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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35892

**ENTERED
Office of Proceedings
December 19, 2014
Part of
Public Record**

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.**

MOTION TO DISMISS

EXPEDITED CONSIDERATION REQUESTED

**Robert A. Wimbish
Audrey L. Brodrick
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Phone: (312) 252-1504
Facsimile: (312) 252-2400**

**ATTORNEYS FOR MASSACHUSETTS
DEPARTMENT OF TRANSPORTATION**

Dated: December 19, 2014

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LIST OF EXHIBITS

- Tab A** - Verified Statement of Jay Westbrook, Assistant Vice President Passenger Operations, CSX Transportation, Inc.
- Tab B** - MBTA Commuter Rail Service Map [Current]
- Tab C** - Definitive Agreement Between CSX Transportation, Inc. and The Massachusetts Department of Transportation (Pertaining to the Purchase and Sale of the Framingham Secondary Line)
- Tab D** - 2014 Operating Agreement Between the Massachusetts Bay Transportation Authority and CSX Transportation, Inc.
- Tab E** - Release Deed and Assignment of Easement Rights [DRAFT]

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MOTION TO DISMISS

The Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation moves to dismiss the concurrently filed Notice of Exemption to acquire certain rail assets, identified below, from CSX Transportation, Inc.

I. OVERVIEW

The Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”), has invoked the Surface Transportation Board’s class exemption procedures at 49 C.F.R. part 1150, subpart D, to acquire certain railroad assets of CSX Transportation, Inc. (“CSXT”), specifically, certain rail assets (i.e., right-of-way, track, and related railroad physical plant) comprising the Framingham Secondary,¹ extending from milepost QBF 0.0 at Mansfield, MA, to milepost QBF 21.2 at Framingham, MA (near CP-21), a distance of approximately 21.2 route miles (the “Railroad Assets”).² The Framingham Secondary connects directly to the Commonwealth-owned trackage at Framingham, Walpole, and Mansfield, MA.

¹ The Framingham Secondary extends from Framingham, MA, to a connection with the Commonwealth-owned portion of the Northeast Corridor railroad line at Mansfield, MA.

² The proposed acquisition of the Railroad Assets is referred to as the “Proposed Transaction.”

CSXT will retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight common carrier easement over the Railroad Assets – an interest constituting a “line of railroad” for purposes of 49 U.S.C. § 10901.

MassDOT will acquire neither the right nor the ability to provide common carrier service over the Railroad Assets, and is contractually precluded from unduly interfering with CSXT’s provision of freight common carrier service over the Railroad Assets.³ MassDOT’s acquisition of the Railroad Assets is an element of the Commonwealth’s plan to extend regularly-scheduled MBTA commuter rail service between Boston and Foxboro, MA (the latter a point located along the rail route that is the subject of this proceeding), and to better integrate the various Commonwealth-owned rail lines radiating out from Boston South Station that already are used extensively for the provision of commuter rail service.

In accordance with Maine Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad, 8 I.C.C.2d 835 (1991) (“State of Maine”) and its extensive progeny including Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., FD 35312 (STB served May 3, 2010) (“MassDOT-I”), aff’d sub nom. Bhd. of R. Signalmen v. Surface Transp. Bd., 638 F.3d 807 (D.C. Cir. 2011) (“Brotherhood of R. Signalmen”), MassDOT hereby requests that its concurrently-filed verified notice of exemption (the “Notice”) in this proceeding be dismissed, because the transaction set forth

³ In that regard, Massachusetts Bay Transportation Authority (“MBTA”) (MassDOT’s designee to oversee rail operations over the Railroad Assets following MassDOT’s acquisition) and CSXT have negotiated an operating agreement (the “2014 Operating Agreement”) assuring to CSXT’s satisfaction that CSXT can fulfill all current and reasonably foreseeable rail freight service requirements without undue interference. See Verified Statement of Jay Westbrook, Assistant Vice President Passenger Operations, CSX Transportation, Inc., attached hereto as Exhibit A (the “V.S. Westbrook”).

in the Notice, as structured, does not involve the conveyance of a line of railroad, and thus does not require Board authorization under 49 U.S.C. § 10901 or MassDOT's invocation of the otherwise applicable class exemption procedure. Moreover, for the reasons discussed herein below, the parties to this Proposed Transaction respectfully request that the Board expeditiously review and act upon the present motion, so that the Proposed Transaction may be consummated by or before March 20, 2015.

II. BACKGROUND

MassDOT is a non-carrier instrumentality of the Commonwealth of Massachusetts. It is the Commonwealth's principal authority for developing and implementing state transportation planning, policy, and programs.⁴

CSXT is a Class I rail carrier whose network encompasses about 21,000 route miles of track in 23 states, the District of Columbia and the Canadian provinces of Ontario and Quebec. Among many other rail lines, CSXT owns and operates over the Framingham Secondary.

As additional background, MBTA currently offers daily commuter rail service over routes intersecting or connecting with the subject Railroad Assets as follows: (1) "Franklin Line" service (Boston South Station – Forge Park/495, via Fairmount, Readville, and Walpole); (2) "Providence/Stoughton" service over the Northeast Corridor line (Boston South Station – Wickford Junction or Stoughton, via Hyde Park, Mansfield, and Providence); and (3) "Worcester Line"

⁴ See Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC, STB Finance Docket No. 35147, Comments of the Commonwealth of Massachusetts' Executive Office of Transportation and Public Works [MassDOT's predecessor agency] (filed Aug. 11, 2008) at 3.

service (Boston south Station – Worcester).⁵ For certain special events such as New England Patriots football games at Foxboro, MA, MBTA offers “Special Events Only” service over the Walpole-Mansfield portion of the Framingham Secondary pursuant to agreement with CSXT. There is no regularly-scheduled commuter rail service to Foxboro.

The Proposed Transaction is being pursued as part of the Commonwealth’s plan to initiate direct service in the near future to Foxboro, and to better integrate elements of MBTA’s existing commuter rail network. By acquiring the Railroad Assets, MassDOT will secure ownership of a strategic rail asset critical to the new Foxboro service, and it will also secure a line connecting various MBTA commuter routes radiating from Boston South Station. The Railroad Assets transaction permits the Commonwealth to better integrate its commuter rail network, allowing MBTA, for example, to more easily re-deploy commuter rail equipment and locomotives among three of its Boston South Station service routes.

Beyond the above considerations, asset ownership affords the Commonwealth greater latitude in planning and implementing infrastructure and rail service improvements in the joint interest of freight and commuter rail passenger service. Thus, MassDOT’s proposed ownership of, and investment in, the Railroad Assets will result in improved track conditions permitting increased train capacity, faster operating speeds, and new and improved facilities supporting commuter rail service. In particular, as part of the preparatory work associated with the initiation of commuter rail service, MBTA has committed to undertaking the following improvements (the “Infrastructure Work” set forth in the 2014 Operating Agreement): (1) track structure improvements to permit operations at FRA Class 3 speeds; (2) replacing the main track and adding a new siding track at

⁵ See MBTA Service map attached hereto as Exhibit B.

Foxboro; (3) upgrading track and switches at Walpole Junction and Lewis Wye; (4) constructing a new station track at Foxboro; and (5) installing new dispatcher dual-controlled, power-operated switches and switch heaters at various dispatcher-controlled locations.⁶

MassDOT's new service will attract commuters who otherwise make use of local roads either to drive to and from points in or closer to Boston or to drive to existing, but more distant, MBTA stations. The transaction therefore will reduce roadway congestion and automobile emissions while also reducing road impacts. The transaction is keyed upon initiating Foxboro commuter rail service, but the Commonwealth understands that CSXT must remain able to offer reliable common carrier freight rail service to meet the current and foreseeable needs of shippers. For this reason, the Commonwealth and CSXT have negotiated transaction terms designed to ensure that freight rail service is not jeopardized – central among them being CSXT's retention of a perpetual and exclusive freight easement over the Railroad Assets and the protective provisions of the 2014 Operating Agreement.

A. The Railroad Assets

The Definitive Agreement Between CSX Transportation, Inc., and The Massachusetts Department of Transportation (Pertaining to the Purchase and Sale of the Framingham Secondary Line) (the "Definitive Agreement")⁷ describes the subject Railroad Assets in considerable detail as follows (boldface in original):

1.1.1 Seller's right, title and interest in the fee simple interests, easements, rights of access and all of Seller's right, title and interest in and to rights-of-way known generally as the Framingham Secondary . . . All of the interests to be conveyed by Seller to Buyer hereunder are generally described in **Exhibit A**, and are shown specifically in a set of plans (the

⁶ 2014 Operating Agreement (attached hereto as Exhibit D), § 4.1(a) ("Infrastructure Work").

⁷ Attached hereto as Exhibit C.

“Railroad Line Plans”) to be developed as **Exhibit A-1** pursuant to **Section 7.3.2** herein. The Railroad Line Plans shall also include a description of real property (the **“Excluded Real Property”**) to be excluded . . . ;

1.1.2. all of Seller’s right, title and interest in and to the tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, crossing protection devices, communication lines, poles and radio masts and signals (the **“Included Fixtures”**) which are affixed or located on or in, as of the Closing Date, the right-of-way described in the Railroad Line Plans, provided, however, that Seller shall not, after the Effective Date, cause a material change in the Included Fixtures sufficient to interfere with Buyer’s ability to provide commuter passenger service on the Railroad Line as provided for in the 2014 Operating Agreement . . . , but excepting any items of the kind described above which are located on the Excluded Real Property, all of which are hereby reserved by Seller and are excepted from the sale, transfer and conveyance to Buyer contemplated by this Agreement;

1.1.3 all of Seller’s right, title and interest in and to the items of personal property, supplies and other materials primarily used in, or primarily relating to, the operation[s] . . . , including those needed to properly operate and maintain the signal systems and grade crossing systems (the **“Included Tangible Personal Property”**) listed or described in a schedule (the **“Included Tangible Personal Property Schedule”**) to be mutually agreed upon by the Parties, but excluding the following items of personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios and radio control equipment, furniture, tools, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to Buyer hereunder and which is not affixed to the Subject Property on the Closing Date, except as any such property may be specifically listed or described in the Included Tangible Personal Property Schedule (the **“Excluded Tangible Personal Property”**) listed in a schedule (the **“Excluded Tangible Personal Property Schedule”**) to be mutually agreed upon between the Parties. Any personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Schedule shall be deemed to be included in the Excluded Tangible Personal Property Schedule (the Included Fixtures and the Included Tangible Personal Property are sometimes referred to hereinafter collectively as the **“Railroad Equipment”**);

1.1.4 to the extent assignable, all permits, licenses, certificates of occupancy, approvals, consents, variances and other authorizations that are used or necessary in connection with, the ownership or operation or other use of any of the Railroad Assets relating primarily to or necessary for the operation of the Railroad Assets (but excluding those necessary for the operation by Seller of the rail freight operations over the CSXT Framingham Easement) as conducted on the date hereof (all such permits and the like, the **“Permits”**) as set forth in a schedule (the **“Assigned Permits Schedule”**) to be mutually agreed upon by the Parties;

1.1.5 all real property interests of Seller described in the Railroad Line Plans including, without limitation, benefits which are appurtenant to the Railroad Line, together with all improvements, structures and fixtures thereon, and all easements, leases, privileges, rights-of-way, the interest of Seller in all land underlying any adjacent public streets or roads which streets and roads exist by reason of an easement over Seller's land, appurtenances, occupancy agreements, and other rights belonging to Seller and which Seller has the ability to convey, pertaining to, or accruing to the benefit of, the Subject Property; subject, however, to (a) those rights, interests, contracts, agreements, leases, occupancy agreements, easements and other rights which are listed, described in, or a part of the Excluded Real Property described in the Railroad Line Plans; and (b) the CSXT Framingham Easement, as set forth in the Deed(s) (defined below), excepting and excluding the Excluded Real Property; and

1.1.6 all of Seller's rights, benefits, obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses, occupancy agreements, and easements (the "**Intangibles**") to be transferred to Buyer (the "**Included Intangibles**") listed or described in a schedule (the "**Included Intangibles Schedule**") to be mutually agreed upon by the Parties but excluding any contract, agreement, lease, license, occupancy agreement or easement which expires or terminates in accordance with the terms thereof on or prior to the Closing Date (the "**Excluded Intangibles**") listed or described in a schedule (the "**Excluded Intangibles Schedule**") to be mutually agreed upon by the Parties. Seller is also reserving to itself the Intangibles (the "**Retained Intangibles**") listed in a schedule (the "**Seller's Retained Intangibles Schedule**") to be mutually agreed upon by the Parties.⁸

The Definitive Agreement also provides, however, that CSXT will retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement (the "CSXT Framingham Easement") allowing CSXT to serve current and future freight customers.⁹

B. Closing/Consummation

MassDOT and CSXT anticipate closing upon the Proposed Transaction by or before March 20, 2015, but in no event before the Board's decision on this motion to dismiss.

⁸ Definitive Agreement, §§ 1.1.1-1.1.6.

⁹ Id., § 1.1.1.

C. The CSXT Framingham Easement

Section 1.1 of the Definitive Agreement governing the sale of the Railroad Assets reads, in part, as follows (emphasis as in original):

Not included in the Railroad Assets are [CSXT]’s reserved, retained, perpetual, easement to provide rail freight service and for such other rights . . . as may be mutually agreed to pursuant to **Section 7.3.2** (the “**CSXT Framingham Easement**”), which [easement] shall (i) incorporate by reference the 2014 Operating Agreement . . . ; [and] (ii) provide that [CSXT] has the exclusive right to provide freight rail service and for such other rights as may be mutually agreed upon . . .

The terms of CSXT’s retained permanent, exclusive freight easement are set forth in the as-yet-unexecuted draft Release Deed and Assignment of Easement Rights (the “Deed”) attached hereto as Exhibit E. The Deed includes expansive definitions of the terms “Trackage,” “Railroad Purposes,” and “Rail Freight Service,” thus guaranteeing CSXT the “right to use all Trackage on the Property for the exclusive provision of Rail Freight Service.”¹⁰ In turn, “Rail Freight Service” is defined broadly as “[t]he transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities . . .”¹¹

The exclusive freight easement that CSXT will retain continues in perpetuity until “abandoned or terminated, as provided in the [2014] Operating Agreement.”¹² As discussed below, the 2014 Operating Agreement grants CSXT considerable discretion over any future abandonment or discontinuance of rail freight service on the Railroad Assets, and it sets forth specific terms and

¹⁰ Deed, § 6(c).

¹¹ Id., § 6(d).

¹² Id., § 6(a).

conditions pursuant to which CSXT's exclusive and permanent freight easement may be terminated in whole or in part pursuant to advance Board authority.¹³

D. Operations on the Railroad Assets

The Definitive Agreement, Deed, and 2014 Operating Agreement all provide for CSXT to continue to provide freight service over the subject rail corridor. Upon consummation of the proposed transaction, MassDOT will designate MBTA to assume day-to-day management and operation of the Railroad Assets, and consistent with that plan, MBTA will take responsibility for, among other things, maintaining the Railroad Assets' trackage and signals and dispatching.¹⁴ In keeping with that approach, MBTA and CSXT have entered into the 2014 Operating Agreement, governing, among other things, capital improvements, maintenance, day-to-day operational oversight, and dispatching. The 2014 Operating Agreement assures that MBTA's oversight does not unduly interfere with or burden CSXT's provision of freight service. Additionally, the Deed allows CSXT to transfer its common carrier freight service obligations to an affiliated or unaffiliated third party under certain circumstances. However, the governing agreements dictate that in no case will MassDOT or MBTA assume responsibility for, or control, the provision of freight common carrier service.

CSXT is the only freight rail operator using the Railroad Assets, and MBTA currently uses a portion of them to provide occasional "special event" passenger rail service to and from Foxboro. The 2014 Operating Agreement entitles CSXT to provide "CSXT Freight Rail Service" post-

¹³ 2014 Operating Agreement, § 5.

¹⁴ *Id.*, § 4.4 (Maintenance and Dispatch); 2014 Operating Agreement, §§ 2.4 and 2.5.

transaction.¹⁵ CSXT currently operates up to four round trip local trains Monday-Friday over all or portions of the Railroad Assets – two based out of Readville, one operating out of Walpole, and the fourth operating out of Framingham.¹⁶

Upon completion of post-transaction Infrastructure Work, MBTA plans to operate a total of 20 commuter trains between Boston and Foxboro (ten trains in each direction) via the route of MBTA’s Boston-Forge Park/495 “Franklin Line,” diverging from that service route at Walpole. See “Passenger Train Schedule,” appended as Exhibit G to the 2014 Operating Agreement.

In keeping with MBTA’s commitments elsewhere in the 2014 Operating Agreement not to interfere unduly with CSXT’s provision of freight common carrier service, that agreement also provides that MBTA’s post-transaction provision of maintenance on the Joint Usage Rail Property¹⁷ “shall be undertaken in a manner that does not unreasonably interfere with train operations.”¹⁸ Moreover, MBTA will use its best efforts to undertake track, right-of-way, and signal maintenance between the hours of 7 a.m. and 7 p.m., fairly apportioning maintenance work among the applicable operating windows (recognizing, however, that certain work, such as work on grade crossings and bridge replacements, often must be performed between 7 p.m. and 7 a.m.).¹⁹

As might be expected, CSXT and MBTA have agreed in advance of the initiation of regularly-scheduled MBTA commuter train service to established windows ascribing at various times priority for passenger or freight service. Specifically, MBTA and CSXT have agreed to – (a)

¹⁵ Id., § 1 (Definition of “CSXT Freight Rail Service”).

¹⁶ See “Freight Train Schedule,” appended as Exhibit H to the 2014 Operating Agreement.

¹⁷ Id., § 1 (Definitions).

¹⁸ Id., § 2.5(a)(1).

¹⁹ Id.

two daily “Commuter Windows” – 5:00 A.M. to 11:00 A.M. and 3:00 P.M. to 9:00 P.M. – during which timeframes MBTA commuter trains will have priority; (b) a daily “Freight Window” – 12:00 A.M. to 5:00 A.M. – during which timeframes CSXT freight trains shall have priority; and (c) two daily “Mixed Use Windows” – 11:00 A.M. to 3:00 P.M. and 9:00 P.M. to 12:00 A.M. – during which timeframes train dispatching shall be handled pursuant to an agreed-upon protocol taking into account the type of train, time of day and then-current passenger and freight train schedules.²⁰ In view of the operating windows and the transfer of dispatching responsibilities to MBTA, the 2014 Operating Agreement provides as follows:

MBTA shall establish a dispatching protocol . . . that (i) will take into account the Commuter Windows, Freight Window and Mixed Use Window[s] and minimize negative impacts on each other’s trains in all time periods, and (ii) will allow reasonable flexibility . . . to accommodate the movement of each other’s trains (including without limitation scheduled and unscheduled CSXT trains), provided however that in all circumstances a scheduled commuter rail train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes later than its scheduled time.²¹

In addition, section 2.2(c) of the 2014 Operating Agreement sets forth a process under which MBTA and CSXT may explore increases in train frequency, based on assessments of, among other things current track capacity, operating windows, technological advances, commercial circumstances, and CSXT’s common carrier obligation. As necessary, increased train traffic proposals (and capacity impacts) may be evaluated with the use of a traffic modeling program.²²

In addition, the 2014 Operating Agreement includes provisions under which MBTA may install, at CSXT’s request, additional infrastructure capacity (including, for example, the installation

²⁰ 2014 Operating Agreement, § 1 (Definitions).

²¹ Id., § 2.2(d).

²² Id.

of switches and siding, including any associated signaling to service any new locations) intended to improve or expand CSXT service on and over the Railroad Assets.²³

In sum, the 2014 Operating Agreement assures that both commuter passenger and freight trains are handled efficiently, and that – (1) CSXT will possess sufficient rights under a permanent and exclusive easement to provide common carrier freight service over the Railroad Assets without undue interference; and (2) MBTA will be able to offer commuters reliable rail transportation. As they may bear on the subject motion to dismiss, specific operational aspects of the 2014 Operating Agreement are reviewed in the Discussion section following.

III. DISCUSSION

State of Maine and the numerous ICC and Board proceedings stemming from that decision establish and reinforce, respectively, the proposition that a non-carrier public entity may under certain circumstances acquire railroad assets (such as track, signals, and right-of-way) and manage those assets going forward (including assuming responsibility for maintenance and dispatching) without the need for Board authority. In such cases where the seller or the seller's third-party designee retains the common carrier obligation and is granted sufficient post-transaction rights to ensure its ability to conduct freight operations without undue interference, the acquiring public entity does not become a federally-regulated rail common carrier. For the reasons discussed below, the proposed Railroad Assets transaction does not involve MassDOT's acquisition of a "railroad line" under 49 U.S.C. § 10901(a)(4), and MassDOT will not become a rail common carrier.

²³ Id., § 4.2 ("Improvements at the Request of CSXT").

A. The Modern-Day *State of Maine* Legal Construct and Section 10901

As a general rule, the acquisition of an active rail line by a non-carrier, including a state, requires Board approval under 49 U.S.C. § 10901. See Common Carrier Status of States and State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). However, a long line of firmly-established cases beginning with the seminal State of Maine decision distinguishes between – (1) the acquisition of a “railroad line,” including the acquisition of the common carrier obligation related thereto, requiring advance Board approval under 49 U.S.C. § 10901 or the acquirer’s invocation of the applicable class exemption; and (2) the purchase of railroad right-of-way and track assets subject to the selling railroad’s retention of a permanent, exclusive freight common carrier service easement which requires advance Board examination, but for which the Board ultimately may determine that its authorization of the transaction is unnecessary because it does not entail the conveyance of a “line of railroad” under section 10901. Transactions that fall within the latter category are commonly referred to as “State of Maine” transactions in view of the seminal Interstate Commerce Commission (“ICC”) case from 1991. Over the years, in proceedings such as Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., FD 35312 (STB served May 3, 2010) (“MassDOT-I”) at 4-8, aff'd sub nom. Bhd. of R. Signalmen v. STB, 638 F.3d 807 (D.C. Cir. 2011), the Board has clarified what sort of transaction satisfies the State of Maine criteria.

The State of Maine legal construct, under which certain rail asset transactions are deemed to be outside of the scope of section 10901, is, at this juncture, hardly novel, and transactions structured very much as this one have consistently been found not to require Board authorization. As the Board has stated, “since 1991, the ICC and the Board have followed State of Maine in more

than 60 cases, mostly involving acquisition of the physical assets of rail lines for commuter transportation, and regional, state and local agencies responsible for commuter transportation have come to rely on this precedent.” MassDOT-I at 6 (footnote omitted). Since issuance of the State of Maine decision, the agency repeatedly and consistently has explained that a railroad asset transaction does not involve the acquisition of a “railroad line” under section 10901(a)(4) where – (1) a key element of the bundle of assets – the freight carrier rights and obligations – are retained by the incumbent freight railroad (or its third-party designee); and (2) the railroad retaining the common carrier rights (typically by way of a permanent easement) cannot be forced to cease to offer service absent Board authorization. See, e.g., State of Maine at 837.

The mere acquisition of “a portion of a railroad” consisting of the “physical assets” divorced from the common carrier rights and obligations affixed to those assets can defensibly be said not to constitute the sale of a railroad line under section 10901. Bhd. of R. Signalmen v. Surface Transp. Bd. 638 F.3d 807, 811-13 (D.C. Cir. 2011). In Brotherhood of R. Signalmen, the D.C. Court of Appeals affirmed a Board decision that MassDOT’s purchase of railroad track and other rail assets from CSXT (assets not involved in the present MassDOT-CSXT transaction) did not entail the acquisition of a “railroad line” requiring authorization under 49 U.S.C. § 10901(a)(4). Important here and in all transactions presented under the State of Maine construct is that Brotherhood of R. Signalmen upheld the Board’s interpretation of the term “railroad line” as it is used in section 10901.

In Brotherhood of R. Signalmen, the D.C Circuit rejected the argument that section 10901(a)(4) requires in every case that the Board either authorize or exempt a non-carrier’s acquisition of railroad physical assets such that the acquirer becomes a regulated rail carrier. Id. at

812. The court accepted that the term “railroad line” is not “necessarily limited to a portion of a railroad’s assets; it may refer to a railroad’s entire railroad operation,” adding that the Board reasonably applied the concept of a “railroad line” to “the interstate freight transportation authority attached to the physical property” rather than to the physical assets themselves. Id. (citations omitted). In addition, the court observed that focusing on the physical assets transaction in isolation “ignores the [acquirer’s] intended use of the Railroad Assets, which is key to the determining whether [the acquirer would become] a ‘rail carrier’ subject to the Board’s jurisdiction.” Id. at 813.

The Brotherhood of R. Signalmen court also acknowledged that in State of Maine transactions “the seller does not relinquish its rights and obligations with respect to providing rail freight transportation,” so that the “noncarrier that purchases the physical assets of a rail line does not thereby assume any common carrier obligation” and does not become “a rail carrier providing transportation and the acquisition is not subject to section 10901(a)(4)’s authorization requirement” Id. at 812 (internal citations omitted). The Board consistently has relied upon Brotherhood of R. Signalmen (and agency precedent effectively upheld by that case) in subsequent proceedings involving transactions intended to satisfy the agency’s State of Maine criteria. See, e.g., Wisconsin Department of Transportation- Petition for Declaratory Order- Reedsburg Line Near Madison, Wis., FD 35854 (served November 6, 2014); Central Puget Sound Regional Transit Authority- Acquisition Exemption- Certain Assets of City of Tacoma In Pierce County, Wash, FD 35812 (served October 27, 2014); Florida Department of Transportation – Petition for Declaratory Order- Rail Line of CSX Transportation, Inc. Between Rivera Beach and Miami, Fla., FD 35783 (served October 1, 2014) (“FDOT – II”); New Jersey Transit Corporation- Acquisition Exemption-Norfolk Southern Railway Company, FD 35638 (served March 27, 2013); Santa Cruz County Regional

Transportation Commission- Petition For Declaratory Order, FD 35653 (served September 27, 2012); Wisconsin Department of Transportation- Petition for Declaratory order- Gibson Line in Milwaukee, WIS, FD 35401 (served August 15, 2012); State of Michigan Department of Transportation- Acquisition Exemption- Certain Assets of Norfolk Southern Railway Company, FD 35606 (served May 8, 2012) (“State of Michigan”); Santa Cruz Regional Transportation Commission – Petition for Declaratory Order, FD 35491 (served December 15, 2011); Wisconsin Department of Transportation Petition for Declaratory Order- Rail Lines in Almena, Cameron, and Rice Lake, Barron County, WIS, FD 35455 (served November 20, 2011); and Virginia Port Authority – Acquisition Exemption – Norfolk and Portsmouth Belt Line Railroad Company, FD 35532 (served August 1, 2011).

B. The State of Maine Standard Generally

For a railroad assets transaction to pass muster under the Board’s State of Maine analysis, the agreements governing the sale and post-transaction operations must protect the selling carrier (or its designee, if the selling railroad contemplates conveying its retained common carrier rights and obligations to a third party) from undue interference in its provision of common carrier freight rail service. State of Michigan, slip op. at 2 (citing MassDOT-I). Once again, “the sale of the physical assets of a rail line by a carrier to a state or other public agency does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901, *if certain conditions are met.*” Florida Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., FD 35110, slip op. at 3 (served Dec. 15, 2010) (“FDOT - I”) (citing State of Maine) (emphasis added). In practice, the “conditions” are that the asset-selling rail carrier must– (1) retain an exclusive, perpetual freight rail easement (or similar rights); and (2) possess the ability to carry out

its common carrier obligations to all freight rail customers without undue interference from the noncarrier purchaser. See The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company, FD 35128 (STB served Oct. 27, 2008), slip op. at 3 (“Port of Seattle”).

In such two-part analysis, the Board “looks to whether [the asset-selling railroad] would obtain a permanent, exclusive freight easement and would have sufficient interest in and control over the [rail line in question] to permit it to carry out its common carrier freight rail obligation” without unreasonable interference. State of Michigan at 3; and see also, e.g., Metro Regional Transit Authority – Acquisition Exemption – CSX Transportation, Inc., FD 33838 (STB served Oct. 10, 2003), slip op. at 4 (“Akron Metro”); New Jersey Transit – Acq. Exempt. – Certain Assets of Conrail, 4 S.T.B. 512, 514 (2000) (“NJT/Bordentown”). In certain recent State of Maine cases, the agreements governing post-transaction operations contained language that could be construed to enable the state subdivision to control (and terminate) the provision of freight service without Board authorization, despite language elsewhere purporting to grant the rail carrier a permanent and exclusive freight common carrier easement. But even in those proceedings, in the interest of facilitating the objectives of the acquiring state agency, the Board issued the requested State of Maine finding by construing ambiguous and clumsily-drafted contractual terms so as to permit the Board to make the requisite non-interference finding. See, e.g., Wisconsin Department of Transportation – Petition for Declaratory Order – Gibson Line in Milwaukee, Wis., FD 35401 (STB served August 15, 2012); and Wisconsin Department of Transportation – Petition for Declaratory Order – Rail Lines in Almena, Cameron, and Rice Lake, Barron County, Wis., FD 35455 (STB served November 10, 2011).

C. The *State of Maine* Standard is Met Here

The parties to this Railroad Assets transaction have carefully modeled it after those previously presented to the Board and found not to entail the sale of a rail line under section 10901. The transaction follows the usual State of Maine railroad asset sale rules, and does not require the Board to enlarge or expand upon past precedent. CSXT will retain the common carrier rights and obligations pursuant to its retention of an exclusive, irrevocable, perpetual, assignable, licensable, and transferable freight easement; neither MassDOT (the acquirer of the assets) nor MBTA (the entity to which MassDOT will delegate oversight of the rail assets post-transaction) will acquire the right to conduct freight common carrier service over the Railroad Assets; and MBTA, in managing and maintaining the Railroad Assets, will be precluded from unduly interfering with CSXT's provision of freight rail service. Building off of the easement rights, the 2014 Operating Agreement contains various commitments protecting CSXT's post-transaction provision of freight rail common carrier service. These factors, taken together with the fact that MassDOT will not hold itself out as a common carrier and will not acquire any common carrier rights, establish that MassDOT's purchase of the Railroad Assets does not involve a transfer of a common carrier obligation and does not require Board authorization. See Central Puget Sound Regional Transit Authority – Acquisition Exemption – BNSF Railway Company, FD 34747 (STB served November 18, 2005) at 2; Metro-North Commuter Railroad Company – Acquisition and Operation Exemption – Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC, FD 34293 (STB served May 13, 2003) (“Metro-North”) at 2, 3.

Finally, MassDOT is engaging in the subject transaction for purposes of establishing and promoting new MBTA commuter rail service. However, “the Board does not have jurisdiction . . . over mass transportation provided by a [State or State subdivision].”²⁴

1. The CSXT Framingham Easement

In keeping with the usual State of Maine transaction structure, CSXT will retain a permanent and exclusive easement to conduct rail freight operations on the Railroad Assets. Under the terms of the 2014 Operating Agreement, the subject freight easement would terminate with respect to a given portion of the Railroad Assets only if – (1) CSXT at its discretion were to obtain regulatory authority to abandon or discontinue service over any portion of the Railroad Assets; (2) MBTA were to invoke the provisions of the 2014 Operating Agreement to request CSXT to seek abandonment or discontinuance authority for any segment of the Railroad Assets over which CSXT has not provided freight rail service for a continuous 8-year period of time; or (3) after a continuous three-year period of freight rail inactivity, MBTA were to pursue and obtain regulatory authority

²⁴ 49 U.S.C. § 10501(c)(2). See Massachusetts Bay Commuter Railroad Company, LLC – Petition for Declaratory Order, FD 34332 (STB served Jun. 5, 2003); Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control, EP 574, FRA Docket No. 1999-4985, Notice No. 4 (STB served March 8, 2002), slip op. at 58 n. 14 (“[u]nder 49 U.S.C. 10501(c), the Board does not have jurisdiction over [commuter service] provided by a local governmental entity. Thus, a transaction involving a railroad subject to the Board’s jurisdiction and a commuter railroad ‘is . . . a one railroad transaction over which [the Board does] not have jurisdiction. . . .’”) (quoting Norfolk & Western Railway Company – Petition for Declaratory Order – Lease of Line in Cook & Will Counties, IL, To Commuter Rail Division of the Regional Transp. Auth. of Northeast Illinois, STB FD 32279 (STB served Feb. 3, 1999)).

pursuant to an adverse abandonment or discontinuance proceeding to terminate CSXT operations over the inactive segment(s) of the Railroad Assets.²⁵

This is not a case where the freight easement is subject to periodic renewal at the state's discretion, or where the state agency has the contractual right to compel the carrier's abandonment of freight service. Cf. Wisconsin Department of Transportation – Petition for Declaratory Order, FD 34764 (STB served December 2, 2005) at 2; Southern Pac. Transp. Co. – Aban. – L.A. County, CA, 8 I.C.C.2d 495 (1992), recons. denied, 9 I.C.C. 2d 385 (1993); see Sacramento-Placerville Transportation Corridor Joint Powers Authority – Acquisition Exemption – Certain Assets of Southern Pacific Transportation Company, FD 33046 (STB served Oct. 28, 1996) (“Sacramento-Placerville”) at 2 (no Board jurisdiction where public agency “has no power to require [carrier] to discontinue or curtail its freight service on the line.”). Rather, CSXT's rights can be terminated permanently under invocation of the Board's abandonment procedures only, and then only under very limited circumstances and upon appropriate showing to the Board.

MBTA may assign its rights, interests or obligations under the 2014 Operating Agreement to another party upon 60 days prior written notice, provided that any MBTA assignment “does not in any way impair or adversely affect the rights of CSXT.”²⁶ On the other hand, transfer of CSXT's retained freight easement is conditioned upon compliance with Transferee Standards. Specifically, under the aforementioned Transferee Standards, CSXT is limited in its ability to assign or otherwise transfer its retained freight easement to any third party, other than a subsidiary or CSXT corporate affiliate, that does not meet prior experience and capability standards set forth in Exhibit G of the

²⁵ 2014 Operating Agreement, § 5.1.

²⁶ *Id.*, § 18(c).

Definitive Agreement and Exhibit E of the Deed. Such measured restrictions on post-transaction freight easement transfers are permissible under the State of Maine construct,²⁷ particularly where, as here, the provisions governing potential future freight easement transfers do not unreasonably interfere with CSXT's ability to fulfill its common carrier obligations.²⁸

2. Contractual Protections Against Undue Interference with the Provision of Freight Common Carrier Service

MassDOT's proposed acquisition of the Railroad Assets strikes an appropriate balance between the sometimes competing interests of freight and passenger service, and, in so doing, is structured to satisfy the State of Maine criteria. In fact, the transaction is an example of a successful public-private partnership designed to accomplish two important objectives – (1) to preserve and aid freight common carrier service on a lower-density line; (2) to establish commuter passenger rail service and promote the same through improved route infrastructure, MBTA operational oversight, and passenger service reliability.

The 2014 Operating Agreement accounts for CSXT's current operations, makes provision for freight traffic growth, and allows for capacity improvements and operating changes designed to establish and promote commuter train service on the Railroad Assets. Freight-passenger "shared use" arrangements such as this one can be structured to secure a Board finding (frequently essential to consummation) that the proposed transaction– (1) does not require agency approval; (2) would not result in the acquiring public entity becoming a rail common carrier; and (3) does not result in undue interference with the freight rail operation by the commuter railroad. In similar

²⁷ "It is not uncommon for a public entity . . . that seeks to acquire the physical assets of a rail line to use or preserve for rail freight and commuter service [] to play a role in the subsequent assignment of the freight easement..." Port of Seattle at 4.

²⁸ The Transferee Standards in this case are identical to the Transferee Standards in MassDOT-I.

circumstances, MassDOT previously has obtained such a Board finding in connection with a previous railroad assets acquisition.²⁹ Indeed, the Board consistently has found that the State of Maine construct can and does apply to properly-structured transactions involving shared freight and passenger use, including those in which the state subdivision will acquire the railroad assets and the rights and obligations to maintain the tracks and signals and to dispatch trains.³⁰

MassDOT's proposed acquisition of the Railroad Assets will not subject CSXT freight operations to any material adverse impact. The parties anticipate no significant post-transaction changes in freight service demand on the Railroad Assets, and they expect that CSXT will be able to provide at least the same level of freight service. Under the 2014 Operating Agreement, MBTA

²⁹ MassDOT-I.

³⁰ The Board's evaluation processes in shared use State of Maine-style transactions have been spelled out as follows:

To balance the development of [passenger rail transportation] with the retention of freight rail service, the freight carrier need not necessarily retain full control. Instead, the Board examines in each case whether the agreements between the parties continue to give the freight carrier the ability to conduct its existing and reasonably foreseeable freight operations so that it can satisfy its common carrier obligation.

While the freight carrier must continue to have a permanent easement or its equivalent to provide freight service, the public agency acquiring the right-of-way and track may negotiate terms and conditions with the freight carrier necessary to provide reliable [passenger rail service] or protect the agency's investment so long as such terms and conditions do not unreasonably interfere with freight rail service. Thus, the easement or the operating agreement may restrict freight operations to specific parts of the day, provided that the window for exclusive freight operations is adequate to satisfy the service needs of freight shippers. Likewise, the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight carrier has the right to inspect and to request prompt repair of any track defects.

Maryland Transit Administration – Petition for Declaratory Order, FD 34975 (STB served Sept. 19, 2008), slip op. at 4-5 (“MTA-II”) (footnotes citing to various other State of Maine-style decisions supporting the subject propositions omitted).

will perform dispatching and maintenance subject to carefully-crafted provisions that prevent discrimination against CSXT freight service, and MBTA will undertake appropriate and timely upkeep of the trackage so as to prevent undue freight service disruption.³¹ The Framingham Secondary's light-density freight service characteristics make it unlikely that MBTA commuter rail service, which will be implemented with proper regard for the CSXT-retained easement and attendant freight common carrier obligation, will present an undue obstacle to freight rail service.

As this motion emphasizes throughout, MassDOT and CSXT have executed the 2014 Operating Agreement in observance of CSXT's exclusive rights and obligations to provide adequate service to freight shippers, and they have modeled that agreement after arrangements that the Board has examined and approved of in other State of Maine-style proceedings. MassDOT believes that CSXT's freight service obligations can and will easily be accommodated now and in the foreseeable future under the shared-use arrangements contained in the 2014 Operating Agreement. Indeed, as the V.S. Westbrook conveys, CSXT is confident that the subject transaction has been so structured so as to safely ensure that CSXT will be able to continue to fulfill its common carrier obligations on the Railroad Assets following the transaction.

MassDOT (and MBTA) take very seriously their commitments to CSXT and their collective assurance as set forth herein that neither will unduly interfere with the provision of rail freight service. Moreover, MassDOT anticipates that the Board may hold the Commonwealth to the

³¹ See also 2014 Operating Agreement at § 2.5(a)(5) (CSXT self-help provisions in the event that MBTA has not complied with its maintenance requirements under that agreement); and § 4.1(a)(1) (providing for infrastructure improvements designed to increase track conditions meeting FRA Class 3 standards).

assurances it has extended in this motion, consistent with the stated objectives and outcomes of the transaction as set forth in the agreements governing this transaction.³²

a. Maintenance and Dispatching

As explained above, MassDOT will acquire the Railroad Assets to extend commuter rail service. MassDOT will delegate day-to-day management of the rail assets to MBTA, which has near-term plans to improve Framingham Secondary track conditions, and will undertake related capital improvements designed to expand operating capacity. MBTA commuter trains will become a major user of the Railroad Assets. The subject trackage interconnects with Commonwealth-owned lines at three locations – Framingham, Walpole, and Mansfield – each of which happens also to be the location of an existing MBTA commuter rail station feeding traffic to and from Boston South Station. MBTA will be responsible for the maintenance and dispatch of the Subject Railroad Assets as it is for other track previously acquired from CSXT and to which the Framingham Secondary connects. Among other benefits, MBTA oversight of the Railroad Assets assures a better coordination of commuter train and light equipment movements among the existing and future MBTA service routes that are linked together by way of the Framingham Secondary. The transfer of dispatching and maintenance responsibilities in light of the circumstances is consistent with similar such transfers in other State of Maine-style transactions presented to the Board.³³

³² See Port of Seattle, slip op. at 5 (the Board “will hold the parties to their assurances to refrain from interfering materially with the third-party operator’s right and obligation to provide rail freight service”).

³³ The Definitive Agreement contemplates that MassDOT will assume maintenance responsibility for certain track segments that are already owned by MassDOT but maintained by CSXT under a 1985 Trackage Rights Agreement. MassDOT is assuming maintenance responsibility for this track so it can better plan and prepare for eventual commuter operations over this track.

The Board has found that “reasonable restrictions on freight operations are acceptable if necessary to permit commuter operations and the freight carrier has sufficient access to conduct its existing and reasonably foreseeable freight operations.” Mass DOT-I, at 9. Building from that general premise, the Board has stated that “while a permanent easement to provide freight service is still required . . . the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight carrier has the right to inspect and to require the prompt repair of any track defects.” Id. at 9-10. More recently, the Board has recognized that parties to a railroad assets transaction structured to satisfy the State of Maine criteria may offer a “legitimate business justification” for transferring maintenance and dispatching to the acquiring public entity or (as in this case) its designee. See, e.g., FDOT- II at p. 6 (transfer of maintenance and dispatching duties to state agency justified where commuter trains are the predominant user of the rail assets when compared to freight trains). The Board frequently has given credence to the legitimate business reasons driving public agencies to assume control dispatching and maintenance responsibilities as part of railroad asset transactions presented for examination (and ultimately “approved” by the Board) under the State of Maine criteria. See, e.g., Virginia Port Authority, FD 35532 at 4-5 (a legitimate business reason exists for the transfer of maintenance and dispatching responsibility where the rail asset acquirer will fund infrastructure enhancements to improve and expand operations within state-owned port facility); State of Michigan, slip op. at p. 4 (transfer of maintenance and dispatching responsibility justified in light of state agency’s objective in improving high-speed passenger rail service).

The Board regularly and consistently has held that railroad asset acquisitions by states or state agencies – including transactions where the acquirer will assume maintenance and dispatching responsibilities – do not require agency authorization under section 10901 and do not thrust upon the acquirer a common carrier status (and the attendant obligations) as long as there are appropriate protections in place for the continued provision of common carrier service by the freight easement holder. In fact, in contemporary transactions presented to the agency under State of Maine and its progeny, it has become customary for the acquiring non-carrier state agency to take on maintenance and dispatching duties. See, e.g., Florida DOT-I; Virginia Port Authority; State of Michigan; Florida DOT- II; New Jersey Transit; Maryland Transit Administration – Petition for Declaratory Order, FD 34975 (STB served Oct. 9, 2007) (“MTA-I”) at 6; Akron Metro at 3; Sacramento-Placerville at 2; and Los Angeles County Transportation Commission – Petition for Exemption – Acquisition from Union Pacific Railroad Company, FD 34374 (STB served July 23, 1996) (“LACTC”) at 3 (needs of passenger service give agency added incentive to fulfill track maintenance obligation).

This transaction is comparable in structure and purpose to the Framingham-Worcester component of the transaction the Board ruled upon in MassDOT-1, where, as is also the case here, MBTA proposed to assume responsibility for maintenance and dispatching. Accordingly, the subject transaction is in line with State of Maine precedent. Additionally, for the reasons articulated above MBTA dispatching will assure fluidity in the movement of commuter trains and equipment moving from one Commonwealth-owned route to another; and due to the interconnectedness of the Railroad Assets and other Commonwealth-owned and MBTA-managed (and dispatched and

maintained railroad assets) – MBTA has a legitimate business justification for assuming responsibility for maintenance and dispatching.

i. Maintenance

A public entity’s assumption of the “responsibility for track maintenance by itself does not constitute an acquisition of a railroad line requiring Board authorization.” Virginia Port Authority at 4. As it has done in other cases, the Board in Virginia Port Authority found that the proposed transaction satisfied the State of Maine criteria where the railroad asset-acquiring public agency would assume responsibility for asset maintenance because the operating agreement – (1) protected freight service; (2) required that the public agency maintain the line to specified FRA standards; and (3) provided the freight carrier with the opportunity to make necessary repairs if public agency failed to do so. Id.; See also FDOT-I at 8; FDOT – II at 4; State of Michigan at 4 (each of these three cases involving transactions that satisfied State of Maine criteria where similar maintenance provisions were in place).

The 2014 Operating Agreement requires MBTA to maintain the Railroad Assets, stating that “maintenance shall be undertaken in a manner that does not unreasonably interfere with train operations,” and requiring MBTA to use its “best efforts to schedule all maintenance service operations between certain windows.”³⁴ MBTA shall maintain the Railroad Assets to a condition that is appropriate for both passenger and freight rail operations and that “shall always meet or exceed the standard required by FRA rules and regulations for the agreed upon designated class of track.”³⁵ Finally, the Operating Agreement contains robust protections and procedures governing

³⁴ 2014 Operating Agreement, § 2.5(a)(1).

³⁵ Id., § 2.5(a)(3).

highly unlikely instances under which MBTA has failed to perform its maintenance obligations properly, and it allows CSXT to conduct necessary and required maintenance to protect its own operations.³⁶

Accordingly, MassDOT requests the Board to find here, in keeping with numerous past cases, that MBTA's assumption of control over maintenance does not impose upon MassDOT or MBTA a common carrier status or obligation, does not unduly interfere with CSXT's freight railroad operations, and, ultimately, that the maintenance arrangements in place here permit the requested finding that the Proposed Transaction does not require the agency's authorization.

ii. Dispatching

In MassDOT-I, the Board observed (as it had in earlier cases) that "dispatching control has less importance in its own right than it has as a means of enforcing the service priorities in the operating agreement. If the operating agreement considered as a whole is not likely to impair freight service, the passenger operator's control over dispatching will not by itself create such an obstacle, because the latter merely implements the former." MassDOT-I at 10 (citations to cases with similar or virtually identical pronouncements omitted). The 2014 Operating Agreement provides for MBTA to assume the management of dispatching and control of all trains on Railroad Assets, but it also provides that such control "shall be exercised in a manner which does not violate CSXT's rights to use MBTA Rail properties" and which "will make all reasonable efforts to expedite the movement of freight trains."³⁷

³⁶ Id., § 2.5(a)(5).

³⁷ Id., § 2.4(a).

This arrangement is in keeping with the State of Maine construct, and similar dispatching arrangements have been found to satisfy the State of Maine dismissal criteria. See, e.g., FDOT-I, slip op. at 9 (finding the eventual transfer of dispatching duties from freight carrier to public agency is permissible where specific protocols for the movement of passenger trains and freight trains were mutually agreed to by the parties); MTA-I at 6 (state agency control of dispatching is permissible where conducted in accordance with agreed-upon protocols aimed at protecting freight rail service); Virginia Port Authority at 4 (noting agency control of dispatching permissible where dispatching will not impair or interfere with freight services); State of Michigan at 3 (DOT control of dispatching permissible because it will take into account needs of both freight and passenger rail service). The 2014 Operating Agreement provides CSXT with the necessary protections for freight rail service and is in keeping with the those arrangements the Board has previously recognized as acceptable in similarly-structured State of Maine transactions.

As a final consideration, MBTA already dispatches trains on multiple rail routes where both freight and passenger trains make use of Commonwealth-owned railroad facilities. One such example is the MassDOT-owned and MBTA-managed 23-mile rail route from Framingham to Worcester, MA – the subject of State of Maine analysis in MassDOT-I. In that proceeding, MassDOT acquired railroad assets between Framingham and Worcester from CSXT, and installed MBTA to assume dispatching, among other things. The line segment hosted, and continues to host, CSXT main line freight trains, Amtrak intercity passenger service, and MBTA commuter rail service. The Board determined in the MassDOT-I proceeding that the operating agreement that would govern MBTA dispatching adequately balanced and protected the interests of all users of the rail line. Due in part to this determination, the Board also found that 49 U.S.C. § 10901 did apply to

MassDOT's acquisition of the Framingham-Worcester railroad assets. Based on MBTA's post-transaction handling of dispatching on the Framingham-Worcester line and its extensive history of dispatching other Commonwealth-owned rail routes hosting freight and passenger trains, MassDOT submits that the Commonwealth's record speaks for itself – MBTA has proven fully capable of dispatching trains to accommodate the needs of freight shippers and passengers. There is no basis here to presume that the Commonwealth would deviate from such a well-recognized, admirable “track record” to compromise freight rail service in a way that raises questions about whether MassDOT's non-carrier status is justified.³⁸

3. Operating Windows

The 2014 Operating Agreement prescribes operating windows within which freight trains and passenger trains are accorded higher or lower priority, as is often the case in transactions involving joint use operations. Such operating window arrangements are acceptable under the State of Maine dismissal criteria. See, e.g., MassDOT-I at 12; MTA-II at 5; New Mexico Department of Transportation – Acquisition Exemption – Certain Assets of BNSF Railway Company, FD 34793 (STB served Feb. 6, 2006) (“New Mexico DOT”) at 2 (preferential operating windows not prohibited where carrier retains ability to provide freight service and “Amtrak service [is] provided in accordance with statutory and contractual standards”); Akron Metro at 4; NJT/Bordentown, 4

³⁸ The Board has considered probative the acquiring state agency's experience with hosting freight and passenger service on state agency-owned tracks. See, e.g., New Jersey Transit Corporation – Acquisition Exemption – Norfolk Southern Railway Company, FD 35638, (STB served Mar. 27, 2013), slip op. at 4, n. 10, (observing the “parties [intent] that NJ Transit shall not be able to conduct [maintenance and dispatching] in a manner that unreasonably interferes with [the freight railroad's] ability to provide common carrier rail service,” and noting that New Jersey Transit has nearly 30 years of experience coordinating passenger operations with those of freight railroads).

S.T.B. at 515. The operating windows proposed here accommodate and protect freight service and commuter service, and reflect the parties' reasonable expectations as to future capacity needs.

In addition, the 2014 Operating Agreement contains provisions for the possible future expansion of commuter and freight service, but the parties have agreed that any additional train service by one user should not unreasonably impact the train service of the other user.³⁹ The 2014 Operating Agreement also ascribes priority to passenger trains operating within 10 minutes of an established train schedule.⁴⁰ Aside from that, the 2014 Operating Agreement stipulates that dispatching within any of the operating windows will be undertaken so as to “make all reasonable efforts to expedite the movement of freight trains, including expediting repairs to lines removing obstructions, and scheduling regular maintenance and repair programs at hours which will not unreasonably interfere with such movement.”⁴¹

MassDOT respectfully submits that the operating windows set forth in the 2014 Operating Agreement adequately accommodate the sometimes competing needs of freight and passenger rail service and protect existing and reasonably foreseeable freight traffic capacity demands. Accordingly, the prescribed operating windows strike the kind of balance that the Board has sanctioned in other State of Maine-style transactions. See, e.g., MassDOT-I; MTA-II; New Mexico DOT; Akron Metro; NJT/Bordentown. As such, MassDOT requests the Board to find, consistent with precedent, that the proposed operating arrangements and balanced allocation of operational priority satisfy the State of Maine criteria. Moreover, CSXT has itself concluded that the subject

³⁹ See, e.g., *id.*, § 2.2(c).

⁴⁰ *Id.*, § 2.2(d).

⁴¹ *Id.*, § 2.4(a).

operating windows will not unduly restrict CSXT's post-transaction provision of freight service over the Railroad Assets. See V.S. Westbrook.

4. Freight Service Capacity Improvements

The 2014 Operating Agreement does not mandate the removal of any spur track or switches connecting the Railroad Assets main trackage to siding or spur track serving freight customers. Rather than thwart future freight traffic growth, the 2014 Operating Agreement contemplates growth, and provides for expanding on-line traffic opportunities. Thus, CSXT may request (and fund) the installation of switches, sidings, and other such physical plant additions or improvements permitting CSXT to access shippers located (or to be located) along the Railroad Assets.⁴²

Once again, MassDOT respectfully submits that these arrangements for freight service capacity improvements, like others bearing on train service over the Railroad Assets, are in keeping with State of Maine principles and past precedent where the Board has determined that the transaction parties had adequately protected the easement-holder's future ability to provide rail common carrier service over transferred assets. See State of Maine – Petition for Declaratory Order, FD 35440, slip op. at 4 (STB served December 29, 2010) (rail assets acquisition transaction found to be consistent with State of Maine in part because the asset-selling carrier could construct improvements or additions such as turnouts, sidetracks, industrial spur tracks to sold assets to facilitate existing and future freight service).

5. Labor Considerations

CSXT has advised MassDOT that CSXT does not anticipate that the sale of the Line to the Commonwealth will have a significant impact on CSXT employees.

⁴² Id., § 4.2.

At closing or shortly thereafter, MBTA will assume responsibility for all maintenance and dispatching of the Line then being done by CSXT. As a result, CSXT anticipates that it will abolish the positions of one Maintenance of Way worker and one Signaller. CSXT expects to displace four Signallers and three Maintenance of Way workers. CSXT does not plan to furlough any employees. CSXT expects to absorb the employees whose positions are abolished through attrition and other work. CSXT has offered to negotiate agreements with its unions representing employees potentially affected by the transaction, which would provide New York Dock-type economic protective benefits to employees adversely affected by the sale of the Line to the Commonwealth.⁴³

EXPEDITED CONSIDERATION

MassDOT and CSXT have committed to a timetable for this transaction, pursuant to which MassDOT plans to close on its purchase of the Railroad Assets by no later than March 20, 2015. Failure to consummate the sale by that deadline would be detrimental to the Commonwealth's transportation planning and funding initiatives, which are linked to the orderly acquisition of the Railroad Assets, and could potentially prevent the Railroad Assets from being considered during the upcoming budget planning cycle or result in loss of the funding currently planned for the acquisition and improvement of the Railroad Assets. Of particular note, the agreements governing the Railroad Assets transaction provide that MBTA commuter rails service to Foxboro may commence following completion of agreed-upon rail infrastructure improvements. These improvements are expected to cost millions of dollars (the full extent of the costs have not yet been determined), and they will take months to complete.

⁴³ This section of the motion to dismiss is based upon statements contained in the V.S. Westbrook.

MBTA would benefit considerably from being able to commence improvement work as soon as the spring construction season begins, thereby avoiding as much as possible weather-related delays later in the year. Prompt action on the motion, and swift consummation of the Proposed Transaction as soon as possible thereafter will allow Commonwealth-funded improvement work to move ahead earlier in the construction season, thereby enabling an earlier initiation of MBTA commuter rail service.

For these reasons, MassDOT respectfully requests that the Board render its decision on the merits of the subject motion in time to permit the parties to consummate the Proposed Transaction on or before March 20, 2015.

The requested decisional timeline is consistent with the Board's handling of a number of similar State of Maine-style transactions, such as State of Maine-II (Board decision issuing the requested finding in two months), State of Michigan (decision granting motion to dismiss "effective on its service date" issued 39 days after motion to dismiss was filed), New Mexico DOT (decision issued within two months), and Metro-North (also, two months).

CONCLUSION

For the foregoing reasons, MassDOT respectfully requests that the Board dismiss MassDOT's concurrently-filed notice of exemption in this docket as not involving a transaction requiring Board approval under section 10901 (or under a class exemption from those statutory provisions), and that the Board so act in order to enable closing on this transaction by no later than March 20, 2015.

Respectfully Submitted,



Robert A. Wimbish
Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(312) 252-1504

Attorneys for Massachusetts
Department of Transportation

DATED: December 19, 2014

COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY

The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with documents prepared by or on behalf of the Commonwealth. Specifically, the Commonwealth encourages greater use of recycled and environmentally preferable products to minimize waste and to promote further recycling. To the extent practicable in light of STB filing requirements, this motion to dismiss filing adheres to the Commonwealth's policies by using recycled paper with a minimum post-consumer content of 30%, recyclable and/or re-usable binding materials, and other products that contain recycled content.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

EXHIBIT A

**VERIFIED STATEMENT
OF
JAY WESTBROOK**

My name is Jay Westbrook. I am Assistant Vice President Passenger Operations for CSX Transportation, Inc. (“CSXT”). I have 30 years of experience in the rail industry and have served in my current position since 2012. As Assistant Vice President Passenger Operations, my responsibilities include directing and overseeing passenger trains operating on the CSXT network, passenger train policy development and contract negotiations, and passenger access and operating agreements.

CSXT is a Class I rail carrier operating 21,000 route miles of rail lines in 23 states east of the Mississippi River, the District of Columbia and the Canadian Provinces of Ontario and Quebec. Based in Jacksonville, Florida, CSXT is the largest railroad in the eastern United States providing rail services to more than 70 river, ocean and lake ports, as well as more than 200 short line railroads.

CSXT currently owns and operates the Framingham Secondary between milepost QBF 0.0 at Mansfield, MA, and milepost QBF 21.2 at Framingham, MA, which is approximately 21.2 route miles (the “Line”).

CSXT has reached agreement with the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Transportation (“Commonwealth”), to sell the real property and the physical assets of the Framingham Secondary Line. The Commonwealth plans to extend regularly-scheduled commuter rail service between Boston and Foxboro, MA, and to better integrate the various Commonwealth-owned rail lines radiating out from Boston South Station that already are used extensively for the provision of commuter rail service.

The Massachusetts Bay Transportation Authority (“MBTA”) is the Commonwealth’s designee to oversee rail operation over the Line following the Commonwealth’s acquisition. MBTA and CSXT have negotiated an operating agreement (the “2014 Operating Agreement”) which assures to CSXT’s satisfaction that CSXT can fulfill all current and reasonably foreseeable rail freight service requirements without undue interference.

The sale of the Line is expected to occur on or before March 20, 2015, but in no event before the Board’s decision.

As part of the sale agreement with the Commonwealth, CSXT will reserve a permanent freight easement over the Line, allowing CSXT to continue to fulfill its common carrier obligation over the Line.

The Commonwealth will have no right to conduct common carrier freight operations on the Line. The parties’ agreements make clear that CSXT retains the common carrier obligations through its permanent freight easement for the Line. The Commonwealth and MBTA are not assuming any common carrier obligations due to shippers on the Line, nor will they have the right to interfere unreasonably with the common carrier obligations that CSXT is retaining on the Line following consummation of the transaction.

MBTA currently provides daily commuter rail service over routes that intersect or connect with the Line. MBTA also offers “Special Events Only” service over the Walpole-Mansfield portion of the Line, for events such as New England Patriots football games at Foxboro. There is currently no regularly-scheduled commuter service on the Line.

I personally participated on behalf of CSXT in the negotiation of the 2014 Operating Agreement between MBTA and CSXT, which will govern operations, maintenance and dispatching of the Line.

As set forth in the 2014 Operating Agreement, the parties have agreed to operate pursuant to three types of daily “operating windows” as follows: (i) “Commuter Windows”- 5:00 A.M to 11:00 A.M. and 3:00 P.M. to 9:00 P.M, during which timeframes commuter trains will have priority; (ii) a “Freight Window”- 12:00 A.M. to 5:00 A.M., during which timeframe CSXT freight trains will have priority; and (iii) “Mixed Use Windows” 11:00 A.M. to 3:00 P.M. and 9:00 P.M. to 12:00 A.M. during which timeframes train dispatching shall be handled pursuant to an agreed-upon protocol taking into account the type of train, time of day and then current passenger and freight train schedules. CSXT will be able to meet its common carrier obligations during these windows.

No passenger trains will move over the Line until certain infrastructure work is completed. The planned Infrastructure Work consists of the following: (1) upgrading the line from Framingham to Mansfield to FRA Class III (40 mph for freight); (2) constructing a 6,400 foot siding and a 1,900 foot siding in Foxboro; and (3) upgrading Walpole Junction and Lewis Wye with remotely controlled power operated switches at both end; (4) constructing passenger station track in Foxboro; and (5) installing dispatched dual controlled power operated switches and switch heaters at all locations between Framingham and Mansfield.

CSXT currently operates up to four round trip local trains Monday through Friday over the Line, two trains based out of Readville, one operating out of Walpole, and one operating out of Framingham. The operating windows that CSXT has preserved will allow CSXT to continue to provide similar service to its shippers after the Line is acquired by the Commonwealth.

I can state from my personal involvement in the negotiation of the 2014 Operating Agreement that the operating agreement was developed through extensive consultation between

the parties in order to provide for the continued accommodation of commuter and freight on the shared corridor.

Having participated in the development of the operating agreement, and based on the Commonwealth's assurances and my 30 years of experience in rail operations and operations planning, I am confident that CSXT will be able to fully satisfy its common carrier freight obligations on the Line following the Commonwealth's purchase and thereafter. CSXT expects that the proposed freight operating plan will maintain acceptable levels of service to current and future customers.

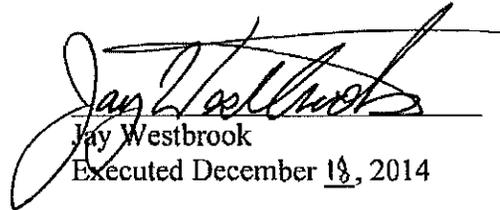
CSXT does not anticipate that the sale of the Line to the Commonwealth will have a significant impact on its employees.

At closing or shortly thereafter, MBTA will assume responsibility for all maintenance and dispatching of the Line then being done by CSXT. As a result, CSXT anticipates that it will abolish the positions of one Maintenance of Way worker and one Signaller. CSXT expects to displace four Signallers and three Maintenance of Way workers. CSXT does not plan to furlough any employees. CSXT expects to absorb the employees whose positions are abolished through attrition and other work. CSXT has offered to negotiate agreements with its unions representing employees potentially affected by the transaction, which would provide New York Dock-type economic protective benefits to employees adversely affected by the sale of the Line to the Commonwealth.

The agreements that have resulted from the CSXT and Commonwealth/MBTA negotiations address safety, capacity, dispatch, maintenance, liability, and operating windows in a well-reasoned and thoughtful manner, accommodating the respective needs of all stakeholders

in and users of the Line. CSXT believes that this transaction is a model of how these types of shared corridor transactions should be handled.

I, Jay Westbrook, declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this Verified Statement.


Jay Westbrook
Executed December 18, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

EXHIBIT C

DEFINITIVE AGREEMENT
BETWEEN
CSX TRANSPORTATION, INC.
and
THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Pertaining to the Purchase and Sale
of the Framingham Secondary Line

Dated as of
November 25, 2014

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This **DEFINITIVE AGREEMENT** (this "**Agreement**"), dated as of November 25, 2014 (the "**Effective Date**") is made and entered into by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, with an address at 500 Water Street, Jacksonville, Florida 32202, hereinafter called the "**Seller**," and **THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**, a Massachusetts body politic and corporate, with an address at Ten Park Plaza, Boston, Massachusetts 02116-3974, hereinafter called the "**Buyer**." Seller and Buyer may hereinafter sometimes be collectively referred to as the "**Parties**," or individually as a "**Party**."

RECITALS

The Parties agree on the following statement of facts upon which the agreements set forth herein are based:

WHEREAS, Seller is a class 1 freight railroad with a substantial presence in Massachusetts, specifically, and New England, generally;

WHEREAS, pursuant to Mass. Gen. L. c. 161C, § 3, Buyer is charged with, among other tasks, developing, promoting, preserving and improving an adequate, safe, efficient, and convenient rail system for the movement of passengers and freight in the Commonwealth;

WHEREAS, Seller has certain interests in land, track, ballast and other infrastructure within certain railroad rights of way in the Commonwealth known and commonly referred to as the Framingham Secondary Line, as more particularly described on **Exhibits A and A-1** hereto;

WHEREAS, Buyer has determined that the acquisition by Buyer of certain assets of Seller and the assumption by Buyer or, at Buyer's election, the Massachusetts Bay Transportation Authority (the "**MBTA**"), of certain obligations of Seller is in the Commonwealth's interest and is in furtherance of Buyer's statutory mandate and responsibilities;

WHEREAS, Buyer claims to be vested with the power to condemn real and personal property including, without limitation, certain assets of Seller, by eminent domain pursuant to Mass. Gen. L. c. 161C, § 6(d);

WHEREAS, Buyer claims to be imminently considering taking certain assets of Seller by eminent domain;

WHEREAS, in lieu of attempting to exercise its power of eminent domain in order to acquire certain assets from Seller adversarially, Buyer has entered into discussions with Seller to acquire such assets, and to assume certain liabilities of Seller by agreement, and Seller has agreed to sell certain assets to Buyer and to permit Buyer to assume certain liabilities of Seller, all in accordance with the terms of this Agreement;

WHEREAS, the Parties desire that Seller retain and reserve, and not transfer to Buyer, a perpetual easement over a portion of the properties acquired by Buyer for the purposes of providing rail freight service on an exclusive basis, it being the intention of the Parties that Seller remain, and Buyer not become a common carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of

railroad transportation on such properties, except to the extent that Buyer seeks to become a common carrier consistent with Seller's rights and obligations hereunder; and

WHEREAS, the introduction of inter-city passenger rail service to the properties to be acquired by Buyer hereunder would have an adverse affect on the use of Seller's retained perpetual easement for freight service over such properties.

NOW, THEREFORE, in consideration for the agreements and mutual undertakings and covenants made in this Agreement, Seller and Buyer hereby agree as follows:

AGREEMENT

1. PURCHASE AND SALE OF THE TRANSFERRED ASSETS

1.1 Purchase and Sale. In lieu of Buyer's exercising its power to acquire certain of Seller's assets by eminent domain, and on the terms and subject to the conditions set forth herein, at the Closing as set forth in **Section 2**, Seller agrees to sell, transfer, convey, assign and deliver, and Buyer hereby agrees to purchase and accept from Seller, the following, all of which, taken together, beginning at **Section 1.1.1** below, comprise the Railroad Assets (the "**Railroad Assets**"). Not included in the Railroad Assets are Seller's reserved, retained, perpetual, easement to provide rail freight service and for such other rights over the Railroad Line as may be mutually agreed to pursuant to **Section 7.3.2** (the "**CSXT Framingham Easement**"), which CSXT Framingham Easement shall (i) incorporate by reference the 2014 Operating Agreement, as hereinafter defined; (ii) provide that Seller has the exclusive right to provide freight rail service and for such other rights as may be mutually agreed upon as set forth above over such easement area, and (iii) provide that other than as may be required by law, buyer and Seller agree that the utilization of Intercity Rail Passenger Transportation (as defined in Title 49 U.S.C. §24102) over the Railroad Line (as hereafter defined) will occur only upon the prior mutual consent of Buyer and Seller, which consent may not be unreasonably withheld, conditioned or delayed. It shall not be unreasonable for either Buyer or Seller to condition its consent to allow the National Railroad Passenger Corporation ("**Amtrak**") to provide such Intercity Rail Passenger Transportation, upon reaching acceptable liability arrangements consistent with existing liability arrangements related to existing Intercity Rail Passenger Transportation on the Boston Main Line ("**Existing Liability Arrangements**"). The term Existing Liability Arrangements shall mean, with respect to Seller, the provisions of the existing agreement dated June 1, 1999 between Seller and Amtrak as such agreement is from time to time supplemented and is in effect at the time of the request for Seller's consent to such utilization for Intercity Rail Passenger Transportation. The term "**Boston Main Line**" shall be deemed to be the property described in a deed dated October 2, 2012 from Seller to Buyer and recorded in the Suffolk Registry of Deeds in Book 50271, Page 152, the Middlesex (S.D.) Registry of Deeds in Book 60154, Page 273, the Norfolk Registry of Deeds in Book 30513 Page 458 and the Worcester District Registry of Deeds in Book 49729, Page 1. The Parties agree that the CSXT Framingham Easement shall burden only the fee and easement interests being conveyed by Seller to Buyer hereunder; provided, however, that this limitation shall not restrict or adversely affect the exercise by Seller of any rights that Seller may have independent of the conveyance and reservation being made by Seller hereunder. The parties understand and agree that Seller has the right to operate freight service on the Railroad

Line by virtue of existing trackage rights, operating agreements or other existing similar rights (collectively, "**Other Operating Rights**"). Said **Other Operating Rights** are excluded from the definition of Railroad Assets. The definition of Other Operating Rights will be subject to mutual agreement of the Parties during the due diligence period pursuant to **Section 7.3.2**. The Parties acknowledge that Seller's exclusive right to provide freight service within the CSXT Framingham Easement does not preclude Buyer or Buyer's assignees from using all of the Railroad Line, as hereinafter defined, for their own freight needs (the Buyer's and its assignee's own freight needs being the transport of railroad materials, equipment, ballast, rails, and the like owned by Buyer or its assignee, but not common or contract carriage of freight), provided such use by Buyer does not interfere with Seller's use of the CSXT Framingham Easement:

1.1.1 Seller's right, title and interest in the fee simple interests, easements, rights of access and all of Seller's right, title and interest in and to rights-of-way known generally as the Framingham Secondary Line (the "**Railroad Line**"). All of the interests to be conveyed by Seller to Buyer hereunder are generally described in **Exhibit A**, and are shown specifically in a set of plans (the "**Railroad Line Plans**") to be developed as **Exhibit A-1** pursuant to **Section 7.3.2** herein. The Railroad Line Plans shall also include a description of real property (the "**Excluded Real Property**") to be excluded from the Railroad Line;

1.1.2 all of Seller's right, title and interest in and to the tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, crossing protection devices, communication lines, poles and radio masts and signals (the "**Included Fixtures**") which are affixed or located on or in, as of the Closing Date, the right-of-way described in the Railroad Line Plans, provided, however, that Seller shall not, after the Effective Date, cause a material change in the Included Fixtures sufficient to interfere with Buyer's ability to provide commuter passenger service on the Railroad Line as provided for in the 2014 Operating Agreement (said fee simple interests, easements and rights-of-way together with Railroad Line and the Included Fixtures are sometimes referred to hereinafter as the "**Subject Property**"), but excepting any items of the kind described above which are located on the Excluded Real Property, all of which are hereby reserved by Seller and are excepted from the sale, transfer and conveyance to Buyer contemplated by this Agreement;

1.1.3 all of Seller's right, title and interest in and to the items of personal property, supplies and other materials primarily used in, or primarily relating to, the operation of the Railroad Line, including those needed to properly operate and maintain the signal systems and grade crossing systems (the "**Included Tangible Personal Property**") listed or described in a schedule (the "**Included Tangible Personal Property Schedule**") to be mutually agreed upon by the Parties, but excluding the following items of personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives,

automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios and radio control equipment, furniture, tools, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to Buyer hereunder and which is not affixed to the Subject Property on the Closing Date, except as any such property may be specifically listed or described in the Included Tangible Personal Property Schedule (the "**Excluded Tangible Personal Property**") listed in a schedule (the "**Excluded Tangible Personal Property Schedule**") to be mutually agreed upon between the Parties. Any personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Schedule shall be deemed to be included in the Excluded Tangible Personal Property Schedule (the Included Fixtures and the Included Tangible Personal Property are sometimes referred to hereinafter collectively as the "**Railroad Equipment**");

1.1.4 to the extent assignable, all permits, licenses, certificates of occupancy, approvals, consents, variances and other authorizations that are used or necessary in connection with, the ownership or operation or other use of any of the Railroad Assets relating primarily to or necessary for the operation of the Railroad Assets (but excluding those necessary for the operation by Seller of the rail freight operations over the CSXT Framingham Easement) as conducted on the date hereof (all such permits and the like, the "**Permits**") as set forth in a schedule (the "**Assigned Permits Schedule**") to be mutually agreed upon by the Parties;

1.1.5 all real property interests of Seller described in the Railroad Line Plans including, without limitation, benefits which are appurtenant to the Railroad Line, together with all improvements, structures and fixtures thereon, and all easements, leases, privileges, rights-of-way, the interest of Seller in all land underlying any adjacent public streets or roads which streets and roads exist by reason of an easement over Seller's land, appurtenances, occupancy agreements, and other rights belonging to Seller and which Seller has the ability to convey, pertaining to, or accruing to the benefit of, the Subject Property; subject, however, to (a) those rights, interests, contracts, agreements, leases, occupancy agreements, easements and other rights which are listed, described in, or a part of the Excluded Real Property described in the Railroad Line Plans; and (b) the CSXT Framingham Easement, as set forth in the Deed(s) (defined below), excepting and excluding the Excluded Real Property; and

1.1.6 all of Seller's rights, benefits, obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses, occupancy agreements, and easements (the "**Intangibles**") to be transferred to Buyer (the "**Included Intangibles**") listed or described in a schedule (the "**Included Intangibles Schedule**") to be mutually agreed upon by the Parties but excluding any contract, agreement, lease, license,

occupancy agreement or easement which expires or terminates in accordance with the terms thereof on or prior to the Closing Date (the “**Excluded Intangibles**”) listed or described in a schedule (the “**Excluded Intangibles Schedule**”) to be mutually agreed upon by the Parties. Seller is also reserving to itself the Intangibles (the “**Retained Intangibles**”) listed in a schedule (the “**Seller’s Retained Intangibles Schedule**”) to be mutually agreed upon by the Parties.

1.2 Identity of Seller. Seller represents that title to certain of the Railroad Assets to be conveyed and transferred to Buyer in accordance with this Agreement may be standing in the name of one or more subsidiary organizations or affiliates of Seller. Seller shall cause each such organization to convey the Railroad Assets to Buyer and Seller hereby guarantees that the conveyance by such organizations shall be in accordance with the terms of this Agreement. Seller shall provide Buyer with such information and documents from such organizations as would have been required under this Agreement if Seller were the owner of the particular Railroad Asset actually owned by such organization. Notwithstanding the foregoing, neither Consolidated Rail Corporation, nor its parent nor any subsidiary thereof shall be considered an affiliate of Seller.

2. CLOSING

2.1 The Closing. The Railroad Assets shall be transferred at the Closing. Whenever the word “Closing” is used herein it shall refer to the Closing at which the Railroad Assets are to be delivered and all references to the Parties’ respective rights and obligations shall be with respect to that Closing. The Closing shall take place at the offices of Buyer, 10 Park Plaza, Boston, Massachusetts, or such other location as mutually agreed upon by the Parties. Upon satisfaction or completion of all closing conditions and deliveries required pursuant to the terms of this Agreement, the Parties shall cause to be immediately recorded the appropriate closing documents, and the Parties shall make disbursements according to the closing statement(s) executed by Buyer and Seller.

2.2 Time of Closing. The Closing shall occur at a time and on a date to be mutually agreed upon by the Parties (the “**Closing Date**”). The Parties agree that such date shall be as soon as is reasonably practicable after the STB Decision, as defined in **Section 9.1** hereof. Subject to the satisfaction of all of the conditions and contingencies herein contained, the Parties shall use commercially reasonable efforts to schedule the Closing on or before December 31, 2014; provided, however, that neither Party shall be in default hereunder solely as a result of its failure to agree to the Closing by such date. If the Closing does not occur by December 31, 2014, either Party may elect to terminate this Agreement by written notice to the other Party, in which event: (i) all Deposits made hereunder by the Buyer shall be returned promptly, (ii) except as otherwise provided herein, all other rights and obligations of the Parties hereto shall cease and, (iii) this Agreement shall be void and without recourse to the Parties hereto.

2.3 Form of Conveyance. Seller shall convey the Subject Property to Buyer by release deed (the “**Deed**,” which may consist of one or more individual Deeds as Buyer and Seller may reasonably determine) substantially in the form of **Exhibit B** attached hereto, which

Deed shall include the retained, reserved CSXT Framingham Easement, and the title to the Subject Property shall be free from encumbrances except:

- (a) The CSXT Framingham Easement;
- (b) Building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations, all as existing as of the Closing Date;
- (c) Taxes, tax liens and assessments, both general and special, which are not yet due and payable but which may become due or payable on the Subject Property on or after the Closing Date;
- (d) Reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights by third parties; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created, existing as of the Closing Date;
- (e) Encroachments or any other state of facts existing as of the Closing Date which might be revealed from an accurate survey, title search or personal inspection of the Subject Property;
- (f) The rights of others in existing roads, streets, ways, alleys and party walls; and
- (g) Mortgage liens with banks or other institutional real estate lenders pertaining to the Subject Property created by Seller, for which Seller will obtain payoff statements prior to or at the Closing and for which a portion of the Purchase Price shall be placed in escrow with the Escrow Agent for the payment thereof, which liens Seller shall cause to be released, at no cost or expense to Buyer, within ten (10) days of the recording date of the Deed.

At the Closing, Seller shall also execute one or more Bills of Sale (each, individually, a "**Bill of Sale**") conveying to Buyer or to Buyer's nominee, the Included Fixtures and the Included Tangible Personal Property, all in a manner consistent with, and subject to, the provisions of this Agreement.

2.3.1 The Parties shall mutually agree upon the form of the Deed and the form of the Bill of Sale. The Deed shall describe the Subject Property, not by means of a metes and bounds description, but by means of map references to plans and surveys which were previously recorded in the Registry of Deeds in which the Deed is to be recorded, and Seller's valuation plans as modified by the agreement of the Parties as described in, and shown on **Exhibits A and A-1**, respectively, which plans and surveys are, consistent with customary conveyancing practice and Massachusetts law, reasonably adequate to accurately describe the Subject

Property. In addition, the Deed shall include the CSXT Framingham Easement, which shall be an easement in gross the benefit of which runs to Seller personally and not to any particular parcel of land. The CSXT Framingham Easement shall, by its terms, be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party, neither Seller, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Framingham Easement (each of Seller, a Related Party and a subsequent holder being a "**Benefitted Holder**"), shall sell, lease, license or otherwise transfer (each such transaction being a "**Transfer**") the benefit of the CSXT Framingham 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 G** attached hereto. The Transferee Standards shall not apply to transactions contemplated in **Section 2.3.6**, even if post Closing regulatory approval of the transaction has not yet been secured. Notwithstanding the foregoing to the contrary, no Benefitted Holder shall be required to obtain Buyer's consent for a Transfer of an Easement Interest to a Related Party 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**"). Seller, a Related Party or the Benefitted Holder, as the case may be, shall deliver to Buyer written notice of every proposed Transfer of an Easement Interest not less than sixty (60) days prior to the effective date of the Transfer of the Easement Interest. Within such sixty (60) day period, if the Transfer is not to a Related Party, Buyer shall either (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 Buyer 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 Seller, a Related Party and by each Benefitted Holder; provided, however, that Buyer shall not have any right to approve a transfer to a Related Party, and shall not apply to any transfer of Other Operating Rights.

2.3.1.1 (a) If at any time Seller, or a party which is a Related Party of Seller (a "**Seller Related Party**"), makes a Transfer of an Easement Interest to a third party, Seller, or a Seller Related Party, shall promptly pay to Buyer a transfer fee of five (5%) percent of the consideration (the "**Easement Transfer Payment**") paid for such transfer, net of any portion of the consideration attributable to any machinery or equipment included in the transfer. No party to whom Seller, or a Seller Related Party, makes a Transfer of an Easement Interest shall be required to make an Easement Transfer Payment with regard to a subsequent Transfer of the same Easement Interest or any part of said Easement Interest. In no event shall Seller or a Seller Related Party be responsible for paying an Easement Transfer Payment to Buyer for transactions which are (a) the

sale of Other Operating Rights, or (b) in the ordinary course of Seller's or the Seller Related Party's business as a freight rail service provider, including without limitation, freight revenue and other income from freight service. Except with respect to the subsequent Transfer of an Easement Interest for which an Easement Transfer Payment has previously been paid, the Easement Transfer Payment shall apply to each Transfer of an Easement Interest (other than a Related Party Transfer) by Seller or a Seller Related Party.

(b) No Benefitted Holder shall be required to make an Easement Transfer Payment in connection with any Transfer of an Easement Interest, 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 Seller Related Party shall take such transfer or assignment subject to the aforesaid provisions pertaining to Buyer's right to collect an Easement Transfer Payment to the extent applicable at the time of such transfer or assignment.

(c) The provisions of this **Section 2.3.1** shall survive the delivery of the Deed hereunder.

2.3.2 Buyer shall cause the Deed (which shall include therein the CSXT Framingham Easement) to be recorded in the public records of the counties in which the Subject Property lies within thirty (30) days subsequent to the Closing Date. In the event that the description of the Subject Property contained in the Deed and/or CSXT Framingham Easement is deemed inadequate for recordation purposes by the Registers of Deeds, Seller, at its own cost and expense, and as promptly as is reasonably practicable, shall make such changes and revisions as may be required by said Registers such that the Deed will be accepted by the Registers for recording. In the event that, after Closing, a metes and bounds description of the Subject Property is desired by Buyer and furnished to Seller by Buyer, at Buyer's sole cost and expense, then Seller shall execute and deliver such further deeds and/or further easements or confirmatory or corrective deeds and/or confirmatory or corrective easements, containing a description of the Subject Property based on such metes and bounds description as may be acceptable to Buyer, Seller and to the Register(s) of Deeds so involved. In the event that the preparation of such further or confirmatory deeds and/or easements requires any survey of the Subject Property, or any portion thereof, or any search or examination of title with respect to the Subject Property, or any portion thereof, Buyer shall pay any and all costs and expenses arising out of or connected with such survey, search or examination.

2.3.3 In the event that any subdivision approval is necessary for the completion of the sale, transfer and conveyance contemplated by this Agreement, said approval shall be obtained by Seller, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plans, the filing of same with governmental body(ies), recordation thereof and legal fees.

2.3.4 At the Closing, Seller shall assign to Buyer all of Seller's rights and interests and Buyer shall assume all of Seller's obligations and liabilities arising under or connected with the Intangibles listed in the Included Intangibles Schedule. Notwithstanding the foregoing, nothing contained in this Agreement shall impose upon Seller an obligation to assign to Buyer the Excluded Intangibles or any Intangible that expires by its terms prior to the Closing. Any expiration or termination of an Excluded Intangible shall not be construed as a breach of this Agreement and shall not constitute grounds for termination or rescission of this Agreement.

2.3.5 In the event that Seller is unable, for any reason(s), including, without limitation, its inability or failure to obtain any necessary consent after having used commercially reasonable efforts to do so, to effect, on the Closing Date, the assignment of any contract or agreement as contemplated by this Agreement, then such failure or inability shall not constitute grounds for termination or rescission of this Agreement. Seller represents that the Intangibles contained in the Included Intangible Schedule and the Permits contained in the Assigned Permits Schedule include, to the best of Seller's knowledge, all such instruments that are in existence. For purposes of this **subsection 2.3.5**, Seller's knowledge shall be limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree without undue investigation and inquiry. In the event that any omission becomes known to Seller or Buyer, then the party discovering such omission shall provide notice thereof to the other party. In such event, Seller shall assign any such instrument to Buyer that would otherwise have been assigned to Buyer under this Agreement, and such instrument shall be subject to all of the applicable terms of this Agreement.

2.3.6 Buyer shall accept and purchase the Railroad Assets subject to: (a) the matters set forth in **Section 2.3** (as applicable), and subject to, and together with the benefit of (b) the 2014 Operating Agreement and the rights, interests, contracts, agreements, leases, occupancy agreements and easement(s) listed or described in the Included Intangibles Schedule and the Permits. Nothing contained in this **Section 2.3.6** shall be construed to: (i) limit or restrict any exception, reservation, right or privilege of Seller under this Agreement; (ii) limit or restrict Seller's right, prior to the

Closing, to enter into any contract, agreement, lease or license pertaining to the provision by Seller or another railroad of rail freight service on the Railroad Line that have not been conveyed, notwithstanding any necessary post Closing regulatory approval; (iii) require Seller to cancel, terminate or amend any Intangible listed or described in the Included Intangibles Schedule; or (iv) impose any obligation on Seller with respect to Labor Protection, any Labor Challenge or Environmental Matters (all of which are defined below) other than as set forth in this Agreement.

2.3.7 The conveyance or retention of an Intangible shall carry with it the right to renew, modify, alter, amend and terminate the same, provided the Included Intangibles shall not be renewed, modified, altered, or amended in such a way as would interfere with the rights of Seller under the CSXT Framingham Easement and provided, further, that Seller shall not renew, modify, alter, or amend Seller's Intangibles in such a way as to interfere with Buyer's reasonable utilization of the Subject Property for its intended use as a commuter and passenger rail system.

2.3.8 All amounts due under or received by Seller relating to the Seller's Intangibles prior to the Closing Date shall remain the property of Seller and shall not be subject to proration or adjustment of any sort. From and after the Closing, Buyer shall be entitled to receive after the Closing Date all amounts due from any third party for the use of Seller's Intangibles; provided, however, in the event that such amount is received by Seller on account of Seller's continued ownership of other railroad lines, Seller shall pay to Buyer quarterly prorated amounts received by Seller on a per mile proration (that is, if a payment relates to 200 miles of rail corridor, and 43 miles of said rail corridor is contained within the Subject Property, Seller shall deliver to Buyer on a quarterly basis 43/200 of amounts received by Seller relating to the Seller's Intangibles for any period due after the Closing Date). It is understood by the Parties that the Seller's Intangibles, inter alia, may grant or confer to others, not party to this Agreement, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing, Buyer shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in the Seller's Intangibles, and Buyer shall not cause or suffer any breach of the Seller's Intangibles.

2.4 Deliveries at Closing.

2.4.1 Deliveries by Seller. As of, or prior to, the Closing Date, Seller shall deliver to the Buyer or an escrow agent to be named ("**Escrow Agent**") to be named the items described in clauses (i) through (xviii) below; provided, however, that the Railroad Equipment shall not be delivered to Buyer until such time as it assumes the responsibility for dispatching, operating and maintaining the Railroad Line to which the

Railroad Equipment relates pursuant to the 2014 Operating Agreement (defined below):

(i) the Deed for the Subject Property subject to the matters described in **Section 2.3**, except that the Deed shall not except mortgage liens;

(ii) one or more Bills of Sale in the form to be mutually agreed upon by the Parties, with respect to the Railroad Equipment subject to the exceptions, reservations, rights, and privileges of Seller set forth in this Agreement;

(iii) an Assignment of the Included Intangibles and Permits, in the form to be mutually agreed upon by the Parties;

(iv) the Turnover Plan (the "**Turnover Plan**"), in a form to be mutually agreed upon by the Parties;

(v) an operating agreement substantially in the form of **Exhibit C1** attached hereto (the "**2014 Operating Agreement**") which 2014 Operating Agreement shall govern the Railroad Line;

(vi) an amendment #7 to that certain Trackage Rights Agreement by and between the MBTA and CONRAIL dated November 20, 1986, but effective as of July 1, 1985 (as amended, the "**1985 Trackage Rights Agreement**") substantially in the form of **Exhibit C2** attached hereto (the "**1985 Trackage Rights Amendment**");

(vii) the information and documents comprising the Railroad Assets set forth in **Section 1** of this Agreement;

(viii) a certificate duly executed by Seller to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;

(ix) a certificate executed on behalf of Seller by the secretary or assistant secretary or other appropriate officer or manager, dated as of the Closing Date, certifying and attaching: a good standing certificate for Seller issued by the Secretary of State for the Commonwealth of Virginia dated within three (3) business days of the Closing; a Good Standing Certificate for a Foreign Corporation for Seller issued by the Secretary of State for the Commonwealth of Massachusetts; and a certified copy of authorizing resolutions of Seller's board of directors or manager(s), as applicable, associated with the approval of the transactions contemplated in this Agreement;

(x) an affidavit of non-foreign status that complies with Section 1445 of the Code in the form attached hereto as **Exhibit D**;

(xi) a general assignment (the "**General Assignment of Warranties**") in form and substance reasonably acceptable to Buyer, of all warranties and guaranties the benefit of which Seller is entitled to, if any, and only to the extent assignable, without consent or expense, with respect to the Railroad Assets, including, without limitation, any from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Railroad Assets;

(xii) affidavits (without indemnification) sufficient for a title insurance company, if Buyer elects to obtain title insurance, to delete any exceptions for mechanics' or materialmen's liens from an owner's title insurance policy and which identify, to Seller's knowledge, all parties in possession of the Subject Property. For purposes of this **subsection 2.4.1**, Seller's knowledge shall be limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree;

(xiii) an original closing statement setting forth the Purchase Price and the closing adjustments and prorations (the "**Closing Statement**") in form to be mutually agreed upon by the Parties;

(xiv) a Designation of Person Responsible for Tax Reporting under Internal Revenue Code Section 6045 in the form of **Exhibit E** annexed hereto designating Seller's attorney as the party responsible for making the returns required under Internal Revenue Code Section 6045;

(xv) a disclosure statement submitted in compliance with the requirements of Mass. Gen. L. c. 7C, s. 38;

(xvi) payoff statements for all mortgages, liens and encumbrances which Seller is obligated to satisfy in order to convey title to the Railroad Assets to Buyer hereunder;

(xvii) an environmental release from the MBTA in a form to be mutually agreed upon between Seller and the MBTA, the benefit of which shall run to Seller and to any assignee of all or any part of the CSXT Framingham Easement (the "**MBTA Environmental Release**");

(xviii) a letter from in-house counsel to Seller stating that the individual signing this Agreement on behalf of Seller has been duly authorized to do so; and

(xix) if requested by Buyer, a gap indemnity agreement from Seller in a form to be mutually agreed upon between Seller and MassDOT whereby Seller agrees to indemnify MassDOT against matters of record arising with respect to the Railroad Assets between the Closing and the actual recording of the Deed.

2.4.2 Deliveries by Buyer. As of or prior to the Closing Date, Buyer shall deliver to the Seller or the Escrow Agent the items described in clauses (i) through (viii) below:

- (i) the Purchase Price to be adjusted as herein provided;
- (ii) the Turnover Plan;
- (iii) the 2014 Operating Agreement;
- (iv) the 1985 Trackage Rights Amendment;
- (v) the Closing Statement;
- (vi) a certificate duly executed by Buyer to the effect that all representations and warranties of Seller set forth in this Agreement remain true and correct in all material respects as of the Closing Date;
- (vii) the MBTA Environmental Release; and
- (viii) letters from in-house counsel to Buyer and from in-house counsel to the MBTA stating that the individuals signing this Agreement on behalf of Buyer and the MBTA, respectively, have been duly authorized to do so.

2.5 Delivery of Railroad Assets. At the Closing, Seller shall deliver the Railroad Assets free of all tenants and occupants, except as provided in this Agreement.

2.6 Conditions Precedent to Obligations of Buyer. The obligations of Buyer under this Agreement to consummate the transactions contemplated hereby at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing, at the option of Buyer:

2.6.1 The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.6.2 All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.6.3 There shall have occurred no change in applicable law between the Effective Date and the Closing Date that would materially adversely affect the ability of Buyer to provide commuter rail service on the Railroad Line.

2.6.4 There shall have occurred no changes in title or encroachments from and after the Effective Date that would have a

material adverse effect on Buyer's ability to provide commuter rail service on the Railroad Line.

2.6.5 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective Date and the Closing Date that affects the liability arrangement as between the Parties (and the MBTA) under the 2014 Operating Agreement, which liability arrangement the Parties (and the MBTA) agree is subject to their mutual consent.

2.7 Conditions Precedent to Obligations of Seller. The obligations of Seller under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing, at the option of Seller:

2.7.1 The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

2.7.2 All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

2.7.3 There shall have occurred no change in applicable statutory or regulatory law (but not including decisional law) between the Effective Date and the Closing Date which affects the liability arrangement as between the Parties and the MBTA under the 2014 Operating Agreement, which liability arrangement the Parties (and the MBTA) agree is subject to their mutual consent.

3. PURCHASE PRICE

3.1 Purchase Price. The Purchase Price ("**Purchase Price**") payable hereunder shall consist of a monetary payment, to be payable as hereinafter provided.

3.2 Cash Payment. The total Purchase Price for the Railroad Assets is TWENTY THREE MILLION and 00/100 DOLLARS (\$23,000,000.00) The Purchase Price shall be payable by Buyer as set forth in **Section 3.5**:

3.3 Deposit. Buyer has, prior to, or simultaneously with, the execution of this Agreement by Seller, delivered TWO MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$2,300,000.00) (the "**Deposit**") to Seller which shall hold the Deposit. At the Closing, the Deposit shall be applied as part of the Purchase Price. If this Agreement is terminated (other than for Buyer default) prior to the Closing Seller shall return the Deposit to Buyer.

3.4 Interest. All interest earned on the Deposit shall be paid to, or applied on account of, the Party entitled to the Deposit or portion of the Deposit, as applicable, in accordance with this Agreement.

3.5 Payment of the Purchase Price. At the Closing, the Purchase Price shall be subject to the prorations and adjustments provided for herein.

3.5.1 The Deposit shall be applied to the Purchase Price at the Closing.

3.5.2 At Closing, the Seller shall apply so much of the interest as has accrued on the Deposit up to the Closing Date to the Purchase Price.

3.5.3 The Purchase Price shall be payable in lawful currency of the United States in immediately available funds by certified check or by wire transfer to an account designated by Seller at the Closing.

3.6 Proration.

3.6.1 At the Closing, all of the items normally prorated, including those listed below, relating to the ownership and operation of the Railroad Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods from and after the Closing Date:

(ix) personal property, real estate, occupancy, sewerage and water taxes, assessments and other charges, if any, on or with respect to the Railroad Assets;

(x) any permit, license, registration, compliance assurance fees, emission fees or other fees, in each case, with respect to any Permit associated with the Railroad Assets; and

(xi) rent or any other payments due from and after the Closing under any of the Included Intangibles.

3.6.2 In connection with the prorations referred to in **Section 3.6.1** above, in the event that actual figures are not available at the Closing Date, the proration shall be measured by calendar days and be based upon the actual amount paid for the preceding year (or appropriate period) for which amounts are available and such proration of taxes or fees shall be recalculated and appropriate adjustments shall be paid upon request of either Seller or Buyer, made within sixty (60) days of the date that the actual amounts become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustments and proration calculations made pursuant to this **Section 3.6**.

3.7 Taxes and Permits. Buyer represents that it is exempt from the payment of sales and/or use taxes and all documentary tax stamps and transfer taxes in connection with the conveyance of the Railroad Assets and agrees that in no event shall Seller be required to pay any such charges.

3.8 Labor Protection. Seller shall be responsible for Labor Protection costs, if any, occasioned by the transactions contemplated in this Agreement. As used herein, "**Labor Protection**" shall mean the costs, if any, incurred by Seller as a result of the sale of the Railroad Assets, which costs may be incurred pursuant to the provision of a collective bargaining agreement bargained by Seller as a result of the sale of the Railroad Assets or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. Except as provided in the immediately preceding sentence, the Parties agree that each shall be solely responsible for its risks and costs associated with any challenge to the transactions brought pursuant to law, a collective bargaining agreement or otherwise ("**Labor Challenge**").

4. ONGOING OPERATIONS

4.1 Continuing Obligations.

4.1.1 New Contracts. From the Effective Date through Closing, Seller will not enter into any contract that will be an obligation affecting the Railroad Assets subsequent to the Closing Date, except (i) contracts relating to Seller's operation of the Railroad Assets that will not prejudice or interfere with the consummation of the transfers contemplated hereunder, will not impose any financial obligation on Buyer, and will not interfere with Buyer's use of the Railroad Assets, subject, however, to the CSXT Framingham Easement, (ii) contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than thirty (30) days prior notice, or (iii) the granting of Intangibles in the ordinary course of Seller's business; provided, however, that the granting of an Intangible shall not materially interfere with Buyer's or, at Buyer's option, Buyer's assignee's, ability to provide commuter passenger service on a Railroad Line;

4.1.2 Maintenance of Improvements. From the Effective Date through Closing, Seller shall maintain all Railroad Assets substantially in their present condition (ordinary use and wear excepted) and in compliance with all applicable and Federal Railroad Administration rules and regulations and in accordance with any legal, contractual or regulatory obligations existing during such period.

4.2 2014 Operating Agreement. The Parties agree that the use of the Railroad Assets purchased hereunder shall be governed from and after the Closing Date by the 2014 Operating Agreement.

4.3 MBTA Role. The MBTA joins in this Agreement for the purpose of benefitting, enforcing and being bound by **Section 4.2 and 4.4**.

4.4 Maintenance and Dispatch. At the Closing, (i) Seller will not own any of the Railroad Line, and (ii) will no longer have any maintenance and dispatching obligations with respect to any of the Railroad Line. The Parties shall mutually determine the exact time and manner of the turn over to Buyer of those maintenance and dispatching functions on the Railroad Line that are currently performed by Seller and are to be assumed by Buyer pursuant to the 2014 Operating Agreement. The determination for the time and manner of the assumption of maintenance and dispatching by the Buyer shall be included in the Turnover Plan.

5. CASUALTY

5.1 Damage. If, prior to the Closing, the Railroad Line, or any portion thereof, is damaged by fire or other casualty, Seller shall estimate the cost to repair and the time required to complete repairs and will provide Buyer with written notice of Seller's estimation (the "**Casualty Notice**") as soon as reasonably practical after the occurrence of the casualty.

5.1.1 Material. In the event of any Material Damage to, or destruction of, the Railroad Line or any portion thereof prior to Closing, either Seller or Buyer may, at its option, terminate this Agreement by delivering written notice to the other on or before the expiration of thirty (30) days after the date Seller delivers the Casualty Notice to Buyer (and if necessary, the Closing Date shall be extended to give the Parties the full thirty-day period to make such election and to obtain insurance settlement agreements with Seller's insurers). Upon any such termination: (i) the Deposit shall be returned to Buyer; (ii) except as otherwise specifically provided herein, the Parties hereto shall have no further rights or obligations hereunder; and (iii) this Agreement shall be void and without recourse to the Parties hereto. If neither Seller nor Buyer so terminates this Agreement within said thirty (30) day period, then the Parties shall proceed under this Agreement and close on schedule (subject to extension of Closing as provided above) and, as of the Closing, Seller shall assign to Buyer, without representation or warranty by, or recourse against, Seller, all of Seller's rights in and to any resulting insurance proceeds due Seller as a result of such damage or destruction and Buyer shall assume full responsibility for all needed repairs. Buyer shall receive a credit at Closing for any deductible amount under such insurance policies (but the amount of the deductible plus insurance proceeds shall not exceed the lesser of (A) the cost of repair or (B) the Purchase Price. For the purposes of this Agreement, "**Material Damage**" and "**Materially Damaged**" means damage which, in Buyer's reasonable estimation, exceeds \$200,000.00 to repair or which, in Buyer's reasonable estimation, will take longer than ninety (90) days to repair.

5.1.2 Not Material. If the Railroad Line is not Materially Damaged, then neither Buyer nor Seller shall have the right to terminate this Agreement, and Seller shall, at its option, either (i) repair the damage before the Closing in a manner reasonably satisfactory to Buyer, or (ii) credit Buyer at Closing for the reasonable cost to complete the repair (in which case Seller shall retain all insurance proceeds and Buyer shall assume full responsibility for all needed repairs).

6. TITLE DUE DILIGENCE

6.1 Title Examination. In connection with Buyer's execution of this Agreement, Buyer may elect to cause to be performed a title examination for the Railroad Line (one or more of such title examinations are hereinafter referred to collectively as the "**Title Examination**") at Buyer's expense. Buyer shall, upon Seller's request, make available to Seller all Title Examination materials, provided Buyer makes no representation or warranty as to the completeness or accuracy thereof. Seller shall, as soon as is reasonably practical, provide to Buyer (but makes no representation or warranty as to the completeness or accuracy of) (i) copies of applicable Valuation Maps for the Railroad Line, (ii) all title information in its possession pertaining to each parcel in the Subject Property, and (iii) copies of all leases and occupancy agreements in its possession related to the Railroad Line. Seller shall also provide in electronic format, scanned versions of each instrument retrievable by Seller. Seller shall not deliver any information to Buyer pursuant to this section that, to Seller's knowledge, is not accurate in any material respect. For purposes of this **subsection 6.1**, Seller's knowledge shall be limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree.

6.2 Name of Buyer. Title to the Railroad Line shall be conveyed to THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, unless Buyer designates a nominee or nominees to take title to all or a part of the Railroad Assets, in which case the grantee shall be said nominee or assignee, as the case may be. Any such assignee or nominee must join in this Agreement and be fully bound thereby.

6.3 Additional Provisions Pertaining to Utility Rights. Seller, as of the Effective Date, may have entered into one or more general agreements with a utility company or companies for a utility crossing or crossings over or under the Railroad Line. Any such general agreement may require Seller to reserve a permanent easement for the benefit of the utility company over or under a particular section of a Railroad Line. If Seller determines that the Railroad Line has already been encumbered by existing utilities which were constructed pursuant to such general agreements, or Seller has a currently enforceable legal obligation as reasonably determined by Seller to create such an easement or easements, Seller shall provide Buyer with copies of all written agreements with utility companies for such easements in its possession as soon as is reasonably practical, but in any event prior to the Closing. Buyer shall have the right to terminate this Agreement within fifteen (15) days of Seller's providing such copies to Buyer if Buyer is not satisfied with the utility easements granted, or to be granted, by Seller, whereupon the Deposit shall be returned forthwith, and except as otherwise provided herein, all obligations of the Parties hereto shall cease and this Agreement shall be void and without recourse to the Parties.

7. OTHER DUE DILIGENCE; BUYER'S CONTINGENCIES

7.1 Due Diligence Materials To Be Delivered. Seller shall deliver to Buyer the following (the "**Property Information**") from time to time after the Effective Date in each case as soon as is reasonably practical:

7.1.1 Environmental and Hazardous Material Reports. Seller shall provide such access and environmental due diligence material related to the Railroad Line as the Parties may agree pursuant to the terms of **Section 18** of this Agreement concerning environmental due diligence ("**Environmental Matters**");

7.1.2 Tax Statements. Copies of real estate tax bills and personal property bills relating to the Subject Property, if applicable, for the current tax period;

7.1.3 Railroad Records. Copies of track charts; Valuation Maps in Seller's possession for the Railroad Line;

7.1.4 Intangibles. Copies of all Intangibles identified in the Included Intangible Schedule, affecting the Subject Property;

7.1.5 Cooperation. The Parties shall cooperate in providing such information as may be required by federal governmental authorities to approve the transfer of the Railroad Line.

7.1.6 Confidentiality. The information described in **Sections 7.1.1, 7.1.4, and 7.1.5** above shall be furnished solely to Buyer's counsel pursuant to a mutually satisfactory confidentiality agreement.

7.2 Access Agreement. Buyer's right to access the Railroad Line shall be subject to the Right of Entry Agreement executed by the Parties contemporaneously herewith (the "**Right of Entry Agreement**"). The Right of Entry Agreement is incorporated herein in full, and all due diligence on the Subject Property performed by Buyer shall be governed by the terms and conditions set forth in the Right of Entry Agreement.

7.3 Due Diligence/Termination Rights.

7.3.1 Buyer shall have the right to examine, inspect, and investigate the title to the Subject Property, the Property Information and the Railroad Line and, in Buyer's sole and absolute judgment and discretion, to determine whether the Railroad Assets are acceptable to Buyer in Buyer's sole discretion. In the event that the Railroad Assets are not acceptable to Buyer for any reason or for no reason, Buyer may terminate this Agreement by giving written notice of termination to Seller on or before the Closing Date (the "**Due Diligence Contingency Date**"). In the event that Buyer terminates this Agreement pursuant to this **Section**: (i) the Deposit shall be returned forthwith, (ii) except as

otherwise provided herein, all obligations of the Parties shall cease; and (iii) this Agreement shall be void and without recourse to the Parties hereto.

7.3.2 Either Party may elect to terminate this Agreement by giving written notice to the other Party on or before the Due Diligence Contingency Date if, after having used commercially reasonable efforts to do so, they have been unable to agree upon the form and content of the Included Tangible Personal Property Schedule, the Excluded Tangible Personal Property Schedule, the Assigned Permits Schedule, the Exceptions to Real Property Interests Schedule, the definition of Other Operating Rights, the Included Intangibles Schedule, the Seller's Retained Intangibles Schedule, the Deed, the Railroad Line Plans, the CSXT Framingham Easement, the Bill of Sale, an Assignment of Included Intangibles and Permits, the Turnover Plan, the General Assignment of Warranties, the MBTA Environmental Release, the 1985 Trackage Rights Amendment, and any Exhibit hereto which is not completed as of the signing of this Agreement, including without limitation **Exhibit F**. In the event that either Party terminates this Agreement pursuant to this subsection, (i) the Deposit shall be returned forthwith, (ii) except as otherwise provided herein, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the Parties hereto.

7.4 Governmental Approvals; Other than the Surface Transportation Board Approvals. Buyer's and Seller's obligations hereunder are subject to, and conditional upon, Buyer's obtaining all licenses, approvals, franchises, notices, variances, exemptions, consents and other authorizations (collectively, the "**Approvals**") issued by all Governmental Authorities that relate to or otherwise are useful or are necessary in connection with the ownership, operations or other use of the Railroad Assets by Buyer or Buyer's assignees. Seller shall cooperate with Buyer in Buyer's obtaining the Approvals including, without limitation, executing all documents and applications and sending appropriate representatives to meetings as reasonably required without unduly affecting the representative's other responsibilities. Each Party shall pay its own expenses and shall share equally all joint expenses. In the event that all such Approvals are not validly and irrevocably issued to Buyer on terms and conditions reasonably satisfactory to Buyer, without qualification, except such qualification as may be reasonably satisfactory to Buyer, and no longer subject to appeal, by not later than the Due Diligence Contingency Date, either Party shall have the option to terminate this Agreement by written notice to the other Party by such date whereupon (i) all Deposits made hereunder shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, the STB Decision shall not be subject to this Section.

8. [INTENTIONALLY BLANK].

9. MUTUAL CONTINGENCIES

9.1 Surface Transportation Board Contingency, FRA Notice.

9.1.1 Buyer and Seller shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board ("STB") that STB authorization is not required for any of the transactions contemplated in this Agreement, or over any of the transactions contemplated in any ancillary agreement contemplated by this Agreement (the "STB Decision or STB Decisions").

9.1.1.1 The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB without first having delivered a copy of such filing to the other Party at least seven (7) days before such filing is made. Buyer will be the principal filing party with respect to the application, petition for exemption, or notice of exemption described in Section 9.1.1 of the Agreement. The Parties will use all reasonable commercial efforts to file the applications, petition for exemption, or notice of exemption on or before December 10, 2014, and will request that the STB treat the applications on an expedited basis.

9.1.2 Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the Closing, if:

(i) the STB has not dismissed the application, petition for exemption, or notice of exemption filed pursuant to Section 9.1.1 of this Agreement; and

(ii) the STB shall have found that it has regulatory authority over any of the transactions contemplated in this Agreement and, in connection therewith, shall have imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or

(iii) the Parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to Closing; or

(iv) any of the transactions shall have been stayed or enjoined by the STB or by any court; or

(v) any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with any of the transactions contemplated in this Agreement, any agreement to be

executed in connection herewith, or any agreement between Buyer and Seller related to the Subject Property.

9.1.3 Any notices required to be given to the Federal Railroad Administration ("FRA") pursuant to 49 C.F.R. § 213.5(c), if applicable, shall have been given at least thirty (30) days prior to the Closing Date.

9.1.4 If this Definitive Agreement is terminated pursuant to Section 9.1.2 above, (i) the Deposit shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties shall cease and (iii) this Agreement shall be void and without recourse to the parties hereto.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS; TERMINATION RIGHT

10.1 Representations, Warranties and Covenants of Buyer. To induce Seller to enter into this Agreement, Buyer hereby covenants with Seller and makes the following representations and warranties.

10.1.1 Buyer is a Massachusetts body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, is duly qualified to conduct business in the Commonwealth of Massachusetts, and has the requisite authority to acquire properties and to carry on its business as currently conducted. Buyer has the requisite power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement. Mass. Gen. L. c. 161(c) § 6(d) authorizes the Buyer to acquire property by eminent domain.

10.1.2 This Agreement, and the documents to be executed and delivered by Buyer in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by Buyer and (with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Buyer enforceable upon Buyer in accordance with their respective terms and conditions.

10.1.3 All requisite action has been taken by Buyer to enter into this Agreement and to consummate the transaction contemplated hereby.

10.1.4 To the best of Buyer's knowledge, the execution, delivery of, and performance of this Agreement, and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Buyer has knowledge or notice, or any other agreement, document or instrument by which Buyer is bound. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which

could materially adversely affect Buyer's ability to perform its obligations under this Agreement.

10.1.5 Buyer has not filed any petition, nor been the party against whom a petition has been filed in relation to any bankruptcy, insolvency, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Buyer's knowledge, is any such action threatened or contemplated.

10.1.6 Buyer has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

10.1.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by Buyer for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Buyer contemplated hereby or thereby.

10.1.8 All necessary funding and appropriations sufficient to allow Buyer to close the purchase of the Railroad Assets will be available on the Closing Date.

10.2 Representations, Warranties and Covenants of Seller. Nothing in this **Section 10.2** shall apply to Labor Protection, a Labor Challenge or Environmental Matters. To induce Buyer to enter into this Agreement, Seller hereby covenants with Buyer and makes the following representations and warranties.

10.2.1 Seller is a corporation validity existing and in good standing under the laws of the Commonwealth of Virginia and is duly qualified to do business in the Commonwealth of Massachusetts, and has the requisite corporate authority to own its properties and to carry on its business as currently conducted. Seller has the full power, right and authority to enter into, execute, deliver, and perform the terms and conditions of this Agreement.

10.2.2 This Agreement, and the documents to be executed and delivered by Seller in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by Seller and (or with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of Seller enforceable upon Seller in accordance with their respective terms and conditions.

10.2.3 All requisite corporate action has been taken by Seller to enter into this Agreement and to consummate the transaction contemplated hereby.

10.2.4 To the best of Seller's knowledge, the execution, delivery and performance of this Agreement and compliance with its terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which Seller has knowledge or notice, or any other agreement, document or instrument by which Seller is bound except as may be provided in the Included Intangibles. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect Seller's ability to perform its obligations under this Agreement.

10.2.5 Seller has not filed any petition, nor has been the party against whom a petition has been filed in the last five (5) years in relation to any bankruptcy, including, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of Seller's knowledge, is any such action threatened or contemplated.

10.2.6 Seller has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transaction contemplated hereby.

10.2.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by Seller for the execution, delivery or performance of this Agreement and the consummation of the transactions on the part of Seller contemplated hereby or thereby.

10.2.8 Except as disclosed by Seller to Buyer in writing prior to Closing, there is no action or proceeding pending or, to Seller's knowledge, threatened challenging Seller's right, title and interest in and to the Subject Property at law or in equity or the consummation and performance of the transactions contemplated by this Agreement, which challenge, if successful, would result in any material adverse effect upon any such transaction.

10.2.9 The Railroad Line has not been abandoned or discontinued, by Seller, and Seller has not filed a request for any such abandonment or discontinuance with the STB or otherwise.

10.3 Representations, Warranties and Covenants of MBTA. To induce Seller to enter into this Agreement, MBTA hereby covenants with Seller and makes the following representations and warranties.

10.3.1 MBTA is a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts, is duly qualified to

conduct business in the Commonwealth of Massachusetts, and has the requisite authority to operate passenger trains and to carry on its business as currently conducted. MBTA has the requisite power, right and authority to enter into, execute, deliver, and perform the terms and conditions of Sections 4.2, 4.4, 10.3, 10.5, 11.1, 11.3, and 12.4 of this Agreement (the "Joined Sections").

10.3.2 This Agreement, and the documents to be executed and delivered by MBTA in connection with the consummation of the transaction contemplated by this Agreement, have been (or with respect to documents to be executed after the Effective Date, will be) duly executed and delivered by MBTA and the Joined Sections and said documents to be executed and delivered by MBTA in connection with the consummation of the transaction contemplated by this Agreement (or with respect to documents to be executed after the Effective Date, will) constitute valid and binding agreements of MBTA enforceable upon MBTA in accordance with their respective terms and conditions.

10.3.3 All requisite action has been taken by MBTA to enter into the Joined Sections and to consummate the transaction contemplated thereby.

10.3.4 To the best of MBTA's knowledge, the execution, delivery of performance of the Joined Sections and compliance with their terms will not conflict with or result in the breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other Governmental Authority of which MBTA has knowledge or notice, or any other agreement, document or instrument by which MBTA is bound. There are no claims, lawsuits or proceedings pending in any court or Governmental Authority the outcome of which could materially adversely affect MBTA's ability to perform its obligations under the Joined Sections.

10.3.5 MBTA has not filed any petition, nor been the party against whom a petition has been filed in relation to any bankruptcy, insolvency, request for reorganization, for the appointment of a receiver or trustee, or for the arrangement of debt, nor to the best of MBTA's knowledge, is any such action threatened or contemplated.

10.3.6 MBTA has not retained any broker, agent or finder or paid or agreed to pay any broker, agent or finder on account of this Agreement or the transactions contemplated hereby.

10.3.7 Except as otherwise specifically provided herein, no consent, waiver, license, order or permit of any Governmental Authority is required to be made or obtained by MBTA for the execution, delivery or

performance of the Joined Sections and the consummation of the transactions on the part of MBTA contemplated hereby.

10.4 Real Property. There is no pending or, to Seller's knowledge, threatened condemnation or other similar proceeding of any part of the Railroad Assets, except by Buyer.

10.5 Survival. All of the warranties and representations made by the Parties and MBTA hereunder shall survive the Closing Date for a period of one year.

11. DEFAULT

11.1 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to the Closing for any reason except the failure by Seller to perform hereunder, or if prior to the Closing any one or more of Buyer's representations or warranties are breached in any material respect and such failure is not cured by Buyer within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Buyer is acting with due diligence) following receipt of notice of such default from Seller, Seller may elect to terminate this Agreement by giving Buyer written notice of such election prior to the Closing. In any such case, except as set forth below, Seller's sole and exclusive remedy shall be to retain from the Deposit an amount equal to Seller's reasonable third party costs associated with the transaction described in this Agreement as agreed-upon liquidated damages in full settlement of any and all claims arising under, or in any way related to, this Agreement and with no further recourse against Buyer, either at law or in equity. Except as set forth in **Section 11.3**, in no event shall Buyer be liable to Seller for money damages hereunder in excess of the dollar value of the Deposit, and (ii) Seller irrevocably waives any and all right to pursue specific performance of the Agreement or any other legal or equitable remedy otherwise available to Seller.

11.2 Seller Default. If Seller fails to perform its obligations pursuant to this Agreement for any reason except the failure by Buyer to perform hereunder, or if prior to the Closing, any one or more of Seller's representations or warranties are breached in any material respect, and such failure is not cured by Seller within ten (10) business days (or such longer period of time as may be reasonably required to cure such default, provided that Seller is acting with due diligence) following receipt of notice of such default from Buyer, Buyer may elect to terminate this Agreement by giving Seller written notice of such election prior to the Closing. In any such case, except as set forth below, Buyer's sole and exclusive remedy shall be money damages limited to reimbursement for any reasonable third party expenses including, without limitation, fees paid to lawyers, engineers, consultants and title examiners, reasonably incurred by Buyer in connection with this Agreement and the transactions contemplated herein. In no event shall Seller be liable to Buyer for money damages hereunder in excess of the dollar value of the Deposit. Notwithstanding the foregoing to the contrary, Buyer may, by notice given no later than thirty (30) days after such default (time being of the essence), waive its election to terminate this Agreement and pursue money damages for reimbursement of third party expenses and, instead, elect, as its sole and exclusive remedy, the remedy of specific performance. If Buyer makes such election for specific performance, it is agreed that specific performance shall be of this Agreement as a whole, including satisfaction of all preconditions to Seller's obligations to close.

11.3 Survival. The provisions of this **Section 11** shall survive termination of this Agreement and delivery of the Deed.

12. EMINENT DOMAIN

12.1 Attempted Taking; Purchase Price. Seller and Buyer hereby explicitly acknowledge and agree that they are entering into this Agreement in lieu of Seller's taking of the Railroad Assets by the exercise of Buyer's power of eminent domain. Buyer and Seller further agree that the Purchase Price is equal to the amount that Buyer would have been obligated to pay to Seller, including both state and federal relocation assistance and benefits, for the condemnation of the Railroad Assets in the condition the Railroad Assets are to be delivered to Buyer under this Agreement. In the event that Buyer elects, from time to time, to take all or any part of the Railroad Assets by eminent domain, the full amount payable by Buyer to Seller in such event, including both state and federal relocation benefits and assistance, for the part of the Railroad Assets so taken, shall be calculated on a pro rata basis based on the Purchase Price payable hereunder being equal to the amount payable for a taking of all of the Railroad Assets and shall be considered to be received in full satisfaction of the Purchase Price under this Agreement.

12.2 Compensatory Claims. Nothing contained herein shall be construed to preclude Seller from prosecuting any claim directly against the condemning authority for the value of the CSXT Framingham Easement in accordance with applicable law for any interests or properties belonging to Seller other than the Railroad Assets and, provided, further, that nothing contained herein shall be construed to create any interest or entitlement in Buyer to any and all funds payable to Seller for such total or partial taking of the Subject Property or any taking of the Seller's property.

12.3 Confirmatory Taking to Perfect Title. Nothing contained herein shall preclude Buyer from exercising its eminent domain powers for any purpose with respect to the Subject Property nor shall this Agreement be construed to limit Buyer's ability to record a "Confirmatory Order of Taking" for the Subject Property following the Closing; provided, however, that such exercise shall not modify, amend, limit or restrict the CSXT Framingham Easement, the 2014 Operating Agreement, any Other Operating Rights, or the rights and obligations of the parties hereto under this Agreement and, provided, further, that any such exercise shall be done at no cost or expense to Seller.

12.4 Circumstances Following Eminent Domain Taking. In the event that Buyer or MBTA takes any of the Subject Property by eminent domain, then at such time, Seller and Buyer shall execute the 2014 Operating Agreement, Buyer or MBTA shall reserve the CSXT Framingham Easement to Seller, and Seller shall deliver to Buyer or MBTA those items listed in **Sections 2.5.1(ii), 2.5.1(iii) and 2.5.1 (xii)**, but neither Party shall be responsible for any other deliveries pursuant to **Section 2.5**. At the Closing, Buyer and Seller shall execute and deliver to the other Party the Turnover Plan and the 2014 Operating Agreement. In no event may the exercise of eminent domain affect the 2014 Operating Agreement.

12.5 Condemnation by Others. If proceedings in eminent domain are instituted with respect to the Railroad Line or any portion thereof, by any governmental entity

so authorized, other than Buyer or MBTA, in which the potential award exceeds \$200,000.00, either Party may terminate this Agreement by written notice to the other Party, whereupon (i) the Deposit then being held by the Seller shall be returned forthwith, (ii) except as hereinafter set forth, all obligations of the Parties hereto shall cease and (iii) this Agreement shall be void and without recourse to the Parties. In the event that the potential award is \$200,000.00 or less, the Parties shall proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award, and Buyer shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. An eminent domain taking by Buyer or MBTA shall be governed by the prior provisions of this Section 12.

13. DISCLAIMER OF WARRANTY

EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE AND/OR THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES THAT THE RAILROAD ASSETS WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO BUYER BY SELLER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN.

14. CONDITION OF PROPERTY

Except as may be expressly set forth in the Deed, Bill of Sale and/or this Agreement, and subject to the rights of termination and rescission expressly set forth herein that are exercisable prior to the Closing, Buyer agrees to accept and purchase the Railroad Assets, without warranty, except as otherwise specifically provided for herein, "as is, where is," as of the Effective Date, subject to reasonable wear and tear.

15. NOTICES

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A Party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for

informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Buyer shall be deemed given by Buyer and notices given by counsel to Seller shall be deemed given by Seller.

Notices to Seller shall be sent to:

CSX Transportation, Inc.
500 Water Street – J150
Jacksonville, FL 32202-5184
Attn: Kim Bongiovanni, Esq.

with copy to:

Peter J. Shudtz, Esq.
CSX Corporation
Suite 560 National Place
1331 Pennsylvania Avenue, N.W.
Washington DC 20004

Notices to Buyer shall be sent to:

Deputy Rail Administrator
Massachusetts Department of Transportation
10 Park Plaza
Boston, MA 02116-3974
Attn: John D. Ray

Notices to MBTA shall be sent to:

Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Attn: Commuter Rail Operations

And a copy to:

Office of General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 3510
Boston, MA 02116
Attn: Michael A. Glover, Esq.

And a copy to:

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

16. MERGER

The delivery of the Deed for the Railroad Line by Seller, and Seller's performance of its obligations with respect to the Railroad Line, and the acceptance thereof by Buyer, shall be deemed to be a full performance and discharge of every agreement and obligation contained herein with respect to the Railroad Line except as otherwise expressly provided herein.

17. ENVIRONMENTAL MATTERS; ENVIRONMENTAL CONDITION OF THE RAILROAD ASSETS

17.1 Definitions. As used in this Section 17 and elsewhere in this Agreement, the following terms shall have the meanings provided below.

17.1.1 **Environmental Law** means any applicable federal, state or local law, statute, code, ordinance, rule, regulation, administrative or judicial order (whether unilateral or consented to) or other requirement relating to the environment, Hazardous Materials or natural resources and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 33 U.S.C. § 2601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601

et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and Massachusetts General Laws c. 21E, as such laws have been amended or supplemented, and the rules and regulations promulgated thereunder, and all analogous state or local statutes.

17.1.2 **Environmental Claim** means any and all administrative, regulatory or judicial actions, suits, judgments, demands, directives, claims, liens, investigations, proceedings or written or oral notices of noncompliance or violation by or from any person alleging liability of any kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resource damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from (1) the presence or Release of, or exposure to, any Hazardous Material at any location, or (2) the failure to comply with any Environmental Law.

17.1.3 **Hazardous Material** means any material, substance or waste, in whatever form, classified, characterized, designated or otherwise regulated as hazardous, toxic, corrosive, flammable, reactive, infectious, radioactive, a pollutant or a contaminant or words of similar meaning or effect under any **Environmental Law** and includes, without limitation, petroleum, petroleum products, asbestos, urea formaldehyde and polychlorinated biphenyls.

17.1.4 **Release** means any actual or threatened release, spill, leaking, pumping, pouring, emission, emptying, discharge, dumping, deposit, disposal, arrangement for disposal, injection, escaping, leaching, dispersal or migration into or through the environment.

17.2 Environmental Permits; Representations and Warranties.

17.2.1 On or before the Closing Date, the Parties shall develop a list of all permits under Environmental Laws used in, or necessary for, the Business or the ownership and operation of the Railroad Assets ("**Environmental Permits**") (and all pending applications for any such Environmental Permits, the "**Environmental Schedule**"). Buyer acknowledges that, except as provided herein, Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Subject Property, and Seller expressly disclaims any and all obligation and liability to Buyer regarding any defects which may exist with respect to the condition of the Subject Property. Notwithstanding the foregoing, subject to **Section 17.2.3** below, Seller represents and warrants that, except as disclosed on **Exhibit F**, Seller has no knowledge of any notices, claims or assessments regarding any environmental conditions

affecting the Subject Property that would be the basis for imposing any liability on the owner of the Subject Property.

17.2.2 Not later than ten (10) days after the Effective Date, Seller shall have used commercially reasonable efforts to make available to Buyer all material reports, investigations, studies, audits, tests, reviews or other analyses relating to the presence or Release of Hazardous Materials or the Environmental Laws conducted by or in the possession of Seller (“**Environmental Reports**”) in relation to the Railroad Assets. Seller makes no warranties or representations about the accuracy or completeness of the Environmental Reports; provided, that subject to **Section 17.2.3** below, Seller has no actual knowledge that any Environmental Report is inaccurate in any material respect. The Environmental Reports shall be furnished to Buyer pursuant a mutually satisfactory confidentiality agreement.

17.2.3 Seller’s representations and warranties in **Sections 17.2.1** and **17.2.2** above are made to the knowledge of said Seller, said knowledge being limited to the actual knowledge of D. Kevin Hurley, Director of Real Estate Services for CSX Real Property, Inc. and such other persons as the parties may mutually agree, without undue investigation or inquiry. If and to the extent Buyer has, as of the Closing, knowledge that any of said representations or warranties is untrue and nevertheless elects to close, then Seller’s representations and warranties shall be deemed modified by such knowledge of Buyer. In addition, no action or claim may be made upon any such representation or warranty after ten (10) years from the date of the Closing with respect to the portion of the Subject Property covered by said representation and warranty, and in any event Seller’s liability for breach of said representations and warranties shall be deemed limited to and modified by the provisions of **Section 17.9** herein.

17.3 Environmental Inspections.

17.3.1 After the execution of this Agreement by all of the Parties, and prior to the Closing, Buyer and/or its agents shall be permitted to have access to the Railroad Assets for the purposes of conducting Due Diligence regarding the presence or Release of Hazardous Materials or other matters pertaining to Environmental Laws, subject to the Right of Entry Agreement and an environmental testing and evaluation methodology to be agreed between the Parties. Buyer hereby acknowledges that Seller has not authorized physical testing of the Railroad Assets pertaining to the Release of Hazardous Materials or other matters pertaining to Environmental Laws.

17.3.2 With regard to such environmental testing programs, Seller reserves the right to monitor and approve in its sole and absolute

discretion all physical procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in or on the Railroad Assets pursuant to **Section 17.3.1** hereof. The Parties agree that Buyer has not yet submitted a request to Seller to conduct environmental testing. Buyer shall: (a) notify Seller in writing no less than five (5) days prior to initiating any such environmental work; (b) keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and (c) fully cooperate with all reasonable requests of Seller in undertaking and carrying out such work. Buyer shall deliver to Seller, at no cost to Seller, within twenty (20) days after receipt, copies of all final results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer.

17.3.3 If the presence or Release of Hazardous Materials relating to the Railroad Assets is revealed by the Environmental Reports, the studies and tests conducted by Buyer pursuant to this Agreement or other information, in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities, or, if Buyer is otherwise, in its sole discretion, unwilling to accept the environmental condition of the Railroad Assets as a result of such Environmental Reports, tests or assessments, Buyer may elect to terminate this Agreement pursuant to **Section 7.3.1** hereof.

17.4 As Is Purchase. If Buyer elects not to secure environmental tests or inspections, or if Buyer does not, pursuant to **Section 7.3.1** hereof, elect to terminate this Agreement after receipt of test results, Buyer shall take the Subject Property "as is" at Closing and, subject to **Section 17.5**, releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition, including without limitation claims for contribution with respect to third party claims.

17.5 Cost Sharing. If Buyer does not elect to terminate this Agreement pursuant to this **Section 17**, Seller shall remain liable for, and shall reimburse Buyer for, fifty percent (50%) of the actual out of pocket costs incurred for remediation of the Subject Property during the first ten (10) years after the Closing, with respect to the property conveyed pursuant to said Closing, upon the following conditions:

- (a) Such remediation shall (i) have been required to respond to the presence or Release of Hazardous Materials which was present or had been released prior to the date of the Closing, with respect to property conveyed pursuant to said Closing, except to the extent caused or contributed to by Buyer; (ii) be subject to a plan of remediation formulated by Buyer and provided to Seller for review and approval, which approval shall not be unreasonably withheld, that utilizes institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Railroad Assets for railroad purposes, including a proposed

schedule and methodology designed to minimize interference with the use of the Railroad Assets by the Parties; and apply only once to any given location.

- (b) Buyer shall pay for the other fifty percent (50%) of such remediation costs;
- (c) Buyer shall have provided Seller with all reasonably requested relevant information regarding the nature and extent of the condition requiring remediation and reasonable documentation as to the costs of remediation;
- (d) Seller's total aggregate reimbursement hereunder shall not exceed ONE MILLION NINE HUNDRED FIFTY-FIVE THOUSAND and 00/100 DOLLARS (\$1,955,000.00);
- (e) Seller shall not be responsible for any single remediation claim or occurrence costing less than \$50,000.00;
- (f) Seller's obligations for reimbursement shall cease and be null and void from and after ten (10) years after the date of the Closing; and
- (g) Buyer shall have the right to allocate Seller's contribution for remediation to such portions of the Subject Property as Buyer may elect in its sole and absolute discretion.

17.6 Claims Against Third Parties. Notwithstanding anything in this Agreement to the contrary, the Parties reserve any and all rights that they may have against third parties under statutory and/or common law, including the Environmental Laws, pertaining to the environmental matters addressed in this **Section 17** and/or the environmental condition of the Railroad Assets, including but not limited to the presence or Release of Hazardous Materials in, on, under, from, to or about the Railroad Assets. In the event that a third party brings a contribution claim against Seller relating to a claim against that third party brought by Buyer or MBTA, any payments by Seller with respect to such third party contribution claims shall reduce, on a dollar for dollar basis, the maximum contribution by Seller under **Section 17.5** or liability of Seller under **Section 17.8**.

17.7 Exceptions. **Section 13** and **Section 14** of this Agreement shall not apply to the environmental condition of the Railroad Assets and/or the environmental matters addressed in this **Section 17**.

17.8 Liabilities for Breach of Representations and Warranties. As set forth in **Section 17.2**, Seller's liability for breach of representation or warranty therein shall, in any event, be limited to a total of ONE MILLION NINE HUNDRED FIFTY-FIVE THOUSAND and 00/100 DOLLARS (\$1,955,000.00), less any amounts payable by Seller pursuant to **Section 17.5** or **17.6**. By way of illustration and example, if Seller is liable for damages of \$1,000,000.00 for breach of a representation or warranty, Seller shall be liable for the entire \$1,000,000.00 attributable to said breach, whereupon its total liability for cleanup costs under

Section 17.5 shall be reduced to NINE HUNDRED FIFTY-FIVE THOUSAND and 00/100 DOLLARS (\$955,000.00).

17.9 Survival. The provisions of this **Section 17** shall survive Closing and the delivery of the Deed hereunder.

18. MISCELLANEOUS PROVISIONS

18.1 Rights and Remedies Cumulative: Waiver. Except as expressly provided herein, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No failure of either Party to exercise any right or power under this Agreement, or to insist upon strict compliance with the provisions of this Agreement, and no custom or practice of either party at variance with this Agreement, shall constitute a waiver of such Party's right to demand exact and strict compliance by the other Party with the terms and conditions of this Agreement.

18.2 Severability. If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and this Agreement shall otherwise remain in full force and effect.

18.3 Controversy. In the event of any controversy, claim or dispute between the Parties hereto affecting or relating to the purposes or subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all of its expenses, including, without limitation, reasonable attorneys' fees and costs.

18.4 Successors and Assigns. This Agreement shall inure to, and be binding upon, the Parties and their respective successors and assigns. Neither Party may assign its rights hereunder without the written consent of the other Party provided, however, that (i) Buyer may (x) assign its rights and obligations hereunder to the MBTA, and (y) designate one nominee or several nominees to take title to the Railroad Assets or any part thereof, provided however, in either such event, Buyer shall not be released from any of its obligations or liabilities hereunder, and (ii) Seller may assign its rights in the CSXT Framingham Easement pursuant to **Section 2.4.1**. Any assignee or nominee of Buyer as provided in subclauses (x) and (y) above shall be required to join in this Agreement as provided in **Section 7.2**.

18.5 Tax Free Exchange. Notwithstanding anything contained herein to the contrary, Buyer acknowledges that Seller may elect to designate the Subject Property as relinquished property to consummate a like-kind exchange or reverse like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (an "**Exchange**") with respect to property that Seller will acquire either prior to or within one hundred eighty (180) days after

Closing (the "**Replacement Property**"). In the event that Seller designates the Subject Property as relinquished property to consummate an Exchange with respect to the Replacement Property through the use of a qualified intermediary (the "**Intermediary**") and/or Exchange Accommodation Titleholder ("**EAT**"), Buyer shall cooperate (at no cost to Buyer) in structuring the transaction as an Exchange for the benefit of Seller and Buyer agrees to render all required performance under this Agreement to either the Intermediary or the EAT (either the Intermediary or the EAT referred to herein as the "**Assignee**") to the extent reasonably directed by Seller and to accept performance of all of Seller's obligations by the Assignee. Buyer consents to the assignment of this Agreement by Seller to an Assignee in connection with an Exchange. Buyer agrees that performance by the Assignee will be treated as performance by Seller, and Seller agrees that Buyer's performance to the Assignee will be treated as performance to Seller. No assignment of rights under this Agreement to an Assignee shall effect a release of Seller from obligations under this Agreement. In the event an Exchange should fail to occur for whatever reason, the sale of the Subject Property shall nonetheless be consummated pursuant to this Definitive Agreement. Seller agrees that: (i) the Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Agreement; (ii) the Exchange shall not affect or diminish Seller's or Buyer's rights under this Agreement; (iii) Buyer shall not be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv) Buyer shall incur no additional liability or expense to effectuate the Exchange. Seller shall promptly reimburse Buyer for any of Buyer's actual, out-of-pocket costs incurred in connection with the Exchange and its activities under this section. Buyer makes no representations or guarantees to Seller that the transaction contemplated under this provision will result in any particular tax treatment to Seller or will qualify as an exchange under Section 1031 of the Internal Revenue Code. Seller hereby unconditionally guarantees the full and timely performance by the Assignee of each and every one of the representations, warranties, indemnities, obligations and undertakings of the Assignee. As guarantor, Seller shall be treated as a primary obligor with respect to these representations, warranties, indemnities, obligations and undertakings, and, in the event of breach of this Agreement, Buyer may proceed directly against Seller on this guarantee without the need to join the Assignee as a party to any action against Seller. Seller unconditionally waives any defense that it might have as guarantor that it would not have if it had made or undertaken these representations, warranties, indemnities, obligations and undertakings directly. In the event of the breach of any representations, warranties, obligations and undertakings by Seller or the Assignee, or in the event of any claim upon any indemnity of Seller or the Assignee (whether the representation, warranty, indemnity, obligation or undertaking is express or implied), Buyer's exclusive recourse shall be against Seller.

18.6 No Brokers. Buyer and Seller each represent and warrant to each other that it has dealt with no broker, finder or other person or entity in connection with the transactions contemplated by this Agreement and each party shall indemnify and hold harmless the other party against any liability, claim, loss, damage, cost or expense (including reasonable attorney's fees and disbursement) suffered as a result of the foregoing representation being, or being alleged to be, false.

18.7 Survival. The provisions of this Agreement that expressly contemplate performance after the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

18.8 Entirety and Amendments. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the Railroad Assets. This Agreement may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

18.9 Time. Time is of the essence in the performance of this Agreement.

18.10 Construction. This Agreement shall be construed as a whole and in accordance with its fair meaning. The premises hereinbefore stated are incorporated as a part of the Agreement. Captions and organizations are for convenience only and shall not be used in interpreting this Agreement or construing meaning. Whenever the words "including", "include" or "includes" are used in this Agreement or the Closing documents, they shall be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. If any Party consists of more than one person, each such person shall be jointly and severally liable.

18.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the Commonwealth of Massachusetts, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m.

18.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange facsimile counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in **Section 16** other than facsimile.

18.13 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either Party at Closing, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

18.14 Designated Representative. Seller has designated Richard Hood ("Seller's Designated Representative") and Buyer has designated John D. Ray, Deputy Rail Administrator of Buyer ("Buyer's Designated Representative") to act as a liaison between Seller and Buyer, respectively, in connection with this Agreement. Whenever any approval, acceptance, consent, direction or action of one party is required pursuant to this Agreement, the

requesting Party shall send to the other Party's Designated Representative a written notice requesting same, which notice shall: (i) describe in detail the matter for which such approval, acceptance, consent, direction or other action of the responding Party is requested; (ii) be accompanied by a copy of any contract, agreement or other document to be executed by the responding Party evidencing such approval, consent, acceptance, direction or action of requesting party; and (iii) be accompanied by such other documents, written explanations and information as may be reasonably necessary to explain the request fully and completely. The Designated Representative will communicate the responding Party's response to any such requests to by the requesting Party.

18.15 Prohibition of Third Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Agreement.

18.16 Publicity. Neither Party shall issue any press release or otherwise make a public statement with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other Party except as may be required by applicable laws, in which case the Parties shall use their best efforts to consult with each other regarding the content of any such press release or statement prior to its release.

18.17 Exhibits. The Exhibits attached hereto are hereby incorporated as integral parts of this Agreement.

18.18 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts and applicable federal law.

18.19 Venue. Any action or proceeding brought hereunder shall be brought exclusively in the United States District Court situate in Boston, Massachusetts, unless such court lacks subject matter jurisdiction in which case any action or proceeding may be brought in any state court situate in Boston, Massachusetts.

18.20 No Recording. This Agreement shall not be recorded by either Party..

SEPARATE SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date, in triplicate, each of which shall be considered an original.

APPROVAL AS TO FORM

Paige Scott Reed
Paige Scott Reed
General Counsel
Massachusetts Department of Transportation
Massachusetts Bay Transportation Authority

BUYER:
THE MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION

Frank DePaola
Frank DePaola
Acting Secretary and Chief Executive Officer

MBTA:

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
only for the purposes of the joining in Sections 4.2, 4.4, 10.3, 10.5, 11.1, 11.3, and 12.4.

By: Beverly A. Scott
Beverly A. Scott, Ph.D.
General Manager

[Framingham Secondary Definitive Agreement – Signature Page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date, in triplicate, each of which shall be considered an original.

SELLER:

CSX TRANSPORTATION, INC.

By: 

Name: Peter J. Shudtz

Title: Vice President-Federal Regulation and General Counsel

[Framingham Secondary Definitive Agreement – Signature Page]

EXHIBIT A

The Railroad Line

Facility Segment	Total Facility Length		Miles
	Mile Posts		
	From	To	
FRAMINGHAM SUBDIVISION (Framingham to Mansfield)	QBF 21.2	QBF 0.0	

NOTE:

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

EXHIBIT A-1

Railroad Line Plans

[to be developed pursuant to **Section 7.3.2**]

EXHIBIT B
Form of Deed

Framingham Secondary

**THIS INSTRUMENT HAS BEEN PREPARED IN
THREE (3) COUNTERPARTS FOR SIMULTANEOUS
RECORDING IN THREE (3) REGISTRIES OF DEEDS**

This instrument prepared by
or under the direction of:

Philip J. Notopoulos, 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 ____ day of _____, 2014, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Grantor", and the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing address is 10 Park Plaza, Boston, Massachusetts 02116, hereinafter called "Grantee,"
#32691984_v7

(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 (i) a line of railroad over which rail freight and special passenger rail service are presently conducted, consisting of (a) [insert description of mileage, mileposts, etc, for Framingham Secondary] and (ii) certain specified properties contiguous to such line; and

WHEREAS, pursuant to a certain Definitive Agreement dated as of November __, 2014 between Grantee and Grantor, as amended (the "Definitive Agreement"), Grantee agreed to acquire Grantor's interests in such properties and such line 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 line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and line of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the terms and conditions set forth herein and in the Operating Agreement (as hereinafter defined), it being the intention of the parties that Grantor 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 Twenty Three Million Dollars (\$23,000,000.00) 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 Middlesex, Norfolk and Bristol Counties, Massachusetts, being the "Land" as defined and more particularly described in **Exhibit A** attached hereto and incorporated herein;

BUT EXCLUDING and excepting unto Grantor those parcels, rights and interests listed or shown on **Exhibit B** attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Framingham 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 affixed as of the date hereof to the Land (including Fixtures located on any portion of the Land that constitutes Excluded Property), 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 Framingham 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 Framingham 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, limitations, rights and reservations set forth in the instruments creating the Existing Easement Rights, as set forth in Exhibit A, and the matters affecting the Existing Easements Rights as set forth in Exhibit C.

2. The terms, conditions and limitations of that certain Operating Agreement dated as of the date hereof between Grantor and Grantee (the "Operating Agreement").

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. Grantor and Grantee agree that the CSXT Framingham Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive common carrier and the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in the Operating Agreement. In addition, Grantee represents that neither Grantee nor MBTA 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 MBTA, which consent may not be unreasonably withheld, conditioned or delayed. It shall not be unreasonable for either Grantor or MBTA 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.

5. Transfer of the CSXT Framingham Easement shall be governed by the provisions of Exhibit D and Exhibit E attached hereto.

6. Definitions of CSXT Framingham Easement Terms:

(a) Perpetuity: Until this CSXT Framingham Easement is abandoned or terminated, as provided in the Operating Agreement. In the event of abandonment or termination of any portion of this CSXT Framingham Easement as provided in the Operating Agreement, such portion thereof shall automatically be extinguished.

(b) 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.

(c) 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 or the MBTA may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee or the MBTA, but not common or contract carriage of freight.

(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 or the MBTA pursuant to the Operating Agreement and otherwise allowed by the terms of this Deed.

There is reserved as part of the CSXT Framingham Easement, to the extent necessary for Grantor's exercise of the CSXT Framingham Easement, the rights created by the following instrument, which rights are to be held and exercised in common with the Grantee: Easements for tracks as set forth in Order of Taking M.B.T.A. No. 129 dated March 26, 1979 recorded with the Norfolk Registry of Deeds in Book 5586, Page 672, to which easements said taking was made subject.

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 Operating Agreement, the provisions of the Operating Agreement 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 Operating Agreement and the Definitive Agreement are retained at the offices of the Grantor.

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

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

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

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

[signature page to follow]

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

CSX TRANSPORTATION, INC.

By: _____

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this ____ day of _____, 2014 before me, the undersigned Notary Public, personally appeared the above-named _____ proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image; oath or affirmation of a credible witness known to me who knows the above signatory; or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him as his free act and deed, voluntarily for its stated purpose, as _____ of CSX Transportation, Inc.

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

EXHIBIT A

#32691984_v7

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EXHIBIT B
Excluded Property Description

1. The Operating Agreement (as defined in the Deed to which this exhibit is attached).
2. The CSXT Framingham Easement (as defined in the Deed to which this exhibit is attached).

EXHIBIT C

List of existing easement rights re: Walpole

Easements for tracks set forth in M.B.T.A. Order of Taking No. 128 dated March 26, 1979 recorded with the Norfolk Registry of Deeds in Book 5586, Page 672, to which easements said taking was made subject.

EXHIBIT D
Provisions Relating to Transfer of CSXT Framingham Easement

1. The CSXT Framingham Easement shall be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Framingham Easement (each of Grantor, a Related Party and a subsequent holder being a "**Benefitted Holder**"), shall sell, lease, license or otherwise transfer (each such transaction being a "**Transfer**") the benefit of the CSXT Framingham 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 which is a Related Party of Grantor (a "**Grantor Related Party**"), makes a Transfer of an Easement Interest to a third 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 which are 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. 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.

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 Framingham 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 or the Massachusetts Bay Transportation Authority (the "**MBTA**").
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 or the MBTA 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 the MBTA, 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 or the MBTA, and the Grantee or the MBTA 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 or the MBTA 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 shall not be waived. No such waiver shall be effective unless evidenced by a written instrument executed by a duly authorized representative of Grantee.

EXHIBIT C1
2014 Operating Agreement

Execution Version

**2014 OPERATING AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND CSX TRANSPORTATION, INC.**

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- EXHIBIT G – Passenger Train Schedule
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INTRODUCTION AND RECITALS

The Massachusetts Bay Transportation Authority (the “**MBTA**”) and CSX Transportation, Inc. (“**CSXT**”) (hereinafter the “**Parties**,” or each a “**Party**”), enter into this 2014 Operating Agreement (the “**Agreement**”) as of the Execution Date (defined below) in order to memorialize their mutual understanding with regard to certain rights to conduct passenger and freight services on property owned by the Massachusetts Department of Transportation, a Massachusetts body politic and corporate (“**MassDOT**”), and for the purpose of defining their respective rights and obligations with respect to the same.

Whereas CSXT, MassDOT, and the MBTA entered into a Definitive Agreement as of November 25, 2014 that, among other things, provides for the transfer of ownership of certain rail properties from CSXT to MassDOT or its designee; and

Whereas CSXT has retained certain perpetual, exclusive, freight easement rights over the MBTA Rail Properties, as defined herein.

Now, therefore, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Definitive Agreement (as hereafter defined). For the purposes of this Agreement:

“**Amtrak**” means the National Railroad Passenger Corporation.

“**Appropriate Statutory and Regulatory Authority**” means 49 U.S.C. §10903, et seq. and 49 C.F.R. Part 1152 and the STB’s interpretations thereof.

“**Commuter Windows**” daily from 5:00 A.M. to 11:00 A.M. and 3 P.M. to 9 P.M. hours, during which times the MBTA Commuter Rail Services will have priority.

“**Consent Properties**” shall have the meaning set forth in paragraph 2.2(e).

“**CSXT**” means CSX Transportation, Inc., a Virginia corporation, as well as any successor or assign duly recognized by the Surface Transportation Board, if necessary.

“**CSXT Framingham Easement**” shall, from the Execution Date until the Effective Date, have the meaning given to that term in the Definitive Agreement. From and after the Effective Date, “**CSXT Framingham Easement**” shall mean CSXT’s easement rights as described in any deed or deeds transferring the MBTA Rail Properties pursuant to the Definitive Agreement, which deed or deeds, when recorded, shall be attached hereto as **Exhibit B**.

“**CSXT Freight Rail Service**” means the full range of services and activities performed by CSXT (or any assignee of the CSXT Framingham Easement) in connection with its provision of rail service in the Commonwealth of Massachusetts.

“**Definitive Agreement**” means that certain Definitive Agreement, dated as of November 25, 2014, as may be amended, by and between MassDOT and CSXT.

“**Effective Date**” means the Closing Date. The Parties shall confirm the Effective Date by letter agreement after the Closing has occurred, and may add such Effective Date here:

_____.

“**Effective Interest Rate**” means the lesser of (i) twelve percent (12%) per annum or (ii) the fluctuating rate per annum equal to the Prime Rate plus two percent (2.0%). “**Prime Rate**” means the Prime Rate as from time to time published in the Money Rates Section of *The Wall Street Journal*. The rate described in clause (ii) of this definition shall change on the date of each change in the Prime Rate, and if such change results in a change to the Effective Interest Rate applicable to any amount due under this agreement, the new Effective Interest Rate shall be applied as of such date.

“**Execution Date**” means the date set forth on the signature page of this Agreement.

“**Extension Notice**” shall have the meaning set forth in paragraph 2.7(b).

“**FRA**” means the Federal Railroad Administration.

“**FRA Track Safety Regulations**” means the regulations promulgated by FRA, currently codified at 49 C.F.R. Parts 200-268 and in effect as of December 1, 2005, as amended from time to time.

“**Freight Window**” daily from 12:00 A.M. until 5:00 A.M. during which times CSXT Freight Rail Services shall have priority.

“**Infrastructure Work**” shall have the meaning set forth in paragraph 4.1.

“**Intercity Rail Passenger Transportation**” shall have the meaning as set forth in Title 49 U.S.C. §24102.

“**Joint Usage Rail Properties**” refers to those segments of the MBTA Rail Properties used by the MBTA for passenger rail service, as listed on Exhibit A and described in Section 2.

“**MBTA**” means the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended.

“**MBTA Commuter Rail Services**” means (i) all of the rail operations, including movement of MBTA materials and equipment, services and activities performed by the MBTA and its commuter rail Operating Contractor (or their respective assignees or designees) in connection with the provision of commuter rail service on the MBTA Rail Properties, and (ii) Third Party IRPT.

“**MBTA Rail Properties**” means the properties within the entirety of the right of way named on Exhibit A. Use of MBTA Rail Properties shall be as allocated in this Agreement. The Parties shall update Exhibit A at the time of the closing of the acquisition of any properties that the

Parties, by mutual agreement, desire to include within the MBTA Rail Properties, and to thereafter reflect any additions to or changes in the allocation of use that the Parties mutually agree to during the Term of this Agreement.

"Mixed Use Window" means the times outside of either the Commuter Windows or the Freight Window, during which time dispatch of the trains shall be handled pursuant to an agreed to dispatch protocol which shall take into account the type of train, time of day and then current respective train schedule.

"Operating Contractor" means (i) any entity contracted with by the MBTA to provide commuter rail services on behalf of the MBTA, or (ii) any Third Party IRPT Provider.

"Parties" means CSXT and MBTA.

"Person" means any individual, corporation, partnership, association, trust or any other entity or organization, including, without limitation, a government, a public agency, political instrumentality or political subdivision or authority.

"Required Insurance Amount" means the greater of (i) the Statutory Limit as that amount may from time to time be modified by the Massachusetts General Court or (ii) Seventy-Five Million Dollars (\$75,000,000.00).

"Response Date" shall have the meaning set forth in paragraph 2.7(b).

"Statutory Limit" means the limitation placed by Massachusetts General Laws chapter 161A, Section 43 on the exposure of the Parties to certain liability.

"STB" means the Surface Transportation Board.

"Third Party IRPT" means Intercity Rail Passenger Transportation, utilizing the MBTA Rail Properties, provided by a Third Party IRPT Provider. For purposes of this Agreement Third Party IRPT shall be deemed to be included in MBTA Commuter Rail Services.

"Third Party IRPT Provider" means MBTA or any other Person (other than Amtrak) providing Third Party IRPT.

"Usage Charges" shall have the meaning set forth in paragraph 6.1.

SECTION 2. JOINT USAGE RAIL PROPERTIES.

The provisions of this Section 2 shall apply to the Joint Usage Rail Properties.

2.1 Access to Joint Usage Rail Properties.

Subject to the provisions of this Agreement, CSXT may use the CSXT Framingham Easement to provide CSXT Freight Rail Service on, and to enter upon and utilize the existing tracks and related operating facilities on those MBTA Rail Properties described on **Exhibit A** hereto as **"Joint Usage Rail Properties,"** *provided* however, that CSXT's use of such properties

shall be subject to the conditions set forth in this Agreement, and *provided further* that MBTA covenants and agrees that it will not transport, and it will not grant any rights with respect to, or otherwise permit any Person other than CSXT to transport freight over such Joint Usage Rail Properties, but the Parties agree that the MBTA shall have the right to use the Joint Usage Rail Properties in accordance with the operating windows described in Section 2.2(b) below to transport baggage and other equipment and material for use by or for the MBTA, its agents or contractors. The access rights granted herein are granted for the purpose of permitting the CSXT Freight Rail Service, including without limitation, permitting CSXT to operate freight trains and related switching movements and CSXT shall have access to all running, side, switching, yard, and interchange tracks included in Joint Usage Rail Properties existing on the Effective Date, or with respect to the Consent Properties (as defined herein), hereafter connected to the existing track whether or not on right-of-way conveyed under the Deed referenced in **Exhibit B** of this Agreement, and necessary for the provision of the CSXT Freight Rail Service, all subject to and consistent with the conditions set forth herein.

2.2 Limitations on Access Rights.

The rights of CSXT described above shall be limited as follows:

(a) Joint Usage Rail Properties shall be jointly used by CSXT for CSXT Freight Rail Service and related uses and by the MBTA for MBTA Commuter Rail Services and related uses, in accordance with the terms set forth herein. Nothing in this Agreement shall derogate from MBTA's right to utilize, directly or through its Operating Contractor, or to permit other carrier(s) to utilize any MBTA Rail Properties for the provision of MBTA Commuter Rail Services provided that such utilization is not in violation of the access rights granted to CSXT pursuant to the provisions of this Agreement, provided however, MBTA shall not provide, directly or through its Operating Contractor, nor permit other carrier(s) to utilize any MBTA Rail Properties for the provision of MBTA Commuter Rail Services unless and until the Infrastructure Work is completed without the consent of CSXT. Notwithstanding any provision of this Agreement to the contrary, CSXT shall not unreasonably withhold its consent to the operation of MBTA trains transporting passengers in connection with special civic, sports or other events ("**Events**" and individually, an "**Event**,") over the Joint Usage Rail Properties prior to the date that the Infrastructure Work is completed, provided that (i) such operations are conducted in an infrequent and temporary manner, (ii) such operations do not unreasonably interfere with CSXT's use of the Joint Usage Rail Properties, (iii) the number of such roundtrip trains does not exceed thirty-six (36) within any consecutive twelve (12) month period, (iv) each Event is preceded by at least two (2) weeks' notice to CSXT and (v) each Event is conducted pursuant to reasonable protocols consistent with prior such events ("**Occasional MBTA Use**"). It shall not be deemed to be unreasonable for CSXT to condition its consent for Occasional MBTA Use with respect to an Event on MBTA's agreement, pursuant to CSXT's request, to clear such trains during the Event to the Walpole and Mansfield Yards, CSXT hereby consenting to MBTA's use of such yards solely for such purpose.

(b) Other than Occasional MBTA Use which may be permitted pursuant to Section 2.2(a), MBTA passenger trains shall not commence on the Joint Usage Rail Properties until the Infrastructure Work is completed to the mutual and reasonable

satisfaction of MBTA and CSXT. From and after the completion of the Infrastructure Work, MBTA may commence passenger trains pursuant to the Passenger Train Schedule attached hereto as **Exhibit G**. Notwithstanding the foregoing, should MBTA seek to modify the Passenger Train Schedule to accommodate changes in the arrival or departure times of existing trains identified in **Exhibit G**, it shall submit such request to CSXT for its prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such modifications will not interfere with CSXT's then existing freight operations.

(c) Notwithstanding the foregoing, this Agreement is not intended to constrain the Parties from considering, over time, and subject to computer modeling, capacity, the effect of future technological, infrastructure, commercial and other changes that may allow the possibility of accommodating additional freight and passenger trains subject to the mutual agreement of the Parties and without interfering with CSXT's ability to satisfy its current and future common carrier obligations. Subject to the foregoing, if, after the completion of the Infrastructure Work, MBTA wishes to add a train other than a train listed in **Exhibit G** (a "New Passenger Train"), or, prior to or after the Infrastructure Work, CSXT wishes to add a freight train in addition to the trains listed in **Exhibit H** (a "New Freight Train," and sometimes referred to collectively with a New Passenger Train, as a "New Train") the Party wishing to add the New Train must notify the other Party of the New Train to be added and demonstrate through the foregoing modeling that such New Train will not unreasonably impact the passenger or freight operations, provided, however, in the event a New Passenger Train is not reasonably likely to operate within the Freight Window, or a New Freight Train is not reasonably likely to operate within the Commuter Windows, the New Train need not be modeled. New Trains that comply with the foregoing provisions will be added to the respective train schedule in the respective exhibit.

(d) Subject to and consistent with the provisions of this Section 2, the MBTA shall establish a dispatching protocol for the Joint Usage Rail Properties that (i) will take into account the Commuter Windows, Freight Window and Mixed Use Window and minimize negative impacts on each other's trains in all time periods, and (ii) will allow reasonable flexibility within the structure described herein in order to accommodate the movement of each other's trains (including without limitation scheduled and unscheduled CSXT trains), provided however that in all circumstances a scheduled commuter rail train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes later than its scheduled time.

(e) The New Tracks (as hereinafter defined) and the properties shown on **Exhibit F** shall be Joint Usage Rail Properties hereunder (collectively, the "Consent Properties"), provided, however, that the Consent Properties may only be used by MBTA with the prior written consent of CSXT, which consent shall not be unreasonably withheld, conditioned or delayed.

2.3 CSXT Usage Levels and Related Alterations.

(a) The MBTA shall, at all times, allow CSXT access to all of CSXT's freight service locations consistent with Section 2.2 above.

(b) The MBTA shall maintain clearance and load carrying capacity on Joint Usage Rail Properties at or equal to the published limit existing thereon as of the date of this Agreement. The MBTA shall not install any new track (except as contemplated by the Infrastructure Work) nor relocate any existing track less than 13 feet (not less than 14 feet wherever reasonably feasible) centerline to centerline from any other track if either track is being used by CSXT in its freight service. Where existing track is being reconstructed or former trackage is being reinstalled, MBTA shall have the option of reconstructing or reinstalling such track to clearances and alignments existing immediately prior to the commencement of such reconstruction or reinstallation.

(c) Notwithstanding any other provision of this Agreement to the contrary, the MBTA shall maintain horizontal and vertical track clearances on the Joint Usage Rail Properties (except station tracks that are separate from the main line) that meet or exceed (i) the vertical clearances set forth in AAR Equipment Diagram (Plate) "H" in effect as of the Effective Date, and (ii) the horizontal clearances set forth in AAR Equipment Diagram (Plate) "F" in effect as of the Effective Date. CSXT shall have the right to conduct clearance laser measure surveys with approved Hi-rail vehicles, and will share the results with MBTA upon request. The MBTA shall have the unilateral right to maintain horizontal and vertical track clearances on station tracks that are separate from the main line that the MBTA determines, in its sole discretion are suitable for MBTA operations.

(d) The MBTA shall, as determined by CSXT to be reasonably necessary, ensure that CSXT is furnished with tracks, bridges and culverts for the operation of the CSXT Freight Rail Service that are materially similar to those tracks, bridges and culverts that exist as of the Effective Date, *provided however*, (i) in the event that any new bridges are constructed on or over the MBTA Rail Properties, or (ii) any existing bridges on or over the MBTA Rail Properties are reconstructed, MBTA shall ensure that all such bridges conform to the "315 standards".

2.4 Control and Management.

(a) MBTA shall perform, or delegate or subcontract to its Operating Contractor or another entity, the performance of the management, regulatory and operational control of any and all rail service over MBTA Rail Properties (including Joint Usage Rail Properties) including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not violate CSXT rights to use MBTA Rail Properties, as set forth in this Agreement. In the exercise of its control over Joint Usage Properties, the MBTA will give priority to MBTA passenger trains over all other train scheduling, dispatching and control, including without limitation freight service, but will make all reasonable efforts to expedite the movement of freight trains, including expediting repairs to lines, removing obstructions, and scheduling regular maintenance and repair programs at hours which will not unreasonably interfere with such movement.

(b) The MBTA shall ensure that its contractors and subcontractors performing work or services on the Joint Usage Rail Properties pursuant to this Section 2 perform and complete their respective work or services in accordance with this Agreement

for the provision of such work or services. The MBTA, and not CSXT, shall be liable for all liability, cost, and expense arising out of or connected with any failure of such contractor or subcontractors to perform, and (except as the Parties may agree by written agreement) shall bear all cost or expense in connection with the performance, or failure to perform, of such contractors or subcontractors.

2.5 Maintenance

(a) Provision of Maintenance Services.

(1) The MBTA shall provide all maintenance services for Joint Usage Rail Properties in accordance with this Agreement, including the applicable maintenance standards described in paragraph 2.5(a)(3) below. All maintenance shall be undertaken in a manner that does not unreasonably interfere with train operations. The MBTA shall use its best efforts to schedule maintenance services between the hours of 7 a.m. and 7 p.m., and in a manner that is fairly apportioned among the applicable windows of operation during that period. The Parties acknowledge and agree, however, that certain work, such as work on grade crossings and bridge replacements, often must be performed between 7 p.m. and 7 a.m. In all circumstances where a track outage is required for the performance of maintenance (except emergency maintenance services), such maintenance work shall be scheduled at least fifteen (15) days in advance of any such track outage.

(2) Where facilities, including utilities, electricity or plumbing property, or drainage property, extend from property maintained by one Party to property maintained by the other Party, the Parties shall determine a line of demarcation which delineates which segment of such facilities are to be maintained by each Party.

(3) The MBTA shall maintain all Joint Usage Rail Property 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 both passenger and freight rail operations and which shall always meet or exceed the standard required by FRA rules and regulations for the agreed upon designated class of track, provided that in no event shall the rating of any bridge rebuilt by MBTA after the Effective Date be less than "315 standard". If CSXT requests that the MBTA maintain a portion of the Joint Usage Rail Properties to a standard that exceeds the standard described above, the MBTA shall perform all work required to meet such standard (an "**Increased Standard**"), and CSXT shall be responsible for all incremental costs and expenses of maintaining such property to the standard requested by CSXT. The MBTA shall provide CSXT with at least thirty (30) days prior written notice of any proposed changes to the maintenance standards that are likely to affect CSXT operations. The Parties shall cooperate and use good faith efforts to reach agreement with respect to the adoption and implementation of such changes. MBTA and CSXT shall hold quarterly meetings to discuss infrastructure and maintenance issues with the goal of collaboratively addressing problems and preventing service disruptions.

(4) MBTA will furnish such snow removal, storm damage recovery, and similar non-structural services (the “**Non-Structural Services**”) as may be necessary to allow for the continued, safe operation of CSXT trains on the MBTA Rail Properties.

(5) If at any time CSXT reasonably determines that (i) MBTA has failed to perform the maintenance work described in Subsection (3) above at a level required pursuant to this paragraph, or if CSXT has been unable to safely operate on the MBTA Rail Properties for reasons attributable to the failure of the MBTA to perform the maintenance work described in subsection (3) above, or (ii) MBTA has failed to perform the Non-Structural Services described in Subsection (4) above to allow for the continued, safe operation of CSXT trains on the MBTA Rail Properties, then, CSXT shall so notify MBTA (which notification may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA) in which case MBTA will as soon as possible, but in no case more than twenty-four (24) hours, respond to CSXT in writing (which writing may be via email) and inform CSXT if MBTA agrees with CSXT’s determination and if so, when MBTA will perform the maintenance work or Non-Structural Service. If MBTA disagrees with CSXT or if CSXT reasonably believes it is able to perform the maintenance work or Non-Structural Service sooner than the date proposed by MBTA, CSXT shall have the right, but not the obligation, immediately upon written notice to MBTA (which writing may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA), to enter MBTA Rail Properties to perform the maintenance work or Non-Structural Service in accordance with applicable operating rules. To the extent permitted by law, such work may be performed by CSXT or its contractors, with the cost thereof to be borne solely by MBTA, which amount shall be paid by MBTA to CSXT upon demand (or CSXT may credit such amounts against the Usage Fee under this Agreement), provided, however, that MBTA shall not be responsible for any incremental costs required to achieve an Increased Standard and provided further that if the Parties disagree with the need for or cost of the maintenance or Non-Structural Service, the Parties shall resolve the matter pursuant to the dispute resolution provisions of Section 13.

(6) 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 CSXT. The MBTA shall be solely responsible for all labor relations issues relating to MBTA employees that arise in connection with the performance of services under this Agreement.

(7) 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 Section 2, provided however that capital work outside of the MBTA’s maintenance responsibilities shall be performed by the MBTA pursuant to Section 4 herein.

2.6 General.

(a) Notwithstanding anything herein to the contrary, MBTA shall have the exclusive right to secure such approvals of regulatory or governmental bodies for such work on Joint Usage Rail Properties as may be necessary, including, without limitation, the FRA, and Massachusetts Department of Public Utilities, and no approval of CSXT shall be required for the performance of any work on Joint Usage Rail Properties except as may be expressly provided herein.

(b) Subject to and consistent with the other provisions of this Agreement, including Section 4.1(a), the MBTA may grant access to the Joint Usage Rail Properties 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 CSXT of all such work that will have an impact on CSXT operations and obtain CSXT's consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, in the event such work, in CSXT's reasonable determination, will have an impact on CSXT operations for a period longer than seven (7) days, then CSXT in its sole discretion may, within fourteen (14) days of receipt of such notice, notify the MBTA in writing (the "**Extension Notice**") that CSXT requires additional time in which to evaluate the matter and shall indicate in such Extension Notice the estimated date (the "**Response Date**") by which CSXT expects to be able to provide notice to MBTA of its consent or withholding of consent. If CSXT so provides to MBTA a timely Extension Notice, then CSXT shall provide its response prior to the Response Date.

SECTION 3. [INTENTIONALLY LEFT BLANK]

SECTION 4. CAPITAL WORK

4.1 Certain Required Improvements by MBTA.

(a) In addition to any other obligations hereunder, and in consideration of the mutual agreements of the Parties set forth herein, MBTA agrees to pay for, cause to be performed, and completed certain work improvements and other infrastructure work (collectively, the "**Infrastructure Work**"), described below:

- (1) the improvement of the Joint Usage Rail Properties between Framingham and Mansfield to meet the FRA Class 3 standards (40 miles per hour);
- (2) the construction of a 6,400 foot new main line track and a 1,900 foot siding in Foxboro (the "**New Tracks**");
- (3) upgrades at Walpole Junction and Lewis Wye with remotely controlled power operated switches at both ends; as described in **Exhibit E**, sufficient to allow the commencement of MBTA Commuter Rail Service and the use of the New Tracks by CSXT;
- (4) an additional station track at Foxboro; and

(5) installation of dispatcher dual controlled power operated switches and switch heaters at the dispatcher controlled locations between Framingham and Mansfield identified in Exhibit E;

all as more specifically set forth and described in the scope of work attached hereto as Exhibit E.

(b) All Infrastructure Work will be in compliance with all MBTA engineering standards and shall be suitable for CSXT Freight Rail Service. Any costs related to meeting the foregoing standards with respect to the Infrastructure Work shall not be considered Increased Standards for any purpose under this Agreement.

(c) MBTA will provide preliminary engineering plans for review and approval by CSXT, which approval will not be unreasonably withheld, conditioned or delayed. CSXT will use all commercially reasonable efforts to conclude its review and timely provide its response to MBTA. In the event that CSXT does not provide approval or disapproval within fourteen (14) days of receipt of such preliminary engineering plans, MBTA may proceed with such Infrastructure Work, provided however such Infrastructure Work shall in all events meet the standards set forth in paragraph 4.1(b) above.

(d) In the event that positive train control ("PTC") equipment is required as a result of passenger rail service on the MBTA Rail Properties, MBTA shall install at its sole cost and expense, the wayside communications, and signals equipment infrastructure, necessary to satisfy the FRA PTC regulations promulgated pursuant to the Rail Safety Improvement Act of 2008. Maintenance of such equipment shall be in accordance with Section 2.5.

4.2 Improvements at the Request of CSXT.

MBTA, at CSXT's written request, shall improve the track and facilities CSXT uses or may use on the MBTA Rail Properties (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 CSXT in such written request, provided that:

(a) the MBTA and CSXT have agreed upon a reasonable allocation of the costs of any such improvements, based on whether and to what extent the MBTA would benefit from such improvements. Nothing in this Section 4.2 shall obligate the MBTA to contribute to the cost of rebuilding or restoring any improvements after a casualty to the extent that any other provision of this Agreement (i) authorizes the MBTA not to rebuild or restore such improvement and (ii) the MBTA has not elected to rebuild such improvement.

(b) any such requested improvements shall be subject to the prior written approval of the MBTA, which shall be given if the MBTA determines that neither such improvements nor the construction required for such improvements will interfere with or unduly limit the MBTA's present or anticipated reasonable future operations or 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, including passenger trains serving special civic, sports or other events over the MBTA Rail Properties in an infrequent and temporary manner;

(d) CSXT shall be solely responsible for any and all incremental costs associated with the operation and maintenance of such improvements. CSXT shall assume full responsibility for the cost of removing or relocating all improvements that are made solely for the benefit of CSXT;

(e) any such improvements or modifications to the MBTA Rail Properties 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; and

(f) 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 CSXT 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.

4.3 CSXT Reimbursement of MBTA.

In the event that the MBTA performs any capital work or maintenance work that is not the obligation of the MBTA under Section 2 or Section 4.2 hereof, at the request of CSXT, CSXT shall reimburse the MBTA for the actual, auditable costs of such work (except for costs to be borne by the MBTA pursuant to Section 4.2(a) above), plus a management fee equal to 16% of the amount of such costs.

SECTION 5. DISCONTINUANCE OF FREIGHT RAIL OPERATIONS

5.1 CSXT-Initiated Abandonment or Discontinuance.

In the event that CSXT shall cease to have current use, or, in CSXT's sole and absolute determination, reasonably foreseeable future use, of any segment of the Joint Usage Rail Properties, or, if in CSXT's sole and absolute discretion it determines that it no longer wishes to continue the use of any such segment for CSXT Freight Rail Service, CSXT shall have the option to seek (and the MBTA agrees not to oppose such action) from the STB, Appropriate Statutory and Regulatory Authority, including without limitation, exemption from the requirement to obtain such authority, to abandon and/or discontinue CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties. Such portions of the Joint Usage Rail Properties shall no longer be subject to this Agreement.

5.2 MBTA Request for Abandonment or Discontinuance.

In the event CSXT has not provided CSXT Freight Rail Service over any segment of the Joint Usage Rail Properties for a continuous period of eight (8) years, CSXT shall, promptly following MBTA's written request, (a) seek Appropriate Statutory and Regulatory Authority from

the STB, including without limitation, exemption from the requirement to obtain such authority to discontinue and/or abandon CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties. CSXT shall promptly (within three (3) days) notify MBTA upon the date such authority to discontinue service becomes effective or authority to abandon is consummated with respect to such portions of the Joint Usage Rail Properties, whether through an exemption or otherwise, and such properties thereafter shall no longer be subject to this Agreement, or (b) fully assist the MBTA in adverse abandonment filings, after which, if such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties, such properties shall no longer be subject to this Agreement.

5.3 MBTA Petition for Abandonment or Discontinuance.

In the event that for a continuous period of three (3) years, CSXT has failed to provide CSXT Freight Rail Service on any segment of the Joint Use Rail Properties (provided any such failure is not a direct or indirect result of the failure of MBTA to properly maintain or repair the Joint Use Rail Properties or of any other breach by MBTA of its obligations under this Agreement), then MBTA shall be entitled, in its sole discretion, to commence adverse abandonment proceedings with the STB with respect to such segments, provided however, CSXT may oppose such proceedings and shall have no obligation to assist MBTA or to otherwise cooperate or participate in such proceedings in any way. If such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties, such properties shall no longer be subject to this Agreement.

5.4 Limitations on Adverse Abandonment.

The MBTA hereby agrees that it will not commence or otherwise seek or pursue any adverse abandonment proceedings with the STB except as permitted by Sections 5.2 and 5.3.

SECTION 6. COMPENSATION

6.1 Elements of Compensation.

Except for fees, charges and reimbursements expressly provided for elsewhere in this Agreement, the sole compensation to MBTA for all services to be rendered by it pursuant to the terms of this Agreement (including, without limitation, all maintenance and dispatch services), shall be a compensation payment equal to Three Hundred Thousand Dollars (\$300,000.00) per year, commencing only upon completion of the Infrastructure Work, subject to revision from time to time as provided in Section 6.2 below (the "Usage Charge"). For the avoidance of doubt, the Usage Charge amount, shall not accrue or be due or payable until the completion of the Infrastructure Work, but shall be subject to the revisions provided in Section 6.2 from July 1, 2015. From and after the completion of the Infrastructure Work, MBTA will invoice CSXT annually in arrears for the Usage Charge and CSXT will pay the Usage Charge within thirty (30) calendar days of the invoice date.

6.2 Adjustment

Beginning July 1, 2015, and each July 1 thereafter, the Usage Charge shall be increased or decreased by the same percentage by which 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 Recovery Index" and supplements thereto (the "**Annual Indexes**"), issued by the Association of American Railroads ("**AAR**") (or if such index ceases to be published, a generally recognized index which is substantially equivalent to such Annual Indexes) has increased or decreased with each change to become effective July 1st of each calendar year. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Usage Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2014 Index for the first annual adjustment) as related to the index for the previous calendar year (2013 Index for the first annual adjustment) and applying that percent to the Usage Charge. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2013; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2014; "C" to be the Usage Charge; and "D" to be the percent of increase or decrease; the revised Usage Charge stated herein would be revised by the following formula:

$$(a) \quad (B - A)/A = D$$

$$(b) \quad (D \times C) + C = \text{revised Usage Charge effective upon the July 1 of the year being revised.}$$

In the event the base for the Annual Indexes 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, 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 resolve the matter pursuant to the dispute resolution provisions of Section 13 hereof.

SECTION 7. TERM

The Parties have executed this Agreement on the Execution Date. The Term of this Agreement shall commence on the Effective Date and end on the date that is thirty (30) years from the Effective Date, unless terminated earlier pursuant to its terms. Notwithstanding the foregoing, the Parties agree that this Agreement shall remain in full force and effect during any interim period between the end of the Term of this Agreement (or the termination hereof for any reason other than mutual agreement of the Parties) and the execution of a new, revised, or extended operating agreement covering all of the MBTA Rail Properties. The Parties acknowledge that expiration or termination of this Agreement will not affect the validity, continuation or perpetual nature of the CSXT Framingham Easement or any other easement rights vested in CSXT with regard to the MBTA Rail Properties.

SECTION 8. INTERCITY RAIL PASSENGER TRANSPORTATION

Neither MassDOT nor MBTA currently plan to utilize, or allow another entity to utilize, the Joint Usage Rail Properties to provide Intercity Rail Passenger Transportation. Other than as may be required by law, the Parties agree that the utilization of Intercity Rail Passenger Transportation over the MBTA Rail Properties will occur only upon the prior mutual consent of CSXT and MBTA, which consent may not be unreasonably withheld, conditioned or delayed. It

shall not be unreasonable for either Party to condition its consent to allow 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.

SECTION 9. ENVIRONMENTAL LIABILITY

With respect to the MBTA Rail Properties, CSXT agrees to indemnify and hold the MBTA harmless from and against any claims, causes of action, damages, fines, or penalties arising with respect to any adverse environmental condition or environmental impairment that arises after the Effective Date to the extent caused by the acts or omissions of CSXT after the Effective Date on or about the MBTA Rail Properties. Such indemnity by CSXT pursuant to this Agreement shall not, however, extend to any such condition or impairment howsoever caused prior to the Effective Date or results from actions or omissions of the MBTA (or its subcontractors and agents) or is created by the MBTA's operations (or those of the MBTA's subcontractors or agents) from and after the Effective Date. The MBTA agrees to indemnify and hold CSXT harmless from and against any claims, causes of action, damages, fines or penalties arising with respect to any adverse environmental conditions or environmental impairment created by the MBTA's operations (including those of its subcontractors or agents) after the Effective Date on or about the MBTA Rail Properties. This section shall not, however, (i) serve to terminate any rights or liabilities accruing under any other title instruments or agreements between the Parties, nor (ii) modify, amend or supersede the obligations, releases, indemnities and allocations of responsibility set forth in, or executed in connection with the Definitive Agreement or Section 10 of this Agreement.

SECTION 10. INDEMNIFICATION, LIABILITY AND INVESTIGATION

10.1 Applicability and Definitions

Financial responsibility for liability for personal injury or property damage arising from activities (including, without limitation, Incidental Use) on or about the MBTA Rail Properties covered by this Agreement shall be allocated as provided in this Section 10. Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 10:

(a) **"Commuter Rail Passenger(s)"** shall mean and include any and all persons, ticketed or unticketed, using the MBTA Commuter Rail Services or engaged in any Incidental Use on or about the MBTA Rail Properties: first, while on board trains, locomotives, rail cars, or rail equipment employed in MBTA Commuter Rail Services and/or entraining and detraining therefrom; second, while on or about the MBTA Rail Properties for any purpose related to the MBTA Commuter Rail Services, including, without limitation, parking, inquiring about MBTA Commuter Rail Services or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or rail equipment; and, third, while on or about the MBTA Rail Properties for any purpose related to any Incidental Use thereof. The term Commuter Rail Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(b) **“Covered Accident(s)”** shall have the meaning set forth in paragraph 10.3(b).

(c) **“Incidental Use”** shall mean the use of ancillary services or facilities (whether or not on the MBTA Rail Properties) conducted or provided for the convenience and comfort of users of MBTA Commuter Rail Services which shall include, without limitation, the use of such facilities as restaurants, kiosks and retail facilities, a purpose or function of which is to serve the needs of users of MBTA Commuter Rail Services.

(d) **“Other Invitee”** shall mean any person or persons on or about the MBTA Rail Properties in connection with MBTA’s (or the Operating Contractor’s) use of the MBTA Rail Properties other than those persons on or about the MBTA Rail Properties to perform Railroad Operations or to engage in Incidental Use. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(e) **“Railroad Operations”** shall mean any and all of the MBTA Commuter Rail Services, CSXT Freight Service and the Intercity Rail Passenger Transportation (if permitted pursuant to Section 8 above).

For the purpose of this Section 10, (i) neither Party shall be deemed to be a “contractor” of the other Party, and (ii) all trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of the Operating Contractor shall be deemed to be trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of MBTA.

10.2 Hold Harmless

Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 10, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost, and expense, assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other party, or its or their officers, agents and employees, and/or any other person or persons whomsoever, except as provided in paragraph 10.3(b) below.

10.3 General

(a) Except as is otherwise expressly provided by Section 10.3(b) or Section 10.4, whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the MBTA Rail Properties, including, without limitation, any loss, damage, destruction, injury or death of or to the MBTA’s contractors, agents or employees, Commuter Rail Passengers, Other Invitees, trespassers on or about the MBTA Rail Properties and/or any other person on, about or crossing the MBTA Rail Properties at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the

loss, damage, destruction, injury or death so occurring shall be borne entirely by the MBTA.

(b) The Parties specifically acknowledge and agree that, in the event of accidents directly between the trains, locomotives, rail cars or rail equipment of the MBTA and CSXT only ("Covered Accidents," and individually a "Covered Accident"), the MBTA shall have no duty to indemnify or hold harmless CSXT from the first seven million five hundred thousand dollars (\$7,500,000) in damages or expenses (aggregate per occurrence):

- (1) caused by or arising from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors:
or
- (2) resulting from an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its officers, employees or agents, licensees or subcontractors;

provided, however that, except as otherwise expressly provided by Section 10.4(c), MBTA shall indemnify and hold harmless CSXT from all damages and expenses above the amount referred to in the introductory paragraph of this Section 10.3(b) above, regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If the MBTA incurs any damages, fees, costs, or expenses in connection with a claim relating to a Covered Accident that is found to have been caused by or have arisen from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, or to have given rise to an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, CSXT shall reimburse the MBTA for all damages, fees, costs and expenses, up to a maximum of seven million five hundred thousand dollars (\$7,500,000) aggregate per occurrence, incurred in the defense or settlement (provided that such settlement has been approved in writing by CSXT) of such a claim, action or demand, which amounts shall count toward CSXT's maximum responsibility under this Section 10.3(b).

10.4 Certain Allocations of Responsibility

The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties (without limiting the application of this Section 10.4 to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either Party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing of the MBTA Rail Properties or (ii) a trespasser, shall be governed by paragraph 10.4(a) or 10.4(b), as applicable.)

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only MBTA being

involved, then MBTA shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 17.5 hereof.

(b) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Commuter Rail Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by MBTA as aforesaid in paragraph 10.3(a)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense referred to in Section 17.5 hereof.

(c) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both MBTA and CSXT being involved, then: (1) MBTA and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them (it being agreed that the Operating Contractor's operation of any of the foregoing shall be deemed to be the MBTA's operation thereof); (2) MBTA shall assume and bear all liability, cost and expense for injury to and death of Commuter Rail Passengers, Other Invitees and MBTA's officers, agents, contractors and employees except as set forth in paragraph 10.3(b); (3) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents, contractors and employees; and (4) MBTA and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in paragraph 10.4(c)(2) or 10.4(c)(3) and for loss of, damage to and destruction of all other property not referenced in paragraph 10.4(c)(1) so occurring, including, without limitation, all cost and expense referred to in Section 17.5 hereof.

(d) Except as provided in paragraph 10.4(e) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both CSXT and any railroad other than MBTA using the MBTA Rail Properties being involved (including, without limitation, any detouring railroad), then the provisions of paragraph 10.4(c) above shall apply for the purpose of determining between MBTA and CSXT, CSXT's assumption and apportionment of liability, cost and expense.

(e) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, MBTA, CSXT and any other railroad (including, without limitation, a detouring railroad) using the MBTA Rail Properties being involved, then the provisions of paragraph 10.4(c) above shall apply

for the purpose of determining between MBTA and CSXT, each Party's assumption and apportionment of liability, cost, and expense, provided however that CSXT's share of that liability, cost and expense that is to be borne equally by MBTA and CSXT under paragraph 10.4(c)(4) above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to MBTA one-third (1/3) or more of the aforesaid liability, cost and expense.

(f) Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Section 10.4, the term "**rail equipment**" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the MBTA Rail Properties at the time of any occurrence under said Section 10.4.

(g) For purposes of this Section 10.4, pilots furnished by MBTA to CSXT pursuant to paragraph 17.3(c) of this Agreement shall be considered as the employees of CSXT.

(h) For purposes of this Section 10.4, the term "**person**" shall include, without limitation, the employee(s) of a Party hereto and the term "**employee(s)**" shall mean and include: (i) employees of a Party hereto; (ii) for each Party hereto, the invitee(s) to the MBTA Rail Properties of each such Party, which shall include the employees of contractors and subcontractors of such Party, excluding Commuter Rail Passengers and Other Invitees.

10.5 Installment Payments

In every case of death or injury suffered by an employee of either MBTA or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's 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 assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

10.6 Validity

Each provision of this Section 10 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 10 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 10 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 10 and the intentions of the parties with respect thereto.

10.7 No Third Party Beneficiaries, Other Remedies

Nothing expressed or implied in this Section 10, including, without limitation, paragraphs 10.4(e) and (f) hereof is intended to or shall be construed to: (A) confer upon or to give any person,

firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 10, or (B) limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

10.8 Investigations

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, 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. For avoidance of doubt, the Parties agree that the MBTA shall have the obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Commuter Rail Passengers or Other Invitees, notwithstanding CSXT's potential liability pursuant to paragraph 10.3(b).

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or MBTA solely or CSXT and MBTA jointly may have any liability under the provisions of this Agreement.

(c) The Party hereto receiving notice of the filing of a claim will promptly notify the other Party of such filing where liability therefor may be joint or that of the other Party hereto. MBTA and CSXT will cooperate with each other in all such investigations, adjustments, and defenses, and MBTA and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any Party which is another'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, and the Party relieved of duties in respect of such claim or suit shall cooperate as requested by the Party investigating, adjusting or defending said claim or suit.

(e) 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.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which MBTA has any liability under this Agreement without the concurrence of MBTA if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 10.8 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 10 or elsewhere in this Agreement.

10.9 Corrective Amendments

The Parties acknowledge and agree that the allocation of liability and other provisions of this Section 10 were a material inducement to both Parties' agreement to enter into this Agreement and that in the event that as a result of legislative action, court decision, regulation or otherwise, said allocations of liability and/or the other provisions of this Section 10 are found to be, or become unenforceable or modified in any manner that would affect the substantive rights of either Party, the Parties shall promptly negotiate such amendments to this Agreement as are mutually satisfactory and necessary to protect the intent of this Section 10. If the statutory modification, court decision, regulation or other event substantially impairs either Party's liability indemnification protection under this Section 10 or the availability of any of the insurance described in Section 11 below, and the Parties cannot reach agreement on a satisfactory amendment to eliminate such substantive impairment within thirty (30) days from the date of said statutory modification, court decision, regulation or other event becomes effective, then, notwithstanding the provisions of paragraph 13.4 (b) hereof, the Parties shall submit the matter to binding arbitration for the establishment of such an amendment to this Agreement in accordance with paragraph 13.4(a) hereof.

SECTION 11. INSURANCE

11.1 General

(a) MBTA has purchased insurance (the "**Current Insurance Policy**"), which Current Insurance Policy includes coverage for punitive and exemplary damages, and has established and shall maintain an adequate program of self-insurance which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, MBTA's contractual liabilities under this Agreement, in the amounts and as provided for in paragraph 11.1(b) hereof. The obtaining of such policy of insurance and the establishment of said self-insurance program, and the maintenance of both in full force and effect by MBTA is a material obligation of this Agreement. The MBTA shall use its commercially reasonable efforts to continue to retain the Current Insurance Policy in effect (including, without limitation, its coverage for punitive and exemplary damages). In the event said Current Insurance Policy, or any replacement insurance policy is canceled for any reason, then MBTA shall replace said policy during the notification period with another policy in like amount and coverage protection (except that MBTA's failure to obtain coverage in such replacement policy for punitive and exemplary damages shall not be a breach of the foregoing requirement in the event that the MBTA has used and continues to use on an on-going basis, commercially reasonable efforts to obtain such coverage) or, in the case of the self-insurance program, the MBTA shall re-establish such program, and, should the MBTA fail in its performance of these contractual obligations to CSXT, then MBTA shall immediately cease operation of any and all MBTA Commuter Rail Service on the Joint Usage Rail Properties until such time, if any, that MBTA shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 11 and/or re-establish the self-insurance program, as the case may be. It is understood and agreed by the parties hereto that the limitation of MBTA's Commuter Rail Services on the Joint Usage Rail Properties, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT

Framingham Easement or CSXT's rights hereunder with respect to the provision of CSXT Freight Rail Services, and shall not modify or amend any other obligation of MBTA under this Agreement.

(b) MBTA, at its sole cost and expense, shall procure and shall maintain during the entire term of this Agreement, liability insurance covering CSXT as an additional named insured as agreed and provided in the terms and conditions of paragraph 11.1(a) hereof. The said liability insurance shall have a limit of not less than the Required Insurance Amount combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage. The said liability coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under the Federal Employer's Liability Act. MBTA shall furnish to CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its CSXT Freight Rail Service on the MBTA Rail Properties) with a limit in excess of the Required Insurance Amount and deductibles or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). CSXT, at its sole cost and expense, shall maintain such insurance with limits not less than the Required Insurance Amount during the entire term of this Agreement, and shall name the MBTA and its Operating Contractor as additional insureds. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 17 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the figure in the definition of Required Insurance Amount as applied to the insurance required of MBTA under subparagraphs (a) and (b) hereof may, at MBTA's option, be reduced to a figure of Thirty Million Dollars (\$30,000,000), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the MBTA Rail Properties, MBTA may not require such entity to maintain during the remainder of the term of this Agreement insurance having a limit in excess of Thirty Million Dollars (\$30,000,000) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Two Million Dollars (\$2,000,000). To the extent and in the event mutually agreeable to MBTA and such other entity, the aforesaid limits and/or amounts of insurance required of MBTA and such other entity may be changed from time to time during the term of this Agreement.

11.2 Period of Coverage

Each Party's responsibility under this Section shall apply to any liability arising on or after the Effective Date of this Agreement, and shall extend beyond the date of expiration or termination of this Agreement with respect to any event occurring or liability arising during the term of this Agreement (or interim period described in Section 7 above).

11.3 Certificates

Each Party shall furnish the other with Certificates of Insurance (and, upon request, copies of all required insurance policies, including endorsements and declarations) evidencing compliance with the requirements set forth in this Section on the Effective Date of this Agreement, and upon the request of the other party, annually thereafter. The policies shall be endorsed to (1) provide that the policy shall not be cancelled or coverage reduced without sixty (60) days prior notice of cancellation or reduction to the other party, and (2) name the other party (the MBTA and/or its Operating Contractor or CSXT, as the case may be), and its directors, officers, agents and employees, as additional insureds with respect to occurrences relating to the performance of the obligations set forth in this Agreement; (3) provide that such coverage is primary and non-contributory to any insurance or self-insurance procured and maintained by the other party; (4) provide that any Workers' Compensation policies contain a waiver of subrogation against the other party; and (5) provide that to the extent reasonably available, all policies shall not contain any terrorism exclusions, or if they so contain such exclusions, shall contain endorsements providing coverage for acts of terrorism, both foreign and domestic, and both certified and non-certified by the Secretary of the Treasury of the United States. In the event any insurance policy required under this Agreement is cancelled or has its aggregate limits coverage reduced by 25% or more, then the MBTA and/or its Operating Contractor or CSXT (as the case may be) shall replace such policy or reinstate the aggregate limits during the notification period referred to above with another policy in like amount and coverage protection.

11.4 Self-insurance

Each party's self-insurance programs and insurance policies with self-insured retentions must provide at least the same protection from liability and defense of suits as would be afforded by "first dollar" insurance. If either party fails or refuses to pay any losses within a permitted self-insured retention, such failure or refusal shall be an Event of Default under this Agreement.

SECTION 12. DEFAULT AND BREACH; TERMINATION

12.1 Default and Breach

In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 12 shall be construed to modify or amend the provisions of Section 12 hereof or to limit or restrict either party's rights thereunder.

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; including, without limitation, any breach with respect to a party's operating windows under paragraph 2.2(b) of this Agreement, 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 dispute resolution procedures set forth in Section 13 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 dispute resolution and arbitration in accordance with the provisions of Section 13 hereof. Nothing contained in this Section 12 shall be construed to limit or restrict the parties' rights and obligations under Section 12.2 hereof.

12.2 Termination; Effect of Termination

(a) This Agreement may be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree to. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this Agreement, except to the extent that the mutual agreement terminating this Agreement so specifies. The Parties agree and acknowledge that any termination of this Agreement does not affect the validity, continuation or perpetual nature of the CSXT Framingham Easement with regard to the MBTA Rail Properties.

(b) This Agreement shall terminate with respect to portions of the MBTA Rail Properties (i) at such time as CSXT or its successors or assigns, secures and exercises Appropriate Statutory and Regulatory Authority to abandon and/or discontinue all CSXT Freight Rail Service on such portions of the MBTA Rail Properties, or (ii) in the event that such authority is not required, at such time as CSXT, its successors or assigns, designates in a written notice of termination of this Agreement with respect to such portions of the MBTA Rail Properties, which written notice shall be given to the MBTA at least six (6) months in advance of the date so designated for termination.

(c) Expiration or termination of this Agreement for any reason, in whole or in part, 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 expiration or termination hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement, including without limitation, where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

SECTION 13. DISPUTE RESOLUTION

13.1 Settlement of Disputes.

Both Parties to this Agreement shall make every reasonable effort to settle any dispute concerning the interpretation, application or enforcement of this Agreement by prompt and diligent discussions and negotiations.

13.2 Informal Consideration by the Parties.

Any dispute that cannot be resolved pursuant to Section 13.1 above within thirty (30) business days after it arises (or such other time as the Parties may agree in writing), may be submitted at the written request of either party to the MBTA's Director of Railroad Operations and the individual designated by CSXT. These individuals shall discuss and attempt to resolve the dispute. In the event that the dispute remains unresolved twenty (20) business days after its submission (or such other time as the parties may agree), the matter may be referred in writing by either party to the General Manager of the MBTA and CSXT's Assistant Vice President - Network Planning and Joint Facilities (the "AVP") for consideration and resolution. If the dispute still remains unresolved thirty (30) calendar days after its referral to the General Manager and the AVP under this paragraph, the Parties may jointly agree to submit the matter to meditation under Section 13.3, below, or either party may commence arbitration in accordance with Section 13.4 below.

13.3 Mediation.

(a) Either the MBTA or CSXT may request mediation of any unresolved dispute under this Section 13.3. If a party elects mediation and the other party declines to have the dispute resolved by mediation under this Section, or if the Parties undertake mediation and one of the Parties unreasonably delays the expeditious conclusion of same, the aggrieved party may proceed with other remedies available under this Agreement.

(b) The MBTA and CSXT shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this Section 13.3. The independent mediator shall be properly qualified in the areas of surface transportation finance and the surface transportation industry, and have experience in the analysis of transportation operating and capital costs and revenues.

(c) The mediator shall meet with the Parties within twenty-one (21) days after his or her selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) calendar days, the mediator shall, after consideration of the Parties' positions and written submissions (if so requested) issue written recommendations for resolution of the dispute. All meetings and proceedings shall be held in Boston, Massachusetts, at a time and location acceptable to both Parties.

(d) During the pendency of such mediation proceedings, the performance by both Parties of this Agreement shall continue in the same manner as before such controversy arose, unless the mediator shall make a preliminary ruling to the contrary.

(e) Each party hereto shall share equally the costs and expenses of any mediation conducted pursuant to this Section.

13.4 Arbitration.

It is the desire and intent of the Parties hereto to avoid the expense and delay inherent in litigation; therefore, CSXT and MBTA agree that whenever a Party desires to commence the arbitration process it shall provide written notice thereof to the other Party and the following provisions shall apply:

(a) Except as is otherwise expressly provided in this Agreement, any dispute (including, without limitation, disputes regarding whether a matter is subject to arbitration under this Agreement) under this Agreement shall be settled exclusively in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award entered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held in Boston, Massachusetts. It is the intent of the Parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, and shall be specifically enforceable by either of the Parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the Commonwealth of Massachusetts. In the event of Arbitration, each Party shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by the Parties.

(b) The Parties agree that neither the provisions of paragraph 13.4(a) nor Section 13.3 shall be applicable to, nor shall they be used: (i) to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by MBTA and CSXT in the submission of the matter to arbitration or mediation; (ii) to resolve any matter subject to the judgment or discretion of one Party to this Agreement; or (iii) except as is otherwise expressly provided herein, to resolve any matter reserved by this Agreement for the mutual agreement of the Parties.

(c) Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when commencement of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

13.5 Interest.

Where the time period during which interest accrues regarding a matter in dispute is specifically established elsewhere in this Agreement, that time period shall apply for purposes of disputes governed by this Section. For any other dispute under this Agreement, interest shall accrue from the date that payment was due, at the Effective Interest Rate.

SECTION 14. EQUAL EMPLOYMENT OPPORTUNITY

14.1 Fair Employment Practices.

CSXT agrees that it will comply with all applicable federal, state, and local laws and regulations relating to fair employment practices and non-discrimination against employees or applicants for employment because of race, religion, creed, color, sex, national origin, disability or sexual orientation.

14.2 Subcontracts.

CSXT shall insert provisions similar to those appearing in Section 14.1 above in each subcontract, except subcontracts for standard commercial supplies, raw materials, or construction.

SECTION 15. DISADVANTAGED BUSINESS ENTERPRISES.

CSXT shall comply with all applicable federal laws and regulations relating to Disadvantaged Business Enterprises, including but not limited to regulations issued by the U.S. Department of Transportation (49 C.F.R. Part 23).

SECTION 16. APPLICABILITY

The Parties agree that this Agreement, on and as of the Effective Date hereof, shall supersede, only with respect to the MBTA Rail Properties governed by this Agreement on and after the Effective Date, as listed on Exhibit A, all previous agreements between the Parties that relate to such MBTA Rail Properties described in this Agreement. All previous agreements shall, however, remain in full force and effect with respect to property not described in this Agreement.

SECTION 17. GENERAL PROVISIONS

17.1 Additional Properties

The Parties may by mutual written agreement add additional segments of railroad and track to the MBTA Rail Properties as defined herein (and designate an Effective Date with respect thereto).

17.2 Ownership of Service Equipment

As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto such expression means the trains, locomotives, cars or equipment in the possession of or operated by or on behalf of one of the Parties and including such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party.

17.3 Compliance with Laws and Operating Rules

(a) CSXT and the MBTA shall comply with the provisions of applicable federal, state, and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of the trains, locomotives, cars and equipment it or any affiliate or contractor operates over the MBTA Rail Properties. Each party shall indemnify, protect, defend, and save the other, and its officers, agents, and employees harmless from all fines and penalties imposed under such laws, rules, and regulations by any governmental or regulatory agency, or court having jurisdiction over the premises, when the imposition of same is related to the failure of a party to comply with its obligations under this paragraph 17.3(a). Nothing in this Section 17.3 shall alter, modify or amend Section 10 of this Agreement.

(b) In its use of the MBTA Rail Properties, CSXT shall comply in all respects with the operating rules and regulations of the MBTA, and the movement of

CSXT's trains, locomotives, cars, and equipment over the Rail Properties shall be subject at all times to the orders of transportation officers of the MBTA.

(c) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties, and MBTA shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties. All of CSXT's and MBTA's employees who shall operate trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties shall be qualified by the MBTA for operation thereover. CSXT shall compensate the MBTA for any and all direct costs incurred by the MBTA in connection with the qualification of such employees of CSXT as well as the cost incurred by MBTA for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of the MBTA to be properly qualified for operation as herein contemplated, provided that the MBTA shall not be required to administer more than three (3) qualifying attempts for any such employee. As used in this Section, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties in accordance with the MBTA's operating rules and practices. For purposes of this Section, any employee of CSXT qualified to operate over the MBTA Rail Properties on a date prior to the Effective Date shall be deemed qualified by the MBTA for operation over MBTA Rail Properties as herein contemplated as of the Effective Date. On a date prior to the Effective Date, CSXT shall provide to MBTA a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the MBTA Rail Properties as of that date.

(a) CSXT shall be wholly responsible for administering and implementing all disciplinary proceedings involving CSXT employees. If a CSXT employee working on MBTA Rail Properties is alleged to have violated any safety rules, operating rules, regulations, orders, practices, or instructions, CSXT shall conduct an investigation. If the charges are sustained, CSXT shall assess disciplinary measures. The MBTA or the Commuter Rail Operator may notify a CSXT transportation officer of any possible violations of safety rules, operating rules, regulations, orders, practices, or instructions, in which case CSXT shall investigate the possible violations. Neither the MBTA nor the Commuter Rail Operator shall conduct any disciplinary proceeding against an employee of CSXT, although employees of the MBTA or the Commuter Rail Operator may provide testimony during a CSXT-conducted investigation.

17.4 Access to MBTA Rail Properties

The MBTA, as the Owner of the MBTA Rail Properties, may exclude any person from the MBTA Rail Properties under the following circumstances:

(a) The MBTA may ban any person from the MBTA Rail Properties, provided such person is not a CSXT officer, in response to a serious violation of, or credible report of a serious violation of, MBTA operating rules, of Rule G, or of material dishonesty or insubordination if, in the opinion of the MBTA, such person is a danger to the safe operation, or may adversely affect the efficient operation, of the MBTA Passenger Rail Service. If the person is a CSXT employee the MBTA shall notify a CSXT Transportation Officer of any such incidents or suspected incidents, and of the MBTA's decision to ban

any such employee from entering upon the MBTA Rail Properties pending further investigation by CSXT. CSXT shall promptly remove the CSXT employee from any service on the MBTA Rail Properties until such time as CSXT has completed its investigation of the matter, as described in paragraph 17.3(d).

(b) The CSXT employee will be allowed to re-enter the MBTA Rail Properties, if and when the employee returns to service for CSXT in accordance with discipline, if any, imposed by CSXT or the final result of any appeal of such discipline by the employee, except as provided in the next sentence. If the MBTA believes that the seriousness of the violation in question was not properly addressed due to a procedural error (by way of example only, but without limitation, dismissal of disciplinary charges due to failure of CSXT to provide adequate notice), the MBTA may continue to ban such employee from entering the MBTA Rail Properties. In case of such continued ban, the matter may be referred in writing by either party to the General Manager of the MBTA and CSXT's AVP for consideration and resolution. If the matter remains unresolved, then either party may submit the matter of the continued ban for resolution pursuant to the dispute resolution procedures set forth in Section 13.

(c) In the event that a person files a claim against the MBTA in connection with any action taken by the MBTA pursuant to this Section 17.4, and a court of competent jurisdiction determines that the MBTA acted in violation of law in directing such action, the MBTA shall indemnify and hold CSXT harmless from and against any damages, fines, or penalties arising from such determination. In the event CSXT receives notice that a CSXT employee has filed such a claim against the MBTA, CSXT shall promptly notify the MBTA.

17.5 Disabled Trains/Wreck Clearing.

(a) If by reason of any mechanical failure or any other cause not resulting from an accident or derailment, a train or locomotive of CSXT becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by the MBTA on the Joint Usage Properties, or if in emergencies crippled or otherwise defective cars are separated from CSXT's trains on the Joint Usage Properties, the MBTA shall have the option of allowing CSXT to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Usage Properties, or the MBTA may perform or arrange for the performance of the necessary functions. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(b) 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 Joint Usage Properties, such work shall, at the option of the MBTA, be done by the CSXT or the MBTA or by the parties' respective contractors. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(c) On the MBTA Rail Properties, each Party shall have full responsibility for rerailling wrecking service or wrecking train service, including without limitation the

removal of damaged equipment, repair and restoration of road bed, track, signals, communication systems and all other right of way structures and facilities affected by such wrecks ("**Wreck Clearing**") on that portion of the MBTA Rail Properties it has responsibility to maintain. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 10 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. Each Party shall perform its services under this Section in an expeditious manner in order to restore rail service on the line.

17.6 Operating Duties in Regard to Safety.

Each Party shall take all reasonable safety precautions and shall provide all reasonable protection to prevent damage, injury, death, or loss to: all employees and passengers of the other Party and all tracks, bridges, culverts and other equipment related to the MBTA Rail Properties. Unless otherwise provided by law, each Party will be responsible to give all notices and comply with all applicable laws, rules, regulations and lawful orders of any public agency or MBTA in connection with its operations under this agreement bearing on the safety of persons or property or their protection from damage, injury, death or loss. Without limitation, this obligation shall include observance of all safety rules and regulations administered by the FRA or Massachusetts Department of Public Utilities including, for example: the FRA's regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U.S. Department of Transportation including 49 CFR Parts 171 et seq., and prescribed by the U.S. Environmental Protection Agency, including 40 CFR Part 263; and all safety rules and other operating procedures of general applicability and future effect issued by MBTA and forwarded in writing to CSXT. Each Party shall promptly furnish to the other Party evidence reasonably satisfactory to such other Party demonstrating compliance with the above. Nothing in this Section 17.6 shall alter, modify or amend Section 10 of this Agreement.

SECTION 18. ASSIGNMENT

(a) CSXT may assign to any Person, in whole or in part, any of its rights, interests or obligations under this Agreement, subject to the following conditions: (i) that CSXT shall provide to the MBTA sixty (60) days prior written notice of such proposed assignment, (ii) that any such assignment must be accompanied by an assignment to such Person of the related portion of the CSXT Framingham Easement, (iii) that any such assignment of the CSXT Framingham Easement shall comply with Section 2.3.1 of the Definitive Agreement, and (iv) that the assignee assume the rights, interests or obligation assigned. The Parties acknowledge and agree that notwithstanding any fee that may be due from CSXT to the Commonwealth of Massachusetts pursuant to Section 2.3.1.1(a) of the Definitive Agreement, with respect to any such assignment of all or a portion of the CSXT Framingham Easement, no fees or other amounts shall be due or payable under this Agreement with respect to any such assignment of the CSXT Framingham Easement or this Agreement. In the event of an assignment of this Agreement by CSXT to an affiliate of

CSXT, CSXT shall unconditionally guarantee to the MBTA the performance of all obligations of CSXT under this Agreement by any such affiliate.

(b) Except as is otherwise provided in subparagraph (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment.

(c) MBTA may assign, in whole or in part, any of its rights, interests or obligations under this Agreement, *provided however*, that MBTA shall provide to CSXT sixty (60) days prior written notice of such proposed assignment, and *provided further*, that such assignment does not in any way impair or adversely affect the rights of CSXT hereunder.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both Parties.

SECTION 19. FORCE MAJEURE

Each party will be excused from performance of any of its obligations to the other under this Agreement, where such non-performance is occasioned by any event beyond the non-performing party's control which shall include, without limitation, any order, rule, or regulation of any Federal, State, or local government body, agent, or instrumentality; work stoppage; natural disaster; terrorist act or threatened act of terrorism; or civil disorder; provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time.

SECTION 20. MISCELLANEOUS

(a) This Agreement, and the transactions to which it relates, will be governed by and construed and enforced in accordance with the law of the Commonwealth of Massachusetts. Any claim or legal action by one party against the other shall be commenced and maintained in any state or federal court located in Massachusetts and both Parties hereby submit to the jurisdiction and venue of any such court.

(b) This Agreement, including the Exhibits hereto, represents the entire agreement between the Parties hereto with respect to the MBTA Rail Properties from and after the Effective Date with respect to such MBTA Rail Properties, and this Agreement supersedes any and all prior discussions, proposals and communications between the MBTA and CSXT with respect to such MBTA Rail Properties.

(c) All notices pursuant to this Agreement shall be in writing and shall be deemed effective: (i) on the date given if delivered by hand or transmitted by facsimile on a weekday, or on the next succeeding weekday if not given on a weekday, (ii) one weekday after delivery to a reputable overnight courier service, and (iii) five days after having been deposited with the U.S. Postal Service, postage prepaid.

Notices to the MBTA shall be addressed to:

Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Attn: John D. Ray

with a copy to:

Office of General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 3510
Boston, MA 02116
Attn: Michael A. Glover, Esq.

with a copy to:

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

Notices to CSXT shall be addressed to:

Assistant Vice President of Network Planning
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

(d) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or

the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(e) The indemnification obligations of CSXT and the MBTA hereunder (and all other obligations) that arise but which are not satisfied during the Term of this Agreement shall survive the termination of this Agreement.

(f) The section headings appearing herein are intended solely for convenience of reference and shall not be construed as affecting the interpretation of any provision hereof.

(g) This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties.

(h) Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(i) The Parties represent and warrant to each other that, except with respect to a Labor Challenge, (i) the Parties have the power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (ii) the Parties have taken all legal action necessary to authorize them to enter into and perform their respective obligations hereunder; (iii) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body, or violate any contract or agreement by which either party hereto is bound; (iv) there is no known litigation or proceeding pending or threatened against a party, or any other action, which could materially or adversely affect the performance of this Agreement; and (v) the Parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.

(j) No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of any other party alleging personal liability on the part of such Person with respect to performance of the MBTA's or CSXT's obligations under this Agreement.

(k) Both Parties shall maintain appropriate operating and accounting records which record the locomotives, cars, weight and mileage of same moved by CSXT over MBTA Rail Properties. Either Party shall have the right, upon reasonable notice, to inspect, examine and audit during normal business hours all operating and accounting records and supporting documents of the other party, including, without limitation, dispatching records, and all other books and records that relate to the performance of this Agreement. Nothing in this Agreement shall be construed as obligating either party to retain books or records beyond the period specified in regulations of the STB, of the former Interstate Commerce Commission or of the Federal Railroad Administration.

(l) Any time limits specified under a provision of this Agreement may be suspended by mutual written agreement of the Parties.

(m) During the pendency of any dispute between the Parties, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of any such dispute, shall continue to be transacted and used in the manner and form existing prior to the arising of any such controversy.

(n) In the event of any conflict between the text of this Agreement and that of any Exhibit hereto, the text of this Agreement shall control except to the extent that this Agreement makes specific reference to a provision of any Exhibit as defining the obligations of a Party hereunder.

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

(p) This Agreement and the Exhibits hereto and thereto may be amended from time to time during the Term of this Agreement. Either the MBTA or CSXT may request in writing such amendments or modifications. However, no such amendments or modification shall be effective unless evidenced by a written amendment to this Agreement executed by duly authorized representatives of both Parties hereto.

(q) This Agreement shall in no way be considered as establishing either a joint facility or a joint enterprise between the MBTA and CSXT.

(r) In the performance of work under this Agreement the Parties shall be deemed to be independent contractors and neither Party shall be deemed to be an agent of the other Party. Notwithstanding the foregoing, for purposes of Section 10 neither Party shall be deemed to be a "contractor" of the other Party.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed the
____ day of _____, 2014, in duplicate, each of which shall be considered an original.

**MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY**

By: _____
Name: Beverly A. Scott, Ph.d
Title: General Manager

APPROVAL AS TO FORM

By: _____
Name: Paige Scott Reed
Title: General Counsel

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

EXHIBIT A

MBTA Rail Properties

Facility Segment	Total Facility Length		Miles	Allocation Of Use
	From	To		
FRAMINGHAM SUBDIVISION (Framingham to Mansfield)	QBF 21.2	QBF 0.0		Joint Usage Rail Properties (subject to Section 2.2(e))

EXHIBIT B

DEED

EXHIBIT C

[DELETED]

EXHIBIT D

[DELETED]

EXHIBIT E
INFRASTRUCTURE WORK

EXHIBIT F

CONSENT PROPERTIES

Name	Milepost	Notes
Mansfield Yard	QBF 0.1 – QBF 0.8	4700' Lead and 3 yard tracks
Foxboro Terminal	QBF 5.0	3 Tracks, 1200' each
Walpole Yard East Wye	QBF 8.5	2500'
Walpole Yard	QBF 8.8	2 Tracks, 1200' each
Bay Colony Industrial Track	QBF 13.7	1800'
Boston Edison Industrial Track	QBF 20.8	775'

EXHIBIT G

PASSENGER TRAIN SCHEDULE

[NOTE: REFERENCE ONLY TO STATIONS ON THE LINE]

<u>Foxboro Station Commuter Schedules</u>										
<u>Passenger service to commence only when all Infrastructure Work is completed:</u>										
<u>Outbound</u>	<u>F01</u>	<u>F03</u>	<u>F05</u>	<u>F07</u>	<u>F09</u>	<u>F11</u>	<u>F11A</u>	<u>F13</u>	<u>F15</u>	<u>F17</u>
<u>Walpole</u>	<u>5:52 AM</u>	<u>7:47 AM</u>	<u>10:22 AM</u>	<u>12:47 PM</u>	<u>3:42 PM</u>	<u>5:39 PM</u>	<u>6:49 PM</u>	<u>7:24 PM</u>	<u>8:39 PM</u>	<u>12:02 AM</u>
<u>Foxborough</u>	<u>6:01 AM</u>	<u>7:56 AM</u>	<u>10:31 AM</u>	<u>12:56 PM</u>	<u>3:51 PM</u>	<u>5:48 PM</u>	<u>6:58 PM</u>	<u>7:33 PM</u>	<u>8:48 PM</u>	<u>12:11 AM</u>
<u>Inbound</u>	<u>F02</u>	<u>F02 A</u>	<u>F04</u>	<u>F06</u>	<u>F08</u>	<u>F10</u>	<u>F12</u>	<u>F14</u>	<u>F16</u>	<u>F18</u>
<u>Foxborough</u>	<u>5:27 AM</u>	<u>6:04 AM</u>	<u>6:34 AM</u>	<u>8:14 AM</u>	<u>10:30 AM</u>	<u>1:45 PM</u>	<u>4:04 PM</u>	<u>6:20 PM</u>	<u>7:35 PM</u>	<u>9:55 PM</u>
<u>Walpole</u>	<u>5:36 AM</u>	<u>6:13 AM</u>	<u>6:43 AM</u>	<u>8:23 AM</u>	<u>10:39 AM</u>	<u>1:54 PM</u>	<u>4:13 PM</u>	<u>6:29 PM</u>	<u>7:44 PM</u>	<u>10:04 PM</u>

EXHIBIT H

FREIGHT TRAIN SCHEDULE

B725 (5 days / Mon - Fri)					B731 (5 days / Mon- Fri)				
Event	Station	Current Schedule	40 mph	25 mph	Event	Station	Current Schedule	40 mph	25 mph
OR	Framingham	2359	2315	2315					
AR	Med Jct	0130			OR	Readville	1030	1030	1030
LV	Med Jct	0200			AR	Walpole	1130	1130	1130
BY	Walpole		2359	0025	LV	Walpole	1230	1200	1200
AR	Mansfield	0230	0045	0119	AR	Med Jct	1300	1230	1235
LV	Mansfield	0300	0115	0149	LV	Med Jct	1315	1300	1305
AR	Attleboro	0330	0145	0224	AR	Framingham	1330	1330	1356
LV	Attleboro	0530	0345	0424	LV	Framingham	1400	1400	1426
BY	Mansfield		0415	0459	AR	Walpole	1530	1530	1622
BY	Walpole		0500	0552	LV	Walpole	1600	1600	1652
AR	Med Jct	0830			TE	Readville	1630	1700	1752
LV	Med Jct	0900							
TE	Framingham	0915	0545	0703					
B732 (5 days / Mon- Fri)					B733 (5 days / Mon- Fri)				
Event	Station	Current Schedule	40 mph	25 mph	Event	Station	Current Schedule	40 mph	25 mph

		e						e		
OR	Readville	1930	193 0	193 0		OR	Walpole	0935	093 5	093 5
BY	Walpole		203 0	203 0		AR	Mansfield	1010	103 5	104 3
AR	Foxboro	2030	210 0	210 5		LV	Mansfield	1800	182 0	182 8
LV	Foxboro	2300	230 0	230 5		TE	Walpole	1920	192 0	193 6
BY	Walpole		233 0	234 0						
TE	Readville	0030	003 0	004 0						

EXHIBIT C2

1985 Trackage Rights Amendment

**Amendment #7
to CONRAIL/MBTA Trackage Rights Agreement
of July 1, 1985**

This Amendment #7 ("**Amendment #7**") to the Trackage Rights Agreement dated as of July 1, 1985, as previously amended (as so amended, the "**1985 Agreement**"), by and between the **CONSOLIDATED RAIL CORPORATION** ("**CONRAIL**") and the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** ("**MBTA**") is entered into by and between **CSX TRANSPORTATION INC.** ("**CSXT**") and the **MBTA** this 25th day of November, 2014, and is effective as of the Amendment #7 Effective Date (defined below).

BACKGROUND

- A. The 1985 Agreement was entered into by the MBTA and CONRAIL to identify certain real property interests described therein and for the purpose of granting to each other certain rights to conduct passenger or freight rail services on property which they separately own or control.
- B. CSXT has succeeded to and currently holds and is responsible for the rights and obligations of CONRAIL including the real property interests identified in and with respect to the 1985 Agreement.
- C. CSXT and the Massachusetts Department of Transportation ("**MassDOT**"), entered into that certain Definitive Agreement, as of the date hereof (the "**2014 Definitive Agreement**"), whereby CSXT agreed to sell and MassDOT agreed to buy, subject to the terms and conditions of the Definitive Agreement, CSXT's interest in certain railroad properties, including, *inter alia*, all of CSXT's right title and interest to the Framingham Secondary Line between Framingham and Mansfield, subject to certain CSXT retained easements and other reserved rights all as such properties are defined and described in the Definitive Agreement.
- D. The 2014 Definitive Agreement contemplated, among other things, that certain properties owned by MBTA and currently maintained by CSXT as a result of their being identified in Addendum 1, Category B (Exclusively Used by CONRAIL), and which properties and certain other properties are identified in Schedule 1 attached hereto (the "**1985 Consent Properties**"), which properties are to be maintained, from and after the Amendment #7 Effective Date, by MBTA.
- E. The parties hereto wish to permanently delete all property descriptions from Addendum 1, Category B, and add the descriptions of the 1985 Consent Properties to Addendum 1, Category A.
- F. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the 2014 Definitive Agreement.
- G. This Amendment #7 shall be effective as of the Closing Date (the "**Amendment #7 Effective Date**")

AGREEMENT

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

1. As of the Amendment #7 Effective Date, the 1985 Consent Properties shall be removed from Addendum 1, Category B, and shall be added to Addendum 1, Category A of the 1985 Agreement. Addendum 1 of the 1985 Agreement is hereby amended, restated and replaced with Addendum 1 attached hereto as **Exhibit A**.
2. Notwithstanding the provisions of Section 3.02(a) of the 1985 Agreement, or any other provision of the 1985 Agreement to the contrary, the parties acknowledge and agree that from and after the Amendment #7 Effective Date MBTA shall not have the right to, and shall not, without the prior written consent of CSXT (which consent may be given or withheld in the sole and absolute discretion of CSXT), change the designation of any of the 1985 Consent Properties from Addendum 1, Category A to Addendum 1, Category B.
3. As of the Amendment #7 Effective Date, the 1985 Agreement shall be amended, by adding to the last sentence of paragraph (b) of Section 5.01 thereof, the following:

"provided however, with respect to the 1985 Consent Properties (as defined in the footnote appearing on Addendum 1, Category A hereto), the following additional provisions shall apply, *provided further*, that in the event of any conflict between the following additional provisions and the prior provisions of this Section 5.01(b) (the "**General Provisions**"), the following additional provisions shall govern:

(i) If CSXT requests that the MBTA maintain a portion of the 1985 Consent Properties to a standard that exceeds the standard described above, the MBTA shall perform all work required to meet such standard (an "**Increased Standard**"), and CSXT shall be responsible for all incremental costs and expenses of maintaining such property to the standard requested by CSXT. The MBTA shall provide CSXT with at least thirty (30) days prior written notice of any proposed changes to the maintenance standards that are likely to affect CSXT operations. The Parties shall cooperate and use good faith efforts to reach agreement with respect to the adoption and implementation of such changes. MBTA and CSXT shall hold quarterly meetings to discuss infrastructure and maintenance issues with the goal of collaboratively addressing problems and preventing service disruptions.

(ii) MBTA will furnish such snow removal, storm damage recovery, and similar non-structural services (the "**Non-Structural Services**") as may be necessary to allow for the continued, safe operation of CSXT trains on the 1985 Consent Properties.

(iii) With respect to any of the 1985 Consent Properties, if at any time CSXT reasonably determines that (x) MBTA has failed to perform the maintenance work described in the General Provisions or subsection (i) above at a level required pursuant to this paragraph, or if CSXT has been unable to safely operate on the 1985 Consent Properties for reasons attributable to the failure of the MBTA to perform the maintenance work described in the General Provisions or subsection (i) above, or (ii) MBTA has failed to perform the Non-Structural Services described in Subsection (ii) above to allow for the continued, safe operation of CSXT trains on the 1985 Consent Properties, then, CSXT shall so notify MBTA (which notification may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA) in which case MBTA will as soon as possible, but in no case more than twenty-four (24) hours, respond to CSXT in writing (which writing may be via email) and inform CSXT if MBTA agrees with CSXT's determination and if so, when MBTA will perform the maintenance work or Non-Structural Service. If MBTA disagrees with CSXT or if CSXT reasonably believes it is able to perform the maintenance work or Non-Structural Service sooner than the date proposed by MBTA, CSXT shall have the right, but not the obligation, immediately upon written notice to MBTA (which writing may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA), to enter 1985 Consent Properties to perform the maintenance work or Non-Structural Service in accordance with applicable operating rules. To the extent permitted by law, such work may be performed by CSXT or its contractors, with the cost thereof to be borne solely by MBTA, which amount shall be paid by MBTA to CSXT upon demand (or CSXT may credit such amounts against any charges due pursuant to Article 6 of this Agreement), provided, however, that MBTA shall not be responsible for any incremental costs required to achieve an Increased Standard and provided further that if the Parties disagree with the need for or cost of the maintenance or Non-Structural Service, the Parties shall resolve the matter pursuant to the dispute resolution provisions of Article 8 hereof."

4. Notwithstanding any provision of the 1985 Agreement to the contrary, as of the Amendment #7 Effective Date, MBTA hereby waives and forgives any and all payments under Article 6 of the 1985 Agreement ("Article 6") related to the 1985 Consent Properties that would otherwise be due and payable by CSXT thereunder from and after the Amendment #7 Effective Date (the "Waiver Date") until the expiration of four (4) years after the Waiver Date (such four (4) year period being the "Waiver Period" and the payments so waived during the Waiver Period being the "Waived Fees"). The parties acknowledge and agree that the value of the Waived Fees for all purposes is estimated at FOUR MILLION and 00/100 DOLLARS (\$4,000,000.00), *provided however*, that the duration of the Waiver Period shall not

be changed even if the actual value of the payments so waived, is greater or lesser than such estimated amount.

5. From and after the end of the Waiver Period and except as otherwise set forth herein, CSXT shall pay car mile charges (the "Car Mile Charges") in accordance with the provisions of Sections 6.01, 6.02 and 6.03 of the 1985 Agreement with respect to the 1985 Consent Properties provided, however, that, notwithstanding any provision of Section 6.01 of the 1985 Agreement to the contrary, such Car Mile Charges shall be calculated using a Base Charge (as defined in the 1985 Agreement) of \$1.036 per mile (the "Doubled Revised Base Charge"). Notwithstanding the foregoing, in the event that the MBTA operates regularly scheduled passenger service on the 1985 Consent Properties after the Waiver Date, CSXT shall, for the periods in which such regularly scheduled passenger service operates and solely with respect to the portions of the 1985 Consent Properties on which such regularly scheduled passenger service operates, pay Car Mile Charges in accordance with the provisions of Sections 6.01, 6.02 and 6.03 of the 1985 Agreement provided, however, that, notwithstanding any provision of Section 6.01 of the 1985 Agreement to the contrary, such Car Mile Charges shall be calculated using a Base Charge of \$0.518 per mile (the "Revised Base Charge"). For the avoidance of doubt, notwithstanding the foregoing waiver of charges, the figures used as the Doubled Revised Base Charge and the Revised Base Charge shall be subject to the revisions (on and after July 1, 2015) described in Section 6.03 of the 1985 Agreement.
6. In the event that there is a material change in the volume of CSXT freight service over the 1985 Consent Properties after the Amendment #7 Effective Date, either party may, by written notice to the other party, request that the Car Mileage Charges be adjusted as appropriate to reflect such change in volume. The party receiving any such notice shall reasonably consider the request set forth in any such notice provided that the proposed adjustment would not cause the Car Mile Charges to exceed the Doubled Revised Base Charge or to be less than the Revised Base Charge. In the event that the parties cannot agree on the Car Mileage Charges to be adopted, the matter shall be submitted to binding arbitration in accordance with Section 8.03 of the 1985 Agreement, provided however, notwithstanding the provisions of said Section 8.03, (i) such arbitration shall be mandatory upon the request of either party hereto, (ii) the decision of the arbitrator(s) thereunder shall be final and binding, and (iii) the arbitrator(s) shall determine and fix the appropriate Car Mileage Charges, but in no event shall such fixed Car Mileage Charges be greater than the Doubled Revised Base Charge nor less than the Revised Base Charge. The provisions of this Section 6 shall not be deemed to amend, modify, or supersede the waiver by MBTA of all fees under Article 6 during the Waiver Period pursuant to Section 4 above.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have caused this Amendment #7 to be signed with effect as of the Amendment #7 Effective Date set forth above, in multiple counterparts, each of which shall be considered an original.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVAL AS TO FORM

By: _____
Name:
Title:

[Signature Page to Amendment #7 to 1985 Agreement]

Schedule 1

1985 Consent Properties

<u>Property</u>	<u>Milepost/ Location</u>
East Junction IT	QVJ 0.25 – 0.60
Readville Yard Yard #2, Tracks 4 and 6	QVL 219
Middleboro Sub Attleboro to COT	QN 0.0 – 13.3 QNB 13.30 – 22.70
Middleboro Yard	QNB 21.5 - 24
Industrial Sidings (from point of clearance to MBTA property line) ^[1]	QVL 197 QVL 198 QVL 203 QVL 204 QVL 204.5 QVL 216 QVL 217 QVL 218
Readville Yard Yard #1, all	QVL 219
Framingham Wye	East leg of Wye to the North Yard (from the PS at CP 21 to the end of the track circuit (a distance of 718'))

EXHIBIT A

**[SUBJECT TO REVIEW BY ALL PARTIES]
ADDENDUM 1**

**MBTA RAIL PROPERTIES |
Category A – Jointly used with CONRAIL**

Facility¹	Location	Milepost⁷	Maintenance²
Worcester Main Line (formerly Boston Line)	COVE to Framingham, MA	1.10 – 22.40	Class III
Shore Line	Boston to COVE	0.45 – 1.10	Class II
Beacon Park Yard	Track through Beacon Park Yard to connect Grand Junction Branch to Main Line at both CP3 and CP4. Includes Beacon Park yard tracks 211, 601, 223, 201 and the easterly portion of track 222 all more accurately depicted on the schematic plan attached to Amendment #6	N/A	Class I
Boston Terminal Running Track	Southampton Street – End of Track at Boston Marine Industrial Park	0.00 – 2.25	Class I
Franklin Branch	Readville to Franklin, MA	9.50 – 28.07	Class III ⁴
Stoughton Branch	CANTON JUNCTION to Stoughton, MA	15.0 – 19.40	Class II
East Junction Industrial Track	East Junction-connection to Track #4 (0.00) to "End of Commuter" board (0.25)	0.00 – 0.25	Class I
Readville #5 Yard	Sprague Street O.H. Bridge to READ	0.90 – 650' East	Class I
Readville #2 Yard, Upper Level, Tracks #8 and #10	From the southerly home signal at DANA Interlocking to the point of clearance at the switches on the south end of the yard. This includes all the switches on the North end of the yard and excludes all the switches on the south end of the yard.	n/a	Class I
Dorchester Branch	TOWER 1 to Readville	0.00 – 9.11	Class II
East Route Main Line	F.X. Interlocking to Wonderland Interlocking	1.20 – 7.10	Class II
Boston Engine Terminal - B&A Eastward and Westward tracks	SWIFT to F.X. Interlocking	Entire length	Class I

Facility ¹	Location	Milepost ⁷	Maintenance ²
Grand Junction Branch	Beacon Park Yard to NEP Lead	0.00 – 5.10	Class I
New England Produce ("NEP") Lead (AKA Eastern Gas and Fuel Railroad Line)	Connection with Grand Junction to end of track	Entire length	Class I
Shore Line	Readville to Rhode Island/Massachusetts State Line	190.80 – 219.20	Class III
Middleboro Main Line (formerly Braintree Secondary ⁵)	Braintree to PILGRIM	0.00 – 24.70	Class II
Middleboro Subdivision (formerly Pilgrim Running Track ⁶)	PILGRIM to CAPE (Marker 114' east of the point of switch that joins the north and south wye tracks)	< See Location	Class I
Middleboro Main Line (formerly Neponset Running Track)	Tower 1 to Redfield Street	0.10 – 3.80	Class I
Plymouth Branch (formerly Plymouth Running Track)	PEARL to Mahar Highway	11.246 – 11.857	Class I
Randolph Industrial Track	Braintree Highlands to the end of track	0.00 – 1.00	Class I
Greenbush Branch (formerly, Weymouth Industrial Track)	ADAMS JUNCTION to ALLEN in East Braintree	10.15 - 11.55	Class I
Holliston Industrial Track	Turnout from the Worcester Main Line through Chafin St.		Class I
Framingham Secondary	Turnout from the Worcester Main Line through Blandin Ave.		Class I
East Junction Industrial Track ^{8*}	"End of Commuter" board 0.25 to Mileage 0.60	QVJ 0.25 - 0.60	Class I
Readville #2 Yard, Upper Level, Tracks #4 and #6*	From the point of clearance to the switches on the north end of the yard, to and including all of the switches on the south end of the yard ⁹	QVL 219	Class I
Middleboro Subdivision*	Attleboro to COT	QN 0.0 - 13.3	Class I
Middleboro Subdivision ^{10*}	COT to CAPE (Marker 114' east of the point of switch that joins the north and south wye tracks)	QNB 13.30 - 22.70	Class I

Facility ¹	Location	Milepost ⁷	Maintenance ²
Industrial Sidings*	From point of clearance to MBTA property line	QVL 197, QVL 198, QVL 203, QVL 204, QVL 204.5, QVL 216, QVL 217, QVL 218	Class I
Readville Yard*	Yard #1, all	QVL 219	Class I
Framingham Wye*	East leg of Wye to the North Yard (from the PS at CP 21 to the end of the track circuit (a distance of 718'))	See information under Location	Class I

NOTES:

1. Line Segment, Yard, etc.
2. FRA Class
3. To be maintained so as to enable passenger train speeds of not less than 60 mph
4. To be maintained so as to enable train speeds of not less than 30 mph
5. MP 11.4 to 24.7 of this property was not originally part of the 1985 Agreement. It was added to the scope of the 1985 Agreement by a 1995 letter agreement between MBTA and Conrail (the "1995 Letter Agreement").
6. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the "2004 Letter Agreement"), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6.
7. Mileposts designations are the best available based on the 2012 MBTA Timetable and used for ease of reference. The mileposts are not to be used to limit access for freight business to or along a named location. If it is determined that additional access is needed for CSXT to serve a customer under its freight easement at or along a named location, the mileposts used herein will be adjusted accordingly.
8. CSXT letter dated September 17, 2001 (attached), CSXT deleted East Junction Industrial track from QVJ 0.6+/- and the MA/RI border the from Addendum 1 effective June 27, 2001. CSXT retains rights from the connection to track #4 and QVJ 0.6.
9. Emergency use by MBTA excepted.

10. This property was not originally part of the 1985 Agreement. Following the Old Colony Sales Agreement it was added to the scope of the 1985 Agreement by the 1995 Letter Agreement, followed up by a 2004 letter agreement between MBTA and CSXT (the "2004 Letter Agreement"), moving the property to Category B. Copies of the Old Colony Sales Agreement, the 1995 Letter Agreement and the 2004 Letter Agreement are attached to Amendment #6 to the 1985 Agreement.

* May only be used by MBTA with the prior written consent of CSXT, which consent shall not be unreasonably withheld, conditioned or delayed. These properties are herein referred to as the "1985 Consent Properties".

ADDENDUM 1

**MBTA RAIL PROPERTIES
Category B – Exclusively used by CONRAIL**

Facility	Location	CSXT MP Prefix	Milepost	Maintenance
	<i>As of _____, 201_ there are no Category B properties</i>			

#33654277_v7

EXHIBIT D
Non-Foreign Certification

NON-FOREIGN CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee (or buyer) of a U.S. real property interest must withhold tax if the transferor (or seller) is a foreign person. To inform the transferee that withholding of a tax is not required in connection with the transfer of a U.S. real property interest by CSX Transportation, Inc. ("Seller"), the undersigned being duly authorized hereby certifies as to the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or non-resident alien individual (as those terms are defined in the Internal Revenue Code Section 1445 and regulations promulgated thereunder or under other provisions applicable thereto);
2. The U.S. Taxpayer Identification Number of Seller is [_____];
3. The office address of Seller is _____.

The undersigned understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, the undersigned declares that he/she has examined this certification and, to the best of his/her knowledge and belief, it is true, correct and complete, and further declares that he/she has authority to sign this document on behalf of Seller.

Date: _____, 201_.

[Title]

EXHIBIT E
DESIGNATION OF PERSON
RESPONSIBLE FOR TAX REPORTING

**DESIGNATION OF PERSON RESPONSIBLE
FOR TAX REPORTING UNDER
INTERNAL REVENUE CODE SECTION 6045**

The undersigned _____ is hereby designated as the person who will make the information return and furnish the statement to the transferor as required under Section 6045 of the Internal Revenue Code of 1986, as amended.

The undersigned, hereby acknowledges that he, she or it is responsible for making and furnishing such return and statement and agrees to do so and agrees to retain this document for four years following the close of the calendar year during which the closing of the transaction described below occurs. The undersigned further acknowledges that the transferee named below and its counsel are relying on this designation and the fulfillment of the undersigned's obligations hereunder as discharging any and all obligations they might otherwise have under Internal Revenue Code 6045.

The undersigned hereby acknowledges that he, she or it is either the person responsible for closing the transaction, the attorney for the transferee, the attorney for the transferor, the title or escrow company, or the mortgage lender, in each case within the meaning of any applicable regulations under the Internal Revenue Code Section 6045.

Name and Address of Transferor: CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Name and Address of Transferee: The Massachusetts Department of Transportation
Ten Park Plaza
Boston, MA

Address and Other Information
Necessary to Identify the Property: See **Exhibit A** attached hereto

Date: As of _____, 201_ DESIGNATED PERSON

Print Name

Signature

**EXHIBIT A
TO
TAX REPORTING**

Description of Real Estate

EXHIBIT F
Environmental Conditions

EXHIBIT G

Transferee Standards

1. The Transferee has a minimum of two (2) years prior experience conducting freight rail operations in the United States, or is owned or controlled by a company that owns or controls at least one other rail carrier that has a minimum of two (2) years prior experience conducting freight rail operations in the United States. Any such company, rail carrier owned by such holding company, and any other entity that owns or controls the Transferee, or is owned or controlled by the Transferee, is referred to herein as an "Affiliate" of the Transferee.
2. The Transferee demonstrates, by providing to the Buyer the information described in Paragraph 3 below, as well as audited financial statements for the previous two (2) years and a business plan for the property to be acquired, that the Transferee has the financial security required to satisfy the financial obligations described in the then-current trackage rights or operating agreement between the Benefitted Holder and the Buyer or the MBTA.
3. The Transferee has disclosed to the Buyer all material litigation, arbitration, mediation, contract dispute, or other disputes submitted to any dispute resolution procedure within the last five (5) years which involved, or arose from, a claim against the Transferee or any Affiliate regarding any of the following: the death or serious injury of any person; business, contract or other commercial disputes; employment, employment discrimination or labor disputes. As used in this Exhibit F, the term "material" means that the item would be considered material in the course of an audit of the firm under Generally Accepted Accounting Principles as expounded by the Financial Accounting Standards Board, or that the item, in the reasonable judgment of the Buyer, calls into question the ability of the Transferee perform the obligations of the the-current trackage rights or operating agreement between the Benefitted Holder and the Buyer or the MBTA in compliance with such agreement and applicable law.
4. Neither the Transferee nor any Affiliate has filed a bankruptcy petition or made a general assignment for the benefit of creditors, and no other party has filed a bankruptcy petition against the Transferee or any Affiliate in the preceding seven (7) years that has not been dismissed.
5. Neither the Transferee nor any Affiliate has applied for or consented to the appointment of a receiver, trustee or liquidator of Transferee or any Affiliate for all or substantially all of the assets of the Transferee or Affiliate and no order, judgment or decree has been entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Transferee or Affiliate for all or substantially all of the assets of the Transferee or Affiliate within the preceding seven (7) years.
6. The Transferee has supplied the Buyer with the records of any accident or other incident occurring in the preceding five (5) years that the Transferee or any Affiliate has reported, or was required to report, to the FRA under 49 CFR Part 225. The Transferee has disclosed to the Buyer, with respect to all freight rail operations conducted by the Transferee or any

Affiliate within the preceding three (3) years, a list of FRA or state violation notices issued with respect to the regulatory compliance of such freight rail operations, together with a brief description and resolution thereof, and demonstrated that it has complied with any penalties, sanctions, or other obligation relating thereto.

7. Neither the Transferee nor any Affiliate is in violation of any law which has the potential to have a material adverse effect on its freight rail operations over the CSXT Framingham Easement.
8. Neither the Transferee nor any Affiliate, nor any officer, director or department head of the Transferee or any Affiliate within the preceding five (5) years:
 - a. has been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity.
 - b. has had filed against it in a state or federal proceeding any criminal charge of fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any contract with any public entity and such charge has not been finally resolved.
 - c. has had filed against it, in a state or federal court, any civil complaint (including, but not limited to, a cross-complaint), counter claim, or other claim arising out of a contract, alleging fraud, bribery, collusion, conspiracy, or any action in violation of state or federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract with any public entity and such civil complaint, counter claim, or other claim has been found substantially meritorious or has not been finally resolved.
 - d. has within the preceding three (3) years been found, adjudicated, or determined (which finding, adjudication or determination has not been subsequently overturned) by any federal or state court or agency, including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, and the Massachusetts Commission Against Discrimination, to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act; Executive Order 11246; or the Massachusetts Law Against Discrimination (Mass. Gen. Laws c. 151B) which violation was of a material nature.
 - e. has within the preceding three (3) years been found, adjudicated or determined (which finding, adjudication or determination has not been subsequently overturned) by any state court, state administrative agency, federal court or federal agency to have violated or failed to comply with any applicable law or

regulation of the United States or any state governing prevailing wages (including, but not limited to, payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation, which violation or failure to comply was of a material nature.

- f. has been terminated or debarred on any contract issued by any public entity, including, but not limited to, the Buyer or the MBTA, or otherwise declared ineligible to contract with any public entity and such debarment remains in effect; or
 - g. is at the time of the proposed Transfer in default under or otherwise failing to perform any material obligations contained in any contract or agreement with the Buyer or the MBTA, and the Buyer or the MBTA has noticed the Transferee about such default or material nonperformance and otherwise exercised its contractual rights under such contract or agreement with respect to the same.
9. In the event that the Benefitted Holder's interest in the trackage rights agreement or operating agreement between the Benefitted Holder and the Buyer or the MBTA 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 F** to the contrary, Buyer may, upon the request of the Transferee or the Benefitted Holder, in its sole and absolute discretion, waive, in whole or in part, any or all of the foregoing Transferee Standards, except that Section 10 shall not be waived. No such waiver shall be effective unless evidenced by a written instrument executed by a duly authorized representative of Buyer.

EXHIBIT H
1985 Consent Properties

<u>Property</u>	<u>Milepost/ Location</u>
East Junction IT	QVJ 0.25 – 0.60
Readville Yard Yard #2, Tracks 4 and 6	QVL 219
Middleboro Sub Attleboro to COT	QN 0.0 – 13.3 QNB 13.30 – 22.70
Middleboro Yard	QNB 21.5 - 24
Industrial Sidings (from point of clearance to MBTA property line) ⁽¹⁾	QVL 197 QVL 198 QVL 203 QVL 204 QVL 204.5 QVL 216 QVL 217 QVL 218

Readville Yard Yard #1, all	QVL 219
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Framingham Wye	East leg of Wye to the North Yard (from the PS at CP 21 to the end of the track circuit (a distance of 718'))
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#30066654_v22

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

EXHIBIT D

**2014 OPERATING AGREEMENT
BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND CSX TRANSPORTATION, INC.**

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INTRODUCTION AND RECITALS

The Massachusetts Bay Transportation Authority (the “**MBTA**”) and CSX Transportation, Inc. (“**CSXT**”) (hereinafter the “**Parties**,” or each a “**Party**”), enter into this 2014 Operating Agreement (the “**Agreement**”) as of the Execution Date (defined below) in order to memorialize their mutual understanding with regard to certain rights to conduct passenger and freight services on property owned by the Massachusetts Department of Transportation, a Massachusetts body politic and corporate (“**MassDOT**”), and for the purpose of defining their respective rights and obligations with respect to the same.

Whereas CSXT, MassDOT, and the MBTA entered into a Definitive Agreement as of November 25, 2014 that, among other things, provides for the transfer of ownership of certain rail properties from CSXT to MassDOT or its designee; and

Whereas CSXT has retained certain perpetual, exclusive, freight easement rights over the MBTA Rail Properties, as defined herein.

Now, therefore, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Definitive Agreement (as hereafter defined). For the purposes of this Agreement:

“**Amtrak**” means the National Railroad Passenger Corporation.

“**Appropriate Statutory and Regulatory Authority**” means 49 U.S.C. §10903, et seq. and 49 C.F.R. Part 1152 and the STB’s interpretations thereof.

“**Commuter Windows**” daily from 5:00 A.M. to 11:00 A.M. and 3 P.M. to 9 P.M. hours, during which times the MBTA Commuter Rail Services will have priority.

“**Consent Properties**” shall have the meaning set forth in paragraph 2.2(e).

“**CSXT**” means CSX Transportation, Inc., a Virginia corporation, as well as any successor or assign duly recognized by the Surface Transportation Board, if necessary.

“**CSXT Framingham Easement**” shall, from the Execution Date until the Effective Date, have the meaning given to that term in the Definitive Agreement. From and after the Effective Date, “**CSXT Framingham Easement**” shall mean CSXT’s easement rights as described in any deed or deeds transferring the MBTA Rail Properties pursuant to the Definitive Agreement, which deed or deeds, when recorded, shall be attached hereto as **Exhibit B**.

“**CSXT Freight Rail Service**” means the full range of services and activities performed by CSXT (or any assignee of the CSXT Framingham Easement) in connection with its provision of rail service in the Commonwealth of Massachusetts.

“Definitive Agreement” means that certain Definitive Agreement, dated as of November 25, 2014, as may be amended, by and between MassDOT and CSXT.

“Effective Date” means the Closing Date. The Parties shall confirm the Effective Date by letter agreement after the Closing has occurred, and may add such Effective Date here:

_____.

“Effective Interest Rate” means the lesser of (i) twelve percent (12%) per annum or (ii) the fluctuating rate per annum equal to the Prime Rate plus two percent (2.0%). **“Prime Rate”** means the Prime Rate as from time to time published in the Money Rates Section of *The Wall Street Journal*. The rate described in clause (ii) of this definition shall change on the date of each change in the Prime Rate, and if such change results in a change to the Effective Interest Rate applicable to any amount due under this agreement, the new Effective Interest Rate shall be applied as of such date.

“Execution Date” means the date set forth on the signature page of this Agreement.

“Extension Notice” shall have the meaning set forth in paragraph 2.7(b).

“FRA” means the Federal Railroad Administration.

“FRA Track Safety Regulations” means the regulations promulgated by FRA, currently codified at 49 C.F.R. Parts 200-268 and in effect as of December 1, 2005, as amended from time to time.

“Freight Window” daily from 12:00 A.M. until 5:00 A.M. during which times CSXT Freight Rail Services shall have priority.

“Infrastructure Work” shall have the meaning set forth in paragraph 4.1.

“Intercity Rail Passenger Transportation” shall have the meaning as set forth in Title 49 U.S.C. §24102.

“Joint Usage Rail Properties” refers to those segments of the MBTA Rail Properties used by the MBTA for passenger rail service, as listed on Exhibit A and described in Section 2.

“MBTA” means the Massachusetts Bay Transportation Authority, a body politic and corporate created by and acting pursuant to St. 1964, c. 563, as amended.

“MBTA Commuter Rail Services” means (i) all of the rail operations, including movement of MBTA materials and equipment, services and activities performed by the MBTA and its commuter rail Operating Contractor (or their respective assignees or designees) in connection with the provision of commuter rail service on the MBTA Rail Properties, and (ii) Third Party IRPT.

“MBTA Rail Properties” means the properties within the entirety of the right of way named on Exhibit A. Use of MBTA Rail Properties shall be as allocated in this Agreement. The Parties shall update Exhibit A at the time of the closing of the acquisition of any properties that the

Parties, by mutual agreement, desire to include within the MBTA Rail Properties, and to thereafter reflect any additions to or changes in the allocation of use that the Parties mutually agree to during the Term of this Agreement.

“Mixed Use Window” means the times outside of either the Commuter Windows or the Freight Window, during which time dispatch of the trains shall be handled pursuant to an agreed to dispatch protocol which shall take into account the type of train, time of day and then current respective train schedule.

“Operating Contractor” means (i) any entity contracted with by the MBTA to provide commuter rail services on behalf of the MBTA, or (ii) any Third Party IRPT Provider.

“Parties” means CSXT and MBTA.

“Person” means any individual, corporation, partnership, association, trust or any other entity or organization, including, without limitation, a government, a public agency, political instrumentality or political subdivision or authority.

“Required Insurance Amount” means the greater of (i) the Statutory Limit as that amount may from time to time be modified by the Massachusetts General Court or (ii) Seventy-Five Million Dollars (\$75,000,000.00).

“Response Date” shall have the meaning set forth in paragraph 2.7(b).

“Statutory Limit” means the limitation placed by Massachusetts General Laws chapter 161A, Section 43 on the exposure of the Parties to certain liability.

“STB” means the Surface Transportation Board.

“Third Party IRPT” means Intercity Rail Passenger Transportation, utilizing the MBTA Rail Properties, provided by a Third Party IRPT Provider. For purposes of this Agreement Third Party IRPT shall be deemed to be included in MBTA Commuter Rail Services.

“Third Party IRPT Provider” means MBTA or any other Person (other than Amtrak) providing Third Party IRPT.

“Usage Charges” shall have the meaning set forth in paragraph 6.1.

SECTION 2. JOINT USAGE RAIL PROPERTIES.

The provisions of this Section 2 shall apply to the Joint Usage Rail Properties.

2.1 Access to Joint Usage Rail Properties.

Subject to the provisions of this Agreement, CSXT may use the CSXT Framingham Easement to provide CSXT Freight Rail Service on, and to enter upon and utilize the existing tracks and related operating facilities on those MBTA Rail Properties described on **Exhibit A** hereto as **“Joint Usage Rail Properties,”** *provided* however, that CSXT’s use of such properties

shall be subject to the conditions set forth in this Agreement, and *provided further* that MBTA covenants and agrees that it will not transport, and it will not grant any rights with respect to, or otherwise permit any Person other than CSXT to transport freight over such Joint Usage Rail Properties, but the Parties agree that the MBTA shall have the right to use the Joint Usage Rail Properties in accordance with the operating windows described in Section 2.2(b) below to transport baggage and other equipment and material for use by or for the MBTA, its agents or contractors. The access rights granted herein are granted for the purpose of permitting the CSXT Freight Rail Service, including without limitation, permitting CSXT to operate freight trains and related switching movements and CSXT shall have access to all running, side, switching, yard, and interchange tracks included in Joint Usage Rail Properties existing on the Effective Date, or with respect to the Consent Properties (as defined herein), hereafter connected to the existing track whether or not on right-of-way conveyed under the Deed referenced in Exhibit B of this Agreement, and necessary for the provision of the CSXT Freight Rail Service, all subject to and consistent with the conditions set forth herein.

2.2 Limitations on Access Rights.

The rights of CSXT described above shall be limited as follows:

(a) Joint Usage Rail Properties shall be jointly used by CSXT for CSXT Freight Rail Service and related uses and by the MBTA for MBTA Commuter Rail Services and related uses, in accordance with the terms set forth herein. Nothing in this Agreement shall derogate from MBTA's right to utilize, directly or through its Operating Contractor, or to permit other carrier(s) to utilize any MBTA Rail Properties for the provision of MBTA Commuter Rail Services provided that such utilization is not in violation of the access rights granted to CSXT pursuant to the provisions of this Agreement, provided however, MBTA shall not provide, directly or through its Operating Contractor, nor permit other carrier(s) to utilize any MBTA Rail Properties for the provision of MBTA Commuter Rail Services unless and until the Infrastructure Work is completed without the consent of CSXT. Notwithstanding any provision of this Agreement to the contrary, CSXT shall not unreasonably withhold its consent to the operation of MBTA trains transporting passengers in connection with special civic, sports or other events ("**Events**" and individually, an "**Event,**") over the Joint Usage Rail Properties prior to the date that the Infrastructure Work is completed, provided that (i) such operations are conducted in an infrequent and temporary manner, (ii) such operations do not unreasonably interfere with CSXT's use of the Joint Usage Rail Properties, (iii) the number of such roundtrip trains does not exceed thirty-six (36) within any consecutive twelve (12) month period, (iv) each Event is preceded by at least two (2) weeks' notice to CSXT and (v) each Event is conducted pursuant to reasonable protocols consistent with prior such events ("**Occasional MBTA Use**"). It shall not be deemed to be unreasonable for CSXT to condition its consent for Occasional MBTA Use with respect to an Event on MBTA's agreement, pursuant to CSXT's request, to clear such trains during the Event to the Walpole and Mansfield Yards, CSXT hereby consenting to MBTA's use of such yards solely for such purpose.

(b) Other than Occasional MBTA Use which may be permitted pursuant to Section 2.2(a), MBTA passenger trains shall not commence on the Joint Usage Rail Properties until the Infrastructure Work is completed to the mutual and reasonable

satisfaction of MBTA and CSXT. From and after the completion of the Infrastructure Work, MBTA may commence passenger trains pursuant to the Passenger Train Schedule attached hereto as **Exhibit G**. Notwithstanding the foregoing, should MBTA seek to modify the Passenger Train Schedule to accommodate changes in the arrival or departure times of existing trains identified in **Exhibit G**, it shall submit such request to CSXT for its prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such modifications will not interfere with CSXT's then existing freight operations.

(c) Notwithstanding the foregoing, this Agreement is not intended to constrain the Parties from considering, over time, and subject to computer modeling, capacity, the effect of future technological, infrastructure, commercial and other changes that may allow the possibility of accommodating additional freight and passenger trains subject to the mutual agreement of the Parties and without interfering with CSXT's ability to satisfy its current and future common carrier obligations. Subject to the foregoing, if, after the completion of the Infrastructure Work, MBTA wishes to add a train other than a train listed in **Exhibit G** (a "New Passenger Train"), or, prior to or after the Infrastructure Work, CSXT wishes to add a freight train in addition to the trains listed in **Exhibit H** (a "New Freight Train," and sometimes referred to collectively with a New Passenger Train, as a "New Train") the Party wishing to add the New Train must notify the other Party of the New Train to be added and demonstrate through the foregoing modeling that such New Train will not unreasonably impact the passenger or freight operations, provided, however, in the event a New Passenger Train is not reasonably likely to operate within the Freight Window, or a New Freight Train is not reasonably likely to operate within the Commuter Windows, the New Train need not be modeled. New Trains that comply with the foregoing provisions will be added to the respective train schedule in the respective exhibit.

(d) Subject to and consistent with the provisions of this Section 2, the MBTA shall establish a dispatching protocol for the Joint Usage Rail Properties that (i) will take into account the Commuter Windows, Freight Window and Mixed Use Window and minimize negative impacts on each other's trains in all time periods, and (ii) will allow reasonable flexibility within the structure described herein in order to accommodate the movement of each other's trains (including without limitation scheduled and unscheduled CSXT trains), provided however that in all circumstances a scheduled commuter rail train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes later than its scheduled time.

(e) The New Tracks (as hereinafter defined) and the properties shown on **Exhibit F** shall be Joint Usage Rail Properties hereunder (collectively, the "Consent Properties"), provided, however, that the Consent Properties may only be used by MBTA with the prior written consent of CSXT, which consent shall not be unreasonably withheld, conditioned or delayed.

2.3 CSXT Usage Levels and Related Alterations.

(a) The MBTA shall, at all times, allow CSXT access to all of CSXT's freight service locations consistent with Section 2.2 above.

(b) The MBTA shall maintain clearance and load carrying capacity on Joint Usage Rail Properties at or equal to the published limit existing thereon as of the date of this Agreement. The MBTA shall not install any new track (except as contemplated by the Infrastructure Work) nor relocate any existing track less than 13 feet (not less than 14 feet wherever reasonably feasible) centerline to centerline from any other track if either track is being used by CSXT in its freight service. Where existing track is being reconstructed or former trackage is being reinstated, MBTA shall have the option of reconstructing or reinstalling such track to clearances and alignments existing immediately prior to the commencement of such reconstruction or reinstallation.

(c) Notwithstanding any other provision of this Agreement to the contrary, the MBTA shall maintain horizontal and vertical track clearances on the Joint Usage Rail Properties (except station tracks that are separate from the main line) that meet or exceed (i) the vertical clearances set forth in AAR Equipment Diagram (Plate) "H" in effect as of the Effective Date, and (ii) the horizontal clearances set forth in AAR Equipment Diagram (Plate) "F" in effect as of the Effective Date. CSXT shall have the right to conduct clearance laser measure surveys with approved Hi-rail vehicles, and will share the results with MBTA upon request. The MBTA shall have the unilateral right to maintain horizontal and vertical track clearances on station tracks that are separate from the main line that the MBTA determines, in its sole discretion are suitable for MBTA operations.

(d) The MBTA shall, as determined by CSXT to be reasonably necessary, ensure that CSXT is furnished with tracks, bridges and culverts for the operation of the CSXT Freight Rail Service that are materially similar to those tracks, bridges and culverts that exist as of the Effective Date, *provided however*, (i) in the event that any new bridges are constructed on or over the MBTA Rail Properties, or (ii) any existing bridges on or over the MBTA Rail Properties are reconstructed, MBTA shall ensure that all such bridges conform to the "315 standards".

2.4 Control and Management.

(a) MBTA shall perform, or delegate or subcontract to its Operating Contractor or another entity, the performance of the management, regulatory and operational control of any and all rail service over MBTA Rail Properties (including Joint Usage Rail Properties) including, without limitation, dispatching and control of all trains, provided that such control shall be exercised in a manner which does not violate CSXT rights to use MBTA Rail Properties, as set forth in this Agreement. In the exercise of its control over Joint Usage Properties, the MBTA will give priority to MBTA passenger trains over all other train scheduling, dispatching and control, including without limitation freight service, but will make all reasonable efforts to expedite the movement of freight trains, including expediting repairs to lines, removing obstructions, and scheduling regular maintenance and repair programs at hours which will not unreasonably interfere with such movement.

(b) The MBTA shall ensure that its contractors and subcontractors performing work or services on the Joint Usage Rail Properties pursuant to this Section 2 perform and complete their respective work or services in accordance with this Agreement

for the provision of such work or services. The MBTA, and not CSXT, shall be liable for all liability, cost, and expense arising out of or connected with any failure of such contractor or subcontractors to perform, and (except as the Parties may agree by written agreement) shall bear all cost or expense in connection with the performance, or failure to perform, of such contractors or subcontractors.

2.5 Maintenance

(a) Provision of Maintenance Services.

(1) The MBTA shall provide all maintenance services for Joint Usage Rail Properties in accordance with this Agreement, including the applicable maintenance standards described in paragraph 2.5(a)(3) below. All maintenance shall be undertaken in a manner that does not unreasonably interfere with train operations. The MBTA shall use its best efforts to schedule maintenance services between the hours of 7 a.m. and 7 p.m., and in a manner that is fairly apportioned among the applicable windows of operation during that period. The Parties acknowledge and agree, however, that certain work, such as work on grade crossings and bridge replacements, often must be performed between 7 p.m. and 7 a.m. In all circumstances where a track outage is required for the performance of maintenance (except emergency maintenance services), such maintenance work shall be scheduled at least fifteen (15) days in advance of any such track outage.

(2) Where facilities, including utilities, electricity or plumbing property, or drainage property, extend from property maintained by one Party to property maintained by the other Party, the Parties shall determine a line of demarcation which delineates which segment of such facilities are to be maintained by each Party.

(3) The MBTA shall maintain all Joint Usage Rail Property 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 both passenger and freight rail operations and which shall always meet or exceed the standard required by FRA rules and regulations for the agreed upon designated class of track, provided that in no event shall the rating of any bridge rebuilt by MBTA after the Effective Date be less than "315 standard". If CSXT requests that the MBTA maintain a portion of the Joint Usage Rail Properties to a standard that exceeds the standard described above, the MBTA shall perform all work required to meet such standard (an "**Increased Standard**"), and CSXT shall be responsible for all incremental costs and expenses of maintaining such property to the standard requested by CSXT. The MBTA shall provide CSXT with at least thirty (30) days prior written notice of any proposed changes to the maintenance standards that are likely to affect CSXT operations. The Parties shall cooperate and use good faith efforts to reach agreement with respect to the adoption and implementation of such changes. MBTA and CSXT shall hold quarterly meetings to discuss infrastructure and maintenance issues with the goal of collaboratively addressing problems and preventing service disruptions.

(4) MBTA will furnish such snow removal, storm damage recovery, and similar non-structural services (the “**Non-Structural Services**”) as may be necessary to allow for the continued, safe operation of CSXT trains on the MBTA Rail Properties.

(5) If at any time CSXT reasonably determines that (i) MBTA has failed to perform the maintenance work described in Subsection (3) above at a level required pursuant to this paragraph, or if CSXT has been unable to safely operate on the MBTA Rail Properties for reasons attributable to the failure of the MBTA to perform the maintenance work described in subsection (3) above, or (ii) MBTA has failed to perform the Non-Structural Services described in Subsection (4) above to allow for the continued, safe operation of CSXT trains on the MBTA Rail Properties, then, CSXT shall so notify MBTA (which notification may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA) in which case MBTA will as soon as possible, but in no case more than twenty-four (24) hours, respond to CSXT in writing (which writing may be via email) and inform CSXT if MBTA agrees with CSXT’s determination and if so, when MBTA will perform the maintenance work or Non-Structural Service. If MBTA disagrees with CSXT or if CSXT reasonably believes it is able to perform the maintenance work or Non-Structural Service sooner than the date proposed by MBTA, CSXT shall have the right, but not the obligation, immediately upon written notice to MBTA (which writing may be via email to the maintenance control desk of the MBTA [(_____.com)] and/or via such other notification method as may be provided by the MBTA), to enter MBTA Rail Properties to perform the maintenance work or Non-Structural Service in accordance with applicable operating rules. To the extent permitted by law, such work may be performed by CSXT or its contractors, with the cost thereof to be borne solely by MBTA, which amount shall be paid by MBTA to CSXT upon demand (or CSXT may credit such amounts against the Usage Fee under this Agreement), provided, however, that MBTA shall not be responsible for any incremental costs required to achieve an Increased Standard and provided further that if the Parties disagree with the need for or cost of the maintenance or Non-Structural Service, the Parties shall resolve the matter pursuant to the dispute resolution provisions of Section 13.

(6) 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 CSXT. The MBTA shall be solely responsible for all labor relations issues relating to MBTA employees that arise in connection with the performance of services under this Agreement.

(7) 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 Section 2, provided however that capital work outside of the MBTA’s maintenance responsibilities shall be performed by the MBTA pursuant to Section 4 herein.

2.6 General.

(a) Notwithstanding anything herein to the contrary, MBTA shall have the exclusive right to secure such approvals of regulatory or governmental bodies for such work on Joint Usage Rail Properties as may be necessary, including, without limitation, the FRA, and Massachusetts Department of Public Utilities, and no approval of CSXT shall be required for the performance of any work on Joint Usage Rail Properties except as may be expressly provided herein.

(b) Subject to and consistent with the other provisions of this Agreement, including Section 4.1(a), the MBTA may grant access to the Joint Usage Rail Properties 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 CSXT of all such work that will have an impact on CSXT operations and obtain CSXT's consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, in the event such work, in CSXT's reasonable determination, will have an impact on CSXT operations for a period longer than seven (7) days, then CSXT in its sole discretion may, within fourteen (14) days of receipt of such notice, notify the MBTA in writing (the "**Extension Notice**") that CSXT requires additional time in which to evaluate the matter and shall indicate in such Extension Notice the estimated date (the "**Response Date**") by which CSXT expects to be able to provide notice to MBTA of its consent or withholding of consent. If CSXT so provides to MBTA a timely Extension Notice, then CSXT shall provide its response prior to the Response Date.

SECTION 3. [INTENTIONALLY LEFT BLANK]

SECTION 4. CAPITAL WORK

4.1 Certain Required Improvements by MBTA.

(a) In addition to any other obligations hereunder, and in consideration of the mutual agreements of the Parties set forth herein, MBTA agrees to pay for, cause to be performed, and completed certain work improvements and other infrastructure work (collectively, the "**Infrastructure Work**"), described below:

(1) the improvement of the Joint Usage Rail Properties between Framingham and Mansfield to meet the FRA Class 3 standards (40 miles per hour);

(2) the construction of a 6,400 foot new main line track and a 1,900 foot siding in Foxboro (the "**New Tracks**");

(3) upgrades at Walpole Junction and Lewis Wye with remotely controlled power operated switches at both ends; as described in **Exhibit E**, sufficient to allow the commencement of MBTA Commuter Rail Service and the use of the New Tracks by CSXT;

(4) an additional station track at Foxboro; and

(5) installation of dispatcher dual controlled power operated switches and switch heaters at the dispatcher controlled locations between Framingham and Mansfield identified in Exhibit E;

all as more specifically set forth and described in the scope of work attached hereto as Exhibit E.

(b) All Infrastructure Work will be in compliance with all MBTA engineering standards and shall be suitable for CSXT Freight Rail Service. Any costs related to meeting the foregoing standards with respect to the Infrastructure Work shall not be considered Increased Standards for any purpose under this Agreement.

(c) MBTA will provide preliminary engineering plans for review and approval by CSXT, which approval will not be unreasonably withheld, conditioned or delayed. CSXT will use all commercially reasonable efforts to conclude its review and timely provide its response to MBTA. In the event that CSXT does not provide approval or disapproval within fourteen (14) days of receipt of such preliminary engineering plans, MBTA may proceed with such Infrastructure Work, provided however such Infrastructure Work shall in all events meet the standards set forth in paragraph 4.1(b) above.

(d) In the event that positive train control (“PTC”) equipment is required as a result of passenger rail service on the MBTA Rail Properties, MBTA shall install at its sole cost and expense, the wayside communications, and signals equipment infrastructure, necessary to satisfy the FRA PTC regulations promulgated pursuant to the Rail Safety Improvement Act of 2008. Maintenance of such equipment shall be in accordance with Section 2.5.

4.2 Improvements at the Request of CSXT.

MBTA, at CSXT’s written request, shall improve the track and facilities CSXT uses or may use on the MBTA Rail Properties (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 CSXT in such written request, provided that:

(a) the MBTA and CSXT have agreed upon a reasonable allocation of the costs of any such improvements, based on whether and to what extent the MBTA would benefit from such improvements. Nothing in this Section 4.2 shall obligate the MBTA to contribute to the cost of rebuilding or restoring any improvements after a casualty to the extent that any other provision of this Agreement (i) authorizes the MBTA not to rebuild or restore such improvement and (ii) the MBTA has not elected to rebuild such improvement.

(b) any such requested improvements shall be subject to the prior written approval of the MBTA, which shall be given if the MBTA determines that neither such improvements nor the construction required for such improvements will interfere with or unduly limit the MBTA’s present or anticipated reasonable future operations or 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, including passenger trains serving special civic, sports or other events over the MBTA Rail Properties in an infrequent and temporary manner;

(d) CSXT shall be solely responsible for any and all incremental costs associated with the operation and maintenance of such improvements. CSXT shall assume full responsibility for the cost of removing or relocating all improvements that are made solely for the benefit of CSXT;

(e) any such improvements or modifications to the MBTA Rail Properties 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; and

(f) 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 CSXT 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.

4.3 CSXT Reimbursement of MBTA.

In the event that the MBTA performs any capital work or maintenance work that is not the obligation of the MBTA under Section 2 or Section 4.2 hereof, at the request of CSXT, CSXT shall reimburse the MBTA for the actual, auditable costs of such work (except for costs to be borne by the MBTA pursuant to Section 4.2(a) above), plus a management fee equal to 16% of the amount of such costs.

SECTION 5. DISCONTINUANCE OF FREIGHT RAIL OPERATIONS

5.1 CSXT-Initiated Abandonment or Discontinuance.

In the event that CSXT shall cease to have current use, or, in CSXT's sole and absolute determination, reasonably foreseeable future use, of any segment of the Joint Usage Rail Properties, or, if in CSXT's sole and absolute discretion it determines that it no longer wishes to continue the use of any such segment for CSXT Freight Rail Service, CSXT shall have the option to seek (and the MBTA agrees not to oppose such action) from the STB, Appropriate Statutory and Regulatory Authority, including without limitation, exemption from the requirement to obtain such authority, to abandon and/or discontinue CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties. Such portions of the Joint Usage Rail Properties shall no longer be subject to this Agreement.

5.2 MBTA Request for Abandonment or Discontinuance.

In the event CSXT has not provided CSXT Freight Rail Service over any segment of the Joint Usage Rail Properties for a continuous period of eight (8) years, CSXT shall, promptly following MBTA's written request, (a) seek Appropriate Statutory and Regulatory Authority from

the STB, including without limitation, exemption from the requirement to obtain such authority to discontinue and/or abandon CSXT Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Properties. CSXT shall promptly (within three (3) days) notify MBTA upon the date such authority to discontinue service becomes effective or authority to abandon is consummated with respect to such portions of the Joint Usage Rail Properties, whether through an exemption or otherwise, and such properties thereafter shall no longer be subject to this Agreement, or (b) fully assist the MBTA in adverse abandonment filings, after which, if such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties, such properties shall no longer be subject to this Agreement.

5.3 MBTA Petition for Abandonment or Discontinuance.

In the event that for a continuous period of three (3) years, CSXT has failed to provide CSXT Freight Rail Service on any segment of the Joint Use Rail Properties (provided any such failure is not a direct or indirect result of the failure of MBTA to properly maintain or repair the Joint Use Rail Properties or of any other breach by MBTA of its obligations under this Agreement), then MBTA shall be entitled, in its sole discretion, to commence adverse abandonment proceedings with the STB with respect to such segments, provided however, CSXT may oppose such proceedings and shall have no obligation to assist MBTA or to otherwise cooperate or participate in such proceedings in any way. If such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Properties, such properties shall no longer be subject to this Agreement.

5.4 Limitations on Adverse Abandonment.

The MBTA hereby agrees that it will not commence or otherwise seek or pursue any adverse abandonment proceedings with the STB except as permitted by Sections 5.2 and 5.3.

SECTION 6. COMPENSATION

6.1 Elements of Compensation.

Except for fees, charges and reimbursements expressly provided for elsewhere in this Agreement, the sole compensation to MBTA for all services to be rendered by it pursuant to the terms of this Agreement (including, without limitation, all maintenance and dispatch services), shall be a compensation payment equal to Three Hundred Thousand Dollars (\$300,000.00) per year, commencing only upon completion of the Infrastructure Work, subject to revision from time to time as provided in Section 6.2 below (the "**Usage Charge**"). For the avoidance of doubt, the Usage Charge amount, shall not accrue or be due or payable until the completion of the Infrastructure Work, but shall be subject to the revisions provided in Section 6.2 from July 1, 2015. From and after the completion of the Infrastructure Work, MBTA will invoice CSXT annually in arrears for the Usage Charge and CSXT will pay the Usage Charge within thirty (30) calendar days of the invoice date.

6.2 Adjustment

Beginning July 1, 2015, and each July 1 thereafter, the Usage Charge shall be increased or decreased by the same percentage by which 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 Recovery Index" and supplements thereto (the "**Annual Indexes**"), issued by the Association of American Railroads ("**AAR**") (or if such index ceases to be published, a generally recognized index which is substantially equivalent to such Annual Indexes) has increased or decreased with each change to become effective July 1st of each calendar year. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Usage Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2014 Index for the first annual adjustment) as related to the index for the previous calendar year (2013 Index for the first annual adjustment) and applying that percent to the Usage Charge. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2013; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2014; "C" to be the Usage Charge; and "D" to be the percent of increase or decrease; the revised Usage Charge stated herein would be revised by the following formula:

$$(a) \quad (B - A)/A = D$$

$$(b) \quad (D \times C) + C = \text{revised Usage Charge effective upon the July 1 of the year being revised.}$$

In the event the base for the Annual Indexes 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, 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 resolve the matter pursuant to the dispute resolution provisions of Section 13 hereof.

SECTION 7. TERM

The Parties have executed this Agreement on the Execution Date. The Term of this Agreement shall commence on the Effective Date and end on the date that is thirty (30) years from the Effective Date, unless terminated earlier pursuant to its terms. Notwithstanding the foregoing, the Parties agree that this Agreement shall remain in full force and effect during any interim period between the end of the Term of this Agreement (or the termination hereof for any reason other than mutual agreement of the Parties) and the execution of a new, revised, or extended operating agreement covering all of the MBTA Rail Properties. The Parties acknowledge that expiration or termination of this Agreement will not affect the validity, continuation or perpetual nature of the CSXT Framingham Easement or any other easement rights vested in CSXT with regard to the MBTA Rail Properties.

SECTION 8. INTERCITY RAIL PASSENGER TRANSPORTATION

Neither MassDOT nor MBTA currently plan to utilize, or allow another entity to utilize, the Joint Usage Rail Properties to provide Intercity Rail Passenger Transportation. Other than as may be required by law, the Parties agree that the utilization of Intercity Rail Passenger Transportation over the MBTA Rail Properties will occur only upon the prior mutual consent of CSXT and MBTA, which consent may not be unreasonably withheld, conditioned or delayed. It

shall not be unreasonable for either Party to condition its consent to allow 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.

SECTION 9. ENVIRONMENTAL LIABILITY

With respect to the MBTA Rail Properties, CSXT agrees to indemnify and hold the MBTA harmless from and against any claims, causes of action, damages, fines, or penalties arising with respect to any adverse environmental condition or environmental impairment that arises after the Effective Date to the extent caused by the acts or omissions of CSXT after the Effective Date on or about the MBTA Rail Properties. Such indemnity by CSXT pursuant to this Agreement shall not, however, extend to any such condition or impairment howsoever caused prior to the Effective Date or results from actions or omissions of the MBTA (or its subcontractors and agents) or is created by the MBTA's operations (or those of the MBTA's subcontractors or agents) from and after the Effective Date. The MBTA agrees to indemnify and hold CSXT harmless from and against any claims, causes of action, damages, fines or penalties arising with respect to any adverse environmental conditions or environmental impairment created by the MBTA's operations (including those of its subcontractors or agents) after the Effective Date on or about the MBTA Rail Properties. This section shall not, however, (i) serve to terminate any rights or liabilities accruing under any other title instruments or agreements between the Parties, nor (ii) modify, amend or supersede the obligations, releases, indemnities and allocations of responsibility set forth in, or executed in connection with the Definitive Agreement or Section 10 of this Agreement.

SECTION 10. INDEMNIFICATION, LIABILITY AND INVESTIGATION

10.1 Applicability and Definitions

Financial responsibility for liability for personal injury or property damage arising from activities (including, without limitation, Incidental Use) on or about the MBTA Rail Properties covered by this Agreement shall be allocated as provided in this Section 10. Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 10:

(a) **"Commuter Rail Passenger(s)"** shall mean and include any and all persons, ticketed or unticketed, using the MBTA Commuter Rail Services or engaged in any Incidental Use on or about the MBTA Rail Properties: first, while on board trains, locomotives, rail cars, or rail equipment employed in MBTA Commuter Rail Services and/or entraining and detraining therefrom; second, while on or about the MBTA Rail Properties for any purpose related to the MBTA Commuter Rail Services, including, without limitation, parking, inquiring about MBTA Commuter Rail Services or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or rail equipment; and, third, while on or about the MBTA Rail Properties for any purpose related to any Incidental Use thereof. The term Commuter Rail Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(b) **“Covered Accident(s)”** shall have the meaning set forth in paragraph 10.3(b).

(c) **“Incidental Use”** shall mean the use of ancillary services or facilities (whether or not on the MBTA Rail Properties) conducted or provided for the convenience and comfort of users of MBTA Commuter Rail Services which shall include, without limitation, the use of such facilities as restaurants, kiosks and retail facilities, a purpose or function of which is to serve the needs of users of MBTA Commuter Rail Services.

(d) **“Other Invitee”** shall mean any person or persons on or about the MBTA Rail Properties in connection with MBTA's (or the Operating Contractor's) use of the MBTA Rail Properties other than those persons on or about the MBTA Rail Properties to perform Railroad Operations or to engage in Incidental Use. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(e) **“Railroad Operations”** shall mean any and all of the MBTA Commuter Rail Services, CSXT Freight Service and the Intercity Rail Passenger Transportation (if permitted pursuant to Section 8 above).

For the purpose of this Section 10, (i) neither Party shall be deemed to be a “contractor” of the other Party, and (ii) all trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of the Operating Contractor shall be deemed to be trains, locomotives, rail cars, rail equipment, officers, agents, contractors and employees of MBTA.

10.2 Hold Harmless

Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 10, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost, and expense, assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other party, or its or their officers, agents and employees, and/or any other person or persons whomsoever, except as provided in paragraph 10.3(b) below.

10.3 General

(a) Except as is otherwise expressly provided by Section 10.3(b) or Section 10.4, whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the MBTA Rail Properties, including, without limitation, any loss, damage, destruction, injury or death of or to the MBTA's contractors, agents or employees, Commuter Rail Passengers, Other Invitees, trespassers on or about the MBTA Rail Properties and/or any other person on, about or crossing the MBTA Rail Properties at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the

loss, damage, destruction, injury or death so occurring shall be borne entirely by the MBTA.

(b) The Parties specifically acknowledge and agree that, in the event of accidents directly between the trains, locomotives, rail cars or rail equipment of the MBTA and CSXT only ("Covered Accidents," and individually a "Covered Accident"), the MBTA shall have no duty to indemnify or hold harmless CSXT from the first seven million five hundred thousand dollars (\$7,500,000) in damages or expenses (aggregate per occurrence):

- (1) caused by or arising from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors:
or
- (2) resulting from an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its officers, employees or agents, licensees or subcontractors;

provided, however that, except as otherwise expressly provided by Section 10.4(c), MBTA shall indemnify and hold harmless CSXT from all damages and expenses above the amount referred to in the introductory paragraph of this Section 10.3(b) above, regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If the MBTA incurs any damages, fees, costs, or expenses in connection with a claim relating to a Covered Accident that is found to have been caused by or have arisen from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, or to have given rise to an award of punitive or exemplary damages caused by the conduct of CSXT or its subsidiaries, its agents, licensees, employees, officers or directors, CSXT shall reimburse the MBTA for all damages, fees, costs and expenses, up to a maximum of seven million five hundred thousand dollars (\$7,500,000) aggregate per occurrence, incurred in the defense or settlement (provided that such settlement has been approved in writing by CSXT) of such a claim, action or demand, which amounts shall count toward CSXT's maximum responsibility under this Section 10.3(b).

10.4 Certain Allocations of Responsibility

The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties (without limiting the application of this Section 10.4 to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either Party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing of the MBTA Rail Properties or (ii) a trespasser, shall be governed by paragraph 10.4(a) or 10.4(b), as applicable.)

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only MBTA being

involved, then MBTA shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 17.5 hereof.

(b) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Commuter Rail Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by MBTA as aforesaid in paragraph 10.3(a)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense referred to in Section 17.5 hereof.

(c) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both MBTA and CSXT being involved, then: (1) MBTA and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them (it being agreed that the Operating Contractor's operation of any of the foregoing shall be deemed to be the MBTA's operation thereof); (2) MBTA shall assume and bear all liability, cost and expense for injury to and death of Commuter Rail Passengers, Other Invitees and MBTA's officers, agents, contractors and employees except as set forth in paragraph 10.3(b); (3) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents, contractors and employees; and (4) MBTA and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in paragraph 10.4(c)(2) or 10.4(c)(3) and for loss of, damage to and destruction of all other property not referenced in paragraph 10.4(c)(1) so occurring, including, without limitation, all cost and expense referred to in Section 17.5 hereof.

(d) Except as provided in paragraph 10.4(e) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Commuter Rail Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both CSXT and any railroad other than MBTA using the MBTA Rail Properties being involved (including, without limitation, any detouring railroad), then the provisions of paragraph 10.4(c) above shall apply for the purpose of determining between MBTA and CSXT, CSXT's assumption and apportionment of liability, cost and expense.

(e) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers, Other Invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, MBTA, CSXT and any other railroad (including, without limitation, a detouring railroad) using the MBTA Rail Properties being involved, then the provisions of paragraph 10.4(c) above shall apply

for the purpose of determining between MBTA and CSXT, each Party's assumption and apportionment of liability, cost, and expense, provided however that CSXT's share of that liability, cost and expense that is to be borne equally by MBTA and CSXT under paragraph 10.4(c)(4) above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to MBTA one-third (1/3) or more of the aforesaid liability, cost and expense.

(f) Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Section 10.4, the term "**rail equipment**" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the MBTA Rail Properties at the time of any occurrence under said Section 10.4.

(g) For purposes of this Section 10.4, pilots furnished by MBTA to CSXT pursuant to paragraph 17.3(c) of this Agreement shall be considered as the employees of CSXT.

(h) For purposes of this Section 10.4, the term "**person**" shall include, without limitation, the employee(s) of a Party hereto and the term "**employee(s)**" shall mean and include: (i) employees of a Party hereto; (ii) for each Party hereto, the invitee(s) to the MBTA Rail Properties of each such Party, which shall include the employees of contractors and subcontractors of such Party, excluding Commuter Rail Passengers and Other Invitees.

10.5 Installment Payments

In every case of death or injury suffered by an employee of either MBTA or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's 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 assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

10.6 Validity

Each provision of this Section 10 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 10 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 10 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 10 and the intentions of the parties with respect thereto.

10.7 No Third Party Beneficiaries, Other Remedies

Nothing expressed or implied in this Section 10, including, without limitation, paragraphs 10.4(e) and (f) hereof is intended to or shall be construed to: (A) confer upon or to give any person,

firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 10, or (B) limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

10.8 Investigations

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, 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. For avoidance of doubt, the Parties agree that the MBTA shall have the obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Commuter Rail Passengers or Other Invitees, notwithstanding CSXT's potential liability pursuant to paragraph 10.3(b).

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or MBTA solely or CSXT and MBTA jointly may have any liability under the provisions of this Agreement.

(c) The Party hereto receiving notice of the filing of a claim will promptly notify the other Party of such filing where liability therefor may be joint or that of the other Party hereto. MBTA and CSXT will cooperate with each other in all such investigations, adjustments, and defenses, and MBTA and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any Party which is another'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, and the Party relieved of duties in respect of such claim or suit shall cooperate as requested by the Party investigating, adjusting or defending said claim or suit.

(e) 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.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which MBTA has any liability under this Agreement without the concurrence of MBTA if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 10.8 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 10 or elsewhere in this Agreement.

10.9 Corrective Amendments

The Parties acknowledge and agree that the allocation of liability and other provisions of this Section 10 were a material inducement to both Parties' agreement to enter into this Agreement and that in the event that as a result of legislative action, court decision, regulation or otherwise, said allocations of liability and/or the other provisions of this Section 10 are found to be, or become unenforceable or modified in any manner that would affect the substantive rights of either Party, the Parties shall promptly negotiate such amendments to this Agreement as are mutually satisfactory and necessary to protect the intent of this Section 10. If the statutory modification, court decision, regulation or other event substantially impairs either Party's liability indemnification protection under this Section 10 or the availability of any of the insurance described in Section 11 below, and the Parties cannot reach agreement on a satisfactory amendment to eliminate such substantive impairment within thirty (30) days from the date of said statutory modification, court decision, regulation or other event becomes effective, then, notwithstanding the provisions of paragraph 13.4 (b) hereof, the Parties shall submit the matter to binding arbitration for the establishment of such an amendment to this Agreement in accordance with paragraph 13.4(a) hereof.

SECTION 11. INSURANCE

11.1 General

(a) MBTA has purchased insurance (the "**Current Insurance Policy**"), which Current Insurance Policy includes coverage for punitive and exemplary damages, and has established and shall maintain an adequate program of self-insurance which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, MBTA's contractual liabilities under this Agreement, in the amounts and as provided for in paragraph 11.1(b) hereof. The obtaining of such policy of insurance and the establishment of said self-insurance program, and the maintenance of both in full force and effect by MBTA is a material obligation of this Agreement. The MBTA shall use its commercially reasonable efforts to continue to retain the Current Insurance Policy in effect (including, without limitation, its coverage for punitive and exemplary damages). In the event said Current Insurance Policy, or any replacement insurance policy is canceled for any reason, then MBTA shall replace said policy during the notification period with another policy in like amount and coverage protection (except that MBTA's failure to obtain coverage in such replacement policy for punitive and exemplary damages shall not be a breach of the foregoing requirement in the event that the MBTA has used and continues to use on an on-going basis, commercially reasonable efforts to obtain such coverage) or, in the case of the self-insurance program, the MBTA shall re-establish such program, and, should the MBTA fail in its performance of these contractual obligations to CSXT, then MBTA shall immediately cease operation of any and all MBTA Commuter Rail Service on the Joint Usage Rail Properties until such time, if any, that MBTA shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 11 and/or re-establish the self-insurance program, as the case may be. It is understood and agreed by the parties hereto that the limitation of MBTA's Commuter Rail Services on the Joint Usage Rail Properties, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT

Framingham Easement or CSXT's rights hereunder with respect to the provision of CSXT Freight Rail Services, and shall not modify or amend any other obligation of MBTA under this Agreement.

(b) MBTA, at its sole cost and expense, shall procure and shall maintain during the entire term of this Agreement, liability insurance covering CSXT as an additional named insured as agreed and provided in the terms and conditions of paragraph 11.1(a) hereof. The said liability insurance shall have a limit of not less than the Required Insurance Amount combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage. The said liability coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under the Federal Employer's Liability Act. MBTA shall furnish to CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its CSXT Freight Rail Service on the MBTA Rail Properties) with a limit in excess of the Required Insurance Amount and deductibles or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). CSXT, at its sole cost and expense, shall maintain such insurance with limits not less than the Required Insurance Amount during the entire term of this Agreement, and shall name the MBTA and its Operating Contractor as additional insureds. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 17 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the figure in the definition of Required Insurance Amount as applied to the insurance required of MBTA under subparagraphs (a) and (b) hereof may, at MBTA's option, be reduced to a figure of Thirty Million Dollars (\$30,000,000), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the MBTA Rail Properties, MBTA may not require such entity to maintain during the remainder of the term of this Agreement insurance having a limit in excess of Thirty Million Dollars (\$30,000,000) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Two Million Dollars (\$2,000,000). To the extent and in the event mutually agreeable to MBTA and such other entity, the aforesaid limits and/or amounts of insurance required of MBTA and such other entity may be changed from time to time during the term of this Agreement.

11.2 Period of Coverage

Each Party's responsibility under this Section shall apply to any liability arising on or after the Effective Date of this Agreement, and shall extend beyond the date of expiration or termination of this Agreement with respect to any event occurring or liability arising during the term of this Agreement (or interim period described in Section 7 above).

11.3 Certificates

Each Party shall furnish the other with Certificates of Insurance (and, upon request, copies of all required insurance policies, including endorsements and declarations) evidencing compliance with the requirements set forth in this Section on the Effective Date of this Agreement, and upon the request of the other party, annually thereafter. The policies shall be endorsed to (1) provide that the policy shall not be cancelled or coverage reduced without sixty (60) days prior notice of cancellation or reduction to the other party, and (2) name the other party (the MBTA and/or its Operating Contractor or CSXT, as the case may be), and its directors, officers, agents and employees, as additional insureds with respect to occurrences relating to the performance of the obligations set forth in this Agreement; (3) provide that such coverage is primary and non-contributory to any insurance or self-insurance procured and maintained by the other party; (4) provide that any Workers' Compensation policies contain a waiver of subrogation against the other party; and (5) provide that to the extent reasonably available, all policies shall not contain any terrorism exclusions, or if they so contain such exclusions, shall contain endorsements providing coverage for acts of terrorism, both foreign and domestic, and both certified and non-certified by the Secretary of the Treasury of the United States. In the event any insurance policy required under this Agreement is cancelled or has its aggregate limits coverage reduced by 25% or more, then the MBTA and/or its Operating Contractor or CSXT (as the case may be) shall replace such policy or reinstate the aggregate limits during the notification period referred to above with another policy in like amount and coverage protection.

11.4 Self-insurance

Each party's self-insurance programs and insurance policies with self-insured retentions must provide at least the same protection from liability and defense of suits as would be afforded by "first dollar" insurance. If either party fails or refuses to pay any losses within a permitted self-insured retention, such failure or refusal shall be an Event of Default under this Agreement.

SECTION 12. DEFAULT AND BREACH; TERMINATION

12.1 Default and Breach

In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 12 shall be construed to modify or amend the provisions of Section 12 hereof or to limit or restrict either party's rights thereunder.

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; including, without limitation, any breach with respect to a party's operating windows under paragraph 2.2(b) of this Agreement, 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 dispute resolution procedures set forth in Section 13 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 dispute resolution and arbitration in accordance with the provisions of Section 13 hereof. Nothing contained in this Section 12 shall be construed to limit or restrict the parties' rights and obligations under Section 12.2 hereof.

12.2 Termination; Effect of Termination

(a) This Agreement may be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree to. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this Agreement, except to the extent that the mutual agreement terminating this Agreement so specifies. The Parties agree and acknowledge that any termination of this Agreement does not affect the validity, continuation or perpetual nature of the CSXT Framingham Easement with regard to the MBTA Rail Properties.

(b) This Agreement shall terminate with respect to portions of the MBTA Rail Properties (i) at such time as CSXT or its successors or assigns, secures and exercises Appropriate Statutory and Regulatory Authority to abandon and/or discontinue all CSXT Freight Rail Service on such portions of the MBTA Rail Properties, or (ii) in the event that such authority is not required, at such time as CSXT, its successors or assigns, designates in a written notice of termination of this Agreement with respect to such portions of the MBTA Rail Properties, which written notice shall be given to the MBTA at least six (6) months in advance of the date so designated for termination.

(c) Expiration or termination of this Agreement for any reason, in whole or in part, 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 expiration or termination hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement, including without limitation, where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

SECTION 13. DISPUTE RESOLUTION

13.1 Settlement of Disputes.

Both Parties to this Agreement shall make every reasonable effort to settle any dispute concerning the interpretation, application or enforcement of this Agreement by prompt and diligent discussions and negotiations.

13.2 Informal Consideration by the Parties.

Any dispute that cannot be resolved pursuant to Section 13.1 above within thirty (30) business days after it arises (or such other time as the Parties may agree in writing), may be submitted at the written request of either party to the MBTA's Director of Railroad Operations and the individual designated by CSXT. These individuals shall discuss and attempt to resolve the dispute. In the event that the dispute remains unresolved twenty (20) business days after its submission (or such other time as the parties may agree), the matter may be referred in writing by either party to the General Manager of the MBTA and CSXT's Assistant Vice President - Network Planning and Joint Facilities (the "AVP") for consideration and resolution. If the dispute still remains unresolved thirty (30) calendar days after its referral to the General Manager and the AVP under this paragraph, the Parties may jointly agree to submit the matter to mediation under Section 13.3, below, or either party may commence arbitration in accordance with Section 13.4 below.

13.3 Mediation.

(a) Either the MBTA or CSXT may request mediation of any unresolved dispute under this Section 13.3. If a party elects mediation and the other party declines to have the dispute resolved by mediation under this Section, or if the Parties undertake mediation and one of the Parties unreasonably delays the expeditious conclusion of same, the aggrieved party may proceed with other remedies available under this Agreement.

(b) The MBTA and CSXT shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this Section 13.3. The independent mediator shall be properly qualified in the areas of surface transportation finance and the surface transportation industry, and have experience in the analysis of transportation operating and capital costs and revenues.

(c) The mediator shall meet with the Parties within twenty-one (21) days after his or her selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) calendar days, the mediator shall, after consideration of the Parties' positions and written submissions (if so requested) issue written recommendations for resolution of the dispute. All meetings and proceedings shall be held in Boston, Massachusetts, at a time and location acceptable to both Parties.

(d) During the pendency of such mediation proceedings, the performance by both Parties of this Agreement shall continue in the same manner as before such controversy arose, unless the mediator shall make a preliminary ruling to the contrary.

(e) Each party hereto shall share equally the costs and expenses of any mediation conducted pursuant to this Section.

13.4 Arbitration.

It is the desire and intent of the Parties hereto to avoid the expense and delay inherent in litigation; therefore, CSXT and MBTA agree that whenever a Party desires to commence the arbitration process it shall provide written notice thereof to the other Party and the following provisions shall apply:

(a) Except as is otherwise expressly provided in this Agreement, any dispute (including, without limitation, disputes regarding whether a matter is subject to arbitration under this Agreement) under this Agreement shall be settled exclusively in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award entered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held in Boston, Massachusetts. It is the intent of the Parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, and shall be specifically enforceable by either of the Parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the Commonwealth of Massachusetts. In the event of Arbitration, each Party shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by the Parties.

(b) The Parties agree that neither the provisions of paragraph 13.4(a) nor Section 13.3 shall be applicable to, nor shall they be used: (i) to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by MBTA and CSXT in the submission of the matter to arbitration or mediation; (ii) to resolve any matter subject to the judgment or discretion of one Party to this Agreement; or (iii) except as is otherwise expressly provided herein, to resolve any matter reserved by this Agreement for the mutual agreement of the Parties.

(c) Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when commencement of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

13.5 Interest.

Where the time period during which interest accrues regarding a matter in dispute is specifically established elsewhere in this Agreement, that time period shall apply for purposes of disputes governed by this Section. For any other dispute under this Agreement, interest shall accrue from the date that payment was due, at the Effective Interest Rate.

SECTION 14. EQUAL EMPLOYMENT OPPORTUNITY

14.1 Fair Employment Practices.

CSXT agrees that it will comply with all applicable federal, state, and local laws and regulations relating to fair employment practices and non-discrimination against employees or applicants for employment because of race, religion, creed, color, sex, national origin, disability or sexual orientation.

14.2 Subcontracts.

CSXT shall insert provisions similar to those appearing in Section 14.1 above in each subcontract, except subcontracts for standard commercial supplies, raw materials, or construction.

SECTION 15. DISADVANTAGED BUSINESS ENTERPRISES.

CSXT shall comply with all applicable federal laws and regulations relating to Disadvantaged Business Enterprises, including but not limited to regulations issued by the U.S. Department of Transportation (49 C.F.R. Part 23).

SECTION 16. APPLICABILITY

The Parties agree that this Agreement, on and as of the Effective Date hereof, shall supersede, only with respect to the MBTA Rail Properties governed by this Agreement on and after the Effective Date, as listed on Exhibit A, all previous agreements between the Parties that relate to such MBTA Rail Properties described in this Agreement. All previous agreements shall, however, remain in full force and effect with respect to property not described in this Agreement.

SECTION 17. GENERAL PROVISIONS

17.1 Additional Properties

The Parties may by mutual written agreement add additional segments of railroad and track to the MBTA Rail Properties as defined herein (and designate an Effective Date with respect thereto).

17.2 Ownership of Service Equipment

As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto such expression means the trains, locomotives, cars or equipment in the possession of or operated by or on behalf of one of the Parties and including such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such party.

17.3 Compliance with Laws and Operating Rules

(a) CSXT and the MBTA shall comply with the provisions of applicable federal, state, and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of the trains, locomotives, cars and equipment it or any affiliate or contractor operates over the MBTA Rail Properties. Each party shall indemnify, protect, defend, and save the other, and its officers, agents, and employees harmless from all fines and penalties imposed under such laws, rules, and regulations by any governmental or regulatory agency, or court having jurisdiction over the premises, when the imposition of same is related to the failure of a party to comply with its obligations under this paragraph 17.3(a). Nothing in this Section 17.3 shall alter, modify or amend Section 10 of this Agreement.

(b) In its use of the MBTA Rail Properties, CSXT shall comply in all respects with the operating rules and regulations of the MBTA, and the movement of

CSXT's trains, locomotives, cars, and equipment over the Rail Properties shall be subject at all times to the orders of transportation officers of the MBTA.

(c) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties, and MBTA shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties. All of CSXT's and MBTA's employees who shall operate trains, locomotives, rail cars and rail equipment over the MBTA Rail Properties shall be qualified by the MBTA for operation thereover. CSXT shall compensate the MBTA for any and all direct costs incurred by the MBTA in connection with the qualification of such employees of CSXT as well as the cost incurred by MBTA for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of the MBTA to be properly qualified for operation as herein contemplated, provided that the MBTA shall not be required to administer more than three (3) qualifying attempts for any such employee. As used in this Section, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the MBTA Rail Properties in accordance with the MBTA's operating rules and practices. For purposes of this Section, any employee of CSXT qualified to operate over the MBTA Rail Properties on a date prior to the Effective Date shall be deemed qualified by the MBTA for operation over MBTA Rail Properties as herein contemplated as of the Effective Date. On a date prior to the Effective Date, CSXT shall provide to MBTA a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the MBTA Rail Properties as of that date.

(a) CSXT shall be wholly responsible for administering and implementing all disciplinary proceedings involving CSXT employees. If a CSXT employee working on MBTA Rail Properties is alleged to have violated any safety rules, operating rules, regulations, orders, practices, or instructions, CSXT shall conduct an investigation. If the charges are sustained, CSXT shall assess disciplinary measures. The MBTA or the Commuter Rail Operator may notify a CSXT transportation officer of any possible violations of safety rules, operating rules, regulations, orders, practices, or instructions, in which case CSXT shall investigate the possible violations. Neither the MBTA nor the Commuter Rail Operator shall conduct any disciplinary proceeding against an employee of CSXT, although employees of the MBTA or the Commuter Rail Operator may provide testimony during a CSXT-conducted investigation.

17.4 Access to MBTA Rail Properties

The MBTA, as the Owner of the MBTA Rail Properties, may exclude any person from the MBTA Rail Properties under the following circumstances:

(a) The MBTA may ban any person from the MBTA Rail Properties, provided such person is not a CSXT officer, in response to a serious violation of, or credible report of a serious violation of, MBTA operating rules, of Rule G, or of material dishonesty or insubordination if, in the opinion of the MBTA, such person is a danger to the safe operation, or may adversely affect the efficient operation, of the MBTA Passenger Rail Service. If the person is a CSXT employee the MBTA shall notify a CSXT Transportation Officer of any such incidents or suspected incidents, and of the MBTA's decision to ban

any such employee from entering upon the MBTA Rail Properties pending further investigation by CSXT. CSXT shall promptly remove the CSXT employee from any service on the MBTA Rail Properties until such time as CSXT has completed its investigation of the matter, as described in paragraph 17.3(d).

(b) The CSXT employee will be allowed to re-enter the MBTA Rail Properties, if and when the employee returns to service for CSXT in accordance with discipline, if any, imposed by CSXT or the final result of any appeal of such discipline by the employee, except as provided in the next sentence. If the MBTA believes that the seriousness of the violation in question was not properly addressed due to a procedural error (by way of example only, but without limitation, dismissal of disciplinary charges due to failure of CSXT to provide adequate notice), the MBTA may continue to ban such employee from entering the MBTA Rail Properties. In case of such continued ban, the matter may be referred in writing by either party to the General Manager of the MBTA and CSXT's AVP for consideration and resolution. If the matter remains unresolved, then either party may submit the matter of the continued ban for resolution pursuant to the dispute resolution procedures set forth in Section 13.

(c) In the event that a person files a claim against the MBTA in connection with any action taken by the MBTA pursuant to this Section 17.4, and a court of competent jurisdiction determines that the MBTA acted in violation of law in directing such action, the MBTA shall indemnify and hold CSXT harmless from and against any damages, fines, or penalties arising from such determination. In the event CSXT receives notice that a CSXT employee has filed such a claim against the MBTA, CSXT shall promptly notify the MBTA.

17.5 Disabled Trains/Wreck Clearing.

(a) If by reason of any mechanical failure or any other cause not resulting from an accident or derailment, a train or locomotive of CSXT becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by the MBTA on the Joint Usage Properties, or if in emergencies crippled or otherwise defective cars are separated from CSXT's trains on the Joint Usage Properties, the MBTA shall have the option of allowing CSXT to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Usage Properties, or the MBTA may perform or arrange for the performance of the necessary functions. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(b) 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 Joint Usage Properties, such work shall, at the option of the MBTA, be done by the CSXT or the MBTA or by the parties' respective contractors. CSXT shall reimburse the MBTA for direct costs incurred in rendering any such assistance.

(c) On the MBTA Rail Properties, each Party shall have full responsibility for rerailling wrecking service or wrecking train service, including without limitation the

removal of damaged equipment, repair and restoration of road bed, track, signals, communication systems and all other right of way structures and facilities affected by such wrecks (“**Wreck Clearing**”) on that portion of the MBTA Rail Properties it has responsibility to maintain. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 10 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. Each Party shall perform its services under this Section in an expeditious manner in order to restore rail service on the line.

17.6 Operating Duties in Regard to Safety.

Each Party shall take all reasonable safety precautions and shall provide all reasonable protection to prevent damage, injury, death, or loss to: all employees and passengers of the other Party and all tracks, bridges, culverts and other equipment related to the MBTA Rail Properties. Unless otherwise provided by law, each Party will be responsible to give all notices and comply with all applicable laws, rules, regulations and lawful orders of any public agency or MBTA in connection with its operations under this agreement bearing on the safety of persons or property or their protection from damage, injury, death or loss. Without limitation, this obligation shall include observance of all safety rules and regulations administered by the FRA or Massachusetts Department of Public Utilities including, for example: the FRA’s regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U.S. Department of Transportation including 49 CFR Parts 171 et seq., and prescribed by the U.S. Environmental Protection Agency, including 40 CFR Part 263; and all safety rules and other operating procedures of general applicability and future effect issued by MBTA and forwarded in writing to CSXT. Each Party shall promptly furnish to the other Party evidence reasonably satisfactory to such other Party demonstrating compliance with the above. Nothing in this Section 17.6 shall alter, modify or amend Section 10 of this Agreement.

SECTION 18. ASSIGNMENT

(a) CSXT may assign to any Person, in whole or in part, any of its rights, interests or obligations under this Agreement, subject to the following conditions: (i) that CSXT shall provide to the MBTA sixty (60) days prior written notice of such proposed assignment, (ii) that any such assignment must be accompanied by an assignment to such Person of the related portion of the CSXT Framingham Easement, (iii) that any such assignment of the CSXT Framingham Easement shall comply with Section 2.3.1 of the Definitive Agreement, and (iv) that the assignee assume the rights, interests or obligation assigned. The Parties acknowledge and agree that notwithstanding any fee that may be due from CSXT to the Commonwealth of Massachusetts pursuant to Section 2.3.1.1(a) of the Definitive Agreement, with respect to any such assignment of all or a portion of the CSXT Framingham Easement, no fees or other amounts shall be due or payable under this Agreement with respect to any such assignment of the CSXT Framingham Easement or this Agreement. In the event of an assignment of this Agreement by CSXT to an affiliate of

CSXT, CSXT shall unconditionally guarantee to the MBTA the performance of all obligations of CSXT under this Agreement by any such affiliate.

(b) Except as is otherwise provided in subparagraph (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment.

(c) MBTA may assign, in whole or in part, any of its rights, interests or obligations under this Agreement, *provided however*, that MBTA shall provide to CSXT sixty (60) days prior written notice of such proposed assignment, and *provided further*, that such assignment does not in any way impair or adversely affect the rights of CSXT hereunder.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both Parties.

SECTION 19. FORCE MAJEURE

Each party will be excused from performance of any of its obligations to the other under this Agreement, where such non-performance is occasioned by any event beyond the non-performing party's control which shall include, without limitation, any order, rule, or regulation of any Federal, State, or local government body, agent, or instrumentality; work stoppage; natural disaster; terrorist act or threatened act of terrorism; or civil disorder; provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time.

SECTION 20. MISCELLANEOUS

(a) This Agreement, and the transactions to which it relates, will be governed by and construed and enforced in accordance with the law of the Commonwealth of Massachusetts. Any claim or legal action by one party against the other shall be commenced and maintained in any state or federal court located in Massachusetts and both Parties hereby submit to the jurisdiction and venue of any such court.

(b) This Agreement, including the Exhibits hereto, represents the entire agreement between the Parties hereto with respect to the MBTA Rail Properties from and after the Effective Date with respect to such MBTA Rail Properties, and this Agreement supersedes any and all prior discussions, proposals and communications between the MBTA and CSXT with respect to such MBTA Rail Properties.

(c) All notices pursuant to this Agreement shall be in writing and shall be deemed effective: (i) on the date given if delivered by hand or transmitted by facsimile on a weekday, or on the next succeeding weekday if not given on a weekday, (ii) one weekday after delivery to a reputable overnight courier service, and (iii) five days after having been deposited with the U.S. Postal Service, postage prepaid.

Notices to the MBTA shall be addressed to:

Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Attn: John D. Ray

with a copy to:

Office of General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 3510
Boston, MA 02116
Attn: Michael A. Glover, Esq.

with a copy to:

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

Notices to CSXT shall be addressed to:

Assistant Vice President of Network Planning
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

(d) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or

the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(e) The indemnification obligations of CSXT and the MBTA hereunder (and all other obligations) that arise but which are not satisfied during the Term of this Agreement shall survive the termination of this Agreement.

(f) The section headings appearing herein are intended solely for convenience of reference and shall not be construed as affecting the interpretation of any provision hereof.

(g) This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties.

(h) Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(i) The Parties represent and warrant to each other that, except with respect to a Labor Challenge, (i) the Parties have the power and authority to enter into this Agreement and to carry out their respective obligations hereunder; (ii) the Parties have taken all legal action necessary to authorize them to enter into and perform their respective obligations hereunder; (iii) entering into and performing this Agreement does not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body, or violate any contract or agreement by which either party hereto is bound; (iv) there is no known litigation or proceeding pending or threatened against a party, or any other action, which could materially or adversely affect the performance of this Agreement; and (v) the Parties have obtained all approvals as may be required to permit their respective performance of the obligations of this Agreement. Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies.

(j) No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of any other party alleging personal liability on the part of such Person with respect to performance of the MBTA's or CSXT's obligations under this Agreement.

(k) Both Parties shall maintain appropriate operating and accounting records which record the locomotives, cars, weight and mileage of same moved by CSXT over MBTA Rail Properties. Either Party shall have the right, upon reasonable notice, to inspect, examine and audit during normal business hours all operating and accounting records and supporting documents of the other party, including, without limitation, dispatching records, and all other books and records that relate to the performance of this Agreement. Nothing in this Agreement shall be construed as obligating either party to retain books or records beyond the period specified in regulations of the STB, of the former Interstate Commerce Commission or of the Federal Railroad Administration.

(l) Any time limits specified under a provision of this Agreement may be suspended by mutual written agreement of the Parties.

(m) During the pendency of any dispute between the Parties, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of any such dispute, shall continue to be transacted and used in the manner and form existing prior to the arising of any such controversy.

(n) In the event of any conflict between the text of this Agreement and that of any Exhibit hereto, the text of this Agreement shall control except to the extent that this Agreement makes specific reference to a provision of any Exhibit as defining the obligations of a Party hereunder.

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

(p) This Agreement and the Exhibits hereto and thereto may be amended from time to time during the Term of this Agreement. Either the MBTA or CSXT may request in writing such amendments or modifications. However, no such amendments or modification shall be effective unless evidenced by a written amendment to this Agreement executed by duly authorized representatives of both Parties hereto.

(q) This Agreement shall in no way be considered as establishing either a joint facility or a joint enterprise between the MBTA and CSXT.

(r) In the performance of work under this Agreement the Parties shall be deemed to be independent contractors and neither Party shall be deemed to be an agent of the other Party. Notwithstanding the foregoing, for purposes of Section 10 neither Party shall be deemed to be a "contractor" of the other Party.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed the 25th day of November, 2014, in duplicate, each of which shall be considered an original.

**MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY**

By: Beverly A. Scott
Name: Beverly A. Scott, Ph.d
Title: General Manager

APPROVAL AS TO FORM

By: Paige Scott Reed
Name: Paige Scott Reed
Title: General Counsel

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed the 25th day of November, 2014, in duplicate, each of which shall be considered an original.

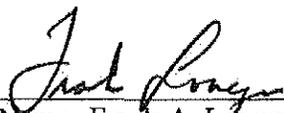
**MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

APPROVAL AS TO FORM

By: _____
Name:
Title:

CSX TRANSPORTATION, INC.

By: 
Name: Frank A. Lonergo
Title: Vice President Service Design

[Framingham Secondary Operating Agreement – Signature Page]

EXHIBIT A

MBTA Rail Properties

Facility Segment	Total Facility Length		Miles	Allocation Of Use
	Mile Posts			
	From	To		
FRAMINGHAM SUBDIVISION (Framingham to Mansfield)	QBF 21.2	QBF 0.0		Joint Usage Rail Properties (subject to Section 2.2(e))

EXHIBIT B

DEED

EXHIBIT C

[DELETED]

EXHIBIT D

[DELETED]

EXHIBIT E
INFRASTRUCTURE WORK

EXHIBIT F

CONSENT PROPERTIES

Name	Milepost	Notes
Mansfield Yard	QBF 0.1 – QBF 0.8	4700' Lead and 3 yard tracks
Foxboro Terminal	QBF 5.0	3 Tracks, 1200' each
Walpole Yard East Wye	QBF 8.5	2500'
Walpole Yard	QBF 8.8	2 Tracks, 1200' each
Bay Colony Industrial Track	QBF 13.7	1800'
Boston Edison Industrial Track	QBF 20.8	775'

EXHIBIT G

PASSENGER TRAIN SCHEDULE

[NOTE: REFERENCE ONLY TO STATIONS ON THE LINE]

<u>Foxboro Station Commuter Schedules</u>										
<u>Passenger service to commence only when all Infrastructure Work is completed:</u>										
<u>Outbound</u>	<u>F01</u>	<u>F03</u>	<u>F05</u>	<u>F07</u>	<u>F09</u>	<u>F11</u>	<u>F11A</u>	<u>F13</u>	<u>F15</u>	<u>F17</u>
<u>Walpole</u>	<u>5:52 AM</u>	<u>7:47 AM</u>	<u>10:22 AM</u>	<u>12:47 PM</u>	<u>3:42 PM</u>	<u>5:39 PM</u>	<u>6:49 PM</u>	<u>7:24 PM</u>	<u>8:39 PM</u>	<u>12:02 AM</u>
<u>Foxborough</u>	<u>6:01 AM</u>	<u>7:56 AM</u>	<u>10:31 AM</u>	<u>12:56 PM</u>	<u>3:51 PM</u>	<u>5:48 PM</u>	<u>6:58 PM</u>	<u>7:33 PM</u>	<u>8:48 PM</u>	<u>12:11 AM</u>
<u>Inbound</u>	<u>F02</u>	<u>F02 A</u>	<u>F04</u>	<u>F06</u>	<u>F08</u>	<u>F10</u>	<u>F12</u>	<u>F14</u>	<u>F16</u>	<u>F18</u>
<u>Foxborough</u>	<u>5:27 AM</u>	<u>6:04 AM</u>	<u>6:34 AM</u>	<u>8:14 AM</u>	<u>10:30 AM</u>	<u>1:45 PM</u>	<u>4:04 PM</u>	<u>6:20 PM</u>	<u>7:35 PM</u>	<u>9:55 PM</u>
<u>Walpole</u>	<u>5:36 AM</u>	<u>6:13 AM</u>	<u>6:43 AM</u>	<u>8:23 AM</u>	<u>10:39 AM</u>	<u>1:54 PM</u>	<u>4:13 PM</u>	<u>6:29 PM</u>	<u>7:44 PM</u>	<u>10:04 PM</u>

EXHIBIT H

FREIGHT TRAIN SCHEDULE

B725 (5 days / Mon - Fri)					B731 (5 days / Mon- Fri)				
Event	Station	Current Schedule	40 mph	25 mph	Event	Station	Current Schedule	40 mph	25 mph
OR	Framingham	2359	2315	2315					
AR	Med Jct	0130			OR	Readville	1030	1030	1030
LV	Med Jct	0200			AR	Walpole	1130	1130	1130
BY	Walpole		2359	0025	LV	Walpole	1230	1200	1200
AR	Mansfield	0230	0045	0119	AR	Med Jct	1300	1230	1235
LV	Mansfield	0300	0115	0149	LV	Med Jct	1315	1300	1305
AR	Attleboro	0330	0145	0224	AR	Framingham	1330	1330	1356
LV	Attleboro	0530	0345	0424	LV	Framingham	1400	1400	1426
BY	Mansfield		0415	0459	AR	Walpole	1530	1530	1622
BY	Walpole		0500	0552	LV	Walpole	1600	1600	1652
AR	Med Jct	0830			TE	Readville	1630	1700	1752
LV	Med Jct	0900							
TE	Framingham	0915	0545	0703					
B732 (5 days / Mon- Fri)					B733 (5 days / Mon- Fri)				
Event	Station	Current Schedule	40 mph	25 mph	Event	Station	Current Schedule	40 mph	25 mph

		e						e		
OR	Readville	1930	193 0	193 0		OR	Walpole	0935	093 5	093 5
BY	Walpole		203 0	203 0		AR	Mansfield	1010	103 5	104 3
AR	Foxboro	2030	210 0	210 5		LV	Mansfield	1800	182 0	182 8
LV	Foxboro	2300	230 0	230 5		TE	Walpole	1920	192 0	193 6
BY	Walpole		233 0	234 0						
TE	Readville	0030	003 0	004 0						

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

MOTION TO DISMISS

EXHIBIT E

Framingham Secondary

**THIS INSTRUMENT HAS BEEN PREPARED IN
THREE (3) COUNTERPARTS FOR SIMULTANEOUS
RECORDING IN THREE (3) REGISTRIES OF DEEDS**

This instrument prepared by
or under the direction of:

Philip J. Notopoulos, 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 ____ day of October, 2014, between CSX TRANSPORTATION, INC., a Virginia
corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called
"Grantor", and the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing
address is 10 Park Plaza, Boston, Massachusetts 02116, hereinafter called "Grantee,"

Error! Unknown document property name.

(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 (i) a line of railroad over which rail freight and special passenger rail service are presently conducted, consisting of (a) **[insert description of mileage, mileposts, etc, for Framingham Secondary]** and (ii) certain specified properties contiguous to such line; and

WHEREAS, pursuant to a certain Definitive Agreement dated as of October __, 2014 between Grantee and Grantor, as amended (the "Definitive Agreement"), Grantee agreed to acquire Grantor's interests in such properties and such line 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 line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement in gross over a portion of such properties and line of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the terms and conditions set forth herein and in the Operating Agreement (as hereinafter defined), it being the intention of the parties that Grantor 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 Twenty Three Million Dollars (\$23,000,000.00) 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 Middlesex, Norfolk and Bristol Counties, Massachusetts, being the "Land" as defined and more particularly described in **Exhibit A** attached hereto and incorporated herein;

BUT EXCLUDING and excepting unto Grantor those parcels, rights and interests listed or shown on **Exhibit B** attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Framingham 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 affixed as of the date hereof to the Land (including Fixtures located on any portion of the Land that constitutes Excluded Property), 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 Framingham 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 Framingham 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, limitations, rights and reservations set forth in the instruments creating the Existing Easement Rights, as set forth in Exhibit A, and the matters affecting the Existing Easements Rights as set forth in Exhibit C.
2. The terms, conditions and limitations of that certain Operating Agreement dated as of the date hereof between Grantor and Grantee (the " Operating Agreement").
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. Grantor and Grantee agree that the CSXT Framingham Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that Grantor shall be the exclusive common carrier and the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in the Operating Agreement. In addition, Grantee represents that neither Grantee nor MBTA 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 MBTA, which consent may not be unreasonably withheld, conditioned or delayed. It shall not be unreasonable for either Grantor or MBTA 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.

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

6. Definitions of CSXT Framingham Easement Terms:

(a) Perpetuity: Until this CSXT Framingham Easement is abandoned or terminated, as provided in the Operating Agreement. In the event of abandonment or termination of any portion of this CSXT Framingham Easement as provided in the Operating Agreement, such portion thereof shall automatically be extinguished.

(b) 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.

(c) 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 or the MBTA may use said Trackage for its own freight needs, being the transport of railroad materials, equipment, ballast, rails and the like owned by Grantee or the MBTA, but not common or contract carriage of freight.

(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 or the MBTA pursuant to the Operating Agreement and otherwise allowed by the terms of this Deed.

There is reserved as part of the CSXT Framingham Easement, to the extent necessary for Grantor's exercise of the CSXT Framingham Easement, the rights created by the following instrument, which rights are to be held and exercised in common with the Grantee: Easements for tracks as set forth in Order of Taking M.B.T.A No. 129 dated March 26, 1979 recorded with the Norfolk Registry of Deeds in Book 5586, Page 672, to which easements said taking was made subject.

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 Operating Agreement, the provisions of the Operating Agreement 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 Operating Agreement and the Definitive Agreement are retained at the offices of the Grantor.

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

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

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

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

[signature page to follow]

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

CSX TRANSPORTATION, INC.

By: _____

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this ____ day of _____, 2014 before me, the undersigned Notary Public, personally appeared the above-named _____ proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image; oath or affirmation of a credible witness known to me who knows the above signatory; or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him as his free act and deed, voluntarily for its stated purpose, as _____ of CSX Transportation, Inc.

Notary Public (print name)

My Commission Expires: _____

Qualified in the Commonwealth of Massachusetts

EXHIBIT A

Error! Unknown document property name.

7

EXHIBIT B
Excluded Property Description

1. The Operating Agreement (as defined in the Deed to which this exhibit is attached).
2. The CSXT Framingham Easement (as defined in the Deed to which this exhibit is attached).

EXHIBIT C

List of existing easement rights re: Walpole

Easements for tracks set forth in M.B.T.A. Order of Taking No. 128 dated March 26, 1979 recorded with the Norfolk Registry of Deeds in Book 5586, Page 672, to which easements said taking was made subject.

EXHIBIT D
Provisions Relating to Transfer of CSXT Framingham Easement

1. The CSXT Framingham Easement shall be assignable in whole or in part. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither Grantor, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the CSXT Framingham Easement (each of Grantor, a Related Party and a subsequent holder being a "**Benefitted Holder**"), shall sell, lease, license or otherwise transfer (each such transaction being a "**Transfer**") the benefit of the CSXT Framingham 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 which is a Related Party of Grantor (a "**Grantor Related Party**"), makes a Transfer of an Easement Interest to a third 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 which are 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. 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.

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 Framingham 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 or the Massachusetts Bay Transportation Authority (the “**MBTA**”).
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 or the MBTA 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 the MBTA, 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 or the MBTA, and the Grantee or the MBTA 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 or the MBTA 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 shall not be waived. No such waiver shall be effective unless evidenced by a written instrument executed by a duly authorized representative of Grantee.