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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ENTERED  
Office of Proceedings  
March 28, 2023  
Part of  
Public Record

DOCKET NO. FD 36688

GREEN MOUNTAIN RAILROAD CORPORATION  
—TRACKAGE RIGHTS EXEMPTION—  
NEW ENGLAND CENTRAL RAILROAD, INC.

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**VERIFIED NOTICE OF EXEMPTION OF  
GREEN MOUNTAIN RAILROAD CORPORATION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

FEE RECEIVED  
March 28, 2023  
SURFACE  
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**FILED**  
March 28, 2023  
SURFACE  
TRANSPORTATION BOARD

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**ATTORNEYS FOR GREEN MOUNTAIN  
RAILROAD CORPORATION**

Dated: March 28, 2023

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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—TRACKAGE RIGHTS EXEMPTION—  
NEW ENGLAND CENTRAL RAILROAD, INC.

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GREEN MOUNTAIN RAILROAD CORPORATION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Green Mountain Railroad Corporation (“GMRC”), a Class III common carrier, files this verified notice of exemption (the “Notice”) pursuant to 49 C.F.R. § 1180.2(d)(7) for authorization to exercise trackage rights over approximately 61.4 miles of railroad line (the “Line”) of New England Central Railroad, Inc. (“NECR”). The Line is located in the Commonwealth of Massachusetts and in the States of New Hampshire and Vermont. In accordance with the notice requirements of 49 C.F.R. § 1180.4(g), GMRC submits the following:

**Description of the Proposed Transaction (49 C.F.R. § 1180.6(a)(1)(i))**

GMRC is a Vermont corporation and a subsidiary of Trans Rail Holding Company, a holding company which controls GMRC; Clarendon and Pittsford Railroad Company; Merrimack and Grafton Railroad Corporation; New England Southern Railroad Company; New York and Ogdensburg Railway Company, Inc.; Vermont Railway, Inc; and Washington County Railroad Company, all of which operate, collectively, under the trade name Vermont Rail System (“VRS”).

GMRC seeks authorization to acquire and exercise overhead trackage rights over the aforementioned Line under the terms of the attached agreement. Under that agreement, GMRC will acquire trackage rights over an NECR line extending between milepost 14.46 at White River Junction, Vermont, and milepost 99.0 at Millers Falls, Massachusetts. In all the Line consists of approximately 61.4 route miles.<sup>1</sup> As part of the trackage rights arrangement, GMRC will be entitled to enter and exit at the Line's terminal points of White River Junction and Millers Falls (at an NECR-Pan Am Southern LLC ("PAS") point of connection at Millers Falls), and also to enter and exit the Line at the following intermediate points: (1) Bellows Falls (for purposes of creating direct service routings among otherwise disconnected portions of the VRS network); and (2) East Northfield (at an NECR-PAS connection at that location). Additionally, GMRC will be entitled, under certain specified conditions applicable to the trackage rights operations south of Bellows Falls, to effectuate interchange with PAS directly via the East Northfield and Millers Falls connections at nearby East Deerfield Yard.

The proposed trackage rights arrangement is the product of successful settlement negotiations among VRS, the State of Vermont, and other parties to the consolidation transaction proceeding encompassed by, and ultimately approved in, *CSX Corp. and CSX Transp. Inc., et al. – Control and Merger – Pan Am Sys., Inc., et al.*, FD 36472 (STB served Apr. 14, 2022) ("*Decision No. 9*"), and the related operation transaction encompassed by, and ultimately approved in, *Decision No. 9, Pittsburg & Shawmut R.R. – Operation Exemption – Pan Am S.*

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<sup>1</sup> Although the Line consists of a single route extending from White River Junction to Millers Falls, passing through Bellows Falls, Vermont and East Northfield, Massachusetts along the way, the Line is actually an amalgam of separate, contiguous railroad lines owned in the past by two carriers (Boston and Maine Corporation between White River Junction and East Northfield, and Central Vermont Railway between East Northfield and Millers Falls). As such, the terminal mileposts for the Line are not indicative of the total route miles. The total distance given is accurate, despite the mileposts that could suggest otherwise.

LLC, FD 36472 (Sub-No. 5) (“*Pittsburg & Shawmut*”). In fact, the subject trackage rights are discussed in Decision No. 9 (slip op. at 18-19) as among the terms of the “Vermont Settlement Agreement,” and the Board imposed those settlement terms “as a condition of the Board’s approval” (*id.* at 19) of the transactions encompassed by *Decision No. 9*. The parties to the trackage rights arrangements have agreed that GMRC’s “pop up” trackage rights from Bellows Falls to a point of VRS-PAS interchange at East Deerfield (*id.* at 18, n. 41) would remain in place so long as Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, or any other carrier controlled by Genesee & Wyoming Inc., operates the railroad lines of PAS as contract operator or otherwise.

The full name and address of the trackage rights recipient is as follows:

Green Mountain Railroad Corporation  
1 Railway Lane  
Burlington, Vermont 05401  
Telephone: (800) 639-3088

The trackage rights transferor is as follows:

New England Central Railroad, Inc.  
200 Meridian Centre, Suite 270  
Rochester, NY 14618

Questions regarding this Notice should be sent to GMRC’s representative:

Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 800  
Chicago, Illinois 60606  
Telephone: (312) 252-1500

**Proposed Time Schedule for Consummation (49 C.F.R. § 1180.6(a)(1)(ii))**

GMRC anticipates acquiring the subject trackage rights on or after the effective date of this Notice.

**Purpose Sought to Be Accomplished (49 C.F.R. § 1180.6(a)(1)(iii))**

The purpose of the overhead trackage rights arrangement is to carry out the terms of the aforementioned Vermont Settlement Agreement, which will, among other things, facilitate more efficient single-system operating efficiencies among the various components of the VRS network (with respect to the Bellows Falls-White River Junction portion of the trackage rights), and to protect against potential service disruptions that could be occasioned by certain service difficulties by VRS's interline partners (with respect to the "pop up" trackage rights south of Bellows Falls).

**States in Which Applicant's Property is Located (49 C.F.R. § 1180.6(a)(5))**

GMRC currently operates in the States of New Hampshire and Vermont.

**Map (49 C.F.R. § 1180.6(a)(6))**

A map of the Lines is attached hereto as Exhibit A.

**Agreements (49 C.F.R. § 1180.6(a)(7)(ii))**

A redacted copy of the subject trackage rights agreement is attached hereto as Exhibit B. An unredacted copy of this agreement is also being filed with the Board, subject to a contemporaneously-filed Motion for a Protective Order.

**Labor Protective Conditions (49 C.F.R. § 1180.4(g)(1)(i))**

The present trackage rights transaction is subject to the labor protective conditions set forth in *Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

**Caption Summary (49 C.F.R. § 1180.4(g)(2)(i))**

A caption summary is attached hereto as Exhibit C.

**Environmental and Historical Preservation (49 C.F.R. § 1180.4(g)(3))**

Pursuant to 49 C.F.R § 1105.6(c)(1), the proposed trackage rights transaction is exempt from environmental reporting requirements. Pursuant to 49 C.F.R. § 1105.8(b)(3), the proposed trackage rights transaction is exempt from historical preservation reporting requirements.

Respectfully submitted,



Robert A. Wimbish

Stephen J. Foland

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606

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**ATTORNEYS FOR GREEN MOUNTAIN  
RAILROAD CORPORATION**

Dated: March 28, 2023

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**EXHIBIT A**  
**MAP**

WHITE RIVER JUNCTION





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**EXHIBIT B**  
**TRACKAGE RIGHTS AGREEMENT - REDACTED**

**TRACKAGE RIGHTS AGREEMENT**  
**Between**  
**NEW ENGLAND CENTRAL RAILROAD, INC.**  
**and**  
**GREEN MOUNTAIN RAILROAD CORPORATION**

**THIS TRACKAGE RIGHTS AGREEMENT** (this "Agreement") entered into as of this 28th day of March, 2023, between New England Central Railroad, Inc., a Delaware corporation ("NECR"), and Green Mountain Railroad Corporation, a Vermont corporation ("GMRC") and, collectively with NECR, the "Parties").

**WHEREAS**, pursuant to an Agreement and Plan of Merger dated as of November 30, 2020, CSX Corporation, the parent company of CSXT Transportation, Inc. ("CSXT"), agreed to acquire Pan Am Systems, Inc. (the "Pan Am Acquisition"), which directly and wholly owns Pan Am Railways, Inc., which in turn directly and wholly owns four rail carriers, including Springfield Terminal Railway Company ("Springfield Terminal"); and

**WHEREAS**, as a result of the Pan Am Acquisition, CSXT would indirectly acquire a 50% membership interest in Pan Am Southern LLC ("PAS"); and

**WHEREAS**, Norfolk Southern Railway Company ("NSR"), as the holder of the remaining 50% membership interest in PAS, and CSXT have agreed that Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E"), a wholly-owned subsidiary of Genesee & Wyoming Inc. ("GWI") and affiliate of NECR, will replace Springfield Terminal as the contract operator of PAS following the consummation of the Pan Am Acquisition (the "Operator"); and

**WHEREAS**, PAS interchanges traffic with GMRC at one or more locations on trackage owned by NECR pursuant to PAS's exercise of its existing trackage rights over NECR; and

**WHEREAS**, Trans Rail Holding Company ("Trans Rail") (on behalf of and for its rail carrier holdings, Vermont Railway, Inc. ("Vermont Railway"), Washington County Railroad Co. ("WCRR"), and Green Mountain Railroad Corporation ("GMRC") (collectively, "VRS") and the Vermont Agency of Transportation ("VTrans") had expressed concerns regarding the competitive effect of the Pan Am Acquisition, including the fact that the Operator will be an affiliate of NECR; and

**WHEREAS**, to address such concerns, CSXT, NSR, GWI, VRS and VTrans have entered into a settlement agreement, dated as of December 29, 2021 (the "Settlement Agreement"), which provides, in part, for GWI to cause NECR to grant certain trackage rights to GMRC in accordance with the terms set forth therein; and

**WHEREAS**, in accordance with the Settlement Agreement, the Parties desire to enter into a formal Trackage Rights Agreement in accordance with the terms of this Agreement, between (i) milepost 14.46 on NECR's Roxbury Subdivision at White River Junction, VT and milepost 144.8 on NECR's Palmer Subdivision at Bellows Falls, VT, and (ii) milepost 144.8 on NECR's Palmer

Subdivision at Bellows Falls, VT and milepost 99.0 on NECR's Palmer Subdivision at Millers Falls, MA.

NOW, THEREFORE, NECR and GMRC, intending to be legally bound, agree as follows:

#### **ARTICLE 1. GRANT OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, NECR hereby grants to GMRC the right to operate the locomotives, cars, and equipment in VRS's revenue waybill account with its own crews over all mainline track and passing sidings along the following segments of NECR's railroad (hereinafter collectively referred to as the "Trackage Rights");

- A. Between milepost 14.46 on NECR's Roxbury Subdivision at White River Junction, VT and milepost 144.8 on NECR's Palmer Subdivision at Bellows Falls, VT, a total distance of 40.3 miles (the "Upper Segment"); and
- B. Between milepost 144.8 on NECR's Palmer Subdivision at Bellows Falls, VT and milepost 99.0 on NECR's Palmer Subdivision at Millers Falls, MA, a total distance of 21.1 miles (the "Lower Segment" and, together with the Upper Segment, the "Subject Trackage").

#### **ARTICLE 2. USE OF SUBJECT TRACKAGE**

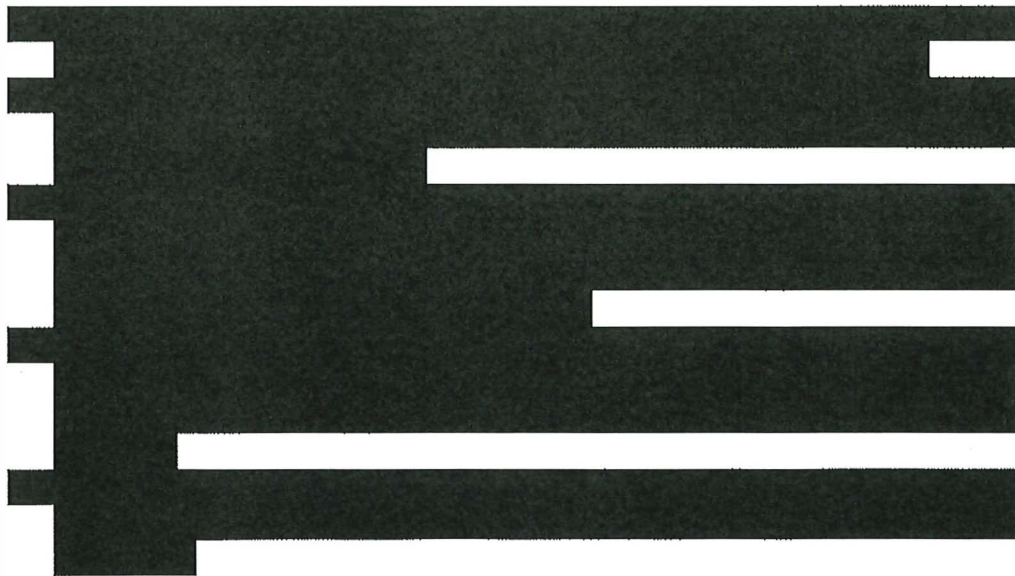
- A. GMRC's use of the Subject Trackage shall be in common with NECR and any other user of the Subject Trackage, including PAS and the National Railroad Passenger Corporation ("Amtrak"), and the rights of NECR, PAS and Amtrak to use the Subject Trackage shall not be diminished by this Agreement. NECR shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage; provided that the rights granted to such other users do not unreasonably interfere with the exercise of GMRC's rights hereunder.
- B. GMRC may use the Subject Trackage solely for the purpose of the overhead movement of VRS trains between the end points of the Subject Trackage.
- C. GMRC shall not use any part of the Subject Trackage for the purpose of providing haulage to a third party, crew changes, switching, storage, or servicing cars or the making or breaking up of trains, except that nothing contained herein shall preclude the use by GMRC of such auxiliary tracks in the case of mechanical failure or emergency as may be designated by NECR for such purposes.
- D. NECR shall have exclusive control of the management, dispatching, maintenance and operation of the Subject Trackage. GMRC shall not have any claim against NECR for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by GMRC is temporarily interrupted or delayed at any time from any cause. GMRC's entry to and exit from the Subject Trackage shall be governed by the instructions of NECR's dispatcher, which shall not unreasonably interfere with the exercise of GMRC's

rights under this Agreement.

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

**ARTICLE 3. RESTRICTIONS ON USE**

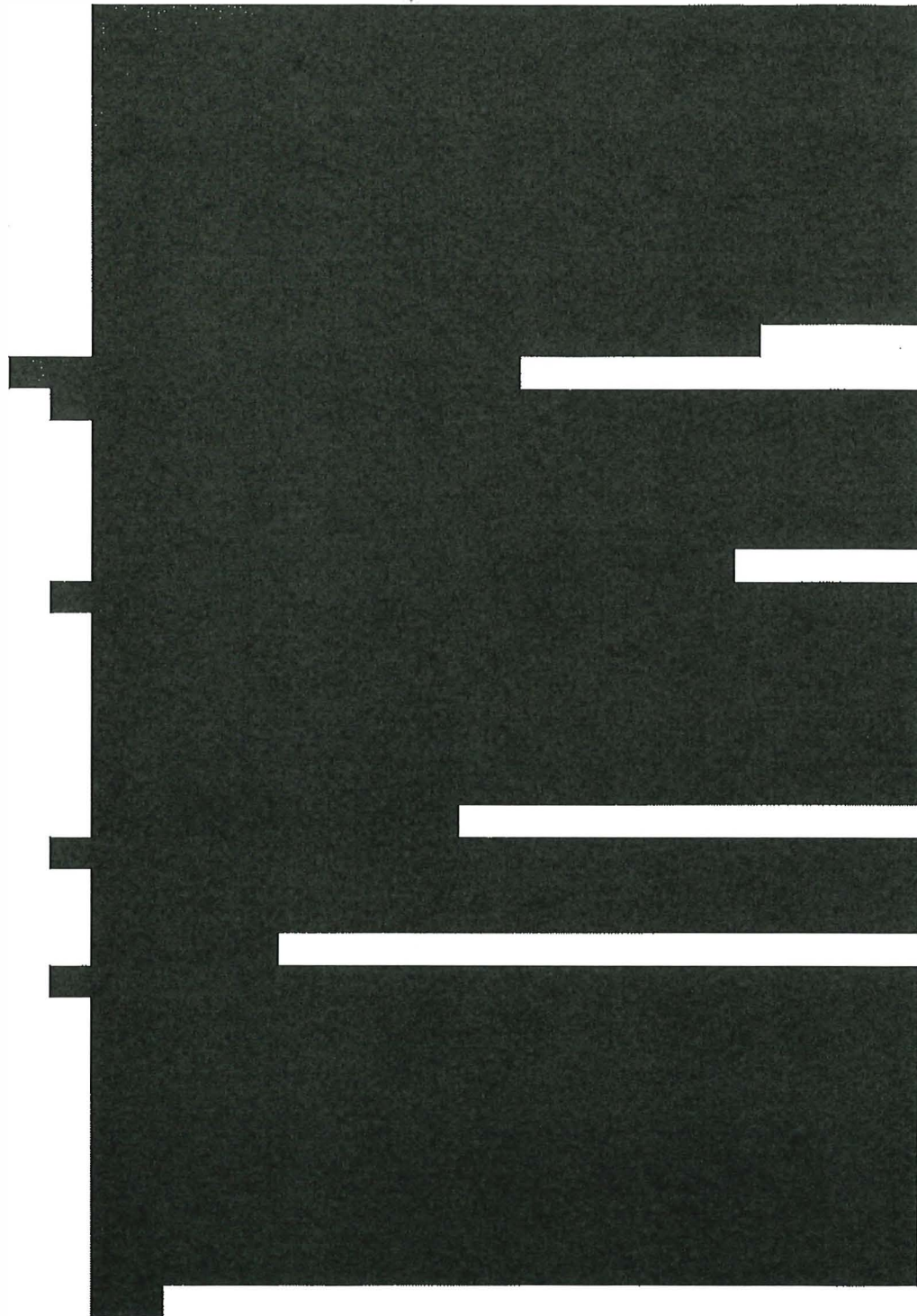
- A. The Trackage Rights over the Upper Segment herein granted are granted for the sole purpose of GMRC using same for overhead movements across the Upper Segment. The Trackage Rights over the Lower Segment herein granted are granted for the sole purpose of GMRC using same for overhead movements across the Lower Segment, one train pair per day (i.e., one train in each direction), in connection with the interchange of traffic with PAS in East Deerfield Yard via either Millers Falls or East Northfield.
- B. GMRC shall not perform any local freight service whatsoever at any point located on the Subject Trackage.
- C. GMRC may only utilize the Trackage Rights over the Lower Segment for the period beginning on the Effective Date (as defined below) and only for so long as NECR or any other GWI subsidiary or affiliated entity operates the rail lines of PAS as contract operator or otherwise. Subject to Article 20, the Trackage Rights over the Upper Segment are intended to be permanent.
- D. GMRC may only utilize the Trackage Rights over the Lower Segment (the "Limited Use Trackage Rights") under the following conditions:
- (i) Discretionary Option Rights.





(ii) Excessive Dwell Option Rights.

[REDACTED]



(iii) Notice Requirements. The Parties shall designate specific individuals to receive the Exercise Notice(s) required by this Subarticle 3.D. to allow for the exercise of these Trackage Rights in accordance with the terms hereof, such written notice to be communicated by email, facsimile, or such other additional method as may be agreed

to by GMRC and B&E or any other GWI subsidiary that is the contract operator of the PAS rail lines.

#### **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Subject Trackage, GMRC's locomotives and crews shall be equipped to communicate with NECR on radio frequencies normally used by NECR in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the reasonable approval of NECR's representative or his designee.

#### **ARTICLE 5. COMPENSATION**

[REDACTED]

- B. GMRC shall furnish NECR, by the 15th day of each month, monthly counts of rail cars handled by GMRC, by segment, over the Subject Trackage during the immediately preceding month. NECR, unless GMRC remits its payment with such monthly statement, shall bill GMRC following receipt of such monthly statement.

#### **ARTICLE 6. RESERVED**

#### **ARTICLE 7. PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made by GMRC within [REDACTED] 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 shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by NECR at the time any work is performed by NECR for GMRC in accordance with the terms of this Agreement.



## **ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

- A. NECR shall maintain, repair and renew the Subject Trackage and any related communication or signal facilities with its own supervision and labor at its own cost and expense. NECR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated and, in any event, not less than FRA Class I condition. NECR shall use commercially reasonable efforts to ensure that any interruptions to operations over the Subject Trackage shall be kept to a minimum, however, NECR does not guarantee the condition of the Subject Trackage at any particular time during the term hereof or that operations thereover shall not be interrupted from time to time. Furthermore, except as may be otherwise provided in Article 14, GMRC shall not by reason of failure or neglect on the part of NECR to maintain, repair or renew the Subject Trackage, have or make any claim or demand against NECR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by GMRC resulting from any such failure or neglect.
- B. NECR shall perform, at the expense of GMRC, such additional maintenance as GMRC may reasonably require or request.
- C. NECR shall provide GMRC with [REDACTED] hours' prior written notice of any maintenance work to be performed by NECR along the Subject Trackage that will adversely impact GMRC's operations thereover.
- D. GMRC shall have the right, but not the obligation, to notify NECR of any potential defects or other issues with respect to the Subject Trackage of which it becomes aware that may require maintenance or repair.

## **ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

Existing connections or facilities that are jointly used by the Parties shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under the relevant agreements. If GMRC shall desire a new or upgraded connection or other facility located on the right of way of NECR, NECR will approve such improvement if it does not adversely affect NECR's, PAS's and Amtrak's operations and shall furnish the labor and materials for the construction on NECR's property as available, at GMRC's sole cost and expense. GMRC shall pay NECR for all maintenance expense for new or upgraded connections or facilities. GMRC shall furnish the labor and materials, at its cost, for any such construction that takes place on GMRC's right of way.

## **ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. NECR, from time to time and at its sole cost and expense may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required



by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage, but in no circumstance may the resulting additions, betterments or retirements unreasonably interfere with the exercise of GMRC's rights under this Agreement.

- B. If the Parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate GMRC's operations beyond that required by NECR to accommodate the operations of NECR, PAS and Amtrak, NECR shall construct the agreed additional or altered facilities and GMRC shall pay to NECR the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. Notwithstanding the foregoing, any such addition or alteration shall be constructed in such a manner as to minimize interference with the operations of NECR, PAS or Amtrak over the Subject Trackage.

#### **ARTICLE 11. MANAGEMENT AND OPERATIONS**

- A. GMRC shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. GMRC shall indemnify, protect, defend, and save harmless NECR and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NECR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of GMRC to comply with its obligations in this regard.
- B. GMRC in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules, timetables, notices, bulletins, orders and other regulations and procedures of NECR, and the movement of GMRC's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NECR; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of NECR shall not unjustly discriminate between the Parties. NECR will not make any rule or restriction applying to GMRC's trains that does not apply equally to NECR's trains. GMRC's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NECR's operating rules and regulations, without the prior consent of NECR. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All GMRC trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

- C. GMRC shall make such arrangements with NECR as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereover, and GMRC shall pay to NECR, upon receipt of bills therefor, any reasonable cost incurred by NECR in connection with the qualification of such employees of GMRC, as well as the reasonable cost of pilots furnished by NECR, until such time as such employees are deemed by the appropriate examining officer of NECR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed. The Parties agree that once properly qualified, GMRC employees may train and qualify other GMRC crews for operation over the Subject Trackage (i.e., "train the trainer") without need of NECR pilots; provided that any such employees performing such training and qualification shall be reasonably acceptable to NECR with the service records of such employees provided to NECR documenting such employees' experience operating over the Subject Trackage and familiarity with NECR's operating rules. Any and all training that may subsequently be required to qualify GMRC operating personnel as to NECR's operating rules may therefore be performed by GMRC, and the determination as to whether such operating personnel are qualified under NECR's operating rules shall be made in the reasonable discretion of GMRC (giving due consideration to any comments or recommendations of NECR).
- D. The trains, locomotives, cars and equipment of GMRC, NECR, PAS, Amtrak and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party or any such other user and in such manner as will result in the most economical and efficient manner of movement of all traffic; provided, however, that NECR shall give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act and GMRC shall be treated similarly to PAS. Notwithstanding the foregoing, GMRC shall have the right, in consultation with NECR, to establish the schedules of GMRC's trains over the line. Trains performing local work, whether NECR or otherwise, are not entitled to priority over trains that are not performing such work. NECR shall establish NECR's train schedules with due regard to the trains to be operated by GMRC. Each Party shall use reasonable efforts to provide [REDACTED] days' notice of changes in its traffic and operating patterns and procedures that may affect the Subject Trackage. NECR shall coordinate with GMRC and use its best efforts in scheduling the work required for any upgrades of the Subject Trackage and any future maintenance or repair of the Subject Trackage to minimize any interference with or disruption of GMRC's operations over the Subject Trackage.
- E. In the event that a train of GMRC shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among GMRC's crew, or due to mechanical failure of GMRC'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 GMRC fails to maintain the speed required by NECR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of GMRC's trains on the Subject Trackage, NECR shall have the option to furnish motive power or such other assistance (including, but not limited to, the right to recrew GMRC's train in the event that GMRC does not recrew its train within [REDACTED] minutes) as may be necessary to haul, help or push such trains,

locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and GMRC shall reimburse NECR for the actual cost of rendering any such assistance.

- F. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, NECR shall have the option to perform such work, and GMRC shall reimburse NECR for the actual cost thereof.
- G. In the event NECR and GMRC agree that NECR should retain employees or provide additional employees for the sole benefit of GMRC, the Parties shall enter into a separate agreement under which GMRC 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 that are made by NECR and would not have been incurred had the retained or additional employees not been provided.
- H. NECR shall have the right to exclude from its tracks any employee of GMRC, except officers, determined by NECR to be in violation of NECR's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by NECR in its timetable or otherwise, and provided in advance to GMRC. The decision to bar any employee of GMRC from its tracks will not be interpreted as a request for GMRC to fire the individual(s). GMRC shall release, indemnify, defend, and save harmless NECR from and against any and all claims and expenses resulting from such exclusion.

#### **ARTICLE 12. MILEAGE AND CAR HIRE**

NECR shall not be responsible for any mileage and car hire charges accruing on cars in GMRC's trains on the Subject Trackage.

#### **ARTICLE 13. CLEARING OF WRECKS**

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

#### **ARTICLE 14. LIABILITY**

- A. Without changing the responsibility for the provision of emergency services as set forth in Article 13, the responsibility and liability between the Parties for: (i) any personal injury or death of any person, including employees of the Parties and third persons, (ii) any real



or personal property damage of any person, including property of the Parties and third persons, (iii) any damage or destruction to the environment, including land, air, water, wildlife and vegetation, and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and reasonable attorneys' fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:

1. If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in this Article 14, "Locomotives"), cars and/or equipment of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
2. Losses involving the trains, Locomotives, cars and/or equipment of both Parties.
  - a. Except as otherwise provided in Subarticle 14.A.2.b, below, if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars and/or equipment of both NECR and GMRC, then (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment and cars in its own account, including lading, and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
  - b. If any damage to the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both NECR's and GMRC's trains, Locomotives, cars and/or equipment, then as between themselves, (A) NECR shall be solely responsible for any damage or destruction to the environment, including exacerbation of existing conditions, and to third parties which results solely from a substance transported in NECR's cars and equipment and/or NECR's Locomotive(s) from which there is a release, (B) GMRC shall be solely responsible for any damage or destruction to the environment, including exacerbation of existing conditions, and to third parties that results solely from a substance transported in GMRC's cars and equipment and/or GMRC's Locomotive(s) from which there was a release, and (C) NECR and GMRC shall be responsible, in proportion to the total number of Locomotives, cars and/or equipment of each Party from which there was a release, for any damage or destruction to the environment, including exacerbation of existing conditions, and to third parties that results from one or more substances transported in cars or equipment in the revenue waybill and car hire accounts or Locomotives of both NECR and GMRC from which there were releases.
3. If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars and/or equipment only one of the Parties and one or more third parties, then such Party shall be solely responsible for such Loss as between the

Parties.

- B. If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars and/or equipment of either NECR or GMRC, then each of NECR and GMRC is solely responsible for any Loss to its own employees, trains, Locomotives, cars and/or equipment, even if caused partially or completely by the other Party.
- C. Except as provided in Subarticle 11.G, Subarticle 15.F and Subarticle 18.B, each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.
- D. Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall (i) forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents and employees from and against such Loss, including without limitation attorney's fees and expenses and court or regulatory expenses, assumed by that Party or apportioned to it, and (ii) shall defend at its cost such indemnified Party against any claims for such liabilities, loss and expenses with counsel selected by the indemnifying Party and reasonably acceptable to the indemnified Party, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either GMRC or NECR, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- F. For purposes of determining liability, pilots furnished by NECR to GMRC pursuant to this Agreement shall be considered as the employees of GMRC while such employees are on duty as pilots for GMRC.
- G. If any suit or action shall be brought against either Party for damages that under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorney's fees incurred in such suit according to its liability assumed hereunder.
- H. In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- I. Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 14, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery that are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- J. Notwithstanding any and all of the forgoing provisions of this Article 14, in the event a Loss occurs while the Subject Trackage is being used by NECR and/or GMRC, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.
- K. Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action, whether in contract, tort or otherwise, in no event shall either Party be liable to the other Party for any incidental, special, indirect, consequential or punitive damages whatsoever, including but not limited to lost profits, business interruption expenses, lost use of equipment, liability to a Party's customers for liquidated damages or other damages, arising out of or related to the activities contemplated by this Agreement, even if advised of the possibility of such damages. Except as otherwise provided in Subarticle 14.G and 15.D hereof, under no circumstances shall either Party be entitled to recover its attorney's fees and legal cost and expenses from the other Party for a dispute arising out of this Agreement.

## ARTICLE 15. CLAIMS

- A. Except as provided in Subarticle 15.B below, all claims, injuries, death, and property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost and expense therefor under the provisions of this Agreement.
- B. Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against NECR or GMRC which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds [REDACTED] DOLLARS (\$ [REDACTED] ).
- 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, expenses and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of or related to claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees, except as otherwise provided in the Settlement Agreement.
- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 14.



## ARTICLE 16. INSURANCE

GMRC shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

A. Railroad liability policy of insurance acceptable to NECR in an amount of at least [REDACTED] DOLLARS (\$[REDACTED]) per occurrence. Such insurance shall include coverage for:

- injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act and third property damage liability;
- seepage and pollution coverage, applicable in the event of railroad accident, derailment or overturn;
- contractual liability; and
- evacuation expense coverage, applicable in the event of railroad accident, derailment or overturn.

If coverage is purchased on a "claims made" basis, GMRC hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually, GMRC agrees to provide evidence of such coverage as required hereunder.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation acceptable to NECR;
- Additional insured endorsement in favor of NECR and its affiliates acceptable to NECR;
- Separation of insureds; and
- The policy shall be primary and non-contributing with respect to any insurance carried by NECR.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$[REDACTED] per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage; and
- Any and all vehicles owned, used or hired.

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation acceptable to NECR;
- Additional insured endorsement in favor of NECR and its affiliates acceptable to NECR; and
- Separation of insureds.



While GMRC is operating on NECR's property, the following is required:

All policies shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

GMRC agrees to waive its right of recovery against NECR for all claims and suits against NECR. In addition, its insurers, through policy endorsement, waive their right of subrogation against NECR for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. GMRC further waives its right of recovery, and its insurers also waive their right of subrogation against NECR for loss of its owned or leased property or property under its care, custody or control.

GMRC's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributory with respect to any insurance carried by NECR. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above shall include a severability of interest endorsement and shall name NECR and its affiliates as additional insureds. Severability of interest and naming NECR and its affiliates as additional insureds shall be indicated on the certificate of insurance.

GMRC may self-insure up to \$[REDACTED] without the prior written consent of NECR. Any deductible, self-insured retention or other financial responsibility for claims as permitted under this Agreement shall be paid directly by GMRC. Any and all NECR liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by GMRC's insurance shall be paid by GMRC as if it elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to exercise of any of the rights herein, GMRC shall furnish to NECR an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify NECR in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from NECR, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to NECR or with a current A.M. Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the relevant trackage is located.

GMRC represents that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who it has instructed to procure the insurance coverage required by this Agreement.

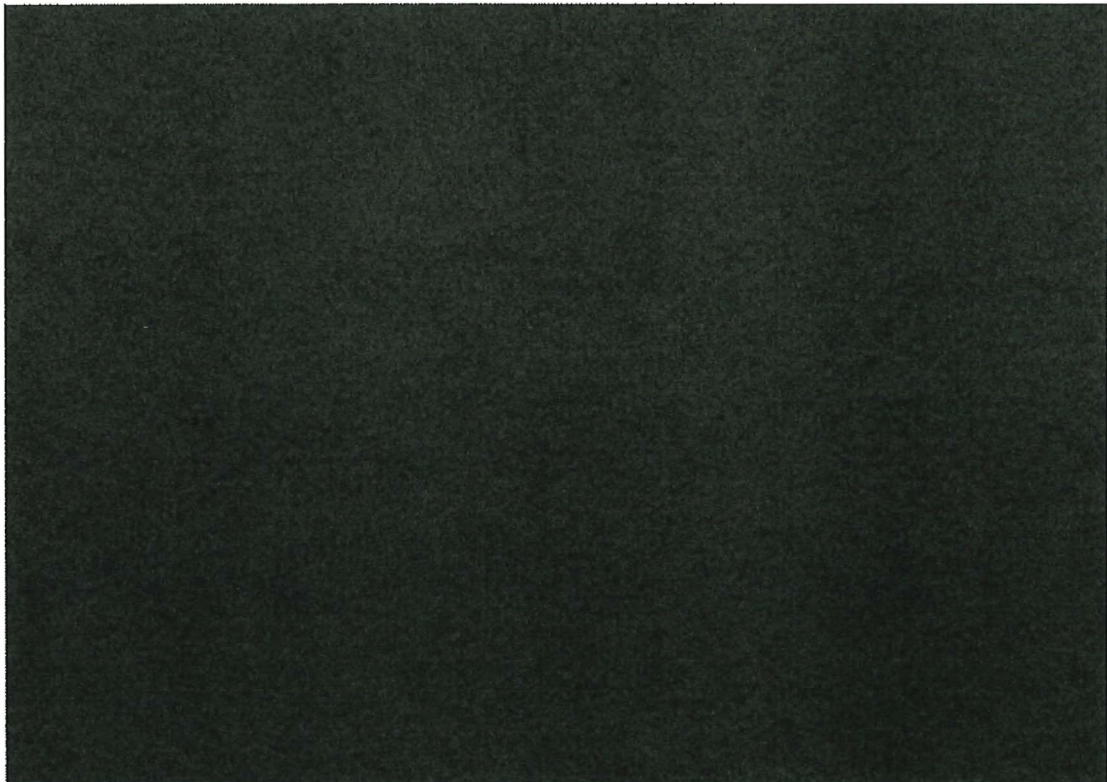
Failure to provide evidence as required by this section shall be deemed to be a material breach and shall entitle, but not require, NECR to terminate this Agreement without prejudice to its ability to pursue any other remedies available at law or in equity. Notwithstanding this provision, GMRC shall have the ability to cure any coverage, or coverage evidence breaches within ten (10) days after receipt of notice from NECR, prior to NECR being able to execute/enforce any of the above remedies in this clause.

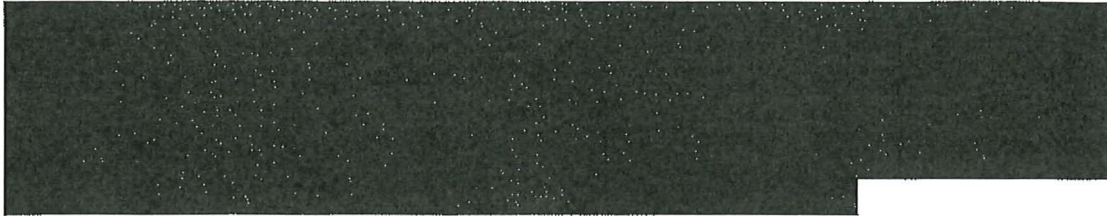
The fact that insurance, including, without limitation, self-insurance to the extent thereof, is obtained by GMRC shall not be deemed to release or diminish the liability of GMRC, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by NECR shall not be limited by the amount of the required insurance coverage.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

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

B.





- C. NECR shall be permitted to terminate this Agreement solely with respect to the Trackage Rights over the Lower Segment (and not the Upper Segment) if the PAS rail lines are no longer being operated by B&E or any other GWI subsidiary or affiliated entity as contract operator or otherwise.
- D. The Parties may terminate this Agreement upon their mutual agreement.
- E. Upon the full or partial termination of this Agreement in accordance with this Article 17 or Article 19, GMRC will promptly seek authority from the U.S. Surface Transportation Board (the “STB”) to discontinue the Trackage Rights and effectuate the full or partial termination thereof. NECR shall assist and support efforts of GMRC to secure any necessary STB approval. In the event GMRC fails to do so, GMRC grants to NECR an irrevocable power of attorney for purposes of consenting to and making any STB filing in the name and on behalf of GMRC, with respect to any full or partial termination of this Agreement in accordance with its terms. This grant of GMRC’s power of attorney will survive the term or any earlier termination of this Agreement. GMRC shall reimburse NECR promptly after receipt of an invoice therefor in respect of any costs and expenses, including reasonable attorneys’ fee and STB filing fees, incurred by NECR in exercising its rights under this Article 17.E.

#### **ARTICLE 18. REGULATORY APPROVAL**

- A. Should the Trackage Rights require the prior approval of the STB, GMRC at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. NECR shall assist and support efforts of GMRC to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, GMRC shall be solely responsible for any and all payments in satisfaction of such conditions. This Subarticle 18.B. shall not apply to Labor Claims as defined in the Settlement Agreement.

#### **ARTICLE 19. ABANDONMENT OR DISCONTINUANCE OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Article 20, NECR shall have the right, subject to securing any necessary regulatory approval, to abandon all or any portion of the Subject Trackage during the term of this Agreement, upon giving GMRC not less than [REDACTED] days’ notice of NECR’s intent to abandon in order that GMRC may file with the STB for authority to discontinue its use thereof. In the event regulatory authority is required to effect such



abandonment, GMRC shall not interfere with NECR's actions to seek and to exercise such authority. In the event regulatory authority is required for GMRC to discontinue its own operations over the Subject Trackage, GMRC shall seek and exercise such regulatory authority at the same time that NECR seeks regulatory authority to abandon the relevant portion of the Subject Trackage. NECR and GMRC shall exercise the abandonment and discontinuance authority, as applicable, within [REDACTED] days from the date NECR and GMRC obtain the aforementioned regulatory authority. Upon the date established by NECR for abandonment of the relevant portion of the Subject Trackage by its aforesaid notice to GMRC or upon the above specified date of exercise of the regulatory authority to abandon, whichever is later, this Agreement shall terminate, in whole or in part, and be of no further force and effect solely with respect to such portion of the Subject Trackage that has been abandoned, except that such termination of this Agreement shall not relieve or release either Party from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the Parties notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law. As used in this Article 19, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

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

## **ARTICLE 20. TERM**

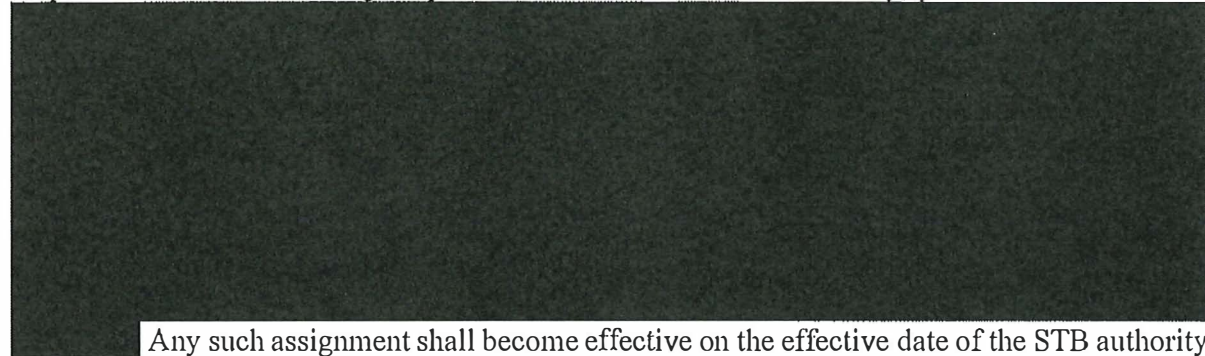
- A. This Agreement shall be effective on the latest to occur of (i) the day and year first above written, (ii) the date an STB decision granting or exempting the Trackage Rights becomes effective, (iii) the date the STB's decision approving the Pan Am Acquisition and the operation of PAS by an affiliate of NECR as contract operator becomes effective or (iv) the start-up of B&E's operations over the rail lines of PAS (the "Effective Date"), and shall remain in effect until terminated (x) in accordance with Articles 17 or 19, or (y) by GMRC upon [REDACTED] days advance written notice to NECR of its intent to terminate this Agreement or until GMRC receives authority to discontinue the rights herein granted, whichever occurs first.
- B. GMRC shall be liable for complying with the requirements and costs of any labor protection imposed by the STB on GMRC as a condition to the discontinuance of its operations over the Subject Trackage.
- C. Termination of this Agreement shall not relieve or release either Party from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.

## **ARTICLE 21. FORCE MAJEURE**

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

## **ARTICLE 22. SUCCESSORS AND ASSIGNS**

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



Any such assignment shall become effective on the effective date of the STB authority permitting such successor operator to exercise the Trackage Rights.

## **ARTICLE 23. NOTICE**

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

If to NECR:                      New England Central Railroad, Inc.  
   200 Meridian Centre, Suite 270  
   Rochester, NY 14618  
   Attention: President

With copy to:

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

With an E-Mail copy to: [LegalNotices@gwrr.com](mailto:LegalNotices@gwrr.com)

If to GMRC: Green Mountain Railroad Corporation  
One Railway Lane  
Burlington, VT 05401  
Attention: President

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

**ARTICLE 24. PERIODIC REVIEW**

The Parties shall conduct a review of the terms and conditions of this Agreement governing the Trackage Rights granted hereunder, the insurance requirements and the other terms and conditions contained herein following each ■-year anniversary of the Effective Date and discuss in good faith any required modifications based on changes in the regulatory and operational environment in which the Parties operate.

**ARTICLE 25. GENERAL PROVISIONS**

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- B. This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every

other separate division, or any combination thereof.


- G. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of such other Party.
- H. This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- I. The recitals to this Agreement are, by this reference, incorporated into and made a part of this Agreement.
- J. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Vermont, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the State of Vermont.
- K. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- L. Neither Party may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company or its counsel, auditors and accountants or representatives of the Vermont Agency of Transportation, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

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

NEW ENGLAND CENTRAL  
RAILROAD, INC.

By: LEONARD WAGNER - President - 3/28/2023 11:53:18 AM  
Name:  
Title:

GREEN MOUNTAIN RAILROAD  
CORPORATION

By:   
Name:  
Title: Selden Houghton  
President



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36688

GREEN MOUNTAIN RAILROAD CORPORATION  
—TRACKAGE RIGHTS EXEMPTION—  
NEW ENGLAND CENTRAL RAILROAD, INC.

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**EXHIBIT C**  
**CAPTION SUMMARY**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36688

GREEN MOUNTAIN RAILROAD CORPORATION  
—TRACKAGE RIGHTS EXEMPTION—  
NEW ENGLAND CENTRAL RAILROAD, INC.

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**VERIFIED NOTICE OF EXEMPTION OF  
GREEN MOUNTAIN RAILROAD CORPORATION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Pursuant to a written agreement dated March 28, 2023, New England Central Railroad, Inc. (“NECR”) has agreed to grant trackage rights to Green Mountain Railroad Corporation for the purpose of handling overhead traffic over an NECR line extending between milepost 14.46 at White River Junction, Vermont, and milepost 99.0 at Millers Falls, Massachusetts. In all the Lines consist of 61.4 route miles. This Notice is filed pursuant to 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the trackage rights exemption pursuant to 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.


Board decisions and notices are available on the Web at [www.stb.gov](http://www.stb.gov).

Dated:

By the Board: \_\_\_\_\_, Director, Office of Proceedings.

**VERIFICATION**

I, Selden J. Houghton, hereby verify that I am the President of Green Mountain Railroad Corporation, that I have read the foregoing Trackage Rights Notice of Exemption and know the facts asserted therein, and that the same are true as stated.

  
Selden J. Houghton

Executed on: March 2, 2023.  
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