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Office of Proceedings
May 8, 2023
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May 8, 2023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **FD 36669**
Massachusetts Bay Transportation Authority —
Acquisition Exemption — CSX Transportation, Inc.

Dear Ms. Brown:

Attached for inclusion in the record in the above-captioned proceeding are copies of the final version of the Release Deeds (as recorded with the Worcester South Registry of Deeds at Book 69103, Page 119, and with the Norfolk Registry of Deeds at Book 41179, Page 430, respectively – each recorded on May 5, 2023) and the fully-executed Operating Agreement between Massachusetts Bay Transportation Authority (“MBTA”) and Grafton and Upton Railroad Company (aka the “Milford Operating Agreement”) dated May 5, 2023, each bearing upon the transaction encompassed by this docket.

MBTA is supplying the attached documents in accordance with Ordering Paragraph 2 of the Board’s decision in this docket served on March 29, 2023 (as further discussed in the decision narrative at page 5, footnote 8).

MBTA hereby advises that it has consummated the asset transaction that is the subject of this Board proceeding. Also, MBTA extends its gratitude to the Board for expeditiously considering and favorably acting upon MBTA’s motion to dismiss the notice of exemption that MBTA had filed in this docket.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

May 8, 2023

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If you have any questions regarding this filing, please contact me. Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Massachusetts Bay
Transportation Authority

RAW:ah

Attachments

cc: Parties of Record

Worcester South District Registry of Deeds Electronically Recorded Document

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Recording Information

Document Number	: 34868
Document Type	: DEED
Recorded Date	: May 05, 2023
Recorded Time	: 03:43:18 PM
Recorded Book and Page	: 69103 / 119
Number of Pages(including cover sheet)	: 32
Receipt Number	: 1512123
Recording Fee (including excise)	: \$155.00

MASSACHUSETTS EXCISE TAX
Worcester District ROD #20 001
Date: 05/05/2023 03:43 PM
Ctrl# 248929 04804 Doc# 00034868
Fee: \$.00 Cons: \$13,000,000.00

Worcester South District Registry of Deeds
Kathryn A. Toomey, Register
90 Front St
Worcester, MA 01608
(508) 368-7000

Central Street
Property: Milford Secondary Track, Milford, Bellingham & Franklin

**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 AND ASSIGNMENT OF EASEMENT RIGHTS

THIS RELEASE DEED AND ASSIGNMENT OF EASEMENT RIGHTS (this "Deed"), made as of the 5th day of May, 2023, 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+20 (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 and Norfolk County Massachusetts being the "Land" as defined and more particularly described in Exhibit A and Exhibit A-1 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 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 subject to the provision of Exhibit D and Exhibit E hereto, 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 described in 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.

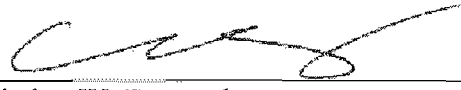
No deed excise stamps are affixed hereto as none are required by law.

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]

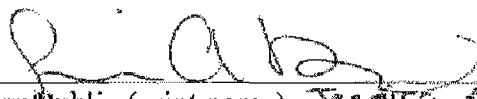
IN WITNESS WHEREOF, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

CSX TRANSPORTATION, INC.

By: 
 Christina W. Bottomley
 Title: Vice President Real Estate &
 Industrial Development

STATE OF FLORIDA
 COUNTY OF DUVAL

On this 24th day of April, 2023, before me, the undersigned Notary Public, personally appeared the above-named Christina W. Bottomley 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 her as her free act and deed, voluntarily for its stated purpose, as Vice President Real Estate & Industrial Development of CSX Transportation, Inc.


 Notary Public (print name) Jessica A. Braig
 My Commission Expires: 1/30/2024

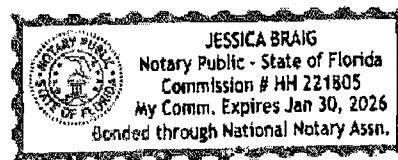


EXHIBIT A

All right, title and interest that the Grantor has in the property below, whether a fee title, an easement, or otherwise, and to the extent Grantor's interest consists of an easement, this Release Deed and Assignment of Easement Rights shall serve as a grant and assignment of all right, title and interest by Grantor to Grantee.

Milford Secondary Track:

All that certain property situated in Milford (Worcester County), Bellingham and Franklin (Norfolk County), Commonwealth of Massachusetts, consisting of a portion of the Milford Secondary Track beginning in the Town of Franklin, at a point in the centerline of grantor's mainline track at or near the point of equivalency with Railroad Valuation station 0+00 at or near Railroad Valuation Station 1458+20, as shown on Right-of-Way and Track Map The New York New Haven and Hartford Railroad Company map (55420) (V4.16/29), thence extending in a general northwesterly direction to the southerly line of Central Street, at or near Railroad Valuation Station 445+02 in the Town of Milford, and the place of ENDING, as shown on Right-of-Way and Track Map The New York New Haven and Hartford R.R. Co. map (55744) (V4.33/9), aforesaid segment containing 72.33 acres in Norfolk County and 21.89 acres in Worcester County, more or less, as shown on reduced copies of valuation maps entitled "Right of Way and Track Map The New York, New Haven and Hartford R.R. Co. Operated By The New York, New Haven and Hartford R.R. Co.", being maps (55420) (V4.16-17/29), (55727) (V4.29-30/22), (55728) (V4.32/1), (55735) (V4.32/2), (55738) (V4.32/3), (55739) (V4.32/4), (55740) (V4.32-33/5), (55741) (V4.33/6), (55742) (V4.33/7), (55743) (V4.33/8), and (55744) (V4.33/9), copies of which are attached hereto and incorporated herein.

Less and Except the area depicted in Exhibit B-1 Excluded Parcel, said area appearing on Right-of-Way and Track Maps The New York New Haven and Hartford R.R. Co. map (55727) (V4.29-30/22).

Together with the following appurtenant rights:

1. Notice to prevent easement dated July 18, 1889 and recorded with Norfolk County Registry of Deeds in Book 624, Page 385.
2. Notice to prevent easement, dated September 18, 1894 and recorded and recorded with Norfolk County Registry of Deeds in Book 721, Page 128.

For Grantor's title see Quitclaim Deed by Consolidated Rail Corporation to New York Central Lines LLC, a Delaware limited liability company, dated June 1, 1999 and recorded with Norfolk County Registry of Deeds in Book 13389, Page 527 and with the Worcester District Registry of Deeds in Book 21992, Page 370 and Corrective Quitclaim Deed dated June 1, 1999 and recorded in Book 30340, Page 001. Further reference is made to Notice of Merger dated September 28, 2007 and recorded with Worcester District Registry of Deeds in Book 43383, Page 136.

EXHIBIT A-1**Conveyed Franklin Industrial Track**

All right, title and interest that the Grantor has in the property below, whether a fee title, an easement, or otherwise, and to the extent Grantor's interest consists of an easement, this Release Deed and Assignment of Easement Rights shall serve as a grant and assignment of all right, title and interest by Grantor to Grantee.

All that certain property situated in Franklin, Norfolk County, Commonwealth of Massachusetts, being the Franklin Industrial Track BEGINNING at a point in the centerline of grantor's mainline track at or near Railroad Valuation Station 1456+00, as shown on Right-of-Way and Track Map The New York, New Haven and Hartford R.R. Co. map (55420) (V4.16/29), thence extending in a general southwesterly direction to the westerly line of Union Street at or near Railroad Valuation Station 1480+40, and the place of ENDING, as shown on Right-of-Way and Track Map The New York New Haven and Hartford Railroad Company map (55420) (V4.16/29), aforesaid segment containing 4.29 acres in Norfolk County, more or less, as shown on reduced copies of valuation maps entitled "Right of Way and Track Map The New York, New Haven and Hartford R.R. Co. Operated By The New York, New Haven and Hartford R.R. Co., a copy of which is attached hereto and incorporated herein.

Together with the following appurtenant rights:

1. Notice to prevent easement dated July 18, 1889 and recorded in Book 624, Page 385.
2. Notice to prevent easement, dated September 18, 1894 and recorded in Book 721, Page 128.

For Grantor's title see Quitclaim Deed by Consolidated Rail Corporation to New York Central Lines, LLC, a Delaware limited liability company, dated June 1, 1999 and recorded with Norfolk County Registry of Deeds in Book 13389, Page 527. Further reference is made to Notice of Merger dated September 28, 2007 and recorded with Worcester District Registry of Deeds in Book 43383, Page 136.

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).
3. Excluded Parcel appearing on Right of Way and Track Maps The New York New Haven and Hartford R.R. Co. map (55727) (V4.29-30/22), as depicted on Exhibit B-1 attached hereto and incorporated herein.

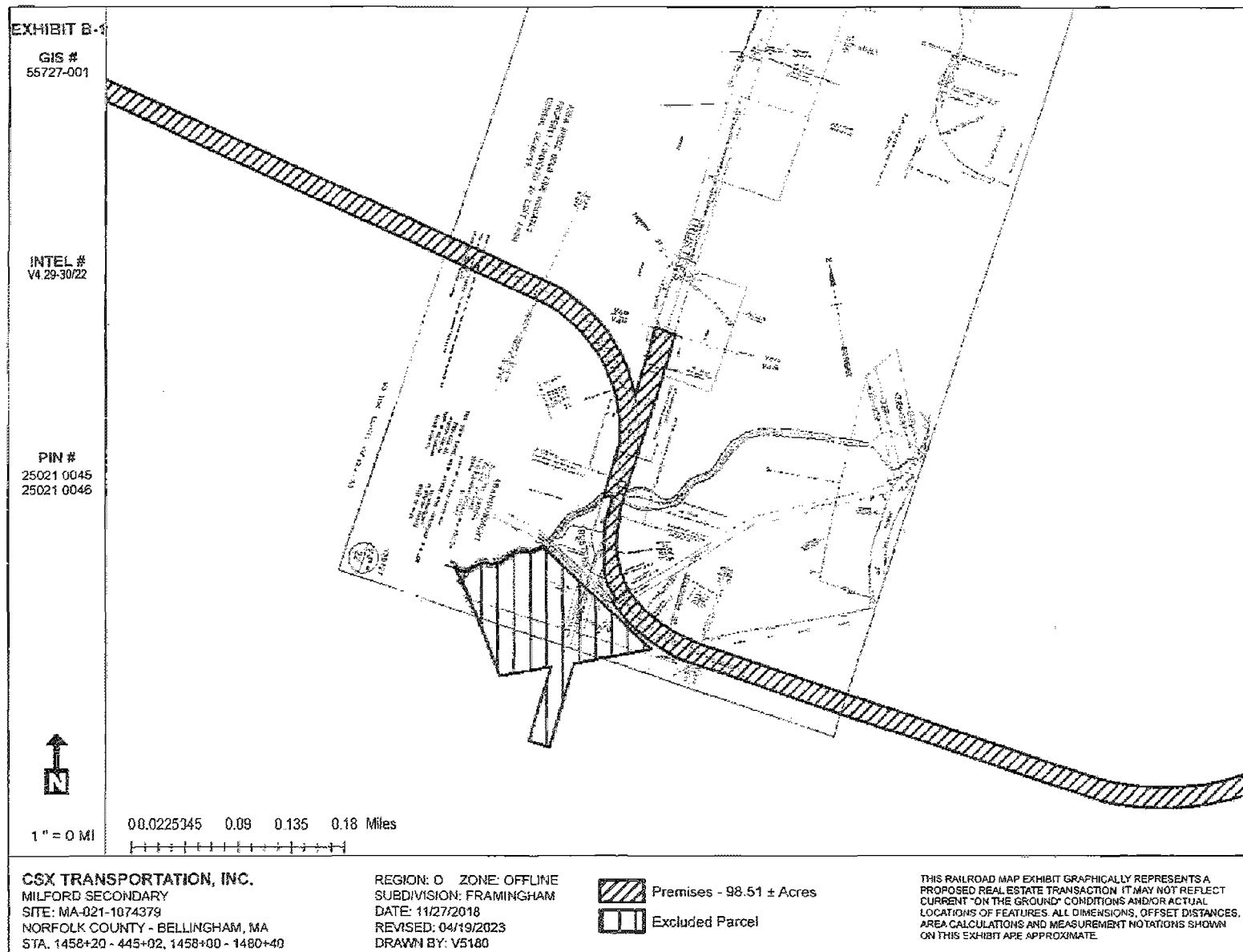


EXHIBIT C**Title Exceptions**

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:

Exceptions 1 through 25 are recorded with the Norfolk County Registry of Deeds.

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.

Exceptions 26 through 42 are recorded with the Worcester District Registry of Deeds.

26. Cart crossing granted in deed recorded in Book 879, Page 58.
27. Culvert and farm crossing reserved in deed dated July 9, 1867 and recorded in Book 879, Page 72.
28. Reservation of crossing with right of way set forth in deed dated October 7, 1867 and recorded in Book 879, Page 63.
29. Agreement to build crossing in deed dated July 19, 1867 and recorded in Book 879, Page 75.
30. Notice to prevent right of drainage and other easements over land set forth in instrument recorded June 4, 1887 in Book 1239, Page 485.
31. Taking by the Town of Milford Sewer Commissioners for sewer purposes dated April 16, 1919 and recorded in Book 2175, Page 445.
32. Taking by the Town of Milford Sewer Commissioners for sewer purposes dated April 16, 1919 and recorded in Book 2175, Page 446.

33. Deed of Easement to New England Power Company dated December 4, 1981 and recorded in Book 7397, Page 23 as affected by Amendment to Deed of Easement dated August 18, 1992 and recorded in Book 14611, Page 243 as further affected by Addendum to Grant of Easement dated September 17, 1992 and recorded in Book 14729, Page 271.
34. Deed of Easement to Massachusetts Electric Company dated May 27, 1982 and recorded in Book 7498, Page 11 as affected by Amendment to Deed of Easement dated August 18, 1992 and recorded in Book 14611, Page 238.
35. Deed of Easement to Algonquin Gas Transmission Company dated March 1, 1982 and recorded in Book 8203, Page 178.
36. Judgment establishing right of way dated May 8, 1941 and recorded in Book 13390, Page 341.
37. Order of Conditions by Milford Conservation Commission (DEP File No. 223-355) recorded November 7, 1991 and recorded in Book 13750, Page 325 affected by Certificate of Compliance recorded in Book 17611, Page 326.
38. Order of Conditions by Milford Conservation Commission (DEP File No. 223-346) recorded November 26, 1991 in Book 13787, Page 145 as amended by Amendment of Order of Conditions recorded November 26, 1991 in Book 13787, Page 152 as further amended by Amended Order of Conditions recorded November 26, 1991 and recorded in Book 13787, Page 156 as further affected by Certificate of Compliance recorded March 28, 1997 in Book 18700, Page 69.
39. Order of Conditions by Milford Conservation Commission (DEP File No. 223-352) recorded November 26, 1991 in Book 13787, Page 163 as further affected by Amendment to the Order of Conditions recorded December 27, 1991 and recorded in Book 13856, Page 281 as further affected by Certificate of Compliance recorded May 14, 1993 in Book 15181, Page 84.
40. License Agreement For Wire, Pipe And Cable Transverse Crossings And Longitudinal Occupations between Consolidated Rail Corporation and Algonquin Gas Transmission Corporation dated June 30, 1992 and recorded in Book 14557, Page 116.
41. Order of Taking by the Town of Milford Board of Selectmen dated September 17, 2001 and recorded in Book 25015, Page 1.
42. Agreement to convey all vehicular bridges by the Trustees of Penn Central Transportation Company to the Commonwealth of Massachusetts acting through its Department of Public Works dated August 16, 1972 and recorded in Book 5274, Page 457.

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 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 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 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 with respect to such assignment. The provisions of this Exhibit D and of Exhibit E shall apply to the assignment of the portion of the CSXT Milford Easement relating to the Conveyed Franklin Industrial to GU pursuant to a MBTA-User Operating Agreement; provided, however, that no Easement Transfer Payment shall be due to Grantee in connection with such assignment, and provided further that in connection with such assignment, (i) the 60-day periods referred to in Section 1 of this Exhibit D shall instead be 30-day periods, and (ii) the provisions of Section 2 of Exhibit E shall not apply.

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,

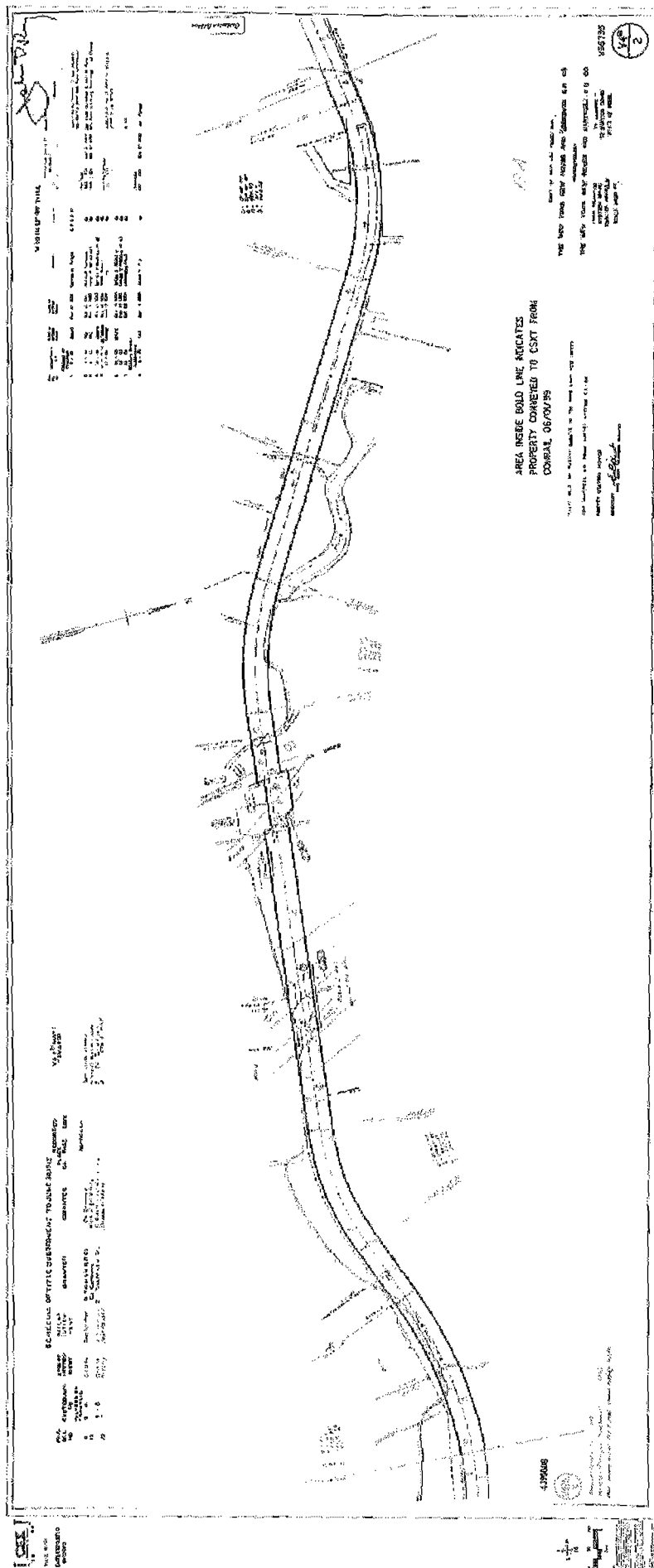
trustee or liquidator of Transferee or Affiliate for all or substantially all of the assets of the Transferee or Affiliate within the preceding seven (7) years.

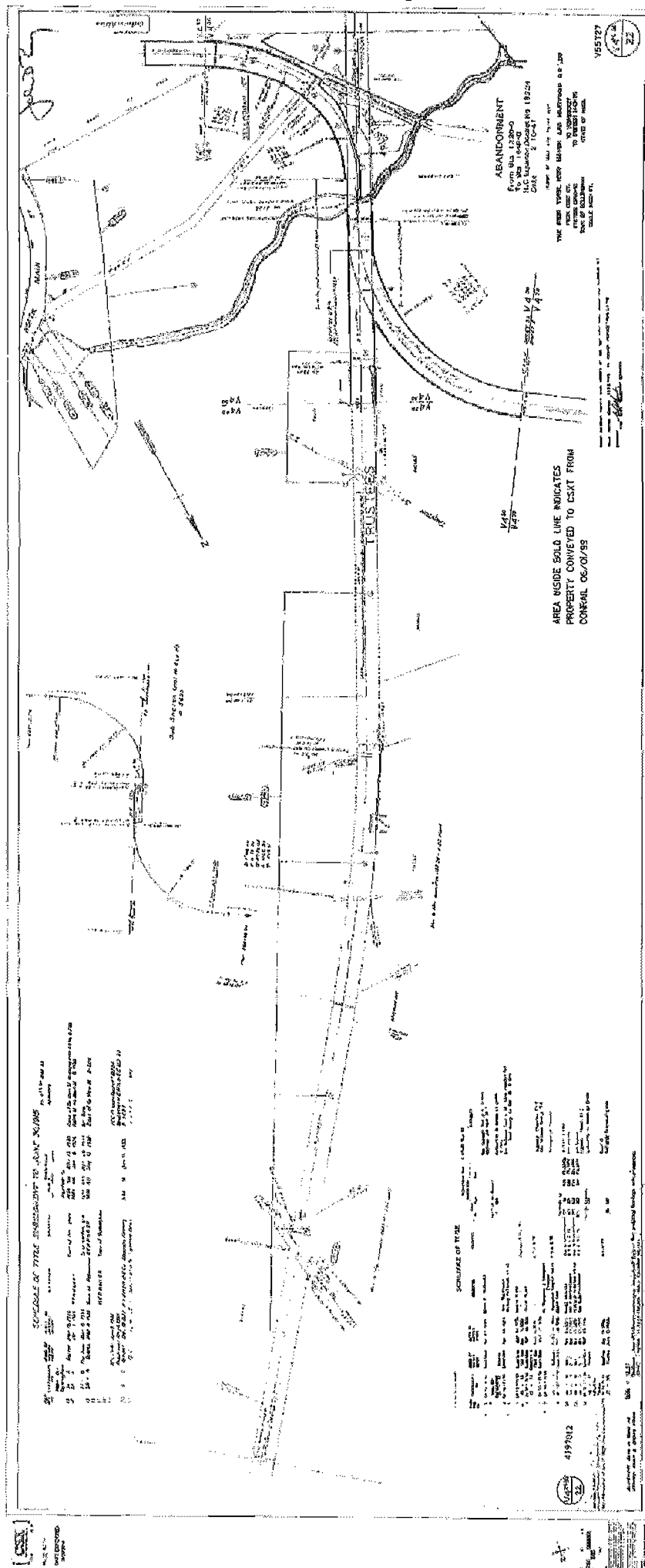
6. The Transferee has supplied the Grantee with the records of any accident or other incident occurring in the preceding five (5) years that the Transferee or any Affiliate has reported, or was required to report, to the Federal Railroad Administration (the "FRA") under 49 CFR Part 225. The Transferee 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

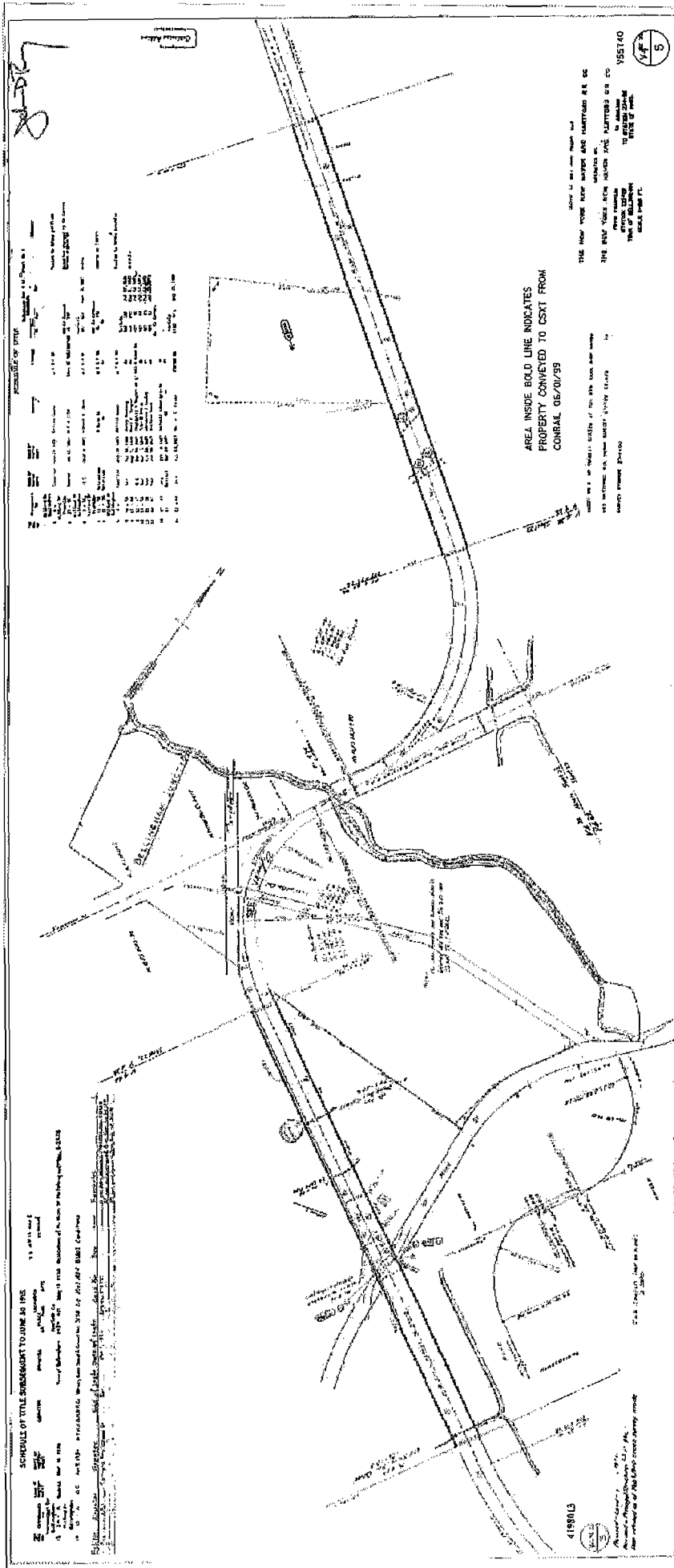
Equal Pay Act; Executive Order 11246; or the Massachusetts Law Against Discrimination (Mass. Gen. Laws c. 151B) which violation was of a material nature.

- 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.

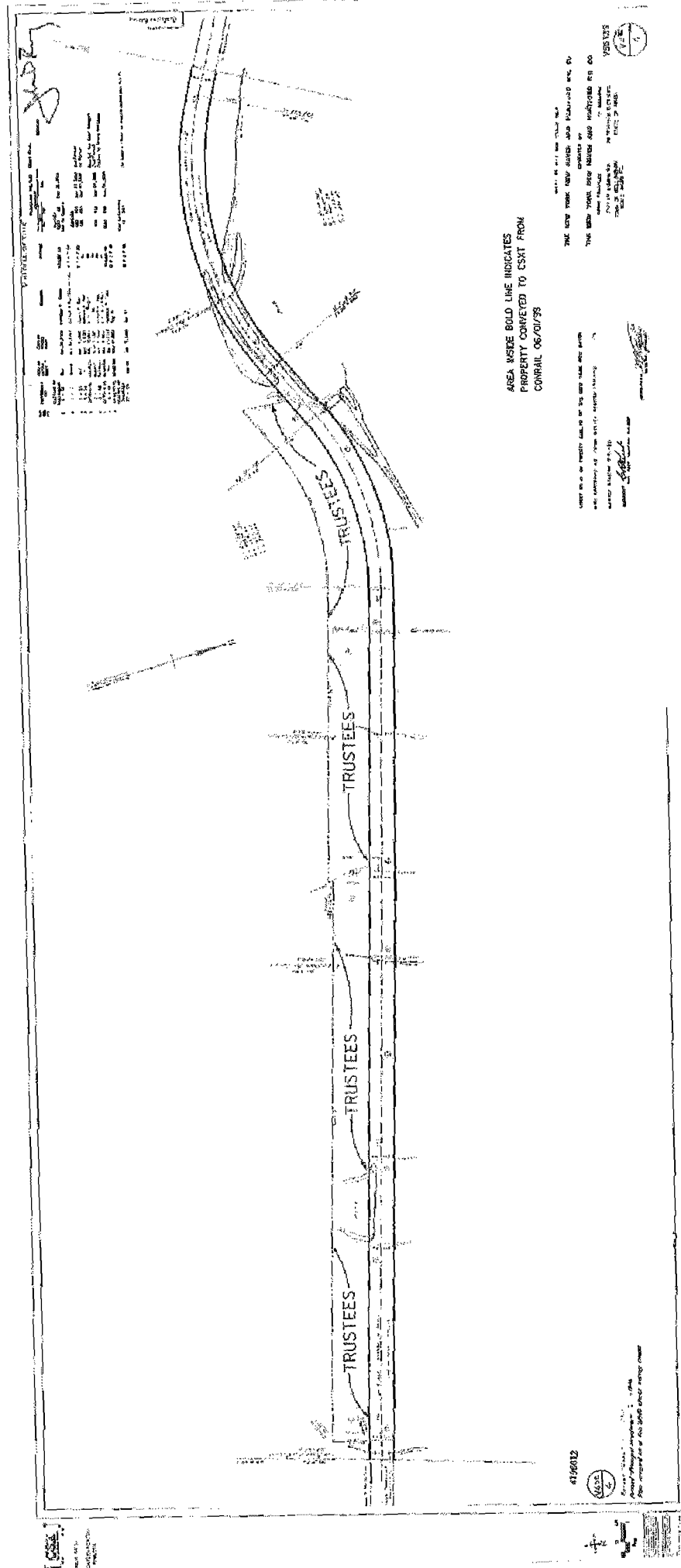


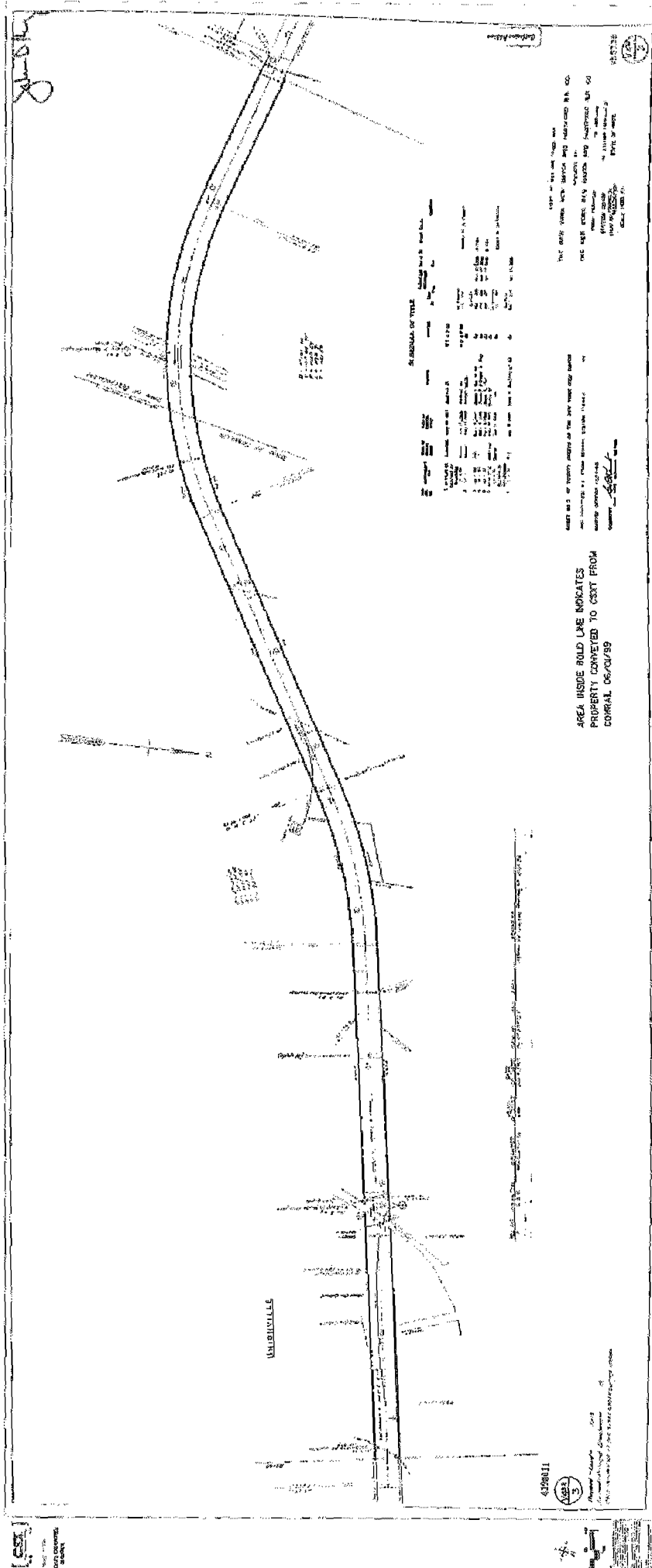


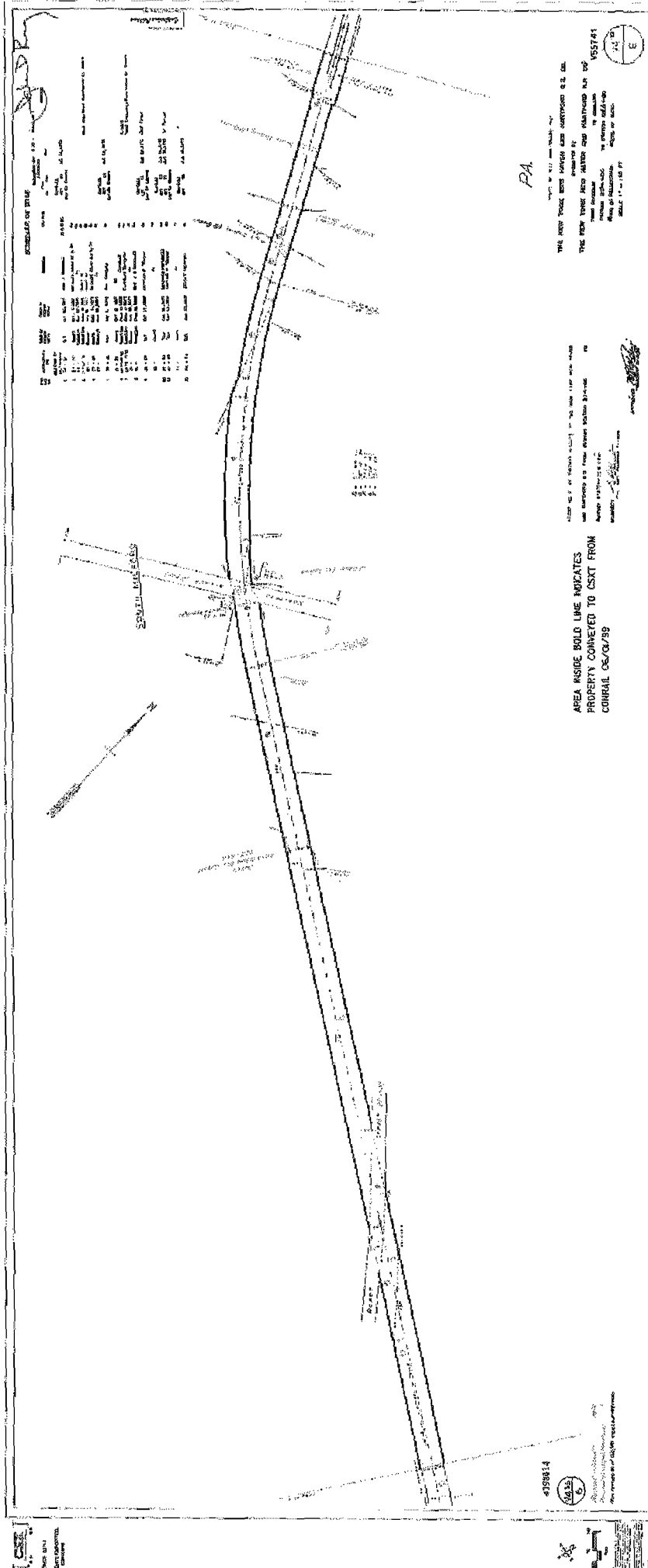


CSX
NOT TO SCALE
DATE PREPARED
BY

4189013
N.E. 1/4
S.E. 1/4
S.W. 1/4
N.W. 1/4







LEGEND

SYMBOL	DESCRIPTION
[Symbol]	Right of Way Line
[Symbol]	Center Line
[Symbol]	Property Line
[Symbol]	Utility Line
[Symbol]	Drainage Line
[Symbol]	Bridge
[Symbol]	Interchange
[Symbol]	Roundabout
[Symbol]	Signalized Intersection
[Symbol]	Unsignalized Intersection
[Symbol]	Grade Separation
[Symbol]	Other

SCHEDULE OF STAKES

STATION	STAKE	DESCRIPTION
100+00	100	Right of Way Line
100+00	101	Center Line
100+00	102	Property Line
100+00	103	Utility Line
100+00	104	Drainage Line
100+00	105	Bridge
100+00	106	Interchange
100+00	107	Roundabout
100+00	108	Signalized Intersection
100+00	109	Unsignalized Intersection
100+00	110	Grade Separation
100+00	111	Other

AREA INSIDE BOLD LINE INDICATES
PROPERTY CONVEYED TO CSXT FROM
CORRAL 06/01/99

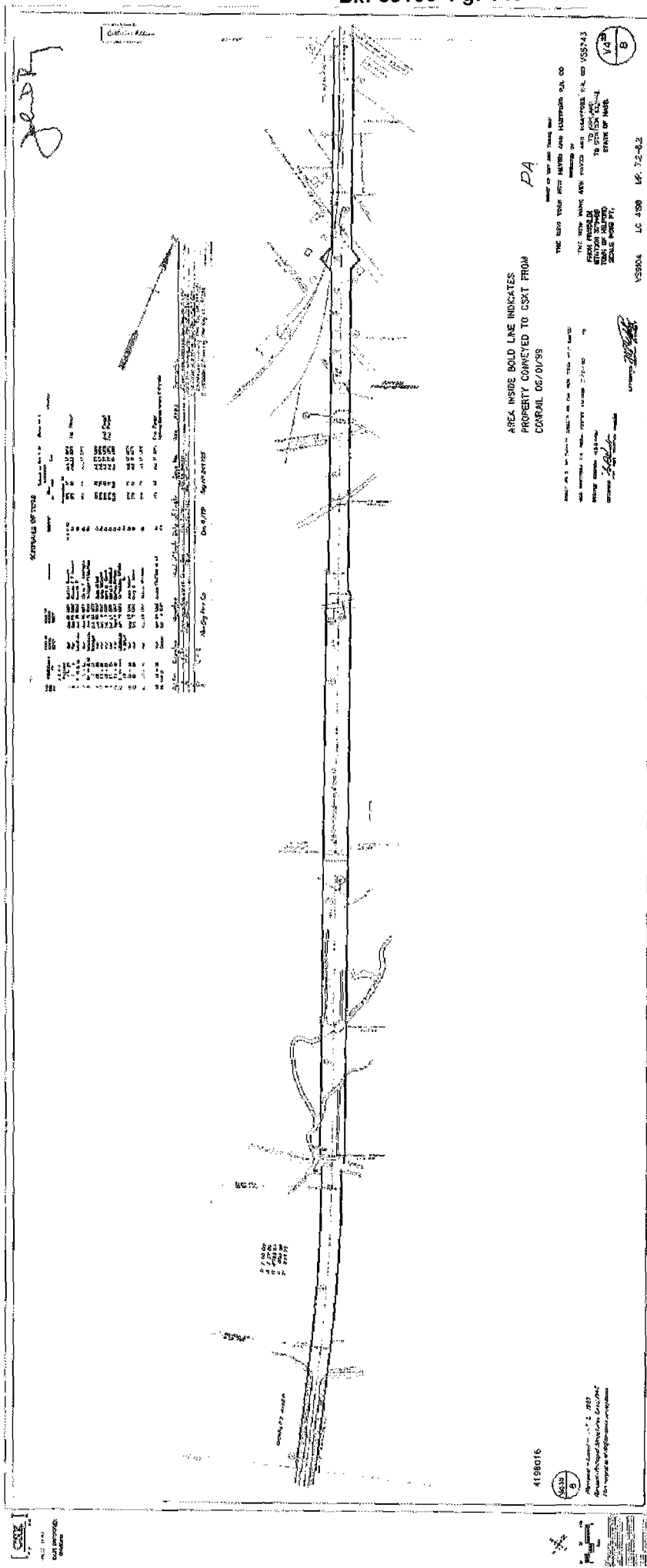
PA

THE NEW YORK STATE DEPT. OF TRANSPORTATION
THE NEW YORK STATE DEPT. OF TRANSPORTATION
V55741
DATE: 11-18-99

439014



THE NEW YORK STATE DEPT. OF TRANSPORTATION
THE NEW YORK STATE DEPT. OF TRANSPORTATION
V55741
DATE: 11-18-99



CSRT
06/01/99
Surveyor General of the State of Maryland

4196016

06/01/99

Surveyor General of the State of Maryland

AREA INSIDE BOLD LINE INDICATES
PROPERTY OWNED TO CSRT FROM
CORRAL 06/01/99

PA

THE NEW YORK STATE ENGINEERING AND SURVEYING CO.
INCORPORATED IN THE STATE OF NEW YORK
125 NASSAU ST.
NEW YORK, N.Y. 10038
STATE OF NEW YORK
SCALE 1/4" = 100 FT.
V5904 LC 4586 14-72-8-2

8

[illegible]

[illegible]

ATTEST: WORC Kathryn A. Toomey, Register

**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 AND ASSIGNMENT OF EASEMENT RIGHTS

THIS RELEASE DEED AND ASSIGNMENT OF EASEMENT RIGHTS (this "Deed"), made as of the 5th day of May, 2023, 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+20 (0+00) as shown on Val Map V4.16, Map 29 to Engineering Station 445+02 as shown on Val Map V4.33,

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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 and Norfolk County Massachusetts being the "Land" as defined and more particularly described in Exhibit A and Exhibit A-1 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 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 subject to the provision of Exhibit D and Exhibit E hereto, 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 described in 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.

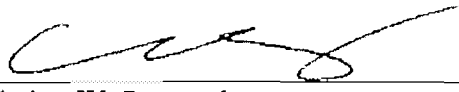
No deed excise stamps are affixed hereto as none are required by law.

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]

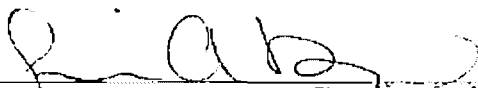
IN WITNESS WHEREOF, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

CSX TRANSPORTATION, INC.

By: 
 Christina W. Bottomley
 Title: Vice President Real Estate &
 Industrial Development

STATE OF FLORIDA
 COUNTY OF DUVAL

On this 24th day of April, 2023, before me, the undersigned Notary Public, personally appeared the above-named Christina W. Bottomley 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 her as her free act and deed, voluntarily for its stated purpose, as Vice President Real Estate & Industrial Development of CSX Transportation, Inc.


 Notary Public (print name) Jessica A. Braig
 My Commission Expires: 1/30/2026

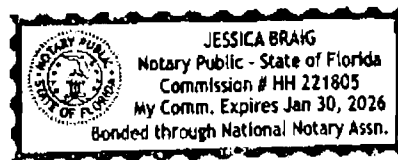


EXHIBIT A

All right, title and interest that the Grantor has in the property below, whether a fee title, an easement, or otherwise, and to the extent Grantor's interest consists of an easement, this Release Deed and Assignment of Easement Rights shall serve as a grant and assignment of all right, title and interest by Grantor to Grantee.

Milford Secondary Track:

All that certain property situated in Milford (Worcester County), Bellingham and Franklin (Norfolk County), Commonwealth of Massachusetts, consisting of a portion of the Milford Secondary Track beginning in the Town of Franklin, at a point in the centerline of grantor's mainline track at or near the point of equivalency with Railroad Valuation station 0+00 at or near Railroad Valuation Station 1458+20, as shown on Right-of-Way and Track Map The New York New Haven and Hartford Railroad Company map (55420) (V4.16/29), thence extending in a general northwesterly direction to the southerly line of Central Street, at or near Railroad Valuation Station 445+02 in the Town of Milford, and the place of ENDING, as shown on Right-of-Way and Track Map The New York New Haven and Hartford R.R. Co. map (55744) (V4.33/9), aforesaid segment containing 72.33 acres in Norfolk County and 21.89 acres in Worcester County, more or less, as shown on reduced copies of valuation maps entitled "Right of Way and Track Map The New York, New Haven and Hartford R.R. Co. Operated By The New York, New Haven and Hartford R.R. Co.", being maps (55420) (V4.16-17/29), (55727) (V4.29-30/22), (55728) (V4.32/1), (55735) (V4.32/2), (55738) (V4.32/3), (55739) (V4.32/4), (55740) (V4.32-33/5), (55741) (V4.33/6), (55742) (V4.33/7), (55743) (V4.33/8), and (55744) (V4.33/9), copies of which are attached hereto and incorporated herein.

Less and Except the area depicted in Exhibit B-1 Excluded Parcel, said area appearing on Right-of-Way and Track Maps The New York New Haven and Hartford R.R. Co. map (55727) (V4.29-30/22).

Together with the following appurtenant rights:

1. Notice to prevent easement dated July 18, 1889 and recorded with Norfolk County Registry of Deeds in Book 624, Page 385.
2. Notice to prevent easement, dated September 18, 1894 and recorded and recorded with Norfolk County Registry of Deeds in Book 721, Page 128.

For Grantor's title see Quitclaim Deed by Consolidated Rail Corporation to New York Central Lines LLC, a Delaware limited liability company, dated June 1, 1999 and recorded with Norfolk County Registry of Deeds in Book 13389, Page 527 and with the Worcester District Registry of Deeds in Book 21992, Page 370 and Corrective Quitclaim Deed dated June 1, 1999 and recorded in Book 30340, Page 001. Further reference is made to Notice of Merger dated September 28, 2007 and recorded with Worcester District Registry of Deeds in Book 43383, Page 136.

EXHIBIT A-1**Conveyed Franklin Industrial Track**

All right, title and interest that the Grantor has in the property below, whether a fee title, an easement, or otherwise, and to the extent Grantor's interest consists of an easement, this Release Deed and Assignment of Easement Rights shall serve as a grant and assignment of all right, title and interest by Grantor to Grantee.

All that certain property situated in Franklin, Norfolk County, Commonwealth of Massachusetts, being the Franklin Industrial Track BEGINNING at a point in the centerline of grantor's mainline track at or near Railroad Valuation Station 1456+00, as shown on Right-of-Way and Track Map The New York, New Haven and Hartford R.R. Co. map (55420) (V4.16/29), thence extending in a general southwesterly direction to the westerly line of Union Street at or near Railroad Valuation Station 1480+40, and the place of ENDING, as shown on Right-of-Way and Track Map The New York New Haven and Hartford Railroad Company map (55420) (V4.16/29), aforesaid segment containing 4.29 acres in Norfolk County, more or less, as shown on reduced copies of valuation maps entitled "Right of Way and Track Map The New York, New Haven and Hartford R.R. Co. Operated By The New York, New Haven and Hartford R.R. Co., a copy of which is attached hereto and incorporated herein.

Together with the following appurtenant rights:

1. Notice to prevent easement dated July 18, 1889 and recorded in Book 624, Page 385.
2. Notice to prevent easement, dated September 18, 1894 and recorded in Book 721, Page 128.

For Grantor's title see Quitclaim Deed by Consolidated Rail Corporation to New York Central Lines, LLC, a Delaware limited liability company, dated June 1, 1999 and recorded with Norfolk County Registry of Deeds in Book 13389, Page 527. Further reference is made to Notice of Merger dated September 28, 2007 and recorded with Worcester District Registry of Deeds in Book 43383, Page 136.

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).
3. Excluded Parcel appearing on Right of Way and Track Maps The New York New Haven and Hartford R.R. Co. map (55727) (V4.29-30/22), as depicted on Exhibit B-1 attached hereto and incorporated herein.

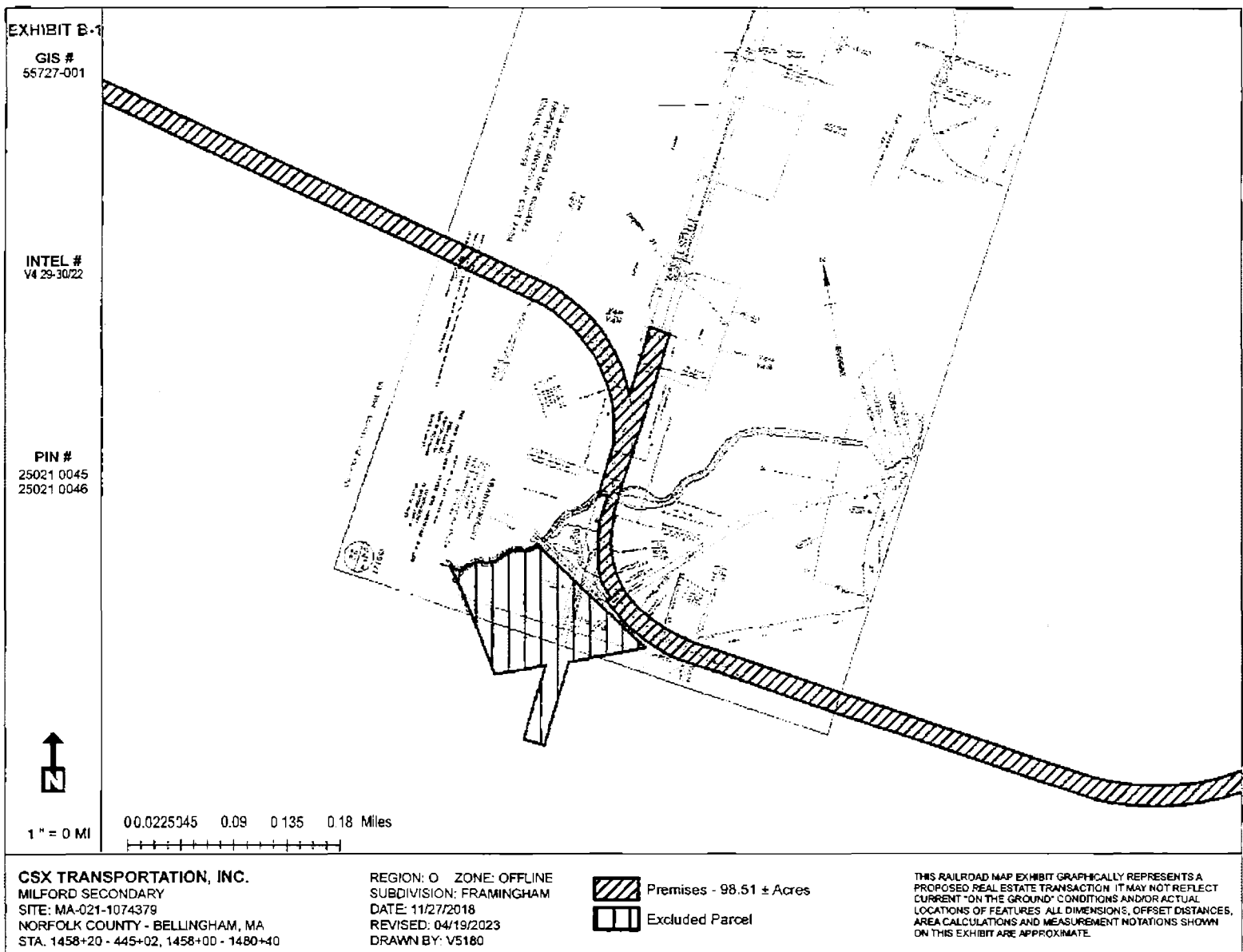


EXHIBIT C**Title Exceptions**

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:

Exceptions 1 through 25 are recorded with the Norfolk County Registry of Deeds.

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.

Exceptions 26 through 42 are recorded with the Worcester District Registry of Deeds.

26. Cart crossing granted in deed recorded in Book 879, Page 58.
27. Culvert and farm crossing reserved in deed dated July 9, 1867 and recorded in Book 879, Page 72.
28. Reservation of crossing with right of way set forth in deed dated October 7, 1867 and recorded in Book 879, Page 63.
29. Agreement to build crossing in deed dated July 19, 1867 and recorded in Book 879, Page 75.
30. Notice to prevent right of drainage and other easements over land set forth in instrument recorded June 4, 1887 in Book 1239, Page 485.
31. Taking by the Town of Milford Sewer Commissioners for sewer purposes dated April 16, 1919 and recorded in Book 2175, Page 445.
32. Taking by the Town of Milford Sewer Commissioners for sewer purposes dated April 16, 1919 and recorded in Book 2175, Page 446.

33. Deed of Easement to New England Power Company dated December 4, 1981 and recorded in Book 7397, Page 23 as affected by Amendment to Deed of Easement dated August 18, 1992 and recorded in Book 14611, Page 243 as further affected by Addendum to Grant of Easement dated September 17, 1992 and recorded in Book 14729, Page 271.
34. Deed of Easement to Massachusetts Electric Company dated May 27, 1982 and recorded in Book 7498, Page 11 as affected by Amendment to Deed of Easement dated August 18, 1992 and recorded in Book 14611, Page 238.
35. Deed of Easement to Algonquin Gas Transmission Company dated March 1, 1982 and recorded in Book 8203, Page 178.
36. Judgment establishing right of way dated May 8, 1941 and recorded in Book 13390, Page 341.
37. Order of Conditions by Milford Conservation Commission (DEP File No. 223-355) recorded November 7, 1991 and recorded in Book 13750, Page 325 affected by Certificate of Compliance recorded in Book 17611, Page 326.
38. Order of Conditions by Milford Conservation Commission (DEP File No. 223-346) recorded November 26, 1991 in Book 13787, Page 145 as amended by Amendment of Order of Conditions recorded November 26, 1991 in Book 13787, Page 152 as further amended by Amended Order of Conditions recorded November 26, 1991 and recorded in Book 13787, Page 156 as further affected by Certificate of Compliance recorded March 28, 1997 in Book 18700, Page 69.
39. Order of Conditions by Milford Conservation Commission (DEP File No. 223-352) recorded November 26, 1991 in Book 13787, Page 163 as further affected by Amendment to the Order of Conditions recorded December 27, 1991 and recorded in Book 13856, Page 281 as further affected by Certificate of Compliance recorded May 14, 1993 in Book 15181, Page 84.
40. License Agreement For Wire, Pipe And Cable Transverse Crossings And Longitudinal Occupations between Consolidated Rail Corporation and Algonquin Gas Transmission Corporation dated June 30, 1992 and recorded in Book 14557, Page 116.
41. Order of Taking by the Town of Milford Board of Selectmen dated September 17, 2001 and recorded in Book 25015, Page 1.
42. Agreement to convey all vehicular bridges by the Trustees of Penn Central Transportation Company to the Commonwealth of Massachusetts acting through its Department of Public Works dated August 16, 1972 and recorded in Book 5274, Page 457.

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 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 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 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 with respect to such assignment. The provisions of this Exhibit D and of Exhibit E shall apply to the assignment of the portion of the CSXT Milford Easement relating to the Conveyed Franklin Industrial to GU pursuant to a MBTA-User Operating Agreement; provided, however, that no Easement Transfer Payment shall be due to Grantee in connection with such assignment, and provided further that in connection with such assignment, (i) the 60-day periods referred to in Section 1 of this Exhibit D shall instead be 30-day periods, and (ii) the provisions of Section 2 of Exhibit E shall not apply.

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.

[illegible]

41000001

4452

①

AREA INSIDE BOLD LINE INDICATES
PROPERTY CONVEYED TO CSXT FROM
CONRAIL OR A/SE

1. *Chlorophyll a* (Chl a) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue and red regions of the visible spectrum. Chl a is essential for the light-dependent reactions of photosynthesis, where it converts light energy into chemical energy in the form of ATP and NADPH.

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VEHICLE OR TRAILER

[illegible]



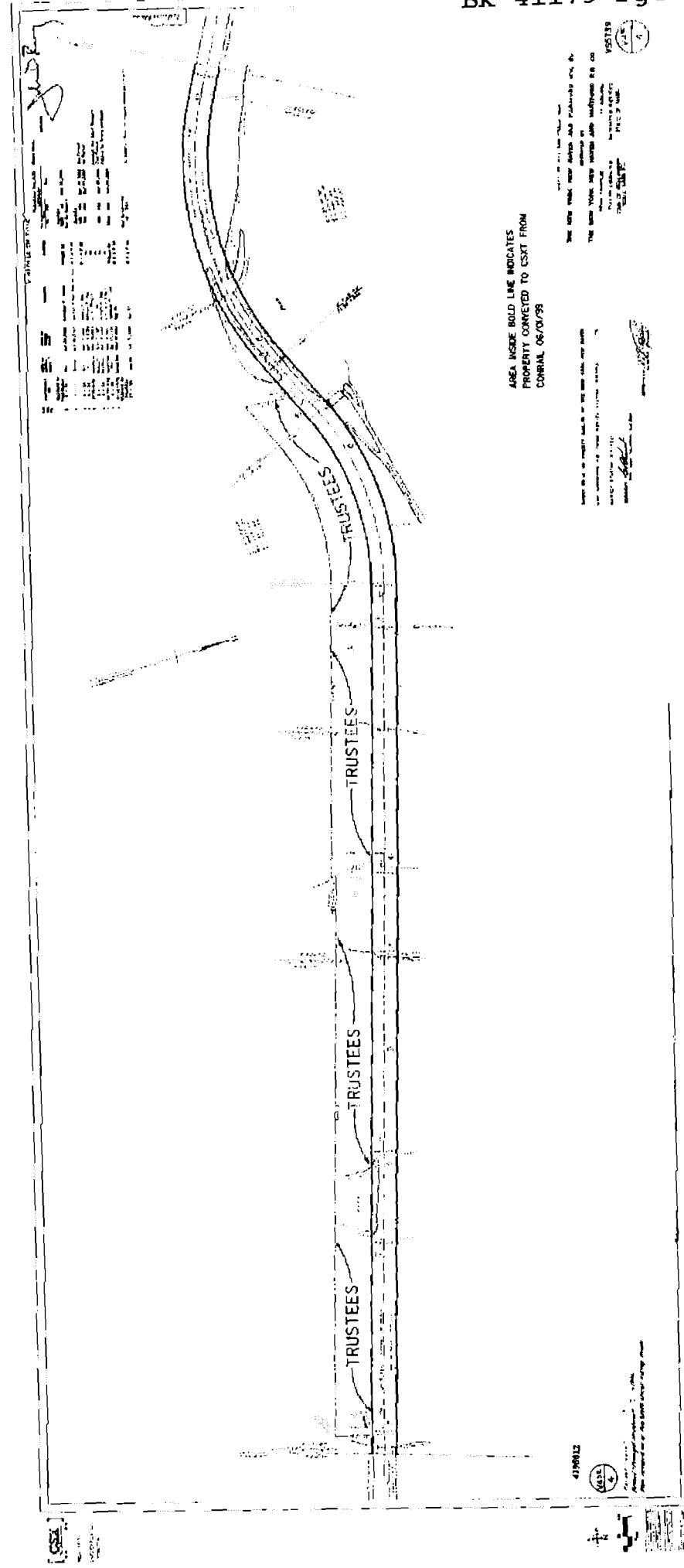
WILLIAMSON
DISCOUNT

418813

AREA INSIDE BOLD LINE INDICATES PROPERTY CONVEYED TO CITY FROM CENTERLINE 05/01/99

100' SCALE

05/01/99

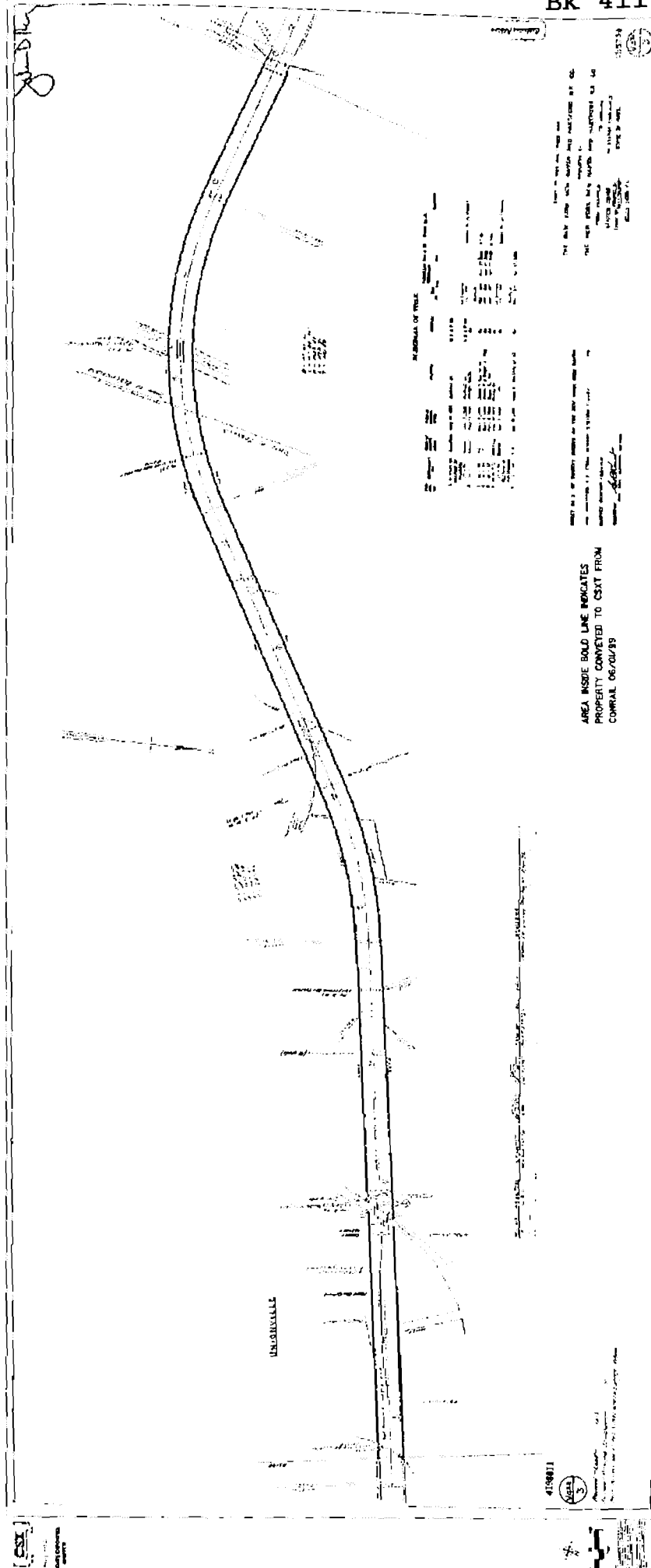


AREA INSIDE BOLD LINE INDICATES
PROPERTY CONVEYED TO CSXT FROM
CORRAL 06/01/98

THE STATE OF NEW YORK, COUNTY OF ALBANY, ss.
I, the County Clerk, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears of record in the County Clerk's Office.
WITNESS my hand and the Seal of said County, this 1st day of June, 1998.
COUNTY CLERK

4190012





STILL NO THEORY

AREA INSIDE BOXING LINE INDICATES
PROPERTY CONVEYED TO USAR FROM
CENTRAL OFFENSE

1000

1000

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[illegible]

24

THE NEW YORK NEW MEXICO AND NORTHWEST R.R. CO.
 INCORPORATED IN
 NEW YORK
 CAPITAL PAID UP \$1,000,000
 STOCK \$1 = 100 ST.

AREA INSIDE BOLD LINE INDICATES
PROPERTY CONVEYED TO CSXT FROM
CONRAL 06/04/79

4198814

$$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}$$

$$\left[\frac{\partial \mathbf{X}}{\partial \mathbf{X}^*} \right]_{\mathbf{X}^* = \mathbf{X}}$$

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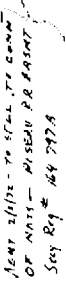
 Approved - Long - ... I. DASH
Revised - Proposed - ...
Date required as at ...

VS9004 LC 480 WP. 72-82

1. **Specimen**
 2. **Number**
 3. **Date**
 4. **Time**
 5. **Location**
 6. **Observer**
 7. **Remarks**
 8. **Signature**
 9. **Initials**
 10. **Printed Name**
 11. **Address**
 12. **City**
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 19. **Other**
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 21. **Notes**
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AREA INSIDE BOLD LINE INDICATES
PROPERTY CONVEYED TO CSXT FROM
CONRAIL 06/09/99

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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 5th day of May, 2023, 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 Worcester South Registry of Deeds in Book 69103, Page 119, and recorded with the Norfolk Registry of Deeds in Book 41179, Page 430 (the “**Deed**”) (i) a 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] (herein referred to as the “**Milford Secondary**”); and (ii) 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

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 over the Conveyed Franklin Industrial (the “**CFI 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. CSXT may in the future assign to User, and the MBTA has consented to such future assignment, CSXT’s rights pursuant to the CFI Freight Easement, for a limited term that is co-terminous with the term of the Assignment of Milford Easement and as may otherwise be set forth in an assignment and assumption instrument to be entered into by CSXT and User (an “**Assignment of CFI Easement**”);

E. 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.

- E. In the event that CSXT and User enter into an Assignment of CFI Easement, this Agreement shall govern the rights and obligations of the Parties with respect to the Conveyed Franklin Industrial for the term of the Assignment of CFI Easement, such that each Party shall have the same rights and obligations as to the Conveyed Franklin Industrial as are provided herein with respect to the Milford Secondary, and references to the Milford Secondary herein shall be deemed to include the Conveyed Franklin Industrial, to the extent applicable; provided, however, that this Section 1(E) shall only be effective from and after the later of:
1. the date that is thirty (30) days following the date that User shall provide the MBTA with written notice of the Assignment of CFI Assignment, including a copy of such assignment and an operations plan detailing User's planned use of the Conveyed Franklin Industrial; and
 2. User and/or CSXT, as applicable, shall have received all necessary determinations or approvals permitting User's operations on the Conveyed Franklin Industrial from the Surface Transportation Board and/or any other regulatory authority with jurisdiction over the Conveyed Franklin Industrial.

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 15th 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 **Error! Reference source not found..**
 - 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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:	Grafton and Upton Railroad Company 42 Westboro Road North Grafton, MA 01536
And a copy to:	James E. Howard, Esq. 57 Via Buena Vista Monterey, CA 93940

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

ARTICLE 26
GENERAL PROVISIONS

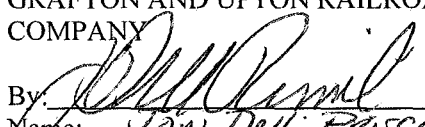
- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either 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

By: 
Name: Jan Dell'Arcosi
Title: President

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By: _____
Name: Jeffrey Gonneville
Title: Acting General Manager

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

By: _____
Name: _____
Title: _____

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By: _____
Name: Phillip Eng
Title: General Manager

DocuSigned By:
Phillip Eng
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