown thereon.

(d) On or before December 31, 1988, CONRAIL, at its sole expense, shall provide and install a Traffic Control System in accordance with the specifications at EXHIBIT 4 and on the track sections shown thereon.



(e) On or before July 1, 1987, CONRAIL, at its sole expense, shall make such improvements as may be necessary and appropriate to permit the operating speeds shown on EXHIBIT 5, and on the track sections shown thereon.

(f) On or before December 31, 1988, CONRAIL shall provide and install pedestrian bridges, in accordance with the provisions of EXHIBIT 6 and at its sole expense, except as otherwise provided in said EXHIBIT. CONRAIL shall notify MBTA in writing immediately upon completion of such installation.

(g) With reference to such Rail Properties from Riverside at Milepost 10.83 to Framingham at Milepost 21.38, CONRAIL shall, in each particular instance, (1) obtain MBTA's approval in writing of any removal of, retirement in place of, or addition to, or modification of, track, signal systems, buildings or equipment on such Rail Property, including, without limitation, approval of applications to the FRA Railway Safety Board, and that upon any such removal, all such items shall remain the property of the MBTA and shall be delivered to same at a materials yard designated by MBTA within MBTA's operating area at CONRAIL's sole expense; and (2) perform all responsibilities and obligations of "track owners" under the FRA's Track Safety Regulations, and shall do all things necessary

to apply for and obtain, subject to MBTA's approval in writing, any approvals of regulatory or governmental bodies (including the Interstate Commerce Commission, FRA and Massachusetts Department of Public Utilities) which may be required in the performance of such responsibilities and obligations, at CONRAIL's sole 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.

(h) The provisions of paragraph (c) of Section 5.02 shall apply to the MBTA Rail Property referred to at this Section 5.04, namely, the Boston Line, Milepost 10.83 to Milepost 22.4.

Section 5.05. Installation of Industrial Sidetracks

(a) In addition to, and without limitation of, the requirements set forth above in this ARTICLE 5, the provisions of this Section 5.05 shall apply to the construction, alteration, repair or removal of industrial sidetracks (referred to in this Section as "sidetracks") located on the Rail Properties.

(b) User shall submit to Owner for its review and written approval (1) the engineering plans and specifications for such work and (2) the applications by User or the industrial user for licenses from Owner to use Owner's Rail Properties for sidetrack purposes. If the plans and specifications are in accordance with the general specifications for sidetrack construction adopted from time to time by Owner, the Owner's approval thereof shall not be unreasonably withheld or delayed.

(c) User shall have full responsibility for negotiations with industrial users in connection with the development of such plans and specifications and with the preparation of licenses for submission to Owner.

(d) The license between Owner and User or the Owner and the industrial user 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 be required by the Owner, including, without limitation, provi-

sions for indemnification of Owner 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 Owner and User, the term shall not be greater than the term of this Agreement under Section 9.01 and shall be subject to the termination provisions of ARTICLE 9 of this Agreement unless the parties otherwise expressly agree.

(e) Unless otherwise agreed, all materials for installation of new sidetracks and for alteration or repair of existing sidetracks will be new, be built to specifications approved by the Owner, and shall be supplied by User to Owner at a location to be agreed upon by the parties.

(f) Except as provided below at paragraph (h), construction, alteration, repair, or removal of sidetracks on the Owner's Rail Properties shall be performed by Owner's employees or contractors at User's sole cost and expense.

(g) Except as provided in paragraph (h) below, following Owner's written approval of plans and specifications for the construction, alteration, removal or repair of sidetracks on Owner's Rail Properties, the Owner shall, within 30 days, submit a force account estimate for work to be done and a time and payment schedule which, when approved by User, 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 Owner, in one payment or a series of payments. If it appears that the cost of such work will exceed the estimate, Owner will notify User to secure authority for such additional costs. Upon completion of work done on behalf of User by Owner, User shall promptly pay any authorized costs which exceed the advance payments, provided, however, that Owner shall not be authorized or obligated to incur costs in excess of those approved in writing by User. The unexpended balance of any advance payments shall be returned by Owner to User promptly upon completion of work.

(h) Construction, alteration, removal, or repair of sidetracks on Category B MBTA Rail Properties shall be performed in accordance with plans and specifications (approved in advance in writing by MBTA) by CONRAIL employees or contractors at CONRAIL's sole cost and expense.

(i) Maintenance of sidetracks on the Owner's Rail Properties shall be performed by Owner's employees or contractors at User's sole cost and expense, except that maintenance of sidetracks on Category B MBTA Rail Properties shall be performed by CONRAIL employees or contractors at CONRAIL's sole cost and expense. It is expressly understood that the compensation charged to the parties under ARTICLE 6 does not cover such cost and expense, which shall

be paid as additional compensation in accordance with the provisions of this Section 5.05.

(j) Owner 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 Owner's Rail Properties.

(k) In the event that use of any sidetracks located on Owner's Rail Properties has ceased for a period of twenty-four (24) months, Owner shall have the option, upon ninety (90) days' written notice to User, to remove the sidetrack and any other facilities or appurtenances connected therewith which are located upon owner's Rail Properties.

(l) In the event of removal of a sidetrack located on Owner's Rail Property, User shall be entitled to the return of all sidetrack materials which User provided to Owner 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 owner's Rail Property, and without interfering with any use by Owner of such Rail Property, provided that the cost of removal is borne by User. All other materials shall be removed by Owner at Owner's expense and shall be retained by Owner. Owner shall notify User of the removal and availability for disposition of all materials belonging to User hereunder.

ARTICLE 6  
COMPENSATION

Section 6.01. Base Charge

(a) Subject to revision from time to time as provided in Section 6.03, the Base Charge for the use by CONRAIL of the MBTA Rail Properties listed in ADDENDUM 1, Category A, and for the use by MBTA of the CONRAIL Rail Properties listed in ADDENDUM 2 shall be as follows:

| <u>Number Car</u><br><u>Miles Annually</u> | <u>Car Mile</u><br><u>Charge</u> |
|--|----------------------------------|
| First Eight Hundred Thousand               | 20¢                              |
| Over Eight Hundred Thousand                | 15¢                              |

(b) Notwithstanding the foregoing, User shall not be obligated to pay to Owner compensation as otherwise provided with respect to the MBTA Rail Property known as the East Route Main Line from Milepost 1.36 to Milepost 2.75, or the CONRAIL Rail Property known as the Grand Junction Secondary from Milepost 0.0 to Milepost 2.7 within which Termini Drawbridge #7 and/or the replacement bridge for Drawbridge #7 is, or will be, located.

Section 6.02. Payment

(a) User will pay to Owner an amount computed by multiplying the Base Charge, as revised from time to time pursuant to Section 6.03, by the number of car miles trav-

elled on each segment of the Rail Properties of the Owner in any calendar month (the "applicable month").

(b) The User shall be responsible for calculating the amount of the payment due to the Owner for the applicable month in accordance with this Section, and shall pay same within ninety (90) calendar days after the close of such month. Any such payments shall be accompanied by a statement prepared by User which shall show the number of car miles travelled during the applicable month by each segment on the Owner's property.

Section 6.03. Revision of the Base Charge.

Beginning July 1, 1987, and each July 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.



Section 6.04. Special Provisions for Certain Property

Notwithstanding the foregoing, and subject to the provisions of Sections 4.03, 5.04 and 9.03, MBTA shall be considered "User" and CONRAIL "Owner" of the MBTA Rail Property identified at ADDENDUM 1, Category A as Boston Line - Riverside to Framingham - Milepost 10.83 to Milepost 21.38 for purposes of this ARTICLE 6.

\*\*\*\*\*

ARTICLE 7

LIABILITY INDEMNIFICATION

Section 7.01. 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 7.

(b) For the purpose of this ARTICLE 7, the following terms shall have the meanings provided below unless otherwise expressly provided in this ARTICLE:

"CONRAIL Employees", the employees and agents of CONRAIL, and CONRAIL's operating contractors and said contractors' employees.

"MBTA Employees", the employees and agents of MBTA, and MBTA's operating contractors and said contractors' employees.

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

(c) For the purpose of this ARTICLE 7, the term "contractor" shall not be deemed to include the National Railroad Passenger Corporation in its capacity as operator of rail services on its own behalf.

Section 7.02. CONRAIL Employees

CONRAIL shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be 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 CONRAIL Employee or other contractor of CONRAIL, or arising out of loss of, damage to, or destruction of any property of any such CONRAIL Employee or contractor. CONRAIL employees who are involved in CONRAIL's provision of services to MBTA under this Agreement shall be regarded as CONRAIL Employees, and not as employees of MBTA.

Section 7.03. MBTA Employees

MBTA shall defend, indemnify, and save harmless CONRAIL and CONRAIL Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be 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 other contractor of MBTA, or arising out of loss of, damage to, or destruction of any property of any such MBTA Employee or contractor. MBTA Employees who are involved in MBTA's provision of services to CONRAIL under this Agreement shall be regarded as MBTA Employees and not as employees of CONRAIL.

Section 7.04. CONRAIL Property

CONRAIL shall defend, indemnify, and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by same, or howsoever the same shall occur or be 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 CONRAIL, including, without limitation, CONRAIL trains, loadings and all other contents thereof and the MBTA Category B Rail Properties and the MBTA Rail Properties known as the Boston Line -- Riverside to Framingham -- Mileposts 10.83 to 21.38, provided that such loss, damage or destruction shall have occurred during the period of CONRAIL's responsibility therefor pursuant to Sections 4.03, 5.02, 5.04 and 9.03, and regardless whether such liability, damage or expense arises before or after the date on which CONRAIL may cease to be responsible therefor in accordance with the provisions of Section 9.03 or the provisions regarding the MBTA Category B Properties.

Section 7.05. MBTA Property

MBTA shall defend, indemnify, and save harmless CONRAIL and CONRAIL Employees, irrespective of any negligence or fault of, or control by same, or howsoever the same shall occur or be 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 MBTA Rail Properties described at Section 7.04, above, with respect to the loss, damage or destruction referred to in such Section.

Section 7.06. Liabilities Arising from Hazardous Materials

Any other provision of this ARTICLE 7 to the contrary notwithstanding:

(1) CONRAIL shall defend, indemnify and save harmless MBTA and MBTA Employees, irrespective of any negligence or fault of, or control by, same, or howsoever the same shall occur or be 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 CONRAIL, CONRAIL Employees or other contractors of CONRAIL (other than MBTA); and

(2) MBTA shall defend, indemnify and save harmless CONRAIL and CONRAIL Employees, irrespective of any

negligence or fault of, or control by same, or howsoever the same shall occur or be 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 CONRAIL, CONRAIL Employees or any Person, resulting from the transportation or use of hazardous materials by MBTA, MBTA Employees or other contractors of MBTA (other than CONRAIL.)

For purposes of this Section, hazardous materials shall be deemed to include, but not be limited to, 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 7.07. Other Apportionment of Liability

Except as otherwise provided in Section 7.01 through 7.06, of this ARTICLE 7:

(a) CONRAIL 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 CONRAIL, CONRAIL Employees or other contractors of CONRAIL (other than MBTA).

(b) MBTA shall defend, indemnify and save harmless CONRAIL and CONRAIL 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, MBTA Employees or other contractors of MBTA (other than CONRAIL).

(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 or other contractors, the obligations of the parties to indemnify each other pursuant to Sections 7.07(a) and 7.07(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 8

DISPUTE RESOLUTION

Section 8.01. 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 8.02) or to other remedies available under this Agreement pursuant to Section 9.03.

(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 CONRAIL General Manager-Northeast Region. 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-Northeast Region for CONRAIL 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 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 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 8.02 or may proceed with other remedies available under this Agreement.

Section 8.02. Arbitration

(a) Arbitration for purposes of resolving a dispute shall follow exhaustion of the informal procedures under Section 8.01 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 same, 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 disinterested arbitrators, one of whom shall be appointed by MBTA and the other by CONRAIL. If the two arbitrators so chosen cannot agree, they shall select a third, disinterested arbitrator ("neutral arbitrator"). In the event that the arbitrators are unable to agree upon the appointment of a neutral arbitrator, the neutral 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 arbitrators' 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 arbitrators' conclusions of law shall be considered a question of law.

(d) The parties may elect through mutual agreement to have the dispute presented to one arbitrator.

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

(f) 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 arbitrators shall make a preliminary ruling to the contrary.

(g) Each party hereto shall bear the costs and expenses incurred by it and by the arbitrator it has appointed under paragraph (b) in connection with such arbitration and both parties shall share equally the costs and expenses attributable to the services of the single arbitrator which they may jointly appoint under paragraph (d) or of the third arbitrator which may be appointed under paragraph (b).

ARTICLE 9

DURATION OF AGREEMENT AND DEFAULT

Section 9.01. Term

The effective date of this Agreement shall be July 1, 1985, and the term hereof, unless sooner terminated as provided below, shall continue from that date until December 31, 2015. 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, 2015.

Section 9.02. 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 of same to CONRAIL, 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 mat-

ters arising under this Agreement prior to such Termination Date shall be governed by this Agreement and except that CONRAIL may elect to continue to use MBTA Rail Properties in accordance with such reasonable terms and conditions as the parties may agree upon in advance of such Termination Date, provided that such terms and conditions shall include a provision whereby CONRAIL, on and after such Termination Date, shall bear the entire risk of damage, loss, liability or costs associated with such Rail Properties and shall indemnify and hold harmless MBTA, its employees, agents, contractor and operating contractors, from any and all liability, damages, losses, expenses and claims of any kind whatsoever and however the same shall occur, including reasonable attorneys' fees, arising with respect to such Rail Properties, unless such liability, damages, losses or claims are caused solely by the fault or negligence of MBTA, its employees, contractors or operating contractors.

Section 9.03. Default

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

(i) Any late payment of compensation under ARTICLE 6 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 modifica-

tion 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 covenant or obligation pursuant to Sections 4.03 or 5.04, which failure shall have continued for more than thirty (30) days following the date of the notice sent pursuant to Section 8.01(d); or

(iv) 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 the notice sent pursuant to Section 8.01(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) If the Event of Default is the failure of CONRAIL to perform any covenant or obligation pursuant to Sections 4.03 or 5.04, MBTA may, upon written notice to CONRAIL which shall be not less than sixty (60) days,

assume the dispatching, train control and maintenance responsibilities referred to at said sections, for that segment of track from Milepost 10.83 to Milepost 21.38, it being understood that CONRAIL shall pay to MBTA one-half of the actual labor and material costs, including fringe benefits, overhead and material additives at the rates therein certified to be in effect by MBTA's Director of Rail Operations, incurred by MBTA or its operating contractor to provide for such transfer, provided that MBTA shall submit a suitable statement in accordance with the Interstate Commerce Commission Uniform System of Accounts which show such costs, and provided further that CONRAIL's one-half share of such costs hereunder shall not exceed the amount of \$50,000, as said amount may be revised on an annual basis in accordance with the index and procedures specified in Section 6.03;

(iii) 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

(iv) Substitute for the remedy described at paragraph (iii) above, the remedy described at Paragraph (i); and

(v) 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 8.01(d) or of Section 9.03(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 other 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 8.01(d) and without waiting for the thirty (30) day period specified therein or in Section 9.03(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 10

ABANDONMENT OF FREIGHT OPERATIONS  
AND TRANSFER OF PROPERTY RIGHTS

Section 10.01. Abandonment of CONRAIL Rail Properties

(a) CONRAIL shall not file with the Interstate Commerce Commission an application for abandonment of any of its Rail Properties under this Agreement nor shall CONRAIL otherwise agree with any person to transfer or dispose of any such properties or any interest therein without first providing written notice not less than sixty (60) days in advance of same to MBTA.

(b) In the event that CONRAIL shall abandon its freight operation over any of the Rail Properties listed at ADDENDUM 2, MBTA may, at its sole discretion and upon written notice to CONRAIL, assume responsibility for and control of such Rail Properties and may maintain same at its sole cost and expense, for such period of time as MBTA may elect, and during such period MBTA shall not be obligated to pay the compensation otherwise assessable on MBTA with respect to its use of such Rail Properties under ARTICLE 6. Except that MBTA's rights under this Section shall be subject to (i) CONRAIL's rights and obligations to transfer or dispose of Rail Property and (ii) the rights and interests that may be acquired by a third party if and to the extent they arise pursuant to 49 U.S.C. Section 10905 or any similar statute.

Section 10.02. Transfer of Easements

The parties agree to grant to each other, at a closing to be held not later than sixty (60) days following the date of execution of this Agreement, the rights or interests described below:

(a) MBTA shall grant to CONRAIL an easement and right of first refusal to operate its service over the Dorchester Branch, MP 0.0 to 9.5, in the form substantially equivalent to EXHIBIT 7, attached hereto and incorporated by reference.

(b) CONRAIL shall grant to MBTA a one-track easement and right of first refusal to operate its service over the Grand Junction Secondary Track, MP 0.0 to 2.7, in the form substantially equivalent to EXHIBIT 8, attached hereto and incorporated by reference

(c) CONRAIL shall convey to MBTA such parcel or parcels of real property along the Boston and Providence Main (Shore) Line right-of-way in the town of Mansfield as may be necessary to permit MBTA to operate and maintain a passenger station in Mansfield, in a form substantially equivalent to EXHIBIT 9, attached hereto and incorporated by reference.

Section 10.03. Framingham Yard

The parties agree that not later than six (6) months following the date of execution of this Agreement,

CONRAIL shall lease to MBTA for nominal rent and for a term of one (1) year the certain two (2) parcels of real property in the Framingham Yard as indicated on the map attached hereto as EXHIBIT 10 and marked Parcel 1 and Parcel 2. Said lease shall include any buildings, structures or facilities which may be located thereon, including signals, steam and water lines, electric power vaults and lines, telephones and similar facilities. Said lease shall also include, but not be limited to, the following provisions:

(a) Grant MBTA an option to purchase the leased parcels during the term of the lease for a price to be negotiated in good faith by MBTA and CONRAIL, which price shall be the fair market value of such parcels. Notice of intent to exercise said option shall be given by MBTA not less than six (6) months prior to the expiration of said lease. It is understood that should the MBTA not purchase said properties, the existing lease will be allowed to expire and shall not be renewed by CONRAIL.

(b) MBTA will assume full responsibility for payment of all costs and expenses related to said leased parcels including, but not limited to real estate taxes and maintenance costs.

(c) MBTA, at its sole cost and expense, and in accordance with a plan for the construction of certain improvements by MBTA on the leased parcels, which plan will

be prepared by MBTA and agreed to in advance by CONRAIL and made a part of said lease, shall remove all rail, ties and other track material currently located on the leased parcels except those materials which are fit and which may be used in constructing new track, and shall place such surplus materials in an area in the Framingham Yard designated by CONRAIL and stacked in a condition reasonably acceptable to CONRAIL for pickup by CONRAIL. It is understood that such surplus material is the sole property of CONRAIL and will be disposed of at CONRAIL's discretion.

(d) MBTA, at its sole cost and expense, in accordance with the aforesaid plan shall provide all labor and materials other than those remaining on the leased parcels as provided above, which are necessary to effect a new track arrangement agreed to in said plan.

(e) MBTA, at its sole cost and expense, shall remove from the leased parcels, in a manner first approved by CONRAIL, any improvements made on said parcels, subsequent to the effective date of the Lease Agreement, and will restore the property to the condition existing prior to the effective date of the Lease in the event the sale referred to in Section 10.03 (a) is not closed.

(f) CONRAIL will grant to MBTA an easement over the east leg of the Wye leading from the Boston Line to Framingham North Yard for the purpose of loading and unloading passengers, which easement shall be included in said lease.

(g) All vertical and horizontal clearances on the leased parcels shall be approved by CONRAIL prior to construction of any improvements including, but not limited to, track relocations.

(h) It is further agreed that upon CONRAIL's determination to relocate its facilities and operations presently existing at the parcel of land described generally at Section 1.02(1) of this Agreement and identified as Parcel 3 or Exhibit 10, attached hereto and made part hereof, CONRAIL will forthwith notify MBTA of this determination, and MBTA shall have the option to purchase such parcel by providing written notice of same within sixty (60) days following receipt of notice of CONRAIL's determination. MBTA's option to purchase such parcel, if exercised hereunder, shall be at a price to be negotiated in good faith by the parties, which price shall be fair market value of such parcel.

\*\*\*\*\*

ARTICLE 11

AFFIRMATIVE DUTIES,  
REPRESENTATIONS AND WARRANTIES

Section 11.01. Operating Duties in Regard to Safety

User 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 of the Owner, Owner's operating contractors, all tracks, bridges and other equipment of the Owner and all adjoining utilities and other equipment in the Owner's rights-of-way. Unless otherwise provided by law, User will be solely 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 safety rules and regulations administered by the Interstate Commerce Commission, Federal Railroad Administration or Massachusetts Department of Public Utilities, including, for example, the FRA's regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U. S. Department of Transportation including 49 CFR Parts 171 et seq, and prescribed by the U. S.

Environmental Protection Agency including 40 CFR Part 263; and all safety rules and other operating procedures of general applicability and future effect issued by Owner and forwarded in writing to User. At Owner's reasonable request, User shall promptly furnish Owner with evidence satisfactory to Owner demonstrating User's compliance with the above.

Section 11.02. 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.



Section 11.03. Certain Duties and Representations

CONRAIL (1) warrants and represents that it has obtained, on or before the date of execution of this Agreement, sufficient right, title or interest in CONRAIL Rail Properties to insure that MBTA shall have and enjoy the access rights granted to it under this Agreement for the term hereof; and (2) shall do nothing to forfeit or otherwise to impair such rights as CONRAIL may have in its Rail Properties so as to interfere with MBTA's access rights hereunder during the term hereof.

\*\*\*\*\*

ARTICLE 12

GENERAL PROVISIONS

Section 12.01. Labor Rights

(a) The User agrees that its entrance upon and use of the Owner's properties is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of the User's employees or its contractors with respect to any other current or future use of the Owner's properties, including without limitation, maintenance, operation, rehabilitation, and improvement thereof by the Owner or Owner's contractors. The User shall indemnify, defend, and hold harmless the Owner and the Owner's contractors against any liability arising from any claims or employment protection rights including without limitation rights or claims arising from the performance of any work for the User on the Owner's properties by the Owner or the Owner's contractors under this Agreement.

(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 12.02. Status As Independent Contractor

In connection with all maintenance or other work performed by MBTA on CONRAIL's account in furtherance of CONRAIL's freight operation on MBTA Rail Properties under Section 5.01 and any other work performed by MBTA on behalf of CONRAIL under this Agreement, the parties intend that the MBTA shall act as an independent contractor and not as the agent for CONRAIL.

Section 12.03. Clearing Wrecks -- MBTA Rail Properties

(a) (1) When, as a result of CONRAIL's sole use of MBTA Category B Rail Properties, rerailling, wrecking service or wrecking train service is required, CONRAIL shall perform or arrange to have performed such service at CONRAIL'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.

(2) In the event that MBTA's sole use of Category B Properties results in the need for wrecking services as described in this Section, the provisions of Section 12.04(a) shall apply.

(3) In the event that any joint use of Category B MBTA Rail Properties by CONRAIL and MBTA results in the need for wrecking services as described in this Section, the provisions of Section 12.04(b) shall apply.

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

(1) When, as a result of CONRAIL's sole use of MBTA Category A Rail Properties, rerailling, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of CONRAIL, shall have the option of requesting CONRAIL to perform such service or of performing such service by itself or by its contractor, all at CONRAIL'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 MBTA Category A Rail Properties, rerailling, wrecking service or wrecking train service is required, MBTA, with the cooperation, assistance, and advice of CONRAIL, shall have the option of requesting CONRAIL 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 MBTA Category A Rail Properties by MBTA and CONRAIL, rerailling, wrecking service or wrecking train service is required, the

provisions of Section 12.03(b) (1) will apply except that all costs, including without limitation liability costs, will be apportioned in accordance with the provisions of ARTICLE 7.

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

Section 12.04. Clearing Wrecks -- CONRAIL Properties

(a) When, as a result of MBTA's sole use of CONRAIL Rail Properties, rerailling, wrecking service, or wrecking train service is required, CONRAIL promptly shall perform or arrange to have performed such service at MBTA'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) When, as a result of MBTA's and CONRAIL's joint use of CONRAIL Rail Properties, rerailing, wrecking service, or wrecking train service is required, the provisions of the foregoing paragraph (Section 12.04(a)) will apply except that all costs, including without limitation liability costs will be determined in accordance with the provisions of ARTICLE 7.

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

Section 12.05. 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) CONRAIL will be excused from any nonfinancial 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 12.06. 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:

**CONRAIL: Consolidated Rail Corporation**  
**Attn. : Senior Vice President, Operations**  
**1740 Six Penn Center Plaza**  
**Philadelphia, PA 19103-2959**

Copy: General Manager-Contracts  
801 - 1528 Walnut Street  
Philadelphia, PA 19102-3693

Copy: General Manager,  
Northeastern Region,  
R.D. 2, Box 145  
Selkirk, NY 12158-9618

MBTA: Massachusetts Bay Transportation  
Authority

Attn.: General Manager  
10 Park Plaza  
Boston, MA 02116

Copy: Director of Railroad Operations  
10 Park Plaza  
Boston, MA 02116

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



Section 12.07. No Third Party Rights

This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto 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 12.08. Headings

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

Section 12.09. 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 extinguish CONRAIL's Transportation Easement retained under the provisions of the January 17, 1973 Deed from the Trustees of The Penn Central Transportaton Company to MBTA as described in Section 1.02 of this Agreement.

Section 12.10. 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 12.11. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties, including, without limitation, the successors or assigns of a party's Rail Properties or any portion thereof. 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 12.12. 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. The Owner shall be under no 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 User provides to the Owner sufficient evidence that such approval has been obtained or is not required.

Section 12.13. Records

Both parties shall maintain appropriate operating and accounting records which record the locomotives and cars and the mileage of same moved by the User on Owner's tracks. Either 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 Interstate Commerce Commission or of the Federal Railroad Administration.

Section 12.14. No Representation and Waivers

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

Section 12.15. Non-Discrimination

The parties shall comply with the terms and conditions contained in EXHIBIT 11.

Section 12.16. 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, except damages arising out of personal injury or death which are subject to Section 12.17, which arise out of or may be connected in any way with use by either party of any of the Rail Properties prior to the Effective Date including, without limitation, with respect to charges for use or maintenance of such Properties, or with respect to losses to property or damages with respect to use or maintenance of the Properties by either party; provided that claims, disputes or causes of action arising under separate, formal force account agreements executed by the parties before the Effective Date and after January 1, 1980, shall not be subject to this provision.

Section 12.17. Past Liabilities

All outstanding claims for liability to third parties, including passengers and employees of the parties, which are not barred by applicable statutes of limitation, shall be discharged or otherwise disposed of in accordance with ARTICLE 7 notwithstanding that the claims arose before the Effective Date of this Agreement.

Section 12.18. 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 12.19. 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 12.20. 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 20th day of NOVEMBER, 1986.

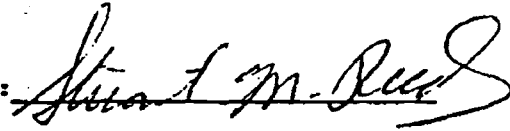
ATTEST:

  
\_\_\_\_\_  
ASSISTANT SECRETARY

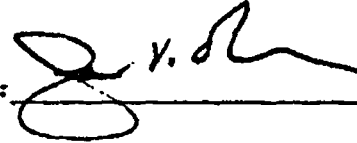
ATTEST:

APPROVAL AS TO FORM:  
  
\_\_\_\_\_  
General Counsel

CONSOLIDATED RAIL CORPORATION

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

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November 12, 1986

Then personally appeared the above named

James F. O'Leary as aforesaid and acknowledged  
the foregoing instrument to be the free act and deed of the  
Massachusetts Bay Transportation Authority.

Virginia L. Brauer  
Notary Public

My Commission Expires:

3/26/93

COMMONWEALTH OF PENNSYLVANIA

Philadelphia, ss.

*NOV 11 1986*, 1986

Then personally appeared the above named  
*STUART W. FORD* as aforesaid and acknowledged  
the foregoing instrument to be the free act and deed of the  
Consolidated Rail Corporation.

*[Signature]*  
Notary Public

My Commission Expires:

*5-11-89*

CHARLES D. ...  
Notary Public, Phila. Pa. Co.  
My Commission Expires Feb. 11, 1985



ADDENDUM 1

~~PROPERTY~~ PROPERTIES

Category A -- Jointly Used with CONRAIL

| Facility <sup>1</sup>               | Location                             | <del>MILEAGE</del> | Maintenance <sup>2</sup> |
|-------------------------------------|--------------------------------------|--------------------|--------------------------|
| <sup>5</sup> Boston Line (B&A M.L.) | 0.45 - West End of Cove Interlocking | 0.45 - 1.1         | Class III <sup>3</sup>   |
| Boston Line (B&A M.L.)              | Riverside - Framingham               | 10.83 - 21.38      | Class III <sup>3</sup>   |
| Franklin Branch                     | Readville - Franklin, MA             | 0.0 - 18.2         | Class III <sup>4</sup>   |
| Stoughton Branch                    | Canton - Stoughton                   | 0.0 - 4.7          | Class II                 |
| East Junction Ind. Track            | East Junction<br>MA/RI State Line    | 0.0 - 0.6          | Class II                 |
| Readville Yard                      | Sprague St. - Overhead Bridge        | 0.9 - 650' East    | Class III                |
| Dorchester Branch                   | Tower 1 to Readville                 | 0.0 - 9.11         | Class II                 |
| East Route Main Line                | Reading Jct. to Revere Interlocking  | 1.36 - 2.75        | Class II                 |

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH

<sup>4</sup> To be maintained so as to enable train speeds of not less than 30 MPH

<sup>5</sup> This segment is owned by the Mass. Turnpike Authority (MTA), in accordance with deed between New York Central (NYC) (a predecessor of Conrail), dated December 27, 1962, which grants NYC (Conrail) a permanent operating easement.

ADDENDUM 1

MBTA RAIL PROPERTIES

Category B -- Exclusively Used by CONRAIL

| Facility <sup>1</sup>                                 | Location                              | Milepost   | Maintenance <sup>2</sup> |
|---|---------------------------------------|------------|--------------------------|
| Millis Ind. Track<br>(Formerly Clicquot<br>Secondary) | Medfield - Clicquot                   | 0.0 - 3.2  | Class I                  |
| Dedham Running Track                                  | Readville - Dedham                    | 0.0 - 2.7  | Class I                  |
| Middleboro Branch                                     | Braintree - Campello                  | 0.0 - 11.4 | Class II                 |
| Neponset Running Track<br>(Formerly Milton Secondary) | Milton-Switch Neponset                | 0.1 - 3.9  | Class I                  |
| Plymouth Running Track                                | South Braintree/Plymouth              | 1.2 - 1.7  | Class II                 |
| East Junction Ind. Track                              | East Junction<br>MA/RI State Line     | 0.6 - 3.7  | Class I                  |
| East Boston Branch                                    | Revere Interlocking to<br>East Boston | 0.0 - 1.85 | Class I                  |

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

ADDENDUM 2

CONRAIL RAIL PROPERTIES

| Facility <sup>1</sup>    | Location   | Milepost     | Maintenance <sup>2</sup> |
|--------------------------|--|--------------|--------------------------|
| Boston Line (B&A M.L.)   | Cove Control Point -<br>Riverside, MA  | 1.1 - 10.83  | Class III <sup>3</sup>   |
| Boston Line (B&A M.L.)   | Framingham, MA   | 21.38 - 22.4 | Class III                |
| Beacon Park Yard         | Track as designated by the<br>Conrail employee in charge<br>of Beacon Park Yard <sup>6</sup> | 3.1 - 4.8    | Class II                 |
| Holliston Ind. Track     | Holliston Wye-East & West<br>Leg - Framingham  | 21.2         | Class I <sup>4</sup>     |
| Framingham Yard          | 1500' of track   | Nevins Yard  | Class I <sup>4</sup>     |
| Grand Jct. Running Track | Allston - Somerville, MA   | 0.0 - 2.7    | Class II <sup>5</sup>    |
| Franklin Branch          | Franklin, MA   | 18.2 - 18.8  | Class I <sup>4</sup>     |

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH.

<sup>4</sup> To be maintained so as to enable train speeds of not less than 15 MPH.

<sup>5</sup> To be maintained by CONRAIL to the standard indicated, provided that any additional cost for highway crossing protection circuits required to increase speed above 10 MPH and requested by MBTA will be assumed by MBTA.

<sup>6</sup> Sufficient headroom to allow MBTA equipment to access entry switch to Grand Jct. running track from the Boston Line.

DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959, ("CONRAIL"), in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) paid, releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended, whose address is Ten Park Plaza, Boston, Massachusetts 02116, all its right, title and interest of in and to the following described premises:

BEING a part of the premises which the Trustees of the Property of the \_\_\_\_\_, Debtor, by Conveyance Document No. \_\_\_\_\_, dated March 30, 1976, and recorded in \_\_\_\_\_ in Book \_\_\_\_\_ at page \_\_\_\_\_, granted and conveyed unto CONRAIL.

SUBJECT, however, to (1) any easements or agreements of record or otherwise affecting the land hereby conveyed; (2) any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same; and (3) the state of facts disclosed by survey made by \_\_\_\_\_, dated \_\_\_\_\_.

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 1  
(2 of 3)

IN WITNESS WHEREOF, the said CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be executed in its name and on its behalf of John F. Jaeger, its Assistant Vice President-Real Estate, thereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

CONSOLIDATED RAIL CORPORATION  
By:

\_\_\_\_\_  
John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

\_\_\_\_\_  
Assistant Secretary

EXHIBIT 1  
(3 of 3)

COMMONWEALTH OF PENNSYLVANIA) : ss Phila., PA \_\_\_\_\_, 1986  
COUNTY OF PHILADELPHIA )

Then personally appeared the above-named John F. Jaeger and acknowledged the foregoing instrument to be the free act and deed of Consolidated Rail Corporation, before me.

---

Notary Public

RELEASE DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959, releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended, whose address is Ten Park Plaza, Boston, Massachusetts 02116, ("MBTA"), in consideration of an Agreement entered into with the MBTA, dated \_\_\_\_\_, including the agreement by MBTA pursuant to Section 5.01(e) thereof to construct the South Station WYE connector), all its right, title, and interest in, and right to use and maintain, that certain real property located in the County of Suffolk within the South Station Terminal area and the approaches thereto between Mileposts 0.45 and 0.00 including, without limitation, any rights which CONRAIL may have under an easement granted by the Boston Redevelopment Authority to the Boston Terminal Corporation, dated July 1, 1965, whether by way of an assignment or by operation of the Regional Rail Reorganization Act of 1983, as amended, (45 USC Section 701 et seq). Such real property shall include all running, side, switching, yard, and interchange tracks and all signals, steam and water lines, electric power vaults and lines, telephones, and similar facilities. As part of this release of all interests in real property, CONRAIL hereby releases any and all rights it may have to the use of said premises or the operation of the facilities related thereto by virtue of any license or

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 2

(2 of 3)

~~contract with MBTA~~ or with any other present or previous owner or operator of said premises and related facilities.

The above release is not intended to include the release of any rights CONRAIL may have to the continued use of said premises under Section 3.01(d) of the Agreement between the Parties, dated \_\_\_\_\_, and referred to above.

IN WITNESS WHEREOF, CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be executed in its name and on behalf by John F. Jaeger, its Assistant Vice President-Real Estate, thereto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

CONSOLIDATED RAIL CORPORATION  
By:

\_\_\_\_\_  
John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

\_\_\_\_\_  
Assistant Secretary



EXHIBIT 2  
(3 of 3)

COMMONWEALTH OF PENNSYLVANIA)  
COUNTY OF PHILADELPHIA : ss Phila., PA \_\_\_\_\_, 1986

Then personally appeared the above-named John F. Jaeger  
and acknowledged the foregoing instrument to be the free  
act and deed of Consolidated Rail Corporation, before me.

\_\_\_\_\_  
Notary Public

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 I 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.

- (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 ..... 185.00 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)

## 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).

SPECIFICATIONS FOR CERTAIN IMPROVEMENTS  
BY CONRAIL ON BOSTON LINE

(A) CONRAIL will install Continuous Welded Rail (CWR) on both main line tracks or single main line track where CWR not presently existing, between milepost 21.38 Framingham and the beginning of MBTA installed CWR at Back Bay, Boston, in accordance with the following:

(1) Rail will be 119# or heavier section, new or "fit" meeting AREA Class I "Recommended Rail Grading Classification" specifications.

(2) Rail strings will be joined by field welding or epoxy glued insulated joints.

(3) Tie plates will be canted and at least 7-1/2" x 13".

(4) Turnouts will be replaced when necessary by physical condition, and then by a minimum of 127#, wherever the rail is replaced with CWR. Turnouts will be of equal or heavier rail section than the adjoining CWR and stockrails will be joined to CWR with field welds. Switch points will be the "Sampson" type on the "through side" of the wayside turnouts and both sides of crossovers.

CONRAIL/MBTA

Trackage Rights Agreement, Effective July 1, 1985.

EXHIBIT 4

(2 of 2)

(5) In addition to the above, CONRAIL will make such improvements in accordance with the "Manual for Construction and Maintenance of Track", CONRAIL publication MW-4, dated March 1, 1977.

(B) CONRAIL will install Traffic Control System (TCS) on both main line tracks or single main line track, where not presently existing, between milepost 21.38 Framingham and milepost 0.45 Boston.

(1) TCS new installations will be controlled from same dispatcher location as existing, unless Division headquarters is changed and then the location would be that of new Division headquarters.

(2) Signal aspects will be the same and signal equipment will be similar and compatible with the Commonwealth of Massachusetts funded TCS installed on track 2 in 1981.

SPECIFICATIONS FOR IMPROVEMENTS PERMITTING CERTAIN  
OPERATING SPEEDS ALONG BOSTON LINE

(A) Except as provided in Paragraph B, below, CONRAIL will make improvements between Milepost 4.5 in Allston and 21.38 in Framingham such that curves will be elevated for not less than 60 MPH operation, in accordance with the following:

(1) Design underbalance shall not exceed 1-1/2" Eu. without MBTA approval. Such approval will not be unreasonable withheld.

(2) Spiral lengths and runoffs will be in accordance with AREA Standard Practice recommendations or approved by the MBTA. Such approval will not be unreasonably withheld.

(B) The 2°59' curve between Milepost 10 and 11 will be elevated for 55 MPH operation at 1-1/2" Eu.

(C) Between Milepost 4.0 in Allston and Back Bay Station, CONRAIL will improve and maintain as necessary so that operating speeds will be not less than those in effect per the CONRAIL Employee Timetable, effective December 1, 1984.

CONRAIL/MBTA

Trackage Rights Agreement, Effective July 1, 1985.



SPECIFICATIONS FOR PEDESTRIAN BRIDGES AT CERTAIN  
LOCATIONS ON BOSTON LINE

Pedestrian Bridges will be installed at Wellesley Farms, Wellesley Hills and West Natick, in accordance with the following:

- (1) Bridges furnished by Conrail will be used, but will be suitable for Pedestrian use.
- (2) Will be installed in conformance with applicable laws provided that MBTA shall indemnify and hold harmless Conrail for any liability, claims, expense or cost arising out of the failure of such bridge as installed to meet the requirements of law with respect to access by handicapped persons.
- (3) Pedestrian bridges, when installed, will be considered property of MBTA for purposes of maintenance and liability.
- (4) Conrail will furnish and install Pedestrian Bridges complete at Wellesley Hills and Wellesley Farms Stations at their sole cost and expense, and will notify MBTA in writing immediately upon completion of such installation.

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 6

(2 of 2)

- (5) MBTA will furnish the Pedestrian Bridge at West Natick Station, complete, at its sole cost and expense. Conrail will furnish foundations and piers and install the West Natick Pedestrian Bridge at its sole cost and expense.

EASEMENT AND RIGHT OF FIRST REFUSAL

DORCHESTER BRANCH

Massachusetts Bay Transportation Authority, a body politic and corporate created by, and acting pursuant to, St. 1964, c. 563, as amended ("MBTA"), grants to Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, established pursuant to Title III of the Regional Rail Reorganization Act of 1973, as amended ("CONRAIL"), in consideration of the exchange of an easement and right of first refusal from CONRAIL to MBTA in and to the land commonly known as the Grand Junction Secondary line located in the Counties of Suffolk and Middlesex, the perpetual, non-exclusive easement to use for freight rail service purposes (including maintenance and construction as well as operations) the following described premises.

The land of the line of railroad known as the Dorchester Branch located in Boston, County of Suffolk and in Dedham, County of Norfolk, between Mileposts 0.0 and 9.5 as shown on the Valuation Map recorded in Suffolk Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, together with all running, interchange, switching, and side tracks (except privately owned industrial side tracks), and all signals, utility lines, drains, and other facilities used in connection with

CONRAIL/MBTA

Trackage Rights Agreement

EXHIBIT 7

(2 of 7)

the operation, maintenance and construction of the  
Dorchester Branch (hereafter called "the tracks and related  
facilities"), being the same premises described in . . .

MBTA expressly reserves its rights as Owner of the  
premises, including, without limitation, the right to use  
the premises (including for purposes of maintenance and  
construction as well as operations) (i) in common with  
CONRAIL's freight rail easement hereunder for railroad  
purposes and (ii) exclusively for other transportation or  
communications purposes.

Except as may otherwise be agreed by the parties in  
writing, in which case said Agreement, if recorded, shall  
govern during the term thereof to the extent inconsistent  
with this easement, the following provisions shall govern  
the exercise of the parties' rights and obligations hereun-  
der:

(1) MBTA shall have the right to perform any or all of  
the following activities with respect to the use of the  
premises for rail purposes: (a) dispatching of trains and  
clearing of wrecks; and (b) maintenance, repair, reconstruc-  
tion, alteration, and improvement of any kind to the premis-  
es necessary for rail operations; provided, that should it  
fail to do so, CONRAIL may, in accordance with such plans  
as may be approved in advance by MBTA, which approval shall  
not be unreasonably withheld, perform such activities.

(2) The scheduling and movement of passenger trains  
shall take precedence over all other train scheduling and  
movement.

EXHIBIT 7

(3 of 7)

(3) MBTA agrees not to convey the fee interest or a leasehold interest recordable under Massachusetts law or any interest substantially equivalent to same, in the premises or any portion thereof, to anyone other than CONRAIL without first offering in writing to convey the same to CONRAIL and any such conveyance in contravention of this provision shall be void. Such offer to CONRAIL shall be for terms and conditions which are not less favorable than those proposed by MBTA for conveyance to a party other than CONRAIL. The terms of such offer to CONRAIL shall provide that a closing shall take place one hundred twenty (120) days from the date of the offer with the place of closing at the Suffolk Registry of Deeds. Conveyance shall be effectuated by a good and sufficient quitclaim deed or other legally sufficient instrument as appropriate. CONRAIL shall have up to the time of closing as set forth in the offer to accept or reject the offer made by MBTA. If the terms of any offer made to anyone other than CONRAIL materially change, CONRAIL shall be given a reasonable opportunity after notice in writing of such change to accept or reject the changed offer. If CONRAIL accepts the changed offer, the original offer to CONRAIL shall be amended to reflect the terms of the changed offer, and the closing time shall be extended a reasonable period by notice in writing sent by MBTA to CONRAIL.

(4) All uses of the premises reserved to MBTA hereunder shall be performed in a manner which does not interfere unreasonably with the easement granted to CONRAIL; and similarly all uses of the premises by CONRAIL under this easement shall be performed in a manner which does not interfere unreasonably with the rights reserved to MBTA hereunder.

EXHIBIT 7

(4 of 7)

Without limitation of MBTA's rights as owners of the premises, nothing in this easement shall be construed to grant to CONRAIL a right to approve actions by MBTA affecting the premises, including, without limitation, alterations and improvements thereto, relocations of tracks or other facilities, installation of privately owned industrial sidetracks, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that MBTA shall keep CONRAIL reasonably informed of those actions affecting CONRAIL's use contemplated hereunder and that such actions shall not unreasonably interfere with the easement granted to CONRAIL.

Notwithstanding the termination of commuter rail service by MBTA on the premises, it is hereby confirmed that this easement shall continue for rail freight service and any sale or other transfer of the premises by MBTA shall be made subject to such easement except as provided below.

CONRAIL may surrender the easement as to any portion or all of the premises at any time by delivering to MBTA a release in recordable form describing the premises or portion thereof being surrendered.

In the event CONRAIL ceases to use the premises or obtains a certificate of abandonment for all rail freight service on the premises from the Interstate Commerce Commission, this easement, and right of first refusal, including all rights by CONRAIL to use the premises, shall terminate. In such event, CONRAIL shall at the written request of MBTA deliver a release in recordable form evidencing the termination of this easement. Failure by

CONRAIL to provide such a release shall not in any way affect the termination of the easement as provided above. It is understood that for purposes of this paragraph, cessation of use shall not be deemed to include a short-term interruption in usage occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster, act of God, or other event which is beyond CONRAIL's reasonable control.

The easement is granted subject to, and with benefit of, existing easements and restrictions of record. Any interest in tracks, signals, utility lines, drains, and other facilities as referred to above is granted "as is", and MBTA makes no warranty, express or implied, with respect thereto, as to merchantability, fitness or otherwise.

All of the terms of this grant of easement shall bind and inure to the benefit of MBTA and CONRAIL and their respective legal representatives, successors, and assigns forever.

EXHIBIT 7

(6 of 7)

Executed as a sealed instrument this \_\_\_\_ day of  
\_\_\_\_, 198\_.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. \_\_\_\_\_, 198\_

Then personally appeared the above named \_\_\_\_\_,  
\_\_\_\_\_ as aforesaid, and acknowledged the foregoing  
to be the free act and deed of the Massachusetts Bay Trans-  
portation Authority.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EASEMENT AND RIGHT OF FIRST REFUSAL  
GRAND JUNCTION SECONDARY TRACK

Consolidated Rail Corporation, a corporation of the Commonwealth of Pennsylvania, established pursuant to Title III of the Regional Rail Reorganization Act of 1973, as amended ("CONRAIL"), grants to Massachusetts Bay Transportation Authority, a body politic and corporate created by, and acting pursuant to, St. 1964, c. 563, as amended ("MBTA"), in consideration of the exchange of an easement and right of first refusal, from MBTA to CONRAIL in and to the land commonly known as the Dorchester Branch line located in the Counties of Suffolk and Norfolk, the perpetual, non-exclusive easement to use for passenger rail service purposes (including maintenance and construction as well as operations) the following described premises.

The land of the line of railroad known as the Grand Junction Secondary located in Boston, County of Suffolk and in Cambridge and Somerville, both within County of Middlesex, between Mileposts 0.0 and 2.7 as shown on the Valuation Map recorded in Suffolk Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, together with all running, interchange, switching, and side tracks (except privately owned industrial side tracks), and all signals, utility lines, drains, and other facilities used in connection with the operation, maintenance and construction of the Grand Junction Secondary (hereafter called "the tracks and related facilities"), being the same premises described in . . .

CONRAIL/MBTA

Trackage Rights Agreement

CONRAIL expressly reserves its rights as Owner of the premises, including, without limitation, the right to use the premises (including for purposes of maintenance and construction as well as operations) (i) in common with MBTA's passenger rail easement hereunder for railroad purposes and (ii) exclusively for other transportation and communication purposes.

Except as may otherwise be agreed by the parties in writing, in which case said agreement, if recorded, shall govern during the term thereof to the extent inconsistent with this easement, the following provisions shall govern the exercise of the parties' rights and obligations hereunder:

(1) CONRAIL shall have the right to perform any or all of the following activities with respect to the use of the premises for rail purposes: (a) dispatching of trains and clearing of wrecks; and (b) maintenance, repair, reconstruction, alteration, and improvement of any kind to the premises necessary for rail operations; provided, that should it fail to do so, MBTA may, in accordance with such plans as may be approved in advance by CONRAIL, which approval shall not be unreasonably withheld, perform such activities.

(2) The scheduling and movement of passenger trains shall take precedence over all other train scheduling and movements.

(3) CONRAIL agrees not to convey the fee interest or a leasehold interest recordable under Massachusetts law, or any interest substantially equivalent to same, in the premises or any portion thereof, to anyone other than MBTA

without first offering in writing to convey the same to MBTA and any such conveyance in contravention of this provision shall be void. Such offer to MBTA shall be for terms and conditions which are not less favorable than those proposed by CONRAIL for conveyance to a party other than MBTA. The terms of such offer to MBTA shall provide that a closing shall take place one hundred twenty (120) days from the date of the offer with the place of closing at the Suffolk Registry of Deeds. Conveyance shall be effectuated by a good and sufficient quitclaim deed or other legally sufficient instrument as appropriate. MBTA shall have up to the time of closing as set forth in the offer to accept or reject the offer made by CONRAIL. If the terms of any offer made to anyone other than MBTA materially change, MBTA shall be given a reasonable opportunity after notice in writing of such change to accept or reject the changed offer. If MBTA accepts the changed offer, the original offer to MBTA shall be amended to reflect the terms of the changed offer, and the closing time shall be extended a reasonable period by notice in writing sent by CONRAIL to MBTA.

(4) All uses of the premises reserved to CONRAIL hereunder shall be performed in a manner which do not interfere unreasonably with the easement granted to MBTA; and similarly all uses of the premises by MBTA under this easement shall be performed in a manner which do not interfere unreasonably with the rights reserved to CONRAIL hereunder.

Without limitation of CONRAIL's rights as owners of the premises, nothing in this easement shall be construed to grant to MBTA a right to approve actions by CONRAIL affecting the premises, including, without limitation, altera-

EXHIBIT 8

(4 of 7)

tions and improvements thereto, relocations of track or other facilities, installation of privately owned industrial sidetracks, use of air or subsurface rights for development or other purposes, and granting of easements for utilities and crossings, provided that CONRAIL shall keep MBTA reasonably informed of those actions affecting MBTA's use contemplated hereunder and that such actions shall not unreasonably interfere with the easement granted to MBTA.

Notwithstanding the termination of freight rail service by CONRAIL on the premises, it is hereby confirmed that this easement shall continue for passenger rail service and any sale or other transfer of the premises by CONRAIL shall be made subject to such easement except as provided below.

MBTA may surrender the easement as to any portion or all of the premises at any time by delivering to CONRAIL a release in recordable form describing the premises or portion thereof being surrendered.

In the event MBTA ceases to use the premises, this easement and right of first refusal, including all rights by MBTA to use the premises, shall terminate. In such event, MBTA shall at the written request of CONRAIL deliver a release in recordable form evidencing the termination of this easement. Failure by MBTA to provide such a release shall not in any way affect the termination of the easement as provided above. It is understood that for purposes of this paragraph, cessation of use shall not be deemed to include short-term interruption of usage occasioned by the occurrence of unusually severe weather not normally experienced in Massachusetts, explosion, fire, disaster,

EXHIBIT 8

(5 of 7)

act of God, or other event which is beyond the MBTA's reasonable control.

The easement is granted subject to, and with benefit of, existing easements and restrictions of record. Any interest in tracks, yards, signals, utility lines, drains, and other facilities as referred to above is granted "as is", and CONRAIL makes no warranty, express or implied, with respect thereto, as to merchantability, fitness or otherwise.

All of the terms of this grant of easement shall bind and inure to the benefit of MBTA and CONRAIL and their respective legal representative, successors, and assigns forever.

EXHIBIT 8

(6 of 7)

Executed as a sealed instrument this \_\_\_\_ day of  
\_\_\_\_\_, 198\_.

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. \_\_\_\_\_, 198\_

Then personally appeared the above named \_\_\_\_\_,  
\_\_\_\_\_ as aforesaid, and acknowledged the foregoing to  
be the free act and deed of the Consolidated Rail Corpora-  
tion.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



DEED

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959 ("CONRAIL"), releases to Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, whose address is Ten Park Plaza, Boston, Massachusetts 02116 ("MBTA"), in consideration of an Agreement entered into with the MBTA, dated \_\_\_\_\_, all its right, title, and interest in, and right to use and maintain, that certain real property located in the County of Bristol, and being described as follows:

BEING a part of the premises which \_\_\_\_\_, by Conveyance, dated \_\_\_\_\_, and recorded in \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_, granted and conveyed unto CONRAIL.

Such real property shall include all running, side, switching, yard, and interchange tracks and all signals, steam and water lines, electric power vaults and lines, telephones, and similar facilities necessary to the operation of the Mansfield passenger station, including, without limitation, the platform and parking lot.

IN WITNESS WHEREOF, CONRAIL has caused its corporate seal to be hereunto affixed and these presents to be

CONRAIL/MBTA

EXHIBIT 9

(2 of 2)

executed in its name and on its behalf by John F. Jaeger,  
its Assistant Vice President-Real Estate, thereto duly  
authorized this day of A.D. 1986.

SIGNED, SEALED & DELIVERED  
in the presence of us:

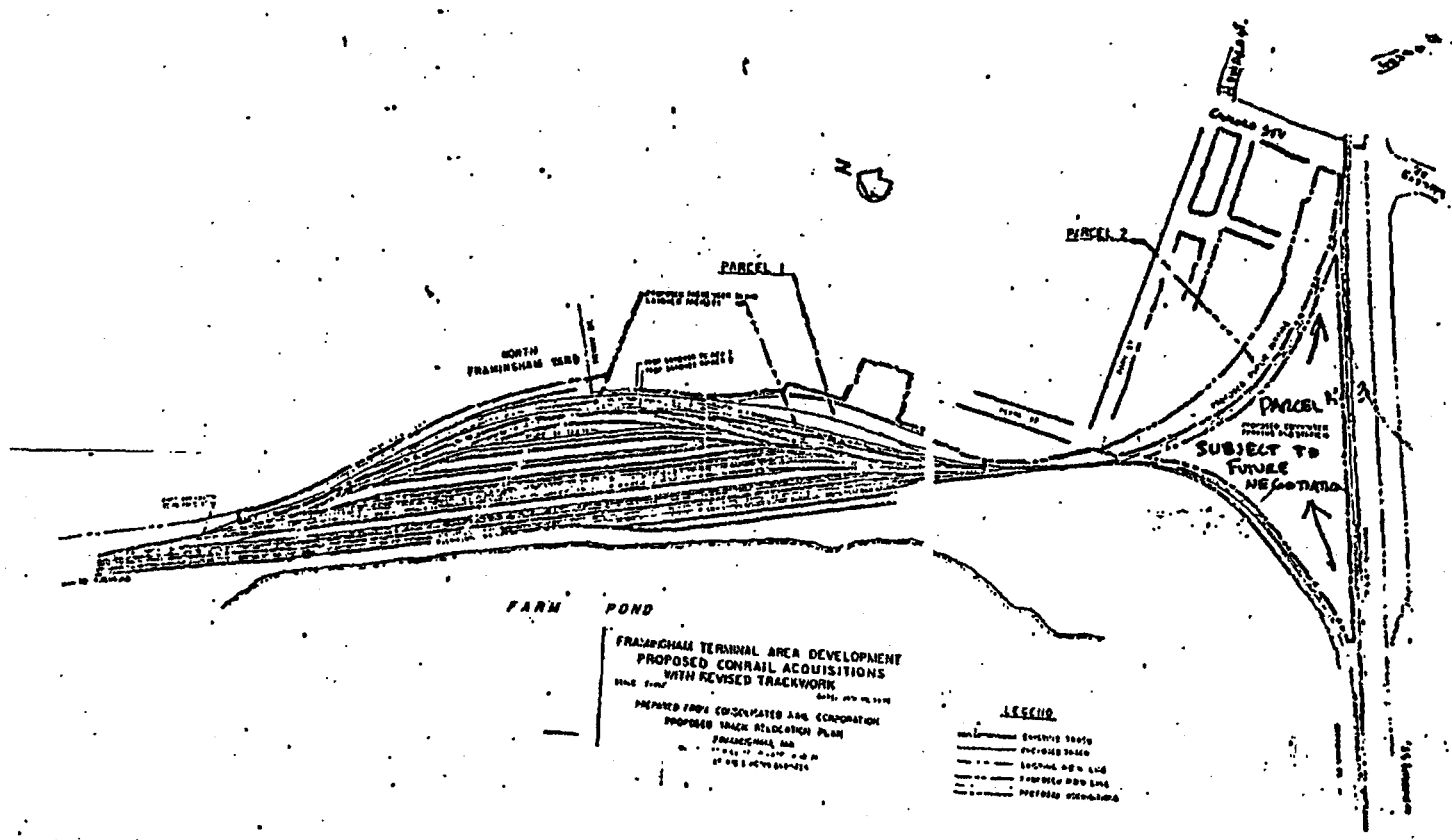
CONSOLIDATED RAIL CORPORATION

By:

\_\_\_\_\_  
John F. Jaeger, Assistant  
Vice President-Real Estate

Attest:

\_\_\_\_\_  
Assistant Secretary



**FARM POND**

**FRAMINGHAM TERMINAL AREA DEVELOPMENT  
PROPOSED CONRAIL ACQUISITIONS  
WITH REVISED TRACKWORK**  
DATE: 6/11/86

**PREPARED BY: CONRAIL AND CORPORATION  
PROPOSED TRACK RELOCATION PLAN**  
FRAMINGHAM, MA  
STATION ST. - 1.5 MI. N. OF  
FRAMINGHAM STATION

**LEGEND**

- EXISTING TRACKS
- PROPOSED TRACKS
- EXISTING AND PROPOSED TRACKS
- FUTURE TRACKS
- PROPOSED ACQUISITIONS

CONRAIL/MBTA  
TRACKS RIGHTS ACQUISITION

**DRAFT**  
JUN 11 1986

DATE \_\_\_\_\_ FOR DISCUSSION ONLY

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.

**CONRAIL** 

**E.A.-1**

**SCHEDULE OF RATES AND SURCHARGES  
COVERING BILLING RAILROADS FOR  
USE OF FACILITIES, SERVICES AND  
EQUIPMENT**

**EFFECTIVE JULY 1, 1986**

**OFFICE OF ASSISTANT CONTROLLER  
EXPENDITURE ACCOUNTING  
PHILADELPHIA, PA**

TABLE OF CONTENTS

| <u>SECTION</u> | <u>DESCRIPTION</u>   | <u>PAGE</u> |
|----------------|--|-------------|
| I              | LABOR  | 1           |
| II             | MATERIAL   | 4           |
| III            | TREATED TIES AND LUMBER                                    | 5           |
| IV             | REPAIRS AT SHOPS   | 5           |
| V              | FUEL FOR LOCOMOTIVES                                       | 6           |
| VI             | GENERAL  | 7           |
| VII            | WORK TRAIN OR WRECK TRAIN                                  | 7           |
| VIII           | DIESEL LOCOMOTIVES   | 8           |
| IX             | TRACKAGE OF TRAIN UNDER OWN POWER<br>OVER NON-JOINT TRACKS | 9           |
| X              | TRACKAGE OF EQUIPMENT UNITS IN<br>REVENUE TRAINS           | 10          |
| XI             | MEALS FURNISHED FROM COMMISSARY<br>CARS                    | 10          |
| XII            | EQUIPMENT  | 10          |

**SECTION - I**

**LABOR SURCHARGES**

- A. To all items of labor, except those chargeable to "Administration Functions," add the following percentages for supervision, administration (includes accounting, legal, management information, personnel, etc.) and use of tools, to amounts properly chargeable under Interstate Commerce Commission Classification.
1. To "Maintenance of Way & Structures" accounts.....31.28%
  2. To "Maintenance of Equipment" accounts (see Section IV, where applicable).....37.67%
  3. To "Transportation Rail-Line" accounts.....18.82%
  4. To "Non-Contract Labor".....3.64%
- B. When necessary to sub-divide the surcharges in Paragraph A among the labor surcharges, the following should govern:

|                       | <u>Supervision</u> | <u>Administration</u> | <u>Use of Tools</u> |
|-----------------------|--------------------|-----------------------|---------------------|
| 1. M. W. & S.         | 24.03%             | 3.64%                 | 3.61%               |
| 2. M. of E.           | 30.42%             | 3.64%                 | 3.61%               |
| 3. Transp. Rail Line  | 15.18%             | 3.64%                 | -                   |
| 4. Non-Contract Labor | -                  | 3.64%                 | -                   |

**Non-Contract Labor Charges:**

a. Maintenance of Way and Structures

Charges will be made for salary costs plus the administrative additive for services of Engineering Department employees such as Design Engineers, Draftsmen, and survey parties or any other officers performing service in the office or field, solely in connection with a particular project or facility.

b. Maintenance of Equipment

Charges will be made for salary costs plus the administrative additive for services of Maintenance of Equipment employees such as Mechanical Superintendents, Shop Managers, General Foremen, and Foremen and/or similar officers or supervisors performing service solely in connection with a particular project or facility.



**c. Transportation**

Charges will be made for salary costs plus the administrative additive for services of Transportation Department employees such as Managers, Assistant Managers, Superintendents, Assistant Superintendents, Trainmasters, Assistant Trainmasters, Road Foremen of Engines, Assistant Road Foremen of Engines and/or similar officers and supervisors performing service solely in connection with a particular project or facility.

- C.** A charge of \$10.00 per month, without surcharge, shall be made to Joint Account, for each interlocking plant, to cover entire expense of inspections regularly made by traveling inspectors or attaches of the signal engineer's office, whose time is not a direct charge to the maintenance of the plant. Cost of repairs shall be included in Joint Account.

In Addition to the arbitrary, cost of inspections and tests shall be included in Joint Account when the work is performed by Signalmen, Maintainers, Testmen, Inspectors (whether from Division Forces or General Office), Maintenance Foremen or other employees below the rank of Signal Supervisor.

- D.** The appropriate percentages specified in Paragraph E, Composite Percentages, are applicable to gross wages to effect recovery of out-of-pocket costs for the following items of expense:

1. Vacation Allowance
2. Paid Holidays
3. Railroad Retirement and Unemployment Insurance Taxes
4. Supplemental Pensions
5. Health and Welfare Benefits

**Note 1** - The percentages for Railroad Retirement and Unemployment Insurance Taxes and Supplemental Pensions are applied to gross wages, vacation and paid holiday allowances. All other percentages applied to gross wages only.

**Note 2** - The percentages representing Vacation allowance and/or Paid Holidays will not be added when bills include actual Vacation and/or Holiday payments.

**E. COMPOSITE PERCENTAGES:**

When labor surcharges covered by this schedule are applicable, the following composite percentages will be used when appropriate. In other cases, the individual percentages will be applied:

- a.** To direct MW&S labor subject to the following percentages:  
Actual Labor .....\$100.00

|   |              |
|---|--------------|
| 1. Vacations 7.69% of \$100.00.....                           | \$ 7.69      |
| 2. Paid Holidays 3.94% of \$100.00.....                       | 3.94         |
| 3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63           | 26.82        |
| 4. Supplemental Pensions 1.03% of \$111.63                    | 1.15         |
| 5. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00.....    | 10.35        |
| 6. Supervision, Admin. & Use of Tools 31.28% of \$100.00..... | 31.28        |
|   | <u>81.23</u> |

The composite percentage is 81.23%

b. To direct MofE labor subject to the following percentages:

|   |              |
|---|--------------|
| Actual Labor.....   | \$100.00     |
| 1. Vacations 7.69% of \$100.00.....                           | \$ 7.69      |
| 2. Paid Holidays 3.94% of \$100.00.....                       | 3.94         |
| 3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63           | 26.82        |
| 4. Supplemental Pensions 1.03% of \$111.63.....               | 1.15         |
| 5. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00.....    | 10.35        |
| 6. Supervision, Admin. & Use of Tools 37.67% of \$100.00..... | 37.67        |
|   | <u>87.62</u> |

The composite percentage is 87.62%

c. To direct T-RL labor subject to the following percentages (Including holidays):

|   |              |
|---|--------------|
| Actual Labor.....                                   | \$100.00     |
| 1. Vacations 7.69% of \$100.00.....                 | \$ 7.69      |
| 2. Paid Holidays 3.94% of \$100.00.....             | 3.94         |
| 3. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$111.63 | 26.82        |
| 4. Supplemental Pensions 1.03% of \$111.63.....     | 1.15         |
| 5. Health & Welf. Grp. Life Ins. 10.35% of \$100.00 | 10.35        |
| 6. Supervision & Administration 18.82% of \$100.00  | 18.82        |
|   | <u>68.77</u> |

The composite percentage is 68.77%

d. To direct T-RL labor subject to the following percentages (Excluding holidays):

|  |              |
|--|--------------|
| Actual Labor.....  | \$100.00     |
| 1. Vacations 7.69% of \$100.00.....                        | \$ 7.69      |
| 2. R.R.Ret. & Unempl. Ins. Taxes 24.03% of \$107.69.....   | 25.88        |
| 3. Supplemental Pensions 1.03% of \$107.69.....            | 1.11         |
| 4. Health & Welf. & Grp. Life Ins. 10.35% of \$100.00..... | 10.35        |
| 5. Supervision & Administration 18.82% of \$100.00.....    | 18.82        |
|  | <u>63.85</u> |

The composite percentage is 63.85%

Note: Add 1.14% to direct MWS labor and 1.30% to direct MofE labor to cover company paid supplemental sickness insurance.

**SECTION - II**

**MATERIAL**

- A. To the invoice price of all items of material, fuel and supplies used except treated ties, treated lumber and fuel for locomotives, add 15% to cover supervision, store expenses, inspection, accounting, purchasing, handling and transportation to point of use or point from which handled by work train.
- B. In all cases of salvage credit allowed in connection with maintenance of operation, there shall first be deducted 15% to cover expenses in connection with accounting, handling, and transportation of such salvaged material. The deduction of 15% covers the handling of the material from the point where it is released to the storage point, however, handling incurred subsequent to the storage of the material at the concentration point is not covered, and is not a proper charge to Joint Account. The cost of handling salvaged material on joint tracks or facilities, is a proper charge to Joint Account.
- C. When material used is hauled in excess of 350 miles, a further allowance of 5 cents per net ton mile for such excess mileage shall be included in addition to the 15% mentioned in Paragraph A; likewise, when material released is hauled in excess of 350 miles, a further allowance of 5 cents per net ton mile for such excess mileage shall be deducted in addition to the 15% provided in Paragraph B.
- D. A reduction of 5% from secondhand rail and 10% from scrap rail and scrap other track material (OTM) shall be made from pattern weight when applied or released from joint tracks. The scale weight of scrap released may be used.
- E. When a non-joint track breaks out of a joint track and unless in violation of contractual provisions, joint track shall be charged with 50% of the cost of the labor and material to repair or renew the turnout. The material considered as a part of the turnout is the frog, switch, guard rails, guard rail clamps, switch stand, switch lamps, switch ties and ballast and track fastenings. The cost of rail shall be charged 100% to the joint or non-joint segment of track as the case may be. The cost of labor shall be charged to the Joint Account on the same basis as material. Work train services shall be charged to the Joint Account on the same basis as labor.
- F. Separation of material as between track and signal shall be based on the accounts to which the material is charged under the I.C.C. Classifications, that is, material charged to Investment Accounts "Ties," and "Other Track Material," Maintenance Accounts "Ties," and "Other Track Material," shall be classed as track material and charged to the road to whose track structure it is applied. Signal and interlocker material, and material for highway protection when part of the

joint interlocking plant, charged to Investment Account "Signals and Interlockers" and Maintenance Account "Signals and Interlockers" shall be classed as signal and interlocker material and charged to the roads on basis provided in the contract. Labor charges shall be divided on the same basis as material charges.

=====

**SECTION - III**

**TREATED TIES AND LUMBER:**

Such elements of cost, as are not included in our book price of treated material shall be added thereto for billing purposes, and to this total shall then be added 15% to cover supervision, store expenses, inspection (except field inspection), purchasing, accounting and transportation over our line to point of use or point from which handled by work train, with a further allowance of 5 cents per net ton mile for the haul on ties and lumber to and from the treating plant over our line in excess of 350 miles.

=====

**SECTION - IV**

**REPAIRS AT SHOPS**

- A. When repair work is performed by our Mechanical Department in shops (including manufacturing shops), or enginehouses, where we account for overhead through shop expenses as defined by the I.C.C. and where the plant facilities are not jointly owned or included in the valuation on which the tenant pays rental, taxes, etc., apply surcharge of 100% in lieu of the 37.67% surcharge specified in Section I to direct labor to cover shop expenses, interest, repairs, depreciation, insurance and taxes on the plant, as well as all other overhead and indirect expense.
- B. The 100% surcharge does not apply to work performed by shop employees away from such shop points, or to work, other than repairs, done at enginehouses such as preparation, cleaning and similar work in connection with dispatchments, or to repairs of freight or passenger cars made under A.A.R. Rules, or to such work as car inspection, car cleaning, coupling and uncoupling of trains, etc. In these instances, shop expense is not a proper charge to Joint Account; the percentages provided in Sections I and II will apply.
- C. The 100% surcharge does not include any expense outside of the shops but is in lieu of percentage provided in Section I insofar as labor expended in the shops is concerned.

The billing carrier should be compensated for the handling and transportation of material released from a joint facility to the scrap dock or shop where repairs are made and also from shop where such material is repaired and again installed in a joint facility. To cover this expense, the provisions of Section II apply unless the parties involved agree otherwise. This provision is effective if accounting is done when material is released and returned to the joint facility. If no accounting is done and material is merely taken from the facility and sent to shop for repairs and returned, the addition of 15% is not applicable but transportation charges, either at tariff rates or rate per ton mile, should be assessed to represent the cost of transporting the material.

In the case of material manufactured in shops, we will be compensated for the handling and transportation of material from the shop to the point where used and we will, therefore, add 15% to the price of the material when charging Joint Account.

- D. This surcharge covers all costs in connection with injuries to, or death of employees whose wages are chargeable to shop, store or overhead expenses at the time accident occurs, but does not cover such costs when the wages of employees injured are chargeable directly to the work performed at the time accident occurs.

-----  
-----  
**SECTION - V**

**FUEL FOR LOCOMOTIVES:**

- A. There shall be added to the invoice price of fuel oil (including foreign line freight charges) 2.1 cents per gallon to cover the expense of purchasing, unloading, fueling, accounting and other undistributed items of expense, whether purchased from a local dealer or otherwise. There also shall be added home line freight charges at 5 cents per net ton mile, origin to destination. Fuel used for any purpose other than for propulsion shall be considered as supplies and billed under Section II.
- B. When our only haul is within a terminal (no switching charges having been collected from a road-haul carrier), we will include the amount of the local switching charge in Joint Account.
- C. The assessment of freight or switching, Paragraphs A and B, includes delivery to the site of the joint facility whether done by freight train, work train or switch engine; this precludes charging trackage over non-joint tracks.

-----  
-----  
**SECTION - VI**

**GENERAL:**

- A. A surcharge of 1% to cover supervision, accounting and inspection shall be added to all outside party invoices when additives or surcharges are not provided for elsewhere in this schedule.
  - B. Examples of items covered are invoices received covering contractor's services, utilities, postage, property taxes, personal expense payments, land purchase, rental of space, rental or lease of equipment and joint facility bills. This listing does not exclude items of a similar nature.
  - C. Liability claim settlements are specifically excluded from the application of the 1% surcharge. Settlements include all payments made in connection with the liability.
- -----

**SECTION - VII**

**WORK TRAIN OR WRECK TRAIN:**

Flat rate, including rental of one locomotive unit (all sizes and types), locomotive repairs, fuel and all supplies, engine and train or switch crew wages and supplies, all enginehouse expense, rental of a caboose and where applicable short crew allowances and productivity fund.

|                                    | <u>Rate Per Hour</u> |             |
|------------------------------------|----------------------|-------------|
|                                    | <u>Road</u>          | <u>Yard</u> |
| Diesel...3 person crew.....        | \$160.00             | \$163.25    |
| 4 person crew without fireman..... | 183.50               | 188.50      |
| 3 person crew short crew.....      | 170.00               | 173.25      |
| 5 person crew with fireman.....    | 206.75               | 212.00      |
| 4 person crew short crew.....      | 193.25               | 196.75      |

**Note:** Rate is to be applied from time engine crew reports for duty until released or assigned to other work, except that engine crew shall not include time allowances for incidental services, such as inspection, making out reports, etc. Rate is to be applied for each hour or fraction thereof.

When more than one locomotive unit is required, an additional charge of \$81.25 per hour or fraction thereof will be billed for each additional unit which covers locomotive rental, repairs, fuel, supplies, servicing locomotives and additional wages paid crews.

When train is used or loaned for less than the normal assigned tour of duty and equipment is not utilized in other service during the twenty-four hour period beginning with the time starting for work on a joint facility or loaned for service to a borrowing carrier, nor the crew utilized in other service during their normal assigned tour of duty, charge applicable rate for Diesel per hour or fraction thereof for the time train was used; also \$22.50 per hour as rental of equipment and \$26.25 per hour for each crew member in road service or \$27.25 per hour for each crew member in yard service, as wages of the crew for the remainder of the normal assigned tour of duty. When called but not used, charge actual wages, plus usual labor surcharges, but no rental.

Where work or wreck train performs both joint and non-joint work during its tour of duty, the running and delay time to and from work shall be apportioned on basis of time worked on joint and non-joint work. The charge for running and delay time during progress of work shall be assigned to the work. Time paid for but not worked shall be apportioned on the basis of joint and non-joint work.

-----  
 -----  
**SECTION - VIII**

**DIESEL LOCOMOTIVE RATES:**

| <u>Horsepower Category</u> | <u>Rental</u> | <u>Rate Per Hour</u>          |  | <u>Total</u> |
|----------------------------|---------------|-------------------------------|--|--------------|
|                            |               | <u>Repairs &amp; Supplies</u> |  |              |
| 999 and Under H.P.         | \$ 5.58       | \$ 24.40                      |  | \$ 29.98     |
| 1000 - 1499 H.P.           | 5.92          | 30.50                         |  | 36.42        |
| 1500 - 1749 H.P.           | 16.18         | 39.65                         |  | 55.83        |
| 1750 - 1999 H.P.           | 11.80         | 45.75                         |  | 57.55        |
| 2000 - 2499 H.P.           | 15.81         | 54.90                         |  | 70.71        |
| 2500 - 2999 H.P.           | 11.24         | 67.10                         |  | 78.34        |
| 3000 - 3599 H.P.           | 30.80         | 80.50                         |  | 111.30       |
| 3600 and Over H.P.         | 35.85         | 87.85                         |  | 123.70       |

- A. Crew wages will be billed on actual wages paid including overtime and constructive allowances plus the applicable surcharges.
- B. Repairs and Supplies - The rates consist of 31% Repairs, 60% Fuel and 9% Servicing.

**SECTION - IX**

**TRACKAGE OF TRAIN UNDER OWN POWER, OVER NON-JOINT TRACKS:**  
Per Mile \$31.67

**Note:** When movement of work or wreck train is made for the purpose of performing service in joint facility territory, charge trackage to Joint Account at the rate per train mile, or fraction thereof, from starting point (where "train" is made up or put away, usually the point from which or to which "train mileage" statistics are computed) to junction with joint track and return; no charge will be made if the distance is less than one mile and no trackage charge will be made for light engines. When work or wreck train performs both joint and non-joint work during its tour of duty, charge Joint Account with proportion of trackage over non-joint tracks (excluding any mileage on which running work such as snow plow or flanger service, weed burning, etc., is performed, in either the going or return trip) on basis of time worked on joint and non-joint work. The charge to Joint Account shall not exceed the amount chargeable for the round trip between regular headquarters (starting point) and joint facility computed on mileage basis. When a work or wreck train incidentally picks up or delivers material at a joint facility, along with other handling of material, no charge for trackage will be made to Joint Account.

When work or wreck equipment is used in joint maintenance or operation work, the locomotive, train or car mileage made on joint tracks shall be excluded from mileages for division of joint expenses.

When movement of work or wreck train is made for the purpose of performing service in joint facility territory, for which tenant companies are solely responsible, charge at the rate per train mile, or fraction thereof, from starting point to junction with joint track, and return. The locomotive, train or car mileage as may be appropriate, made by the work or wreck train on the joint tracks shall be added to the tenant company's mileage used in the regular division of expenses of maintenance and operation of the facility for the current month.



**SECTION - X**

TRACKAGE OF EQUIPMENT UNITS, IN REVENUE TRAINS....Per Mile \$1.11.

Note: When any unit of equipment, including work cars, is moved in revenue trains to or from the work site, charge at the rate herein specified, with a maximum of 250 miles for the haul in both directions, i.e., both to and from the work site. Where the haul is less than 50 miles, a minimum of 50 miles will be charged.

-----  
-----  
**SECTION - XI**

MEALS FURNISHED FROM COMMISSARY CARS.....Each Meal \$5.95

-----  
-----  
**SECTION - XII**

EQUIPMENT

|  | <u>PER DAY</u> |                        |
|--|----------------|------------------------|
|  | <u>Total</u>   | <u>Rep. &amp; Sup.</u> |
| 1. ADZERS:   |                |                        |
| A. Single Head, Self-Propelled.....                | \$ 59.00       | \$ 37.00               |
| B. Multiple Head, Self-Propelled.....              | 709.00         | 222.00                 |
| -----  |                |                        |
| 2. AIR COMPRESSORS:                                |                |                        |
| A. Non-Self-Propelled:                             |                |                        |
| 1. Less than 125 cu. ft.....                       | \$ 17.00       | \$ 10.00               |
| 2. From 125 cu. ft. to 200 cu. ft.<br>(incl.)..... | 45.00          | 28.00                  |
| 3. From 201 cu. ft. to 300 cu. ft.<br>(incl.)..... | 63.00          | 39.00                  |
| 4. From 301 cu. ft. to 500 cu. ft.<br>(incl.)..... | 58.00          | 48.00                  |
| 5. 501 cu. ft. and over.....                       | 106.00         | 69.00                  |

|  | <u>PER DAY</u>  |                        |
|--|-----------------|------------------------|
|  | <u>Total</u>    | <u>Rep. &amp; Sup.</u> |
| <b>B. Self-Propelled:</b>  |                 |                        |
| 1. To 200 cu. ft. (incl.).....                                       | 47.00           | 39.00                  |
| 2. From 201 cu. ft. to 500 cu. ft.<br>(incl.).....                   | 127.00          | 95.00                  |
| 3. 501 cu. ft. and over.....   | 200.00          | 102.00                 |
| -----  |                 |                        |
| <b>3. ANCHOR APPLICATORS:</b>  |                 |                        |
| Semi-automatic & Manual.....   | \$ 80.00        | \$ 59.00               |
| -----  |                 |                        |
| <b>4. BALLAST CRIBBING MACHINES:</b>                                 |                 |                        |
| A. Mono-rail Type (Rail Gang Use).....                               | \$ 57.00        | \$ 35.00               |
| B. Rail Mounted.....   | 290.00          | 68.00                  |
| -----  |                 |                        |
| <b>5. BALLAST PLOWS &amp; SLEDS.....</b>                             | <b>\$806.00</b> | <b>\$285.00</b>        |
| -----  |                 |                        |
| <b>6. BALLAST REGULATORS AND CONDITIONERS:</b>                       |                 |                        |
| Ballast Regulator or Maintenance Car.....                            | \$242.00        | \$142.00               |
| -----  |                 |                        |
| <b>7. BRUSH CUTTERS:</b>   |                 |                        |
| Self-Propelled - on and/or off track.....                            | \$341.00        | \$213.00               |
| -----  |                 |                        |
| <b>8. CARS:</b>  |                 |                        |
| A. Ballast Cars.....   | \$ 27.00        | \$ 6.00                |
| (Not Commercial Freight  |                 |                        |
| B. Caboose.....  | 25.00           | 14.00                  |
| C. Dump Cars (Air Operated).....                                     | 83.00           | 12.00                  |
| D. Non-Occupied Cars.....  | 10.00           | 3.00                   |
| (Includes: Tool, Flat, Block,<br>Truck, Tie, Water and Similar Cars) |                 |                        |

| 8. CARS: (Cont'd)   | PER DAY      |             |
|---|--------------|-------------|
|   | Total        | Rep. & Sup. |
| <b>E. Occupied Cars:</b>                                    |              |             |
| 1. Uni-Vans.....  | 50.00        | 17.00       |
| 2. Coach Style.....   | 47.00        | 21.00       |
| <b>F. Ordinary Commercial Freight.....</b>                  | <b>19.00</b> | <b>5.00</b> |
| <b>G. Scale Test Cars:</b>                                  |              |             |
| 1. Non-Self-Propelled.....                                  | 20.00        | 11.00       |
| 2. Self-Propelled.....                                      | 105.00       | 26.00       |
| <b>H. Welded Rail Cars:</b>                                 |              |             |
| 1. Pusher Unit-Threader Cars.....                           | 219.00       | 103.00      |
| 2. Pusher Unit-Companion Cars.....                          | 127.00       | 77.00       |
| 3. Pusher Unit-Hoist Cars.....                              | 193.00       | 103.00      |
| 4. Pusher Unit-Power Cars.....                              | 749.00       | 412.00      |
| 5. Unloading Unit-Threader Cars.....                        | 67.00        | 23.00       |
| 6. Unloading Unit-Roller Cars.....                          | 29.00        | 2.00        |
| 7. Loading & Unloading Units<br>Anchorage Cars.....         | 41.00        | 6.00        |
| 8. Loading & Unloading Units-Other<br>Welded Rail Cars..... | 25.00        | 4.00        |
| 9. Threader Truck Rail Guide.....                           | 21.00        | 6.00        |

9. CARTS:

|                |          |          |
|----------------|----------|----------|
| A. Anchor..... | \$ 26.00 | \$ 14.00 |
| B. Spike.....  | 22.00    | 2.00     |

10. COMPACTORS:

|                               |          |          |
|-------------------------------|----------|----------|
| Ballast, Crib & Shoulder..... | \$251.00 | \$104.00 |
|-------------------------------|----------|----------|

11. DERRICK CARS:

|                                  |         |         |
|----------------------------------|---------|---------|
| Push Car Mounted, Hydraulic..... | \$ 8.00 | \$ 5.00 |
|----------------------------------|---------|---------|

|   | PER DAY  |             |
|---|----------|-------------|
|   | Total    | Rep. & Sup. |
| <b>12. DERRICK AND CRANES:</b>              |          |             |
| A. Burro Cranes or Equivalent:              |          |             |
| 1. Less than 10 tons.....                   | \$151.00 | \$109.00    |
| 2. 10 tons and over.....                    | 391.00   | 174.00      |
| B. Other Cranes, Rail Mounted:              |          |             |
| 1. 100 tons or less.....                    | 419.00   | 232.00      |
| 2. 250 tons and over.....                   | 880.00   | 419.00      |
| C. Crawler, Rubber, Off-On Track:           |          |             |
| 1. 25 tons or less.....                     | 331.00   | 200.00      |
| 2. 50 tons and over.....                    | 677.00   | 237.00      |
| D. Multicrane, Rubber Tired, Off-On Track.. | 382.00   | 200.00      |
| -----                                       |          |             |
| <b>13. DITCHERS:</b>                        |          |             |
| A. Spreader-Air.....                        | \$161.00 | \$ 81.00    |
| B. Spreader-Hydraulic.....                  | 511.00   | 155.00      |
| C. Gradall Type, Hy-Rail.....               | 457.00   | 217.00      |
| -----                                       |          |             |
| <b>14. EARTH BORING MACHINES:</b>           |          |             |
| Self-contained, Non-Self-Propelled.....     | \$ 35.00 | \$ 21.00    |
| -----                                       |          |             |
| <b>15. GAUGE THREADERS:</b>                 |          |             |
| Standard or wide.....                       | \$296.00 | \$111.00    |
| -----                                       |          |             |
| <b>16. GAUGING MACHINES:</b>                |          |             |
| Complete with pre-gauger including bits...  | \$ 77.00 | \$ 49.00    |
| -----                                       |          |             |
| <b>17. GENERATORS, ELECTRIC:</b>            |          |             |
| A. Up to 4999 Watts.....                    | \$ 5.00  | \$ 4.00     |
| B. 5000 Watts and Over.....                 | 15.00    | 12.00       |
| -----                                       |          |             |

|   | <u>PER DAY</u>  |                        |
|---|-----------------|------------------------|
|   | <u>Total</u>    | <u>Rep. &amp; Sup.</u> |
| <b>18. GRADERS:</b>                     |                 |                        |
| All, with attachments.....              | \$117.00        | \$110.00               |
| -----                                   |                 |                        |
| <b>19. HAMMER, JACK.....</b>            | <b>\$ 16.00</b> | <b>\$ 6.00</b>         |
| -----                                   |                 |                        |
| <b>20. JACKS, POWER TRACK.....</b>      | <b>\$ 25.00</b> | <b>\$ 20.00</b>        |
| -----                                   |                 |                        |
| <b>21. LOADER, SCRAP:</b>               |                 |                        |
| On-Track.....                           | \$131.00        | \$ 65.00               |
| -----                                   |                 |                        |
| <b>22. MOTOR CARS.....</b>              | <b>\$ 13.00</b> | <b>\$ 10.00</b>        |
| -----                                   |                 |                        |
| <b>23. RAIL GRINDERS, PORTABLE.....</b> | <b>\$ 16.00</b> | <b>\$ 11.00</b>        |
| -----                                   |                 |                        |
| <b>24. RAIL HEATERS.....</b>            | <b>\$119.00</b> | <b>\$ 86.00</b>        |
| -----                                   |                 |                        |
| <b>25. RAIL LIFTERS.....</b>            | <b>\$ 29.00</b> | <b>\$ 17.00</b>        |
| -----                                   |                 |                        |
| <b>26. RAIL PULLER EXPANDERS:</b>       |                 |                        |
| Hydraulic.....                          | \$ 17.00        | \$ 8.00                |
| -----                                   |                 |                        |

|  | PER DAY          |                 |
|--|------------------|-----------------|
|  | Total            | Rep. & Sup.     |
| <b>27. RAIL SAWS:</b>                              |                  |                 |
| A. Non-Abrasive.....                               | \$ 7.00          | \$ 5.00         |
| B. Abrasive.....                                   | 15.00            | 13.00           |
| C. Abrasive, Rail Mounted.....                     | 94.00            | 69.00           |
| -----  |                  |                 |
| <b>28. RAIL SAW-DRILL.....</b>                     | <b>\$ 4.00</b>   | <b>\$ 1.00</b>  |
| -----  |                  |                 |
| <b>29. SNOWMOBILES.....</b>                        | <b>\$ 37.00</b>  | <b>\$ 29.00</b> |
| -----  |                  |                 |
| <b>30. SNOW PLOWS AND FLANGERS:</b>                |                  |                 |
| A. Work Cars with Fixed Plows<br>and Flangers..... | \$ 274.00        | \$ 26.00        |
| B. Plows, Fixed, Wings Operated by Air....         | 352.00           | 232.00          |
| C. Plows, Rotary.....                              | 1,517.00         | 350.00          |
| D. Fan Snow Blower.....                            | 212.00           | 107.00          |
| E. Jet Snow Blower.....                            | 835.00           | 439.00          |
| (Rate does not include jet fuel)                   |                  |                 |
| -----  |                  |                 |
| <b>31. SPIKE DRIVERS:</b>                          |                  |                 |
| A. Non-Self Propelled.....                         | \$ 48.00         | \$ 31.00        |
| B. Self-Propelled, Multiple Head.....              | 297.00           | 190.00          |
| -----  |                  |                 |
| <b>32. SPIKE PULLERS:</b>                          |                  |                 |
| A. Non-Self-Propelled.....                         | \$ 30.00         | \$ 22.00        |
| B. Self-Propelled.....                             | 73.00            | 45.00           |
| -----  |                  |                 |
| <b>33. TIE CRANES.....</b>                         | <b>\$ 137.00</b> | <b>\$ 90.00</b> |
| -----  |                  |                 |

|  | PER DAY          |                  |
|--|------------------|------------------|
|  | Total            | Rep. & Sup.      |
| <b>34. TIE CUTTERS:</b>  |                  |                  |
| A. Non-Self-Propelled.....   | \$ 16.00         | \$ 10.00         |
| B. Self-Propelled Production.....                                      | 239.00           | 155.00           |
| -----  |                  |                  |
| <b>35. TIE DESTROYERS.....</b>   | <b>\$ 632.00</b> | <b>\$ 425.00</b> |
| -----  |                  |                  |
| <b>36. TIE DRILLS.....</b>   | <b>\$ 29.00</b>  | <b>\$ 23.00</b>  |
| -----  |                  |                  |
| <b>37. TIE PLUG INSERTERS.....</b>                                     | <b>\$ 67.00</b>  | <b>\$ 41.00</b>  |
| -----  |                  |                  |
| <b>38. TIE REMOVERS AND/OR TIE INSERTERS:</b>                          |                  |                  |
| A. Less than 30 H.P.....   | \$ 33.00         | \$ 26.00         |
| B. 30 H.P. and over.....   | 169.00           | 100.00           |
| C. Production Tie Injectors.....                                       | 344.00           | 221.00           |
| -----  |                  |                  |
| <b>39. TIE SPACERS.....</b>  | <b>\$ 153.00</b> | <b>\$ 85.00</b>  |
| -----  |                  |                  |
| <b>40. TIE SPRAYERS: (Exclude Creosote).....</b>                       | <b>\$ 18.00</b>  | <b>\$ 11.00</b>  |
| -----  |                  |                  |
| <b>41. TIE TAMPERS:</b>  |                  |                  |
| A. Self-tamping jacks (includes track<br>surfacers).....               | \$ 218.00        | \$ 147.00        |
| B. Spot and/or switch, mechanical<br>indicators.....                   | 259.00           | 160.00           |
| C. Spot and/or switch, electronic<br>indicators.....                   | 330.00           | 176.00           |
| D. Production:   |                  |                  |
| 1. Without jacks or liners.....  | 309.00           | 218.00           |
| 2. Automatic with jacks and surfacing<br>indicator without liners..... | 426.00           | 302.00           |
| 3. Automatic with liner and jacks<br>electronic indicator.....         | 511.00           | 420.00           |
| 4. Switch tamper, high production<br>with jacks and liners.....        | 753.00           | 458.00           |

|   | PER DAY         |                 |
|---|-----------------|-----------------|
|   | Total           | Rep. & Sup.     |
| <b>42. TRACK BROOMS:</b>                        |                 |                 |
| Self-Propelled.....                             | \$136.00        | \$ 84.00        |
| -----   |                 |                 |
| <b>43. TRACK CLEANERS</b>                       |                 |                 |
| Track mounted.....                              | \$694.00        | \$444.00        |
| -----   |                 |                 |
| <b>44. TRACK WRENCHES:</b>                      |                 |                 |
| A. Single Head.....                             | \$ 21.00        | \$ 13.00        |
| B. Multiple Head.....                           | 222.00          | 167.00          |
| -----   |                 |                 |
| <b>45. TRACTORS, CRAWLER OR RUBBER MOUNTED:</b> |                 |                 |
| A. Bulldozer - under 60 HP.....                 | \$ 81.00        | \$ 66.00        |
| B. Bulldozer - over 60 HP.....                  | 236.00          | 95.00           |
| C. Front-End loader 2-1/2 yds. & under....      | 141.00          | 105.00          |
| D. Front-End loader with backhoe.....           | 159.00          | 116.00          |
| E. Backhoe - 1 yd.....                          | 218.00          | 152.00          |
| F. Speed swing.....                             | 290.00          | 167.00          |
| G. Tractors-Utility with Attachments.....       | 151.00          | 110.00          |
| -----   |                 |                 |
| <b>46. TRAILERS:</b>                            |                 |                 |
| A. Rail Mounted.....                            | \$ 31.00        | \$ 6.00         |
| B. Rubber Tired.....                            | 9.00            | 2.00            |
| -----   |                 |                 |
| <b>47. TRENCHING MACHINES.....</b>              | <b>\$ 54.00</b> | <b>\$ 22.00</b> |
| -----   |                 |                 |
| <b>48. UNDERCUTTERS:</b>                        |                 |                 |
| Switch.....                                     | \$876.00        | \$402.00        |
| -----   |                 |                 |



|                                 | <u>PER DAY</u> |                        |
|---------------------------------|----------------|------------------------|
|                                 | <u>Total</u>   | <u>Rep. &amp; Sup.</u> |
| <b>49. UNDERCUTTER CLEANER:</b> |                |                        |
| Track and Ballast.....          | \$3,718.00     | \$2,249.00             |

-----

**50. VEHICLES, AUTOMOBILES, TRUCKS AND BUSES:**

|   |              |              |
|---|--------------|--------------|
| <b>A. Automobiles:</b>                                    |              |              |
| 1. Sedans - Other.....                                    | \$ 24.00     | \$ 11.00     |
| 2. Sedans - Police.....                                   | 47.00        | 26.00        |
| <b>B. Buses - 17 thru 37 capacity.....</b>                | <b>34.00</b> | <b>18.00</b> |
| <b>C. Station Wagons:</b>                                 |              |              |
| 1. Standard.....  | 39.00        | 24.00        |
| 2. High-Rail.....   | 36.00        | 16.00        |
| <b>D. Trucks:</b>   |              |              |
| 1. Dump 19,000 thru 25,000 GVW.....                       | 46.00        | 26.00        |
| 2. Dump Hi-Rail 19,000 GVW.....                           | 61.00        | 23.00        |
| 3. Dump 29,000 thru 31,000 GVW.....                       | 77.00        | 35.00        |
| 4. Dump Hi-Rail 31,000 GVW.....                           | 96.00        | 38.00        |
| 5. Dump Three-Way.....                                    | 219.00       | 59.00        |
| 6. Pick-up less than 10,000 GVW.....                      | 32.00        | 19.00        |
| 7. Pick-up Hi-Rail less than<br>10,000 GVW.....           | 36.00        | 19.00        |
| 8. Refueling.....   | 80.00        | 37.00        |
| 9. Semi-Tractors.....                                     | 99.00        | 49.00        |
| 10. Stake/Platform 19,000 thru<br>25,000 GVW.....         | 39.00        | 17.00        |
| 11. Stake/Platform over 26,000 GVW.....                   | 70.00        | 31.00        |
| 12. Strato Towers (Snorkle).....                          | 140.00       | 22.00        |
| 13. Track Inspection Hi-Rail Less<br>than 10,000 GVW..... | 49.00        | 28.00        |
| 14. Truck Clearance.....                                  | 266.00       | 28.00        |
| 15. Utility Less Than 10,000 GVW.....                     | 32.00        | 17.00        |
| 16. Utility Hi-Rail less than<br>10,000 GVW.....          | 39.00        | 21.00        |
| 17. Utility 10,000 thru 21,000 GVW.....                   | 53.00        | 25.00        |
| 18. Utility Hi-Rail 16,000 GVW.....                       | 65.00        | 30.00        |
| 19. Utility over 26,000 GVW.....                          | 79.00        | 35.00        |
| 20. Utility Hi-Rail over 26,000 GVW....                   | 100.00       | 42.00        |
| 21. Van less than 10,000 GVW.....                         | 30.00        | 16.00        |
| 22. Van 17,000 thru 20,000 GVW.....                       | 58.00        | 30.00        |
| 23. Van over 36,000 GVW.....                              | 79.00        | 46.00        |
| 24. Welding 16,000 thru 22,000 GVW.....                   | 63.00        | 33.00        |
| 25. Welding Hi-Rail 10,000 thru<br>19,000 GVW.....        | 64.00        | 27.00        |
| 26. Wreck with crane over 26,000 GVW....                  | 89.00        | 43.00        |
| 27. Bridge Inspection with Crane<br>Hi-Rail.....          | 583.00       | 84.00        |

|  | PER DAY         |                 |
|--|-----------------|-----------------|
|  | Total           | Rep. & Sup.     |
| <b>51. WEED BURNERS</b>                      |                 |                 |
| Self-Propelled (snow-melter).....            | \$258.00        | \$187.00        |
| -----  |                 |                 |
| <b>52. WEED MOWERS - Self-Propelled.....</b> | <b>\$ 52.00</b> | <b>\$ 45.00</b> |
| -----  |                 |                 |
| <b>53. WELDERS, ELECTRIC:</b>                |                 |                 |
| A. Strick Electrode.....                     | \$ 15.00        | \$ 9.00         |
| B. Automatic Wire Feed.....                  | 26.00           | 19.00           |
| -----  |                 |                 |
| <b>54. WELDING KIT APPLICATOR.....</b>       | <b>\$ 7.00</b>  | <b>\$ 4.00</b>  |
| -----  |                 |                 |
| <b>55. WELDING SHEARS.....</b>               | <b>\$ 12.00</b> | <b>\$ 8.00</b>  |
| -----  |                 |                 |
| -----  |                 |                 |

**CONRAIL TRACKAGE RIGHTS AGREEMENT**

**AMENDMENT NO. 1**

This amendment agreement is between the Massachusetts Bay Transportation Authority (MBTA) and Consolidated Rail Corporation (Conrail). The purpose of this amendment is to amend the "Trackage Rights Agreement" between the parties dated November 20, 1986, but effective July 1, 1985, to provide for additional trackage rights on the so-called East Route Main Line and East Boston Branch.

Effective July 20, 1989, the parties hereby covenant and agree as follows.

1. ADDENDUM 1 - MBTA RAIL PROPERTIES - Category A is amended by extending Conrail's use of the East Route Main Line by replacing existing Reading Jct. to Revere Interlocking with Reading Jct. to FX Interlocking and by replacing existing Milepost 1.36 - 2.75 with Milepost 1.26 - 6.28.
2. ADDENDUM 1 - MBTA RAIL PROPERTIES - Category B is amended by extending Conrail's use of the East Boston Branch by replacing existing Revere Interlocking to East Boston with Revere Interlocking at the connection to the East Route Main Line and Conrail's property at Milepost 2.2 and by replacing existing Milepost 0.0 - 1.85 with Milepost 0.0 - 2.2.
3. Conrail shall provide MBTA reimbursement for operations between Milepost 2.85 and 6.28 in accordance with Article 6 of the "Trackage Rights Agreement".

4. Conrail's right to use of said rail lines is contingent upon the continuing full force and effect of a letter agreement between Boston and Maine Corporation, Springfield Terminal Railway Company and Conrail dated July 20, 1989, attached hereto.

IN WITNESS WHEREOF, Conrail and the MBTA have caused this amendment agreement to be executed by their respective duly authorized officers.


Approved as to form:

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By:

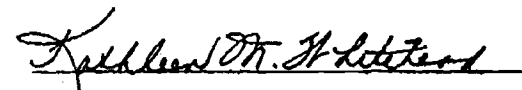
  
\_\_\_\_\_  
Gregory C. Flynn  
General Counsel, MBTA *GKC*

By:

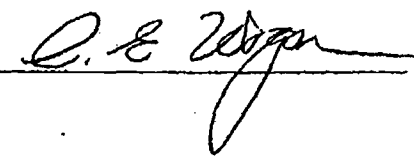
  
\_\_\_\_\_  
Thomas P. Glynn  
General Manager

ATTEST:

CONSOLIDATED RAIL CORPORATION

  
\_\_\_\_\_  
Kathleen M. H. H. H. H.

By:

  
\_\_\_\_\_  
C. E. Wagon

## CONRAIL TRACKAGE RIGHTS AGREEMENT

### AMENDMENT NO. 2

This Amendment Agreement is between the Massachusetts Bay Transportation Authority ("MBTA") and Consolidated Rail Corporation ("CONRAIL"). The purpose of this Agreement is to amend the July 1, 1985, "Trackage Rights Agreement" (Basic Agreement) to provide for resolution of issues relating to the so-called Shore Line.

WHEREAS, Section 1.02(k) of the Basic Agreement deferred resolution of certain issues related to the parties' respective rights and obligations as to the former Boston and Providence Main (Shore) Line right-of-way; and

WHEREAS, the parties hereto have now reached agreement on the resolution of their past and future rights and obligations relative to the Shore Line;

NOW THEREFORE, in consideration of the terms and conditions contained herein, effective July 1, 1985, the parties hereby covenant and agree as follows:

#### Section 1. ADDENDUM 1 - MBTA Rail Properties

Category A is amended by adding the Shore Line, (Main Line - Boston to New Haven), Readville (Mile Post 219.2) to Rhode Island/Massachusetts State Line (Mile Post 190.8) to be jointly used with Conrail and to be maintained at a Class 3 level.

#### Section 2. Compensation - Car Miles

With regard to compensation and Conrail car miles operated on the Shore Line, Conrail shall pay MBTA 25.2 cents per car mile for the first 500,000 car miles Conrail operates each calendar year and 81 percent of that rate, as that rate may change from time to time, for all car miles it operates over 500,000 over said Shore Line. This rate shall be escalated annually in accordance with the provisions of Section 6.03 of the Basic Agreement and shall apply solely to Shore Line car miles.

#### Section 3. Freight-only Turnouts

- a. A listing of freight-only turnouts connected to the Shore Line and used by Conrail as of October 1, 1991, is attached hereto as Exhibit 1. This listing will be amended on a month-to-month basis, as necessary, in order to remove turnouts no longer required by Conrail or to add turnouts newly installed.

- b. Conrail shall pay MBTA \$4,589.00 per year as compensation in full for all maintenance of each existing freight-only turnout listed on Exhibit 1. This amount shall be escalated annually in accordance with the provisions of Section 6.03 of the Basic Agreement, which applies to the Base Charge rounded to the nearest whole dollar. It is understood that this amount shall constitute all maintenance, including routine replacement for existing turnouts, and MBTA shall not seek additional compensation for maintenance on these turnouts, excepting, however, those turnouts which must be replaced as a result of an incident determined under the Liability Indemnification provisions of ARTICLE 7 of the Basic Agreement as Conrail's liability.
- c. MBTA shall submit monthly to Conrail, an invoice reflecting the number of turnouts being billed for that service month and the monthly maintenance charge per turnout (annual fee divided by 12). Conrail shall immediately process such invoices for payment. In the event of any disputes as to the billable number of turnouts, Conrail shall pay the invoiced amount and request adjustment in the following month's invoicing, which adjustment shall not be unreasonably withheld. Invoices shall be addressed to Conrail as follows:

General Superintendent  
Contract Administration  
Consolidated Rail Corporation  
1099 One Liberty Place  
Philadelphia, PA 09103  
ATTN: R. Gay

- d. In the event that Conrail notifies MBTA of its desire to remove a freight-only turnout listed on Exhibit 1, that turnout shall be removed from Exhibit 1 and dropped from invoicing for the service month immediately following the month such letter of notification is received by MBTA from Conrail. Such notice shall be addressed to MBTA as follows:

Director, Railroad Operations  
Massachusetts Bay  
Transportation Authority  
Ten Park Plaza  
Boston, MA 02116  
ATTN: Finance Unit

Upon notification from Conrail, MBTA shall have sole discretion regarding retention or removal of the turnout.

- e. In the event Conrail desires to have a new turnout installed that does not exist on the effective date of this agreement or that has been removed pursuant to Section 3.d above, all construction charges associated therewith shall be determined in accordance with the provisions of Section 5.05 of the Basic

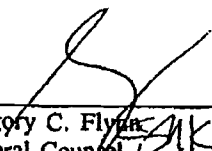
Agreement. Exhibit 1 shall be changed to reflect such additional turnout and the annual maintenance charge for such turnout installed pursuant to this paragraph, shall be at the agreed upon annual maintenance fee specified in Section 3.b above.

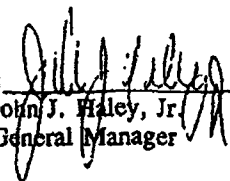
Except as otherwise stated above, all applicable provisions of the Basic Agreement shall remain in effect.

IN WITNESS WHEREOF, Conrail and the MBTA have caused this Amendment Agreement No. 2 to be executed by their respective duly authorized officers.

Approved as to form:

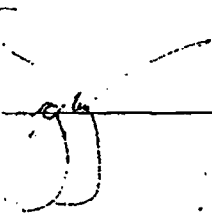
MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

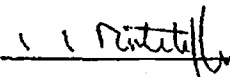
  
\_\_\_\_\_  
Gregory C. Flynn  
General Counsel

By:   
\_\_\_\_\_  
John J. Haley, Jr.  
General Manager

ATTEST:

CONSOLIDATED  
RAIL CORPORATION

  
\_\_\_\_\_  
[Signature]

By:   
\_\_\_\_\_  
[Signature]

SHORE LINE - STATE LINE TO READVILLE  
 FREIGHT ONLY TURNOUTS  
 OCTOBER 1, 1991

| <u>MilePost</u> | <u>Track<br/>Number</u> | <u>Location</u>      | <u>Tenant</u>              |
|-----------------|-------------------------|----------------------|----------------------------|
| 192.55          | 2                       | Sth. Attleboro       | Pascale Trucking           |
| 192.68          | 1                       | Sth. Attleboro       | American Wire              |
| 195.78          | 1                       | Hebronville          | Furman Lumber              |
| 196.30          | 1                       | Attleboro (Thatcher) | Team Track                 |
| 197.95          | 4                       | Attleboro            | Fortifibre                 |
| 197.97          | 4                       | Attleboro            | Fortifibre                 |
| 198.01          | 4                       | Attleboro            | Fortifibre                 |
| 202.50          | 1                       | Mansfield            | Industrial Park<br>(Zayre) |
| 203.7           | 1                       | Mansfield            | American Paper             |
| 203.8           | 2                       | Mansfield            | Bliss & Laughlin           |
| 204.3           | 2                       | Mansfield            | Old 4-Industrial           |
| 204.4           | 1                       | Mansfield            | B&P Lead                   |
| 213.9           | 1                       | Canton               | Cumberland Farms           |
| 215.2           | 2                       | Canton               | Grinnel                    |
| 216.30          | 1                       | Westwood             | Rt. 128 Ind. Park          |
| 217.30          | 1                       | Westwood             | Rt. 128 Ind. Park          |
| 218.30          | 1                       | Readville (Transfer) | Yard Lead                  |

17 Turnouts



CONRAIL-MBTA

TRACKAGE RIGHTS AGREEMENT

AMENDMENT #3

This amendment, effective July 12, 1993, is between the Massachusetts Bay Transportation Authority (MBTA) and Consolidated Rail Corporation (Conrail) and will amend the Trackage Rights Agreement, dated July 1, 1985, in the following respect:

(1) Notwithstanding the provisions of Sections 7.04 (only insofar as it applies to MBTA Station property) and 7.07 of the 1985 Trackage Rights Agreement between MBTA and Conrail, MBTA shall defend, indemnify and save harmless Conrail and Conrail 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 any loss of, damage to or destruction of any property of any person (including MBTA platform property), resulting from the collision of a Conrail freight car with its load shifted, or a freight car equipped with a plug door and an MBTA handicap platform with a retractable edge, irrespective of whether the operation of such shifted loads, or box cars with open "plug doors" is determined to be Conrail negligence or fault. This provision shall not apply to excess dimension, wide load shipments covered by paragraph (2) below.

(2) In handling excess dimension, wide load movements over Rail Properties on which MBTA has installed a handicap platform with a retractable edge, Conrail shall follow the operating

procedures set forth in the Attachment hereto. The provisions of the Trackage Rights Agreement shall govern with respect to this paragraph.

(3) The foregoing shall apply only to West Natick, MA station where MBTA is installing or will install a handicap platform. It is hereby understood, and agreed by both parties hereto that the MBTA's acceptance of the foregoing shall be without prejudice to the right of either party to renegotiate its terms and is not intended to establish precedent for negotiation of future terms and conditions related thereto.

(4) (a) The provisions of this Amendment #3 shall expire either upon reconfiguration of the accessibility improvements at West Natick or in the event that the provisions herein are superceded, whichever shall occur first.

(b) Notwithstanding paragraph 4(a) above, on or after July 12, 1998, either party may request that the terms of this Amendment #3 shall be renegotiated, in good faith, and in a timely manner, by the parties hereto. If the parties are unable to agree, either party may refer the matter to binding arbitration. If arbitration is invoked, the matter shall be conducted according to the rules and procedures of the American Arbitration Association, unless the parties agree otherwise. The matter shall be subject to expedited proceedings at the request of either party.

Except for the foregoing paragraphs, all other provisions, terms and conditions of the 1985 Trackage Rights Agreement shall remain unchanged and in full force and effect.


IN WITNESS WHEREOF, Conrail and the MBTA have caused this  
Amendment to be executed by their respective authorized officers.

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

CONSOLIDATED RAIL CORPORATION

By:

By:

  
\_\_\_\_\_  
Michael T. Burns  
Assistant General Manager  
for Railroad Operations

  
\_\_\_\_\_  
R. Paul Carey

Dated: July 14, 1993

Dated: July 16, 1993

Attachment

## OPERATING PROCEDURE

### Handicap Platforms with Retractable Edges

When Conrail desires to move an excess dimension wide load over rail properties on which a handicap platform with a retractable edge (increases centerline track to edge of platform clearance from 5'7" to 7'3") is located, the following procedure will be strictly adhered to:

1. Conrail will notify the MBTA trouble desk (617-722-3628) with the train number and time of movement, at least 24 hours in advance of the time the movement is scheduled to pass the retractable edge platform.
2. Wide load movements will occur anytime except at commuter rail rush hours which are Monday thru Friday 0600 to 0930 hrs. and 1600 to 1900 hrs. Midday moves on weekdays are encouraged.
3. MBTA maintenance forces will notify the Operating Contractor's Assistant Superintendent Transportation through the Operating Contractor's Chief Dispatcher that the handicap platform is out of service for all use. After information is acknowledged the MBTA forces will raise and lock the retractable platform edges. They will also notify the Conrail dispatcher that 7'3" clearance is available, specifying the day and time when available, which shall be no less than one (1) hour before the estimated time of arrival for the wide load movement.
4. After passage of the wide load MBTA forces will seek permission from the Conrail dispatcher to lower the retractable platform edge for normal 5'7" clearance.
5. After receiving Conrail dispatcher direction, MBTA forces will lower and lock the retractable platform edges.
6. MBTA forces will notify the Conrail Dispatcher that the platform edges are down and locked and will specify the date and time completed.
7. MBTA forces will notify the Operating Contractor's Assistant Superintendent Transportation, through the

OPERATING PROCEDURE (Cont'd)

Handicap Platforms with Retractable Edges

Operating Contractor's Chief Dispatcher and the MBTA trouble desk that the handicap platform is back in service to accommodate physically challenged passengers.

8. If MBTA fails to discharge its responsibilities as set forth above within 2 hours of the scheduled time referenced in Section 1 hereof, Conrail may, but shall not be required to, operate and restore the platform edge to permit passage of the excess dimension wide load, provided that prior to any operation of the platform edges, Conrail forces notify the MBTA trouble desk at (617-722-3628). MBTA assumes responsibility for Conrail's direct labor expenses.

**Amendment #4  
to CONRAIL/MBTA Trackage Rights Agreement  
of July 1, 1985**

This Amendment #4 ("Amendment #4") to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the "1985 Agreement"), by and between the CONSOLIDATED RAIL CORPORATION ("CONRAIL") and the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY ("MBTA") is entered into by and between CSX TRANSPORTATION INC. ("CSXT") and the MBTA this 23<sup>rd</sup> day of November, 2009, and is effective as of the Amendment #4 Effective Date (defined below).

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works (the "Commonwealth"), entered into that certain Definitive Agreement, dated October 10, 2008, as amended by that certain First Amendment to Definitive Agreement dated as of November 23, 2009 (as so amended, the "Definitive Agreement"), whereby CSXT agreed to sell and the Commonwealth agreed to buy, subject to the terms and conditions of the Definitive Agreement, CSXT's interest in certain railroad properties, including, inter alia, (i) the Grand Junction Branch, (ii) the Boston Terminal Running Track, and (iii) all of CSXT's right title and interest to the Boston Main Line between Boston and Worcester, subject in each case to certain CSXT retained easement and other reserved rights (the "Additional Assets"; all as such properties are defined and described in the Definitive Agreement and on Exhibit A attached hereto and incorporated herein). This Amendment #4 shall be effective as of the actual date of the conveyance of the properties described in (i) and (ii) above (the "Amendment #4 Effective Date"). The actual date of the conveyance of the properties described in (iii) above is referred to herein as the "Second Closing Date."
- D. As of November 1, 2009, the Massachusetts Department of Transportation ("MDOT") has by operation of law succeeded to all of the rights and obligations of the Executive Office of Transportation and Public Works to act by and on behalf of the Commonwealth under the Definitive Agreement.

- E. The Commonwealth has the right to designate, and has designated, the MBTA to act for and on behalf of, and to assume the rights and obligations of the Commonwealth, with respect to the Additional Assets under the Definitive Agreement.
- F. CSXT, for itself, and the MBTA, acting by and on behalf of the Commonwealth, wish to provide for the operation of their respective railroad services by amending the 1985 Agreement with respect to the Additional Assets.

### AGREEMENT

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

1. As of the Amendment #4 Effective Date, Section 1.01, Recitals, is hereby amended by adding the following paragraph immediately following paragraph (f):

“(f ½) CSX Transportation Inc. (“CSXT”), CONRAIL’s successor in interest with respect to this Agreement, has conveyed by deed all of its interest in certain described railroad rights of way to the Commonwealth of Massachusetts, acting by and through its Department of Transportation (“MassDOT”), subject to CSXT’s retained, permanent, and exclusive freight easement, prior easement rights and other reservations described in the deed, including the terms of this Agreement, specifically (i) the Grand Junction Branch and (ii) the Boston Terminal Running Track. CSXT intends to convey by deed all of its interest in certain other described railroad rights of way to MassDOT, specifically the property known as the Boston Main Line between Boston and Worcester, subject to CSXT’s retained, permanent, and exclusive freight easement, prior easement rights and other reservations described in the deed to such property, subject to the terms of this Agreement and that certain 2009 Operating Agreement between CSXT and MBTA.”

2. As of the Amendment #4 Effective Date, Article 7 is hereby amended by adding the following paragraph as Section 7.08:

“Section 7.08. Insurance

MBTA shall secure and maintain the liability insurance policy required by Chapter 161A, Section 43 of the Massachusetts General Laws.”

3. As of the Amendment #4 Effective Date, Addendum 2 to the 1985 Agreement is hereby amended by deleting the Grand Junction Running Track. A revised Addendum 2 is attached hereto as **Exhibit B**, and shall replace the current Addendum 2.

4. As of the Amendment #4 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended by adding thereto the Grand Junction Branch under Category A. From and after the Amendment #4 Effective Date, the Grand Junction Branch shall be a Category A MBTA Rail Property for all purposes under the 1985 Agreement.
5. As of the Amendment #4 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended by adding thereto the Boston Terminal Running Track under Category A. From and after the Amendment #4 Effective Date, the Boston Terminal Running Track shall be a Category A MBTA Rail Property for all purposes under the 1985 Agreement. A revised Addendum 1 is attached hereto as Exhibit C, and shall replace the current Addendum 1.
6. As of the Second Closing Date, Addendum 2 to the 1985 Agreement shall be amended by deleting the Boston Line, Cove Control Point – Riverside, MA (MP 1.1 to MP 10.83) and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4).
7. As of the Second Closing Date, Addendum 1 to the 1985 Agreement shall be amended by adding thereto the Boston Line, Cove Control Point – Riverside, MA (MP 1.1 to MP 10.83) and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4) under Category A. From and after the Second Closing Date, the Boston Line, Cove Control Point – Riverside, MA and the Boston Line, Framingham, MA (MP 21.38 to MP 22.4) shall be Category A MBTA Rail Properties for all purposes under the 1985 Agreement.
8. As of the Second Closing Date, CSXT shall no longer maintain or dispatch the Boston Main Line and Sections 4.03 and 5.04 of the 1985 Agreement shall be deleted.

*[Signatures on following page.]*



IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel

*[Signature Page to Amendment #4 to 1985 Agreement]*

**Exhibit A**  
**EOT/CSXT Asset List**

|           | FACILITY SEGMENT<br>(See Notes)   | TOTAL FACILITY<br>LENGTH / AREA |              | Miles        |
|-----------|---|---------------------------------|--------------|--------------|
|           |   | Mile Posts                      |              |              |
|           |   | From                            | To           |              |
| <b>1.</b> | <b>BOSTON MAIN LINE<br/>(Boston to Worcester)</b>   |                                 |              |              |
|           | South Station to CP Cove  | 0.0                             | 1.12         |              |
|           | CP Cove to BPY / ALS*   | 1.12                            | 3.10         | 1.98         |
|           | Main Line @ BPY / ALS (See Note 2)*   | 3.10                            | 4.80         | 1.70         |
|           | BPY to Newton (Riverside)*  | 4.80                            | 10.83        | 6.03         |
|           | Newton (Riverside) to Framingham*   | 10.83                           | 21.38        | 10.55        |
|           | Framingham  | 21.38                           | 22.40        | 1.02         |
|           | Framingham to Worcester   | 22.40                           | 44.30        | 21.90        |
|           | <b>Total</b>  | <b>0.00</b>                     | <b>44.30</b> | <b>44.30</b> |
| <b>2.</b> | <b>GRAND JUNCTION BRANCH<br/>(Boston to Chelsea)</b>  | <b>From</b>                     | <b>To</b>    |              |
| a.        | BPY to Boston Engine Terminal (BET)   | 0.00                            | 2.70         | 2.70         |
| b.        | Valley Track@BET*   | 2.70                            | 2.95         | 0.25         |
| c.        | BET to Chelsea*   | 2.95                            | 5.70         | 2.75         |
| d.        | Chelsea to East Boston (as CSXT's interest<br>may appear)   | 5.70                            | 7.87         | 2.17         |
|           | <b>Total</b>  |                                 |              | <b>7.87</b>  |
| <b>3.</b> | <b>INTENTIONALLY DELETED</b>  |                                 |              |              |
| <b>4.</b> | <b>BOSTON TERMINAL RUNNING<br/>TRACK</b>  |                                 |              |              |
|           | Southampton St. to W. First Street  | 0.00                            | 0.80         | 0.80         |
|           | W. First Street to Summer (including those<br>portions of the W. First Street Yard shown on<br>Exhibit A-1) | 0.80                            | 1.10         | 0.30         |
|           | Summer to BMIP*   | 1.10                            | 2.25         | 1.15/2.2     |
|           | <b>Total</b>  |                                 |              |              |

**NOTE:**

- The Railroad Lines are shown in more detail on the plans attached as **Exhibit A-1**.

2. The Parties acknowledge that the Second Closing, and the transaction with Harvard shall be coordinated so as to preserve to Seller (by way of a retained easement) the continued right to operate over the portion of the Boston Main Line passing through Beacon Park Yard (Parcel C-1, as the same may be redesignated).

\* Segments marked with an asterisk are not owned by CSXT and are included solely for the convenience of EOT. CSXT makes no warranty of ownership or title to these segments, and reserves any Other Operating Rights therein.

**Exhibit B**

*[Revised Addendum 2.]*

**Exhibit C**

*[Revised Addendum 1.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

APPROVAL AS TO FORM

*Joseph A. Kelly*  
ACTING General Counsel

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By: *William A. Mitchell*  
Name: William A. Mitchell  
Title: ACTING GENERAL  
MANAGER

CSX TRANSPORTATION, INC.

By: \_\_\_\_\_  
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

[Signature Page to Amendment #4 to 1985 Agreement]


# 8987138\_v1

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be signed with effect as of the Amendment #4 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: William A. Mitchell  
Title: Acting General Manager

By:   
Name: Steven Potter  
Title: Assistant Vice President Network  
Planning and Joint Facilities

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Gerald K. Kelley  
Title: Acting General Counsel

*[Signature Page to Amendment #4 to 1985 Agreement]*

**Amendment #5  
to CONRAIL/MBTA Trackage Rights Agreement  
of July 1, 1985**

This Amendment #5 (“**Amendment #5**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION** (“**CONRAIL**”) and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (“**MBTA**”) is entered into by and between **CSX TRANSPORTATION INC.** (“**CSXT**”) and the **MBTA** this 2nd day of April, 2012, and is effective as of the Amendment #5 Effective Date (defined below).

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works (the “**Commonwealth**”), entered into that certain Definitive Agreement, dated October 10, 2008, as amended by that certain First Amendment to Definitive Agreement dated as of November 23, 2009, that certain Closing Amendment to Definitive Agreement dated as of June 11, 2010 and that certain Third Amendment to Definitive Agreement entered into as of April 2, 2012 (as so amended, the “**Definitive Agreement**”), whereby CSXT agreed to sell and the Commonwealth agreed to buy, subject to the terms and conditions of the Definitive Agreement, CSXT's interest in certain railroad properties, including, *inter alia*, all of CSXT's right title and interest to the Boston Main Line between Boston and Worcester (the “**Boston Main Line**”), subject in each case to certain CSXT retained easements and other reserved rights (the “**Additional Assets**”); all as such properties are defined and described in the Definitive Agreement.
- D. The Boston Main Line includes a certain portion of track approximately 2.64 miles in length (as more fully described on **Exhibit A** attached hereto) and Additional Assets related thereto (collectively the “**Yawkey Segment**”), and the Commonwealth wishes to purchase and CSXT wishes to sell to the Commonwealth, the Yawkey Segment, in advance of the Second Closing (as defined in the Definitive Agreement). This Amendment #5 shall be effective as of the actual date of the conveyance of the Yawkey Segment (the “**Amendment #5 Effective Date**”). The actual date of the conveyance of the Yawkey Segment is referred to herein as the “**Segment Closing Date**.”



- E. As of November 1, 2009, the Massachusetts Department of Transportation (“**MassDOT**”) has by operation of law succeeded to all of the rights and obligations of the Executive Office of Transportation and Public Works to act by and on behalf of the Commonwealth under the Definitive Agreement.
- F. MassDOT has the right to designate, and has designated, the MBTA to act for and on behalf of, and to assume the rights and obligations of the Commonwealth, with respect to the Additional Assets under the Definitive Agreement.
- G. The parties hereto are parties to a certain Amendment #4 to CONRAIL/MBTA Trackage Rights Agreement of July 1, 1985 dated as of November 23, 2009 (the “**4<sup>th</sup> Amendment**”).
- H. CSXT, for itself, and the MBTA wish to provide for the operation of their respective railroad services by amending the 1985 Agreement with respect to the Yawkey Segment.

### AGREEMENT

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

1. As of the Amendment #5 Effective Date, Section 1.02, Recitals, of the 1985 Agreement is hereby amended by replacing paragraph (f ½) thereof in its entirety with the following new paragraph (f ½):

“(f ½) CSX Transportation Inc. (“CSXT”), CONRAIL’s successor in interest with respect to this Agreement, has conveyed by deed all of its interest in certain described railroad rights of way to the Commonwealth of Massachusetts, acting by and through its Department of Transportation (“MassDOT”), subject to CSXT’s retained, permanent and exclusive, freight easement, prior easement rights and other reservations described in the deed, including the terms of this Agreement, specifically (i) the Grand Junction Branch, (ii) the Boston Terminal Running Track, and (iii) the portion of the Boston Line from Milepost 0.46 to Milepost 3.10 (the “Yawkey Segment”). CSXT intends to convey by deed all of its interest in certain other described railroad rights of way to MassDOT, specifically the property known as the Boston Main Line between Boston and Worcester, subject to CSXT’s retained permanent and exclusive freight easement, prior easement rights and other reservations described in the deed to such property, subject to the terms of this Agreement and that certain 2009 Operating Agreement between CSXT and MBTA.”
2. As of the Amendment #5 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended by adding thereto the Yawkey Segment (i.e., Boston Line MP 0.46 - MP 3.10) under Category A. From and after the Amendment #5 Effective Date, the

Yawkey Segment shall be a Category A MBTA Rail Property for all purposes under the 1985 Agreement. A revised Addendum 1 is attached hereto as **Exhibit B**, and shall replace the current Addendum 1.

3. As of the Amendment #5 Effective Date, Addendum 2 to the 1985 Agreement is hereby amended by (i) replacing the word “0.45” twice appearing in the first line thereof, with the word “3.10” in order to reflect the deletion of the Yawkey Segment. A revised Addendum 2 is attached hereto as **Exhibit C**, and shall replace the current Addendum 2.
4. As of the Amendment #5 Effective Date, CSXT shall no longer maintain or dispatch that portion of the Yawkey Segment from MP 1.1 to MP 3.10 (the “Yawkey Segment Portion”) notwithstanding the provisions of Sections 4.03 and 5.04 of the 1985 Agreement, it being specifically acknowledged and agreed that said Sections 4.03 and 5.04 shall continue to apply to all tracks and properties described therein except, from and after the Amendment #5 Effective Date, the Yawkey Segment Portion.
5. As of the Amendment #5 Effective Date, sections 6 and 7 of the 4<sup>th</sup> Amendment are hereby amended by (i) replacing the words “Boston Line, Cove Control Point - Riverside, MA” with the words “Milepost 3.10 - Riverside, MA (MP 3.10 to MP 10.83)” and (ii) deleting the words “(MP 1.1 to MP 10.83)”.


*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #5 to be signed with effect as of the Amendment #5 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: Jonathan R. Davis  
Title: Acting General Manager

By:  \_\_\_\_\_  
Name: Steven A. Potter  
Title: Assistant Vice President Passenger  
Planning

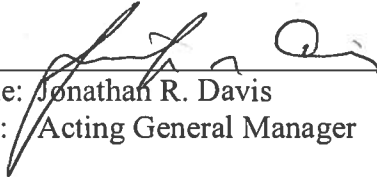
**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Rachael Rollins  
Title: General Counsel

#11069654\_v2

IN WITNESS WHEREOF, the parties have caused this Amendment #5 to be signed with effect as of the Amendment #5 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By:   
Name: Jonathan R. Davis  
Title: Acting General Manager

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: Steven A. Potter  
Title: Assistant Vice President Passenger  
Planning

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name: Rachael Rollins  
Title: General Counsel

#11069654\_v2

IN WITNESS WHEREOF, the parties have caused this Amendment #5 to be signed with effect as of the Amendment #5 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

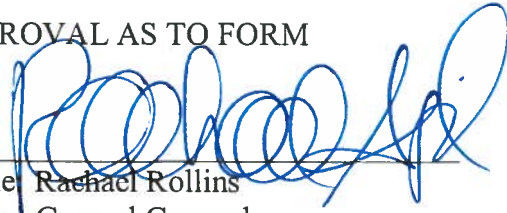
**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: Jonathan R. Davis  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Steven A. Potter  
Title: Assistant Vice President Passenger  
Planning

**APPROVAL AS TO FORM**

By:   
Name: Rachael Rollins  
Title: General Counsel

#11069654\_v2

**Exhibit A**  
**Yawkey Segment**

|    | FACILITY SEGMENT<br>(See Notes)                                | TOTAL FACILITY<br>LENGTH / AREA |      | Miles |
|----|--|---------------------------------|------|-------|
|    |  | Mile Posts                      |      |       |
|    |  | From                            | To   |       |
| 1. | Yawkey SEGMENT OF BOSTON MAIN<br>LINE<br>(Boston to Worcester) | 0.46                            | 3.10 | 2.64  |
|    | Total  |                                 |      |       |

**EXHIBIT B**

**ADDENDUM I**

**MBTA RAIL PROPERTIES**

**Category A -- Jointly Used with CONRAIL**

| Facility <sup>1</sup>                       | Location   | Milepost         | Maintenance <sup>2</sup>  |
|---|--|------------------|---------------------------|
| Boston Terminal Running Track               | Southampton St. - BMIP                             | 0.0 - 2.25       |                           |
| Boston Line - Yawkey Segment                | Milepost 0.46 - Beacon Park Yard                   | 0.46 - 3.10      | [Class III <sup>3</sup> ] |
| Boston Line (B&A M.L.)                      | Riverside -- Framingham                            | 10.83 - 21.38    | Class III <sup>3</sup>    |
| Franklin Branch                             | Readville - Franklin, MA                           | 0.0 - 18.2       | Class III <sup>4</sup>    |
| Stoughton Branch                            | Canton - Stoughton                                 | 0.0 - 4.7        | Class II                  |
| East Junction Ind. Track                    | East Junction<br>MA/RJ State Line                  | 0.0 - 0.6        | Class II                  |
| Readville Yard                              | Sprague St. - Overhead Bridge                      | 0.90 - 650' East | Class III                 |
| Dorchester Branch                           | Tower 1 to Readville                               | 0.0 - 9.11       | Class II                  |
| East Route Main Line                        | Reading Jct. to FX Interlocking                    | 1.26 - 6.28      | Class II                  |
| Grand Junction Branch                       | Boston-East Boston                                 | 0.0 - 7.87       |                           |
| Shore Line (Main Line - Boston to New Haven | Readville to Rhode Island/Massachusetts State Line | 219.2 - 190.8    | Class III                 |

<sup>1</sup> Line Segment, Yard, Etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH

<sup>4</sup> To be maintained so as to enable train speeds of not less than 30 MPH

**EXHIBIT B**

**ADDENDUM I**

**MBTA RAIL PROPERTIES**

**Category A -- Jointly Used with CONRAIL**

| Facility <sup>1</sup>   | Location  | Milepost  | Maintenance <sup>2</sup> |
|---|---|---|--------------------------|
| Middleboro Main<br>[which includes portions of the<br>Middleboro Branch, Neponset<br>Running Track and the Plymouth<br>Running Track properties<br>formerly accounted for in the<br>TRA under Addendum I<br>Category B] | Boston South Station to Bay   | 0.0 - 36.443  | Class II                 |
| Weymouth Industrial Track   | Currently Green to a Location<br>immediately east of Mill Lane;<br>anticipated to be renamed Adams<br>Junction to Allen in East Braintree | Currently 0.0 -<br>1.4; anticipated<br>to be<br>renumbered<br>10.15 - 11.55 | Class II                 |



**EXHIBIT B**

**ADDENDUM I**

**MBTA RAIL PROPERTIES**

**Category B -- Exclusively Used by CONRAIL**

| Facility <sup>1</sup>                            | Location   | Milepost  | Maintenance <sup>2</sup> |
|--|--|-----------|--------------------------|
| Millis Ind. Track<br>(Former Clicquot Secondary) | Medfield - Clicquot  | 0.0 - 3.2 | Class I                  |
| Dedham Running Track                             | Readville - Dedham   | 0.0 - 2.7 | Class I                  |
| East Junction Ind. Track                         | East Junction<br>MA/RI State Line  | 0.6 - 3.7 | Class I                  |
| East Boston Branch                               | Revere Interlocking at the connection<br>to the East Route Main Line to Mile<br>Post 2.2 | 0.0 - 2.2 | Class I                  |

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

**EXHIBIT C**

**ADDENDUM 2**

**CONRAIL RAIL PROPERTIES**

| Facility <sup>1</sup>  | Location   | Milepost     | Maintenance <sup>2</sup> |
|------------------------|--|--------------|--------------------------|
| Boston Line (B&A M.L.) | Milepost 3.10 - Riverside, MA  | 3.10 - 10.83 | Class III <sup>3</sup>   |
| Boston Line (B&A M.L.) | Framingham, MA   | 21.38 - 22.4 | Class III                |
| Beacon Park Yard       | Track as designated by the Conrail employee in charge of Beacon Park Yard <sup>5</sup> | 3.1 - 4.8    | Class II                 |
| Holliston Ind. Track   | Holliston Wye-East & West Leg - Framingham   | 21.2         | Class I <sup>4</sup>     |
| Framingham Yard        | 1500' of track   | Nevins Yard  | Class I <sup>4</sup>     |
| Franklin Branch        | Franklin, MA   | 18.2 - 18.8  | Class I <sup>4</sup>     |

<sup>1</sup> Line Segment, Yard, etc.

<sup>2</sup> FRA Class

<sup>3</sup> To be maintained so as to enable passenger train speeds of not less than 60 MPH.

<sup>4</sup> To be maintained so as to enable train speeds of not less than 15 MPH.

<sup>5</sup> Sufficient headroom to allow MBTA equipment to access entry switch to Grand Jct. running track from the Boston Line.

**Amendment #6  
to CONRAIL/MBTA Trackage Rights Agreement  
of July 1, 1985**

This Amendment #6 (“**Amendment #6**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION (“CONRAIL”)** and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (“MBTA”)** is entered into by and between **CSX TRANSPORTATION INC. (“CSXT”)** and the **MBTA** this 2<sup>nd</sup> day of October, 2012, and is effective as of the Amendment #6 Effective Date (defined below).

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the Commonwealth of Massachusetts, acting by and through its Executive Office of Transportation and Public Works (the “**Commonwealth**”), entered into that certain Definitive Agreement, dated October 10, 2008, as amended by that certain First Amendment to Definitive Agreement dated as of November 23, 2009, that certain Closing Amendment to Definitive Agreement dated as of June 11, 2010, that certain Third Amendment to Definitive Agreement entered into as of April 2, 2012 and that certain Fourth Amendment to Definitive Agreement entered into as of the Amendment #6 Effective Date, as hereafter defined (as so amended, the “**Definitive Agreement**”), whereby CSXT agreed to sell and the Commonwealth agreed to buy, subject to the terms and conditions of the Definitive Agreement, CSXT's interest in certain railroad properties, including, *inter alia*, all of CSXT's right title and interest to the Boston Main Line between Boston and Worcester (the “**Boston Main Line**”), subject in each case to certain CSXT retained easements and other reserved rights (the “**Additional Assets**”) all as such properties are defined and described in the Definitive Agreement.
- D. As of November 1, 2009, the Massachusetts Department of Transportation (“**MassDOT**”) by operation of law succeeded to all of the rights and obligations of the Executive Office of Transportation and Public Works to act by and on behalf of the Commonwealth under the Definitive Agreement.
- E. MassDOT has assigned and transferred and MBTA has accepted and assumed the right to operate and control the Boston Main Line.

- F. The Boston Main Line includes a certain portion of track approximately 2.64 miles in length that was conveyed by CSXT to MassDOT on April 2, 2012 (the "**Yawkey Segment**", and the Boston Main Line excluding said Yawkey Segment being the "**Primary Boston Main Line**"), and pursuant to the Definitive Agreement, MassDOT wishes to purchase and CSXT wishes to sell to MassDOT at the Second Closing (as defined in the Definitive Agreement) the Primary Boston Main Line.
- G. The Definitive Agreement contemplated that the CSX Beacon Park Yard Relocation would occur prior to the Second Closing.
- H. MassDOT, MBTA and CSXT acknowledge that it is in the best interest of all parties to consummate the Second Closing in advance of the completion of the CSX Beacon Park Yard Relocation.
- I. CSXT will continue to use commercially reasonable efforts to complete the CSX Beacon Park Yard Relocation as soon as is reasonably practicable it being understood that the previously anticipated reduction of CSXT operations on the Boston Main Line between Boston and Framingham will occur in phases as the CSX Beacon Park Yard Relocation is completed over time. MassDOT and MBTA will continue to use reasonable efforts to accommodate CSXT's operations at Beacon Park Yard as it continues to effect each phase of the CSX Beacon Park Yard Relocation.
- J. In furtherance of the foregoing, CSXT, for itself, and the MBTA wish to provide for the operation of their respective railroad services by amending the 1985 Agreement with respect to the Boston Main Line.
- K. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Definitive Agreement.
- L. This Amendment #6 shall be effective as of the actual date of the conveyance of the Primary Boston Main Line (the "**Amendment #6 Effective Date**")

### AGREEMENT

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

1. As of the Amendment #6 Effective Date, Section 1.02, Recitals, of the 1985 Agreement is hereby amended by replacing paragraph (f ½) thereof in its entirety with the following new paragraph (f ½):

“(f ½) CSX Transportation Inc. (“**CSXT**”), CONRAIL’s successor in interest with respect to this Agreement, has conveyed by deeds all of its interest in certain described railroad rights of way to the Massachusetts Department of Transportation (“**MassDOT**”), subject to CSXT's retained permanent and exclusive freight easement, prior easement rights and other reservations described in the deeds to such property, including the terms of this Agreement and that certain 2009 Operating Agreement

between CSXT and MBTA, (the "2009 Operating Agreement"), specifically (i) the Grand Junction Branch, (ii) the Boston Terminal Running Track, and (iii) the Boston Main Line.”

2. In recognition of the transition of operations contemplated by the consummation of the Second Closing prior to the completion of all phases of the CSX Beacon Park Yard Relocation, the MBTA shall use reasonable efforts to exercise the dispatching protocol described in the 1985 Agreement in a manner that accommodates CSXT operations between Beacon Park Yard and Worcester, until all phases of the CSX Beacon Park Yard Relocation is complete, provided however, that MBTA shall not be required to accommodate CSXT operations that do not conform to CSXT’s operating rights set forth in the 1985 Agreement if MBTA, in its reasonable judgment, determines that such nonconforming CSXT operations will unreasonably interfere with MBTA operations. CSXT shall use commercially reasonable efforts to cause the CSX Beacon Park Yard Relocation to occur prior to September 30, 2013, but does not guarantee that it will occur by that date.
3. As of the Amendment #6 Effective Date, Addendum 1 to the 1985 Agreement is hereby amended, restated and replaced with Addendum 1 attached hereto as **Exhibit A**.
4. As of the Amendment #6 Effective Date, Addendum 2 to the 1985 Agreement is hereby amended, restated and replaced with Addendum 2 attached hereto as **Exhibit B**.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #6 to be signed with effect as of the Amendment #6 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_

Name: Jonathan R. Davis  
Title: Acting General Manager

By:  \_\_\_\_\_

Name: Steven A. Potter  
Title: Assistant Vice President - Passenger  
Planning

**APPROVAL AS TO FORM**

By: \_\_\_\_\_

Name: Rachael Rollins  
Title: Acting General Counsel

IN WITNESS WHEREOF, the parties have caused this Amendment #6 to be signed with effect as of the Amendment #6 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

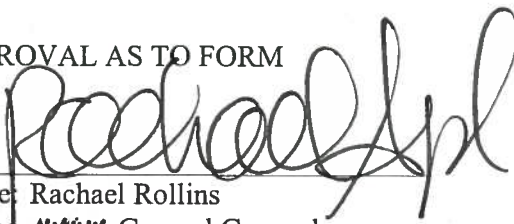
**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By:   
Name: Jonathan R. Davis  
Title: Acting General Manager

By: \_\_\_\_\_  
Name: Steven A. Potter  
Title: Assistant Vice President - Passenger  
Planning

**APPROVAL AS TO FORM**

By:   
Name: Rachael Rollins  
Title: ~~Acting~~ General Counsel

**EXHIBIT A****[SUBJECT TO REVIEW BY ALL PARTIES]  
ADDENDUM 1****MBTA RAIL PROPERTIES |  
Category A – Jointly used with CONRAIL**

| Facility <sup>1</sup>                                     | Location  | Milepost <sup>7</sup> | Maintenance <sup>2</sup> |
|---|---|-----------------------|--------------------------|
| Worcester Main Line (formerly Boston Line)                | COVE to Framingham, MA  | 1.10 – 22.40          | Class III                |
| Shore Line  | Boston to COVE  | 0.45 – 1.10           | Class II                 |
| Beacon Park Yard  | Track through Beacon Park Yard to connect Grand Junction Branch to Main Line at both CP3 and CP4. Includes Beacon Park yard tracks 211, 601, 223, 201 and the easterly portion of track 222 all more accurately depicted on the schematic plan attached to Amendment #6 | N/A                   | Class I                  |
| Boston Terminal Running Track                             | Southampton Street – End of Track at Boston Marine Industrial Park  | 0.00 – 2.25           | Class I                  |
| Franklin Branch   | Readville to Franklin, MA   | 9.50 – 28.07          | Class III <sup>4</sup>   |
| Stoughton Branch  | CANTON JUNCTION to Stoughton, MA  | 15.0 – 19.40          | Class II                 |
| East Junction Industrial Track                            | East Junction-connection to Track #4 (0.00) to “End of Commuter” board (0.25)   | 0.00 – 0.25           | Class I                  |
| Readville #5 Yard   | Sprague Street O.H. Bridge to READ  | 0.90 – 650’ East      | Class I                  |
| Readville #2 Yard, Upper Level, Tracks #8 and #10         | From the southerly home signal at DANA Interlocking to the point of clearance at the switches on the south end of the yard. This includes all the switches on the North end of the yard and excludes all the switches on the south end of the yard.                     | n/a                   | Class I                  |
| Dorchester Branch   | TOWER 1 to Readville  | 0.00 – 9.11           | Class II                 |
| East Route Main Line                                      | F.X. Interlocking to Wonderland Interlocking  | 1.20 – 7.10           | Class II                 |
| Boston Engine Terminal - B&A Eastward and Westward tracks | SWIFT to F.X. Interlocking  | Entire length         | Class I                  |



| Facility <sup>1</sup>  | Location  | Milepost <sup>7</sup> | Maintenance <sup>2</sup> |
|--|---|-----------------------|--------------------------|
| Grand Junction Branch  | Beacon Park Yard to NEP Lead  | 0.00 – 5.10           | Class I                  |
| New England Produce ("NEP") Lead<br>(AKA Eastern Gas and Fuel Railroad Line) | Connection with Grand Junction to end of track  | Entire length         | Class I                  |
| Shore Line   | Readville to Rhode Island/Massachusetts State Line  | 190.80 – 219.20       | Class III                |
| Middleboro Main Line<br>(formerly Braintree Secondary <sup>5</sup> )         | Braintree to PILGRIM  | 0.00 – 24.70          | Class II                 |
| Middleboro Subdivision<br>(formerly Pilgrim Running Track <sup>6</sup> )     | PILGRIM to CAPE (Marker 114' east of the point of switch that joins the north and south wye tracks) | < See Location        | Class I                  |
| Middleboro Main Line<br>(formerly Neponset Running Track)                    | Tower 1 to Redfield Street  | 0.10 – 3.80           | Class I                  |
| Plymouth Branch<br>(formerly Plymouth Running Track)                         | PEARL to Mahar Highway  | 11.246 – 11.857       | Class I                  |
| Randolph Industrial Track  | Braintree Highlands to the end of track   | 0.00 – 1.00           | Class I                  |
| Greenbush Branch<br>(formerly, Weymouth Industrial Track)                    | ADAMS JUNCTION to ALLEN in East Braintree   | 10.15 - 11.55         | Class I                  |
| Holliston Industrial Track   | Turnout from the Worcester Main Line through Chaffin St.  |                       | Class I                  |
| Framingham Secondary   | Turnout from the Worcester Main Line through Blandin Ave.   |                       | Class I                  |
|  |   |                       |                          |

NOTES:

1. Line Segment, Yard, etc.
2. FRA Class
3. To be maintained so as to enable passenger train speeds of not less than 60 mph
4. To be maintained so as to enable train speeds of not less than 30 mph
5. MP 11.4 to 24.7 of this property was not originally part of the 1985 Agreement. It was added to the scope of the 1985 Agreement by a 1995 letter agreement between MBTA and Conrail (the "1995 Letter Agreement").
6. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the "2004 Letter Agreement"), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6.

7. Mileposts designations are the best available based on the 2012 MBTA Timetable and used for ease of reference. The mileposts are not to be used to limit access for freight business to or along a named location. If it is determined that additional access is needed for CSXT to serve a customer under its freight easement at or along a named location, the mileposts used herein will be adjusted accordingly.

## ADDENDUM 1

### MBTA RAIL PROPERTIES Category B – Exclusively used by CONRAIL

| Facility <sup>1</sup>                            | Location   | CSXT<br>MP<br>Prefix | Milepost       | Maintenance <sup>2</sup> |
|--|--|----------------------|----------------|--------------------------|
| East Junction Industrial Track <sup>3</sup>      | “End of Commuter” board 0.25 to Mileage 0.60   | QVJ                  | 0.25 - 0.60    | Class I                  |
| Readville #2 Yard, Upper Level, Tracks #4 and #6 | From the point of clearance to the switches on the north end of the yard, to and including all of the switches on the south end of the yard <sup>4</sup> |                      | n/a            | Class I                  |
| Middleboro Subdivision <sup>5</sup>              | COT to CAPE (Marker 114’ east of the point of switch that joins the north and south wye tracks)  | QNB                  | 13.30 – 22.70  | Class I                  |
| Framingham Wye*                                  | East leg of Wye to the North Yard (from the PS at CP 21 to the end of the track circuit (a distance of 718’))  |                      | < See location | Class I                  |

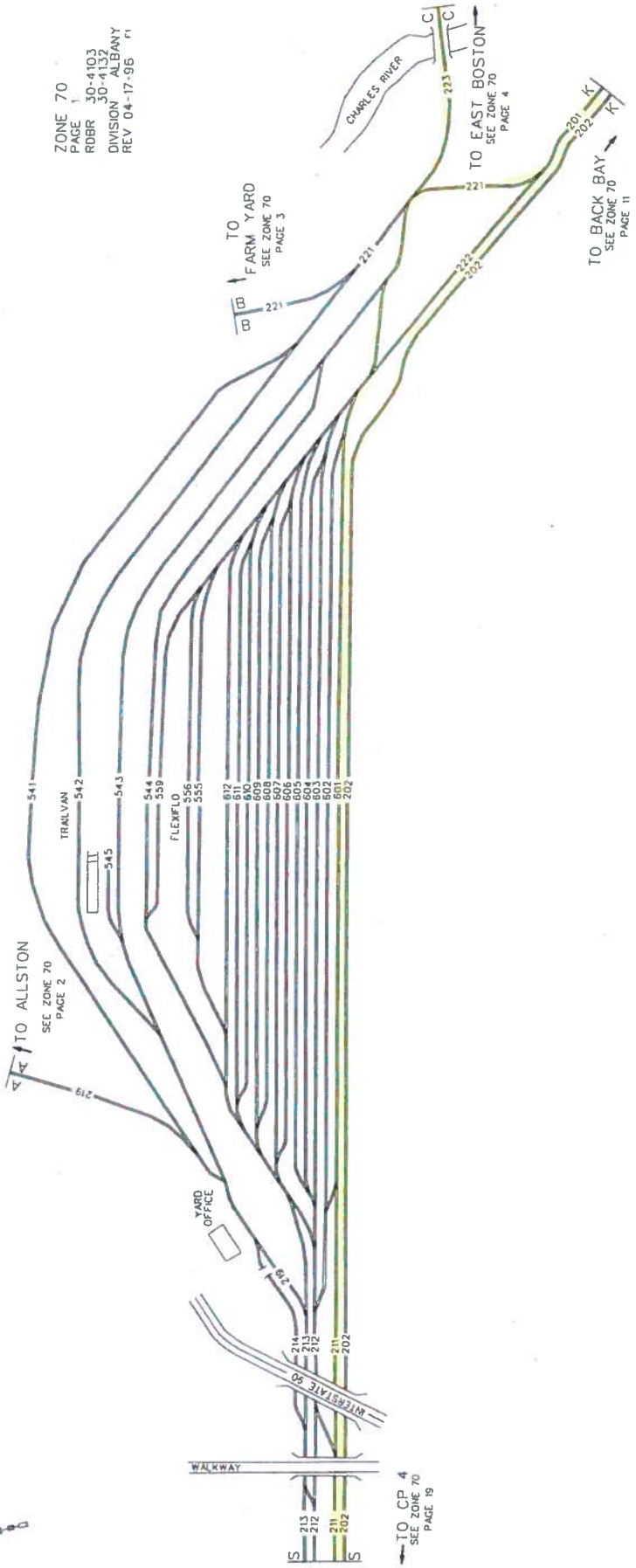
**NOTES:**

1. Line Segment, Yard, etc.
2. FRA Class
3. CSXT letter dated September 17, 2001 (attached), CSXT deleted East Junction Industrial track from QVJ 0.6+/- and the MA/RI border the from Addendum 1 effective June 27, 2001. CSXT retains rights from the connection to track #4 and QVJ 0.6.
4. Emergency use by MBTA excepted
5. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the “2004 Letter Agreement”), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6.

\* To be maintained by MBTA as a Category A property. The provisions of the first sentence of Section 3.02(a) of the 1985 Agreement shall not apply to this property.

BOSTON MA  
 (ALLSTON)  
 BEACON PARK YARD

ZONE 70  
 PAGE 1  
 RDBR 30-4103  
 DIVISION ALBANY  
 REV 04-17-96



IO CP 4  
 SEE ZONE 70  
 PAGE 19

SALE AGENT

THIS AGREEMENT entered into this 16th day of December 1982, by and between the COMMONWEALTH OF MASSACHUSETTS, acting through the Executive Office of Transportation and Construction, pursuant to MGL c.161C and Chapter 732 of the Massachusetts Acts of 1981, having a mailing address of One Ashburton Place, Room 1610, Boston, Massachusetts 02108, hereinafter referred to as "Grantee", and CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, having an office at Six Penn Center Plaza, Philadelphia, Pennsylvania, 19104, hereinafter referred to as "Grantor".

WHEREAS, Grantor has agreed to sell and Grantee has agreed to buy certain lines and yards of railroad,

WHEREAS, Grantor will retain certain rights as hereinafter set forth with respect to the lines and yards; and

WHEREAS, Grantee desires to enter into one or more agreements with Grantor regarding the performance of rail operations on the lines of railroad to be purchased, and

WHEREAS, the parties desire to set forth the terms and conditions of said purchase and sale and retention of rights

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

Mark George  
F-1700

SECTION I

SALE AND TRANSFER OF LINES

A. PURCHASE AND SALE. Grantee agrees to purchase from Grantor, and Grantor agrees to sell to Grantee subject to the terms and conditions of this Agreement, all the right, title, and interest of Grantor in and to the lines, structures and yards the limits of which are in three categories and are described below:

Category A

| <u>Name and Line Code</u>         | <u>Milepost</u>   |
|-----------------------------------|---|
| Attleboro Secondary<br>LC 4188    | Attleboro at MP 0.0±<br>to CP Whit at MP 9.4±                   |
| New Bedford Branch<br>LC 4189     | CP Whit at MP 9.4±<br>to CP Cotley at MP 13.3±                  |
| Middleboro Branch<br>LC 4190      | CP Cotley at MP 32.4± to<br>Alden/Middleboro at MP<br>24.6± ✓   |
| Buzzards Bay Secondary<br>LC 4178 | Pilgrim/Middleboro at MP<br>0.0± to Middleboro at MP<br>1.5± ✓? |
| Middleboro Branch<br>LC 4177      | Middleboro at MP 24.6± to<br>Campello at MP 11.4± ✓             |

and the Middleboro Yard more or less described below and marked on the attached valuation map entitled and included in Appendix A.

All real property of the Consolidated Rail Corporation in the Town of Middleboro between station 1206+00 on the railroad line from South Braintree to Middleboro and station 29+16 on the Buzzards Bay Secondary and between the above-referred station 1206+00 and station 43+00 on the Middleboro Branch comprising the Middleboro Yards as shown on the plan entitled: -

"Right of Way and Track-Map Old Colony Railroad Company operated by the New York, New Haven and Hartford Railroad Company from South Braintree to Newport Station 1206+00 to Station 1640+40 Town of Middleboro State of Massachusetts Scale 1"=100' June 30, 1915. Office of the Valuation Engineer, Boston, Massachusetts" sheet 24 in series V.5-36.

Category B

| <u>Name and Line Code</u>     | <u>Milepost</u>   |
|-------------------------------|---|
| Randolph Secondary<br>LC 4194 | Braintree Highlands at MP<br>0.0 to Braintree Highlands<br>at MP 1.0  |
| Plymouth Secondary<br>LC 4185 | South Braintree (Landers)<br>at MP 1.2 to South<br>Braintree (Landers) at MP<br>1.7 (to the extent that<br>same is not already owned<br>by the Massachusetts Bay<br>Transportation Authority) |

Category-C

Name and-Line-Code

Milepost

Randolph Secondary  
LC 4194

Braintree Highlands at MP  
1.0 to Randolph at MP 2.5

Dighton Industrial Track  
LC 4195

Weir Junction at MP 0.0 to  
Weir Village at MP 1.1

North Abington Turnout  
LC 4179

North Abington at MP 0.0±  
to North Abington at MP  
0.1±

All of the foregoing real property shall hereinafter be collectively referred to as the "Property" and marked on the attached valuation maps entitled Appendix A, together with all right, title and interest of Grantor in and to the real property contiguous thereto and conveyed to Grantor as part of the afore-said line codes, in-place track and devices appurtenant thereto, track materials, wires, pipes, conduits, poles, guys, structures, buildings, signals, yards, and bridges located thereon as of the date of this Agreement, together with all rights of Grantor in and to any leases, easements, licenses, agreements and privileges (excluding sidetrack and track leases in effect as of the date first above-written) pertaining to the real property.

B. Freight-Easement

As to the Property described in Categories A and B above, the deed shall reserve to the Grantor, its successors and assigns, an exclusive and permanent easement, as hereinafter



provided, for continuing its freight railroad operations over the Properties, at no charge to the Grantor, hereinafter referred to as the "Freight Easement". As to the Property described in Category C above, the Grantor will quitclaim and deed over to the Grantee all of its right, title and interest in and to Category C Property without reservation of any rights in and to the said Category C Property.

To the extent that Conrail seeks to transfer said easement, said transfer shall be made in accordance with 45 USC 763(b)(3)(A). Grantor covenants that it and its successors and assigns will not effect any such assignment or transfer without the prior written consent of the Grantee. To the extent that said assignment or transfer cannot be made in accordance with 45 USC 763(b)(3)(A), then Grantor, its successors and assigns covenants that any assignment or transfer of said easement will be made only with the prior written consent of the Grantee. In the event, the Grantee does not consent, then the Grantor, its successors and assigns agrees to seek an abandonment of said easement in accordance with this section.

Grantor reserves said easement for the following purposes of the Grantor: (1) operation over the Property of freight trains, cars, engines and other railroad equipment; (2) the inspection,

maintenance and rehabilitation of the tracks, roadbed and associated rail facilities on the Property; (3) such other activity as is reasonably necessary or customary in connection with the operation of rail freight service; and together with all benefits and burdens of any provisions under any existing labor agreements with respect to rail operations.

The Grantor, its successors and assigns covenants that at any time or times as it obtains a certificate of abandonment or discontinuance of its freight operations on the Property or any portion(s) thereof from appropriate governmental authority or authorities or if the Grantor in fact ceases its freight operations, by its own action for any consecutive 15-day period, then the said freight easement shall to the same extent terminate and Grantor, its successors or assigns, shall thereupon execute an appropriate release of said easement which is suitable for recording to the extent Grantor is authorized by law to do so provided, however, that any interruption of service not due to Grantor, including without limitation, strikes, lock-outs, casualties or acts of God, riot, and/or civil insurrection, shall not be deemed a cessation of freight service for the purpose of this paragraph. Grantor agrees to make a simultaneous assignment of all track leases and sidetrack agreements in affect on the Property(ies) to the extent the Grantor is legally authorized

to do so. It is understood and agreed among the parties hereto that such release of easement is a part of this conveyance and shall be supported by no consideration in addition to the price tendered under the terms of this agreement for purchase of the Property.

C. Track Rights

Grantor shall retain all rights in and to all track leases and sidetrack agreements in effect as of the date first above-written. Thereafter, Grantor may grant only, subject to the prior written approval of the Grantee, which shall not be unreasonably delayed or withheld, overhead trackage rights and access to switching and/or yard facilities to railroad companies operating east of Attleboro and sidetrack or track lease agreements to customers on the Property, unless otherwise directed by order of a regulatory authority having a jurisdiction, subject to whatever rights the Grantee may have under law or in connection with the issuance of any such order. In the event Grantor grants any such rights, the Grantor shall forward a certified copy(ies) of any instruments of such grants to Grantee by first class mail immediately thereafter. Grantor represents that operations under leases or sidetrack agreements now in effect or any it later grants shall not unreasonably interfere with passenger rail operations on the Property.

SECTION II

CONSIDERATION FOR TRANSFERS

A. PURCHASE PRICE

Grantee shall pay Grantor the sum of one million two hundred thousand dollars (\$1,200,000) for the Properties, such sum to be paid to Conrail at Closing in cash, or by Grantee's check, unless otherwise agreed to by both parties in writing.

B. TITLE

(a) Possession of the Property shall be delivered at Closing by Massachusetts statutory quitclaim deed, hereinafter, "Deed" of conveyance of the property in a form suitable for recording by description and line code as was conveyed to Conrail, without covenants or warranties of any nature, except as hereinafter provided. Title to the Property shall be conveyed free and clear of all liens and encumbrances (except those which the Grantor has specifically indemnified the Grantee against), except that title shall be conveyed under and subject to all existing tenancies, easements, rights, licenses, privileges, agreements, covenants, conditions, restrictions, rights of re-entry, possibilities of reverter, existing laws and ordinances,

(excluding track leases and sidetrack agreements) and any state of facts that an accurate survey and a prudent inspection of the Property would disclose.

### SECTION III

#### CLOSING

(1) Closing will be held on or before December 31, 1982, at the Executive Office of Transportation and Construction, One Ashburton Place in Boston, or at such other time and place as may be mutually agreed upon by the parties hereto.

(2) At Closing, Grantor shall deliver to Grantee the following:

(a) Four (4) executed counterparts of said quit-claim deed, duly executed and acknowledged for recording in the appropriate Registeries of Deeds. In addition, Grantor will provide to Grantee valuation maps covering all of the Property, which are marked in red on Appendix A and Appendix B, attached hereto. If a survey is required as a prerequisite to recordation, Grantee shall obtain and bear cost of such survey.

(b) A general assignment by Grantor to Grantee of all leases, licenses, agreements (excluding track leases and sidetrack agreements), and privileges pertaining to the Property, and within 30 days thereafter any security deposits under any such instruments.

(c) Proof of satisfaction of mortgages, if any, affecting the Property and proof of satisfaction of all pre-closing real estate tax obligations affecting the Property and a letter from the Grantor indemnifying the Grantee against any outstanding tax obligations on the day of the Closing.

(d) A certificate by an authorized officer of the Grantor certifying the power and authority of Grantor's signator to the deed to bind the Grantor to the conveyance of the Property.

(e) Grantor will use its best efforts to deliver final drafts of all closing documents will be submitted to the Grantee at least 14 and no later than 7 days prior to closing for its review and approval. Ninety-six (96) hours before Closing, Grantor will produce for examination and approval by requisite Commonwealth authorities the final, executed Closing documents which will remain in Grantor's possession until closing.

(3) Grantor shall make all reasonable efforts to make available or deliver the following to Grantee at the times specified:

(a) Within 14 days after Closing, Grantor shall deliver to Grantee a list of all licenses, agreements, and the lease documents.

(b) Within 45 days after Closing Conrail shall deliver to Grantee (i) the "linens" for the Property, (ii) Grantor's executed counterparts of licenses and agreements and also the deed records and historic data, (iii) a schedule of the security deposits (if any) held by Grantor as of the date of Closing; (iv) Grantor's payment, by separate check, in the aggregate amount of all security deposits held under leases; and Grantee shall execute an agreement releasing Grantor, and holding Grantor free and harmless from, any liability for any application of such security deposits made after delivery of said deposits; and (v) any available engineering data on track and structures on the Property.

(4) At Closing, Grantee shall deliver to Grantor the following documents:

(a) A certificate by an authorized officer of the Grantee certifying that the Grantee has the legislative and other authority to enter into and be bound by the obligations imposed under this Agreement.

(b) An assumption and release of Grantor from all liability arising after delivery of the executed counterparts under the aforesaid assignment of the leases, licenses, sidetrack agreements, and privileges pertaining to the Property.

(5) All real estate transfer taxes (if any) imposed by law shall be divided equally between Grantor and Grantee; provided, however, that both parties shall be entitled to avail themselves of any exemptions from the payment of such taxes as they may enjoy. Real property taxes; and income from leases, licenses, agreements, and privileges pertaining to the Property shall be apportioned as of the date of Closing.

(6) All recording costs and filing fees required to be paid with respect to documents under this Agreement shall be the sole responsibility of Grantee.

(7) Grantor agrees to indemnify Grantee against:

(a) losses resulting from liens against the Property recorded up to the time of Closing, and



(b) loss and liability arising out of any instrument referred to in Subsection 2(b) of this Section if, and only to the extent that, (i) such loss and liability accrued and a cause of action against Grantor existed during the period from April 1, 1976 until delivery of said instruments to Grantee or (ii) such loss or liability and a cause of action against Grantor accrued at any time prior to delivery of the relevant instrument to Grantee and a written demand for redress was received by Grantor from the aggrieved party prior to said delivery.

Grantee shall notify Grantor of any claim or action falling within the scope of this Paragraph (7), and Grantor shall have the right to defend such claim and to assert any and all defenses which would be available to Grantor if Grantor continued to be the owner of the Property.

#### SECTION IV

In the event the Massachusetts Department of the Attorney General, the Executive Office of Administration and Finance or the Executive Council fails prior to closing to authorize or approve this Agreement or the closing documents, then this Agreement shall be cancelled and neither party hereto shall have any claim against the other by reason hereof.

BEST-EFFORTS. Each party shall use its best efforts to expedite the obtaining of any governmental approvals required in connection with any of the transactions contemplated by this Agreement.

SECTION V

By entering into this Agreement, neither party waives any rights which it may have against the holders of interest referred to in Section III, paragraph (2)(b).

SECTION VI

If the Grantee is required to secure subdivision approval, due to existing laws or ordinances of any municipality of which any of the Property is in part, then the Grantor shall cooperate with the Grantee in securing such approval, including the furnishing of maps, title reports and other pertinent information in its possession.

SECTION VII

DESIGNATED RAIL PASSENGER OPERATOR

In the event that rail operations, or rehabilitation, or construction on the Property (or any portion thereof) are to be conducted by a party other than Grantor, Grantor shall enter into

( an agreement with such party performing operations, rehabilitation or construction on the Property (or any portion thereof) for the joint use of said Property. Such agreements shall include but not be limited to the following provisions:

(1) Reasonable access to the Property by the Grantee's assigned operator(s) and/or contractor(s);

(2) Indemnification of such operator(s), and/ or contractor(s) and the Grantee as to any loss or liability, death, bodily injury, damage to property or the Property arising from Grantor's use and enjoyment of its freight easement reserved and described in Section IB;

(3) As to any designated passenger operator, Grantor shall share in the cost and expense of maintaining the Property or any portion thereof used for passenger operations.

(4) Subject to the provisions of subparagraph 5 below, as to any rehabilitation or construction, Grantor shall agree to keep and maintain the Properties designated Category A, in Section I above, at its own expense at no less than FRA Class II and shall maintain or cause to be maintained the Properties designated as Category B at no less than FRA Class I, at its own expense.

(5) Conrail shall determine the requirements for maintenance, construction, reconstruction or alteration of the Category A lines and shall bear the complete cost thereof as long as there is no Commonwealth use of these rail lines for passenger service or until service thereon is discontinued by Conrail. In the event that rail passenger service is initiated on the Category A lines, Conrail as provided in the previous two subparagraphs, (3) and (4), shall share in the cost and expense of maintaining the Property or any portion thereof used for passenger operations, and shall agree to bring up, keep and maintain the Properties designated in Category A, in Section 1 above, at its own expense, at no less than FRA Class II and shall bring up, maintain or cause to be maintained the Properties designated as Category B at no less than FRA Class I, at its own expense. In the event that the track class on the lines designated in Category A is less than Class II standards, or less than Class I on the lines designated in Category B, Conrail shall, at its own cost, restore the lines to Class II standards or Class I standards respectively, within 180 days of the effective date of any discontinuance of service by Conrail.

(6) Any disputes arising under this section shall be first negotiated in good faith and, if irreconcilable, shall be submitted to final and binding arbitration by the American Arbitration Association. Any costs of arbitration shall be borne equally by the Grantor and the Grantee.

(7) If any agreement is reached between the Grantor and Grantee, or any other parties, concerning the operation and maintenance of Categories A and B lines of railroad (but not the yards) owned, operated or otherwise utilized by the Grantor, the provisions of that agreement shall supersede this Section VII, in its entirety, provided it is in writing and assented to in writing by the Grantee.

#### SECTION VIII

NOTICES. Unless otherwise specified herein, all notices, requests, consents, demands, or other communications desired or required to be given by one party to the other shall have been deemed to have been given only when deposited in the United States mail, certified, return receipt requested, directed to the recipient as follows (or at such other addresses as either the parties hereto may designate by written notice to the other party hereto):

If to the Grantor:

Consolidated Rail Corporation  
1528 Walnut Street  
Room 901  
Philadelphia, PA 19102

Attention: Lawrence A. Huff, Assistant Vice President  
Real Estate

If to Grantee:

Executive Office of Transportation and Construction  
One Ashburton Place, Room 1610  
Boston, MA 01208

Attention: Secretary

With a copy to:

Executive Office of Transportation and Construction  
One Ashburton Place, Room 1610  
Boston, MA 02108

Attention: Legal Counsel

SECTION IX

RISK OF LOSS. Risk of loss or damage to the Property shall remain with the Grantor until such time as title to the property passes to the Grantee; provided, however, that in the event of substantial damage to any of the Property, Grantee, by notice in writing to Grantor may terminate this Agreement as to such line(s) or yard(s) upon which substantial damage has occurred. In such event the parties hereto shall negotiate an appropriate reduction of the purchase price. Substantial damage shall be deemed to mean such damage to a line as to render it not capable of being operated for continued rail services.

The Grantee shall have the right to enter for the purpose of inspecting the Property during the period of this Agreement at its own risk, and Grantee hereby relieves Grantor of all liability for loss or damage to property or for death or bodily injury arising from entry for the purpose of inspection.

#### SECTION X

A. CONTENTS OF AGREEMENTS: PARTIES IN INTEREST. This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby and may not be amended except by written instrument executed by the parties hereto. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement, except as herein provided. All representations, warranties, covenants, terms, conditions, stipulations and provisions of this Agreement shall survive closing and be binding upon and inure to the benefit of, and be enforceable by, the successors and assigns of the respective parties, to the extent not satisfied at closing. Neither Grantee nor Grantor shall assign, pledge, encumber, or transfer this Agreement, or any interest therein, without the prior consent of the other.

B. GOVERNING LAW. This Agreement and the rights and obligations accruing hereunder shall be constructed and enforced in accordance with the laws of Massachusetts in the courts of the Commonwealth.

C. APPENDICES. All appendices referred to in this Agreement are intended to be, and are hereby, specifically made a part of this Agreement.

D. WAIVER. No waiver by either party of any failure of, or refusal by, the other party to comply with its obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply. Notwithstanding any provisions of this agreement, the Grantee specifically reserves its rights pursuant to MGL c.161C.

E. TIME:-TENDER. Time shall be of the essence of this Agreement.

#### SECTION XI

BROKER. Grantee represents that it has not dealt with any broker in connection with the transactions contemplated by this Agreement. Grantee agrees to indemnify Grantor against, and hold Grantor harmless from, any and all loss, damage, penalty, claim, liability, cost, and expense, including without limitation, reasonable attorneys' fees and disbursements arising from or in



connection with any action by any broker or other party with whom Grantee may have dealt for a commission or compensation from this sale of the Property.

SECTION-XII

DEFAULT. If Grantor shall tender the Deed and other papers and payments required to be delivered at Closing by this Agreement, and if Grantee fails or refuses to tender the purchase price, as required by this Agreement or fails to comply with the Closing requirements of this Agreement, then, without limiting any rights available to it at law or in equity, Grantor may, at its option, refuse to close title. If the Grantee shall tender the purchase price at closing by the terms of this Agreement, and if Grantor fails or refuses to tender the Deed and other papers and payments required to be delivered at closing then, without limiting any rights available to it at law or in equity, the Grantee may, at its option, refuse to close title.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

Witnesses as to the Grantor

Mary Ann Nelson  
Patricia Lombard

CONSOLIDATED RAIL CORPORATION

By: [Signature]  
Robert J. Soltis  
Manager - Real Estate

Witnesses as to the Grantee

Mary Lynn Kiley  
Edna Bora

COMMONWEALTH OF MASSACHUSETTS  
acting through the Executive  
Office of Transportation and  
Construction

By: [Signature]  
James J. Kerasiotes  
Undersecretary

Approved as to form:

[Signature]  
Asst Attorney General

By: [Signature]  
Deputy Commissioner of  
Capital Planning and  
Operations

[Signature]  
James F. Carlin  
State Secretary of Transportation

CONRAIL



15

May 12, 1998

Advance Copy via Fax to:  
617 / 222 - 6180

MBTA

101

RALPH

YES Discuss.

- J.  
- 7/27

Mr. Robert H. Prince  
Chief Operating Officer  
Massachusetts Bay Transportation Authority  
10 Park Plaza  
Boston, MA 02116

Dear Mr. Prince:

This refers to a Sale Agreement between the Commonwealth of Massachusetts ("Grantee" or "Commonwealth") and Consolidated Rail Corporation ("Grantor" or "Conrail") dated December 16, 1982, copy attached, which established the basis for Commonwealth's acquisition of the following Category A and B lines from Conrail:

| <u>NAME</u>  | <u>LINE CODE</u> | <u>BETWEEN FOLLOWING LOCATIONS</u>          |
|--|------------------|---|
| Braintree Secondary<br>(former Middleboro Br)      | 4177             | Campello (MP 11.4) and Middleboro (MP 24.6) |
| Middleboro Secondary<br>(former Buzzards Bay Sec.) | 4178             | Middleboro (MP 21.2) and BCLR (MP 22.7)     |
| Plymouth IT  | 4185             | S. Braintree (MP 1.2) and BCLR (MP 1.7)     |
| Middleboro Secondary<br>(former New Bedford Br.)   | 4189             | Whit (MP 9.4) and Cotley (MP 13.3)          |
| Randolph IT  | 4194             | Braintree (MP 0.0) and EOT (MP 1.0)         |
| Middleboro Secondary                               | 4203             | Cotley (MP 13.3) and Middleboro (MP 21.2)   |

Pursuant with Section I B of the December 16, 1982 Agreement, Conrail reserved, at no charge, an exclusive and permanent easement over the above lines for continued freight railroad operations and related activities necessary for the freight operations thereover.



Mr. Robert H. Prince

Page #25

May 12, 1998

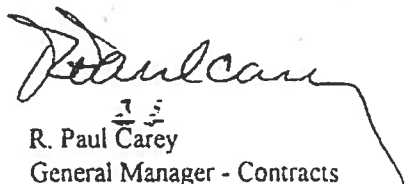
Over the past several years, the Commonwealth has progressed a major program of various capital projects to upgrade these lines so that control could be assumed by the Massachusetts Bay Transportation Authority ("MBTA"), in order to commence commuter rail passenger operations over said lines.

Although the change of control has been accomplished, there is no defined basis to deal with the apportionment of liability between Conrail and MBTA in conjunction with their shared operations over these lines, pursuant with Section VII of the December 16, 1982 Agreement.

Conrail suggests the Liability Indemnification provisions in Article 7 of the master Trackage Rights Agreement between Conrail and MBTA dated (effective) July 1, 1985, as the basis for the apportionment of liability on these lines. As such, this Letter Agreement would be considered as an amendment to the December 16, 1982 agreement, solely for the purpose of governing liability apportionment on the above lines, effective May 12, 1998.

If you agree with this proposal, please acknowledge your concurrence in the space provided below, returning Conrail's original counterpart to me for our records.

Very sincerely yours,



R. Paul Carey  
General Manager - Contracts

ACCEPTED ON BEHALF OF MASSACHUSETTS BAY TRANSPORTATION AUTHORITY:

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

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_





# Massachusetts Bay Transportation Authority

William F. Weld  
Governor

Argeo Paul Cellucci  
Lieutenant Governor

James J. Keraslotes  
Secretary and MBTA Chairman

Robert L. Mabardy  
Interim General Manager

MBTA RAILROAD OPERATIONS

May 26, 1995

Mr. Michael Peterson  
General Manager  
Consolidated Rail Corporation  
One Bell Crossing Road  
RD2 Box 145  
Selkirk, NY 12158-9618

ENGINEERING DEPT.

*C. J. Ray*  
*DW Operatt*  
*Pls revise June*  
*7/1/95*  
*5/31*

**RE: Change in Maintenance Responsibilities**

Dear Mr. Peterson:

Pursuant to earlier discussions the MBTA has prepared the attached revised addendae to the Trackage Rights Agreement. These revisions should encompass all of our previous agreements; however, if you understand differently, please bring it to my attention.

The Weymouth Industrial Track is included in Addendum 1 as a Category A Property in anticipation of the signing of a lease agreement. This lease is currently being progressed by our respective Real Estate Departments and should be completed soon. If the inclusion of the Weymouth Industrial Track presents a problem, we can defer it until a later date.

These changes in maintenance and dispatching shall become effective on June 1<sup>st</sup>, 1995 provided you do not see problems with the revisions.

*July*  
*1995*

Please indicate your concurrence by signing on the line provided below. If you require any changes or additional clarification, please call at your earliest convenience.

Sincerely,

*John A. Cline*  
John A. Cline  
Deputy Chief  
for Railroad Operations

*cc DWU*  
*JCH*  
*KCM*  
*DJ...*

CONCUR:

*[Signature]*  
Michael Peterson  
General Manager, Consolidated Rail Corporation

cc: R. H. Prince; J. F. Flaherty; J. D. Ray; J. E. Powers

ADDENDUM 1

MBTA RAIL PROPERTIES

Category A -- Jointly Used with CORRAL

| Facility                       | Location  | Milepost       | Mileference <sup>2</sup> |
|--------------------------------|---|----------------|--------------------------|
| 5 Boston Line (B & A M.L.)     | MP 0.45 - West End of Cove Interlocking                                   | 0.45 - 1.1     | Class III <sup>3</sup>   |
| Boston Line (B & A M.L.)       | Riverside - Framingham  | 10.63 - 21.58  | Class III <sup>3</sup>   |
| Framingham Branch              | Roadville - Framingham, Ma  | 0.0 - 18.2     | Class III <sup>4</sup>   |
| Stoughton Branch               | Clinton - Stoughton   | 14.95 - 19.4   | Class B                  |
| East Junction Industrial Track | East Junction - "End of Commuter" board                                   | 0.0 - 0.8      | Class II                 |
| Roadville Yard                 | Sprague St. - Overhead Bridge   | 0.9 - 667 east | Class III                |
| Dorchester Branch              | Tower 1 - Roadville   | 0.0 - 8.11     | Class II                 |
| East Route Main Line           | F.X. Interlocking - Wonderland Interlocking                               | 1.2 - 7.1      | Class II                 |
| Roadville #2 Yard Lead         | Dana Interlocking - Lower #2 ("Belt") Yard                                |                | Class I                  |
| Boston Engine Terminal         | Relocated B & A Eastbound & Westbound tracks Tower H - F. X. Interlocking | Entire Length  | Class I                  |
| Brintree Secondary             | Brintree - Campbell   | 0.0 - 11.4     | Class II                 |
| Brintree Secondary             | Campbell - Abbin  | 11.4 - 21.7    | Class II                 |
| Plimton Running Track          | Abbin - Plimton   | Entire Length  | Class I                  |
| Naperville Running Track       | Milton Switch - Naperville  | 0.1 - 3.8      | Class I                  |
| Plymouth Running Track         | South Brintree - Plymouth   | 1.2 - 1.7      | Class I                  |
| Middleboro Secondary           | COT - BAY (Via CAPE)  | 13.3 - 22.7    | Class I                  |
| Randolph Industrial            | Brintree Highlands - End of track   | 0.0 - 1.0      | Class I                  |
| Weymouth Industrial            | East Brintree - End of Track  | 0.0 - 1.5      | Class I                  |
| West Oxbury Industrial         | East Brintree - End of Track  | 0.0 - 0.9      | Class I                  |

<sup>1</sup> Line Segment, Track etc.

<sup>2</sup> P.L.A. Class

<sup>3</sup> To be maintained as an all-weather passenger subgrade of road base from 60 MPH

<sup>4</sup> To be maintained as an all-weather subgrade of road base from 50 MPH

<sup>5</sup> This segment is owned by the Massachusetts Turnpike Authority (M.T.A.), in accordance with deed between New York Central (NYC) (a predecessor of CORRAL), dated December 27, 1952, which grants NYC (CORRAL) a permanent operating easement.

<sup>6</sup> Pending lease or deed from Council to MBTA



ADDENDUM 1

META RAIL PROPERTIES

Category B -- Excludes Used by CORRAL

| Facility 1                      | Location                                 | Milepost   | Milemarker 2 |
|---------------------------------|--|------------|--------------|
| Mills Industrial Track          | Medford - Citycut                        | 0.0 - 3.2  | Class 1      |
| Deerhorn Running Track          | Roseville - Deerhorn                     | 0.0 - 2.7  | Class 1      |
| East Junction Industrial Track  | East Junction - MA/RI State Line         | 0.0 - 3.7  | Class 1      |
| East Boston Branch              | Rivers - East Boston                     | 0.0 - 1.85 | Class 1      |
| Roseville #2 Yard (Upper Level) | All Tracks, (Dera - west end of #2 yard) |            | Class 1      |

1 Live Segment, Yard, etc.  
2 FRA Class



# Massachusetts Bay Transportation Authority

Mitt Romney  
Governor

Kerry Healey  
Lt. Governor

Daniel A. Grabauskas  
Secretary and MBTA Chairman

Michael H. Mulhern  
General Manager

February 27, 2004

Mr. John N. Booth, III  
Director – Joint facility Contracts  
~~CSX~~ Transportation  
500 Water Street, J801  
Jacksonville, FL 32202

Dear Mr. Booth:

Thank you for responding to my letter of November 19, 2003. That letter was fashioned after all previous letters regarding changes to ADDENDUM 1 of the 1985 Trackage Rights Agreement between our respective organizations. This 1985 Agreement was intended to define each party's rights and obligations related to the use of certain rail property. This process has worked quite well through the years and we are now ourselves "a bit confused".

Please do not be confused by our request for concurrence. This request was only made out of respect for Mr. Gibson and the CSXT Corporation. The trackage rights that exist between our organizations are quite clear with respect to CSX usage of MBTA rail properties. The change from Category A to Category B of Addendum 1 is solely to correct the fact that the Capeway segment is in fact MBTA owned and solely used by CSXT. These changes are being made in the exercise of the rights identified in Section 3.03, paragraph (a) which reads:

Section 3.02. Changes in Status of MBTA Rail Properties

- (a) *Nothing in this Agreement shall derogate from MBTA's right to determine which category its Rail Property shall fall within, as shown in ADDENDUM 1. In the event that passenger services are instituted by MBTA or a carrier authorized by MBTA on MBTA Rail Properties shown in ADDENDUM 1 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 . MBTA Rail 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 rail property shall be effective upon the date specified by MBTA in a written notice provided in advance thereof to CONRAIL.*

The seven (7) approximate miles of track between Cotley and Cape is in a better condition now than when the MBTA took over the maintenance in 1995. The amendment dated May 26, 1995 was delivered to Conrail's General Manager, Michael Peterson. The request for concurrence was also included by the MBTA's John A Cline at that time in deference to the same respect being shown in my recent transmittal. A copy of this amendment was provided to you in early December shortly after your receipt of my letter. In 1995 the segment was listed in ADDENDUM 1 Category A, fourth from the bottom as:

*Massachusetts Bay Transportation Authority, 45 High Street, Boston, MA 02110*

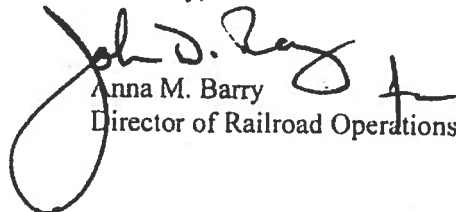
|                      |                      |             |         |
|----------------------|----------------------|-------------|---------|
| Middleboro Secondary | Cot - Bay (Via Cape) | 13.3 - 22.7 | Class I |
|----------------------|----------------------|-------------|---------|

Your agreement is not required for the reclassification to occur but your acceptance of the requirement of Article 5, Section 5.02 is required. This Section establishes the parameters that must be met prior to and concurrent with CSXT use of MBTA rail properties. Your acceptance of these conditions is a prerequisite to your use of said properties. If you wish to wait "several months to accommodate the transition" you also must be prepared to wait several months before you use the identified segment of track. The MBTA's written notification to you dated November 19, 2003 contained an effective date of January 1, 2004 (copy attached). This notification needs no response from CSX, but lacking an affirmative response from CSXT accepting of the responsibilities prescribed in section 5.02, the MBTA will be forced to remove the Capeway from service to prevent its usage in violation of FRA regulations.

We are quite surprised that you think it will take several months to transition in a safe and orderly manner. CSXT forces already dispatch and maintain the 13 miles from Attleboro to Cotley on one end and Middleboro yard on the other end. Further you also dispatch and maintain from Cotley to Fall River and New Bedford.

If CSXT can sufficiently validate a hardship that prevents your dispatching and maintenance of this track segment, the MBTA may be willing to continue these functions at CSXT's sole cost and expense. The MBTA will use its commuter rail operating contractor to perform the required function and pass through all costs associated thereto, a cost presumably higher than what CSXT can provide for themselves. The MBTA will cease maintaining and dispatching this track segment effective close of business March 15, 2004.

Sincerely,

  
Anna M. Barry  
Director of Railroad Operations

JDR/AMB:mj

Attachments

cc: J.D. Ray  
A.R. Regan  
D.E. Breen  
S.A. Jones  
N.K. Chin

bcc: R.C. McGovern

**EXHIBIT B**

**ADDENDUM 2**

**CONRAIL RAIL PROPERTIES**

| Facility <sup>1</sup> | Location                      | CSXT<br>MP<br>Prefix | Milepost      | Maintenance <sup>2</sup> |
|-----------------------|-------------------------------|----------------------|---------------|--------------------------|
| Framingham Yard       | 1500' of track in Nevins Yard |                      | n/a           | Class I <sup>3</sup>     |
| Franklin Branch       | Franklin, MA                  | QVF                  | 18.20 – 18.80 | Class I <sup>3</sup>     |
|                       |                               |                      |               |                          |
|                       |                               |                      |               |                          |
|                       |                               |                      |               |                          |

**NOTES:**

1. Line Segment, Yard, etc.
2. FRA Class
3. To be maintained so as to enable train speeds of not less than 15 MPH

#11308542\_v16

**EXHIBIT A**

[SUBJECT TO REVIEW BY ALL PARTIES]  
ADDENDUM I

**MBTA RAIL PROPERTIES I**  
Category A – Jointly used with CONRAIL

| Facility <sup>1</sup>                                     | Location  | Milepost <sup>7</sup> | Maintenance <sup>2</sup> |
|---|---|-----------------------|--------------------------|
| Worcester Main Line (formerly Boston Line)                | COVE to Framingham, MA  | 1.10 – 22.40          | Class III                |
| Shore Line  | Boston to COVE  | 0.45 – 1.10           | Class II                 |
| Beacon Park Yard  | Track through Beacon Park Yard to connect Grand Junction Branch to Main Line at both CP3 and CP4. Includes Beacon Park yard tracks 211, 601, 223, 201 and the easterly portion of track 222 all more accurately depicted on the schematic plan attached to Amendment #6 | N/A                   | Class I                  |
| Boston Terminal Running Track                             | Southampton Street – End of Track at Boston Marine Industrial Park  | 0.00 – 2.25           | Class I                  |
| Franklin Branch   | Readville to Franklin, MA   | 9.50 – 28.07          | Class III <sup>4</sup>   |
| Stoughton Branch  | CANTON JUNCTION to Stoughton, MA  | 15.0 – 19.40          | Class II                 |
| East Junction Industrial Track                            | East Junction-connection to Track #4 (0.00) to "End of Commuter" board (0.25)   | 0.00 – 0.25           | Class I                  |
| Readville #5 Yard   | Sprague Street O.H. Bridge to READ  | 0.90 – 650' East      | Class I                  |
| Readville #2 Yard, Upper Level, Tracks #8 and #10         | From the southerly home signal at DANA Interlocking to the point of clearance at the switches on the south end of the yard. This includes all the switches on the North end of the yard and excludes all the switches on the south end of the yard.                     | n/a                   | Class I                  |
| Dorchester Branch   | TOWER 1 to Readville  | 0.00 – 9.11           | Class II                 |
| East Route Main Line                                      | F.X. Interlocking to Wonderland Interlocking  | 1.20 – 7.10           | Class II                 |
| Boston Engine Terminal - B&A Eastward and Westward tracks | SWIFT to F.X. Interlocking  | Entire length         | Class I                  |

| Facility <sup>1</sup>   | Location   | Milepost <sup>7</sup> | Maintenance <sup>2</sup> |
|---|--|-----------------------|--------------------------|
| Grand Junction Branch   | Beacon Park Yard to NEP Lead   | 0.00 – 5.10           | Class I                  |
| New England Produce ("NEP") Lead (AKA Eastern Gas and Fuel Railroad Line) | Connection with Grand Junction to end of track   | Entire length         | Class I                  |
| Shore Line  | Readville to Rhode Island/Massachusetts State Line   | 190.80 – 219.20       | Class III                |
| Middleboro Main Line (formerly Braintree Secondary <sup>5</sup> )         | Braintree to PILGRIM   | 0.00 – 24.70          | Class II                 |
| Middleboro Subdivision (formerly Pilgrim Running Track <sup>6</sup> )     | PILGRIM to CAPE (Marker 114' east of the point of switch that joins the north and south wye tracks)  | < See Location        | Class I                  |
| Middleboro Main Line (formerly Neponset Running Track)                    | Tower 1 to Redfield Street   | 0.10 – 3.80           | Class I                  |
| Plymouth Branch (formerly Plymouth Running Track)                         | PEARL to Mahar Highway   | 11.246 – 11.857       | Class I                  |
| Randolph Industrial Track   | Braintree Highlands to the end of track  | 0.00 – 1.00           | Class I                  |
| Greenbush Branch (formerly, Weymouth Industrial Track)                    | ADAMS JUNCTION to ALLEN in East Braintree  | 10.15 – 11.55         | Class I                  |
| Holliston Industrial Track  | Turnout from the Worcester Main Line through Chafin St.  |                       | Class I                  |
| Framingham Secondary  | Turnout from the Worcester Main Line through Blandin Ave.  |                       | Class I                  |
| East Junction Industrial Track <sup>8*</sup>                              | "End of Commuter" board 0.25 to Mileage 0.60   | QVJ 0.25 – 0.60       | Class I                  |
| Readville #2 Yard, Upper Level, Tracks #4 and #6*                         | From the point of clearance to the switches on the north end of the yard, to and including all of the switches on the south end of the yard <sup>9</sup> | QVL 219               | Class I                  |
| Middleboro Subdivision*   | Attleboro to COT   | QN 0.0 - 13.3         | Class I                  |
| Middleboro Subdivision <sup>10*</sup>                                     | COT to CAPE (Marker 114' east of the point of switch that joins the north and south wye tracks)  | QNB 13.30 - 22.70     | Class I                  |

| Facility <sup>1</sup> | Location  | Milepost <sup>7</sup>  | Maintenance <sup>2</sup> |
|-----------------------|---|--|--------------------------|
| Industrial Sidings*   | From point of clearance to MBTA property line   | QVL 197, QVL 198, QVL 203, QVL 204, QVL 204.5, QVL 216, QVL 217, QVL 218 | Class I                  |
| Readville Yard*       | Yard #1, all  | QVL 219  | Class I                  |
| Framingham Wye*       | East leg of Wye to the North Yard (from the PS at CP 21 to the end of the track circuit (a distance of 718')) | See information under Location   | Class I                  |
|                       |   |  |                          |

NOTES:

1. Line Segment, Yard, etc.
2. FRA Class
3. To be maintained so as to enable passenger train speeds of not less than 60 mph
4. To be maintained so as to enable train speeds of not less than 30 mph
5. MP 11.4 to 24.7 of this property was not originally part of the 1985 Agreement. It was added to the scope of the 1985 Agreement by a 1995 letter agreement between MBTA and Conrail (the "1995 Letter Agreement").
6. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the "2004 Letter Agreement"), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6.
7. Mileposts designations are the best available based on the 2012 MBTA Timetable and used for ease of reference. The mileposts are not to be used to limit access for freight business to or along a named location. If it is determined that additional access is needed for CSXT to serve a customer under its freight easement at or along a named location, the mileposts used herein will be adjusted accordingly.
8. CSXT letter dated September 17, 2001 (attached), CSXT deleted East Junction Industrial track from QVJ 0.6+/- and the MA/RI border the from Addendum 1 effective June 27, 2001. CSXT retains rights from the connection to track #4 and QVJ 0.6.
9. Emergency use by MBTA excepted.



10. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the "2004 Letter Agreement"), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6 to the 1985 Agreement.

\* May only be used by MBTA with the prior written consent of CSXT, which consent shall not be unreasonably withheld, conditioned or delayed. These properties are herein referred to as the "1985 Consent Properties".

**ADDENDUM 1**

**MBTA RAIL PROPERTIES  
Category B – Exclusively used by CONRAIL**

| Facility | Location   | CSXT<br>MP<br>Prefix | Milepost | Maintenance |
|----------|--|----------------------|----------|-------------|
|          | <i>As of _____, 201__ there are no<br/>Category B properties</i> |                      |          |             |
|          |  |                      |          |             |
|          |  |                      |          |             |
|          |  |                      |          |             |

#33654277\_v7

**Amendment #8  
to CONRAIL/MBTA Trackage Rights Agreement  
of July 1, 1985**

This Amendment #8 (“**Amendment #8**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION (“CONRAIL”)** and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (“MBTA”)** is entered into by and between **CSX TRANSPORTATION INC. (“CSXT”)** and the **MBTA** this 11<sup>th</sup> day of November, 2015 (the “**Amendment #8 Effective Date**”), and is effective as of the Amendment #8 Effective Date.

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. Pursuant to Section 9.01 of the 1985 Agreement (“**Section 9.01**”), the 1985 Agreement will terminate on December 31, 2015, and the parties hereto have not, prior to June 30, 2015, elected, pursuant to Section 9.01, to extend the term of the 1985 Agreement for one successive thirty (30) year term.
- D. The parties hereto wish to extend the term of the 1985 Agreement so that it will continue until December 31, 2017.

**AGREEMENT**

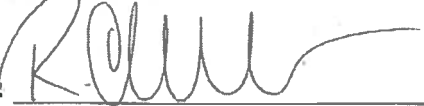
In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

- 1. Section 9.01 of the 1985 Agreement is hereby amended by (i) replacing the words “December 31, 2015” in the first sentence thereof, with the words “December 31, 2017”, and (ii) replacing the words “June 30, 2015” in the second sentence thereof, with the words “June 30, 2017”.
- 2. All of the terms, conditions, and agreements contained in the 1985 Agreement shall be continued in full force and effect except as may have been amended herein, and the 1985 Agreement, as amended herein, is hereby ratified and affirmed.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #8 to be signed with effect as of the Amendment #8 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.


**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By: 

Name: Ryan D. Cahalan

Title: Deputy Director/RRO

**CSX TRANSPORTATION, INC.**

By: 

Name: JAY S. WESTBROOK

Title: AVIP PASSENGER OPERATIONS

**APPROVAL AS TO FORM**

By: 

Name: John Englander

Title: GENERAL COUNSEL

**Amendment #10  
to CONRAIL/MBTA Trackage Rights Agreement  
of July 1, 1985**

This Amendment #109 (“**Amendment #10**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION** (“**CONRAIL**”) and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (“**MBTA**”) is entered into by and between **CSX TRANSPORTATION INC.** (“**CSXT**”) and the **MBTA** this 23<sup>rd</sup> day of January, 2018 (the “**Amendment #9 Effective Date**”), and is effective as of the Amendment #9 Effective Date.

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. Pursuant to Section 9.01 of the 1985 Agreement (“**Section 9.01**”), the 1985 Agreement will terminate on December 31, 2017, and the parties hereto have not, prior to June 30, 2017, elected, pursuant to Section 9.01, to extend the term of the 1985 Agreement for one successive thirty (30) year term.
- D. The parties hereto wish to extend the term of the 1985 Agreement for one month periods so that it will continue until either party gives thirty (30) days’ notice January 31, 2018.

**AGREEMENT**

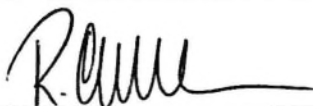
In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

- 1. Section 9.01 of the 1985 Agreement, as previously amended, is hereby amended by (i) replacing the words “January 31, 2018” in the first sentence thereof, with the words “February 28, 2018. This Agreement shall then automatically renew for subsequent thirty (30) day periods, for a maximum of up to 12 months, until such time as either party gives thirty (30) days’ notice to terminate or the Agreement is otherwise renewed.”,
- 2. All of the remaining terms, conditions, and agreements contained in the 1985 Agreement shall continue in full force and effect

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have caused this Amendment #10 to be signed with effect as of the Amendment #10 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By:   
Name: Ryan D. Coholan  
Title: Chief Railroad Officer

**CSX TRANSPORTATION, INC.**

By:   
Name: Andy Daly  
Title: AVP Passenger Operations

*[Signature Page to Amendment #9 to 1985 Agreement]*

**Amendment #11  
to CONRAIL/MBTA Trackage Rights  
Agreement of July 1, 1985**

This Amendment #11 (“**Amendment #11**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION** (“**CONRAIL**”) and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (“**MBTA**”) is entered into, by and between **CSX TRANSPORTATION INC.** (“**CSXT**”) and the **MBTA** this ~~28~~<sup>1<sup>st</sup></sup> day of November, 2018 (the “**Amendment #11 Effective Date**”), and is effective as of the Amendment #11 Effective Date.

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. Pursuant to Section 9.01 of the 1985 Agreement (“**Section 9.01**”), the 1985 Agreement is subject to automatic renewal for 30 days for up to 12 months from February 28, 2018, and the parties have not elected, pursuant to Section 9.01, to extend the term of the 1985 Agreement for one successive thirty (30) year term.
- D. The parties hereto wish to extend the term of the 1985 Agreement for twelve (12) one month periods so that it will continue until either party given thirty (30) days’ notice of termination or the Agreement is otherwise renewed.

**AGREEMENT**

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

- 1. Section 9.01 of the 1985 Agreement, as previously amended, is hereby amended by (i) replacing the words “February 28, 2018” in the first sentence thereof, with the words “February 28, 2019”; and (ii) replacing the words “June 30, 2017” with the words “June 30, 2019.”
- 2. From and after February 28, 2019, the 1985 Agreement shall automatically



renew for subsequent thirty (30) day periods, for a maximum of up to twelve (12) months, until such time as either party gives at least thirty (30) days' notice to terminate or the Agreement is otherwise renewed.

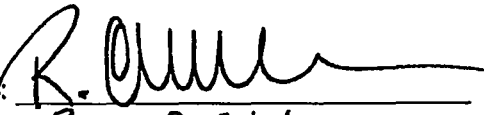
3. All of the terms, conditions, and agreements contained in the 1985 Agreement shall be continued in full force and effect except as may have been amended herein and the 1985 Agreement, as amended herein, is hereby ratified and affirmed.

(signature page follows)

IN WITNESS WHEREOF, the parties have caused this Amendment #11 to be signed with effect as of the Amendment #11 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

CSX TRANSPORTATION, INC.

By:   
Name: Ryan D. Cahalan  
Title: Chief Railroad Officer

By:   
Name: MARCO TURCO  
Title: DIRECTOR

*[Signature Page to Amendment #11 to 1985 Agreement]*

**Amendment #12  
to CONRAIL/MBTA Trackage Rights  
Agreement of July 1, 1985**

This Amendment #12 (“Amendment #12”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “1985 Agreement”), by and between the **CONSOLIDATED RAIL CORPORATION** (“CONRAIL”) and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (“MBTA”) is entered into by and between **CSX TRANSPORTATION INC.** (“CSXT”) and the MBTA this 28<sup>th</sup> day of February, 2020 (the “Execution Date”), and is effective as set forth herein.

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. The parties hereto wish to extend the term of the 1985 Agreement so that it will continue until December 31, 2035.

**AGREEMENT**

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

- 1. Section 9.01 of the 1985 Agreement is hereby deleted and replaced in its entirety, as of the Execution Date, with the following:

“Section 9.01. Term

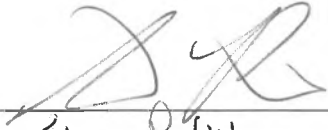
The effective date of this Agreement shall be July 1, 1985, and the term hereof, unless sooner terminated as provided below, shall continue from that date until December 31, 2035.”

- 2. All of the terms, conditions, and agreements contained in the 1985 Agreement shall be continued in full force and effect except as may have been amended herein and the 1985 Agreement, as amended herein, is hereby ratified and affirmed.

*(signature pages follow)*

IN WITNESS WHEREOF, the parties have caused this Amendment #12 to be signed as of the Execution Date, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By:   
Name: Sam Patel  
Title: General Manager

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Amendment #12 to 1985 Agreement]*

IN WITNESS WHEREOF, the parties have caused this Amendment #12 to be signed as of the Execution Date, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name:  
Title: General Manager

By: Brian Barr  
Name: Brian Barr  
Title: SR. VP Northern Region

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name:  
Title: General Counsel

*[Signature Page to Amendment #12 to 1985 Agreement]*

**Amendment #13 to  
CONRAIL/MBTA Trackage Rights Agreement of July 1, 1985**

This Amendment #13 (“**Amendment #13**”) to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the “**1985 Agreement**”), by and between the **CONSOLIDATED RAIL CORPORATION** (“**CONRAIL**”) and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (“**MBTA**”) is entered into by and between **CSX TRANSPORTATION INC.** (“**CSXT**”) and the **MBTA** this \_\_\_ day of \_\_\_\_\_, 2022 (the “**Execution Date**”), and is effective as set forth herein.

**BACKGROUND**

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the MBTA, entered into that certain Definitive Agreement, as of April 11, 2022 (the “**2022 Definitive Agreement**”), whereby CSXT agreed to sell and MBTA agreed to buy, subject to the terms and conditions of the 2022 Definitive Agreement, CSXT’s interest in certain railroad properties, and CSXT has by Release Deed of even date hereof (the “**Release Deed**”) conveyed the Milford Secondary and the Conveyed Franklin Industrial to the MBTA, including, *inter alia*, all of CSXT’s right title and interest to the Milford Secondary and the Conveyed Franklin Industrial, subject to certain CSXT retained easements and other reserved rights, all as such properties are defined and described in the Release Deed.
- D. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the 2022 Definitive Agreement.
- E. The parties acknowledge and agree that concurrently with the execution of this Amendment #13, CSXT has conveyed by Release Deed that certain property defined in such Release Deed as the “**Milford Secondary**” to the MBTA, and entered into an Assignment of Permanent Freight Easement Agreement with the Grafton and Upton Railroad Company (“**GU**”) (the “**Assignment of Easement**”), pursuant to which, among other things, CSXT has assigned the CSXT Milford Easement as it relates to the Milford Secondary to GU on an exclusive basis for a term of years, subject to extension (the date upon which such Assignment of Easement takes effect being the “**Effective Date of Assignment of Easement**”), while retaining a reversionary interest therein upon expiration or termination of said Assignment of Easement (the expiration or termination of the Assignment of Easement being the “**Assignment End Date**”).
- F. The parties hereto wish to (i) add the Milford Secondary to Addendum 1, Category A of

the 1985 Agreement as of the date hereof for such periods as the Assignment of Easement is not in effect, and (ii) add the Conveyed Franklin Industrial to Addendum 1, Category A of the 1985 Agreement as of the date hereof for such period or periods as there is not in effect an operating or trackage rights agreement by and between MBTA and a party other than CSXT governing freight rail operations of such other party on the Conveyed Franklin Industrial (any such agreement being a “**Conveyed FIT Operating Agreement**”).

## AGREEMENT

In consideration of the premises recited above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, CSXT and the MBTA agree as follows:

1. Effective as of the date hereof, the Milford Secondary and the Conveyed Franklin Industrial are hereby added to Addendum 1, Category A of the 1985 Agreement as MBTA Rail Properties for all purposes under the 1985 Agreement.

2. Notwithstanding the provisions of Section 1 hereof, so long as the Assignment of Easement is in effect (the “**Assignment Period**”), the Milford Secondary shall be deemed not to have been added to Addendum 1, Category A of the 1985 Agreement and shall not be deemed to be MBTA Rail Properties under the 1985 Agreement, or otherwise governed in any way by the 1985 Agreement, but rather shall be governed by that certain Operating Agreement between the MBTA and GU of even date herewith (the “**Current MBTA-GU Agreement**”), or such other operating agreement as the MBTA and GU shall enter into (such other operating agreement or the Current MBTA-GU Agreement as may then be in effect being the “**MBTA-GU Operating Agreement**”). For the avoidance of doubt, the Milford Secondary is to be treated as MBTA Rail Properties and reflected in Addendum 1, Category A of the 1985 Agreement at all times after the Assignment End Date, but the Milford Secondary shall not be governed in any way by the 1985 Agreement from the Effective Date of the Assignment of Easement through the Assignment End Date.

3. Notwithstanding the provisions of Section 1 hereof, so long as there is a Conveyed FIT Operating Agreement in effect (the “**Conveyed FIT Operating Period**”), the Conveyed Franklin Industrial shall be deemed not to have been added to Addendum 1, Category A of the 1985 Agreement and shall not be deemed to be MBTA Rail Properties under the 1985 Agreement, or otherwise governed in any way by the 1985 Agreement, but rather shall be governed by such Conveyed FIT Operating Agreement. For the avoidance of doubt, the Conveyed Franklin Industrial is to be treated as MBTA Rail Properties and reflected in Addendum 1, Category A of the 1985 Agreement at all times during which there is no Conveyed FIT Operating Agreement in effect.

4. MBTA hereby covenants and agrees that in the event CSXT grants to GU rights to operate over the Conveyed Franklin Industrial, MBTA will use commercially reasonable efforts to amend the MBTA-GU Operating Agreement to include in its coverage the Conveyed Franklin Industrial. Notwithstanding the foregoing, such MBTA-GU Operating Agreement (whether or not amended in accordance with the preceding sentence) shall also be deemed to be

a Conveyed FIT Operating Agreement in effect for all such periods as GU has rights to operate over the Conveyed Franklin Industrial.

5. MBTA, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases, and forever discharges CSXT and its current or former corporate parents, subsidiaries, divisions, affiliates, principals, officers, directors, employees, shareholders, partners, agents, attorneys, insurers, successors and assigns, and other representatives, of and from all obligations, charges, complaints, claims, liabilities, promises, actions or causes of action, damages, losses, debts, attorneys' fees or other costs or expenses (collectively "**Obligations**"), in law or in equity, known or unknown, contingent or matured, asserted or unasserted, that arise (i) with respect to the Milford Secondary, during the Assignment Period or (ii) with respect to the Conveyed Franklin Industrial, during any Conveyed FIT Operating Period, in any case under clause (i) or clause (ii) notwithstanding when asserted; provided, however, that this Paragraph 5 (x) shall not apply to Obligations resulting from CSXT rail operations on the Milford Secondary during the Assignment Period or on the Conveyed Franklin Industrial during the Conveyed FIT Operating Period, and (y) shall apply only to those Obligations relating to the Milford Secondary and, to the extent arising during the Conveyed FIT Operating Period, the Conveyed Franklin Industrial, and not to those Obligations relating solely to the Conveyed Franklin Industrial arising at any time other than during the Conveyed FIT Operating Period, or to any other property governed by the 1985 Agreement.

6. Addendum 1 of the 1985 Agreement is hereby amended to add to Category A the following lines, subject to the provisions of Paragraphs 2 and 3 above:

| Facility Segment  | Mile Posts   |                     |   |                     | Maintenance |
|-------------------|--|---------------------|---|---------------------|-------------|
|                   | From   |                     | To  |                     |             |
|                   | Val Map  | Engineering Station | Val Map   | Engineering Station |             |
| Milford Secondary | V4.16, Map 29  | 1458+20 (0+00)      | V4.33, Map 9  | 445+02              | Class 1     |
|                   | Franklin IT Point of Switch at 1459+20 = Engineering Station 0+00 on Milford Secondary |                     | Easterly edge of at-grade crossing, Central Street, Milford |                     |             |

| Facility Segment             | Mile Posts                                    |                     |  |                     | Maintenance |
|------------------------------|---|---------------------|--|---------------------|-------------|
|                              | From  |                     | To   |                     |             |
|                              | Val Map                                       | Engineering Station | Val Map  | Engineering Station |             |
| Conveyed Franklin Industrial | V4.16, Map 29                                 | 1456+00             | V4.16, Map 29  | 1480+40             | Class 1     |
|                              | Point of intersection with MBTA Franklin Line |                     | Westerly edge of at-grade crossing, Union Street, Franklin |                     |             |

7. All of the terms, conditions, and agreements contained in the 1985 Agreement shall be continued in full force and effect except as may have been amended herein and the 1985 Agreement, as amended herein, is hereby ratified and affirmed.



*(signature page follows)*

IN WITNESS WHEREOF, the parties have caused this Amendment #13 to be signed as of the Execution Date, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name:  
Title: General Manager

By: \_\_\_\_\_  
Name:  
Title:

**APPROVAL AS TO FORM**

By: \_\_\_\_\_  
Name:  
Title: General Counsel

*[Signature Page to Amendment #13 to 1985 Agreement]*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

**EXHIBIT E**

**DEFINITIVE AGREEMENT**

Execution Copy

DEFINITIVE AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.

and

THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

---

**Pertaining to the Purchase and Sale  
of the Milford Secondary and a Portion of the Franklin Industrial**

Dated as of

April 11, 2022

---

## TABLE OF CONTENTS

| Section  | Page |
|--|------|
| 1. PURCHASE AND SALE OF THE TRANSFERRED ASSETS .....         | 2    |
| 1.1 Purchase and Sale .....                                  | 2    |
| 1.2 Identity of Seller .....                                 | 5    |
| 2. CLOSING .....   | 5    |
| 2.1 The Closing.....   | 5    |
| 2.2 Time of Closing .....                                    | 5    |
| 2.3 Form of Conveyance.....                                  | 5    |
| 2.4 Deliveries .....   | 12   |
| 2.5 Delivery of Railroad Assets .....                        | 15   |
| 2.6 Conditions Precedent to Obligations of Buyer .....       | 15   |
| 2.7 Conditions Precedent to Obligations of Seller.....       | 15   |
| 3. PURCHASE PRICE .....                                      | 16   |
| 3.1 Purchase Price.....                                      | 16   |
| 3.2 Cash Payment.....  | 16   |
| 3.3 Payment of the Purchase Price.....                       | 16   |
| 3.4 Proration.....   | 16   |
| 3.5 Taxes and Permits.....                                   | 17   |
| 3.6 Labor Protection.....                                    | 17   |
| 4. ONGOING OPERATIONS .....                                  | 17   |
| 4.1 Continuing Obligations.....                              | 17   |
| 4.2 1985 Trackage Rights Agreement .....                     | 18   |
| 5. CASUALTY .....  | 18   |
| 5.1 Damage .....   | 18   |
| 6. TITLE DUE DILIGENCE.....                                  | 19   |
| 6.1 Title Examination.....                                   | 19   |
| 6.2 Name of Buyer.....                                       | 19   |
| 6.3 Additional Provisions Pertaining to Utility Rights ..... | 19   |
| 7. OTHER DUE DILIGENCE; BUYER'S CONTINGENCIES .....          | 20   |
| 7.1 Due Diligence Materials To Be Delivered.....             | 20   |
| 7.2 Access Agreement .....                                   | 20   |

|      |   |               |
|------|---|---------------|
| 7.3  | Due Diligence/Termination Rights .....  | 20            |
| 7.4  | Governmental Approvals; Other than the Surface Transportation Board Approvals ..... | 21            |
| 8.   | INTENTIONALLY BLANK.....  | 22            |
| 9.   | MUTUAL CONTINGENCIES .....  | 22            |
| 9.1  | Surface Transportation Board Contingency, FRA Notice .....                          | 22            |
| 10.  | REPRESENTATIONS, WARRANTIES AND COVENANTS; TERMINATION RIGHT .....                  | 23            |
| 10.1 | Representations, Warranties and Covenants of Buyer.....                             | 23            |
| 10.2 | Representations, Warranties and Covenants of Seller .....                           | 24            |
| 10.3 | Real Property .....   | 26            |
| 10.4 | Survival .....  | 26            |
| 11.  | DEFAULT .....   | 26            |
| 11.1 | Buyer Default.....  | 26            |
| 11.2 | Seller Default .....  | 26            |
| 11.3 | Survival .....  | 27            |
| 12.  | <del>EMINENT DOMAIN .....</del>   | <del>27</del> |
| 12.1 | <del>Attempted Taking; Purchase Price.....</del>                                    | <del>27</del> |
| 12.2 | <del>Compensatory Claims .....</del>  | <del>27</del> |
| 12.3 | <del>Confirmatory Taking to Perfect Title .....</del>                               | <del>27</del> |
| 12.4 | <del>Circumstances Following Eminent Domain Taking.....</del>                       | <del>27</del> |
| 12.5 | <del>Condemnation by Others .....</del>   | <del>27</del> |
| 13.  | DISCLAIMER OF WARRANTY .....  | 28            |
| 14.  | CONDITION OF PROPERTY .....   | 28            |
| 15.  | NOTICES.....  | 28            |
| 16.  | MERGER.....   | 29            |
| 17.  | ENVIRONMENTAL MATTERS; ENVIRONMENTAL CONDITION OF THE RAILROAD ASSETS .....         | 30            |
| 17.1 | Definitions.....  | 30            |
| 17.2 | Environmental Permits; Representations and Warranties.....                          | 31            |
| 17.3 | Environmental Inspections.....  | 32            |
| 17.4 | As Is Purchase.....   | 32            |
| 17.5 | Cost Sharing.....   | 32            |

|       |  |    |
|-------|--|----|
| 17.6  | Claims Against Third Parties .....                             | 33 |
| 17.7  | Exceptions .....   | 34 |
| 17.8  | Liabilities for Breach of Representations and Warranties ..... | 34 |
| 17.9  | Survival .....   | 34 |
| 18.   | MISCELLANEOUS PROVISIONS.....                                  | 34 |
| 18.1  | Rights and Remedies Cumulative: Waiver .....                   | 34 |
| 18.2  | Severability .....   | 34 |
| 18.3  | Controversy .....  | 34 |
| 18.4  | Successors and Assigns.....                                    | 34 |
| 18.5  | Tax Free Exchange .....  | 35 |
| 18.6  | No Brokers.....  | 36 |
| 18.7  | Survival.....  | 36 |
| 18.8  | Entirety and Amendments.....                                   | 36 |
| 18.9  | Time .....   | 36 |
| 18.10 | Construction.....  | 36 |
| 18.11 | Calculation of Time Periods .....                              | 36 |
| 18.12 | Execution in Counterparts.....                                 | 36 |
| 18.13 | Further Assurances.....  | 36 |
| 18.14 | Designated Representative.....                                 | 37 |
| 18.15 | Prohibition of Third Party Beneficiaries.....                  | 37 |
| 18.16 | Publicity .....  | 37 |
| 18.17 | Exhibits .....   | 37 |
| 18.18 | Governing Law .....  | 37 |
| 18.19 | Venue .....  | 37 |
| 18.20 | No Recording.....  | 37 |

---

**List of Exhibits**

- Exhibit A     The Railroad Line
- Exhibit A-1   Plans of Railroad Line

|           |   |
|-----------|---|
| Exhibit B | Form of Deed  |
| Exhibit C | Form of 1985 Trackage Rights Amendment                    |
| Exhibit D | Non-Foreign Affidavit                                     |
| Exhibit E | Certificate Designating Person Responsible for Paying Tax |
| Exhibit F | Environmental Conditions                                  |
| Exhibit G | Transferee Standards                                      |
| Exhibit H | Lease Termination   |
| Exhibit I | Assignment of Easement                                    |
| Exhibit J | GU Certification re Transferee Standards                  |

---



This **DEFINITIVE AGREEMENT** (this “**Agreement**”), dated as of April 11, 2022 (the “**Effective Date**”), is made and entered into by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, with an address at 500 Water Street, Jacksonville, Florida 32202, hereinafter called the “**Seller**,” and **THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**, a Massachusetts body politic and corporate, with an address at Ten Park Plaza, Boston, Massachusetts 02116-3974, hereinafter called the “**Buyer**.” Seller and Buyer may hereinafter sometimes be collectively referred to as the “**Parties**,” or individually as a “**Party**.”

### RECITALS

The Parties agree on the following statement of facts upon which the agreements set forth herein are based:

WHEREAS, Seller is a class 1 freight railroad with a substantial presence in Massachusetts, specifically, and New England, generally;

WHEREAS, pursuant to Mass. Gen. L. c. 161A, Buyer is charged with, among other tasks, owning and operating transit facilities and providing transportation services in the Commonwealth;

WHEREAS, Seller has certain interests in land, track, ballast and other infrastructure within certain railroad rights of way in the Commonwealth known and commonly referred to as (i) the Milford Secondary (the “**Milford Line**”) and, (ii) the Franklin Industrial Track (the “**Franklin Industrial**”, and the portion of the Franklin Industrial to be conveyed hereunder being herein referred to as the “**Conveyed Franklin Industrial**”), the Milford Line and the Conveyed Franklin Industrial each as more particularly described on **Exhibits A and A-1** hereto;

WHEREAS, Buyer has determined that the acquisition by Buyer of certain assets of Seller and the assumption by Buyer of certain obligations of Seller is in the Commonwealth’s interest and is in furtherance of Buyer’s statutory mandate and responsibilities;

WHEREAS, Buyer claims to be vested with the power to condemn real and personal property including, without limitation, certain assets of Seller, by eminent domain pursuant to Mass. Gen. L. c. 161A, § 3(o);

WHEREAS, Buyer claims to be imminently considering taking certain assets of Seller by eminent domain;

WHEREAS, in lieu of attempting to exercise its power of eminent domain in order to acquire certain assets from Seller adversarially, Buyer has entered into discussions with Seller to acquire such assets, and assume certain liabilities of Seller by agreement, and Seller has agreed to sell certain assets to Buyer and to permit Buyer to assume certain liabilities of Seller, all in accordance with the terms of this Agreement;

WHEREAS, the Parties desire that Seller retain and reserve, and not transfer to Buyer, a perpetual easement over the properties acquired by Buyer for the purposes of providing rail freight service on an exclusive basis, it being the intention of the Parties that Seller remain, and Buyer not become a common carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such

properties, except to the extent that Buyer seeks to become a common carrier consistent with Seller's rights and obligations hereunder; and

WHEREAS, the introduction of inter-city passenger rail service to the properties to be acquired by Buyer hereunder would have an adverse effect on the use of Seller's retained perpetual easement for freight service over such properties.

NOW, THEREFORE, in consideration for the agreements and mutual undertakings and covenants made in this Agreement, Seller and Buyer hereby agree as follows:

## AGREEMENT

### 1. PURCHASE AND SALE OF THE TRANSFERRED ASSETS

1.1 Purchase and Sale. In lieu of Buyer's exercising its power to acquire certain of Seller's assets by eminent domain, and on the terms and subject to the conditions set forth herein, at the Closing as set forth in **Section 2**, Seller agrees to sell, transfer, convey, assign and deliver, and Buyer hereby agrees to purchase and accept from Seller, the following, all of which, taken together, beginning at **Section 1.1.1** below, comprise the Railroad Assets (the "**Railroad Assets**"). Not included in the Railroad Assets are Seller's reserved, retained, perpetual, easement to provide rail freight service and for such other rights over the Railroad Line (as hereafter defined) as may be mutually agreed to pursuant to **Section 7.3.2** (the "**CSXT Milford Easement**"), which CSXT Milford Easement shall (i) incorporate by reference the 1985 Trackage Rights Agreement, as hereinafter defined; (ii) provide that Seller has the exclusive right (except for an Assignment of Easement, as hereinafter defined, which may be granted by CSXT subject to the conditions set forth herein) to provide freight rail service and for such other rights as may be mutually agreed upon as set forth above over such easement area, and (iii) provide that other than as may be required by law, Buyer and Seller agree that the utilization of Intercity Rail Passenger Transportation (as defined in Title 49 U.S.C. §24102) over the Railroad Line (as hereafter defined) will occur only upon the prior mutual consent of Buyer and Seller, which consent may not be unreasonably withheld, conditioned or delayed. It shall not be unreasonable for either Buyer or Seller to condition its consent to allow the National Railroad Passenger Corporation ("**Amtrak**") to provide such Intercity Rail Passenger Transportation, upon reaching acceptable liability arrangements consistent with existing liability arrangements related to existing Intercity Rail Passenger Transportation on the Boston Main Line ("**Existing Liability Arrangements**"). The term Existing Liability Arrangements shall mean, with respect to Seller, the provisions of the existing agreement dated June 1, 1999 between Seller and Amtrak as such agreement is from time to time supplemented and is in effect at the time of the request for Seller's consent to such utilization for Intercity Rail Passenger Transportation. The term "**Boston Main Line**" shall be deemed to be the property described in a deed dated October 2, 2012 from Seller to Buyer and recorded in the Suffolk Registry of Deeds in Book 50271, Page 152, the Middlesex (S.D.) Registry of Deeds in Book 60154, Page 273, the Norfolk Registry of Deeds in Book 30513 Page 458 and the Worcester District Registry of Deeds in Book 49729, Page 1. The Parties agree that the CSXT Milford Easement shall burden only the fee and easement interests being conveyed by Seller to Buyer hereunder; *provided, however*, that this limitation shall not restrict or adversely affect the exercise by Seller of any rights that Seller may have independent of the conveyance and reservation being made by Seller hereunder. The parties

understand and agree that Seller has the right to operate freight service on the Railroad Line (as hereinafter defined) by virtue of existing trackage rights, operating agreements or other existing similar rights (collectively, "**Other Operating Rights**"). Said **Other Operating Rights** are excluded from the definition of Railroad Assets. The definition of Other Operating Rights will be subject to mutual agreement of the Parties during the due diligence period pursuant to **Section 7.3.2**. The Parties acknowledge that Seller's exclusive right to provide freight service within the CSXT Milford Easement does not preclude (i) Buyer or Buyer's assignees from using all of the Railroad Line, as hereinafter defined, for their own freight needs (the Buyer's and its assignee's own freight needs being the transport of railroad materials, equipment, ballast, rails, and the like owned by Buyer or its assignee, but not common or contract carriage of freight), *provided* such use by Buyer does not interfere with Seller's use of the CSXT Milford Easement (or use thereof pursuant to the Assignment of Easement if and when executed), or (ii) Seller's right to provide the Assignment of Easement.

1.1.1 Seller's right, title and interest in the fee simple interests, easements, rights of access and all of Seller's right, title and interest in and to rights-of-way of the Milford Line and the Conveyed Franklin Industrial (the Milford Line and the Conveyed Franklin Industrial, being collectively referred to herein as, the "**Railroad Line**"). All of the interests to be conveyed by Seller to Buyer hereunder are generally described under "Railroad Line" in **Exhibit A**, and are shown specifically in a set of plans (the "**Railroad Line Plans**") to be developed as **Exhibit A-1** pursuant to ~~Section 7.3.2~~ herein. ~~The Railroad Line Plans shall also include a~~ description of certain real property to be excluded from the Railroad Line (the "**Excluded Real Property**");

1.1.2 all of Seller's right, title and interest in and to the tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, crossing protection devices, communication lines, poles and radio masts and signals (the "**Included Fixtures**") which are affixed or located on or in, as of the Closing Date, the right-of-way described in the Railroad Line Plans, *provided, however*, that Seller shall not, after the Effective Date, cause a material change in the Included Fixtures sufficient to interfere with Buyer's ability to provide commuter passenger service on the Railroad Line as provided for in the 1985 Trackage Rights Agreement (said fee simple interests, easements and rights-of-way together with Railroad Line and the Included Fixtures are sometimes referred to hereinafter as the "**Subject Property**"), but excepting any items of the kind described above which are located on the Excluded Real Property, all of which are hereby reserved by Seller and are excepted from the sale, transfer and conveyance to Buyer contemplated by this Agreement;

1.1.3 all of Seller's right, title and interest in and to the items of personal property, supplies and other materials primarily used in, or primarily relating to, the operation of the Railroad Line, including those needed to properly operate and maintain the signal systems and grade crossing systems (the "**Included Tangible Personal Property**") listed or

described in a schedule (the “**Included Tangible Personal Property Schedule**”) to be mutually agreed upon by the Parties, but excluding the following items of personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios and radio control equipment, furniture, tools, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to Buyer hereunder and which is not affixed to the Subject Property on the Closing Date, except as any such property may be specifically listed or described in the Included Tangible Personal Property Schedule (the “**Excluded Tangible Personal Property**”) listed in a schedule (the “**Excluded Tangible Personal Property Schedule**”) to be mutually agreed upon between the Parties. Any personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Schedule shall be deemed to be included in the Excluded Tangible Personal Property Schedule (the Included Fixtures and the Included Tangible Personal Property are sometimes referred to hereinafter collectively as the “**Railroad Equipment**”);

1.1.4 to the extent assignable, all permits, licenses, certificates of occupancy, approvals, consents, variances and other authorizations that are used or necessary in connection with, the ownership or operation or other use of any of the Railroad Assets relating primarily to or necessary for the operation of the Railroad Assets (but excluding those necessary for the operation by Seller of the rail freight operations over the CSXT Milford Easement) as conducted on the date hereof (all such permits and the like, the “**Permits**”) as set forth in a schedule (the “**Assigned Permits Schedule**”) to be mutually agreed upon by the Parties;

1.1.5 all real property interests of Seller described in the Railroad Line Plans including, without limitation, benefits which are appurtenant to the Railroad Line, together with all improvements, structures and fixtures thereon, and all easements, leases, privileges, rights-of-way, the interest of Seller in all land underlying any adjacent public streets or roads which streets and roads exist by reason of an easement over Seller’s land, appurtenances, occupancy agreements, and other rights belonging to Seller and which Seller has the ability to convey, pertaining to, or accruing to the benefit of, the Subject Property; subject, however, to (a) those rights, interests, contracts, agreements, leases, occupancy agreements, easements and other rights which are listed, described in, or a part of the Excluded Real Property described in the Railroad Line Plans; and (b) the CSXT Milford Easement, as set forth in the Deed(s) (defined below), excepting and excluding the Excluded Real Property; and

1.1.6 all of Seller’s rights, benefits, obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses, occupancy agreements, and easements (the “**Intangibles**”) to be transferred

to Buyer (the “**Included Intangibles**”) listed or described in a schedule (the “**Included Intangibles Schedule**”) to be mutually agreed upon by the Parties but excluding any contract, agreement, lease, license, occupancy agreement or easement which expires or terminates in accordance with the terms thereof on or prior to the Closing Date (the “**Excluded Intangibles**”) listed or described in a schedule (the “**Excluded Intangibles Schedule**”) to be mutually agreed upon by the Parties. Seller is also reserving to itself the Intangibles (the “**Seller’s Retained Intangibles**”) listed in a schedule (the “**Seller’s Retained Intangibles Schedule**”) to be mutually agreed upon by the Parties.

1.2 Identity of Seller. Seller represents that title to certain of the Railroad Assets to be conveyed and transferred to Buyer in accordance with this Agreement may be standing in the name of one or more subsidiary organizations or affiliates of Seller. Seller shall cause each such organization to convey the Railroad Assets to Buyer and Seller hereby guarantees that the conveyance by such organizations shall be in accordance with the terms of this Agreement. Seller shall provide Buyer with such information and documents from such organizations as would have been required under this Agreement if Seller were the owner of the particular Railroad Asset actually owned by such organization. Notwithstanding the foregoing, neither Consolidated Rail Corporation, nor its parent nor any subsidiary thereof shall be considered an affiliate of Seller.

---

## 2. CLOSING

2.1 The Closing. The Railroad Assets shall be transferred at the Closing. Whenever the word “Closing” is used herein it shall refer to the Closing at which the Railroad Assets are to be delivered and all references to the Parties’ respective rights and obligations shall be with respect to that Closing. The Closing shall take place at the offices of Buyer, 10 Park Plaza, Boston, Massachusetts, or such other location as mutually agreed upon by the Parties. Upon satisfaction or completion of all closing conditions and deliveries required pursuant to the terms of this Agreement, the Parties shall cause to be immediately recorded the appropriate closing documents, and the Parties shall make disbursements according to the Closing Statement executed by Buyer and Seller.

2.2 Time of Closing. The Closing shall occur at a time and on a date to be mutually agreed upon by the Parties (the “**Closing Date**”). The Parties agree that such date shall be as soon as is reasonably practicable after the STB Decision, as defined in **Section 9.1** hereof, but in no event later than forty-five (45) days after the receipt of the STB Decision. If the Closing does not occur by the first anniversary of the Effective Date either Party may elect to terminate this Agreement by written notice to the other Party, in which event: (i) except as otherwise provided herein, all other rights and obligations of the Parties hereto shall cease, and (ii) this Agreement shall be void and without recourse to the Parties hereto.

2.3 Form of Conveyance. Seller shall convey the Subject Property to Buyer by release deed (the “**Deed**,” which may consist of one or more individual Deeds as Buyer and Seller may reasonably determine) substantially in the form of Exhibit B attached hereto, *which*

*Deed shall include the retained, reserved CSXT Milford Easement, and the title to the Subject Property shall be free from encumbrances except:*

- (a) The CSXT Milford Easement;
- (b) Building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date;
- (c) Taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Subject Property on or after the Closing Date;
- (d) Reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date;
- (e) Encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Subject Property;
- (f) The rights of others in existing roads, streets, ways, alleys and party walls; and
- (g) Mortgage liens with banks or other institutional real estate lenders pertaining to the Subject Property created by Seller, for which Seller will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be directed to such lenders for the payment thereof, which liens Seller shall cause to be released, at no cost or expense to Buyer, within ten (10) days of the recording date of the Deed.

At the Closing, Seller shall also execute one or more Bills of Sale (each, individually, a “**Bill of Sale**”) conveying to Buyer or to Buyer’s nominee, the Included Fixtures and the Included Tangible Personal Property, all in a manner consistent with, and subject to, the provisions of this Agreement.

2.3.1 The Parties shall mutually agree upon the form of the Deed and the form of the Bill of Sale. The Deed shall describe the Subject Property, not by means of a metes and bounds description, but by means of map references to plans and surveys which were previously recorded in the Registry of Deeds in which the Deed is to be recorded, and Seller’s valuation plans as modified by the agreement of the Parties as described in, and shown on **Exhibits A and A-1**, respectively, which plans and surveys are, consistent with customary conveyancing practice and Massachusetts law, reasonably adequate to accurately describe the Subject Property. In addition, the Deed shall include the CSXT Milford Easement, which shall

be an easement in gross, the benefit of which runs to Seller personally and not to any particular parcel of land. The CSXT Milford Easement shall, by its terms, be transferrable subject to the terms and conditions set forth herein, and provided that only (i) the entirety of that portion of the CSXT Milford Easement relating to the Milford Line and/or (ii) the entirety of that portion of the CSXT Milford Easement relating to the Conveyed Franklin Industrial may be transferred such that at any time only one party may benefit from the CSXT Milford Easement with respect to the Milford Line and only one party (which need not be the same party benefiting from the CSXT Milford Easement with respect to the Milford Line) may benefit from the CSXT Milford Easement with respect to the Conveyed Franklin Industrial. Except as hereinafter set forth with respect to the Assignment of Easement, and transfers to a Related Party, neither Seller, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Milford Easement (each of Seller, a Related Party and a subsequent holder being a “**Benefitted Holder**”), shall sell, lease, license or otherwise transfer (each such transaction being a “**Transfer**”) the benefit of the CSXT Milford Easement or any interest therein (any such interest being an “**Easement Interest**”) to a third party who fails to meet the Transferee Standards set forth on **Exhibit G** attached hereto. The Transferee Standards shall not apply to transactions contemplated in **Section 2.3.6**, even if post-Closing regulatory approval of the transaction has not yet been secured. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Buyer’s consent for a Transfer of an Easement Interest to a Related Party (as defined below in Section 2.3.1.1(b)) of the Benefitted Holder that is making the transfer, and such Related Party shall be deemed to have met the Transferee Standards (a “**Related Party Transfer**”). Seller, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Buyer written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Buyer shall either: (x) consent to such transfer, such consent not to be unreasonably withheld, conditioned or delayed and which must be given if the proposed transferee meets the Transferee Standards, or (y) state in detail the reasons for denial of consent or why Buyer contends that the proposed transferee does not meet the Transferee Standards, as the case may be. The preceding notification provision shall apply to any Transfer of an Easement Interest by Seller, a Related Party or a Benefitted Holder; *provided, however*, that Buyer shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights.

2.3.1.1 (a) If at any time Seller, or a party that is a Related Party of Seller (a “**Seller Related Party**”), makes a Transfer of an Easement Interest to a third party (who is not a Seller Related Party), Seller, or such Seller Related Party, shall promptly pay to Buyer a transfer fee of five (5%) percent of the consideration (the

“**Easement Transfer Payment**”) paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Seller, or a Seller Related Party, makes a Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Seller or a Seller Related Party be responsible for paying an Easement Transfer Payment to Buyer for transactions which are (x) the sale of Other Operating Rights, or (y) in the ordinary course of Seller’s or the Seller Related Party’s business as a freight rail service provider, including without limitation, freight revenue and other income from freight service, or (z) transfers to Seller or to a Seller Related Party. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Seller or a Seller Related Party.

(b) No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest to any person, firm, partnership, corporation or other entity ~~now or hereafter affiliated with such Benefitted Holder or in~~ connection with a merger, reorganization, or sale of all or substantially all of such Benefitted Holder’s assets (collectively, a “**Related Party**”); *provided, however*, that a Seller Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Buyer’s right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

The provisions of this **Section 2.3.1** (i) shall survive the delivery of the Deed hereunder, and (ii) shall not apply to the assignment of the portion of the CSXT Milford Easement relating to the Milford Line to the Grafton and Upton Railroad Company (“**GU**”) pursuant to the terms of the Assignment of Easement. For the avoidance of doubt, (x) Buyer acknowledges and agrees that GU is hereby deemed to meet the Transferee Standards, and (y) no Easement Transfer Payment shall be due or payable in connection with the assignment to GU of the portion of the CSXT Milford Easement relating to the Milford Line pursuant to the Assignment of Easement.

2.3.2 Buyer shall cause the Deed (which shall include therein the CSXT Milford Easement) to be recorded in the public records of the counties in which the Subject Property lies within thirty (30) days subsequent to the Closing Date. In the event that the description of the Subject Property contained in the Deed and/or CSXT Milford Easement is



deemed inadequate for recordation purposes by the Registers of Deeds, Seller, at its own cost and expense, and as promptly as is reasonably practicable, shall make such changes and revisions as may be required by said Registers such that the Deed will be accepted by the Registers for recording. In the event that, after Closing, a metes and bounds description of the Subject Property is desired by Buyer and furnished to Seller by Buyer, at Buyer's sole cost and expense, then Seller shall execute and deliver such further deeds and/or further easements or confirmatory or corrective deeds and/or confirmatory or corrective easements, containing a description of the Subject Property based on such metes and bounds description as may be acceptable to Buyer, Seller and to the Register(s) of Deeds so involved. In the event that the preparation of such further or confirmatory deeds and/or easements requires any survey of the Subject Property, or any portion thereof, or any search or examination of title with respect to the Subject Property, or any portion thereof, Buyer shall pay any and all costs and expenses arising out of or connected with such survey, search or examination.

2.3.3 In the event that any subdivision approval is necessary for the completion of the sale, transfer and conveyance contemplated by this Agreement, said approval shall be obtained by Seller, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plans, the filing of same with governmental body(ies), recordation thereof and legal fees.

2.3.4 At the Closing, Seller shall assign to Buyer all of Seller's rights and interests and Buyer shall assume all of Seller's obligations and liabilities arising under or connected with the Intangibles listed in the Included Intangibles Schedule. Notwithstanding the foregoing, nothing contained in this Agreement shall impose upon Seller an obligation to assign to Buyer the Excluded Intangibles or any Intangible that expires by its terms prior to the Closing. Any expiration or termination of an Excluded Intangible shall not be construed as a breach of this Agreement and shall not constitute grounds for termination or rescission of this Agreement.

2.3.5 In the event that Seller is unable, for any reason(s), including, without limitation, its inability or failure to obtain any necessary consent after having used commercially reasonable efforts to do so, to effect, on the Closing Date, the assignment of any contract or agreement as contemplated by this Agreement, then such failure or inability shall not constitute grounds for termination or rescission of this Agreement. Seller represents that the Intangibles contained in the Included Intangible Schedule and the Permits contained in the Assigned Permits Schedule include, to the best of Seller's knowledge, all such instruments that are in existence. For purposes of this **Section 2.3.5**, Seller's knowledge shall be limited to the actual knowledge of Catherine Adkins, Regional Manager –

Sales and Leasing of Seller and such other persons as the parties may mutually agree without undue investigation and inquiry. In the event that any omission becomes known to Seller or Buyer, then the party discovering such omission shall provide notice thereof to the other party. In such event, Seller shall assign any such instrument to Buyer that would otherwise have been assigned to Buyer under this Agreement, and such instrument shall be subject to all of the applicable terms of this Agreement.

2.3.6 Buyer shall accept and purchase the Railroad Assets subject to the matters set forth in **Section 2.3** (as applicable), and subject to, and together with the benefit of the 1985 Trackage Rights Agreement and the rights, interests, contracts, agreements, leases, occupancy agreements and easement(s) listed or described in the Included Intangibles Schedule and the Permits. Nothing contained in this **Section 2.3.6** shall be construed to: (i) limit or restrict any exception, reservation, right or privilege of Seller under this Agreement; (ii) limit or restrict Seller's right, prior to the Closing, to enter into any contract, agreement, assignment, lease or license pertaining to the provision by Seller or another railroad of rail freight service on the Railroad Line that have not been conveyed, notwithstanding any necessary post-Closing regulatory approval, including, without limitation, that certain Easement Agreement dated as of January 28, 2021 by and between Seller and GU (the "**GU Easement Agreement**"), and the Operating Agreement of even-date therewith by and between Seller and GU (the "**GU Operating Agreement**"), and together with the GU Easement Agreement, the "**Pre-Closing GU Agreements**") relating to the grant to GU of an exclusive rail freight easement over the Milford Line, such Pre-Closing GU Agreements to terminate in accordance with their terms upon consummation of the Closing hereunder; (iii) require Seller to cancel, terminate or amend any Intangible listed or described in the Included Intangibles Schedule; or (iv) impose any obligation on Seller with respect to Labor Protection, any Labor Challenge or Environmental Matters (all of which are defined below) other than as set forth in this Agreement.

2.3.7 At or immediately following the Closing, CSXT intends to assign the portion of the CSXT Milford Easement relating to the Milford Line to GU pursuant to an Assignment Agreement substantially in the form of **Exhibit I** hereto (the "**Assignment of Easement**"), for a term of years, during which term Seller will not be entitled to utilize such portion of the CSXT Milford Easement relating to the Milford Line for freight services, but as to which Seller shall retain a reversionary right, from and after termination or expiration of such Assignment of Easement, to the full benefit and use of the CSXT Milford Easement relating to the Milford Line. The MBTA shall be deemed to have consented to the Assignment of Easement.

2.3.8 At such time as the Assignment of Easement is entered into by the parties thereto, (i) Buyer and GU shall enter into an Operating

Agreement with respect to the Milford Line for the term of the Assignment of Easement (the “**GU-MBTA Operating Agreement**”); and (ii) Buyer and Seller shall enter into an amendment to the Trackage Rights Agreement dated as of July 1, 1985, by and between Consolidated Rail Corporation and Buyer, as previously amended, substantially in a form to be attached as **Exhibit C** hereto (the “**Trackage Rights Amendment**”, and said Trackage Rights Agreement, as amended to date, and as further amended by such Amendment, being the “**1985 Trackage Rights Agreement**”) which 1985 Trackage Rights Agreement shall (x) govern the Conveyed Franklin Industrial, (y) govern the Milford Line only during such time or times as the Assignment of Easement is not in effect, and (z) release Seller from Seller’s rights and obligations under the 1985 Trackage Rights Agreement (as amended by the Trackage Rights Amendment) with respect to the Milford Line during such time as the Assignment of Easement is in effect. The GU-MBTA Operating Agreement shall provide, inter alia, that GU shall secure and maintain in full force and effect policies of insurance reasonably satisfactory to Buyer and naming Buyer as an additional insured.

2.3.9 The conveyance or retention of an Intangible shall carry with it the right to renew, modify, alter, amend and terminate the same, *provided* the Included Intangibles shall not be renewed, modified, altered, or amended in such a way as would interfere with the rights of Seller under the ~~CSXT-Milford-Easement (or any assignee thereof) and~~ *provided, further*, that Seller shall not renew, modify, alter, or amend the Seller’s Retained Intangibles in such a way as to interfere with Buyer’s reasonable utilization of the Subject Property for its intended use as a commuter and passenger rail system.

2.3.10 All amounts due under or received by Seller relating to the Intangibles (including, without limitation, the Included Intangibles) prior to the Closing Date shall remain the property of Seller and shall not be subject to proration or adjustment of any sort; *provided, however*, that notwithstanding anything in this Agreement to the contrary, from and after the Effective Date, Seller shall not seek or accept any accelerated or increased amounts due from any third party under any of the Included Intangibles, whether such amounts are received pursuant to any amendment to any of the Included Intangibles or otherwise. From and after the Closing, Buyer shall be entitled to receive after the Closing Date all amounts due from any third party for the use of any Included Intangibles; *provided, however*, in the event that such amount is received by Seller on account of Seller’s continued ownership of other railroad lines, Seller shall pay to Buyer quarterly prorated amounts received by Seller on a per mile proration (that is, if a payment relates to 200 miles of rail corridor, and 43 miles of said rail corridor is contained within the Subject Property, Seller shall deliver to Buyer on a quarterly basis 43/200 of amounts received by Seller relating to the Seller’s Intangibles for any period due after the Closing Date). It is understood by the Parties that Seller’s Retained Intangibles,

inter alia, may grant or confer to others, not party to this Agreement, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing, Buyer shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in the Seller's Retained Intangibles, and Buyer shall not cause or suffer any breach of the Seller's Retained Intangibles.

## 2.4 Deliveries.

2.4.1 Deliveries by Seller. At the Closing Seller shall deliver to the Buyer or an escrow agent to be named by mutual agreement of the Parties at least 5 business days prior to the Closing ("**Escrow Agent**") the items described in clauses (i) through (xix) below, *provided, however*, that the Railroad Equipment shall not be delivered to the Buyer until such time as it assumes the responsibility for dispatching, operating and maintaining the Railroad Line to which the Railroad Equipment relates pursuant to the 1985 Trackage Rights Agreement (defined below):

- (i) the Deed for the Subject Property subject to the matters described in **Section 2.3**, except that the Deed shall not except mortgage liens;
- (ii) one or more Bills of Sale in the form to be mutually agreed upon by the Parties, with respect to the Railroad Equipment subject to the exceptions, reservations, rights, and privileges of Seller set forth in this Agreement;
- (iii) an Assignment of the Included Intangibles and Permits, in the form to be mutually agreed upon by the Parties;
- (iv) the Trackage Rights Amendment;
- (v) a termination of that certain Lease Agreement, dated as of June 1, 1987 (the "**Lease**"), by and between CSXT, as successor to Consolidated Rail Corporation and Buyer, substantially in the form of **Exhibit H** attached hereto (the "**Lease Termination**") terminating said Lease;
- (vi) the information and documents comprising the Railroad Assets set forth in **Section 1** of this Agreement;
- (vii) a certificate duly executed by Seller to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;
- (viii) a certificate executed on behalf of Seller by the secretary or assistant secretary or other appropriate officer or manager, dated as

of the Closing Date, certifying and attaching: a good standing certificate for Seller issued by the Secretary of State for the Commonwealth of Virginia dated within three (3) business days of the Closing; a Good Standing Certificate for a Foreign Corporation for Seller issued by the Secretary of State for the Commonwealth of Massachusetts; and a certified copy of authorizing resolutions of Seller's board of directors or manager(s), as applicable, associated with the approval of the transactions contemplated in this Agreement;

- (ix) an affidavit of non-foreign status that complies with Section 1445 of the Code in the form attached hereto as **Exhibit D**;
- (x) a general assignment (the "**General Assignment of Warranties**") in form and substance reasonably acceptable to Buyer, of all warranties and guaranties the benefit of which Seller is entitled to, if any, and only to the extent assignable, without consent or expense, with respect to the Railroad Assets, including, without limitation, any from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Railroad Assets;
- (xi) ~~affidavits (without indemnification) sufficient for a title insurance company, if Buyer elects to obtain title insurance, to delete any exceptions for mechanics' or materialmen's liens from an owner's title insurance policy and which identify, to Seller's knowledge, all parties in possession of the Subject Property. For purposes of this **Section 2.4.1**, Seller's knowledge shall be limited to the actual knowledge of Catherine Adkins, Regional Manager – Sales and Leasing of Seller and such other persons as the parties may mutually agree;~~
- (xii) an original closing statement setting forth the Purchase Price and the closing adjustments and proration (the "**Closing Statement**") in form to be mutually agreed upon by the Parties;
- (xiii) a Designation of Person Responsible for Tax Reporting under Internal Revenue Code Section 6045 in the form of **Exhibit E** annexed hereto designating Seller's attorney as the party responsible for making the returns required under Internal Revenue Code Section 6045;
- (xiv) a disclosure statement submitted in compliance with the requirements of Mass. Gen. L. c. 7C, s. 38;

- (xv) payoff statements for all mortgages, liens and encumbrances which Seller is obligated to satisfy in order to convey title to the Railroad Assets to Buyer hereunder;
  - (xvi) a letter from in-house counsel to Seller stating that the individual signing this Agreement on behalf of Seller has been duly authorized to do so;
  - (xvii) if requested by Buyer, a gap indemnity agreement from Seller in a form to be mutually agreed upon between Seller and Buyer whereby Seller agrees to indemnify Buyer against matters of record arising with respect to the Railroad Assets between the Closing and the actual recording of the Deed;
  - (xviii) in the event that Seller has elected to assign the CSXT Freight Easement with respect to the Milford Line to GU, the Assignment of Easement executed by Seller and GU; and
  - (xix) in the event that Seller and GU are executing the Assignment of Easement, a certification executed by GU, substantially in the form of **Exhibit J** hereto, stating that there have been no material adverse changes relating to GU's satisfaction of the Transferee Standards since the Effective Date of this Agreement.
- 

2.4.2 Deliveries by Buyer. As of or prior to the Closing Date, Buyer shall deliver to the Seller or the Escrow Agent the items described in clauses (i) through (viii) below:

- (i) the Purchase Price to be adjusted as herein provided;
- (ii) the Trackage Rights Amendment;
- (iii) the Lease Termination;
- (iv) the Closing Statement;
- (v) a certificate duly executed by Buyer to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;
- (vi) letters from in-house counsel to Buyer stating that the individuals signing this Agreement on behalf of Buyer have been duly authorized to do so; and
- (vii) in the event the Assignment of Easement is delivered at Closing, the GU-MBTA Operating Agreement executed by Buyer and GU.

2.5 Delivery of Railroad Assets. At the Closing, Seller shall deliver the Railroad Assets free of all tenants and occupants, except as provided in this Agreement.

2.6 Conditions Precedent to Obligations of Buyer. The obligations of Buyer under this Agreement to consummate the transactions contemplated hereby at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing, at the option of Buyer:

2.6.1 The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.6.2 All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.6.3 There shall have occurred no change in applicable law between the Effective Date and the Closing Date that would materially adversely affect the ability of Buyer to provide commuter rail service on the Railroad Line.

2.6.4 There shall have occurred no changes in title or encroachments from and after the Effective Date, and no improvements shall have been constructed on the Railroad Line from and after the Effective Date, that would have a material adverse effect on Buyer's ability to provide commuter rail service on the Railroad Line.

2.6.5 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective Date and the Closing Date that affects the liability arrangement as between the Parties under the 1985 Trackage Rights Agreement, which liability arrangement the Parties agree is subject to their mutual consent.

2.7 Conditions Precedent to Obligations of Seller. The obligations of Seller under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing, at the option of Seller:

2.7.1 The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.7.2 All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.7.3 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective

Date and the Closing Date which affects the liability arrangement as between the Parties and the Buyer under the 1985 Trackage Rights Agreement, which liability arrangement the Parties (and the Buyer) agree is subject to their mutual consent.

### 3. PURCHASE PRICE

3.1 Purchase Price. The Purchase Price (“Purchase Price”) payable hereunder shall consist of a monetary payment, to be payable as hereinafter provided.

3.2 Cash Payment. The total Purchase Price for the Railroad Assets is Thirteen Million and 00/100 DOLLARS (\$13,000,000.00). The Purchase Price shall be payable by Buyer as set forth in Section 3.3.

3.3 Payment of the Purchase Price. At the Closing, the Purchase Price shall be subject to the prorations and adjustments provided for herein.

3.3.1 The Purchase Price shall be payable in lawful currency of the United States in immediately available funds by certified check or by wire transfer to an account designated by Seller at the Closing.

#### 3.4 Proration.

3.4.1 At the Closing, all of the items normally prorated, including those listed below, relating to the ownership and operation of the Railroad Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods from and after the Closing Date:

- (i) personal property, real estate, occupancy, sewerage and water taxes, assessments and other charges, if any, on or with respect to the Railroad Assets;
- (ii) any permit, license, registration, compliance assurance fees, emission fees or other fees, in each case, with respect to any Permit associated with the Railroad Assets; and
- (iii) rent or any other payments due from and after the Closing under any of the Included Intangibles.

3.4.2 In connection with the prorations referred to in **Section 3.4.1** above, in the event that actual figures are not available at the Closing Date, the proration shall be measured by calendar days and be based upon the actual amount paid for the preceding year (or appropriate period) for which amounts are available and such proration of taxes or fees shall be recalculated and appropriate adjustments shall be paid upon request of either Seller or Buyer, made within sixty (60) days of the date that the actual



amounts become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustments and proration calculations made pursuant to this **Section 3.4**.

3.5 Taxes and Permits. Buyer represents that it is exempt from the payment of sales and/or use taxes and all documentary tax stamps and transfer taxes in connection with the conveyance of the Railroad Assets and agrees that in no event shall Seller be required to pay any such charges.

3.6 Labor Protection. Seller shall be responsible for Labor Protection costs, if any, occasioned by the transactions contemplated in this Agreement. As used herein, “**Labor Protection**” shall mean the costs, if any, incurred by Seller as a result of the sale of the Railroad Assets, which costs may be incurred pursuant to the provision of a collective bargaining agreement bargained by Seller as a result of the sale of the Railroad Assets or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. Except as provided in the immediately preceding sentence, the Parties agree that each shall be solely responsible for its risks and costs associated with any challenge to the transactions brought pursuant to law, a collective bargaining agreement or otherwise (“**Labor Challenge**”).

#### 4. ONGOING OPERATIONS

##### 4.1 Continuing Obligations.

4.1.1 Contracts. From the Effective Date through Closing, Seller will not enter into any contract that will be an obligation affecting the Railroad Assets subsequent to the Closing Date, except (i) contracts relating to Seller’s operation of the Railroad Assets that will not prejudice or interfere with the consummation of the transfers contemplated hereunder, will not impose any financial obligation on Buyer, and will not interfere with Buyer’s use of the Railroad Assets, subject, however, to the CSXT Milford Easement, (ii) contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than thirty (30) days prior notice, or (iii) the granting of Intangibles in the ordinary course of Seller’s business; *provided, however*, that the granting of an Intangible shall not materially interfere with Buyer’s or, at Buyer’s option, Buyer’s assignee’s, ability to provide commuter passenger service on a Railroad Line. As set forth in Section 2.3.9, from and after the Effective Date, Seller shall not seek or accept any accelerated or increased amounts due from any third party under any of the Included Intangibles, whether such amounts are received pursuant to any amendment to any of the Included Intangibles or otherwise.

4.1.2 Maintenance of Improvements. From the Effective Date through Closing, except as otherwise provided in the Lease, Seller shall maintain all Railroad Assets substantially in their present condition (ordinary use and wear excepted) and in compliance with all applicable and

Federal Railroad Administration rules and regulations and in accordance with any legal, contractual or regulatory obligations existing during such period.

4.2 1985 Trackage Rights Agreement. From and after the Closing, the Seller will not own any of the Railroad Line. The Parties agree that the use of the Railroad Assets purchased hereunder, as well as the obligations of the Parties with respect to maintenance and dispatching shall be governed from and after the Closing Date by the 1985 Trackage Rights Agreement, *provided however* that during such time as the Assignment of Easement is in effect, the Milford Line shall be governed by the GU-MBTA Operating Agreement.

## 5. CASUALTY

5.1 Damage. If, prior to the Closing, the Railroad Line, or any portion thereof, is damaged by fire or other casualty, Seller shall estimate the cost to repair and the time required to complete repairs and will provide Buyer with written notice of Seller's estimation (the "**Casualty Notice**") as soon as reasonably practical after the occurrence of the casualty.

5.1.1 Material. In the event of any Material Damage to, or destruction of, the Railroad Line or any portion thereof prior to Closing, either Seller or Buyer may, at its option, terminate this Agreement by delivering written notice to the other on or before the expiration of thirty (30) days after the date Seller delivers the Casualty Notice to Buyer (and if necessary, the Closing Date shall be extended to give the Parties the full thirty-day period to make such election and to obtain insurance settlement agreements with Seller's insurers). Upon any such termination: (i) except as otherwise specifically provided herein, the Parties hereto shall have no further rights or obligations hereunder, and (ii) this Agreement shall be void and without recourse to the Parties hereto. If neither Seller nor Buyer so terminates this Agreement within said thirty (30) day period, then the Parties shall proceed under this Agreement and close on schedule (subject to extension of Closing as provided above) and, as of the Closing, Seller shall assign to Buyer, without representation or warranty by, or recourse against, Seller, all of Seller's rights in and to any resulting insurance proceeds due Seller as a result of such damage or destruction and Buyer shall assume full responsibility for all needed repairs. Buyer shall receive a credit at Closing for any deductible amount under such insurance policies (but the amount of the deductible plus insurance proceeds shall not exceed the lesser of (A) the cost of repair or (B) the Purchase Price. For the purposes of this Agreement, "**Material Damage**" and "**Materially Damaged**" means damage which, in Buyer's reasonable estimation, exceeds \$200,000.00 to repair or which, in Buyer's reasonable estimation, will take longer than ninety (90) days to repair.

5.1.2 Not Material. If the Railroad Line is not Materially Damaged, then neither Buyer nor Seller shall have the right to terminate this Agreement, and Seller shall, at its option, either (i) repair the damage before

the Closing in a manner reasonably satisfactory to Buyer, or (ii) credit Buyer at Closing for the reasonable cost to complete the repair (in which case Seller shall retain all insurance proceeds and Buyer shall assume full responsibility for all needed repairs).

## 6. TITLE DUE DILIGENCE

6.1 Title Examination. In connection with Buyer's execution of this Agreement, Buyer may elect to cause to be performed a title examination for the Railroad Line (one or more of such title examinations are hereinafter referred to collectively as the "**Title Examination**") at Buyer's expense. Buyer shall, upon Seller's request, make available to Seller all Title Examination materials, provided Buyer makes no representation or warranty as to the completeness or accuracy thereof. Seller shall, as soon as is reasonably practical, to the extent not already in the possession of Buyer, provide to Buyer (but makes no representation or warranty as to the completeness or accuracy of) (i) copies of applicable Valuation Maps for the Railroad Line, (ii) all title information in its possession pertaining to each parcel in the Subject Property, and (iii) copies of all leases and occupancy agreements in its possession related to the Railroad Line. Seller shall also provide in electronic format, scanned versions of each instrument retrievable by Seller. Seller shall not deliver any information to Buyer pursuant to this section that, to Seller's knowledge, is not accurate in any material respect. For purposes of this **Section 6.1**, Seller's knowledge shall be limited to the actual knowledge of Catherine Adkins, Regional Manager – Sales and Leasing of Seller and such other persons as the parties may mutually agree.

6.2 Name of Buyer. Title to the Railroad Line shall be conveyed to THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, unless Buyer designates a nominee or nominees to take title to all or a part of the Railroad Assets, in which case the grantee shall be said nominee or assignee, as the case may be. Any such assignee or nominee must join in this Agreement and be fully bound thereby.

6.3 Additional Provisions Pertaining to Utility Rights. Seller, as of the Effective Date, may have entered into one or more general agreements with a utility company or companies for a utility crossing or crossings over or under the Railroad Line. Any such general agreement may require Seller to reserve a permanent easement for the benefit of the utility company over or under a particular section of a Railroad Line. If Seller determines that the Railroad Line has already been encumbered by existing utilities which were constructed pursuant to such general agreements, or Seller has a currently enforceable legal obligation as reasonably determined by Seller to create such an easement or easements, Seller shall provide Buyer with copies of all written agreements with utility companies for such easements in its possession as soon as is reasonably practical, but in any event prior to the Closing. Buyer shall have the right to terminate this Agreement within fifteen (15) days of Seller's providing such copies to Buyer if Buyer is not satisfied with the utility easements granted, or to be granted, by Seller, whereupon (i) except as otherwise provided herein, all obligations of the Parties shall cease, and (ii) this Agreement shall be void and without recourse to the Parties hereto.

## 7. OTHER DUE DILIGENCE; BUYER'S CONTINGENCIES

7.1 Due Diligence Materials To Be Delivered. Seller shall deliver to Buyer, to the extent not already in the possession of Buyer, the following (the "**Property Information**") from time to time after the Effective Date in each case as soon as is reasonably practical, and with respect to materials that are currently available to Seller, within five (5) business days after the Effective Date:

7.1.1 Environmental and Hazardous Material Reports. Seller shall provide such access and environmental due diligence material related to the Railroad Line as the Parties may agree pursuant to the terms of **Section 17** of this Agreement concerning environmental due diligence ("**Environmental Matters**");

7.1.2 Tax Statements. Copies of real estate tax bills and personal property bills relating to the Subject Property, if applicable, for the current tax period;

7.1.3 Railroad Records. Copies of track charts; Valuation Maps in Seller's possession for the Railroad Line;

7.1.4 Intangibles. Copies of all Intangibles identified in the Included Intangible Schedule, affecting the Subject Property;

7.1.5 Cooperation. The Parties shall cooperate in providing such information as may be required by federal governmental authorities to approve the transfer of the Railroad Line.

7.1.6 Confidentiality. The information described in **Sections 7.1.1, 7.1.4, and 7.1.5** above shall be furnished solely to Buyer's counsel pursuant to a mutually satisfactory confidentiality agreement.

7.2 Access Agreement. Buyer's right to access the Railroad Line shall be subject to the Right of Entry Agreement executed by the Parties contemporaneously herewith (the "**Right of Entry Agreement**"). The Right of Entry Agreement is incorporated herein in full, and all due diligence on the Subject Property performed by Buyer shall be governed by the terms and conditions set forth in the Right of Entry Agreement.

### 7.3 Due Diligence/Termination Rights.

7.3.1 Buyer shall have the right to examine, inspect, and investigate the title to the Subject Property, the Property Information and the Railroad Line and, in Buyer's sole and absolute judgment and discretion, to determine whether the Railroad Assets are acceptable to Buyer in Buyer's sole discretion. Buyer may terminate this Agreement for any reason or for no reason by giving written notice of termination to Seller on or before the ninetieth (90<sup>th</sup>) day after the Effective Date (the "**Due Diligence Contingency Date**"). In the event that Buyer terminates this Agreement

pursuant to this **Section**: (i) except as otherwise provided herein, all obligations of the Parties shall cease; and (ii) this Agreement shall be void and without recourse to the Parties hereto.

7.3.2 Either Party may elect to terminate this Agreement by giving written notice to the other Party on or before the Due Diligence Contingency Date if, after having used commercially reasonable efforts to do so, they have been unable to agree upon the form and content of the Included Tangible Personal Property Schedule, the Excluded Tangible Personal Property Schedule, the Assigned Permits Schedule, the definition of Other Operating Rights, the Included Intangibles Schedule, the Excluded Intangibles Schedule, the Seller's Retained Intangibles Schedule, the Deed, the Railroad Line Plans, the CSXT Milford Easement, the Bill of Sale, an Assignment of Included Intangibles and Permits, the General Assignment of Warranties, the Trackage Rights Amendment, the GU-MBTA Operating Agreement, and any Exhibit hereto which is not completed as of the signing of this Agreement, including without limitation **Exhibit F**. In the event that either Party terminates this Agreement pursuant to this **Section 7.3**, (i) except as otherwise provided herein, all obligations of the Parties shall cease, and (ii) this Agreement shall be void and without recourse to the Parties hereto.

~~7.3.3 Buyer may elect to terminate this Agreement by giving written notice to Seller on or before the Due Diligence Contingency Date if, after having used commercially reasonable efforts to do so, Buyer has been unable to agree with GU on the GU-MBTA Operating Agreement, in which event, (i) except as otherwise provided herein, all obligations of the Parties shall cease, and (ii) this Agreement shall be void and without recourse to the Parties hereto. For the sake of clarity, the foregoing right of Buyer to elect to terminate this Agreement pursuant to this Section 7.3.3 is in addition to the rights of either Party to elect to terminate this Agreement pursuant to the provisions of Section 7.3.2 above in connection with the GU-MBTA Operating Agreement.~~

7.4 Governmental Approvals; Other than the Surface Transportation Board Approvals. Buyer's and Seller's obligations hereunder are subject to, and conditional upon, Buyer's obtaining all licenses, approvals, franchises, notices, variances, exemptions, consents and other authorizations (collectively, the "**Approvals**") issued by all Governmental Authorities that relate to or otherwise are useful or are necessary in connection with the ownership, operations or other use of the Railroad Assets by Buyer or Buyer's assignees. Seller shall cooperate with Buyer in Buyer's obtaining the Approvals including, without limitation, executing all documents and applications and sending appropriate representatives to meetings as reasonably required without unduly affecting the representative's other responsibilities. Each Party shall pay its own expenses and shall share equally all joint expenses. In the event that all such Approvals are not validly and irrevocably issued to Buyer on terms and conditions reasonably satisfactory to Buyer, without qualification, except such qualification as may be reasonably satisfactory to Buyer, and no longer subject to appeal, by not later than the Due

Diligence Contingency Date, either Party shall have the option to terminate this Agreement by written notice to the other Party by such date whereupon (i) except as hereinafter set forth, all obligations of the Parties shall cease, and (ii) this Agreement shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, the STB Decision shall not be subject to this Section.

**8. INTENTIONALLY BLANK**

**9. MUTUAL CONTINGENCIES**

9.1 Surface Transportation Board Contingency, FRA Notice.

9.1.1 Buyer and Seller shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board (“STB”) that STB authorization is not required for any of the transactions contemplated in this Agreement, or over any of the transactions contemplated in any ancillary agreement contemplated by this Agreement, other than the Assignment of Easement (the “**STB Decision or STB Decisions**”).

9.1.1.1 The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB without first having delivered a copy of such filing to the other Party at least seven (7) days before such filing is made. Buyer will be the principal filing party with respect to the application, petition for exemption, or notice of exemption described in Section 9.1.1 of the Agreement. Buyer, with Seller’s support, will use all reasonable commercial efforts to file the application, petition for exemption, or notice of exemption as soon as reasonably practicable after the Due Diligence Contingency Date and will request that the STB treat the applications on an expedited basis.

9.1.2 Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the Closing, if:

(i) the STB has not dismissed the application, petition for exemption, or notice of exemption filed pursuant to Section 9.1.1 of this Agreement; and

(ii) the STB shall have found that it has regulatory authority over any of the transactions contemplated in this Agreement and, in connection therewith, shall have imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or

(iii) the Parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB’s decision to be performed prior to Closing; or

(iv) any of the transactions shall have been stayed or enjoined by the STB or by any court; or

(v) any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with any of the transactions contemplated in this Agreement, any agreement to be executed in connection herewith, or any agreement between Buyer and Seller related to the Subject Property.

9.1.3 Any notices required to be given to the Federal Railroad Administration (“FRA”) pursuant to 49 C.F.R. § 213.5(c), if applicable, shall have been given at least thirty (30) days prior to the Closing Date.

9.1.4 If this Definitive Agreement is terminated pursuant to Section 9.1.2 above, (i) except as hereinafter set forth, all obligations of the Parties shall cease, and (ii) this Agreement shall be void and without recourse to the parties hereto.

9.2 STB Filing by GU for Assignment of Easement. The Parties will provide reasonable cooperation in support of GU’s STB regulatory filings associated with the Assignment of Easement.

---

**10. REPRESENTATIONS, WARRANTIES AND COVENANTS;  
TERMINATION RIGHT**

10.1 Representations, Warranties and Covenants of Buyer. To induce Seller to enter into this Agreement, Buyer hereby covenants with Seller and makes the following representations and warranties.

10.1.1 Buyer is a Massachusetts body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, is duly qualified to conduct business in the Commonwealth of Massachusetts, and has the requisite authority to acquire properties and to carry on its business as currently conducted. Buyer has the requisite power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement. Mass. Gen. L. c. 161A §6(o) authorizes the Buyer to acquire property by eminent domain.

10.1.2 This Agreement, and the documents to be executed and delivered by Buyer in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by Buyer and (with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Buyer enforceable upon Buyer in accordance with their respective terms and conditions.

10.1.3 All requisite action has been taken by Buyer to enter into this Agreement and to consummate the transaction contemplated hereby.

10.1.4 To the best of Buyer's knowledge, the execution, delivery of, and performance of this Agreement, and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Buyer has knowledge or notice, or any other agreement, document or instrument by which Buyer is bound. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect Buyer's ability to perform its obligations under this Agreement.

10.1.5 Buyer has not filed any petition, nor been the party against whom a petition has been filed in relation to any bankruptcy, insolvency, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Buyer's knowledge, is any such action threatened or contemplated.

10.1.6 Buyer has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

10.1.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by Buyer for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Buyer contemplated hereby or thereby.

10.1.8 All necessary funding and appropriations sufficient to allow Buyer to close the purchase of the Railroad Assets will be available on the Closing Date.

10.2 Representations, Warranties and Covenants of Seller. Nothing in this Section 10.2 shall apply to Labor Protection, a Labor Challenge or Environmental Matters. To induce Buyer to enter into this Agreement, Seller hereby covenants with Buyer and makes the following representations and warranties.

10.2.1 Seller is a corporation validity existing and in good standing under the laws of the Commonwealth of Virginia and is duly qualified to do business in the Commonwealth of Massachusetts, and has the requisite corporate authority to own its properties and to carry on its business as currently conducted. Seller has the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement.

10.2.2 This Agreement, and the documents to be executed and delivered by Seller in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents



to be executed after the Effective Date, will be) duly executed and delivered by Seller and (or with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Seller enforceable upon Seller in accordance with their respective terms and conditions.

10.2.3 All requisite corporate action has been taken by Seller to enter into this Agreement and to consummate the transaction contemplated hereby.

10.2.4 To the best of Seller's knowledge, the execution, delivery and performance of this Agreement and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Seller has knowledge or notice, or any other agreement, document or instrument by which Seller is bound except as may be provided in the Included Intangibles. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect Seller's ability to perform its obligations under this Agreement.

~~10.2.5 Seller has not filed any petition, nor has been the party against whom a petition has been filed in the last five (5) years in relation to any bankruptcy, including, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Seller's knowledge, is any such action threatened or contemplated.~~

10.2.6 Seller has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transaction contemplated hereby.

10.2.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by Seller for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Seller contemplated hereby or thereby.

10.2.8 Except as disclosed by Seller to Buyer in writing prior to Closing, there is no action or proceeding pending or, to Seller's knowledge, threatened challenging Seller's right, title and interest in and to the Subject Property at law or in equity or the consummation and performance of the transactions contemplated by this Agreement, which challenge, if successful, would result in any material adverse effect upon any such transaction.

10.2.9 The Railroad Line has not been abandoned or discontinued, by Seller, and Seller has not filed a request for any such abandonment or discontinuance with the STB or otherwise.

10.3 Real Property. There is no pending or, to Seller's knowledge, threatened condemnation or other similar proceeding of any part of the Railroad Assets, except by Buyer.

10.4 Survival. All of the warranties and representations made by the Parties hereunder shall survive the Closing Date for a period of one year.

## 11. DEFAULT

11.1 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to the Closing for any reason except the failure by Seller to perform hereunder, or if prior to the Closing any one or more of Buyer's representations or warranties are breached in any material respect and such failure is not cured by Buyer within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Buyer is acting with due diligence) following receipt of notice of such default from Seller, Seller may elect to terminate this Agreement by giving Buyer written notice of such election prior to the Closing. In any such case, except as set forth below, Seller's sole and exclusive remedy shall be to receive from Buyer an amount equal to Seller's reasonable third party costs associated with the transaction described in this Agreement as agreed-upon liquidated damages in full settlement of any and all claims arising under, or in any way related to, this Agreement and with no further recourse against Buyer, either at law or in equity. Except as set forth in Section 11.3, in no event shall Buyer be liable to Seller for money damages hereunder in excess of ten percent (10%) of the Purchase Price (the "**Liability Cap**"). In addition, Seller irrevocably waives any and all right to pursue specific performance of the Agreement or any other legal or equitable remedy otherwise available to Seller.

11.2 Seller Default. If Seller fails to perform its obligations pursuant to this Agreement for any reason except the failure by Buyer to perform hereunder, or if prior to the Closing, any one or more of Seller's representations or warranties are breached in any material respect, and such failure is not cured by Seller within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Seller is acting with due diligence) following receipt of notice of such default from Buyer, Buyer may elect to terminate this Agreement by giving Seller written notice of such election prior to the Closing. In any such case, except as set forth below, Buyer's sole and exclusive remedy shall be money damages limited to reimbursement for any reasonable third party expenses including, without limitation, fees paid to lawyers, engineers, consultants and title examiners, reasonably incurred by Buyer in connection with this Agreement and the transactions contemplated herein. In no event shall Seller be liable to Buyer for money damages hereunder in excess of the Liability Cap. Notwithstanding the foregoing to the contrary, Buyer may, by notice given no later than thirty (30) days after such default (time being of the essence), waive its election to terminate this Agreement and pursue money damages for reimbursement of third party expenses and, instead, elect, as its sole and exclusive remedy, the remedy of specific performance. If Buyer makes such election for specific performance, it is agreed that specific performance shall be of this Agreement as a whole, including satisfaction of all preconditions to Seller's obligations to close.

11.3 Survival. The provisions of this **Section 11** shall survive termination of this Agreement and delivery of the Deed.

## 12. EMINENT DOMAIN

12.1 Attempted Taking; Purchase Price. Seller and Buyer hereby explicitly acknowledge and agree that they are entering into this Agreement in lieu of Seller's taking of the Railroad Assets by the exercise of Buyer's power of eminent domain. Buyer and Seller further agree that the Purchase Price is equal to the amount that Buyer would have been obligated to pay to Seller, including both state and federal relocation assistance and benefits, for the condemnation of the Railroad Assets in the condition the Railroad Assets are to be delivered to Buyer under this Agreement. In the event that Buyer elects, from time to time, to take all or any part of the Railroad Assets by eminent domain, the full amount payable by Buyer to Seller in such event, including both state and federal relocation benefits and assistance, for the part of the Railroad Assets so taken, shall be calculated on a pro rata basis based on the Purchase Price payable hereunder being equal to the amount payable for a taking of all of the Railroad Assets and shall be considered to be received in full satisfaction of the Purchase Price under this Agreement.

12.2 Compensatory Claims. Nothing contained herein shall be construed to preclude Seller from prosecuting any claim directly against the condemning authority for the value of the CSXT Milford Easement in accordance with applicable law for any interests or properties belonging to Seller other than the Railroad Assets and, *provided, further*, that nothing contained herein shall be construed to create any interest or entitlement in Buyer to any and all funds payable to Seller for such total or partial taking of the Subject Property or any taking of the Seller's property.

12.3 Confirmatory Taking to Perfect Title. Nothing contained herein shall preclude Buyer from exercising its eminent domain powers for any purpose with respect to the Subject Property nor shall this Agreement be construed to limit Buyer's ability to record a "Confirmatory Order of Taking" for the Subject Property following the Closing; *provided, however*, that such exercise or recordation shall not modify, amend, limit or restrict the CSXT Milford Easement, the 1985 Trackage Rights Agreement, any Other Operating Rights, or the rights and obligations of the parties hereto under this Agreement and, *provided, further*, that any such exercise shall be done at no cost or expense to Seller.

12.4 Circumstances Following Eminent Domain Taking. In the event that Buyer takes any of the Subject Property by eminent domain, then at such time, Seller and Buyer shall execute the Trackage Rights Amendment, Buyer shall reserve the CSXT Milford Easement to Seller, and Seller shall deliver to Buyer those items listed in **Sections 2.4.12.4.1(ii), 2.4.12.4.1(iii) and 2.4.12.4.1(xii)**, but neither Party shall be responsible for any other deliveries pursuant to **Section 2.4**. At the Closing, Buyer and Seller shall execute and deliver to the other Party the Trackage Rights Amendment. In no event may the exercise of eminent domain affect the 1985 Trackage Rights Agreement.

12.5 Condemnation by Others. If proceedings in eminent domain are instituted with respect to the Railroad Line or any portion thereof, by any governmental entity so

authorized, other than Buyer, in which the potential award exceeds \$200,000.00, either Party may terminate this Agreement by written notice to the other Party, whereupon (i) except as hereinafter set forth, all obligations of the Parties hereto shall cease, and (ii) this Agreement shall be void and without recourse to the Parties. In the event that the potential award is \$200,000.00 or less, the Parties shall proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award, and Buyer shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. An eminent domain taking by Buyer shall be governed by the prior provisions of this **Section 12**.

### **13. DISCLAIMER OF WARRANTY**

EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE AND/OR THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES THAT THE RAILROAD ASSETS WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO BUYER BY SELLER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN.

### **14. CONDITION OF PROPERTY**

Except as may be expressly set forth in the Deed, Bill of Sale and/or this Agreement, and subject to the rights of termination and rescission expressly set forth herein that are exercisable prior to the Closing, Buyer agrees to accept and purchase the Railroad Assets, without warranty, except as otherwise specifically provided for herein, "as is, where is," as of the Effective Date, subject to reasonable wear and tear.

### **15. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A Party's address may be changed by written notice to the other party; *provided, however*, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by

counsel to Buyer shall be deemed given by Buyer and notices given by counsel to Seller shall be deemed given by Seller.

Notices to Seller shall be sent to:

CSX Transportation, Inc.  
500 Water Street – J150  
Jacksonville, FL 32202-5184  
Attn: Kim Bongiovanni, Esq.

with copy to:

CSX Transportation, Inc.  
500 Water Street – J180  
Jacksonville, FL 32202-5184  
Attn: Sarah Watson

Notices to Buyer shall be sent to:

Massachusetts Bay Transportation Authority  
10 Park Plaza  
Boston, MA 02116  
Attn: John D. Ray, Assistant General Manager for Railroad and Ferry Operations

And a copy to:

Office of General Counsel  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Suite 3510  
Boston, MA 02116  
Attn: General Counsel

And a copy to:

Goulston & Storrs P.C.  
400 Atlantic Ave.  
Boston MA 02110  
Attn: Peter N. Kochansky, Esq.

**16. MERGER**

The delivery of the Deed for the Railroad Line by Seller, and Seller's performance of its obligations with respect to the Railroad Line, and the acceptance thereof by Buyer, shall be deemed to be a full performance and discharge of every agreement and obligation contained herein with respect to the Railroad Line except as otherwise expressly provided herein.

**17. ENVIRONMENTAL MATTERS; ENVIRONMENTAL CONDITION OF THE RAILROAD ASSETS**

17.1 Definitions. As used in this **Section 17** and elsewhere in this Agreement, the following terms shall have the meanings provided below.

17.1.1 **Environmental Law** means any applicable federal, state or local law, statute, code, ordinance, rule, regulation, administrative or judicial order (whether unilateral or consented to) or other requirement relating to the environment, Hazardous Materials or natural resources and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 33 U.S.C. § 2601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and Massachusetts General Laws c. 21E, as such laws have been amended or supplemented, and the rules and regulations promulgated thereunder, and all analogous state or local statutes.

17.1.2 **Environmental Claim** means any and all administrative, regulatory or judicial actions, suits, judgments, demands, directives, claims, liens, investigations, proceedings or written or oral notices of noncompliance or violation by or from any person alleging liability of any kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resource damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from (1) the presence or Release of, or exposure to, any Hazardous Material at any location, or (2) the failure to comply with any Environmental Law.

17.1.3 **Hazardous Material** means any material, substance or waste, in whatever form, classified, characterized, designated or otherwise regulated as hazardous, toxic, corrosive, flammable, reactive, infectious, radioactive, a pollutant or a contaminant or words of similar meaning or effect under any Environmental Law and includes, without limitation, petroleum, petroleum products, asbestos, urea formaldehyde and polychlorinated biphenyls.

17.1.4 **Release** means any actual or threatened release, spill, leaking, pumping, pouring, emission, emptying, discharge, dumping, deposit, disposal, arrangement for disposal, injection, escaping, leaching, dispersal or migration into or through the environment.

17.2 Environmental Permits; Representations and Warranties.

17.2.1 On or before the Closing Date, the Parties shall develop a list of all permits under Environmental Laws used in, or necessary for, the Business or the ownership and operation of the Railroad Assets (“**Environmental Permits**”) (and all pending applications for any such Environmental Permits, the “**Environmental Schedule**”). Buyer acknowledges that, except as provided herein, Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Subject Property, and Seller expressly disclaims any and all obligation and liability to Buyer regarding any defects which may exist with respect to the condition of the Subject Property. Notwithstanding the foregoing, subject to **Section 17.2.3** below, Seller represents and warrants that, except as disclosed on **Exhibit F**, Seller has no knowledge of any notices, claims or assessments regarding any environmental conditions affecting the Subject Property that would be the basis for imposing any liability on the owner of the Subject Property.

17.2.2 Not later than ten (10) days after the Effective Date, Seller shall have used commercially reasonable efforts to make available to Buyer all material reports, investigations, studies, audits, tests, reviews or other analyses relating to the presence or Release of Hazardous Materials or the Environmental Laws conducted by or in the possession of Seller (“**Environmental Reports**”) in relation to the Railroad Assets. Seller makes no warranties or representations about the accuracy or completeness of the Environmental Reports; provided, that subject to **Section 17.2.3** below, Seller has no actual knowledge that any Environmental Report is inaccurate in any material respect. The Environmental Reports shall be furnished to Buyer pursuant a mutually satisfactory confidentiality agreement.

17.2.3 Seller’s representations and warranties in **Sections 17.2.1** and **17.2.2** above are made to the knowledge of said Seller, said knowledge being limited to the actual knowledge of Coley Campbell, Senior Manager, Environmental Services, for Seller and such other persons as the parties may mutually agree, without undue investigation or inquiry. If and to the extent Buyer has, as of the Closing, knowledge that any of said representations or warranties is untrue and nevertheless elects to close, then Seller’s representations and warranties shall be deemed modified by such knowledge of Buyer. In addition, no action or claim may be made upon any such representation or warranty after ten (10) years from the date of the Closing with respect to the portion of the Subject Property covered by said representation and warranty, and in any event Seller’s liability for breach of said representations and warranties shall be deemed limited to and modified by the provisions of **Section 17.9** herein.

17.3 Environmental Inspections.

17.3.1 After the execution of this Agreement by all of the Parties, and prior to the Closing, Buyer and/or its agents shall be permitted to have access to the Railroad Assets for the purposes of conducting Due Diligence regarding the presence or Release of Hazardous Materials or other matters pertaining to Environmental Laws, subject to the Right of Entry Agreement and an environmental testing and evaluation methodology to be agreed between the Parties. Buyer hereby acknowledges that Seller has not authorized physical testing of the Railroad Assets pertaining to the Release of Hazardous Materials or other matters pertaining to Environmental Laws.

17.3.2 With regard to such environmental testing programs, Seller reserves the right to monitor and approve in its sole and absolute discretion all physical procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in or on the Railroad Assets pursuant to **Section 17.3.1** hereof. The Parties agree that Buyer has not yet submitted a request to Seller to conduct environmental testing. Buyer shall: (a) notify Seller in writing no less than five (5) days prior to initiating any such environmental work; (b) keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and (c) fully cooperate with all reasonable requests of Seller in undertaking and carrying out such work. Buyer shall deliver to Seller, at no cost to Seller, within twenty (20) days after receipt, copies of all final results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer.

17.3.3 If the presence or Release of Hazardous Materials relating to the Railroad Assets is revealed by the Environmental Reports, the studies and tests conducted by Buyer pursuant to this Agreement or other information, in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities, or, if Buyer is otherwise, in its sole discretion, unwilling to accept the environmental condition of the Railroad Assets as a result of such Environmental Reports, tests or assessments, Buyer may elect to terminate this Agreement pursuant to **Section 7.3.1** hereof.

17.4 As Is Purchase. If Buyer elects not to secure environmental tests or inspections, or if Buyer does not, pursuant to **Section 7.3.1** hereof, elect to terminate this Agreement after receipt of test results, Buyer shall take the Subject Property "as is" at Closing and, subject to **Section 17.5**, releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition, including without limitation claims for contribution with respect to third party claims.

17.5 Cost Sharing. If Buyer does not elect to terminate this Agreement pursuant to this **Section 17**, Seller shall remain liable for, and shall reimburse Buyer for, fifty



percent (50%) of the actual out of pocket costs incurred for remediation of the Subject Property during the first ten (10) years after the Closing, with respect to the property conveyed pursuant to said Closing, upon the following conditions:

- (a) Such remediation shall (i) have been required to respond to the presence or Release of Hazardous Materials which was present or had been released prior to the date of the Closing, with respect to property conveyed pursuant to said Closing, except to the extent caused or contributed to by Buyer; (ii) be subject to a plan of remediation formulated by Buyer and provided to Seller for review and approval, which approval shall not be unreasonably withheld, that utilizes institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Railroad Assets for railroad purposes, including a proposed schedule and methodology designed to minimize interference with the use of the Railroad Assets by the Parties; and apply only once to any given location.
- (b) Buyer shall pay for the other fifty percent (50%) of such remediation costs;
- (c) Buyer shall have provided Seller with all reasonably requested relevant information regarding the nature and extent of the condition requiring remediation and reasonable documentation as to the costs of remediation;
- (d) Seller's total aggregate reimbursement hereunder shall not exceed One Million One Hundred Five Thousand and 00/100 DOLLARS (\$1,105,000.00);
- (e) Seller shall not be responsible for any single remediation claim or occurrence costing less than \$50,000.00;
- (f) Seller's obligations for reimbursement shall cease and be null and void from and after ten (10) years after the date of the Closing; and
- (g) Buyer shall have the right to allocate Seller's contribution for remediation to such portions of the Subject Property as Buyer may elect in its sole and absolute discretion.

17.6 Claims Against Third Parties. Notwithstanding anything in this Agreement to the contrary, the Parties reserve any and all rights that they may have against third parties under statutory and/or common law, including the Environmental Laws, pertaining to the environmental matters addressed in this **Section 17** and/or the environmental condition of the Railroad Assets, including but not limited to the presence or Release of Hazardous Materials in, on, under, from, to or about the Railroad Assets. In the event that a third party brings a contribution claim against Seller relating to a claim against that third party brought by Buyer, any payments by Seller with respect to such third party contribution claims shall reduce, on a

dollar for dollar basis, the maximum contribution by Seller under **Section 17.5** or liability of Seller under **Section 17.8**.

17.7 Exceptions. **Section 13** and **Section 14** of this Agreement shall not apply to the environmental condition of the Railroad Assets and/or the environmental matters addressed in this **Section 17**.

17.8 Liabilities for Breach of Representations and Warranties. As set forth in **Section 17.2**, Seller's liability for breach of representation or warranty therein shall, in any event, be limited to a total of One Million One Hundred Five Thousand and 00/100 DOLLARS (\$1,105,000.00), less any amounts payable by Seller pursuant to **Section 17.5** or **17.6**. By way of illustration and example, if Seller is liable for damages of \$1,000,000.00 for breach of a representation or warranty, Seller shall be liable for the entire \$1,000,000.00 attributable to said breach, whereupon its total liability for cleanup costs under **Section 17.5** shall be reduced to One Hundred Five Thousand and 00/100 DOLLARS (\$105,000.00).

17.9 Survival. The provisions of this **Section 17** shall survive Closing and the delivery of the Deed hereunder.

## 18. MISCELLANEOUS PROVISIONS

18.1 Rights and Remedies Cumulative: Waiver. Except as expressly provided herein, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No failure of either Party to exercise any right or power under this Agreement, or to insist upon strict compliance with the provisions of this Agreement, and no custom or practice of either party at variance with this Agreement, shall constitute a waiver of such Party's right to demand exact and strict compliance by the other Party with the terms and conditions of this Agreement.

18.2 Severability. If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

18.3 Controversy. In the event of any controversy, claim or dispute between the Parties hereto affecting or relating to the purposes or subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all of its expenses, including, without limitation, reasonable attorneys' fees and costs.

18.4 Successors and Assigns. This Agreement shall inure to, and be binding upon, the Parties and their respective successors and assigns. Neither Party may assign its rights hereunder without the written consent of the other Party *provided, however*, that (i) Buyer may designate one nominee or several nominees to take title to the Railroad Assets or any part thereof,

*provided however*, in either such event, Buyer shall not be released from any of its obligations or liabilities hereunder, and (ii) Seller may assign its rights in the CSXT Milford Easement pursuant to **Section 2.3.1**. Any assignee or nominee of Buyer as provided in subclauses (x) and (y) above shall be required to join in this Agreement as provided in **Section 7.2**.

18.5 Tax Free Exchange. Notwithstanding anything contained herein to the contrary, Buyer acknowledges that Seller may elect to designate the Subject Property as relinquished property to consummate a like-kind exchange or reverse like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (an “**Exchange**”) with respect to property that Seller will acquire either prior to or within one hundred eighty (180) days after Closing (the “**Replacement Property**”). In the event that Seller designates the Subject Property as relinquished property to consummate an Exchange with respect to the Replacement Property through the use of a qualified intermediary (the “**Intermediary**”) and/or Exchange Accommodation Titleholder (“**EAT**”), Buyer shall cooperate (at no cost to Buyer) in structuring the transaction as an Exchange for the benefit of Seller and Buyer agrees to render all required performance under this Agreement to either the Intermediary or the EAT (either the Intermediary or the EAT referred to herein as the “**Assignee**”) to the extent reasonably directed by Seller and to accept performance of all of Seller’s obligations by the Assignee. Buyer consents to the assignment of this Agreement by Seller to an Assignee in connection with an Exchange. Buyer agrees that performance by the Assignee will be treated as performance by Seller, and Seller agrees that Buyer’s performance to the Assignee will be treated as performance to Seller. No assignment of rights under this Agreement to an Assignee shall effect a release of Seller from obligations under this Agreement. ~~In the event an Exchange should fail to occur for whatever reason, the sale of the Subject Property shall nonetheless be consummated pursuant to this Definitive Agreement.~~ Seller agrees that: (i) the Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller’s obligations under this Agreement; (ii) the Exchange shall not affect or diminish Seller’s or Buyer’s rights under this Agreement; (iii) Buyer shall not be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv) Buyer shall incur no additional liability or expense to effectuate the Exchange. Seller shall promptly reimburse Buyer for any of Buyer’s actual, out-of-pocket costs incurred in connection with the Exchange and its activities under this section. Buyer makes no representations or guarantees to Seller that the transaction contemplated under this provision will result in any particular tax treatment to Seller or will qualify as an exchange under Section 1031 of the Internal Revenue Code. Seller hereby unconditionally guarantees the full and timely performance by the Assignee of each and every one of the representations, warranties, indemnities, obligations and undertakings of the Assignee. As guarantor, Seller shall be treated as a primary obligor with respect to these representations, warranties, indemnities, obligations and undertakings, and, in the event of breach of this Agreement, Buyer may proceed directly against Seller on this guarantee without the need to join the Assignee as a party to any action against Seller. Seller unconditionally waives any defense that it might have as guarantor that it would not have if it had made or undertaken these representations, warranties, indemnities, obligations and undertakings directly. In the event of the breach of any representations, warranties, obligations and undertakings by Seller or the Assignee, or in the event of any claim upon any indemnity of Seller or the Assignee (whether the representation, warranty, indemnity, obligation or undertaking is express or implied), Buyer’s exclusive recourse shall be against Seller.

18.6 No Brokers. Buyer and Seller each represent and warrant to each other that it has dealt with no broker, finder or other person or entity in connection with the transactions contemplated by this Agreement and each party shall indemnify and hold harmless the other party against any liability, claim, loss, damage, cost or expense (including reasonable attorney's fees and disbursement) suffered as a result of the foregoing representation being, or being alleged to be, false.

18.7 Survival. The provisions of this Agreement that expressly contemplate performance after the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

18.8 Entirety and Amendments. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the Railroad Assets. This Agreement may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

18.9 Time. Time is of the essence in the performance of this Agreement.

18.10 Construction. This Agreement shall be construed as a whole and in accordance with its fair meaning. The premises hereinbefore stated are incorporated as a part of the Agreement. Captions and organizations are for convenience only and shall not be used in interpreting this Agreement or construing meaning. Whenever the words "including", "include" or "includes" are used in this Agreement or the Closing documents, they shall be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. If any Party consists of more than one person, each such person shall be jointly and severally liable.

18.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the Commonwealth of Massachusetts, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m.

18.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange facsimile counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in **Section 15** other than facsimile.

18.13 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either Party at Closing, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability

or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

18.14 Designated Representative. Seller has designated Catherine Adkins, Regional Manager – Sales and Leasing of Seller (“**Seller’s Designated Representative**”) and Buyer has designated John D. Ray, Assistant General Manager for Railroad and Ferry Operations of Buyer (“**Buyer’s Designated Representative**”) to act as a liaison between Seller and Buyer, respectively, in connection with this Agreement. Whenever any approval, acceptance, consent, direction or action of one party is required pursuant to this Agreement, the requesting Party shall send to the other Party’s Designated Representative a written notice requesting same, which notice shall: (i) describe in detail the matter for which such approval, acceptance, consent, direction or other action of the responding Party is requested; (ii) be accompanied by a copy of any contract, agreement or other document to be executed by the responding Party evidencing such approval, consent, acceptance, direction or action of requesting party; and (iii) be accompanied by such other documents, written explanations and information as may be reasonably necessary to explain the request fully and completely. The Designated Representative will communicate the responding Party’s response to any such requests to by the requesting Party.

18.15 Prohibition of Third Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Agreement.

18.16 Publicity. Neither Party shall issue any press release or otherwise make a public statement with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other Party except as may be required by applicable laws, in which case the Parties shall use their best efforts to consult with each other regarding the content of any such press release or statement prior to its release.

18.17 Exhibits. The Exhibits attached hereto are hereby incorporated as integral parts of this Agreement.

18.18 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts and applicable federal law.

18.19 Venue. Any action or proceeding brought hereunder shall be brought exclusively in the United States District Court situate in Boston, Massachusetts, unless such court lacks subject matter jurisdiction in which case any action or proceeding may be brought in any state court situate in Boston, Massachusetts.

18.20 No Recording. This Agreement shall not be recorded by either Party.

SEPARATE SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date, in triplicate, each of which shall be considered an original.

**BUYER:**  
THE MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY



---

Steve Poftak  
General Manager

*[Milford Secondary Definitive Agreement – Signature Page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date, in triplicate, each of which shall be considered an original.

**SELLER:**

CSX TRANSPORTATION, INC.

By: Sean Pelkey

Name: Sean Pelkey

Title: CFO

*[Milford Secondary Definitive Agreement – Signature Page]*

**EXHIBIT A**

**The Railroad Line**

Milford Secondary

| Facility Segment  | Total Facility Length  |                     |   |                     | Miles             |
|-------------------|--|---------------------|---|---------------------|-------------------|
|                   | Mile Posts   |                     |   |                     |                   |
|                   | From   |                     | To  |                     |                   |
|                   | Val Map  | Engineering Station | Val Map   | Engineering Station |                   |
| Milford Secondary | V4.16, Map 29  | 1458+20 (0+00)      | V4.33, Map 9  | 445+02              | Approximately 8.4 |
|                   | Franklin IT Point of Switch at 1459+20 = Engineering Station 0+00 on Milford Secondary |                     | Easterly edge of at-grade crossing, Central Street, Milford |                     |                   |

**NOTE:**

- The Railroad Line is shown in more detail on the plans attached as **Exhibit A-1**.

The Conveyed Franklin Industrial

| Facility Segment  | Total Facility Length                         |                     |  |                     | Miles              |
|---|---|---------------------|--|---------------------|--------------------|
|   | Mile Posts                                    |                     |  |                     |                    |
|   | From  |                     | To   |                     |                    |
|   | Val Map                                       | Engineering Station | Val Map  | Engineering Station |                    |
| Portion of the Franklin Industrial Track being conveyed | V4.16, Map 29                                 | 1456+00             | V4.16, Map 29  | 1480+40             | Approximately 0.46 |
|   | Point of intersection with MBTA Franklin Line |                     | Westerly edge of at-grade crossing, Union Street, Franklin |                     |                    |

**NOTE:**

- The Conveyed Franklin Industrial is shown in more detail on the plans attached as **Exhibit A-1**.



**EXHIBIT A-1**  
**Railroad Line Plans**  
[to be developed pursuant to **Section 7.3.2**]

**EXHIBIT B**  
**Form of Deed**

**EXHIBIT C**  
**Trackage Rights Amendment**

**EXHIBIT D**  
**Non-Foreign Certification**

**NON-FOREIGN CERTIFICATION**

Section 1445 of the Internal Revenue Code provides that a transferee (or buyer) of a U.S. real property interest must withhold tax if the transferor (or seller) is a foreign person. To inform the transferee that withholding of a tax is not required in connection with the transfer of a U.S. real property interest by CSX Transportation, Inc. ("Seller"), the undersigned being duly authorized hereby certifies as to the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or non-resident alien individual (as those terms are defined in the Internal Revenue Code Section 1445 and regulations promulgated thereunder or under other provisions applicable thereto);
2. The U.S. Taxpayer Identification Number of Seller is [ \_\_\_\_\_ ];
3. The office address of Seller is \_\_\_\_\_.

The undersigned understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, the undersigned declares that he/she has examined this certification and, to the best of his/her knowledge and belief, it is true, correct and complete, and further declares that he/she has authority to sign this document on behalf of Seller.

Date: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Title]

**EXHIBIT E**

**Designation Of Person  
Responsible For Tax Reporting**

**DESIGNATION OF PERSON RESPONSIBLE  
FOR TAX REPORTING UNDER  
INTERNAL REVENUE CODE SECTION 6045**

The undersigned \_\_\_\_\_ is hereby designated as the person who will make the information return and furnish the statement to the transferor as required under Section 6045 of the Internal Revenue Code of 1986, as amended.

The undersigned, hereby acknowledges that he, she or it is responsible for making and furnishing such return and statement and agrees to do so and agrees to retain this document for four years following the close of the calendar year during which the closing of the transaction described below occurs. The undersigned further acknowledges that the transferee named below and its counsel are relying on this designation and the fulfillment of the undersigned's obligations hereunder as discharging any and all obligations they might otherwise have under Internal Revenue Code 6045.

The undersigned hereby acknowledges that he, she or it is either the person responsible for closing the transaction, the attorney for the transferee, the attorney for the transferor, the title or escrow company, or the mortgage lender, in each case within the meaning of any applicable regulations under the Internal Revenue Code Section 6045.

Name and Address of Transferor: CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

Name and Address of Transferee: The Massachusetts Bay Transportation Authority  
Ten Park Plaza  
Boston, MA

Address and Other Information

Necessary to Identify the Property: See **Attachment A** attached hereto

Date: As of \_\_\_\_\_, 20\_\_ DESIGNATED PERSON

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**ATTACHMENT A  
TO  
TAX REPORTING  
Description of Real Estate**

**EXHIBIT F**  
**Environmental Conditions**

## EXHIBIT G

### Transferee Standards

1. The Transferee has a minimum of two (2) years prior experience conducting freight rail operations in the United States, or is owned or controlled by a company that owns or controls at least one other rail carrier that has a minimum of two (2) years prior experience conducting freight rail operations in the United States. Any such company, rail carrier owned by such holding company, and any other entity that owns or controls the Transferee, or is owned or controlled by the Transferee, is referred to herein as an “Affiliate” of the Transferee.
2. The Transferee demonstrates, by providing to the Buyer the information described in Paragraph 3 below, as well as audited financial statements for the previous two (2) years and a business plan for the property to be acquired, that the Transferee has the financial security required to satisfy the financial obligations described in the then-current trackage rights or operating agreement between the Benefitted Holder and the Buyer.
3. The Transferee has disclosed to the Buyer all material litigation, arbitration, mediation, contract dispute, or other disputes submitted to any dispute resolution procedure within the last five (5) years which involved, or arose from, a claim against the Transferee or any Affiliate regarding any of the following: the death or serious injury of any person; business, contract or other commercial disputes; employment, employment discrimination or labor disputes. As used in this **Exhibit G**, the term “material” means that the item would be considered material in the course of an audit of the firm under Generally Accepted Accounting Principles as expounded by the Financial Accounting Standards Board, or that the item, in the reasonable judgment of the Buyer, calls into question the ability of the Transferee perform the obligations of the the-current trackage rights or operating agreement between the Benefitted Holder and the Buyer in compliance with such agreement and applicable law.
4. Neither the Transferee nor any Affiliate has filed a bankruptcy petition or made a general assignment for the benefit of creditors, and no other party has filed a bankruptcy petition against the Transferee or any Affiliate in the preceding seven (7) years that has not been dismissed.
5. Neither the Transferee nor any Affiliate has applied for or consented to the appointment of a receiver, trustee or liquidator of Transferee or any Affiliate for all or substantially all of the assets of the Transferee or Affiliate and no order, judgment or decree has been entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Transferee or Affiliate for all or substantially all of the assets of the Transferee or Affiliate within the preceding seven (7) years.
6. The Transferee has supplied the Buyer with the records of any accident or other incident occurring in the preceding five (5) years that the Transferee or any Affiliate has reported, or was required to report, to the FRA under 49 CFR Part 225. The Transferee has disclosed to the Buyer, with respect to all freight rail operations conducted by the Transferee or any



Affiliate within the preceding three (3) years, a list of FRA or state violation notices issued with respect to the regulatory compliance of such freight rail operations, together with a brief description and resolution thereof, and demonstrated that it has complied with any penalties, sanctions, or other obligation relating thereto.

7. Neither the Transferee nor any Affiliate is in violation of any law which has the potential to have a material adverse effect on its freight rail operations over the CSXT Milford Easement.
8. Neither the Transferee nor any Affiliate, nor any officer, director or department head of the Transferee or any Affiliate within the preceding five (5) years:
  - a. has been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity.
  - b. has had filed against it in a state or federal proceeding any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity and such charge has not been finally resolved.
  - c. has had filed against it, in a state or federal court, any civil complaint (including, but not limited to, a cross-complaint), counter claim, or other claim arising out of a contract, alleging fraud, bribery, collusion, conspiracy, or any action in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract with any public entity and such civil complaint, counter claim, or other claim has been found substantially meritorious or has not been finally resolved.
  - d. has within the preceding three (3) years been found, adjudicated, or determined (which finding, adjudication or determination has not been subsequently overturned) by any federal or state court or agency, including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, and the Massachusetts Commission Against Discrimination, to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act; Executive Order 11246; or the Massachusetts Law Against Discrimination (Mass. Gen. Laws c. 151B) which violation was of a material nature.
  - e. has within the preceding three (3) years been found, adjudicated or determined (which finding, adjudication or determination has not been subsequently overturned) by any state court, state administrative agency, federal court or federal agency to have violated or failed to comply with any applicable law or regulation of the United States or any state governing prevailing wages

(including, but not limited to, payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation, which violation or failure to comply was of a material nature.

- f. has been terminated or debarred on any contract issued by any public entity, including, but not limited to, the Buyer, or otherwise declared ineligible to contract with any public entity and such debarment remains in effect; or
  - g. is at the time of the proposed Transfer in default under or otherwise failing to perform any material obligations contained in any contract or agreement with the Buyer, and the Buyer has noticed the Transferee about such default or material nonperformance and otherwise exercised its contractual rights under such contract or agreement with respect to the same.
9. In the event that the Benefitted Holder's interest in the trackage rights agreement or operating agreement between the Benefitted Holder and the Buyer is to be assigned to the Transferee, the Transferee shall demonstrate the ability to secure and maintain insurance coverage in commercially reasonable amounts and on commercially reasonable terms, as reasonably required by the Buyer.
10. All Interchange Commitments with the Transferee, if any, shall at all times comply with all applicable STB rules and regulations, if any.
- 

Notwithstanding any provision of this **Exhibit G** to the contrary, Buyer may, upon the request of the Transferee or the Benefitted Holder, in its sole and absolute discretion, waive, in whole or in part, any or all of the foregoing Transferee Standards, except that Section 10 shall not be waived. No such waiver shall be effective unless evidenced by a written instrument executed by a duly authorized representative of Buyer.

## EXHIBIT H

### Lease Termination

#### TERMINATION AND RELEASE AGREEMENT

This **TERMINATION AND RELEASE AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 2021 (the “**Termination Date**”), is made and entered into by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, with an address at 500 Water Street, Jacksonville, Florida 32202 (“**Landlord**”) and **THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**, a Massachusetts body politic and corporate, with an address at Ten Park Plaza, Boston, Massachusetts 02116-3974 (“**Tenant**”) (Landlord and Tenant each a “**Party**” and collectively the “**Parties**”).

#### WITNESSETH:

Reference is hereby made to the following facts which constitute the background to this Agreement:

A. The predecessor-in-interest to Landlord and Tenant entered into that certain Lease Agreement, dated June 1, 1987 (the “**Lease**”), for the lease of certain railroad properties (the “**Premises**”) known as the Milford Secondary and the Franklin Industrial Track. All capitalized words and phrases used in this Agreement and not otherwise defined herein will have the meanings ascribed to them in the Lease.

B. The Parties have entered into that certain Definitive Agreement Pertaining to the Purchase and Sale of the Milford Secondary and a Portion of the Franklin Industrial dated as of [ ], pursuant to which Landlord has agreed to convey a portion of the Premises to Tenant (as shall be described in the Deed for such premises, the “**Conveyed Premises**”), and Landlord and Tenant desire to terminate the Lease and the rights and obligations of the Parties thereunder with respect to the entirety of the Premises as of the date of such conveyance (the “**Closing Date**”). From and after the Closing Date, Landlord shall have the right to use the Conveyed Premises pursuant to a reserved freight easement to be agreed upon by the Parties. Tenant shall surrender to Landlord the portion of the Premises not conveyed to Tenant (the “**Unconveyed Premises**”), and Landlord shall recover possession of the Unconveyed Premises, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration by each of the Parties hereto to the other of them in hand this day paid, the receipt, sufficiency and delivery of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Effective as of the Termination Date, the term of the Lease shall end and expire, and all of Tenant’s right, title and interest in and to the Premises pursuant to the Lease shall terminate and be extinguished, with the same force and effect as if such Termination Date was the expiration date of the term of the Lease as stated therein. On or before the Termination Date,

Tenant shall remove Tenant's personal property and vacate and surrender the Unconveyed Premises. Notwithstanding anything in the Lease to the contrary, Tenant shall not be required to remove any fixtures, installations, or other improvements placed by it on the Unconveyed Premises during the Term of the Lease. Without limiting the foregoing, any personal property, fixtures, installations, or other improvements of Tenant remaining in the Unconveyed Premises after said Termination Date shall be deemed to have been abandoned by Tenant, and Landlord may, in Landlord's discretion, take possession of said property or dispose of same, at Tenant's cost and expense.

2. Effective as of the Termination Date, (i) all rights and obligations of the Parties under the Lease are terminated, and (ii) each Party releases the other from all liabilities arising from the Lease, including any rent, charges, expense, or other amounts, *provided, however*, that any rights to indemnification or indemnity obligations under the Lease related to events occurring prior to the Termination Date are excluded from the termination and the release referenced above and shall survive the termination of the Lease in full force and effect, and, *provided, further*, that if the Closing does not occur, nothing herein shall be deemed to waive, modify or prejudice any claim by Landlord that it is or was at any time entitled to rent at a fair market value or any other sum due under the Lease, or any claim or counter-claim by Tenant with respect to any such matters.

3. All notices and other communications given under this Agreement shall be delivered to the addresses set forth in, and in accordance with the terms and conditions of, the Lease.

4. This Agreement constitutes the entire agreement of the Parties with respect to the Lease, and all prior negotiations, discussions, representations, agreements, and understandings are superseded and merged into this Agreement. The submission of drafts of this document for examination and negotiation does not constitute either an offer or the acceptance of an offer, and this Agreement shall not be binding upon the Landlord or the Tenant unless and until it has been executed by both Parties.

5. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original and all of which, when taken together, shall constitute one document.

6. Each Party represents that this Agreement is being executed voluntarily with full knowledge of its legal significance and with the express intention of the extinguishment of the rights and claims of the Parties under the Lease, in accordance with and subject to the terms and provisions hereof.

7. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

8. This Agreement shall inure to the benefit of and bind the respective heirs, devisees, successors and assigns of the Parties hereto. Time is of the essence of all of the provisions of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as an instrument under seal as of the day and year first above written.

**LANDLORD:**

**CSX TRANSPORTATION, INC.**  
a Virginia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT I**

**Assignment of Easement**

**EXHIBIT J**

**GU Certification**

**CERTIFICATION OF GRAFTON AND UPTON RAILROAD COMPANY**

Reference is hereby made to that certain Definitive Agreement dated \_\_\_\_\_, 2021 (as amended to date, the “**Agreement**”), by and between CSX Transportation, Inc. and the Massachusetts Bay Transportation Authority (“**MBTA**”), and the consummation on this date of certain transactions contemplated by the Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

The undersigned does hereby certify to MBTA that as of the date hereof there have been no material adverse changes relating to GU’s satisfaction of the Transferee Standards since the Effective Date of the Agreement.

IN WITNESS WHEREOF, the undersigned hereby executes this certificate this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

**GRAFTON AND UPTON RAILROAD COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36669

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
—ACQUISITION EXEMPTION—  
CSX TRANSPORTATION, INC.

---

**EXHIBIT F**

**VERIFIED STATEMENT OF JON DELLI PRISCOLI**



## **VERIFIED STATEMENT OF JON DELLI PRISCOLI**

My name is Jon Delli Priscoli. I am the owner and chief executive officer of the Grafton and Upton Railroad Company (“G&U”), a Class III short line railroad with general offices located in North Grafton, Massachusetts. I oversee G&U’s day-to-day freight railroad operations, among other duties. In this capacity, I am also responsible for ensuring that G&U’s rail service meets the needs of our customers. Critical to G&U’s service mission, as it is with all short line railroads, is our provision of reliable transportation services. I am providing this verified statement in support of the Massachusetts Bay Transportation Authority’s (“MBTA”) acquisition of the assets of the Milford Secondary, which transaction is part of the present proceeding before the Surface Transportation Board (STB), and particularly to affirm G&U’s view that the transaction, as structured, is unlikely to unreasonably interfere with future G&U operations over that line.

In operation since 1873, G&U currently operates a line in the greater Boston area, between the towns of Franklin and Grafton, Massachusetts. G&U is actively engaged in revitalizing rail freight traffic in the region by offering an attractive modal and transload transportation alternative. G&U is focused on service quality and reliability.

As is reflected in the current MBTA filing to the STB, G&U has been working with CSX Transportation, Inc. (“CSXT”) and MBTA to extend G&U’s line. One of the purposes of the transaction that is the subject of this proceeding is, as we understand it, to secure G&U’s continued provision of common carrier service on a route (the Milford Secondary) over which G&U commenced operations in 2020. This transaction will not alter the fundamental nature of G&U’s operating rights over the Milford Secondary (G&U now holds, and will continue to hold, an easement interest), and we have worked with MBTA to structure a relationship that would

prevent the transaction from adversely affecting G&U's ability to continue to provide reliable common carrier service on the Milford Secondary.

To that end, G&U and MBTA have reached terms under a carefully-negotiated operating agreement (the Milford Operating Agreement – “MOA”) that will govern G&U's and MBTA's respective rights and obligations in connection with the operation of the Milford Secondary post-transaction. In my opinion, the MOA has provisions sufficient to protect G&U's post-transaction ability (and rights) to conduct freight service on the Milford Secondary without unreasonable interference from MBTA, thus protecting G&U's common carrier service.

Among other things, the MOA provides that MBTA will recognize G&U's rights and obligations to be the exclusive provider of freight service on the Milford Secondary. Those rights and responsibilities will remain with G&U, as the intended post-transaction holder of the reserved freight common carrier easement. Further, the terms of the MOA require MBTA to maintain the Milford Secondary to minimum Federal Railroad Administration track safety standards, and, in the event MBTA fails to fulfil its track maintenance obligations, G&U may step in to take appropriate remedial action at the expense of MBTA. Also, the MOA provides that, in dispatching rail traffic on the Milford Secondary, MBTA must do so without prejudice or partiality in recognition of G&U's common carrier obligations. Finally, the MOA entitles G&U to request, at its expense, track improvements that would allow G&U to pursue new freight traffic opportunities.

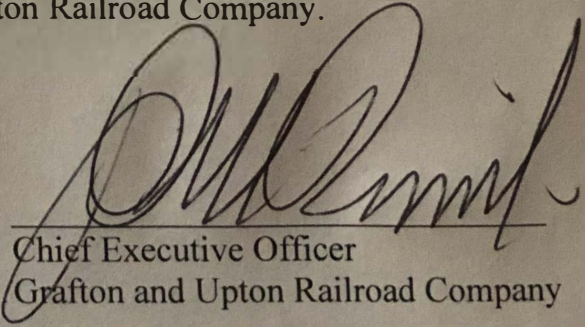
In G&U's view, MBTA's proposed railroad assets arrangements transaction, under arrangements such as those in the MOA, will not adversely affect freight transportation. Based on my experience in managing G&U's freight operations and my understanding of the structure of the subject Milford Secondary transaction (and the MOA discussed above), I am confident

that G&U will be able to satisfy its common carrier obligations on the Milford Secondary Line going forward without unreasonable interference from MBTA.

**VERIFICATION**

I, Jon Delli Priscoli, verify under penalty of perjury that I have read the foregoing statement, that I know its contents, and that the same are true and correct to the best of my knowledge and belief. Further, I certify that I am both authorized and qualified to tender this Verified Statement on behalf of the Grafton and Upton Railroad Company.

Executed on February 13, 2023.



Chief Executive Officer  
Grafton and Upton Railroad Company