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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35866

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October 16, 2014
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**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.**

MOTION TO DISMISS

EXPEDITED CONSIDERATION REQUESTED

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DEPARTMENT OF TRANSPORTATION**

Dated: October 16, 2014

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LIST OF EXHIBITS

- Tab A** - Release Deed; Housatonic Railroad Company, Inc. (Grantor) and Maybrook Railroad Company, Inc. (Grantee)
- Tab B** - Purchase and Sale Contract [Draft]
- Tab C** - 2014 Operating Agreement [Draft]
- Tab D** - Deed [Draft]
- Tab E** - Verified Statement of John R. Hanlon, Jr., president, Housatonic Railroad Company, Inc.

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I. OVERVIEW

In this proceeding, the Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”), has invoked the Board’s class exemption procedures at 49 C.F.R. part 1150, subpart D, to acquire certain railroad-related assets of Housatonic Railroad Company, Inc. (“HRRC”) and Maybrook Railroad Company (“MRC”)¹. Specifically, MassDOT proposes to acquire the railroad-related assets (i.e., right-of-way and track railroad physical plant) comprising the “Berkshire Line” passing through western Massachusetts, extending from approximately milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, MA, to a connection with CSX Transportation, Inc., at approximately milepost 86.3 at Pittsfield, MA (collectively, the “Railroad Assets”). HRRC, the Berkshire Line operator and current owner of the railroad physical plant (excluding the right-of-way, bridges and trackside structures, all of which MRC owns) will retain for itself an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight common carrier easement over the Railroad Assets. MassDOT

¹ For reasons offered below, MassDOT has concluded that MRC is not a rail carrier. Accordingly, MRC is not listed in the proceeding caption.

will acquire neither the right nor the ability to provide railroad common carrier service, and it will be contractually precluded from unduly interfering with HRRC's provision of freight common carrier service over the Railroad Assets.² MassDOT's acquisition of the Railroad Assets is intended to facilitate the Commonwealth's long-term plans to restore regional passenger train service linking the New York City metropolitan area and the Northeast Corridor megalopolis generally with the Berkshire region of western Massachusetts. The acquisition of the subject Railroad Assets is one step in what MassDOT anticipates will be an involved, multi-step process that ultimately will lead to the establishment of a new railroad passenger service route in the Northeast.

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 progeny, MassDOT hereby requests that its concurrently-filed verified notice of exemption (the “Notice”) in this proceeding be dismissed, because Railroad Assets acquisition, as structured, does not require Board authorization under 49 U.S.C. § 10901, or MassDOT's invocation of the otherwise applicable class exemption procedure. Moreover, in light of the timetable that the parties have established for this transaction and the consequences of delay, the parties to this transaction respectfully request that the Board expeditiously review and act upon this Motion, so that the underlying transaction may be consummated as soon as possible but, in any event, before December 31, 2014.

² In that regard, MassDOT, the Massachusetts Bay Transportation Authority (“MBTA”), and HRRC have negotiated an Operating Agreement (the “2014 Operating Agreement”) assuring that HRRC will be able to fulfill all current and reasonably foreseeable rail freight service requirements without undue interference from the Commonwealth.

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.³

MRC is a railroad asset-owning company with property holdings in Connecticut, and Massachusetts. HRRC operates over MRC-owned railroad assets.⁴ HRRC, Coltsville Terminal Company, Inc. ("CTC"), and another non-carrier that conducting warehousing, reloading, and transloading operations are all controlled by Housatonic Transportation Company ("HTC"), a noncarrier holding company.⁵

As is relevant here, MRC owns the land that comprises the right-of-way and the bridges and line side structures along the route that MassDOT proposes to acquire in the subject Railroad Assets transaction. MRC does not own the track, track material, or other railroad personal property affixed to the right-of-way – such assets are owned by HRRC – and MRC lacks the right to provide common carrier service over the Berkshire Line.

HRRC is an operating Class III, or short line, railroad operating over the following railroad properties: The Berkshire Line in Massachusetts (which is the subject of this proceeding), the Berkshire Line in Connecticut, and the MayBrook Line, which runs through Connecticut and New

³ 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.

⁴ Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company – Intra-Corporate Family Transaction Exemption, Docket No. FD 35723 (STB served Mar. 22, 2013).

⁵ See id.

York. As indicated above, HRRC owns the railroad physical plant (track and track structure) affixed to the MRC-owned Berkshire Line right-of-way in Massachusetts.

MassDOT believes that the relationship between MRC and HRRC warrants further explanation here for purposes of completeness and to put the subject Railroad Assets transaction in its proper regulatory context. A former HTC subsidiary known as the Housatonic Track Company, Inc. (“Track”) acquired the portion of the Berkshire Line in Massachusetts from the Boston and Maine Corporation in the early 1990s pursuant to Housatonic Track Company, Inc. – Acquisition Exemption – Line of Boston and Maine Corporation, Finance Docket No. 31780 (Sub-No. 2) (ICC served Dec. 28, 1990). At the same time, HRRC acquired exclusive operating rights on the line that Track acquired.⁶ In connection with this series of transactions, the Interstate Commerce Commission (“ICC” – the Board’s predecessor agency) later ruled that HTC did not need advance approval to continue in control of Track alongside HTC’s rail carrier holdings (including HRRC), because Track, although a rail line owner, was not a carrier for purposes of common control under former 49 U.S.C. § 11343 (now 49 U.S.C. § 11323).⁷

HTC elected to merge HRRC and Track in 2000, with HRRC emerging as the surviving entity with the common carrier operating rights and obligations over, and also ownership of, the Berkshire Line in Massachusetts. MassDOT understands that the merging parties relied upon HTC-Control regarding Track’s noncarrier status for purposes of common control under former section

⁶ Housatonic Railroad Company, Inc. – Operation Exemption – Lines of the Connecticut Department of Transportation and the Housatonic Track Company, Inc., Finance Docket No. 31780 (ICC served Dec. 28, 1990).

⁷ Housatonic Transportation Company – Continuance in Control Exemption – Danbury Terminal Railroad Company and Housatonic Railroad Company, Inc., et al., Finance Docket No. 32163, et al., slip op. at 7 (“HTC-Control”) (ICC served Oct. 5, 1993) (“Track acquired a line segment [subject to ICC approval], but [HRRC] operates it . . . We conclude that . . . Track is [not] a carrier within the meaning of the control provisions of section 11343”).

11343 in deciding that HRRC and Track did not need to invoke the Board’s intra-corporate family class exemption procedures at 49 C.F.R. §§ 1180.2(d)(3) and 1180.4(g) in advance of the merger. However, in light of contemporary agency practice and potentially conflicting agency pronouncements regarding common control of railroads owning lines of railroad operated by others in the same corporate family,⁸ HRRC recently has opted out of an abundance of caution to invoke the Board’s class exemption procedures for the HRRC-Track merger in case the Board were to conclude that HRRC’s understandable reliance upon HTC-Control nevertheless was misplaced. See Housatonic Railroad Company, Inc., and Housatonic Track Company, Inc. – Intra-Corporate Family Transaction Exemption, FD 35857 (filed September 19, 2014).

In 2013, HRRC transferred ownership of the subject right-of-way component of the subject Railroad Assets to MRC. The parties to the 2013 right-of-way transfer contemporaneously invoked the Board’s intra-corporate family transaction class exemption procedures in advance of the property sale, stating in the body of the class exemption filing that HRRC sought to transfer the Massachusetts portion of a “rail line” to MRC.⁹ The Board issued the class exemption covering the HRRC-MRC asset sale on March 22, 2013.

⁸ See, e.g., Canadian Pacific Ltd. – Pur. & Trackage – D&H Ry. Co., 7 I.C.C. 2d 95, 97 n. 2 (despite applicants’ arguments to the contrary, railroads within a corporate family that are inactive and do not hold themselves out as carriers because their lines are operated by others within the same corporate family nevertheless are “‘carriers’ within the meaning of 49 U.S.C. § 11343, and thus are . . . subject to the provisions of the Interstate Commerce Act”).

⁹ “The purpose of this filing is to permit HRRC to transfer ownership of the portion of the Berkshire Line in Massachusetts to MRC . . . HRRC would continue to operate the *line* through retained perpetual and exclusive common carrier freight operating right exercised pursuant to an Operating Agreement between HRRC and MRC . . . the transfer of ownership of the Massachusetts *rail line* from HRR to MRC will not result in adverse changes in service levels . . .” Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company – Intra-Corporate Family Transaction Exemption, FD 35723 (March 7, 2013 notice of exemption filing – the “2013 Filing” – at unnumbered pages 3-4) (emphasis added).

HRRC's use of the term "rail line" in the filing to describe the assets transferred may have been unintentionally over-inclusive in describing the transaction that HRRC and MRC ultimately undertook, which is more limited in scope than the text of the 2013 Filing suggests. Specifically, HRRC and MRC have informed MassDOT that – (1) MRC merely acquired interests in parcels of land, bridges, and buildings comprising or located upon the right-of-way along the Massachusetts portion of the Berkshire Line; and (2) MRC did not acquire a "rail line" or, for that matter, acquire any common carrier status with respect to its acquisition of the land underlying *HRRC's* line of railroad. HRRC, on the other hand, retained "all rail, ties, anchors, tie plates, switch timbers, turnouts and signals" along the Massachusetts portion of the Berkshire Line.¹⁰ Despite the use of the term "railroad line" or "line of railroad" (legal terms of art in agency practice) in the 2013 Filing, MassDOT has separately ascertained from its assessment of the 2013 Filing materials that elements of that filing are consistent with HRRC's and MRC's recent explanation of their respective interests in the Railroad Assets. For example, as is reflected in the "Operating Rights Agreement" appended to the 2013 Filing as Exhibit B, HRRC proposed to sell to MRC a "railroad line," *except that* HRRC reserved for itself "perpetual and exclusive freight operating rights," ownership of the rail physical plant, and the right to undertake rail operations and track maintenance as HRRC alone saw fit, subject only a general duty to comply "with all applicable laws, regulations and orders of government or governmental agencies."¹¹

The ICC and the Board consistently have stated that an entity like MRC that owns the land comprising a railroad right-of-way is not subject to the Board's jurisdiction and does not assume a

¹⁰ Release Deed between HRRC and MRC (hereinafter, the "Release Deed"), December 28, 2012, § 1, attached hereto as Exhibit A.

¹¹ 2013 Filing, Exhibit B (Operating Rights Agreement) – preamble and §§ 1-4, 6.

common carrier status in connection with its land holding interests if it does not own the railroad tracks atop the land, and lacks the right to operate trains over those tracks.¹² Moreover, it warrants noting that the exemption authority that HRRC and MRC invoked in 2013 is permissive, and does not mandate that the parties undertake the transaction described in their intra-corporate family transaction class exemption filing.¹³ Thus, the two companies are not required to and, in MassDOT's view, did not engage in the transfer of ownership of a line of railroad requiring Board authorization.

In short: Although not entirely clear, it is possible that HRRC and Track should have invoked the intra-corporate class exemption procedures for purposes of the HRRC-Track merger accomplished in 2000, and that HRRC's subsequent sale of the Massachusetts right-of-way (subject

¹² See, e.g., Alabama & Florida Railway Co., Inc. – Abandonment Exemption – in Geneva, Coffee and Covington Counties, Ala., AB-1073X (STB served Aug. 9, 2011); Seminole Gulf Railway Company – Abandonment Exemption – In Lee County, FL, Docket No. AB-400 (Sub-No. 2X) (ICC Served Dec. 22, 1994), 1994 ICC LEXIS 278, *11-*12 (“CSXT’s interest in the line is solely that of the owner of the underlying right-of-way . . . [T]he common carrier obligation can be separated from the underlying right-of-way and fixed assets of a rail line. Similarly, we have separated the ownership of the underlying right of way from the common carrier obligation and the ownership of the track... Here, the parties have separated CSXT’s property interest in underlying right-of-way from the common carrier obligation transferred to [the short line carrier] along with the track and facilities. There is nothing of record indicating that CSXT retained any operating functions or exerted any control over [the short line’s] operation of any of the lines”) (footnote and citations omitted); Florida Central Railroad Company, Inc. – Abandonment Exemption – in Lake County, FL., Docket No. AB-319 (Sub-No. 2X) (ICC served Jun. 14, 1993) (same).

¹³ The Board has stated in other proceedings that agency authority for a particular project is permissive and not mandatory, so that the decision to go forward with the proposed transaction is in hands of the applicant. See, e.g., California High Speed Rail Authority – Construction Exemption – In Fresno, Kings, Tulare, and Kern Counties, Ca., FD 35724, slip op. at 11 (STB served August 12, 2014); New Hampshire Cent. R.R., Inc. – Lease & Operation Exemption – Line of the New Hampshire Department of Transportation, FD 35022, slip op. at 4 (STB served Dec. 10, 2007) (authority obtained via an exemption proceeding is permissive in nature – it confers only the right, not the obligation, to exercise the authority).

to HRRC's retention of what appears to be a common carrier easement¹⁴) did *not* require the filing of an intra-corporate family transaction exemption notice.

The aforementioned background bears upon the structure of the Railroad Assets transaction presented for Board consideration here. Under the circumstances and in keeping with agency precedent discussed above, MassDOT believes that MRC does not possess a common carrier status *of any sort*¹⁵ with respect to the holdings that MRC will contribute as part of the Railroad Assets sale to MassDOT. Rather, MassDOT believes that HRRC alone possesses a common carrier status with respect to the Massachusetts portion of the Berkshire Line, and that, in conveying the rail physical plant component of the collective Railroad Assets to MassDOT, HRRC is the appropriate entity to retain the usual freight common carrier easement typical for a State of Maine-style transaction. As such, Board precedent suggests that MRC is not an essential party to the subject notice of exemption and it is not listed in the case caption, inasmuch as MRC is not carrier and that MRC is engaging in a real estate transaction that would not trigger the Board's regulatory oversight. Nevertheless, in the interest of full disclosure, MassDOT has chosen to present a fuller picture of MRC's role in this transaction, and to identify MRC as among the entities participating in the sale of assets that, bundled together, constitute the Railroad Assets.

Returning now to the purpose behind the transaction before the Board, MassDOT has determined that its near-term and long-term strategies for passenger train service are best served through public ownership of the subject Railroad Assets. Such ownership affords the

¹⁴ The language in the Operating Rights Agreement and in the general description of the transaction that the parties supplied to the Board states that HRRC would retain "exclusive and perpetual rights" to provide common carrier service. Moreover, the aforementioned Release Deed reinforces the proposition that HRRC's retained rights exist in the form of an easement.

¹⁵ See HTC-Control (suggesting that a non-operating rail carrier might not be a carrier in certain regulatory contexts).

Commonwealth greater latitude in planning and implementing the kinds of rail transportation and infrastructure improvements that would facilitate expanded passenger train service and would, in turn, promote needed regional economic development. The rail line at issue here hosts modest freight traffic, but it has considerable appeal as a passenger rail corridor. Nevertheless, MassDOT's ownership of the Railroad Assets will benefit freight by delivering improved track conditions, permitting faster freight train operating speeds and safer operations. It also relieves HRRC significant capital outlays associated with rehabilitation of a light-density rail line, when such capital expenditures are designed to protect the Commonwealth's longer-term strategic interests in passenger service. However, because the planned infrastructure improvements that MassDOT plans to undertake in the near term will benefit future railroad passenger service and existing freight shippers, MassDOT's Railroad Assets purchase will advance all aspects of interstate commerce.

A. The Railroad Assets

The underlying Purchase and Sale Contract ("P&S Contract")¹⁶ describes the subject Railroad Assets as consisting of MRC's and HRRC's collective right, title and interest in the "Berkshire right of way," trackage and other physical assets associated with the rail route extending between the Massachusetts-Connecticut border at Sheffield and Pittsfield.¹⁷ In turn, HRRC will retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement (the "Freight Easement")¹⁸ allowing HRRC to serve current and future

¹⁶ Attached hereto as Exhibit B (currently in draft form).

¹⁷ P&S Contract, Recitals.

¹⁸ Id.

freight customers as well as interchange with all current and future freight carriers whose lines connect with the subject railroad route.¹⁹

B. Closing/Consummation

MassDOT and HRRC anticipate closing upon the subject Railroad Assets transaction as soon as possible (preferably by December 15, 2104) and, in any event before December 31, 2014.

C. The HRRC-Retained Easement

Section 3.1.2 of the P&S Contract governing the sale of the Railroad Assets states, in part, as follows:

The Deed shall not convey and shall set forth and reserve to [HRRC] an exclusive, retained and perpetual easement in gross (the “**Retained Freight Easement**”) to provide rail freight service, both local and overhead, and which shall provide that [HRRC] has the exclusive right to provide freight rail service (which right shall be perpetual, unless abandoned pursuant to applicable law by [HRRC] in accordance with the terms of the Operating Agreement to be entered into by HRRC and [MassDOT and MBTA]) and such other rights as may be mutually agreed upon . . . [MassDOT] and [HRRC] acknowledge that [HRRC’s] exclusive right to provide freight service . . . The Retained Freight Easement shall . . . be assignable and transferable in whole, but not in part, provided, however, that (a) [HRRC] shall have no right to split or share the Retained Freight Easement or any portion of the Property with any assignee or transferee, and (b) any assignment or transfer by [HRRC] of the Retained Freight Easement to a third party shall be subject to the approval of [MassDOT], which approval shall not be withheld if such third party meets certain standards described in the Deed.

Similarly, the 2014 Operating Agreement defines the HRRC-reserved rights as “the perpetual easement to provide Freight Rail Service^[20] and such other rights over the Property reserved and retained by HRRC as are described in any deed or deeds transferring the Property from

¹⁹ The Freight Easement is reserved in the P&S Contract.

²⁰ “‘Freight Rail Service’ means the full range of services and activities performed by HRRC in connection with the provision of current and future freight common carrier and contract carrier obligations on the Rail Operating Property and other activities permitted or required under this Agreement . . .” 2014 Operating Agreement, § 1 (the most recent draft of the 2014 Operating Agreement is attached hereto as Exhibit C).

HRRC to MassDOT pursuant to the Purchase Contract, and any additional easements to provide freight rail service and such other rights over the Property as may be added to this Agreement from time to time by mutual agreement of the Parties.”²¹

The terms of HRRC’s retained permanent, exclusive freight easement are set forth in the draft release deed (the “Deed”) attached hereto as Exhibit D.

The Deed includes expansive definitions of the terms “Trackage,” “Freight Railroad Purposes,” and “Rail Freight Service,” thus guaranteeing HRRC the “right to use all Trackage on the Property for the exclusive provision of Rail Freight Service.”²² 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 overhead traffic and rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities . . .”²³

The exclusive freight easement that HRRC will retain continues in perpetuity until “abandoned or terminated, as provided in the Operating Agreements herein referenced . . .”²⁴ As discussed below, the 2014 Operating Agreement grants HRRC considerable discretion over any future abandonment or discontinuance of rail freight service on the Railroad Assets, and it sets forth specific terms and conditions pursuant to which HRRC’s exclusive and permanent freight easement may be terminated pursuant to advance authority from the Board.²⁵

²¹ Id. (definition of “Freight Easement”).

²² Draft Deed, § 6.

²³ Id., § 6(d).

²⁴ Id., § 6(a).

²⁵ 2014 Operating Agreement, § 3.2(c).

D. Operations on the Railroad Assets

HRRC has provided freight service over the Railroad Assets for over 20 years. It is the only railroad service provider operating on the line. HRRC typically operates one round-trip through freight and one round-trip local freight per day on the line segment between Sheffield and Pittsfield.

MassDOT, MBTA, and HRRC have entered into the 2014 Operating Agreement, governing, among other things, capital improvements, maintenance, and day-to-day railroad operations over the Railroad Assets. The 2014 Operating Agreement contemplates – (1) a potentially extended time period immediately following consummation of the Railroad Asset transaction during which the Commonwealth will pursue the steps necessary to implement publicly-sponsored passenger train operation, and during which HRRC will operate freight trains and will continue to manage the Railroad Assets (subject only to the requirement that, following certain specified track rehabilitation to be funded by the Commonwealth, HRRC shall maintain the Railroad Assets “to a level that is adequate and customary in the business to maintain the quality and projected lifespan of any capital improvements constructed . . . in accordance with the terms of this Agreement, all reasonable aging, wear and tear excepted);”²⁶ and (2) a joint use “era,” during which time Commonwealth-sponsored passenger trains would use the Railroad Assets – and possibly other assets installed along the rail route exclusively for the purposes of supporting passenger train service (the “Passenger Only Rail Property”) – alongside HRRC freight trains.²⁷

²⁶ Id., § 4.3(a).

²⁷ Id., § 5.

As indicated above, the proposed Railroad Assets transaction calls for immediate rail infrastructure improvements as set forth in Exhibit B to the 2014 Operating Agreement,²⁸ but, for the foreseeable future, HRRC and MassDOT anticipate no significant departure from the current operating and service *status quo*. MassDOT has purchased the Railroad Assets to preserve the Commonwealth's long-term strategic interests in utilizing those assets for the development of regional rail passenger service linking the Berkshire region with the Northeast Corridor megalopolis via New York City. To be clear, however, there is no set timetable for passenger train service implementation. MassDOT recognizes that implementation will likely entail considerable inter-state coordination, much of which remains work to be done.

Thus, for the indefinite future, the parties to the subject transaction contemplate that HRRC will continue to operate over the Railroad Assets and will remain responsible for dispatching and track maintenance as is the case today. In fact, the most notable distinction between current HRRC operations and post-transaction operations into the foreseeable future – aside from Commonwealth-funded “Phase 1 Rehabilitation” of the Railroad Assets outlined in Exhibit B to the 2014 Operating Agreement – is a nominal one: HRRC will no longer function as the owner of the subject track assets, but will instead operate pursuant to its status as freight easement holder.

²⁸ The 2014 Operating Agreement calls for the rehabilitation of the Railroad Assets in two phases, with the first phase beginning this year and expected to be completed in 2017. The first phase work (involving such steps as tie, rail and switch replacement, new ballast and track surfacing, and grade crossing improvements) is also discussed at 2014 Operating Agreement § 4.4, and it is intended to improve operating conditions that will benefit freight service, but that also will form the foundation for the future implementation of regularly-scheduled railroad passenger service. The second phase infrastructure work (not scheduled at this time) constitutes the incremental infrastructure improvements beyond the foundational phase one steps that will need to be completed prior to MassDOT's election to start regularly-scheduled passenger train service.

During this indefinite period during which the parties anticipate that the Railroad Assets will fall under the 2014 Operating Agreement’s “HRRC Only Rail Property” designation, HRRC will have nearly unlimited latitude to schedule its services and operate its trains as it sees fit (including the provision of non-Commonwealth-subsidized, HRRC-supplied rail passenger service, should HRRC elect to undertake such service in the future), subject only to a protective restriction that HRRC train scheduling and operations do not preclude the future initiation of regularly-scheduled, Commonwealth-sponsored passenger train service²⁹ and MassDOT’s right of “Occasional Use.”³⁰

Again, it is difficult to predict when MassDOT’s longer-term objective of introducing Commonwealth-sponsored train service over the Railroad Assets may be achieved; such a goal lies in the indefinite future. It is fair to say that, in the course of pursuing its objective, the dynamics between MassDOT and HRRC may change and may need to change, such that the 2014 Operating Agreement may also have to evolve to reflect emerging circumstances that cannot now be readily anticipated. Nevertheless, MassDOT envisions that rail passenger service eventually will be restored over all or significant portions of the Railroad Assets. In fact, the 2014 Operating Agreement makes specific provision for the prospective transition from an era of exclusive HRRC operation over the Railroad Assets to a scenario where the Railroad Assets are deployed for joint use between HRRC and MassDOT (or MassDOT’s third party passenger service designee, which

²⁹ 2014 Operating Agreement, §§ 1 (defining “HRRC Only Rail Property”), 3.1 (acknowledging that the entire Railroad Assets “shall be designated as HRRC Only Rail Property” as of the effective date of the operating agreement), and 4.1(a)-(b).

³⁰ Id., § 3.2(b)(ii) (““Occasional Use” by MassDOT over HRRC Only Rail Property . . . shall refer to MassDOT’s right to periodically run trains for the purpose of (x) inspecting the Property; (y) transporting railroad material and equipment, ballast, rails, and the like owned by MassDOT or its contractors . . . ; and (z) transporting passengers in connection with special civic, sports or other events . . . in an intermittent, but not regularly scheduled, manner that does not unreasonably interfere with HRRC’s use of the HRRC Only Rail Property”).

could be HRRC).³¹ But, in so doing, the 2104 Operating Agreement also stakes out appropriate protections for the continuation of HRRC’s freight common carrier service.

As the preceding paragraphs indicate, the 2014 Operating Agreement grants MassDOT the discretion upon at least 60 days advance notice to initiate passenger train service over all or any portion of the Railroad Assets itself or through a designated “Operating Contractor” (which could be HRRC), subject to HRRC’s right to schedule and run four daily through freight trains and twice-daily local freight service, an allotment of freight train capacity that is roughly twice the current daily freight train average on the subject portion of the Berkshire Line.³² The 2014 Operating Agreement provides that, upon the Commonwealth’s election to initiate passenger train service over the Railroad Assets, HRRC will be accorded priority to schedule two daily “Freight Service Capacity” trains, subject to the expectation that HRRC’s scheduling prerogative will account for the Commonwealth’s interest in preserving “commuter rush hours” as prime passenger train operating timeframes.³³ In the case that the Commonwealth elects to initiate passenger train service, HRRC will retain the exclusive right to run additional freight trains over the Railroad Assets at its discretion as traffic demands may dictate, subject to a “balance of interests” provision protecting passenger service reliability once such service is introduced.³⁴ In addition, if the Railroad Assets cannot at some future point accommodate scheduled passenger service and freight traffic growth exceeding the originally-allocated Freight Traffic Capacity, HRRC is entitled to install additional

³¹ Id., § 5.2(c) (discussing the “Commonwealth Passenger Service Commencement Date”).

³² Id., §§ 1 (defining “Operating Contractor”), 5.2(a) (defining HRRC’s guaranteed “Freight Service Capacity”); and 5.2(c) (notice process associated with the “Commonwealth Passenger Service Commencement Date”).

³³ Id., § 5.2(a).

³⁴ Id., § 5.2(e).

railroad infrastructure to accommodate traffic increases, provided only that such capacity expansion does not undercut existing Commonwealth-sponsored passenger train service.³⁵

The parties to the 2014 Operating Agreement also contemplate that, at some point after Commonwealth-sponsored passenger train service would commence, MassDOT may elect to add additional railroad infrastructure that would be used primarily, if not exclusively, for purposes of passenger operations. Such infrastructure would qualify as “Passenger Only Rail Property” if – (1) it is not listed among the properties over which HRRC will be accorded either exclusive or joint operating rights, and (2) MassDOT elects to so designate the additional infrastructure as falling within this category.³⁶ The parties understand that the installation and deployment of such Passenger Only Rail Property must not undercut HRRC’s ability to fulfill its freight common carrier obligation, and agree that, should the Commonwealth seek to add railroad infrastructure intended to support passenger service (“Additional Passenger Only Rail Property”), “in the event that HRRC seeks to provide Freight Rail Service over Additional Passenger Only Rail Property, MassDOT shall, to the extent practicable, accommodate such Freight Rail Service and such Rail Operating Property shall be re-designated as Joint Usage Rail Property.”³⁷

At such time as Commonwealth-sponsored passenger train service begins over the Railroad Assets – an event shifting the targeted assets from HRRC Only Rail Property to Joint Usage Rail Property status – MassDOT will have the “exclusive right to exercise and to perform, or to delegate or subcontract to another entity, the performance of the management, regulatory and operational control of any and all rail service over the Joint Usage Rail Property including, without limitation,

³⁵ Id., § 6.2.

³⁶ Id., § 6.1 and Exhibit A to the 2014 Operating Agreement.

³⁷ Id., § 6.1.

dispatching and control of all trains.”³⁸ (MassDOT may elect to designate HRRC to continue to oversee rail operations on the Rail Assets, and to handle dispatching duties on the Joint Usage Rail Property.) The parties have committed to dispatch operations so as to “prioritize trains and resolve scheduling conflicts using best dispatching practices,”³⁹ and to “establish a dispatching protocol for the Joint Usage Rail Property that will (i) minimize negative impacts on each Party’s trains in all time periods, and (ii) allow reasonable flexibility within the structure described herein to accommodate the movement of each other’s trains, *provided however*, that . . . MassDOT shall have the exclusive right to schedule Commonwealth Passenger Service trains (in consultation with HRRC) and that in all circumstances a scheduled Commonwealth Passenger Service train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes earlier or later than its scheduled time.”⁴⁰ Dispatching will account for the aforementioned first priority scheduling election for two of HRRC’s Freight Service Capacity trains.

Finally, should MassDOT’s longer-term plans for passenger train service come to fruition, MassDOT will “take over the obligation to perform Maintenance Services on the Joint Usage Rail Property and shall maintain the main line in accordance with all applicable laws to a condition sufficient to allow for Freight Rail Service at the Freight Service Capacity,” subject HRRC’s contribution to such maintenance going forward on a per-car-mile basis.⁴¹ The 2014 Operating Agreement clarifies that in taking over maintenance of the Joint Usage Rail Property, MassDOT may elect to contract with HRRC or any other third party to serve as the actual provider of

³⁸ Id., § 5.4(a).

³⁹ Id.

⁴⁰ Id., § 5.4(b).

⁴¹ Id., §§ 5.5(a), 5.6(a).

maintenance service, and it provides that track maintenance (except in cases of emergency) “shall be undertaken in a manner so as to minimize interference with rail operations.”⁴²

Because the Commonwealth is not expected to initiate passenger train service for the foreseeable future, the 2014 Operating Agreement does not contain anticipated passenger train frequency projections, and thus lacks a passenger service counterpart to the Freight Service Capacity provisions. Similarly, the 2014 Agreement lacks operating “windows” during which freight or passenger trains are given varying degrees of priority, except to the extent that the agreement protects future passenger train service within 10 minutes on either side of that prospective train’s regular schedule.⁴³

III. DISCUSSION

A. The State of Maine Doctrine

The acquisition of an active rail line by a noncarrier, 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 distinguish between – (1) the acquisition of a line of railroad, including the acquisition of the common carrier obligation related thereto, which requires 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 service easement preserving the seller’s common carrier right and obligation

⁴² Id., § 5.5(b).

⁴³ Id., § 5.4(b).

which requires advance Board examination, but for which the Board ultimately may determine that authorization or the invocation of a class exemption is unnecessary. State of Maine, 8 I.C.C.2d at 836-837; and see, e.g., 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); Rail Term Corp. – Petition for Declaratory Order, FD 35582 (STB served Nov. 19, 2013) at 11-13 (reaffirming validity of State of Maine principles for publicly-owned, shared use rail corridors).

For a transaction to fall within this second category, however, the terms of the sale must protect the selling carrier or its third-party designee from undue interference in its provision of common carrier freight rail service. State of Michigan Department of Transportation – Acquisition Exemption – Certain Assets of Norfolk Southern Railway Company, FD 35606 (STB served May 8, 2012) (“State of Michigan”).

The longstanding State of Maine doctrine removing certain railroad asset transactions from the scope of section 10901 (following pre-transaction Board analysis) may best be encapsulated by the following Board quote: “[T]he 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 5 (served Dec. 15, 2010) (“FDOT”) (citing State of Maine). As will be demonstrated herein, the proposed transfer of railroad physical assets to MassDOT meets those “certain conditions,” because the asset sale is subject to HRRC’s retention of a permanent and exclusive freight rail operating easement buttressed by the 2104 Operating Agreement, which contains various commitments to protect HRRC’s post-

transaction provision freight rail common carrier service. Accordingly, MassDOT's proposed acquisition of the Railroad Assets satisfies the State of Maine criteria for a finding that the transaction does not require MassDOT's compliance with the requirements of section 10901 or its invocation of the class exemption from section 10901 set forth at 49 C.F.R. part 1150, subpart D.

B. Analysis

Central to the Board's analysis in a proposed State of Maine-style transaction is the selling railroad's retention of a permanent easement and (in the case of existing or anticipated joint freight and passenger operations) the negotiation of an operating arrangement enabling the selling railroad to continue to assert and to fulfill its freight common carrier rights and obligations without undue interference. 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”). 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.” State of Michigan at 3. For the Board to find that the proposed transaction does not require approval under section 10901 or invocation of the related class exemption, the agency must be assured that the railroad transferor of the physical assets has preserved, through its retained easement and related agreements with the asset purchaser, sufficient rights to conduct common carrier freight operations without unreasonable interference. See 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”).

Under the P&S Contract and the Deed, MassDOT will acquire the Railroad Assets subject to HRRC's retention of an exclusive, irrevocable, perpetual, assignable, licensable, and transferable freight easement ensuring that HRRC will be able to fulfill its common carrier freight rail obligations. MassDOT will not hold itself out as a common carrier performing freight rail service. Also, the 2014 Operating Agreement ensures that HRRC will not be interfered with unreasonably in the continuation of common carrier freight rail service, whether HRRC continues indefinitely in the day-to-day management on operation of the Railroad Assets (including track maintenance and dispatching, among other things), or whether MassDOT at some future date invokes its right to assume (through itself or a delegated third party) such oversight upon the commencement of Commonwealth Passenger Service.

The 2014 Operating Agreement accounts for HRRC's current operations, makes generous provision for possible freight traffic growth, including the possible downstream need for freight train service capacity increases, and provides for capacity and operating changes designed to establish and then expand passenger train service on the Railroad Assets at some point in the future. As is the case here, prospective freight-passenger "shared use" arrangements can be structured to enable the asset-acquiring public entity to avail itself of the State of Maine construct, as MassDOT has done before,⁴⁴ to secure a Board finding (frequently essential to consummation) that – (1) the transaction does not require agency approval, and (2) the transaction, as structured, would not result in the acquiring public entity becoming a rail common carrier. The Board has on numerous occasions found that the State of Maine construct can and does apply to properly-structured

⁴⁴ MassDOT-I, FD 35312 (STB served May 3, 2010).

transactions involving existing and prospective shared freight and passenger use,⁴⁵ and it should render such a determination here.

MassDOT's 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 three important objectives – (1) to preserve and aid freight common carrier service on a low-density line; (2) to re-establish passenger rail service over the subject rail corridor at some point in the future; and (3) to provide a foundation for the restoration of passenger train service through improved route infrastructure.

⁴⁵ 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).

MassDOT's acquisition of the Railroad Assets will not affect HRRC's freight operations materially. If anything, the arrangement will strengthen freight service. The parties anticipate no significant post-transaction changes in freight volumes, and they expect that HRRC will be able to provide the same or better freight service due to immediate Phase 1 track improvements that will enhance safety and permit increased freight train operating speeds. HRRC will retain dispatching and maintenance responsibility for the indefinite future, subject to the requirements of the 2014 Operating Agreement, under which, if MassDOT elects to invoke its right to initiate Commonwealth-sponsored passenger train service, MassDOT may assume dispatching and maintenance responsibilities or to designate a third party to fulfill such responsibilities. (As indicated above, however, MassDOT may, at its sole discretion, elect to retain the current maintenance and dispatching arrangement, allowing HRRC to continue to handle such duties directly after the commencement of Commonwealth Passenger Service.) HRRC will retain considerable control over its freight operations on the Railroad Assets – particularly with Commonwealth-sponsored passenger service on the distant horizon.

MassDOT's acquisition of the Railroad Assets is a win-win for freight shippers and rail passenger advocates. MassDOT's physical plant improvement plans will benefit both types of rail service. MassDOT regards the Railroad Assets as valuable for the longer-term expansion of regional rail passenger service, but the subject rail line's light-density freight service characteristics make it highly unlikely that passenger rail service expansion (whether intercity or commuter in nature), if implemented with proper regard for the HRRC-retained easement and HRRC's freight common carrier obligation, will present material freight rail service obstacles.

As indicated above, the 2014 Operating Agreement recognizes and preserves HRRC's exclusive rights and obligations to provide adequate service to freight shippers located on, or making use of, the Railroad Assets in keeping with the kinds of arrangements that the Board has examined and approved of in other State of Maine-style proceedings. Because the Railroad Assets currently host, and are expected to continue to host, relatively modest freight volumes, MassDOT is confident that HRRC'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 attached verified statement of John R. Hanlon, Jr., HRRC's president, conveys, HRRC is confident that the subject transaction has been so structured so as to safely ensure that it will continue to be able to fulfill its common carrier obligations post transaction.⁴⁶

MassDOT anticipates that passenger service is years away, and, accordingly, it expects that the particulars of the 2014 Operating Agreement may (and, indeed, should) be revisited and adjusted over the years by agreement of the parties to account for changing operating circumstances and transportation policies and plans. As such, it is impossible to assure that the key elements of the 2014 Operating Agreement will or should remain exactly as they are now at such time as Commonwealth-sponsored passenger train service begins. MassDOT understand that the operating agreement – however it may be adjusted or revised in the future – must not undercut MassDOT's commitments and assurances in such a way that could later raise questions about MassDOT's legal status before this agency. MassDOT takes very seriously its commitment to HRRC and its assurances to the Board that MassDOT will not materially interfere with the provision of rail freight

⁴⁶ Verified Statement of John R. Hanlon, Jr., attached hereto as Exhibit E.

service on the Railroad Assets, and expects that the Board may hold MassDOT to the assurances it has extended in this Motion, and those contained in the transaction agreements.⁴⁷

In short, the transaction presented herein and the agreements that will govern post-transaction operations will assure that HRRC can provide adequate common carrier rail freight service on the Railroad Assets into the future. MassDOT will not, and does not wish to, acquire a rail common carrier obligation, and, for these reasons, the notice of exemption should be dismissed.

Finally, MassDOT's vision for the future establishment of rail passenger service over all or certain portions of the Railroad Assets at some as-yet-undetermined future date contemplates either regional, intercity passenger train service, commuter train service or both. Clearly, if MassDOT were to elect to initiate intercity passenger train service itself (it is more likely to delegate the task and responsibilities to a third-party service provider or to HRRC), MassDOT acknowledges that it would have to obtain appropriate STB authorization in advance. However, "the Board does not have jurisdiction . . . over mass transportation provided by a local government authority."⁴⁸

⁴⁷ 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").

⁴⁸ 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, STB Ex Parte No. 574, FRA Docket No. 1999-4985, Notice No. 4 (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 mass transportation (commuter service) provided by a local governmental entity. Thus, a transaction involving a railroad subject to the STB's jurisdiction and a commuter railroad 'is now 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, FD 32279 (STB served Feb. 3, 1999))).

1. General Provisions

In keeping with the usual State of Maine transaction structure, HRRC 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) HRRC, at in its sole discretion, were to obtain regulatory authority to abandon all or any portion of the Railroad Assets; (2) following a one-year period of freight inactivity, MassDOT were to invoke the provisions of the 2014 Operating Agreement to re-designate the inactive track segment as Passenger Only Rail Property (subject to subsequent re-designation as HRRC Only Rail Property or Joint Usage Rail Property, as applicable, upon notice from HRRC of its intent to resume freight service over the given track segment); or (3) after a continuous three-year period of freight rail inactivity, MassDOT were to pursue and obtain regulatory authority pursuant to an adverse abandonment proceeding to terminate HRRC’s operations over the inactive segment(s) of the Railroad Assets.⁴⁹

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 Dec. 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”), slip op. at 2 (no STB jurisdiction where public agency “has no power to require

⁴⁹ 2014 Operating Agreement, §§ 3.2(c).

[carrier] to discontinue or curtail its freight service on the line.”). Rather, HRRC’s rights can only be terminated permanently under invocation of the Board’s abandonment procedures, and only upon appropriate showing (such as an extended absence of freight service).

MassDOT may assign its interests or obligations under the 2014 Operating Agreement to another party upon 60 days written notice, provided, among other things, that any assignment by MassDOT “does not in any way impair or adversely affect the rights of HRRC hereunder or as required by law.”⁵⁰ On the other hand, transfer of HRRC’s retained freight easement is conditioned upon compliance with transfer conditions set forth in the Deed. Specifically, HRRC is limited in its ability to assign or otherwise transfer its retained freight easement to any third party, other than a subsidiary or HRRC corporate affiliate, that does not meet prior experience and capability standards.⁵¹ Such measured restrictions on post-transaction transfers of the retained freight easement have been found to be permissible under the State of Maine construct,⁵² particularly where, as here, the provisions governing potential future transfers of the freight easement do not unreasonably interfere with HRRC’s ability to fulfill its common carrier obligations.

It should be clear from the arrangements discussed above that MassDOT lacks the right, interest, or wherewithal to be or function as a freight common carrier, that it cannot admit any other party onto the property for such purposes, and that it certainly will not hold itself out to the public

⁵⁰ Id., § 20.3. This provision also provides that “upon such assignment, MassDOT shall remain primarily responsible to HRRC for the performance of MassDOT’s duties and obligations herein, unless MassDOT assigns its rights, interests, and obligations to a public or quasi-public agency created by state or federal statute to undertake the responsibilities and obligations of MassDOT with respect to the [Railroad Assets].”

⁵¹ Quitclaim Deed Exhibit E, and 2014 Operating Agreement, § 20.1.

⁵² “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.

as a railroad providing freight rail service to shippers upon reasonable demand. Because MassDOT will not hold itself out as a common carrier on the Railroad Assets, its ownership of the Railroad Assets does not involve a transfer of a common carrier obligation and is not subject to the Board's authorization. Central Puget Sound Regional Transit Authority – Acquisition Exemption – BNSF Railway Company, FD 34747 (STB served Nov. 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.

2. Maintenance

For so long as HRRC remains the exclusive user of the Railroad Assets (such that they remain designated as HRRC Only Rail Property under the terms of the 2014 Operating Agreement), HRRC shall be solely responsible for maintenance and inspection, subject to agreed-upon track upkeep standards.⁵³ Joint Usage Rail Property, on the other hand, will be maintained by MassDOT or its contractor (which may be HRRC), subject to MassDOT's commitment to protect Freight Service Capacity.⁵⁴ As indicated above, MassDOT and HRRC will share in Joint Usage Rail Property maintenance costs and capital expenses, based on a prescribed formula under which HRRC's contribution will be determined by a per-car-mile fee.⁵⁵ As would be expected, MassDOT alone would be responsible for the upkeep of Passenger Only Rail Property, except to the extent that HRRC may make temporary or “Occasional Use” of those assets.⁵⁶

⁵³ 2014 Operating Agreement, §§ 4.3(a), (c) and (d).

⁵⁴ Id., §§ 5.5(a) and (b).

⁵⁵ Id., § 5.6.

⁵⁶ Id., §§ 3.2(b), 6.1 and 6.2.

Such a maintenance regime is consistent with the Board's State of Maine precedent. To begin with, the Board generally views transactions which keep track maintenance in the hands of the operating freight carrier (such as is the case here for at least the foreseeable future) favorably. See State of Maine – Petition for Declaratory Order, FD 35440, slip op. at 5 (“State of Maine-II”) (in assessing a similarly-structured asset sale under the State of Maine construct – and finding that the proposed transaction would not require Board approval – the Board made no issue of, and indeed did not even mention in the merits analysis of its decision, the incumbent freight carrier's retention of maintenance responsibilities), and State of Maine, 8 I.C.C.2d at 836-37 (state agency's acquisition of the physical assets of a rail line owned by a common carrier railroad did not require Board approval where the existing carrier retained, among other things, the right to maintain the line). As such, the Board should determine as it has in cases such as State of Maine and State of Maine-II, that the maintenance arrangements in place here support the requested finding that the Railroad Assets transaction does not require the agency's authorization.

Even upon commencement of Commonwealth Passenger Service over Joint Usage Rail Property, when maintenance duties may transfer to MassDOT under the terms of the 2014 Operating Agreement – a common arrangement in contemporary State of Maine-style transactions – there are robust protections in place for post-transfer freight common carrier service consistent with those found in other transactions where the Board ruled that the acquiring state entity would not assume a common carrier status despite its assumption of maintenance duties. See MassDOT at 10 (no common carrier obligation created where agency is responsible for maintenance but must do so in accordance with applicable laws and without unreasonably interference to freight operations); Maryland Transit Administration – Petition for Declaratory Order, FD 34975 (STB served Oct. 9,

2007) (“MTA-I”) at 6 (finding agency control of maintenance did not create common carrier obligation where agreement made clear that maintenance operations were not to interfere with freight service and capacity); see also 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); Akron Metro at 3; Sacramento-Placerville at 2.

Here, HRRC will retain track maintenance responsibility indefinitely. But if MassDOT were ever to take over that function, the 2014 Operating Agreement provides ample protections for HRRC freight service. Accordingly, the Railroad Assets transaction is, at a minimum, in keeping with the cases cited in the preceding paragraph.

3. Dispatching

As explained above, the 2014 Operating Agreement provides for HRRC to continue to dispatch the Railroad Assets post-transaction for so long into the future as the Railroad Assets qualify as HRRC Only Rail Property.⁵⁷ MassDOT will assume dispatching responsibility – or may designate HRRC to continue dispatching or delegate that obligation to a third party – upon the commencement of Commonwealth Passenger Service over all or selected portions of the Railroad Assets.⁵⁸ As mentioned above, in the case of joint passenger and freight train operations, additional protections for freight and passenger train schedules are provided for in sections 5.4(a) and (b) of the 2014 Operating Agreement, specifically requiring MassDOT to make all reasonable efforts to expedite the movement of freight trains when performing dispatching operations.⁵⁹

⁵⁷ Id., § 4.2(a).

⁵⁸ Id., §§ 5.4(a) (for Joint Usage Rail Property) and 6.2(a) (for Passenger Only Rail Property).

⁵⁹ Id., § 5.4(a).

This arrangement is in keeping with the considerations of the State of Maine construct, including those where similar dispatching arrangements have been approved of in previous Board proceedings. See, e.g., FDOT, 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, slip op. at 6 (STB served Oct. 5, 2007) (state agency control of dispatching is permissible where conducted in accordance with agreed-upon protocols aimed at protecting freight rail service). Because HRRC will remain in control of dispatching for at least the foreseeable future, and in light of the agreed-upon freight service protections contained in the 2014 Operating Agreement in the event of a transfer of dispatching duties, the subject dispatching arrangements are, at a minimum, in keeping with those the Board examined in proceedings such as MassDOT-I, LACTC, FDOT, and MTA-I.

As a final consideration, the Commonwealth, through MBTA, dispatches multiple rail routes where both freight and passenger trains make use of Commonwealth-owned railroad facilities. One such example is the MassDOT-owned, MBTA-managed rail route from Framingham to Worcester, MA – the subject of State of Maine analysis in MassDOT-I. There, MassDOT acquired railroad assets between Framingham and Worcester from CSX Transportation (“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 MassDOT-I 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 not apply to MassDOT’s railroad assets acquisition. 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 – it has proven fully capable of dispatching trains to accommodate the needs of freight shippers and passengers. Accordingly, there is no basis here to presume that the Commonwealth would deviate from such a well-recognized, admirable “track record,” and compromise freight rail service, thereby raising questions about MassDOT's noncarrier status.

4. Operating Windows

It is too early to tell when Commonwealth-sponsored passenger train operations might commence, or, for that matter, what such passenger train operations might look like. So, rather than attempt at this point to establish formal operating windows, the 2014 Operating Agreement provides for the mutual development of freight train capacity and future scheduling, worked around to-be-established passenger train schedules. While freight trains will be accorded protections, passenger trains will also be granted certain dispatching preferences related to each passenger train's schedule.

In addition, while the 2014 Operating Agreement contains provisions for expanding passenger and freight service, the parties have agreed not to commit added capacity to one category of service at the expense of the existing capacity needs of another.⁶⁰ The 2014 Operating Agreement stipulates that dispatching will be undertaken so as to – (1) “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

⁶⁰ See, e.g., *id.* at § 5.2(b).

unreasonably interfere with such movement;” and (2) “allow reasonable flexibility within the structure described herein to accommodate the movement of each other’s trains.”⁶¹

The 2014 Operating Agreement thus allows for even more flexibility and fluidity in accommodating joint freight and passenger service than is the case in transactions involving joint use operations employing more rigid operating windows that the Board has found still fall within the State of Maine ambit. See, e.g., MassDOT 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 passenger service is provided “in accordance with statutory and contractual standards”); Akron Metro at 4; NJT/Bordentown, 4 S.T.B. at 515. MassDOT respectfully submits that the arrangements contained in the 2014 Operating Agreement adequately accommodate the sometimes competing needs of freight and passenger rail service, including reasonably foreseeable freight and passenger service demands. Accordingly, the 2014 Operating Agreement strikes the kind of balance that the Board has sanctioned where the parties in other State of Maine-style transactions have employed prescribed operating windows. See, e.g., MassDOT-I; MTA-II; New Mexico DOT; Akron Metro; NJT/Bordentown. As such, the Board should find, in keeping with precedent, that the proposed operating arrangements and allocation of operational priority satisfy the State of Maine criteria.

5. Spur Tracks and Capacity Improvements

The 2014 Operating Agreement does not mandate the removal of spur track or switches connecting the Railroad Assets main trackage to siding or spur track serving freight customers.

⁶¹ Id., §§ 5.4(a) and (b).

Rather than thwart future freight traffic growth, the 2014 Operating agreement contemplates such growth, and provides for expanding on-line traffic opportunities. Thus, HRRC, at its own cost and expense (and subject to advance consultation and coordination with MassDOT), may at all times post transaction install or order the installation of switches and sidings to access shippers located (or to be located) along the Railroad Assets.⁶² The Commonwealth Parties are, on the other hand, free to undertake construction, maintenance, alterations and improvements to the Railroad Assets of any sort, provided that any such undertakings do not restrict freight service capacity or unreasonably interfere with HRRC's provision of freight common carrier service.⁶³

MassDOT submits that these arrangements for spur trackage and freight capacity, 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 railroad assets to obtain the requested agency determination. See State of Maine-II, slip op. 4 (finding the transaction consistent with State of Maine where the freight carrier maintained the right to construct changes or additions such as turnouts, sidetracks, industrial spur tracks or other facilities related to carrier's freight operations). The subject elements of the transaction support the requested finding that MassDOT's acquisition of the Railroad Assets does not require advance Board approval under § 10901 or the related class exemption.

6. Labor Considerations

As is reflected in the agreements underlying the subject transaction HRRC will at all times operate its own trains, and it is expected to retain dispatching and maintenance responsibilities over

⁶² Id., §§ 4.3(h) and 8.1.

⁶³ Id., § 8.2.

the Railroad Assets indefinitely. Moreover, if MassDOT were in the future to assume dispatching and maintenance responsibilities for the Railroad Assets, it may nevertheless contract such duties to HRRC. Finally, the subject transaction calls for railroad infrastructure improvements that will promote both freight and passenger service growth, and, as such, is likely to be a catalyst for additional passenger and freight railroad employment opportunities in the region.

EXPEDITED CONSIDERATION

MassDOT and HRRC have committed to a timetable for this transaction, pursuant to which MassDOT plans to close on its purchase of the Railroad Assets preferably by December 15, 2014, but certainly before the end of the year. Failure to consummate the transaction by that deadline could interrupt the smooth progress of the closing process because of known changes in Commonwealth administration, which, in turn, could cause further delay and jeopardize the prompt implementation of Phase 1 rehabilitation. Delay would thus be detrimental to the Commonwealth's transportation planning and funding initiatives, which are linked to the orderly acquisition of the Railroad Assets and the swift completion of scheduled track improvements.

As is indicated above, Mass DOT has authorized approximately \$35 million in capital improvements (Phase 1 Rehabilitation) for the Railroad Assets in contemplation of the purchase of those assets later this year, and in preparation for the future restoration of passenger train service. In addition, a 2014 closing has been incorporated into HRRC and its affiliates' business and tax planning, such that delay into next year would subject HRRC to a financial hardship. Subjecting HRRC to such hardship under the circumstances is contrary to the Rail Transportation Policy, particularly 49 U.S.C. §§ 10101(3) (promoting a safe and efficient rail transportation system by

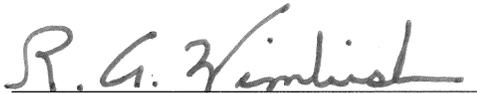
allowing rail carriers to earn adequate revenues), (5) (fostering sound economic conditions in transportation), and (9) (encouraging honest and efficient management of railroads).

Finally, the requested decisional timeline is consistent with the Board's handling of similar State of Maine-style transactions, such as State of Maine-II (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 (two months), and Metro North (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 December 15, 2014, but no later than December 31, 2014.

Respectfully Submitted,



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Dated: October 16, 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 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION Exemption –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

MOTION TO DISMISS

EXHIBIT A

Railroad Line - Sheffield, Great Barrington, Stockbridge, Lee, Lenox, Pittsfield



2013 00226309

Bk: 2198 Pg: 120 SBRD
Page: 1 of 4 06/05/2013 02:42 PM



2013 00838770

Bk: 5206 Pg: 107 Doc: DEED
Page: 1 of 4 06/11/2013 12:04 PM

RELEASE DEED

HOUSATONIC RAILROAD COMPANY, INC., a specially chartered railroad corporation duly organized and existing under the laws of the State of Connecticut and the Commonwealth of Massachusetts, having an office and place of business at 1 Railroad Street, Canaan, Connecticut 06018 (the "Grantor") for the consideration of one million two hundred seventy thousand three hundred eleven (\$1,270,311) dollars paid to it by Maybrook Railroad Company, Inc., a Connecticut corporation having an office and place of business at 8 Davis Road West, PO Box 687, Old Lyme, Connecticut 06371 (the "Grantee") hereby grants to the Grantee, except as hereinafter set forth, all of the Grantor's right title and interest, without warranties or covenants of title whatsoever, in those certain parcels of land, and the buildings, bridges, structures, fixtures and improvements thereon, if any, situated in Sheffield, Great Barrington, Stockbridge, Lee, Lenox, and Pittsfield Massachusetts (the "Premises"), together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rents, profits and any other interests and rights belonging thereto or in any way appertaining to such real property, including the same easements and rights with respect to the real property and such other interests appurtenant to the property to be transferred, as Housatonic Track Company, Inc. received from the Boston and Maine Corporation in connection with its acquisition of the Premises, except as those interests and items are specifically hereinafter reserved and excepted. Said Premises are more particularly described as set forth in Schedule A attached hereto and made a part hereof.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

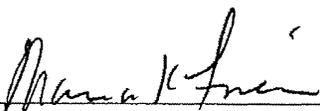
1. Excluded from the conveyance are all rail, ties, anchors, tie plates, switch timbers, turnouts and signals affixed to the Premises as of the date hereof ("Track and OTM"), which Track and OTM shall continue to be the property of Grantor.
2. The Grantor reserves unto itself the perpetual, exclusive right to operate rail freight service over the Premises. This reservation includes reservation of all rights pertaining to freight operation under operating, trackage rights and joint facilities agreements, rates and divisions and other rights pertaining to rail freight operation.

3. Grantor shall exercise its freight operating rights pursuant to an Operating Rights Agreement between Grantor and Grantee of even date herewith, as the same may be amended from time to time. Grantee shall have no obligation to repair or maintain the premises in a condition suitable for rail operations of Grantor.
4. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land.

The Premises are subject to a mortgage in favor of the Pittsfield Cooperative Bank dated April 30, 2012 and recorded with the Berkshire Registry of Deeds – Southern District at Book 2113, page 263 and Berkshire Registry of Deeds – Middle District at Book 4950, page 100, which mortgage, by acceptance of this deed, the Grantee assumes and agrees to pay. As of the date hereof, the current principal balance allocable to his parcel is \$1,270,311.

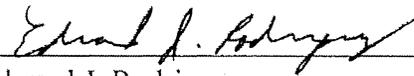
IN WITNESS WHEREOF, the said HOUSATONIC RAILROAD COMPANY, INC. has caused this release deed to be executed in its name by Edward J. Rodriguez, its Executive Vice President and Assistant Treasurer, thereunto duly authorized this 28th day of December, 2012.

HOUSATONIC RAILROAD COMPANY, INC.



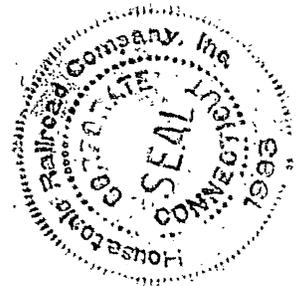
Witness

By



Edward J. Rodriguez

Executive Vice President & Asst. Treasurer

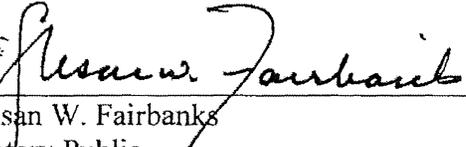


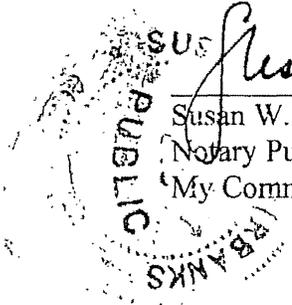
STATE OF CONNECTICUT

SS: Old Lyme

COUNTY OF NEW LONDON

On this 28th day of December, 2012, before me, the undersigned notary public, personally appeared Edward J. Rodriguez, as Executive Vice President of Housatonic Railroad Company, Inc., personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in such capacity.


Susan W. Fairbanks
Notary Public
My Commission Expires: 7/31/2016



SCHEDULE "A"

PREMISES

Description of Premises conveyed by Housatonic Railroad Company, Inc. to Maybrook Railroad Company

That portion of Grantor's line of railroad formerly known as the "Canaan Secondary Branch" and currently known as the "Berkshire Line" situated in the Commonwealth of Massachusetts, County of Berkshire and Towns/Cities of Sheffield, Great Barrington, Stockbridge, Lee, Lenox and Pittsfield and more particularly described as follows:

Beginning at the border of the State of Connecticut and the Commonwealth of Massachusetts, in Sheffield, Massachusetts, valuation section 57.68.10, map 74 at mile post 49.9, thence running in a generally northerly direction through said Sheffield, Great Barrington, Stockbridge, Lee and Lenox, Massachusetts, terminating at mile post 85.94 located on the east side of Mill Street in Pittsfield, Massachusetts, all as more particularly shown on plans for valuation section 57.68.10, map 74, valuation section 57.10, maps 75 through 88 inclusive, valuation section 57.10.12, map 89 and valuation section 57.12, maps 90 through 110, inclusive.

Being the same Premises described in the deed of Boston and Maine Corporation to Housatonic Track Company, Inc. dated December 20, 1990 and recorded with the Berkshire Registry of Deeds – Southern District at Book 755, page 332 and Berkshire Registry of Deeds – Middle District at Book 1319, page 609.

The Premises also include the following described land in the Town of Great Barrington acquired by Housatonic Railroad Company, Inc. by deed of Lorraine Hebert dated May 1, 2009 and recorded in the Berkshire Registry of Deeds – Southern District at Book 1911, page 330.

Beginning in the northwest line of the layout of the New York, New Haven & Hartford Railroad Company and in line of land of one Race; thence north 41 Deg. East 100 feet more or less to a pipe; thence north 86 Deg. 5' East 200 feet more or less to a point; thence southerly 115 feet more or less to a pipe in the corner of land of one Wilks; thence southwesterly approximately 180 feet along the lay-out of the New York, New Haven & Hartford Railroad Company to the point of beginning.

*Subject to the easement to the so-called Gas House Lane as spelled out in deed to said Wilks. Said parcel is also shown on a plan recorded in Berkshire South Registry of Deeds as Plan # 94 recorded on December 28th, 2004 in Plat File M-124.

This deed does not convey registered land.

ATTEST: BERKSHIRE SOUTH Wanda M. Beckwith REGISTER
WANDA M. BECKWITH

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION Exemption –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

MOTION TO DISMISS

EXHIBIT B

PURCHASE AND SALE CONTRACT

between

THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, as Buyer

and

HOUSATONIC RAILROAD COMPANY, INC., a Massachusetts railroad corporation, as Seller

and

HOUSATONIC RAILROAD COMPANY, INC., a Connecticut railroad corporation, as Seller

and

MAYBROOK RAILROAD COMPANY, as Seller

THE RIGHT OF WAY KNOWN GENERALLY AS THE BERKSHIRE LINE

as of _____, 2014

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PURCHASE AND SALE CONTRACT

THIS AGREEMENT (the “**Contract**”) is made as of this _____ day of _____, 2014, by and between HOUSATONIC RAILROAD COMPANY, INC., a specially chartered Massachusetts railroad corporation and HOUSATONIC RAILROAD COMPANY, INC., a specially chartered Connecticut railroad corporation (collectively “**HRRC**”), each having an address of 1 Railroad Street, PO Box 1146, Canaan, Connecticut 06018, and MAYBROOK RAILROAD COMPANY, a Connecticut corporation authorized to transact business in Massachusetts, having an address of 8 Davis Road West, PO Box 687, Old Lyme, Connecticut 06371 (“**MRC**” and hereinafter referred to collectively with HRRC as “**Seller**”) and THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, having an address of 10 Park Plaza, Boston, Massachusetts (hereinafter referred to as “**Buyer**”).

RECITALS

A. Seller is the owner of or has certain interests in the following real and personal property, which, taken together, is herein collectively called the “**Property**”:

1. The right of way known generally as the Berkshire Line, from the junction with the CSX Boston and Albany Line in Pittsfield, Massachusetts to the Massachusetts-Connecticut border in Sheffield, Massachusetts (the “**Berkshire Line**”) consisting of Seller’s right, title, and interest in the Berkshire right of way extending from about milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, MA, to a connection with CSX Transportation, Inc., at approximately milepost 86.6 at Pittsfield, MA, an approximate distance of 36.6 route miles and all adjoining property (the “**Land**”) as described on EXHIBIT A attached hereto and incorporated herein by reference, but shall except therefrom the Retained Freight Easement (defined below) over the Berkshire Line. The Land generally described on EXHIBIT A attached hereto and incorporated herein by reference is shown more specifically in a set of plans to be developed as EXHIBIT A-1 (the “**Railroad Line Plans**”) pursuant to Section 7.1.3 herein.

2. The tracks, rails, ties, switches, ballast, crossings, bridges, trestles, culverts, buildings, structures, facilities, crossing protection devices, communication lines, poles, radio masts and signals which are affixed or located on or in the Land or, with respect to the Berkshire Line as of the date hereof (the “**Included Fixtures**”), but subject to the Retained Right of Reclamation (defined below).

3. All items of personal property, supplies, and other materials used in, or primarily relating to, the operation of the Property, only to the extent such items are owned by Seller and are necessary to properly operate and maintain the Property, including without limitation those items necessary to operate signal systems and grade crossing systems (but excluding those reasonably necessary for Seller to exclusively retain in order to operate rail freight operations, the “**Tangible Personal Property**”).

4. All permits, licenses, certificates of occupancy, approvals, consents, variances and other authorizations, if any, that are used or necessary in connection with the ownership, operation or other use of, any of the Land (but excluding those reasonably necessary for the

operation by Seller of the rail freight operations over the Retained Freight Easement (as defined below) (all such permits and the like, the "**Permits**").

5. All real property interests of Seller in the Property including, without limitation, benefits which are appurtenant to the Land, 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 the Land, appurtenances, occupancy agreements, and other rights belonging to Seller pertaining to, or accruing to the benefit of, the Property, subject, however, to the Retained Freight Easement.

6. All of Seller's right, title and interest in any contracts, agreements, guaranties, warranties, leases, licenses, occupancy agreements and easements now or hereafter relating to the ownership, use or operation of the Property, but excluding all interchange agreements, side track agreements, joint facilities agreements and any contracts pursuant to which Seller provides freight rail transportation services for customers and other freight carriers, whether or not listed on Exhibit E-1 hereto (the "**Intangibles**").

B. Seller shall retain and reserve, and not transfer to Buyer, exclusive and perpetual freight service rights, both local and overhead, over the Berkshire Line ("**Retained Freight Easement**") to be held by HRRRC, it being the intention of the Buyer and Seller that HRRRC shall remain, and Buyer not become, a common carrier subject to any federal law relating to the provision of freight railroad transportation on such properties.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1. Agreement to Sell.

Subject to the terms and conditions hereinafter set forth and specifically excluding the Retained Freight Easement, Seller agrees to sell and Buyer agrees to buy, the Property.

ARTICLE 2. Purchase Price and Payment.

The total purchase price (the "**Purchase Price**") for the Property shall be Twelve Million One Hundred Thirty Thousand Dollars (\$12,130,000.00). The Parties hereto acknowledge that the foregoing Purchase Price has been adjusted for the value to the Seller of the Retained Right of Reclamation. Subject to the terms and conditions of this Contract, the Purchase Price shall be paid as follows:

2.1 Simultaneous with the execution of this Contract, Buyer shall deliver to Seller a deposit in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "**Deposit**"), which may be refundable or non-refundable subject to the terms and

conditions of this Contract. Notwithstanding the foregoing, in the event that this Contract is terminated for any reason other than a default by Buyer, the Deposit shall be returned to Buyer without any further required action by Buyer or Seller.

2.2 The balance of the Purchase Price, subject to adjustments and prorations provided for herein, shall be paid by Buyer at the Closing (as hereinafter defined) by wire transfer of immediately available federal funds to such account(s) as Seller may designate in writing.

2.3 Subject to Seller's rights pursuant to Section 7.1.1 herein, Seller shall be responsible for Labor Protection costs, if any, occasioned by the transactions contemplated in this Contract. As used herein, "**Labor Protection**" shall mean the costs, if any, incurred by Seller as a result of the sale of the Property, which costs may be incurred pursuant to the provisions of a collective bargaining agreement bargained by Seller as a result of the sale of the Property or pursuant to a 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.

2.4 Provided that the allocation is not clearly unreasonable, Seller shall have the right to allocate the consideration received for all of the transactions contemplated herein among the various assets transferred to Buyer by Seller.

ARTICLE 3. Conveyance of Title.

3.1 The Deed.

3.1.1 The Land shall be conveyed by release deed (the "**Deed**," which may consist of one or more individual deeds as Buyer and Seller reasonably determine) in a form mutually agreed to by Buyer and Seller, which Deed shall define the Retained Freight Easement. Subject to the process described in this section and Sections 3.6, 3.7 and 3.9, title to the Property shall be free from all liens, encumbrances, and encroachments from or on the Land except the Permitted Exceptions (as hereinafter defined). The following matters, among others, shall specifically be deemed to be "**Permitted Exceptions**":

1. the Retained Freight Easement;
2. the Retained Right of Reclamation;
3. the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing (as hereinafter defined), subject to adjustment as herein provided;
4. local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and

zoning laws, ordinances and regulations, now or hereafter in effect relating to the Land;

5. all encumbrances, liens, survey matters, and other matters affecting or encumbering the Property which are deemed Permitted Exceptions as described in Sections 3.6 and 3.9 below.
6. Any liens and encumbrances in favor of the Commonwealth of Massachusetts, its municipalities, the United States of America or any agency, department or instrumentality of the foregoing.

3.1.2 The Deed shall describe the Land, 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 Registries of Deeds or filed in any Registry Districts of the Land Court in which the Deed is to be recorded or filed, 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, or, at the expense of Buyer, shall be revised so as to be consistent with customary conveyancing practice and Massachusetts law, as reasonably necessary to accurately describe the Land. Notwithstanding the foregoing, Seller may, at its election, convey the Land by the same or similar description as the description in the Deed conveying such land to the Grantee with such modifications as may be required to account for any additions or reductions in the land to be conveyed since the date of the deed to the Grantor. The Deed shall not convey and shall set forth and reserve to Seller an exclusive, retained and perpetual easement in gross (the "**Retained Freight Easement**") to provide rail freight service, both local and overhead, and which shall provide that Seller has the exclusive right to provide freight rail service (which right shall be perpetual, unless abandoned pursuant to applicable law by Seller in accordance with the terms of the Operating Agreement to be entered into by Seller and Buyer) and such other rights as may be mutually agreed upon over the Land. Buyer and Seller acknowledge that Seller's exclusive right to provide freight service on the Land does not preclude Buyer or Buyer's contractors from using all of the Land for the transport of railroad material, equipment, ballast, rails, and the like owned by Buyer or its contractor, but not common or contract carriage of freight. The Retained Freight Easement shall, by its terms, be assignable and transferable in whole, but not in part, provided, however, that (a) Seller shall have no right to split or share the Retained Freight Easement or any portion of the Property with any assignee or transferee, and (b) any assignment or transfer by Seller of the Retained Freight Easement to a third party shall be subject to the approval of Buyer, which approval shall not be withheld if such third party meets certain standards described in the Deed. The Deed shall also specify that certain of the Included Fixtures located on the Land at the time of conveyance, specifically any rail, switches, and tie plates subsequently removed by the Buyer in connection with construction of improvements on or along the Line and not reinstalled on the Land as part of such construction, shall be conveyed to the Buyer subject to a retained right of Seller to reclaim any such rail, switches, and tie plates (the "**Retained Right of**

Reclamation”); provided, however, that the Retained Right of Reclamation shall expire on the earlier to occur of: (i) the completion of construction of the Rehabilitation Project (as described on **Exhibit H** attached hereto), or (ii) the date that is twenty (20) years from the conveyance of the Land. In connection with the Retained Right of Reclamation, Buyer shall notify Seller of any rail, switches, and tie plates removed from the Land as part of construction and not reinstalled on the Land, and the Seller shall notify the Buyer as to which of such material Seller wishes to reclaim. Buyer shall, at no cost or expense to Seller, load such material into railcars or vehicles supplied by Seller, or stockpile such material at a mutually agreeable location for loading by Seller.

3.1.3 Buyer shall cause the Deed to be recorded in the public records of the counties in which the Land lies within thirty (30) days subsequent to the Closing Date. In the event that the description of the Land contained in the Deed and/or the Retained Freight Easement is deemed inadequate for recordation or filing purposes by any Registry of Deeds or any Registry District of the Land Court, as applicable, Buyer, with the reasonable cooperation of Seller but at Buyer’s cost and expense, and as promptly as is reasonably practicable, shall make such changes and revisions as may be required by said Registry of Deeds or Registry District of the Land Court such that the Deed will be accepted by said Registry of Deeds or Registry District of the Land Court for recording or filing. In the event that, after Closing, a metes and bounds description for the 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 or easements or confirmatory or corrective deeds and/or confirmatory or corrective easements, containing a description of the Land based on such metes and bounds description as may be acceptable to Buyer, Seller and to the Registries of Deeds or Registry Districts of the Land Court so involved. In the event that the preparation of such further or confirmatory deeds and/or easements requires any survey of the Land, or any portion thereof, or any search or examination of title with respect to the 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. The obligations of Buyer and Seller set forth in this Section 3.1.2 shall survive the Closing.

3.2 The non-exclusive rights to run passenger trains that originate or terminate in Massachusetts over certain rail lines in Connecticut that Seller either owns, leases, or otherwise has rights to operate passenger service over (the “**CT Passenger Rights**”), shall be defined in and conveyed by one or more instruments in a form to be agreed to by Buyer and Seller (the “**HRRC Passenger Operating Rights Transfer Document**”).

3.3 Subject to Article 6 hereof, the Included Fixtures and the Included Tangible Personal Property (as hereinafter defined) shall be conveyed free of all encumbrances (other than the Permitted Exceptions determined by the process described in Sections 3.1, 3.6, 3.7 and 3.9) by one or more bills of sale (the “**Bill of Sale**”) in a form to be agreed to by Buyer and Seller. As used in this Contract, the term “**Included Tangible Personal Property**” shall mean all of the Tangible Personal

Property that is located on the Land or used in connection with the Property as of the Closing Date, excepting therefrom any personal property that is or would be used solely in connection with activities related to Seller's operation of freight service over the Property and not in connection with rail service operations generally, including but not limited to the following items (to the extent such items are or would be used solely in connection with activities related to Seller's operation of freight service and not in connection with rail service operations generally): railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios and radio control equipment, furniture, tools, inventories, materials and supplies (collectively, "**Seller's Business Property**"). Any personal property located on the Land on the Closing Date other than Seller's Business Property shall be deemed to be Included Tangible Personal Property.

3.4 At the Closing, Seller shall assign to Buyer all of Seller's rights and interests in and to the Permits and the Intangibles and Buyer shall assume (i) all of Seller's obligations and liabilities first arising on and after the Closing Date and (ii) all of Seller's obligations (but not liabilities) arising before the Closing Date but continuing after the Closing Date (e.g., obligations maintain certain areas for the exercise of third party rights pursuant to easements that are among the Permitted Exceptions), under or connected with the Intangibles by an assignment and assumption agreement (the "**Assignment and Assumption Agreement**") in a form to be agreed to by Buyer and Seller. The conveyance or retention of any of the Permits or Intangibles shall carry with it the right to renew, modify, alter, amend and terminate the same in accordance with the terms of the instruments governing each of said Intangibles; provided, however, that Buyer's rights under the Permits and Intangibles shall be subject to the Retained Freight Easement; and provided further that neither Seller nor Buyer shall renew, modify, alter, or amend the Permits or Intangibles in such a way as to interfere with Buyer's reasonable utilization of the Property for its intended use for passenger rail service or Seller's reasonable utilization of the Property for its intended use for freight rail service.

3.5 In the event that any subdivision approval is necessary for the completion of the sale, transfer and conveyance contemplated by this Contract, said approval shall be obtained by Seller and Buyer jointly, but at Buyer's 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 the same with governmental body(ies), recordation thereof and legal fees, but excluding Seller's attorney's fees which shall be the sole responsibility of Seller.

3.6 Except as to any matters objected to by Buyer in a written notice to Seller on or before the seventh (7th) business day prior to the Due Diligence Expiration Date set forth in ARTICLE 5 hereof (a "**Buyer's Title Notice**"), Buyer shall be deemed to have accepted any matter affecting the Property and the state of title (and to have waived any objections thereto), and any such matter which is not objected to by Buyer on or before the seventh (7th) business day prior to the Due Diligence Expiration Date shall be a Permitted Exception, regardless of whether or not such matter is brought to the attention of the Buyer by the Seller. Seller shall have five (5) business

days following its receipt of a Buyer's Title Notice to notify Buyer by written notice as to whether or not Seller has elected to cure the matter or matters objected to by Buyer in such Buyer's Title Notice (a "**Seller's Title Notice**"). Failure of Seller to give the Seller's Title Notice shall be deemed an election by Seller not to cure such objection(s). If Seller elects or is deemed to have elected not to cure any matter objected to in such Buyer's Title Notice, Buyer shall elect within three (3) business days following the date of such election or deemed election either (i) to waive its objection or objections to the matter or matters not being cured by Seller, without reduction of the Purchase Price in which case such matter shall become a Permitted Exception; or (ii) to terminate this Contract by written notice to Seller, in which case the Deposit shall be returned to Buyer without any further required action by Buyer or Seller and neither party shall have any further liability or obligation to the other hereunder except for the obligations under Sections 5.4, Section 5.5, and Article 14 hereof, which shall remain in effect.

3.7 If Seller has elected to cure any matter, such matter shall be cured by Seller prior to Closing, and Buyer shall be given a reasonable opportunity prior to Closing to verify that such matter has in Buyer's sole discretion been cured to Buyer's satisfaction. Notwithstanding the foregoing or anything contained herein to the contrary, Seller shall cause to be released or bonded over any and all mortgages or encumbrances securing the payment of money which Seller has caused or permitted to be recorded against the Property (each, a "**Voluntary Monetary Encumbrance**").

3.8 Seller shall be entitled to use such portion of the Purchase Price as is necessary to pay off all such Voluntary Monetary Encumbrances and any title objection that Seller agrees to cure. Buyer hereby acknowledges that any instruments evidencing the release or discharge of any Voluntary Monetary Encumbrances may be recorded at or after the Closing in accordance with standard conveyancing practice.

3.9 From and after the date that is seven (7) business days prior to the Due Diligence Expiration Date set forth in Article 5 hereof, Seller will not voluntarily grant any mortgages, liens or other encumbrances affecting the Real Property; provided, however, that in the ordinary course of business Seller may enter into contracts pursuant to which Seller provides shipping services for customers and other freight carriers and/or side track agreements similar to those listed on Exhibit E-1 hereto. If a new encumbrance or survey matter affecting the Property arises prior to Closing which (i) encumbers or affects title to the Property, and (ii) as of the date set forth in the preceding sentence was not of record or did not encumber or affect title to the Property (each, a "**New Encumbrance**"), Buyer may, prior to Closing, notify Seller in writing of any such New Encumbrance. If Buyer does not object to any New Encumbrance as herein provided, such New Encumbrance shall be deemed a Permitted Exception. In the event that Buyer gives written notice of objection to any New Encumbrance, Seller shall have the same options to cure and Buyer shall have the same options to waive its objections or to terminate this Contract, as set forth above in Sections 3.6 and 3.7, in which event the Closing Date shall be extended for a period not to exceed forty-five (45) days in order to accommodate the process. If any New Encumbrance is a

Voluntary Monetary Encumbrance, Seller must satisfy the same on or before the Closing in the manner outlined in Section 3.7.

ARTICLE 4. Closing.

4.1 Unless extended pursuant to the terms of this Contract, the closing of the transactions contemplated hereunder (the "**Closing**") shall take place at 10 a.m. on the earlier to occur of: (i) sixty (60) days after the Due Diligence Expiration Date (as hereinafter defined), or (ii) fourteen (14) days after the date of Buyer's receipt of a determination of the STB, as described in Section 7.1.1 hereof (as such date may be extended pursuant to the terms hereof, the "**Closing Date**"); at the offices of Buyer, or at such other location in Massachusetts as Buyer and Seller shall designate by five (5) business days prior written notice. Notwithstanding the foregoing, at the election by Buyer or Seller by written notice at least thirty (30) days prior to Closing, the Closing may take place through an escrow established with an escrow agent selected by Buyer and reasonably acceptable to Seller. In the event that the condition set forth in Section 7.1.1 has not been satisfied prior to the Closing Date, Buyer and Seller shall execute and place in escrow the documents sets forth in Section 4.2 and Section 4.3, below, and shall instruct the escrow agent to release such documents upon the satisfaction of such condition.

4.2 At the Closing, Seller shall deliver the following documents:

4.2.1 The Deed, duly executed by Seller and acknowledged as required;

4.2.2 The HRRC Passenger Operating Rights Transfer Document, if applicable, duly executed by Seller and acknowledged as required;

4.2.3 The Assignment and Assumption Agreement duly executed by Seller;

4.2.4 The Bill(s) of Sale, duly executed by Seller;

4.2.5 Originals of all Permits and Intangibles requested by Buyer not less than thirty (30) days prior to the Closing Date, to the extent the same are in Seller's possession or control, any renewals thereof, all amendments thereto, guarantees thereof and all material files, records and correspondence relating thereto;

4.2.6 The Operating Agreement (as hereinafter defined) duly executed by Seller;

4.2.7 A certification of non-foreign status in the form attached hereto as EXHIBIT B, duly executed by Seller;

4.2.8 Evidence satisfactory to Buyer that all necessary approvals and/or consents by Seller and any constituent person of Seller otherwise required under Seller's organizational documents, have been delivered and such other evidence reasonably satisfactory to Buyer of Seller's good standing and authority and the

authority of the signatory on behalf of Seller to convey the Property pursuant to this Contract;

4.2.9 A certificate duly executed by Seller restating as of the Closing Date all of Seller's representations and warranties set forth in Article 10 and Article 14;

4.2.10 An original of a closing statement setting forth the Purchase Price and the closing adjustments and prorations in form and substance satisfactory to Buyer and Seller (the "**Closing Statement**"), duly executed by Seller;

4.2.11 An original 1099 B Certification, duly executed by Seller;

4.2.12 A Designation of Person Responsible for Tax Reporting under Internal Revenue Code Section 6045 in the form of EXHIBIT C attached hereto designating Seller as the party responsible for making the returns required under Internal Revenue Code Section 6045;

4.2.13 A disclosure statement submitted in compliance with the requirements of Mass. Gen. Laws, Chapter 7C, Section 38 in the form attached hereto as EXHIBIT D;

4.2.14 Keys to all locks at the Property; and

4.2.15 All other documents reasonably required to effectuate this Contract and the transactions contemplated hereby.

4.3 At the Closing, Buyer shall deliver, or cause to be delivered, the following:

4.3.1 The Purchase Price as adjusted in accordance with the terms hereof;

4.3.2 The HRRC Passenger Operating Rights Transfer Document, if applicable, duly executed by Buyer and acknowledged as required;

4.3.3 The Assignment and Assumption Agreement duly executed by Buyer,

4.3.4 The Operating Agreement duly executed by Buyer;

4.3.5 The Deed(s) duly executed and acknowledged by the Buyer if requested by the Seller.

4.3.6 A duplicate original of the Closing Statement, duly executed by Buyer;

4.3.7 A certificate reasonably satisfactory to the Seller which attests to the legal authority of the individuals executing, on behalf of the Buyer, any of the documents or instruments required hereby, to act on behalf of MassDOT and to obligate MassDOT with respect to the matters contained in any such documents or instruments.

4.3.8 A certificate duly executed by Buyer restating as of the Closing Date all of Buyer's representations and warranties contained herein; and

4.3.9 All other documents reasonably required to effectuate this Contract and the transactions contemplated hereby.

ARTICLE 5. Due Diligence Investigations by Buyer.

5.1 Within fourteen (14) days of execution of this Contract, Seller shall provide the following documents and information to Buyer:

5.1.1 copies of applicable Valuation Maps, track charts, surveys, plans and specifications for the Property in Seller's possession or control;

5.1.2 all title information in Seller's possession or control pertaining to each parcel in the Property;

5.1.3 Seller shall use reasonable diligence to review its records to identify, locate and provide to Buyer copies of all Permits and Intangibles, any renewals thereof, all amendments thereto, guarantees thereof and all material files, records and correspondence relating thereto of which Seller has possession, control, or actual knowledge together with reasonable access and which are materially related to the physical and environmental condition of all or any portion of the Property;

5.1.4 without representation, and solely for informational purposes, Seller shall use reasonable diligence to review its records to identify, locate and provide to Buyer copies of all reports and information of which Seller has actual possession, control, or actual knowledge together with reasonable access and which are materially related to the physical and environmental condition of all or any portion of the Property. Seller shall use reasonable diligence to review its records to identify and locate and to provide to Buyer such documents, including but not limited to the most recent track maintenance reports, bridge reports, culvert reports, and similar records; and

5.1.5 copies of real estate tax bills and personal property bills relating to the Property for the current tax period in Seller's possession or control.

5.2 Seller acknowledges that Buyer intends to conduct an investigation of the Property, which may include examination of all structural and mechanical aspects thereof, review of any and all documentation with respect to the Property, and examination of the title to the Land and the compliance of the Property with applicable zoning and laws, regulations, by-laws, ordinances, and the like. During the Due

Diligence Period, Buyer may conduct an environmental assessment to determine the presence or absence of Hazardous Materials (hereinafter defined), and to determine the compliance of the Property with all applicable laws, rules, codes and regulations. Notwithstanding the generality of the foregoing, Buyer shall not conduct any sub-surface boring or testing, except with the prior written consent of Seller, and only if the results of such environmental assessment indicate that subsurface boring is reasonably necessary to assess the environmental condition of the Property. In the event that Buyer requests Seller's consent to conduct sub-surface boring or testing, and Seller denies such consent, Seller shall have the right to terminate this Agreement pursuant to Section 5.3 below. Buyer shall comply with Seller's safety rules and requirements at all times when on the Property. Upon request by Seller, Buyer shall provide to Seller copies of any reports developed during the Due Diligence Period.

5.3 Notwithstanding anything to the contrary contained in this Contract, Seller acknowledges that Buyer shall have the right in its sole and absolute discretion, for any reason whatsoever or for no reason, to terminate this Contract by giving notice of such election to Seller on any day prior to and including the date of November 14, 2014 (until 4:00 P.M.) (as the same may be extended pursuant to this Section 5.3, the "**Due Diligence Expiration Date**"; the period from the date of this Contract to the Due Diligence Expiration Date, the "**Due Diligence Period**"). Notwithstanding the foregoing, Buyer may, by written notice to Seller, toll the Due Diligence Expiration Date for and to the extent that Buyer's due diligence investigations are made impracticable due to winter weather conditions; provided, however, that such tolling shall not exceed the lesser of (a) the actual number of days that Buyer's due diligence investigations are made impracticable due to winter weather conditions or (b) seven (7) days. The tolling of the Due Diligence Expiration shall apply only to activities related to the physical condition of the property and not to due diligence relating to public records and other documents. In the event that Buyer provides such written notice to Seller tolling the Due Diligence Expiration Date, Buyer shall, upon reasonably determining the date that weather conditions allow the resumption of due diligence investigations, send a subsequent written notice to Seller specifying the date of the resumption of the Due Diligence Period. Buyer may by written notice to Seller establish an earlier Due Diligence Expiration Date if it completes its due diligence investigation prior to the Due Diligence Expiration Date. In the event that Buyer terminates this contract pursuant to this Section 5.3 on or before the Due Diligence Expiration Date, the Deposit shall be returned to Buyer without any further required action by Buyer or Seller, and neither party shall have any further liability or obligation to the other hereunder except the obligations under Section 5.4, Section 5.5 and Article 14. In the absence of such written notice, Buyer's right to terminate this Contract in accordance with this Section 5.3 shall no longer be applicable, and this Contract shall continue in full force and effect.

5.4 Buyer shall have the right to interview governmental officials and tenants (if any) with respect to the Property. Seller shall make the Property available at reasonable times to Buyer and its agents, consultants and engineers for such inspections and tests as Buyer deems appropriate, including for Buyer's engineering inspection(s), hazardous materials inspections (to the extent permitted pursuant to

Section 5.2 above), site evaluations, and such other inspections and tests as Buyer deems appropriate. In connection with its right to enter upon the Property set forth in this Section 5.4, Buyer hereby agrees (i) not to interfere unreasonably with Seller's operation of the Property, (ii) to restore the Property to its prior condition after the performance of any such inspections, (iii) to follow Seller's standard safety rules and requirements at all times; and (iv) to provide reasonable advance notice of its desire to be on the Property.

5.5 Whether or not the Closing occurs, Buyer hereby releases all rights or claims of Buyer against Seller for loss, cost or damage to the Property to the extent arising out of actions taken by Buyer or its agents, engineers or consultants at the Property between the date of execution of this Contract and the Closing or termination of this Contract (the "**Entry Period**"), including the release by Buyer of Hazardous Materials on the Property, but expressly excluding claims, loss, cost or damage arising out of the discovery of pre-existing conditions. In the event that the Closing occurs, and not otherwise, Buyer releases all rights or claims of Buyer against Seller relating to pre-existing conditions or for any costs of remediation of such conditions incurred by Buyer. Buyer agrees to release and indemnify Seller against any claims of bodily injury or property damage to the extent caused by the negligence or willful misconduct of Buyer or its agents, engineers or consultants at the Property during the Entry Period. In the event that the Closing does not occur, Buyer agrees to pay to Seller any costs incurred to repair any damage to the Property as result of Buyer's use or inspection of the Property during the Entry Period and regardless of any fault, failure or negligence of Seller or third parties which may have contributed to any loss, subject to the terms set forth in the following sentence. Notwithstanding the foregoing, Buyer does not release, and shall not be obligated to cause its contractors to release, Claims against Seller that arise because of Seller's gross negligence or willful misconduct (it being agreed that it shall not be "negligent" for Seller to allow access to the Premises in its "as is" condition). The obligations of Buyer set forth in this Section 5.5 shall survive the Closing.

Prior to entry on the Land pursuant to this Article 5, Buyer shall cause its consultant(s) to provide Seller with a certificate or certificates of insurance covering all days that Buyer and Buyer's consultants and contractors will be on the Land before the Closing Date, evidencing the insurance of the activities permitted hereunder, with companies that are reasonably acceptable to Seller as stated below, in which Buyer and others hereinafter specified are additional insureds as their interests may appear and which provides coverage as stated below.

- (a) Commercial General Liability Insurance
Insuring Buyer, Seller, the Land and all activities allowed hereunder as well as Buyer's indemnification obligations contained in this ARTICLE 5 with minimum liability coverage for personal injury, bodily injury and property damage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate. Such insurance shall be written on an occurrence basis as

opposed to a claims-made basis. This policy shall name Seller as an additional insured.

- (b) Automobile Liability Insurance
Automobile liability insurance shall be provided by Buyer or its consultant with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Buyer and/or its consultants and contractors that are used in the activities permitted hereunder.
- (c) Worker's Compensation Insurance
Worker's Compensation Insurance insuring all persons employed by Buyer or its consultant in connection with any work done on or about the Land with respect to which claims for death or bodily injury could be asserted against Buyer or its consultant with limits of liability of not less than those required by Chapter 152 of the General Laws of Massachusetts, as amended. The policy shall contain a waiver of subrogation clause in favor of Seller. Each of Buyer's contractors and consultants shall have similar policies covering their employees.
- (d) Railroad Protective Insurance
Railroad Protective Insurance covering all work performed under this Contract in the amount of not less than \$5,000,000 per occurrence, \$10,000,000 aggregate combined bodily injury and property damage. This policy shall name Seller as an additional insured.

Seller acknowledges and agrees that Buyer is self-insured and is not required to procure or maintain insurance of any kind hereunder for payment of damages to Seller or any other party.

ARTICLE 6. AS IS, WHERE IS.

Except for the representations and warranties contained in Article 10 and Article 14 herein, the Property is being acquired by Buyer in an "AS IS", "WHERE IS" condition, "WITH ALL DEFECTS" and "WITH ALL FAULTS". Buyer acknowledges that it will be acquiring the Property on the basis of its own investigations. Except as expressly set forth in Article 10 and Article 14 of this Contract, no representations or warranties, whether express, implied or statutory, have been made or are made and no responsibility has been or is assumed by Seller or by any officer, person, firm, agent or representative acting or purporting to act on behalf of the Seller as to condition or repair of the Property or the value, expense of operation, or income potential thereof, the reliability of any information furnished to Buyer or as to any other fact or condition which has or might affect the Property or the condition, repair, value, expense of operation or income potential of the Property or any portion thereof.

The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Contract and the Exhibits hereto annexed, which alone fully and completely express their agreement, and that this Contract has been entered into after full investigation, or with the parties satisfied with the opportunity

afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is expressly set forth in this Contract. Notwithstanding the foregoing sentence, Buyer and Seller acknowledge that this Contract contemplates additional documents to be negotiated, executed, and delivered on or prior to the Closing Date in accordance with the terms of this Contract, some of which are express conditions precedent to the obligations of each party to complete the transactions contemplated hereby, as more particularly set forth in Article 7 hereof. Buyer acknowledges that Seller has given Buyer the opportunity to inspect fully the Property and investigate all matters relevant thereto, and, to rely solely upon the results of Buyer's own inspections or other information obtained or otherwise available to Buyer, provided that the foregoing shall not diminish Buyer's rights with respect to any representations or warranties expressly made by Seller in this Contract. The provisions hereof shall survive Closing.

ARTICLE 7. Conditions to Closing; Extensions to Satisfy.

7.1 Mutual Contingencies. Without limiting any of the other conditions to Buyer's or Seller's obligations to close set forth in this Contract, the obligations of Buyer and Seller under this Contract are subject to the satisfaction at or prior to the time of Closing of each of the following conditions:

7.1.1 Notwithstanding anything to the contrary herein, neither Seller nor Buyer shall be obligated to close unless and until Buyer has either obtained a determination from the Surface Transportation Board ("STB") that, pursuant to the so-called "State of Maine" precedent, no STB approvals or exemptions from the need to receive such approvals are necessary for the consummation of the transaction covered by this Contract and the transactions contemplated hereby and hereunder or until Buyer has obtained any necessary approvals or exemptions necessary therefore. Buyer agrees that Buyer will promptly, on Buyer's and Seller's behalf, at Buyer's sole cost and expense, prepare and (after providing and receiving comments and consent from Seller for the same) file with the STB, all applications, petitions, requests, notices or other necessary filings, in order to seek such STB determination for the transaction covered by this Contract and the Operating Agreement. In addition, it is a condition to Seller's and Buyer's obligation to close that any STB order or other action not contain or be subject to any condition that Seller or Buyer determine to be unacceptable, including but not limited to the imposition of labor protective conditions. Any conditions imposed by the STB shall be presumed to be acceptable unless Seller or Buyer (as the case may be) gives the other notice within fifteen (15) business days of the service date of the STB order or other written action that the condition is unacceptable, and the reason therefor. If the STB order or other action imposes labor protective or other conditions or either party does give such notice of unacceptability, then (i) the provisions of this Contract concerning the time for Closing shall not be effective, (ii) the Deposit shall be returned to Buyer, and (iii) this Contract shall be terminated and the Parties shall have no further liability to each other, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Contract. Notwithstanding anything to the contrary herein, neither Seller nor Buyer shall be obligated to close unless and until Seller has filed a verified notice of exemption under 49 C.F.R. §§ 1180.2(d)(3) for an

intra-corporate family transaction relating to the 2000 merger of Housatonic Track Company into Housatonic Railroad Company, Inc., and the exemption shall have become effective or the STB shall have dismissed it as unnecessary.

7.1.2 Buyer shall provide notification to the Federal Railroad Administration pursuant to 49 C.F.R. § 213.5(c), if applicable, at least thirty (30) days prior to the Closing Date;

7.1.3 Buyer and Seller shall mutually agree on the Railroad Line Plans to be attached hereto as EXHIBIT A-1, and the documents to be delivered at Closing, including, without limitation, the form of Deed and the form of Bill of Sale, such agreement not to be unreasonably withheld, conditioned or delayed;

7.1.4 Buyer and Seller shall mutually agree on an operating agreement with respect Seller's freight railroad operations on the Property on and after the Closing Date in a form reasonably acceptable to both Buyer and Seller (the "**Operating Agreement**"). Buyer and Seller agree that the Operating Agreement shall be consistent with the Retained Freight Easement, shall set forth the respective rights and obligations of Seller and Buyer with respect to the train operation, construction, maintenance, management and dispatching services on the Berkshire Line, and the respective responsibilities for the costs of such services, which respective rights and responsibilities will depend on whether the Land is used for freight and/or passenger rail and/or commuter rail service from time to time.

7.1.5 Buyer and Seller agree that Buyer will rehabilitate the Property to facilitate the continued freight rail service over the Property and to facilitate the commencement of passenger service operated by Buyer or its contractor on the Property. The project and the scope of work and performance schedule described on Exhibit H, attached hereto shall be referred to herein as the "**Rehabilitation Project**." In connection with such Rehabilitation Project, Buyer agrees to engage Seller to the extent consistent with, and to the extent allowed by, state and, if applicable, federal procurement laws for the construction of the first phase of the Rehabilitation Project, as further described on Exhibit H (the "**Phase 1 Rehabilitation Project**"). If Buyer engages Seller to perform such Phase 1 Rehabilitation Project construction work, the Parties shall mutually agree on a force account-based construction agreement setting forth their respective obligations. Notwithstanding the foregoing, Seller shall not be engaged to perform any items of work that Seller is not reasonably capable of performing, either directly or through contractors, in a workmanlike and efficient manner. Buyer shall be responsible for securing all necessary permits and approvals for the construction of the Phase 1 Rehabilitation Project and Seller shall cooperate with permitting efforts and shall comply with all of the terms of any permit obtained.

7.2 Failure of Mutual Contingency. If any condition to Closing set forth in Section 7.1 is not satisfied at Closing (as the same may be extended), other than as a result of a default by the Buyer or Seller (the remedies for which are provided in ARTICLE 8 below), (a) either Buyer or Seller may terminate this Contract by

delivering written notice to the other party on the Closing Date, whereupon the Deposit shall be returned to Buyer and all obligations of the parties under this Contract shall terminate (other than any party's obligations under Section 5.4, Section 5.5 and ARTICLE 14 hereof, which shall remain in effect), or (b) Buyer and Seller may elect to close, notwithstanding the non-satisfaction of such condition, in which event each party shall be deemed to have waived any such condition.

7.3 Buyer's Conditions. Without limiting any of the other conditions to Buyer's obligations to close set forth in this Contract, the obligations of Buyer under this Contract are subject to the satisfaction at the time of Closing of each of the following conditions (any one of which may be waived in whole or in part by Buyer at or prior to Closing):

7.3.1 All of the representations and warranties by Seller set forth in Article 10 or Article 14 of this Contract shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing;

7.3.2 Subject to the provisions of ARTICLE 9 hereof, the Property shall be in substantially the same condition as at the Due Diligence Expiration Date, reasonable use and wear excepted;

7.3.3 Seller shall have performed, observed, and complied in all material respects with all covenants and agreements required by this Contract to be performed by Seller at or prior to Closing;

7.3.4 There shall be no outstanding notices of violation with respect to the Property from any governmental authorities; and

7.3.5 There shall have been no material adverse change, in Buyer's reasonable determination, in the information or items received and approved by Buyer during the Due Diligence Period.

7.4 Failure of Buyer's Condition; Extension of Closing Date. If on or before the Closing Date any condition to Buyer's obligation to close set forth in Section 7.3 has not been satisfied, Buyer shall have the right to either (a) terminate this Contract by delivering written notice to Seller on the Closing Date, whereupon the Deposit shall be returned to Buyer and all obligations of the parties under this Contract shall terminate (other than any party's obligations under Section 5.4, Section 5.5 and ARTICLE 14 hereof, which shall remain in effect), (b) direct the Seller to use reasonable and good faith efforts to satisfy any such unsatisfied condition and, if Buyer so directs, the Closing Date shall be extended by written notice from Buyer to Seller for a period of up to thirty (30) days as specified in said notice and Seller shall thereafter use its good faith efforts to cure any such failure or default, or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event Buyer shall be deemed to have waived any such condition, or (d) elect to close, notwithstanding the non-satisfaction of such condition, in which event Buyer shall be

deemed to have waived any such condition. If Buyer elects to extend the Closing Date pursuant to clause (b) of the immediately preceding sentence and any condition to Buyer's obligation to close set forth in Section 7.3 remains unsatisfied as of such extended Closing Date, then Buyer shall have the right to terminate this Contract by delivering written notice to Seller on the Closing Date, whereupon the Deposit shall be returned and all obligations of the parties under this Contract shall terminate (other than any party's obligations under Section 5.4, Section 5.5 and ARTICLE 14 hereof, which shall remain in effect). Notwithstanding any provision of this Contract to the contrary, the failure of Seller to satisfy any condition to Buyer's obligation to close set forth in Sections 7.3.1, 7.3.2, 7.3.4, or 7.3.5 shall not constitute a breach or default by Seller hereunder.

7.5 Seller's Conditions. Without limiting any of the other conditions to Seller's obligations to close set forth in this Contract, the obligations of Seller under this Contract are subject to the satisfaction at the time of Closing of each of the following conditions (any one of which may be waived in whole or in part by Seller at or prior to Closing):

7.5.1 All of the representations and warranties by Buyer set forth in this Contract or any Exhibit attached hereto shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing; and

7.5.2 Buyer shall have performed, observed, and complied in all material respects with all covenants and agreements required by this Contract to be performed by Buyer at or prior to Closing.

7.6 Failure of Seller's Condition. If on or before the Closing Date any condition to Seller's obligations to close set forth in Section 7.5 has not been satisfied, Seller shall have the right to either (a) terminate this Contract by delivering written notice to Buyer on the Closing Date, whereupon Deposit shall be retained by Seller and all obligations of the parties under this Contract shall terminate (other than any party's obligations under Section 5.4, Section 5.5 and ARTICLE 14 hereof, which shall remain in effect) or (b) elect to close, notwithstanding the non-satisfaction of such condition, in which event Seller shall be deemed to have waived any such condition. Notwithstanding any provision of this Contract to the contrary, the failure of Buyer to satisfy the condition to Seller's obligation to close set forth in Sections 7.5.1 shall not constitute a breach or default by Buyer hereunder.

ARTICLE 8. Default.

8.1 Seller Default. In the event of a material breach or default by Seller of any of the representations or warranties described in Article 10 or Article 14 herein, or in the certificate to be delivered by Seller pursuant to Section 4.2.9 hereof, or any material breach or default of Seller of any covenants or obligations hereunder on or before the Closing Date, Buyer's sole and exclusive remedy shall be the right to elect any one of the following rights and remedies:

8.1.1 Buyer shall have the right to terminate this Contract by notice to Seller, in which event (a) the Deposit shall be returned to Buyer, (b) because it would be extremely impracticable and difficult to reasonably estimate the damage, harm, and the total net detriment that Buyer would suffer in the event of Seller's failure to duly complete the acquisition hereunder, Seller shall pay to Buyer the sum of One Hundred Thousand Dollars (\$100,000.00) and such deemed payment shall be Buyer's sole and exclusive remedy for damages arising from Seller's failure to complete the acquisition in accordance with the terms hereof, and Buyer shall have no further recourse or remedy at law or in equity for any such breach by Seller except as may otherwise be provided herein; and (c) thereupon all obligations of the parties under this Contract shall terminate (other than any Party's obligations under Sections 5.4, Section 5.5, and ARTICLE 14 hereof, which shall remain in effect). Notwithstanding the foregoing, if Buyer knew or learned of a breach or default by Seller prior to the Due Diligence Expiration Date, the remedy of Buyer shall be limited to a return of the Seller's Deposit.

8.1.2 Buyer shall have the right to waive the default or failure of conditions and proceed to Closing in accordance with the provisions of this Contract.

8.2 Buyer Default. In the event of a material breach or default by Buyer of any of its representations or warranties described in Article 14 or Article 15 herein, or in the certificate to be delivered by Buyer pursuant to Section 4.3.8 hereof, or any material breach or default by Buyer of any of its covenants or obligations hereunder, it would be extremely impracticable and difficult to estimate the damage and harm which Seller would suffer, and because a reasonable estimate of the total net detriment that Seller would suffer in the event of Buyer's failure to duly complete the acquisition hereunder is the amount of the Deposit, and such deemed payment shall be Seller's sole and exclusive remedy for damages arising from Buyer's failure to complete the acquisition in accordance with the terms hereof, and Seller shall have no further recourse or remedy at law or in equity for any such material breach by Buyer hereunder; provided, however that, notwithstanding anything herein to the contrary, in addition to such deemed payment, Seller shall also have the right to enforce Buyer's obligations under Section 5.4, Section 5.5 and ARTICLE 14 hereof.

8.3 No Indirect Damages. Under no circumstances shall Seller or Buyer have the right to any indirect, consequential or punitive damages, "overhead" or similar charges, or any damages relating to lost profits or lost opportunities with respect to any such default by the other party hereto, it being understood that Seller and Buyer hereby waive their right to collect all other damages and all of their rights and remedies on account of a default hereunder by the other party hereto, and agree that the remedies described in this ARTICLE 8 shall be their sole and exclusive remedies in the event of any such default.

ARTICLE 9. Damage or Destruction.

9.1 The risk of loss, damage or destruction to the Property by fire or other casualty or the taking of all or part of the Property by condemnation or eminent

domain or by an agreement in lieu thereof until the Closing is assumed by Seller, provided, however, that Seller shall have no risk under this Section 9.1 with respect to any condemnation or eminent domain action taken by Buyer.

9.2 In the event of any damage or destruction of the Property of a type which, in Buyer's reasonable determination, will not materially impair Buyer's intended use of the Property for passenger rail service and that is fully covered by insurance subject to commercially reasonable insurance deductibles, then Buyer shall (unless such damage has been repaired by Seller in a good and workmanlike manner prior to Closing), accept title to the Property in its destroyed or damaged condition. Buyer shall pay the full Purchase Price at Closing without reduction, and Seller shall pay over or assign to Buyer all rights to any proceeds of insurance payable with respect to such destruction or damage (less amounts reasonably expended by Seller in repairing the damage prior to the Closing Date) and Buyer shall have a credit against the Purchase Price in the amount of any deductible.

9.3 In the event of any damage or destruction of the Property of a type which, in Buyer's reasonable determination, materially impairs Buyer's intended use of the Property for passenger service or, in Buyer's reasonable determination, does not materially impair Buyer's intended use of the Property for such service but is not fully covered by insurance subject to commercially reasonable insurance deductibles, then at Buyer's election, unless Seller has previously repaired or restored the Property to its former condition, (a) Buyer may terminate this Contract by delivering written notice to Seller, in which case the Deposit shall be returned to Buyer, and all other obligations of the parties hereto shall cease except those set forth in Section 5.4, Section 5.5, and ARTICLE 14 hereof, and this Contract shall be void and without recourse to the parties hereto or (b) Buyer may accept the Property in its damaged or partially repaired condition in which case Seller shall pay over or assign to Buyer all rights to any proceeds of insurance payable with respect to such destruction or damage (less amounts reasonably expended by Seller in repairing the damage prior to the Closing Date) and or (c) Buyer may accept the Property in its damaged condition without reduction in purchase price. Seller shall promptly notify Buyer of any material damage or destruction to the Property or any notice received by it or information or awareness acquired by it regarding the threatening of or commencement of condemnation or similar proceedings.

9.4 Seller shall promptly notify Buyer of any material damage or destruction to the Property or any notice received by it or information or awareness acquired by it regarding the threatening of or commencement of condemnation or similar proceedings.

ARTICLE 10. Representations and Warranties of Seller.

10.1 In order to induce Buyer to enter into this Contract and to consummate the purchase of the Property, Seller hereby represents and warrants to Buyer as of the date of this Contract as follows:

10.1.1 Authority. MRC is, and on the Closing Date shall be, a Connecticut corporation duly and validly organized and existing and governed by the laws of the State of Connecticut and registered to do business in the Commonwealth of Massachusetts. HRRC is, and on the Closing Date shall be, a railroad corporation specially chartered concurrently by the State of Connecticut and the Commonwealth of Massachusetts, duly and validly organized and existing and governed by the laws of the Commonwealth of Massachusetts. This Contract and all documents executed by Seller that are to be delivered to Buyer at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by Seller, and all consents required under Seller's organizational documents or by law will have been obtained. Except as otherwise specifically provided herein, to the best of Seller's actual knowledge all necessary third party or governmental consents and approvals to the transactions contemplated hereby have been obtained. This Contract and such documents are, or at the Closing will be, legal, valid, and binding obligations of Buyer enforceable in accordance with their terms, and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

10.1.2 Condemnation. There are no condemnation, zoning, environmental or other land use regulation proceedings, either instituted or to Seller's knowledge planned to be instituted, that would materially and detrimentally affect the use, occupancy and operation of the Property for Buyer's intended purpose as a passenger rail line, or the value of the Property.

10.1.3 Intangibles and Permits. Seller has used reasonable diligence to review its records to identify, locate and provide to Buyer true and correct copies of all Permits and Intangibles of which Seller has possession, control, or actual knowledge together with reasonable access and which are materially related to the physical and environmental condition of all or any portion of the Property, and all extensions, renewals and amendments thereto; and, unless otherwise so designated, to the best of Seller's actual knowledge the Intangibles and Permits are in full force and effect. To the best of Seller's actual knowledge, the list of Intangibles and Permits set forth on EXHIBIT E is a true, correct, and complete in all respects.

10.1.4 Abandonment. None of the Property has been abandoned or discontinued, and Seller has not filed a request for any such abandonment or discontinuance with the STB or otherwise.

10.1.5 Violations of Law. To the best of Seller's actual knowledge, the Property is not in violation of any law, ordinance, rule or regulation applicable to the Property to the extent that such violation would materially and detrimentally affect the use, occupancy and operation of the Property for Buyer's intended purpose as a passenger rail line, or the value of the Property. To the best of Seller's actual knowledge, all Permits required for the ownership, use or operation of the Property have been duly and validly issued by the appropriate authority and are in full force and effect. Seller has not received any written notice of proceedings relating to the

revocation or modification of any such Permits which would have an adverse effect on the Property.

10.1.6 Special Assessments. There are no special assessments filed, pending or, to the best of Seller's actual knowledge, proposed, against the Property or any portion thereof, including, without limitation, any street improvement or special district assessments.

10.1.7 Bankruptcy. Seller has not filed any petition, nor has been the party against whom a petition has been filed, in relation to any bankruptcy, including, requests 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.

10.1.8 Environmental Matters. To the best of Seller's actual knowledge, Seller has delivered to Buyer complete copies of all reports prepared for Seller or in Seller's possession or control related to Hazardous Materials, asbestos, lead paint, radon, lead in drinking water, mold, oil, urea-formaldehyde and other similar substances, a list of which is attached hereto as EXHIBIT F and incorporated herein by reference (the "**Environmental Reports**"). For purposes of this paragraph, the term "**Environmental Laws**" shall mean all existing applicable federal, state, or local laws, rules or regulations and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, relating to the protection of human health, safety and the environment; and the term "**Hazardous Materials**" shall include any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous, toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal life or the environment or which are defined, determined or identified as such in any Environmental Laws or which are regulated or subject to clean-up authority under any Environmental Laws, including, but not limited to materials defined as (A) "hazardous waste" under the Federal Resource Conservation and Recovery Act; (B) "hazardous substances" under the Federal Comprehensive Environmental Response, Compensation and Liability Act, (C) "pollutants" under the Federal Clean Water Act; (D) "toxic substances" under the Toxic Substances Control Act; and (E) "oil or hazardous materials" under state law, including, without limitation, M.G.L. ch. 21E and the Massachusetts Contingency Plan (310 C.M.R. 40.00). Notwithstanding the foregoing, Buyer shall not in any way rely upon any statement or representation contained in the Environmental Reports, and in conducting this transaction, Buyer shall rely solely upon the results of Buyer's own inspections or other information obtained or otherwise available to Buyer. Seller expressly makes no representations or warranties as to the completeness, accuracy or any other aspect of the Environmental Reports.

10.1.9 Litigation. Except as set forth on EXHIBIT G attached hereto and incorporated herein by reference, there is not now pending nor, to Seller's actual knowledge, has there been threatened any legal action, suit or proceeding against Seller or the Property before any federal or state court, commission, regulatory body,

administrative agency or other governmental body, domestic or foreign that would affect Seller's ability to perform under this Contract.

10.1.10 No Employees. Except as may be detailed in the Operating Agreement, Buyer shall have no obligation, liability or responsibility with respect to charges, salaries, vacation pay, fringe benefits or like items subsequent to Closing, nor with respect to any management or employment agreements with respect to the Property.

10.1.11 Section 1445. Seller is not a "foreign person" as defined by the Internal Revenue Code (the "Code"), Section 1445, Seller's Taxpayer or Employer I.D. Number will be provided at Closing, and Seller will execute and deliver to Buyer at Closing an affidavit or certification in compliance with Code Section 1445.

10.1.12 Patriot Act/Executive Order 13224. Seller is not in violation of any legal requirements, now in effect, relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, including, without limitation, Executive Order 13224 (as defined below) and the Patriot Act (as defined below). Seller (i) is not (a) a Blocked Person (as defined below) or (b) owned, in whole or in part, directly or indirectly, by any Blocked Person; and (ii) does not (a) conduct any business or engage in any transaction or dealing with a Blocked Person or (b) deal in, or otherwise engage in, any transaction or dealing relating to any property, or interests in property, blocked pursuant to Executive Order 13224.

As used herein, (i) "Blocked Person" is defined as any individuals or entities which (a) are owned or controlled by, or acting on behalf of, the governments of countries currently listed under section 6(j) of the Export Administration Act as supporting international terrorism, or (b) are owned or controlled by, are acting on behalf of, or are associated with international terrorism, as indicated by their listing on the Treasury Department's Specially Designated Nationals and Blocked Persons, as updated from time to time; (ii) "Executive Order 13224" is defined as Executive Order Number 13224, "Blocking Property Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism," 66 Fed. Reg. 49079 (Sept. 23, 2001); and (iii) "Patriot Act" is defined as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

10.1.13 Cross-Representations. Seller further represents and warrants that any provision specifically identified as a representation or warranty in the Deed, the HRRC Passenger Operating Rights Transfer Document, if any, the Assignment and Assumption Agreement, the Bill(s) of Sale, the Operating Agreement, and any specifically identified representation or warranty contained in an agreement entered into at Closing by Buyer and Seller pursuant to Section 4.2 and Section 4.3 is true and correct, to the best of Seller's actual knowledge.

10.2 Subject to the provisions in Section 10.1.8 and Article 8, Seller shall indemnify and defend Buyer against and hold Buyer harmless from any and all claims related to losses, costs, damages, liabilities and expenses (including, without limitation, reasonable counsel fees) arising out of any breach by Seller of its representations and warranties described in this Article 10 or in Article 14 herein.

10.3 The representations and warranties of Seller contained herein shall survive the Closing and delivery of the Deed for a period of five (5) years after Closing, and with respect to any written claim made within such period, until final unappealable adjudication or settlement thereof.

ARTICLE 11. Seller's Covenants Prior to Closing. Between the date hereof and the Closing:

11.1 Operation of Property. Subject to the provisions of ARTICLE 11 hereof, Seller shall operate the Property or cause the Property to be operated in the ordinary course of business and consistent with past procedures heretofore followed by it in connection with such operation, including, without limitation, maintaining Seller's existing insurance coverage with respect to the Property provided, however, that Seller shall not cause a change to all or any portion of the Property sufficient to interfere with Buyer's ability to provide passenger rail service on the Land.

11.2 Removal of Fixtures and Personal Property. Seller shall not permit the removal of any item of the Included Fixtures or the Included Tangible Personal Property, from the Property unless the same is obsolete and is replaced by tangible personal property of equal or greater utility and value.

11.3 Contracts and Intangibles. Except as otherwise permitted by Section 3.9 hereof, Seller shall not (i) enter into any contract, agreement, lease, license, occupancy agreement relating to the ownership, use or operation of the Property, (ii) amend, modify or cancel any of the Intangibles (or any guaranty thereof) or (iii) grant any consents under, or waive any provisions of, any of the Intangibles, in each case without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 12. Apportionment of Taxes and Other Charges.

12.1 Prorations. All normal and customarily proratable items, including without limitation, real estate and personal property taxes and assessments, utility bills (except as hereinafter provided), collected rents and other income received in connection with any Intangibles, and Operating Contract payments (under Operating Contracts assumed by Buyer), shall be prorated as of the Closing Date, Seller being charged and credited for all of the same relating to the period up to the Closing Date and Buyer being charged and credited for all of the same relating to the period on and after the Closing Date. If the amount of any such item is not known at the time of the delivery of the Deed, such item shall be apportioned on the basis of the comparable period of the prior year with a reapportionment within ninety (90) days of the Closing

Date or as soon thereafter as the amount of the item is actually determined. All street, drainage, betterment and like assessments (or portions thereof) assessed against the Property prior to Closing relating to periods prior to Closing, shall be paid by Seller at Closing.

12.2 Utilities. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration shall be made at the Closing with respect to utility bills. Otherwise a proration shall be made based upon the parties' reasonable good faith estimate and a readjustment made within thirty (30) days after Closing or such later date as shall be necessary so that such readjustment may be based upon actual bills for such utilities. Seller shall be entitled to receive a return of all deposits presently in effect with the utility providers, and Buyer shall be obligated to make its own arrangements for deposits with the utility providers. The costs of charges for utilities incurred after the Closing shall be allocated as set forth in the Operating Agreement.

12.3 Survival. The provisions of this ARTICLE 12 shall survive the Closing for a period of one (1) year, and in the event of any error in performing the prorations contemplated by this Contract or if information becomes available subsequent to the Closing indicating that the prorations performed at Closing were not accurate the parties hereto shall be obligated promptly to re-prorate the closing adjustments to correct such errors and to reflect such new information. A detailed statement shall be prepared at the Closing setting forth the manner of computation of the aforesaid proration adjustments.

ARTICLE 13. Closing Costs.

Except as hereinafter specifically provided, Seller and Buyer shall allocate all closing costs between them in accordance with standard practice in Boston, Massachusetts. Each of Seller and Buyer shall be responsible for preparing such documents as it is obligated to deliver pursuant to ARTICLE 4 hereof and for its own legal expenses. Seller and Buyer agree to allocate closing costs as follows:

13.1 Transfer taxes, deed taxes, if any, or the like shall be paid by Buyer.

13.2 The cost of Buyer's due diligence inspections including, without limitation, costs for the updating of existing surveys or obtaining new surveys, environmental diligence, property reviews and the like shall be paid by Buyer.

13.3 The cost of preparation and recordation of any releases and termination statements required to clear title to the Property shall be paid by Seller.

13.4 The cost of recordation of the Deed shall be paid by Buyer.

ARTICLE 14. Broker.

14.1 Each party represents hereby to the other that it dealt with no broker in the consummation of this Contract. Seller shall indemnify and save Buyer harmless

from and against any claim, loss, cost, damage, liabilities and expense (including, without limitation, reasonable counsel fees and court costs) arising from the breach of such representation by Seller. Buyer shall save Seller harmless from and against any claim, loss, cost, damage, liabilities and expense (including, without limitation, reasonable counsel fees and court costs) arising from the breach of such representation by Buyer.

14.2 The provisions of this ARTICLE 14 shall survive Closing or the termination of this Contract.

ARTICLE 15. Representations and Warranties of Buyer.

Buyer hereby represents and warrants to Seller as of the date hereof as follows:

15.1 This Contract and all documents executed by Buyer that are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by Buyer, and all consents required under Buyer's organizational documents or by law will have been obtained. The individuals executing, on behalf of Buyer, any of the documents or instruments required hereby, are authorized to act on behalf of MassDOT and to obligate MassDOT with respect to the matters contained in any such documents or instruments. Except as otherwise specifically provided herein, all necessary third party consents and approvals to the transactions contemplated hereby have been obtained. This Contract and such documents are, or at the Closing will be, legal, valid, and binding obligations of Buyer enforceable in accordance with their terms, and do not, and, at the time of Closing will not, violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

15.2 There are no proceedings pending or, to Buyer's knowledge, threatened against it in any court or before any governmental authority or any tribunal which, if adversely determined, would have an adverse effect on its ability to purchase the Property or to carry out its obligations under this Contract.

15.3 Buyer is not in violation of any legal requirements, now or hereafter in effect, relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, including, without limitation, Executive Order 13224 and the Patriot Act. Buyer (i) is not (a) a Blocked Person or (b) owned, in whole or in part, directly or indirectly, by any Blocked Person; and (ii) does not (a) conduct any business or engage in any transaction or dealing with a Blocked Person or (b) deal in, or otherwise engage in, any transaction or dealing relating to any property, or interests in property, blocked pursuant to Executive Order 13224.

15.4 Buyer further represents and warrants that any provision specifically identified as a representation or warranty in the Deed, the HRRC Passenger Operating Rights Transfer Document, if any, the Assignment and Assumption Agreement, the Bill(s) of Sale, or the Operating Agreement, and any specifically identified

representation or warranty contained in an agreement entered into at Closing by Buyer and Seller pursuant to Section 4.2 and Section 4.3 is true and correct.

15.5 Buyer shall hold Seller harmless from any and all losses, costs, damages, liabilities and expenses (including, without limitation, reasonable counsel fees) arising out of any breach by Buyer of its representations and warranties hereunder.

15.6 The representations and warranties of Buyer contained herein shall survive the Closing and delivery of the Deed for a period of five (5) years after Closing, and with respect to any written claim made within such period, until final unappealable adjudication or settlement thereof.

ARTICLE 16. Eminent Domain.

16.1 Subsequent to the Closing Date, MassDOT will record a "Confirmatory Order of Taking" for the Property, if permitted by applicable law; provided, however, that such exercise shall not modify, amend, limit or restrict the Retained Freight Easement or the rights and obligations of the parties hereto under this Contract, nor reduce the Purchase Price.

16.2 If prior to the Closing Date, all or a material portion of the Property is taken by condemnation, eminent domain or by agreement in lieu thereof by any governmental entity other than Buyer, or any proceeding to acquire, take or condemn all or a material portion of the Property is threatened or commenced by any governmental entity other than Buyer, Buyer may either terminate this Contract (in which event the Deposit shall be returned to Buyer, and all other obligations of the parties hereto shall cease except those set forth in Section 5.4, Section 5.5 and ARTICLE 14 hereof) or purchase the Property in accordance with the terms hereof, without reduction in the Purchase Price, together with an assignment of Seller's rights to any award paid or payable by or on behalf of the condemning authority. If Seller has received payments from the condemning authority and if Buyer elects to purchase the Property, Seller shall credit the amount of said payments against the Purchase Price at the Closing (less amounts reasonably expended by Seller in repairing the damage prior to the Closing Date).

16.3 The provisions of this ARTICLE 16 shall survive the Closing.

ARTICLE 17. Further Assurances.

Seller and Buyer shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order fully to carry out the intent and purposes of the transactions contemplated hereby. Except for such instruments and documents as the parties were originally obligated to deliver by the terms of this Contract, such cooperation shall be without additional cost or liability. The provisions of this ARTICLE 17 shall survive the Closing.

ARTICLE 18. Notices.

Any notice, consent or approval required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) three business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

To Seller: Mr. John R. Hanlon, Jr.
President
Housatonic Railroad Company, Inc.
1 Railroad Street
PO Box 1146 (required for USPS delivery)
Canaan, CT 06018

with a copy to:

Edward J. Rodriguez, Esq.
Executive Vice President & General Counsel
Housatonic Railroad Company, Inc.
8 Davis Road West
PO Box 687 (required for USPS delivery)
Old Lyme, Connecticut 06371

To Buyer: Deputy Rail Administrator
Massachusetts Department of Transportation
10 Park Plaza
Boston, MA 02116
Attention: John D. Ray

with a copy to:

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110
Attention: Peter N. Kochansky

or such other address as either party may from time to time specify in writing to the other. Any notice, consent, approval or extension of time hereunder may be given on behalf of a party by its attorney in accordance with the terms of this ARTICLE 18.

ARTICLE 19. Miscellaneous.

19.1 Cooperation. Buyer and Seller shall cooperate in providing such information as may be required by governmental authorities, including but not limited

to the Surface Transportation Board, to approve the transactions contemplated by this Contract.

19.2 Assignment by Buyer; Successors and Assigns. Without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion, Buyer shall not, directly or indirectly, assign this Contract or any of its rights hereunder. Subject to the terms of this paragraph, this Contract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

19.3 Entire Agreement; Amendment. The parties understand and agree that their entire agreement is contained herein and that no warranties, guarantees, statements, or representations shall be valid or binding on a party unless set forth in this Contract. It is further understood and agreed that all prior understandings and agreements heretofore had between the parties are merged in this Contract which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying on any statement or representation not embodied in this Contract. Notwithstanding the foregoing, Buyer and Seller acknowledge that this Contract contemplates additional documents to be negotiated, executed, and delivered on or prior to the Closing Date in accordance with the terms of this Contract. This Contract may be changed, modified, altered or terminated only by a written agreement signed by Buyer and Seller.

19.4 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of choice of law or conflicts of law. For purposes of any suit, action or proceeding involving this Contract, Buyer and Seller hereby expressly submit to the jurisdiction of all federal and state courts sitting in the Commonwealth of Massachusetts and consent that any order, process, notice of motion or application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and the parties agree that such courts shall have exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. In furtherance of such agreement, the parties agree upon the request of the other to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction. Each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Contract brought in any federal or state court sitting in the Commonwealth of Massachusetts, and hereby further irrevocably waives any claim that such suit, action or proceeding brought in any such court has been brought in an inconvenient form.

19.5 Waiver of Trial by Jury. In recognition of the benefits of having any disputes with respect to this Contract resolved by an experienced and expert person, Buyer and Seller hereby agree that any suit, action or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Contract or which in any way relates, directly or indirectly, to this Contract or any

event, transaction, or occurrence arising out of or in any way connected with this Contract or the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, EXPRESSLY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.

19.6 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Buyer of the breach of any covenant of this Contract shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Contract.

19.7 Time of the Essence; Time Periods. Time is of the essence of this Contract. Any reference in this Contract to the time for the performance of obligations or elapsed time shall mean consecutive calendar or business days, months, or years, as applicable. As used in this Contract, the term "business day" shall mean any day other than a Saturday, Sunday, recognized federal holiday or a recognized state holiday in the Commonwealth of Massachusetts. If the last date for performance by either party under this Contract occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

19.8 Severability. If any term, provision, covenant, or condition of this Contract, or the application thereof to any person or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants, and conditions of this Contract, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction), will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Contract so long as this Contract as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Contract will not substantially impair the respective expectations of the parties or the practical realization of the benefits that would otherwise be enforced upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

19.9 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

19.10 Construction of Agreement. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Buyer and Seller have contributed substantially and materially to the preparation of this Contract.

19.11 No Personal Liability. Buyer acknowledges and agrees that no general or limited partner, officer, director, equity owner, employee, agent, member, manager or representative of Seller (or any partner, member or manager of such a partner, member or manager) shall ever have any personal liability under this Contract. Seller acknowledges and agrees that no general or limited partner, officer, director, member, manager, equity owner, employee or representative of Buyer (or any partner, member or manager of such a partner, member or manager) shall ever have any personal liability under this Contract.

19.12 Merger. Except as otherwise specifically provided herein or in any closing document, the acceptance of the deed and the recordation thereof shall be deemed to be a full and complete performance and discharge of every agreement and obligation of the Seller herein contained.

19.13 No Third Party Beneficiaries. Nothing in this Contract is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Contract.

19.14 Captions. The captions in this Contract are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Contract or any part hereof.

19.15 Recording. It is agreed hereby that neither this Contract nor any notice or memorandum hereof shall be recorded or filed with any Registry of Deeds or Registry District of the Land Court.

19.16 Marketing. During the term of this Contract, Seller agrees not to market the Property to any other prospective purchasers or accept any offers for the Property (whether or not subordinate to this Contract) from any other prospective purchasers.

19.17 No Offer. The submission of this Contract for review and execution shall not be deemed an offer by Seller to sell the Property nor a reservation or option for the Property on behalf of the Buyer. This Contract shall become effective and binding only upon the execution and delivery hereof by both Buyer and Seller.

[Signatures to follow on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as an instrument under seal as of the day and date first written above.

Buyer:

APPROVAL AS TO FORM

**MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION**

By: _____
Paige Scott Reed
General Counsel
Massachusetts Department of
Transportation

By: _____
Richard A. Davey
Secretary and Chief Executive Officer

Seller:

HOUSATONIC RAILROAD COMPANY, INC.,
a specially chartered Massachusetts corporation

By: _____
John R. Hanlon, Jr.
President

HOUSATONIC RAILROAD COMPANY, INC.,
a specially chartered Connecticut corporation

By: _____
John R. Hanlon, Jr.
President

MAYBROOK RAILROAD COMPANY, INC.,
a Connecticut corporation

By: _____
John R. Hanlon, Jr.
President

EXHIBIT A
DESCRIPTION OF PROPERTY

[INSERT LEGAL DESCRIPTION]

EXHIBIT A-1
PLANS AND VALUATION MAPS

EXHIBIT B-1

[Completed form with tax id to be provided at closing as a confidential document]

CERTIFICATION OF NON-FOREIGN STATUS

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 is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Housatonic Railroad Company, Inc., (“Transferor”), the undersigned being duly authorized hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii) [*or Transferor is a disregarded entity and _____ is its sole member*];
3. Transferor’s U.S. employer identification number is _____; and
4. Transferor’s office address 8 Davis Road West, P.O. Box 687, Old Lyme, Connecticut 06371.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee 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.

By: _____
Name:
Title:

EXHIBIT B-2

[Completed form with tax id to be provided at closing as a confidential document]

CERTIFICATION OF NON-FOREIGN STATUS

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 is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Maybrook Railroad Company, Inc., ("Transferor"), the undersigned being duly authorized hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii) [*or Transferor is a disregarded entity and _____ is its sole member*];
3. Transferor's U.S. employer identification number is _____; and
4. Transferor's office address 8 Davis Road West, P.O. Box 687, Old Lyme, Connecticut 06371.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee 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.

By: _____
Name:
Title:

EXHIBIT C

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 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 Internal Revenue Code Section 6045.

Name and Address of the Transferor:

Housatonic Railroad Company, Inc.
Maybrook Railroad Company
8 Davis Road West
P.O. Box 687
Old Lyme, Connecticut 06371

Name and Address of the Transferee:

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

Address and Other Information Necessary to Identify the Property:

A certain line of railroad known as the Berkshire Line and situated in the City of Pittsfield and the towns of Lee, Lenox, Stockbridge, Sheffield and Great Barrington, all in the County of Berkshire and Commonwealth of Massachusetts.

DESIGNATED PERSON

Edward J. Rodriguez

Date

Signature

Title: General Counsel

8 Davis Road West

P.O. Box 687

Old Lyme, Connecticut 06371

Taxpayer ID Number

860.434.4303

Telephone Number

EXHIBIT D

DISCLOSURE STATEMENT UNDER SECTION 38
OF CHAPTER 7C OF THE MASSACHUSETTS GENERAL LAWS

1. Location: A certain line of railroad known as the Berkshire Line and situated in the City of Pittsfield and the towns of Lee, Lenox, Stockbridge, Sheffield and Great Barrington, all in the County of Berkshire and Commonwealth of Massachusetts.
2. Grantor: Housatonic Railroad Company, Inc. and Maybrook Railroad Company
3. Grantee: Massachusetts Department of Transportation
4. I hereby state, under the pains and penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the above-listed property are listed below in compliance with the provisions of Section 38 of Chapter 7C.

NAMES AND ADDRESSES OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

[Names to be inserted and provided at closing]

5. The undersigned also acknowledges and states that none of the above listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Department of Capital Asset Management and Maintenance.

SIGNED under the penalties of perjury.

HOUSATONIC RAILROAD COMPANY, INC.
and MAYBROOK RAILROAD COMPANY

By: _____
Name: John R. Hanlon, Jr.
Title: President

Date: As of _____, 2014

EXHIBIT E

LIST OF INTANGIBLES AND PERMITS

PART I – PERMITS

Seller has used reasonable diligence to review its records to determine the existence of Permits described in Paragraph A.4 of the Contract, and such review has disclosed no Permits other than those reasonably necessary for the operation by Seller of the rail freight operations over the Retained Freight Easement. Permits excluded as reasonably necessary for the operation by Seller of the rail freight operations include, *inter alia*, operating authority from the ICC and STB, radio licenses, FMCSA Broker License of an affiliate, motor vehicle registrations and motor vehicle permits.

PART II – INTANGIBLES APPEARING OF RECORD

The following easements and similar documents are known to be on record affecting the Premises.

Easements

1. Easement to Laurel Hill Association dated November 27, 1941 and recorded in Berkshire Registry of Deeds Middle District at Book 492, page 601.
2. Right-of-way, to be used in common with others so entitled, to the so-called Gas House Lane, as described in a deed to Willie J. and Edna Wilkes, dated February 10, 1950 and recorded with Berkshire Southern at Book 294, Page 50.
3. Easement to the Town of Lee dated December 14, 1981 and recorded Jan 7, 1982 in Berkshire Registry of Deeds, Middle District in Book 1054, page 31.
4. Easements to Massachusetts Electric Company dated December 10, 1981, recorded on December 12, 1981 Berkshire Registry of Deeds Southern District at Book 503, page 126.
5. Sewer Easement to the Town of Lenox dated April 16, 1982, recorded on May 3, 1982 in Berkshire Registry of Deeds Middle District in Book 1057, page 572.
6. Temporary Easement in favor of the City of Pittsfield for emergency bank protection on Housatonic River dated January 25, 1983, recorded in Berkshire Registry of Deeds Middle District in Book 1069, page 302 amended by amended recorded in Book 1070, page 637.
7. Replacement and relocation of a water main, sewer pipe and sewer pipe outflow at three separate locations in the Town of Lenox, as set forth in Deed and Agreement of Easement, by and between Housatonic Track Company, Inc. and the Town of Lenox, dated May 14, 1991 and recorded with Berkshire Registry of Deeds Middle District at Book 1338, Page 805. Such agreement was amended by an Amendment to Dees and Agreement of Easement dated 12/1/1999, which amendment is not recorded.

8. Slope and drainage easements taken in connection with the relocation of Mill Street, in the Town of Lenox, by Layout No. 7251 and Order of Taking by the Massachusetts Department of Highways, dated December 6, 1995 and recorded with Berkshire Registry of Deeds Middle District at Book 1500, Page 579 and shown on a plan entitled "Plan of Road in the Town of Lenox Berkshire County Altered and Laid Out as a State Highway by the Department of Highways", dated December 6, 1995 and filed with said Registry as Plat D-326.
9. A perpetual right and easement over a portion of the Premises in the Town of Sheffield, between Stations 406+37.57 and 411+97.75, to locate a 20-foot wide crossing exclusively for pedestrian use and to manage and use the crossing within the easement area as a public footpath for the use and benefit of the general public in connection with the Appalachian National Scenic Trail, including the right to traverse the crossing and to post appropriate warning signs, as granted in Deed and Agreement of Easement, made by and among Housatonic Track Company, Inc., Housatonic Railroad Company, Inc. and the United States Department of the Interior, dated June 21, 1999 and recorded with Berkshire Registry of Deeds Southern District at Book 1159, Page 334.
10. An exclusive easement to maintain a residential dwelling known as 3 George Street, in the Town of Great Barrington, in its location as of the date of the easement, determined to be situated partially on the Premises, together with the right to use the area extending three (3) feet around the perimeter of the dwelling to maintain said dwelling, upon the terms and conditions set forth in an Easement Agreement between Housatonic Railroad Company, Inc. and Paul R. Chojnowski, Trustee of Good Fortune Realty Trust, dated April 26, 2002 and recorded with Berkshire Registry of Deeds Southern District at Book 1316, Page 189.
11. Easements for use in connection with property located at 110 Marble Street, Lee, as set forth in a Deed and Agreement of Easement by and between Housatonic Railroad Company, Inc. and Cemex, Inc., dated October 17, 2002 and recorded with Berkshire Registry of Deeds Middle District at Book 2353, Page 164.
12. Easements for use in connection with property located at 110 Marble Street, Lee, as set forth in a Deed and Agreement of Easement by and between Housatonic Railroad Company, Inc. and Cemex, Inc., dated October 17, 2002 and recorded with Berkshire registry of Deeds Middle District at Book 2353, Page 179.
13. Partial Release of Easement, dated January 30, 2007 and recorded with Berkshire Registry of Deeds Middle District at Book 3736, Page 102, by and between Housatonic Railroad Company, Inc., as Releasor, and West Park Terrace, LLC, as Releasee, releasing a portion of certain easement rights in connection with property located at 154-156 West Park Street, Lee, reserved by Penn Central Transportation Company, Releasor's predecessor in title, in deed of George P. Baker *et al.*, Trustees dated April 4, 1972 and recorded with Berkshire Middle at Book 923, Page 1098, shown on a plan filed with said Registry as Plat H-251.

14. License Agreement for Private Grade Crossing adjacent to the Laurel Mill site, in the Town of Lee, located at Station 1183+75 of the Berkshire Line, located on Val Plan 57.12, Sheet 97, by and between Housatonic Railroad Company, Inc. and MW Custom Papers, LLC, dated December 21, 2009 and recorded with Berkshire Registry of Deeds Middle District at Book 4471, Page 30.
15. Easement granted to Onyx Specialty Papers, Inc. to permit the occupation, use and maintenance of specific listed appurtenances over the Premises in connection with its Laurel Mill Site In Lee, upon the terms and conditions contained in an Agreement of Easement, by and between Maybrook RR, Housatonic RR and Onyx Specialty Papers, Inc., dated July 3, 2014 and recorded with Berkshire Registry of Deeds Middle District at Book 5402, Page 74.
16. Easement granted to Onyx Specialty Papers, Inc. to permit the occupation, use and maintenance of specific listed appurtenances over the Premises in connection with its Willow Mill Site in South Lee, upon the terms and conditions contained in an Agreement of Easement, by and between Maybrook RR, Housatonic RR and Onyx Specialty Papers, Inc., dated July 3, 2014 and recorded with Berkshire Registry of Deeds Middle District at Book 5402, Page 83.

In addition, there are Easements, rights covenants, agreements and/or obligations set forth in the following deeds:

- a) Deed to Consolidated Rail Corporation by the Trustees of the Property of Penn Central Transportation Company, dated March 30, 1976 and recorded with Berkshire Southern District Registry of Deeds at Book 453, Page 270, and with Berkshire Middle District Registry of Deeds at Book 1010, Page 1026.
- b) Deed to the Trustees of The Boston and Maine Corporation by Consolidated Rail Corporation, dated March 31, 1982 and recorded with Berkshire Southern District Registry of Deeds at Book 510, Page 270, and with Berkshire Middle District Registry of Deeds at Book 1057, Page 515;
- c) Deed by and between The Boston and Maine Corporation as Grantor and Housatonic Track Company, Inc., as Grantee, dated December 20, 1990 and recorded with Berkshire Southern District Registry of Deeds at Book 755, Page 332 and with Berkshire Middle at Book 1319, Page 609.

There may be other instruments on record dated prior to acquisition of the line by Consolidated Rail Corporation by deed dated March 30, 1976. Seller has no actual knowledge of such instruments. Seller expresses no opinion as to the validity of any interests created prior to March 30, 1976, or the effect of the provisions of Section 303(b)(2) of the Regional Rail Reorganization Act on any such interests.

PART III INTANGIBLES-LICENSES NOT OF RECORD

**LICENSE AGREEMENTS-
MASSACHUSETTS**

| License | Registry Number | Agreement Date | Town | Type | Orig Doc in file |
|--|--------------------|-------------------|--------------|-------------|---------------------------|
| Berkshire Feedline f/k/a Berkshire Gas | 400045 | 7/1/1992 | Pittsfield | Gas | No |
| Berkshire Health Systems | 400046 | 2/23/2009 | G Barrington | comm | No |
| D.J. Oil Express | 400047 | 2/1/2001 | Lenoxdale | PGC | Yes |
| High Meadow Foundation, Inc | 400048 | 4/30/2004 | Stockbridge | Sewer | Yes |
| LB Corporation | 400049 | 4/29/1998 | Lenox | water/sewer | Yes |
| Mark Massini | 400050 | 9/1/2000 | Sheffield | PGC | Yes |
| Massachusetts Technology Collaborative | 400051 | 5/2/2012 | Various | comm | Yes |
| Mead Westvaco Corp | 400052 | 12/21/2009 | Lee | PGC | Yes |
| Tennessee Gas Line n/k/a Kinder Morgan | 400053 | 7/13/1951 | South Lee | Gas | No |
| Tennessee Gas Line n/k/a Kinder Morgan | 400053 | 10/8/1951 | Pittsfield | Gas | No |
| Tennessee Gas Line n/k/a Kinder Morgan | 400054 | 6/1/1992 | Lee | Gas | Yes |
| Tennessee Gas Line n/k/a Kinder Morgan | 400053 | 8/4/1969 | South Lee | Gas | No |
| Time Warner Cable | 400055 | 7/1/2012 | Lenox | comm | Yes |
| Town of Stockbridge Massachusetts | 400056 | 7/17/2003 | Stockbridge | Sewer | Yes |
| Verizon New England | 400026 | 4/21/2004 | Lenox | comm | Yes |
| Verizon New England | 400026 | 7/31/2004 | Sheffield | comm | No |
| Western Massachusetts Electric | 400057 | 10/28/1996 | G Barrington | Elec | Yes |
| Williams Communications | 400048 | 9/1/1999 | Lee | comm | Yes |

The above agreements are believed to be in force.

Seller expresses no opinion as to the validity of any interests created prior to March 30, 1976, or the effect of the provisions of Section 303(b)(2) of the Regional Rail Reorganization Act on any such interests.

Seller has reviewed its records to locate copies of Intangibles.

Seller believes that there exist unrecorded licenses, leases or other agreements, the nature of which Seller has no knowledge.

EXHIBIT E-1
EXCLUDED INTANGIBLES

Excluded Intangibles

1. Sidetrack Agreement dated February 1, 2012 with Lenox Valley WTF, LLC, Lenox.
2. Sidetrack Agreement dated March 1, 2011 with Onyx Specialty Papers, Inc., Laurel Mill South Lee.

EXHIBIT F
ENVIRONMENTAL REPORTS

1. Sheffield –Gasoline discharge by Sheffield Police Department – December 26, 1996.
2. Pittsfield – Soil Sampling, 54 South Merriam Street – May 21, 2014

EXHIBIT G

LITIGATION

Housatonic Railroad Company, Inc. is a defendant in the case of *Dawn Gonzalez v. Housatonic Railroad Company, Et. Al.*, Connecticut Superior Court, Judicial District of Waterbury, UWY CV 13 6021784S. This claim arises out of a motor vehicle accident in Danbury, Connecticut on March 12, 2013.

EXHIBIT H

Rehabilitation Project

The Phase I Rehabilitation Project shall begin during the fiscal year beginning July 1, 2014 and continue expeditiously until completed. Estimated completion date is no later than June 30, 2017.

A general description of improvements to be constructed as part of the Phase 1 Rehabilitation Project is as follows:

- 37 Miles = (assumed 19.5” spacing)
40,000 ties replaced (roughly 1/3)
- 26 public grade crossings
 - Four crossings now, plus;
 - Four more funded through section 130
 - Private crossings encountered will addressed with either tie or rail work
- 26 switches (14 are 130 lb, 4 are 112 lb or larger and 8 are 107 lb rigid braces)
 - Replace eight (8) 107# switches
- 30 miles of rail used to obtain the greatest benefit [JDR to confirm]
 - Four (4) full rail trains [JDR to confirm]
 - Plates will be Pandrol with screw lags, “e” clips
- Re-ballast and surfacing
 - Figure 1,000 tons per mile ballast
 - Surface 195,360 feet of track with 2” – 3” lift
- Specific site work mud spots
 - Ditching 12,000 feet
- Bolts and joint work as required
- Bridge and culvert work is an unknown and will draw from a lump sum item budget (\$15 million) [JDR to confirm]
 - Where rail is installed on bridges need new timber with “J” bolts and blocking adding guard rails.

The general project description is subject to adjustment in accordance with field conditions.

Passenger Improvements

Phase 2 Rehabilitation Improvements shall be scheduled in coordination with the institution of Commonwealth Passenger Service such that the Phase 2 Rehabilitation Improvements will be completed before the institution of any such service.

Phase 2 Rehabilitation Improvements shall include all improvements necessary to safely and efficiently accommodate inter-city passenger service in accordance with MassDOT and MBTA specifications, and shall include, but not be limited to:

Replacement of all main line rail, switches and ties not replaced in connection with the Phase 1 Rehabilitation Project

Ballast as required to achieve the required elevations

Surfacing

Grade Crossing renewal and/or replacement as needed

Signal system as needed

PTC if required by law or otherwise specified by MassDOT

Ditching, drainage and similar site work as required

Bridge and Culvert work

Construction of passing sidings and other sidings as are reasonably required for joint use and to achieve maintenance of required freight clearances

The foregoing description shall not be construed as an undertaking by MassDOT to construct or complete the Phase 2 Rehabilitation Project or any component thereof, or any specific design, programming or mix of improvements.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION Exemption –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

MOTION TO DISMISS

EXHIBIT C

2014 OPERATING AGREEMENT

BY AND BETWEEN

THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION,

AND

HOUSATONIC RAILROAD COMPANY, INC.

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2014 OPERATING AGREEMENT

BY AND BETWEEN

THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

AND

HOUSATONIC RAILROAD COMPANY, INC.

INTRODUCTION AND RECITALS

This agreement (the "**Agreement**") is made this ___ day of _____, 2014, by and between the Massachusetts Department of Transportation, a body politic and corporate created by and acting pursuant to Chapter 6C of the General Laws of the Commonwealth of Massachusetts, as amended, having an address of 10 Park Plaza, Boston, Massachusetts ("**MassDOT**"), and the Housatonic Railroad Company, Inc., a railroad corporation specially chartered by the Commonwealth of Massachusetts, having an address of 1 Railroad Street, P.O. Box 1146, Canaan, Connecticut 06018 ("**HRRC**") (hereinafter the "**Parties**," or each a "**Party**"), in order to memorialize their mutual understanding with regard to certain rights to conduct passenger and freight services on certain property owned by MassDOT, and for the purpose of defining their respective rights and obligations with respect to the same.

WHEREAS, MassDOT and HRRC entered into that certain Purchase and Sale Contract dated as of _____, 2014 (as amended, the "**Purchase Contract**"), pursuant to which HRRC has agreed to convey to MassDOT certain real property, and railroad assets that comprise a section of railroad line known generally as the Berkshire Line, from the junction with the CSX Boston and Albany Line in Pittsfield, Massachusetts to the Massachusetts-Connecticut border in Sheffield, Massachusetts (the "**Berkshire Line**") all as described in the Purchase Contract (the "**Property**") and, as set forth in the Purchase Contract, HRRC shall retain the Freight Easement (as defined in the Deed conveying the Property from HRRC to MassDOT);

WHEREAS, HRRC transferred certain rights (the "**CT Passenger Rights**") to operate passenger service over certain rail lines in Connecticut pursuant to that certain Passenger Operating Rights Grant dated substantially the same as the date hereof (the "**Passenger Operating Rights Transfer Document**");

WHEREAS, the transfer of the Property and the CT Passenger Rights from HRRC to MassDOT is contingent upon, among other things, the execution and delivery by MassDOT and HRRC of an operating agreement setting forth certain rights and obligations of the Parties with respect to the Property;

WHEREAS, MassDOT is purchasing the Property as part of a plan to rehabilitate the Property to support freight and passenger train services on the Property (the “**Rehabilitation Project**”) as more particularly set forth in **Exhibit B** attached hereto;

WHEREAS, HRRC has incurred and continues to incur significant costs and employ significant resources to design and analyze the feasibility and economic benefits of instituting inter-city passenger rail service over the Berkshire Line and to design a preliminary service plan, and HRRC remains interested in the development and institution of such service;

WHEREAS, the Parties agree in good faith that the Rehabilitation Project and the operation of freight and passenger service over the Berkshire Line is intended to be a part of a public-private partnership with the intended purpose of providing passenger service between Berkshire County and New York City; and

WHEREAS, the Parties acknowledge and agree that the Rehabilitation Project will benefit both passenger and freight service on the Property.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1 DEFINITIONS.

“Additional Freight Service” shall have the meaning set forth in Section 5.2(e).

“Additional Passenger Only Rail Property” shall have the meaning set forth in Section 6.1.

“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.

“Commonwealth Employees” shall mean the employees and agents of MassDOT, and MassDOT’s operating contractors and said contractors’ employees.

“Commonwealth Passenger Service” means all of the rail operations, and movement of materials and equipment, services and activities performed by MassDOT or its Operating Contractor (or their respective contractors, assignees or designees) in connection with the provision of passenger rail service in the Commonwealth of Massachusetts.

“Commonwealth Passenger Service Commencement Date” shall have the meaning set forth in Section 5.2(c).

“Commonwealth Passenger Service Commencement Notice” shall have the meaning set forth in Section 5.2(c).

“Construction Work” means all construction work (other than Rehabilitation Activities) performed by MassDOT or its agents or contractors, including HRRC, pursuant to this Agreement.

“Effective Date” means the date on which HRRC conveys the Property to MassDOT.

“Effective Interest Rate” means the then applicable late payment interest rate established by the Office of the Comptroller of the Commonwealth of Massachusetts pursuant to 815 CMR 4.00.

“Force Account Work” means work that HRRC has agreed to perform as part of this Agreement pursuant to Section 7 hereof.

“FRA” means the Federal Railroad Administration.

“Freight Easement” means the perpetual and exclusive easement to provide Freight Rail Service and such other rights over the Rail Operating Property reserved and retained by HRRC as are described in any deed or deeds transferring the Property from HRRC to MassDOT pursuant to the Purchase Contract, and any additional easements to provide freight rail service and such other rights over the Rail Operating Property as may be added to this Agreement from time to time by mutual agreement of the Parties.

“Freight Rail Service” means the full range of services and activities performed by HRRC in connection with the provision of current and future freight common carrier and contract carrier obligations on the Rail Operating Property and other activities permitted or required under this Agreement, which services and activities include non-revenue inspection and non-revenue excursion trains.

“Freight Service Capacity” means the two (2) daily through round-trip freight trains and two (2) daily local trains that HRRC may operate on the Joint Usage Rail Property, as described in Section 5.

“HRRC Only Rail Property” means those segments of the Rail Operating Property for which HRRC has a right of access to provide Freight Rail Service pursuant to the Freight Easement or this Agreement or to provide Passenger Service prior to the Commonwealth Passenger Service Commencement Date pursuant to this Agreement, and which are not used by MassDOT for the provision of Commonwealth Passenger Service, as described in Section 3, and which may be listed on **Exhibit A**, including but not limited to industrial sidings and related assets. From the Effective Date until the Commonwealth Passenger Service Commencement Date, all of the Rail Operating Property shall be designated as HRRC Only Rail Property.

“Infrastructure Improvements” means any improvements to the Property other than infrastructure improvements constructed as part of the Rehabilitation Project.

“Joint Usage Rail Property” means those segments of the Rail Operating Property for which HRRC has a right of use and access to provide Freight Rail Service pursuant to the Freight Easement or this Agreement, and which are also used by MassDOT for passenger rail service, as described in Section 3, which shall be listed on **Exhibit A**.

“Maintenance Services” means all actions necessary or required for the routine maintenance of the rights-of-way, tracks, bridges, signals, communications equipment and all

appurtenances of any relevant section of the Property in accordance with the Maintenance Standard.

“Maintenance Standard” means the standards to be set from time to time by the Party obligated to provide maintenance hereunder which in all instances shall be appropriate for freight rail operations and which shall always meet or exceed the standard required by FRA rules and regulations for the applicable class of track provided for in this Agreement.

“MassDOT” shall have the meaning set forth in the recitals of this Agreement.

“Mitigation Plan” shall have the meaning set forth in Section 5.3 of this Agreement.

“Occasional Use” shall have the meaning set forth in Section 3.2(b) of this Agreement.

“Operating Contractor” means any entity contracted with or otherwise authorized by MassDOT to provide Passenger Service, including, at MassDOT’s election, HRRC.

“Parties” means HRRC and MassDOT.

(a) “HRRC” shall have the meaning set forth in the Recitals to this Agreement.

(b) “HRRC Employees” shall mean the employees and agents of HRRC, and HRRC’s operating contractors and said contractors’ employees.

(c) “HRRC Car-Mile Payment” shall have the meaning set forth in Section 5.6(a).

“Passenger Facilities” means portions of the Property exclusively used for and related to Passenger Service, including but not limited to stations, platforms, parking areas and passenger service amenity facilities, which shall be owned, controlled, and used by MassDOT or its designees.

“Passenger Only Rail Property” means those segments of the Rail Operating Property for which HRRC does not have the right to operate rail service, which may be listed on “**Exhibit A**”.

“Passenger Service” means all of the rail operations and movement of materials and equipment, services and activities whether performed by HRRC or MassDOT (or their respective contractors, assignees or designees) in connection with the provision of passenger rail service in the Commonwealth of Massachusetts, but does not include the operation by HRRC of occasional non-revenue inspection and non-revenue excursion trains.

“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.

“Phase 1 Rehabilitation Improvements” means the infrastructure improvements constructed as part of the first phase of the Rehabilitation Project in connection with Freight Rail Service over the Property, excluding the Phase 2 Rehabilitation Improvements, as described in more detail on **Exhibit B**, attached hereto.

“Phase 2 Rehabilitation Improvements” means the infrastructure improvements to be constructed as the second phase of the Rehabilitation Project in connection with Freight Rail Service and Passenger Service prior to the introduction of Commonwealth Passenger Service over the Property, excluding the Phase 1 Rehabilitation Improvements, as described in more detail on **Exhibit B**, attached hereto.

“Property” shall have the meaning set forth in the Recitals to this Agreement, and shall include but not be limited to the Rail Operating Property.

“Purchase Contract” shall have the meaning set forth in the recitals to this Agreement.

“Rail Operating Property” means those portions of the Property used by any Party hereto for the provision of rail services and excludes all other non-operating portions of the Property, including Passenger Facilities, which shall be owned, controlled, and used by MassDOT or its designees. The Rail Operating Property shall be designated as HRRC Only Rail Property, Passenger Only Rail Property, or Joint Usage Rail Property. The Parties agree that, under certain circumstances described in this Agreement, properties may change from any designation to any other designation.

“Rehabilitation Activities” means all construction and construction-related activities reasonably necessary for the completion of the Rehabilitation Project.

“Rehabilitation Project” shall have the meaning set forth in the Section 4.4 of this Agreement.

“Service Suspension” means the suspension of Freight Rail Service in connection with the Reconstruction Activities.

“STB” means the Surface Transportation Board of the United States Federal Government.

SECTION 2 GENERAL OPERATING RIGHTS

Consistent with the Freight Easement and subject to this Agreement, HRRC shall have the right to enter upon and utilize the tracks and related operating facilities on the HRRC Only Rail Property and the Joint Usage Rail Property for the purpose of exclusively performing Freight Rail Service and, prior to the Commonwealth Passenger Service Commencement Date, exclusively performing Passenger Service on the HRRC Only Rail Property. After the Commonwealth Passenger Service Commencement Date, HRRC may enter upon and utilize the tracks and related operating facilities on the Joint Usage Rail Property for the purpose of performing Passenger Service only with the prior written consent of MassDOT. Notwithstanding the foregoing, HRRC shall have the right to operate occasional non-revenue

inspection and excursion trains, provided that such trains do not interfere with revenue passenger trains.

SECTION 3 DESIGNATION OF PROPERTY

3.1 General.

The Rail Operating Property shall be designated as HRRC Only Rail Property, Joint Usage Rail Property, or Passenger Only Rail Property, as described in the definitions of those terms provided in Section 1 and in this Section 3. The initial designation for each segment of Rail Operating Property is listed on **Exhibit A** attached hereto. The Parties acknowledge that as of the Effective Date, all Rail Operating Property shall be designated as HRRC Only Rail Property. In conjunction with the introduction of Commonwealth Passenger Service on the Rail Operating Property on the Commonwealth Passenger Service Commencement Date, the Rail Operating Property shall change designation from HRRC Only Rail Property to Joint Usage Rail Property. Any change in designation pursuant to Section 3.2 shall be effective thirty (30) days after written notice to HRRC. MassDOT shall designate any subsequent additions to the Rail Operating Property as HRRC Only Rail Property, Joint Usage Rail Property, or Passenger Only Rail Property and provide thirty (30) days prior written notice to HRRC, which notice shall include a draft of a revised **Exhibit A** reflecting the new designation.

3.2 Changes in Designation of Property.

(a) General.

MassDOT shall designate the Rail Operating Property as HRRC Only Rail Property, Joint Usage Rail Property or Passenger Only Rail Property and may change such designations from time to time upon thirty (30) days prior written notice to HRRC, which notice shall include a draft of a revised **Exhibit A** reflecting the change in designation; provided, however, that MassDOT may designate a segment of the Rail Operating Property as Passenger Only Rail Property only if such segment is a subsequent addition to the Rail Operating Property not included in **Exhibit A** as of the date of this Agreement, and only if MassDOT determines, in its sole discretion, that such Rail Operating Property will be used only for Commonwealth Passenger Service, and not for Freight Rail Service (other than Occasional Use as set forth in Section 3.2(b)). Notwithstanding the foregoing, MassDOT may not designate improvements constructed by HRRC pursuant to Section 8.1 below as Passenger Only Rail Property. Any change in designation pursuant to this Section 3.2(a) shall be effective thirty (30) days after written notice to HRRC.

(b) Occasional Use.

(i) Occasional Use by HRRC over Passenger Only Rail Property (where HRRC has received the permission of MassDOT for such use and such use is conducted by HRRC subject to and in conformance with MassDOT's operating and dispatching rules) shall refer to HRRC's right to transport railroad material, equipment, ballast, rails and the like in support of Freight Rail Service, and to otherwise use the Passenger Only Rail Property in support of Freight Rail Service on the Freight Rail Only

Property or the Joint Usage Rail Property in an intermittent, but not regularly scheduled, manner that does not materially interfere with the use of the Passenger Only Rail Property or the Joint Usage Rail Property for Passenger Service.

(ii) Occasional Use by MassDOT over HRRC Only Rail Property (where MassDOT has received the permission of HRRC for such use and such use is conducted by MassDOT subject to and in conformance with the HRRC's operating and dispatching rules) shall refer to MassDOT's right to periodically run trains for the purpose of (x) inspecting the Property; (y) transporting railroad material and equipment, ballast, rails, and the like owned by MassDOT or its contractors, but not common or contract carriage of freight; and (z) transporting passengers in connection with special civic, sports or other events over the HRRC Only Rail Property in an intermittent, but not regularly scheduled, manner that does not unreasonably interfere with HRRC's use of the HRRC Only Rail Property. MassDOT shall assume all incremental costs and expenses incurred as a result of such Occasional Use passenger trains, if any, including costs to provide additional maintenance, perform additional inspections, or build infrastructure if reasonable or necessary to permit such Occasional Use.

(iii) Occasional Use over Passenger Only Rail Property or HRRC Only Rail Property shall not change the designation of such property to Joint Usage Rail Property.

(iv) Prior to any Occasional Use, the party seeking to operate pursuant to paragraphs (i) or (ii) above shall provide the other party with certificates of insurance evidencing coverage for claims arising out of such Occasional Use. Liability for incidents arising out of Occasional Use shall be allocated as set forth in Section 11. In the case of HRRC's Occasional Use, such insurance shall comply with the provisions applicable to HRRC in Section 12.1 hereof. In the case of MassDOT's Occasional Use, such insurance shall comply with the provisions applicable to MassDOT in Section 12.2 hereof.

(c) Discontinuance of Freight Rail Operations.

(i) In the event that HRRC ceases to have current use, or, in HRRC's sole and absolute determination, reasonably foreseeable future use, of any segment of the Joint Usage Rail Property or HRRC Only Rail Property, or, if in HRRC's sole and absolute discretion it determines that it no longer wishes to continue the use of any such segment for Freight Rail Service, HRRC will have the option to seek from the STB approval pursuant to Appropriate Statutory and Regulatory Authority, which approval may come in the form of an exemption from the requirement to obtain such approval, to abandon and/or discontinue Freight Rail Service over all or any portion of such segment of the Joint Usage Rail Property or HRRC Only Rail Property. Such portions of the Joint Usage Rail Property or HRRC Only Rail Property will no longer be subject to this Agreement.

(ii) In the event that the Freight Easement has not been abandoned, but HRRC ceases to provide Freight Rail Service (or provides MassDOT notice of its intention to cease providing Freight Rail Service) over segments of the HRRC Only Rail Property or Joint Usage Rail Property for a period of not less than one (1) year, MassDOT may re-designate such segments as Passenger Only Rail Property; provided, however, that upon sixty (60) days prior written notice of HRRC's intent to resume providing Freight Rail Service over the Rail Operating Property, MassDOT shall designate such segments of the Rail Operating Property as HRRC Only Rail Property or Joint Usage Property, as applicable, as necessary to allow HRRC to resume Freight Rail service in accordance with the terms of this Agreement.

(iii) In the event that for a continuous period of three (3) years, HRRC has failed to provide Freight Rail Service on any segment of the Joint Usage Rail Property or HRRC Only Rail Property (provided any such failure is not a direct or indirect result of the failure of MassDOT to properly maintain or repair the Joint Usage Rail Property or of any other breach by MassDOT of its obligations under this Agreement), then MassDOT will be entitled, in its sole discretion, to commence adverse abandonment proceedings with the STB with respect to such segments and HRRC shall cooperate with such proceedings. If such adverse abandonment proceedings are successfully consummated with respect to such portions of the Joint Usage Rail Property or HRRC Only Rail Property, such property will no longer be subject to this Agreement.

SECTION 4 HRRC ONLY RAIL PROPERTY

4.1 Use.

(a) HRRC shall have the exclusive right to use the HRRC Only Rail Property for the Freight Rail Service at such levels of activity as HRRC deems to be appropriate, without the prior written consent of MassDOT, *provided* that the character, scheduling or extent of such Freight Rail Service shall not preclude MassDOT's potential future use of the HRRC Only Rail Property for Commonwealth Passenger Service, as, if and when such properties are converted to Joint Usage Rail Property in accordance with the terms of this Agreement, and provided further that MassDOT, following reasonable prior notice to HRRC, may use the HRRC Only Rail Property for Occasional Use pursuant to Section 3.2(b) above.

(b) Prior to the Commonwealth Passenger Service Commencement Date, HRRC shall have the exclusive right to use the HRRC Only Rail Property for Passenger Service at such levels of activity as HRRC deems to be appropriate, without the prior written consent of MassDOT, *provided* that HRRC does not receive subsidies or other benefits from the Commonwealth of Massachusetts to provide such services and *provided further* that the character, scheduling or extent of its Passenger Service operations shall not preclude MassDOT's potential future use of the HRRC Only Rail Property for Commonwealth Passenger Service, as, if and when such properties are converted to Joint Usage Rail Property in accordance with the terms of this Agreement, and provided further that MassDOT, following reasonable prior notice to HRRC, may use the HRRC Only Rail Property for Occasional Use pursuant to Section 3.2(b) above.

4.2 Management and Control.

(a) HRRC shall have the exclusive authority over freight operations and, prior to the Commonwealth Passenger Service Commencement Date over Passenger Service operations, and may use the entire HRRC Only Rail Property for its operations. When Rail Operating Property is designated as HRRC Only Rail Property, HRRC shall have the exclusive authority to determine schedules, rates, track speeds and restrictions and shall continue to dispatch traffic on the Property, subject to the terms of this Agreement.

(b) HRRC shall exclusively exercise and perform, at HRRC's sole cost and expense, the management, regulatory and operational control of any and all Freight Rail Service or, prior to the Commonwealth Passenger Service Commencement Date, Passenger Service, over the HRRC Only Rail Property including, without limitation dispatching and control of all trains, provided that such control shall be exercised in a manner which does not preclude or materially impair MassDOT's future use of the HRRC Only Rail Property for Commonwealth Passenger Service.

(c) HRRC shall ensure that work or services on the HRRC Only Rail Property is performed and completed in accordance with this Agreement. Except as expressly provided for in Section 3.2(b) or Section 11 of this Agreement and except for the Rehabilitation Project improvements and any other work as MassDOT may in the future agree to fund, HRRC, and not MassDOT, shall bear all costs or expenses, and be liable for all liability, costs, and expenses arising out of or connected with, the performance and completion of such work or services (or failure to so perform and complete such work or services) in accordance with this Agreement.

4.3 Maintenance.

(a) At all times HRRC shall be solely responsible for the maintenance and inspection of the HRRC Only Rail Property, including any and all industrial sidings and related HRRC Only Rail Property assets required solely in relation to Freight Rail Service. Prior to completion of the Phase 1 Improvements, HRRC may provide Maintenance Services on the HRRC Only Rail Property to a level that HRRC determines is sufficient for HRRC to operate Freight Rail Service. Upon completion of the Phase 1 Improvements, HRRC shall provide Maintenance Services on the HRRC Only Rail Property to a level that is adequate and customary in the business to maintain the quality and projected lifespan of any capital improvements constructed on the Property as part of the Rehabilitation Project or otherwise constructed on the Property in accordance with the terms of this Agreement, all reasonable aging, wear and tear excepted. All Maintenance Services shall be undertaken in a manner which does not preclude or materially impair MassDOT's future use of HRRC Only Rail Property for Commonwealth Passenger Service, as, if and when such properties are converted to Joint Usage Rail Property in accordance with the terms of this Agreement.

(b) HRRC shall at all times provide Freight Rail Service and Passenger Service over the HRRC Only Rail Property in accordance with FRA regulations and all other applicable laws, rules and regulations.

(c) For so long as HRRC has the obligation or is designated to perform the Maintenance Services under this Agreement, HRRC shall provide and furnish all labor, administrative, professional, and supervisory personnel necessary for its performance of the Maintenance Services. All HRRC personnel involved in any aspect of providing services under this Agreement shall be subject to the direction, supervision, and control of the HRRC, and not MassDOT. HRRC shall be solely responsible for all labor relations issues relating to the HRRC Employees that arise in connection with the performance of Maintenance Services under this Agreement. HRRC may use its own forces to perform Maintenance Services without any requirement for approval from MassDOT, provided all activities and practices of HRRC in connection with Maintenance Services are consistent with this Agreement and all applicable laws, rules and regulations.

(d) Unless otherwise stated explicitly in this Agreement, HRRC shall be responsible for the costs of materials, equipment, management, and other expenses required for the performance of any Maintenance Services performed by HRRC pursuant to this Section 4.3. If any maintenance or inspection activities are required as a result of HRRC's failure to maintain the HRRC Rail Only Property in accordance with this Section 4.3, HRRC shall be responsible for any and all related costs, including but not limited to any expenses reasonably required to restore such property through additional maintenance activities or the construction of capital improvements.

(e) In the event that HRRC does not provide Maintenance Services as required pursuant to this Section 4.3, MassDOT may, at its option after providing notice to HRRC and HRRC's failure to perform the Maintenance Services within seven (7) days of such notice, either with or without the consent or request of HRRC, maintain the HRRC Only Rail Property and HRRC shall reimburse MassDOT for all direct costs incurred in rendering such Maintenance Services. The Parties hereto agree that the seven (7)-day period described in the immediately preceding sentence shall be extended as reasonably necessary if weather conditions prevent HRRC from completing such maintenance within such period. Notwithstanding the foregoing, HRRC may choose not to perform any maintenance on portions of the HRRC Only Rail Property, based upon lack of freight demand or otherwise. HRRC's failure to perform Maintenance Services over said sections of the HRRC Only Rail Property shall not constitute grounds for MassDOT to perform Maintenance Services over said sections of the HRRC Only Rail Property pursuant to this Section 4.3(e) provided that no capital expenses are required as a result of such deferred maintenance, as discussed further in Section 8.3 below. MassDOT's provision of Maintenance Services pursuant to this Section 4.3(e) shall not be considered a waiver of any other remedies available to MassDOT under this Agreement including, without limitation, the remedies set forth in Section 13.

(f) Nothing in this Section 4 shall derogate from MassDOT's right to enter upon the HRRC Only Rail Property for any purpose, provided that such entry does not unreasonably interfere with HRRC's Passenger Service or Freight Rail Service and provided that reasonable notice is provided and all applicable safety rules and practices are followed. The entry upon the HRRC Only Rail Property by MassDOT and any of its agents, contractors, and invitees pursuant to this Section 4.3(f) shall be performed at MassDOT's sole cost, risk and

expense. For the purposes of this Section 4.3(f), HRRC shall not be considered an agent, contractor, or invitee of MassDOT.

(g) Notwithstanding any provision of this Agreement to the contrary, in the event that MassDOT operates over the HRRC Only Rail Property for Occasional Use, MassDOT shall be responsible for any and all damage to the HRRC Only Rail Property that may occur from such use.

(h) HRRC shall have the sole obligation to maintain, at its expense, sidings and other facilities and equipment that are designated as HRRC Only Rail Property, including but not limited to any such sidings, facilities or equipment added to the Rail Operating Property pursuant to Section 8.1 of this Agreement.

4.4 Rehabilitation Project.

MassDOT and HRRC agree that MassDOT will rehabilitate the Property to facilitate the continued freight rail service over the Property and to facilitate the commencement of passenger service operated by MassDOT or its contractor on the Property. The project and the scope of work and performance schedule described on **Exhibit B**, attached hereto shall be referred to herein as the “**Phase 1 Rehabilitation Project**.” In connection with such Phase 1 Rehabilitation Project, MassDOT agrees to engage HRRC to the extent consistent with, and to the extent allowed by, state and, if applicable, federal procurement laws for the construction of the Phase 1 Rehabilitation Project. If MassDOT engages HRRC to perform such construction work, the Parties shall mutually agree on a force account-based construction agreement setting forth their respective obligations. Notwithstanding the foregoing, HRRC shall not be engaged to perform any items of work that HRRC is not reasonably capable of performing in a workmanlike and efficient manner. MassDOT shall be responsible for securing all necessary permits and approvals for the construction of the Phase 1 Rehabilitation Project, and HRRC shall cooperate with permitting efforts and shall comply with all of the terms of any permit obtained.

SECTION 5 JOINT USAGE RAIL PROPERTY.

5.1 Use.

Consistent with the Freight Easement and subject to this Agreement, including but not limited to the limitations described in Section 5.2 below, HRRC may use the Joint Usage Rail Property to provide Freight Rail Service and, subject to the prior written approval of MassDOT, Passenger Service, and MassDOT may use the Joint Usage Rail Property to provide Passenger Service, to perform Construction Work, and for related uses. Nothing in this Agreement other than the provisions of Section 5 and Section 9 shall derogate from MassDOT’s right to utilize, directly or through its Operating Contractor, any portion of the Joint Usage Rail Property for the provision of Passenger Service.

5.2 Limitations on Use of Joint Usage Rail Property.

(a) Upon the commencement of Commonwealth Passenger Service on the Commonwealth Passenger Service Commencement Date, HRRC shall have the right to run up to

two (2) daily round-trip Freight Rail Service trains on the Joint Usage Rail Property and two (2) daily local Freight Rail Service trains to serve customers (the “**Freight Service Capacity**”). HRRC shall have first priority to schedule two Freight Service Capacity trains daily except as otherwise set forth in Section 5.2(b) below; provided, however, that HRRC acknowledges the importance of MassDOT’s ability to provide Commonwealth Passenger Service trains during commuter rush hours and shall use reasonable efforts to avoid conflicts with Commonwealth Passenger Service operations.

(b) Subject to the foregoing Section 5.2(a) and Section 5.2(c) below, MassDOT shall have the right to run Commonwealth Passenger Service trains on the Joint Usage Rail Property and may operate as many passenger train round-trips as it deems reasonable or necessary, provided that such use does not interfere with or limit HRRC’s ability to operate Freight Rail Service up to the Freight Service Capacity. If MassDOT proposes to add Commonwealth Passenger Service trains during time periods that would interfere with previously scheduled Additional Freight Service (defined in Section 5.2(e) below) trains, MassDOT shall provide HRRC with thirty (30) days prior written notice. If HRRC has not made improvements to add capacity for such Additional Freight Service trains, HRRC may reschedule such Additional Freight Service trains to a different time period, or elect to build or have built, at HRRC’s sole cost and expense, additional capacity sufficient to accommodate the Additional Freight Service without interfering with the schedules of the existing and proposed Commonwealth Passenger Service trains. If additional capacity is constructed by or for HRRC to accommodate Additional Freight Service trains by adding to the total capacity of the Rail Operating Property without interfering with the schedules of existing and future Passenger Service trains, such Additional Freight Service shall become part of HRRC’s Freight Service Capacity as described above in Section 5.2(a). Any construction pursuant to this Section 5.2(b) shall be subject to HRRC obtaining the written consent of MassDOT, which consent shall not be unreasonably withheld or delayed.

(c) MassDOT shall provide notice to HRRC (a “**Commonwealth Passenger Service Commencement Notice**”) advising HRRC of the date on which MassDOT or its Operating Contractor intends to commence Commonwealth Passenger Service on the Joint Usage Rail Property (such date, a “**Commonwealth Passenger Service Commencement Date**”) at least sixty (60) days prior to such Commonwealth Passenger Service Commencement Date. In addition, any date upon which MassDOT or the Commonwealth of Massachusetts commences subsidizing the rail operations of HRRC (which subsidization specifically excludes any capital expenditures incurred by MassDOT in connection with the Rehabilitation Project) on the Property shall be treated as a Commonwealth Passenger Service Commencement Date, whether or not MassDOT has provided HRRC with Commonwealth Passenger Service Commencement Notice.

(d) Notwithstanding the foregoing Section 5.2(c), Commonwealth Passenger Service shall not commence until the Phase 2 Rehabilitation Improvements to be constructed as part of the Rehabilitation Project referred to in Section 4.4 and described in Exhibit B have been substantially completed.

(e) HRRC shall have the exclusive right to run as many Freight Rail Service trains in excess of the Freight Service Capacity (“**Additional Freight Service**”), including but not limited to local working trains, as necessary to serve customers, provided such Additional Freight Service trains do not interfere with Commonwealth Passenger Service. Any Freight Service train that is not designated as a Freight Service Capacity train shall automatically be designated an Additional Freight Service train. MassDOT agrees to use reasonable efforts to accommodate such Additional Freight Service Trains.

5.3 Service Suspensions.

Notwithstanding any provision of this Agreement to the contrary, HRRC and MassDOT acknowledge that one or more Service Suspensions may be necessary in order to perform Construction Work or Maintenance Services. In the event that MassDOT elects to perform Construction Work, either through HRRC or a third party, MassDOT shall confer with HRRC and attempt to minimize, to the extent practicable, and to mitigate disruption to the Freight Rail Service. Except under extraordinary circumstances, in an emergency, or with the consent of HRRC, Freight Rail Service shall not be interrupted as a result of Construction Work or Maintenance Services for a period of time exceeding ten (10) consecutive hours. In the event of extended interruption of Freight Rail Service because of Construction Work or Maintenance Services, reasonable measures shall be taken, at MassDOT’s expense (unless the suspension is caused by HRRC’s performance of Construction Work or Maintenance Services) to accommodate the Freight Rail Service needs of HRRC and its customers, taking into account the risk of long-term or permanent business migration from HRRC’s rail lines as a result of Freight Rail Service interruption. For such service interruptions in excess of three (3) days, MassDOT and HRRC shall coordinate on the preparation of a mitigation plan to be agreed upon in the reasonable discretion of the Parties (a “**Mitigation Plan**”). Such Mitigation Plan shall, among other things, detail shipping alternatives that can be implemented during the service interruptions. MassDOT shall use reasonable efforts to ensure that HRRC can restore Freight Rail Service on a daily basis.

5.4 Control and Management.

(a) MassDOT shall retain the exclusive right to exercise and to perform, or to delegate or subcontract to another entity, the performance of the management, regulatory and operational control of any and all rail service over the Joint Usage Rail Property including, without limitation, dispatching and control of all trains. In the exercise of its control over the Joint Usage Rail Property, the party performing dispatching services 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; provided, however, such party providing dispatching services shall give priority to Commonwealth Passenger Service trains over all other train scheduling, dispatching and control, including without limitation HRRC Freight Service, provided that each such Commonwealth Passenger Service train is within ten (10) minutes earlier or later than its scheduled time. For all other train movements, the party performing dispatching services on behalf of MassDOT shall prioritize trains and resolve scheduling conflicts using best dispatching practices.

(b) MassDOT shall establish a dispatching protocol for the Joint Usage Rail Property that will (i) minimize negative impacts on each Party's trains in all time periods, and (ii) allow reasonable flexibility within the structure described herein to accommodate the movement of each other's trains, *provided however*, that, subject to Section 5.2(a) of this Agreement, MassDOT shall have the exclusive right to schedule Commonwealth Passenger Service trains (in consultation with HRRC) and that in all circumstances a scheduled Commonwealth Passenger Service train shall hold a priority for as long as it maintains its schedule within a period no longer than ten minutes earlier or later than its scheduled time, as described above in Section 5.4(a).

(c) In connection with MassDOT's assumption of control of dispatching services upon the Commonwealth Passenger Service Commencement Date, HRRC shall provide full cooperation to allow for the transfer of dispatching control on the Joint Usage Rail Property to MassDOT or a third party. Such cooperation shall include but not be limited to providing access and assistance in locating and activating switching (transfer) equipment at necessary sites, whether located on MassDOT property or HRRC property, to establish the capability or activation of train control machines controlling the Joint Usage Rail Properties at MassDOT's dispatching center and deactivation of the train control machines at HRRC's dispatching center. HRRC shall provide this cooperation within thirty (30) days of direction from MassDOT. Such work shall be performed as Force Account Work under this Agreement or by MassDOT or third parties engaged by MassDOT, at its sole discretion.

(d) MassDOT shall ensure that its contractors and subcontractors performing work or services on the Joint Usage Rail Property perform and complete their respective work or services in accordance with this Agreement.

5.5 Performance of Maintenance Work.

(a) Upon the commencement of Commonwealth Passenger Service over the Joint Usage Rail Property on the Commonwealth Passenger Service Commencement Date, MassDOT shall take over the obligation to perform Maintenance Services on the Joint Usage Rail Property and shall maintain the main line in accordance with all applicable laws to a condition sufficient to allow for Freight Rail Service at the Freight Service Capacity. In consideration thereof, HRRC shall pay MassDOT the HRRC Car-Mile Payment described below in Section 5.6(a) of this Agreement.

(b) All Maintenance Services over the Joint Usage Rail Property, whether performed by MassDOT or its contractor (which may be HRRC), shall be undertaken in a manner so as to minimize interference with rail operations on the Property. In all circumstances where a track outage is required for the performance of Maintenance Services (except emergency Maintenance Services), the Party performing such Maintenance Service work shall provide the other Party with written notice of such maintenance work at least fifteen (15) calendar days in advance of any such track outage. Notwithstanding the foregoing, each Party performing Maintenance Services shall make reasonable efforts to provide written notice at least thirty (30) days in advance of any such track outage.

(c) For so long as MassDOT assumes maintenance control and performs the Maintenance Services on the Joint Usage Rail Property and HRRC has not been designated to perform such Maintenance Services, HRRC shall contribute the HRRC Car-Mile Payment set forth in Section 5.6 toward the Maintenance Services.

(d) The provisions of this Section 5.5 do not apply to or otherwise affect any HRRC Only Rail Property.

5.6 Responsibility for Maintenance Services and Capital Expenses.

(a) As its contribution towards Maintenance Services, after the commencement of Commonwealth Passenger Service over the Rail Operating Property on the Commonwealth Passenger Service Commencement Date, HRRC shall pay to MassDOT the amount of \$0.518 per car mile for each freight car, loaded, or empty, and for each locomotive operated over the line by HRRC (the "**HRRC Car-Mile Payment**"). The Maintenance Service obligations will be established by MassDOT upon commencement of Passenger Service. HRRC shall pay the HRRC Car-Mile Payment in monthly installments (which shall be estimated monthly).

(i) MassDOT shall be responsible for all costs associated with elements of the maintenance of the Joint Usage Rail Property in excess of the HRRC Car-Mile Payment. If HRRC is selected by MassDOT to perform Maintenance Services on the Joint Usage Rail Property, so long as HRRC is performing such Maintenance Services, HRRC shall receive a first dollar credit for the costs of all Maintenance Services up to the amount of the monthly HRRC Car-Mile Payment. To the extent that monthly expenses incurred by HRRC in connection with Maintenance Services exceed the HRRC Car-Mile Payment, HRRC shall not be responsible for its monthly Car-Mile Payment. HRRC may elect to carry forward any remaining credit (after the application of the first-dollar credit to the HRRC Car-Mile Payment) to apply toward future HRRC Car-Mile Payments or, upon request, MassDOT shall provide reimbursement to HRRC. (For purposes of determining MassDOT's payments for Maintenance Services and the HRRC Car-Mile Payment, such payments may be reconciled within sixty (60) days of the end of each calendar year, based on actual Car-Mile usage and actual Maintenance Service costs incurred). **[NEED TO DISCUSS REIMBURSEMENT/STANDARD CONTRACT FORM]**

(ii) HRRC, in its sole and absolute discretion, may pay additional amounts towards the maintenance or improvement of the Property as well as capital projects, provided, however, that any capital projects shall be subject to the written approval of MassDOT, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) MassDOT shall have the responsibility and obligation to, at its cost and expense, cause the improvement, construction, and capital maintenance of the Joint Usage Rail Property and any facilities to be used in connection with Commonwealth Passenger Service to

such standards as it may deem appropriate to allow for the speeds and other conditions that are anticipated to be necessary or reasonable for such Commonwealth Passenger Service.

SECTION 6 PASSENGER ONLY RAIL PROPERTY

6.1 Access to Passenger Only Rail Property.

HRRC shall have no rights to utilize the tracks and related operating facilities that may be described on **Exhibit A** hereto as “Passenger Only Rail Property” for any purpose, except as may otherwise be expressly provided in this Agreement. In accordance with Section 3.2(a), segments of the Rail Operating Property may only be designated as Passenger Only Rail Property if the segment is a subsequent addition to the Rail Operating Property not included in Exhibit A as of the date of this Agreement, and only if MassDOT determines, in its sole discretion, that such Rail Operating Property will be used only for Passenger Service, and not for Freight Rail Service (other than Occasional Use as set forth in Section 3.2(b)) (such segments of Rail Operating Property, “**Additional Passenger Only Rail Property**”); provided, however, that in the event that HRRC seeks to provide Freight Rail Service over Additional Passenger Only Rail Property, MassDOT shall, to the extent practicable, accommodate such Freight Rail Service and such Rail Operating Property shall be re-designated as Joint Usage Rail Property. Passenger Only Rail Property shall be used for Passenger Service only; except pursuant to Section 3.2(b) of this Agreement, Passenger Only Rail Property shall not be used by HRRC in connection with the performance of Freight Rail Service.

6.2 Control, Management, Maintenance, and Alterations.

(a) MassDOT retains the exclusive right to exercise and to perform, or to delegate or subcontract to another entity the performance of, the management, maintenance, all regulatory and operational control of Passenger Only Rail Property, including, without limitation, dispatching and control of all trains. Notwithstanding the foregoing, at any given time, all of the Rail Operating Property will be managed and controlled, including dispatching, by one party.

(b) MassDOT shall cause all tracks within the Passenger Only Rail Property to be maintained to whatever standard MassDOT chooses in its sole discretion. Nothing in this Agreement shall be construed to require MassDOT to use the Passenger Only Rail Property or to maintain the tracks on said properties to a condition that allows use of the Passenger Only Rail Property by any Person.

(c) Notwithstanding any provision of this Agreement to the contrary, in the event that MassDOT grants prior written approval to HRRC to run trains over the Passenger Only Rail Property in an infrequent and temporary manner, HRRC shall be responsible for any damage to the Passenger Only Rail Property that may occur from such use.

(d) MassDOT shall have the responsibility and obligation to cause, at its cost and expense, the improvement, construction, and capital maintenance of the Passenger Only Rail Property and any facilities to be used solely in connection with the Commonwealth Passenger Service to such standards as it may deem appropriate to allow for the speeds and other conditions

that MassDOT determines to be necessary or reasonable for such Commonwealth Passenger Service.

6.3 General.

Notwithstanding anything herein to the contrary, MassDOT shall have the exclusive right to secure such approvals of regulatory or governmental bodies for such work on Passenger Only Rail Property as may be necessary, including, without limitation, the FRA and Massachusetts Department of Public Utilities, and no approval of HRRC shall be required for the performance of any work on Passenger Only Rail Property. Any new Infrastructure Improvements constructed on Additional Passenger Rail Property that, in the sole discretion of MassDOT, is or may become Joint Usage Rail Property or HRRC Only Rail Property shall permit the passage of rail cars meeting AAR Plate F dimensions and cars having an outside extreme width of ten feet and ten inches (10'10") and an outside extreme length of seventy-nine feet (79'). Any new Infrastructure Improvements constructed on Additional Passenger Rail Property that, in the sole discretion of MassDOT, will never become Joint Usage Rail Property or HRRC Only Rail Property, shall not be required to permit the passage of rail cars meeting such Plate F dimensions.

6.4 Emergency Access.

MassDOT hereby grants to HRRC the right to enter upon and to utilize the Passenger Only Rail Property on such emergency basis as the Parties determine to be necessary, but at the direction and control of MassDOT, *provided* that such use (a) does not unreasonably interfere with MassDOT's use of the Passenger Only Rail Property, and (b) shall be subject to all other provisions of this Agreement.

SECTION 7 FORCE ACCOUNT WORK

MassDOT may, to the extent permitted by applicable law and in its sole discretion, or, solely with respect to the Phase I Rehabilitation Project as described in and subject to the terms of Section 4.4 hereinabove shall, request that HRRC perform work not otherwise required by this Agreement ("**Force Account Work**") on the Property. All Force Account Work shall be performed pursuant to a Force Account Work Agreement reasonably acceptable to both parties.

SECTION 8 ACCESS, ALTERATIONS AND GOVERNMENTAL APPROVALS

8.1 Installation of Switches and Sidings for Freight Rail Service.

HRRC shall retain the right to cause, at its sole cost and expense, the installation of additional turnouts, sidings, communication lines and equipment, and other freight facilities and equipment on the Property for Freight Rail Service purposes, so long as such track or other freight facilities do not materially interfere with current or future Commonwealth Passenger Service operations on the Rail Operating Property. The actual construction or installation of any such facilities or equipment on Joint Usage Rail Property shall be performed by the Party responsible for maintaining the Joint Usage Rail Property pursuant to the terms of this Agreement, but construction or installation of facilities or equipment beyond the "point of

clearance” on HRRC Only Rail Property shall be performed by HRRC with its own forces or contractors. Upon or prior to the completion of construction of facilities added to the Rail Operating Property pursuant to this Section 8.1, MassDOT, in its sole discretion, shall designate such property as HRRC Only Rail Property or Joint Usage Property, as reasonable and appropriate to best maintain such facilities, provided, however, that MassDOT shall contribute its proportionate share of cost and expenses if MassDOT elects to designate such improvements as Joint Usage Rail Property. All such installations shall be subject to the prior written approval of MassDOT, which approval shall not be unreasonably withheld, conditioned or delayed. MassDOT shall make reasonable efforts to provide any such written approval (or decision not to approve such request) within forty-five (45) days of the date HRRC first requests such approval.

8.2 No HRRC Approval.

Except as expressly provided herein, nothing in this Agreement shall be construed to grant to HRRC a right to approve actions by MassDOT affecting the Property including, without limitation, alterations thereto, the relocations, use of air or subsurface rights for development or other purposes, or granting of easements for utilities and crossings; provided, however, that such actions shall not unreasonably interfere with the provision of HRRC Freight Rail Service.

8.3 Maintenance of the Property, Capital Expenses.

Except as provided in Section 4.3, nothing in this Agreement shall derogate from MassDOT’s right to perform all maintenance, construction, alterations or improvements of any kind on the Property which are determined to be necessary by MassDOT, provided, however, that all such maintenance, construction, alterations or improvements shall be undertaken in such a way so as not to materially interfere with the provision of HRRC Freight Rail Service, and provided further that all such maintenance, construction, alterations, or improvements shall comply with all relevant provisions of this Agreement. Except with respect to portions of the Property that are intended to permanently remain HRRC Only Rail Property, MassDOT shall be responsible for capital improvements to the Property, including those necessary to repair or replace rail lines, including rail and ties, and other facilities rendered unusable by natural disasters, or as a result of age deterioration or obsolescence, criminal acts of others or acts of terrorism. Such capital improvements do not include any work required as a result of incomplete or substandard performance by HRRC with respect to its maintenance obligations set forth in this Agreement and which occurs after the date of this Agreement. HRRC shall be solely responsible for the costs and expenses incurred as a result of any such capital improvements required as a result of HRRC’s failure to perform its maintenance obligations hereunder.

8.4 Access to Third Parties.

(a) Subject to and consistent with the other provisions of this Agreement, including HRRC’s exclusive Freight Easement, MassDOT shall have the exclusive right to issue licenses or grant access to the Property to third parties, including but not limited to utility service providers, to perform work on such third parties’ own behalf. MassDOT 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 HRRC of all such work that will have an impact on

HRRC operations. To the extent that any such work by third parties is performed on HRRC Only Rail Property or any Joint Usage Rail Property on which HRRC performs maintenance or dispatching, such work will be performed in accordance with the applicable operational and dispatching rules and regulations of HRRC and such third parties shall be obligated to have received or to procure from HRRC any railway worker protection training, flagging, employee in charge and other such services as are reasonably and customarily required by HRRC and to compensate HRRC in accordance with its customary policies and procedures for the provision of such required training, protection and other mandatory services. Any new aerial crossings of utility lines over the Property shall exceed the minimal clearance requirements that exist as of the date of this Agreement, but shall maintain a vertical clearance of not less than twenty feet (20') over the top of rail. Any license issued or access granted to a third party by MassDOT pursuant to this section 8.4(a) shall require such third party to broadly indemnify all rail users of the Property from any damages sustained as a result of or in connection with the use, existence of, or failure of such third party to maintain or relocate such utility crossings if such maintenance or relocation shall be necessary for rail operations on the Property. Any insurance provided by any licensee or lessee for the benefit of MassDOT shall, to the same extent, be written or endorsed to provide the same coverage to HRRC as is provided to MassDOT.

(b) MassDOT shall not permit access to third parties for non-rail use of the Property if such use will interfere with current or foreseeable Freight Rail Service or Passenger Service operations. Shared use of the right-of-way, including but not limited to hiking, bicycling, motorcycle or snowmobile trails, shall normally be considered to present a safety hazard with respect to both Freight Rail Service and Passenger Service operations; however, MassDOT may permit such access in its reasonable discretion, provided the Parties shall mutually agree upon a reasonable indemnity agreement with respect to such access which provides full indemnification for HRRC against any claims for injury or damage arising in connection with such access.

(c) MassDOT shall provide to HRRC copies of any license agreements, leases, occupancy agreements, access agreements, crossing agreements, permits and other similar agreements entered into after the date of this Agreement that grant any rights of entry or other rights to third parties to enter or use the Berkshire Line (collectively, "**Occupancy Agreements**"). HRRC may, from time to time, notify MassDOT of any violations by others of terms and provisions of any Occupancy Agreement or other similar agreements entered into by MassDOT or its predecessors in title and of any unauthorized encroachment onto the Property, and MassDOT shall promptly take such measures as it deems appropriate to cause the termination of any violation or removal of any encroachment that interferes with rail operations and related activities on the Berkshire Line.

8.5 General.

Notwithstanding anything herein to the contrary, MassDOT shall have the right to secure such approvals of regulatory or governmental bodies for such work on the Property as may be necessary, including, without limitation, the FRA and the Massachusetts Department of Public Utilities, and no approval of HRRC shall be required for the performance of any work on the Property, except as may be expressly provided herein.

8.6 Passenger Facilities.

Except as provided in Section 6.3 herein, MassDOT shall not construct or modify any Infrastructure Improvements in such a manner that will prevent the passage of rail cars meeting AAR Plate F dimensions. Any and all new station platforms constructed on the Property shall be constructed so that they are no closer than 5 feet, 7 inches to the centerline of the track up to an elevation of 4 feet above the top of the rails. MassDOT shall, in coordination with HRRC, take reasonable steps to provide Plate F clearance during the reconstruction of any existing structure where such clearance did not previously exist. Notwithstanding the foregoing or anything herein to the contrary, MassDOT shall not be required to replace any such existing structures on or adjacent to the Property with new structures to meet the dimensional clearance requirements set forth in this Section 8.6.

SECTION 9 GENERAL OPERATING REQUIREMENTS

9.1 Operating Rules

Regardless of the designation of the Property, at all times operations on the Berkshire Line shall be governed by the Northeast Operating Rules Advisory Committee (NORAC) Operating Rules, unless the Parties hereto otherwise agree in writing.

9.2 Positive Train Control

In the event that positive train control (“PTC”) equipment is required for rail operations over the Berkshire Line as a result of Commonwealth Passenger Service and not solely because of HRRC operations, MassDOT shall, at its cost and expense, provide a PTC system that complies with applicable law and is fully compatible with the PTC system adopted by the national freight system. In addition, MassDOT shall equip, at its cost and expense, up to ten (10) locomotives with equipment necessary for said locomotives to operate on or over the Property. Should the PTC system be installed, the maintenance and renewal of that PTC system shall be an element of the Maintenance Services.

9.3 Passenger Operating Agreement

MassDOT shall keep HRRC reasonably apprised of any preliminary planning initiatives regarding the introduction of Commonwealth Passenger Service over the Property as contemplated by Section 5 of this Agreement. MassDOT agrees to consult with HRRC from time to time, prior to the issuance of any request for qualifications, request for proposals, or other procurement process designed to identify a private operator of such potential Commonwealth Passenger Service, regarding the possible details of such Commonwealth Passenger Service, the impact of such service on HRRC’s operations, and HRRC’s potential role in facilitating or operating such service. In the event that MassDOT decides to seek to engage a third party to operate Commonwealth Passenger Service on the Berkshire Line, MassDOT shall provide HRRC with notice of its intention to make such a selection and, to the extent practicable, HRRC shall have an opportunity to participate in the selection process. Unless otherwise agreed to by the Parties, any request for qualifications, request for proposals, or other aspects of the procurement process, or agreements related thereto, designed to identify a private rail service

provider or private operator of or with respect to the Berkshire Line shall be specific to the Berkshire Line and shall not be combined with the procurement of operating or other rail services provided or to be provided on or with respect to any other line of railroad. In the event that HRRC, in accordance with all applicable laws, rules, regulations, and policies, is selected to operate the Commonwealth Passenger Service on the Berkshire Line, the Parties shall negotiate in good faith and attempt to enter into a separate "Passenger Operating Agreement," which shall govern the operation of Commonwealth Passenger Service on the Berkshire line by HRRC.

9.4 FRA Intercity Standards

Any entity operating Passenger Service on the Property shall employ only rolling stock that meets FRA intercity commuter standards, which shall be operated and maintained by professional paid and qualified railroad personnel.

SECTION 10 TERM

This Agreement shall commence on the Effective Date and shall be for a Term of thirty (30) years, 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 Property. The Parties acknowledge that expiration or termination of this Agreement will not affect the validity, continuation or perpetual nature of the Freight Easement or any other easement rights vested in HRRC with regard to the Property.

SECTION 11 INDEMNIFICATION, LIABILITY AND INVESTIGATION

11.1 General.

As between the Parties hereto, prior to the introduction of Commonwealth Passenger Service, and except as allocated in the Construction Agreement, HRRC shall be liable for all personal injury or property damage occurring as a result of or relating to its operations on the Property, except for liability arising out of Occasional Use, which shall be allocated as otherwise set forth in this Section 11. Upon the introduction of Commonwealth Passenger Service, financial responsibility for liability for personal injury or property damage shall be allocated between HRRC and MassDOT as provided in this Section 11. For the purpose of this Section 11, no Party shall be deemed to be a "contractor" of any other Party.

11.2 Harm Involving One Party Only.

(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, customers and passengers or other invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment, or employees or agents of, or in the account of, only MassDOT being involved, then MassDOT shall assume all liability therefor, and bear all cost and expense in connection therewith, including reasonable attorneys' fees. MassDOT shall

release, indemnify, and hold harmless HRRC and its contractor(s) from and against any and all claims, damages, awards, or judgments arising from or related to this Section 11.2(a).

(b) 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, customers and passengers or other invitees or trespassers), occurs with the trains, locomotives, rail cars or rail equipment, or employees or agents of, or in the account of, only HRRC being involved, then HRRC shall assume all liability therefor, and bear all cost and expense in connection therewith, including reasonable attorneys' fees. Notwithstanding the foregoing, HRRC shall not be liable for damage to the real property and track of MassDOT. HRRC shall release, indemnify, and hold harmless MassDOT and its contractor(s) from and against any and all claims, damages, awards or judgments arising from or related to this Section 11.2(b).

11.3 Harm Caused by Third Party.

In the event that harm, damage or injury (including death) is caused solely by an act or omission for which a third party is legally responsible, to the property of, or in the custody of, one of the Parties hereto, or to the employees, passengers, customers, or licensees of one of the Parties hereto, that Party shall assume all loss, cost and expense arising therefrom, without contribution from the other Party. This Section is not intended to relieve any third party from any liability.

11.4 Harm Involving Both Parties.

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, customers and passengers or other invitees), occurs with the trains, locomotives, rail cars or rail equipment, or the employees of, or in the account of, both MassDOT and HRRC being involved, then:

(a) MassDOT and HRRC shall separately assume and bear all liability, cost and expense for loss of, damage to, or destruction of any property, real or personal, owned by or leased to or otherwise under the control of such party, including, without limitation, trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them.

(b) MassDOT and HRRC shall separately assume and bear all liability, cost and expense for injury to and death of the officers, agents, contractors and employees employed or engaged by each of them.

(c) Each Party shall assume and bear all liability, cost, and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in paragraphs (a) or (b) above, and for loss of, damage to and destruction of all other property not referenced in paragraphs (a) or (b) above, caused by the negligence or fault of such Party; provided, however, that MassDOT shall indemnify HRRC for claims described in this paragraph (c) arising from the negligence or fault of HRRC, to the extent that such claims fall within the program of insurance

and self-insurance described in Section 12.2 below and exceed \$3,000,000 in the aggregate and per occurrence.

11.5 Derailment or Accident.

In the event of any derailment or other accident occurring on the Joint Usage Rail Property wherein cars, motive power, or other equipment of either Party shall fall or encroach upon tracks, bridges or other property being used by the other Party so that said property is blocked or normal operation is impeded, the Party whose property has so fallen or encroached shall expeditiously remove the same and cause all necessary repairs to be made and all tracks and appurtenances restored, at its expense, as may be required for the continued operation of the other Party's railroad activities. Both parties agree to cooperate with each other to expedite the repair and removal of such cars, motive power and other equipment and will make all reasonable efforts to restore the affected line or facility to service.

11.6 Administration of Claims.

(a) Except as provided in Section 11.6(b) below, 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.

(b) HRRC 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 HRRC's Employees, for which either HRRC or MassDOT solely or HRRC and MassDOT 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 Parties of such filing where liability therefor may be joint or that of another Party. MassDOT and HRRC will cooperate with each other in all such investigations, adjustments, and defenses, and MassDOT and HRRC 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 Party'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) HRRC shall not settle or compromise any claim, demand, suit or cause of action of any HRRC Employee for which MassDOT has any liability under this Agreement

without the concurrence of MassDOT if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00) and MassDOT shall not settle or compromise any claim, demand, suit or cause of action of any MassDOT employee or passenger for which HRRC has any liability under this Agreement without the concurrence of HRRC 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 11.6 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 11 or elsewhere in this Agreement.

SECTION 12 INSURANCE

12.1 HRRC Requirements

From and after the Effective Date, HRRC shall procure and maintain general liability insurance with respect to Freight Rail Service with minimum limits of not less than \$7,500,000 per occurrence and in the aggregate, which insurance shall cover HRRC's liability under Section 11 above for damage, including but not limited to damage to rolling stock and lading and injury to persons, but excluding damage to railroad tracks. HRRC shall also procure and maintain worker's compensation insurance, employer liability and other insurance as required by law. All insurance herein provided for shall be in such form and written by such companies as may be reasonably approved by MassDOT, which approval shall not be unreasonably withheld. HRRC will deliver to MassDOT certificates of insurance for all policies and name MassDOT as additional insured as required under this Agreement. In the event that such insurance policy is canceled for any reason, HRRC shall replace said policy with another policy in like amount and coverage protection.

12.2 MassDOT Requirements.

(a) MassDOT 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, MassDOT's contractual liabilities and indemnification obligations under this Agreement, including without limitation those obligations set forth in Section 11.2(a) and 11.4(c), in the amounts as provided for in paragraph 12.2(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 MassDOT is a material obligation of this Agreement. In the event that such insurance policy is canceled for any reason, then MassDOT shall replace said policy during the notification period with another policy in like amount and coverage protection or, in the case of the self-insurance program, shall re-establish such program.

(b) MassDOT, at its sole cost and expense, shall maintain during the entire term of this Agreement, liability insurance covering HRRC as an additional named insured as agreed and provided in the terms and conditions of paragraph 12.2(a) hereof. The said liability insurance shall have a limit of not less than \$75,000,000 (or such other amount required by law)

combined single limit for personal injury and property damage per occurrence. Except to the extent required by the laws of the Commonwealth of Massachusetts, MassDOT may meet the foregoing insurance requirements by means of self-insurance which shall respond as though self-insurance coverage were provided by a third party insurer. The said liability coverage within its terms and conditions shall extend coverage to HRRC for third party personal injury and property damage and shall contain no exclusions which are applicable to HRRC and which are not equally applicable to MassDOT.

12.3 Insurance Certificates

MassDOT shall furnish to HRRC 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 12.3 on the Effective Date of this Agreement, and upon the request of HRRC, 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 HRRC and its operating contractor, and their 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 of self-insurance procured and maintained by the other party; and (4) 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 MassDOT or its Operating Contractor (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.

12.4 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.

12.5 Self-Insurance

The self-insurance programs and insurance policies with self-insured retentions described above in Section 12.2 must provide at least the same protection from liability and defense of suits as would be afforded by "first dollar" insurance. If MassDOT 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.

12.6 Waivers of Subrogation

All insurance policies procured by either party and in force with respect to the properties governed by this Agreement shall contain waivers of subrogation against the other party.

SECTION 13 DEFAULT AND BREACH; TERMINATION

13.1 Default and Breach.

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

(i) any late payment under the provisions of this Agreement remaining outstanding for more than four (4) months.

(ii) the commencement of any proceeding by or against HRRC or by MassDOT which might result in any modification of the obligations hereunder under any bankruptcy, insolvency or similar law, unless all of the obligations of such party shall have been duly assumed by a trustee or successor to such party within sixty (60) days after such proceeding shall have commenced; and

(iii) the failure to perform any other material covenant or obligation in this Agreement, which failure shall have continued for more than thirty (30) days following the date of written notice thereof.

(b) If an Event of Default shall occur, the Party not in default may exercise any or all of the following remedies:

(i) terminate this Agreement by and upon sixty (60) days’ written notice to the defaulting Party; and

(ii) pursue any other remedy at law or in equity in any state or federal court in Massachusetts, subject to the provisions of Section 14.

(c) The Parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring, and that equitable relief, such as injunction, mandatory or otherwise, including specific performance, may be necessary in the event a Party fails to cure a breach or default so occurring; in such case, the aggrieved Party may take such legal action as it deems appropriate and may file immediately any and all pleadings in any state or federal court in Massachusetts to secure an injunction of the action or inaction resulting in such default or breach, pending resolution of the matter pursuant to the dispute resolution procedures set forth in Section 14 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 14 hereof. Nothing contained in this Section 13 shall be construed to limit or restrict the Parties’ rights and obligations under Section 13.2.

(d) An Event of Default shall not be waived or satisfied by the failure of a Party to provide written notice thereof to another Party, nor shall a failure to provide written

notice be considered a waiver of any other remedies available to any Party under this Agreement or otherwise.

13.2 Termination; Effect of Termination.

(a) This Agreement may be terminated as provided in Section 13.1 or 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 any 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 Freight Easement with regard to the Property.

(b) This Agreement shall terminate with respect to portions of the Property (i) at such time as HRRC or MassDOT secures and exercises authority, in accordance with Appropriate Statutory and Regulatory Authority, to abandon the common carrier obligations as to such portions of the Property and Freight Rail Service is ceased with regard to said portions of the Property, or (ii) in the event that such authority is not required, at such time as HRRC, its successors or assigns, designates in a written notice of termination of this Agreement with respect to such portions of the Property, which written notice shall be given to MassDOT at least six (6) months in advance of the date so designated for termination, *provided however*, such portions of the Property shall continue to be subject to applicable law.

(c) Expiration or termination of this Agreement for any reason, in whole or in part, shall not relieve or release any Party from any obligation assumed or from any liability which may have arisen or been incurred by any 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. All obligations for indemnification and insurance coverage shall survive expiration or termination of this Agreement with respect to events that occur during the term of this Agreement.

SECTION 14 DISPUTE RESOLUTION

14.1 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.

14.2 Informal Consideration by the Parties.

Any dispute that cannot be resolved pursuant to Section 14.1 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 any Party to MassDOT's Deputy Rail Administrator and the individual designated by HRRC. 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 any Party to the Secretary of MassDOT and HRRC's President for consideration and resolution. If the dispute still remains unresolved thirty (30) calendar days after its referral to the Secretary of MassDOT and HRRC's President under this paragraph, the Parties may jointly agree to submit the matter to meditation under Section 14.3, below, or any Party may commence arbitration in accordance with Section 14.4 below.

14.3 Mediation.

(a) Either MassDOT or HRRC may request mediation of any unresolved dispute under this Section 14.3. If a Party elects mediation and any 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) MassDOT and HRRC shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this Section 14.3. 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 shall share equally the costs and expenses of any mediation conducted pursuant to this Section.

14.4 Arbitration.

It is the desire and intent of the Parties hereto to avoid the expense and delay inherent in litigation; therefore, HRRC and MassDOT agree that whenever a Party desires to commence the arbitration process it shall provide written notice thereof to the other Parties 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. The arbitrator(s) selected to adjudicate the arbitration must have transportation industry experience.

(b) The Parties agree that neither the provisions of Section 14.4(a) nor Section 14.3 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 MassDOT and HRRC in the submission of the matter to arbitration or mediation; or (ii) except as is otherwise expressly provided herein, to resolve any matter reserved by this Agreement for the mutual agreement of the Parties.

14.5 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 under this Agreement. For any other dispute under this Agreement, interest shall accrue from the date that payment was due, at the Effective Interest Rate.

SECTION 15 EQUAL EMPLOYMENT OPPORTUNITY

15.1 Fair Employment Practices.

HRRC 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.

15.2 Subcontracts.

To the extent such laws or regulations are applicable to any particular subcontractor, HRRC shall insert provisions similar to those appearing in Section 15.1 above in each subcontract, except subcontracts for standard commercial supplies, raw materials, or construction.

SECTION 16 DISADVANTAGED BUSINESS ENTERPRISES.

HRRC 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). It is not the intent of this provision to impose requirements upon HRRC that would not be applicable in the absence of this provision.

SECTION 17 EMPLOYEE WAGES AND BENEFITS

Each Party (or its contractors) shall be solely responsible for the determination of and payment of wages and benefits and other terms and conditions of employment of all such Party's employees; provided, however, that such Party shall comply with any applicable mandatory federal or state prevailing wage rate, safety, or wage/hour laws. It is not the intent of this provision to impose requirements upon HRRC that would not be applicable in the absence of this provision.

SECTION 18 APPLICABILITY

The Parties agree that this Agreement, on and as of the respective Effective Date hereof, shall supersede all previous agreements between the Parties that relate to all or any portion of the Property described in this Agreement; provided, however, the Construction Agreement shall be superseded by this Agreement only as specified herein.

SECTION 19 GENERAL PROVISIONS

19.1 Additional Properties.

The Parties may by mutual written agreement add additional rail line segments or other trackage to the Property as defined herein (and designate an Effective Date with respect thereto). Provided appropriate regulatory approvals are sought and obtained in advance of any such transactions, the segments of railroad so added shall be subject to all of the rights and obligations set forth in this Agreement, and, to the extent permitted by law, these segments of rail line and/or track shall thereafter cease to be governed by any other agreements (including operating and trackage rights agreements) that previously had been in effect with respect to any such segments of railroad.

19.2 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.

19.3 Compliance with Laws and Operating Rules.

(a) HRRC and MassDOT 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 Property. HRRC and MassDOT shall each 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 Property, when the imposition of same is related to

the failure of such Party to comply with its obligations under this Section 19.3(a). Nothing in this Section 19.3 shall alter, modify or amend Section 11 or Section 12 of this Agreement.

(b) In its use of the Joint Usage Rail Property, each Party shall comply in all respects with the operating rules and regulations of the Party responsible for dispatching pursuant to Section 5.4, and the movement of each Party's trains, locomotives, cars, and equipment over the Joint Usage Rail Property shall be subject at all times to the orders of transportation officers of such dispatching Party.

(c) HRRC shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the Property and MassDOT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the Property. All of HRRC's Employees and MassDOT's Employees who operate trains, locomotives, rail cars and rail equipment over the Property shall be qualified by MassDOT for operation thereover. HRRC shall compensate MassDOT for any and all direct costs incurred by MassDOT in connection with the qualification of such employees of HRRC as well as the cost incurred by MassDOT for furnishing pilots, until such time as such employees of HRRC are deemed by the appropriate examining officer of MassDOT to be properly qualified for operation as herein contemplated, *provided* that MassDOT 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 Property in accordance with MassDOT's operating rules and practices. For purposes of this Section, any employee of HRRC qualified to operate over the Property on a date prior to the Commonwealth Passenger Service Commencement Date shall be deemed qualified for operation over the Property as herein contemplated as of the Commonwealth Passenger Service Commencement Date. On a date prior to the Commonwealth Passenger Service Commencement Date, HRRC shall provide to MassDOT a list of the names of all HRRC Employees that HRRC certifies to be qualified to operate over the Property as of that date.

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

(e) MassDOT shall have the right to exclude from the Property any HRRC Employee, except officers, whom MassDOT determines, based on the investigation or hearing described above, to be in violation of MassDOT's rules, regulations, orders, practices or instructions issued by timetable or otherwise, provided that MassDOT may exclude any HRRC Employee, except officers, from the Property prior to such determination for alleged violations of MassDOT's rules regarding use of intoxicating beverages or drugs, or for alleged insubordination. HRRC shall release, indemnify, defend and save harmless MassDOT and its officers, agents and employees from and against any and all claims and expenses arising from such exclusion.

19.4 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 HRRC becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by MassDOT on Joint Usage Rail Property, or if in emergencies crippled or otherwise defective cars are separated from HRRC's trains on Joint Usage Rail Property, MassDOT shall have the option of furnishing or allowing HRRC 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 Property. HRRC shall reimburse MassDOT 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 Rail Property, such work shall, at the option of MassDOT, be performed by HRRC or MassDOT or by the Parties' respective contractors. HRRC shall reimburse MassDOT for direct costs incurred in rendering any such assistance.

(c) Each Party shall have full responsibility for re-railing 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**") during the period in which such Party has the responsibility to maintain such portion of the Property. 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 11 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by HRRC 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.

19.5 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, passengers, and customers of the other Parties and all tracks, bridges, and other equipment related to the Property. 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 MassDOT 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 Federal Railroad Administration or Massachusetts Department of Public Utilities including, for example: the FRA's regulations at 49 CFR Subtitle B, Chapter II; all applicable regulations regarding the transport of hazardous materials or wastes prescribed by the U.S. Department of Transportation including 49 CFR Parts 171 et seq., and prescribed by the U.S. Environmental Protection Agency, including 40 CFR Part 263; and all applicable safety rules and other operating

procedures of general applicability and future effect issued by MassDOT and forwarded in writing to HRRC. Each Party shall promptly furnish to the other Parties evidence reasonably satisfactory to the other Parties demonstrating compliance with the above. Nothing in this Section 19.5 shall alter, modify or amend Section 11 or Section 12 of this Agreement.

SECTION 20 ASSIGNMENT

20.1 Assignment by HRRC.

HRRC may assign to any Person, in whole but not in part, all of its rights, interests or obligations under this Agreement, subject to the following conditions: (i) HRRC shall provide MassDOT with sixty (60) days prior written notice of such proposed assignment; (ii) any such assignment must be accompanied by an assignment to such Person of all of HRRC's rights under the Freight Easement; (iii) the proposed transfer complies with the transfer provisions of the Deed, including but not limited to the transferee's qualification under the transferee standards set forth in such Deed; and (iv) the assignee must assume, by written agreement reasonably acceptable to MassDOT, all of HRRC's obligations under this Agreement. No fees or other amounts shall be due or payable under this Agreement with respect to any such assignment of the Freight Easement or this Agreement; provided, however, that HRRC shall have no right to partially assign its rights to perform Freight Rail Service on any portion of the Property such that HRRC and such assignee both are performing Freight Rail Service. In the event of an assignment of this Agreement by HRRC to an affiliate of HRRC, HRRC shall unconditionally guarantee to MassDOT the performance of all obligations of HRRC under this Agreement by any such affiliate. Nothing in this Section 20 shall prevent or impede HRRC from transferring the Freight Easement in accordance with its terms and generally applicable law.

20.2 Release and Discharge.

Except as is otherwise provided in Section 20.1 of this Agreement, any assignment of this Agreement, in whole or in part, by HRRC, its successors or assigns, shall release and discharge HRRC: (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.

20.3 Assignment by MassDOT.

MassDOT may assign, in whole or in part, any of its rights, interests or obligations under this Agreement, *provided however*, that MassDOT shall provide to HRRC sixty (60) days prior written notice of such proposed assignment, and *provided further*, that such assignment does not impair or adversely affect any rights of HRRC hereunder or as required by law, and *provided further* that upon such assignment, MassDOT shall remain primarily responsible to HRRC for the performance of MassDOT's duties and obligations herein, unless MassDOT assigns its rights, interests, and obligations to a public or quasi-public agency created by state or federal

statute to undertake the responsibilities and obligations of MassDOT with respect to the Property.

20.4 Survival of Liability.

Assignment of this Agreement, in whole or in part, shall not relieve or release any Party 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 any Party.

SECTION 21 FORCE MAJEURE

Each Party will be excused from performance of any of its obligations to the other under this Agreement other than those set forth in Section 12, where such non-performance is occasioned by any event beyond the non-performing Party's control which shall include, without limitation, any applicable order, rule, or regulation of any Federal, State (other than any such rule or regulation (i) which is enacted solely by MassDOT and (ii) which is not enacted pursuant to State legislation), 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. The obligations set forth in Section 12 are not excused hereunder.

SECTION 22 MISCELLANEOUS.

22.1 Applicable Law.

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 that is not submitted to mediation or arbitration pursuant to Section 14 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.

22.2 Entire Agreement.

This Agreement, including the Exhibits hereto, represents the entire agreement between the Parties hereto with respect to the Property from and after the Effective Date with respect to the Property, and this Agreement supersedes any and all prior discussions, proposals and communications between MassDOT and HRRC with respect to the Property, except for the provisions of the Deed, which, in the case of conflict, shall prevail over the provisions of this Agreement.

22.3 Notices.

(a) 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 (5) days after having been deposited with the U.S. Postal Service, postage prepaid.

(b) Notices to MassDOT shall be addressed to:

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

with a copy to:

Massachusetts Department of Transportation
Park Plaza
Boston, MA 02116
Attention: General Counsel

with an additional copy to:

Goulston & Storrs
Atlantic Avenue
Boston, MA 02110-3333
Attention: Peter Kochansky, Esq.

(c) Notices to HRRC shall be addressed to:

Mr. John R. Hanlon, Jr.
President
Housatonic Railroad Company, Inc.
1 Railroad Street
PO Box 1146 (required for USPS delivery)
Canaan, CT 06018

with a copy to:

Edward J. Rodriguez, Esq.
Executive Vice President & General Counsel
Housatonic Railroad Company, Inc.
8 Davis Road West
PO Box 687 (required for USPS delivery)

22.4 No Waiver.

No failure on the part of any 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.

22.5 Survival of Indemnification and Insurance Obligations.

The indemnification obligations of HRRC and MassDOT 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.

22.6 Headings.

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.

22.7 Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the Parties.

22.8 No Benefit to Third Parties.

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 the Parties, 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.

22.9 Representations and Warranties.

The Parties represent and warrant to each other that, except with respect to a challenge by any union representing any MassDOT Employees or HRRC Employees, (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 any 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.

22.10 No Personal Recourse.

No recourse shall be had by any 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 MassDOT's or HRRC's obligations under this Agreement.

22.11 Record Keeping.

HRRC shall maintain appropriate operating and accounting records which record the locomotives, cars, weight and mileage of same moved by HRRC over the Property. MassDOT 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 HRRC 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 HRRC 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.

22.12 Waivability of Time Limits.

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

22.13 Operations during Dispute.

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.

22.14 Controlling Agreement.

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.

22.15 Severability.

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.

22.16 Amendment.

This Agreement and the Exhibits hereto and thereto may be amended from time to time during the Term of this Agreement. MassDOT or HRRC 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 all Parties hereto.

22.17 No Joint Enterprise.

This Agreement shall in no way be considered as establishing either a joint facility or a joint enterprise between MassDOT and HRRC.

22.18 Status of Work under Agreement.

In the performance of work under this Agreement the Parties shall be deemed to be independent contractors and no Party shall be deemed to be an agent of any other Party. Notwithstanding the foregoing, for purposes of Section 11 no Party shall be deemed to be a "contractor" of any other Party.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed as of the date first written above, in duplicate, each of which shall be considered an original.

APPROVAL AS TO FORM

**MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION**

By: _____
Paige Scott Reed
General Counsel,
Massachusetts Department
of Transportation

By: _____
Richard A. Davey
Secretary & Chief Executive Officer

HOUSATONIC RAILROAD COMPANY, INC.,
a specially chartered Massachusetts corporation

By: _____
John R. Hanlon, Jr.
President

EXHIBIT A

HRRC Only Rail Property

| <u>Property Description</u> | <u>FRA Class</u> |
|---|--------------------------------|
| <p>The Right of Way between _____ in _____ Massachusetts and _____, in _____, Massachusetts.</p> <p>(excluding any industrial sidings and related assets required solely in relation to Freight Rail Service)</p> | <p align="center">Excepted</p> |
| <p><u>Any Industrial sidings and related assets required solely in relation to Freight Service.</u></p> | <p align="center">Excepted</p> |

Joint Usage Rail Property

| <u>Property Description</u> | <u>FRA Class</u> |
|---|--|
| <p>None – provided, however, that any portion of the HRRC Only Rail Property described above shall be designated as Joint Usage Rail Property upon the introduction of Commonwealth Passenger Service</p> | <p align="center">TO BE DISCUSSED (subsequent to the introduction of Commonwealth Passenger Service)</p> |

Passenger Only Rail Property

None

Exhibit B

Rehabilitation Project

The Phase I Rehabilitation Project shall begin during the fiscal year beginning July 1, 2014 and continue expeditiously until completed. Estimated completion date is no later than June 30, 2017.

A general description of improvements to be constructed as part of the Phase 1 Rehabilitation Project is as follows:

- 37 Miles = (assumed 19.5” spacing)
40,000 ties replaced (roughly 1/3)
- 26 public grade crossings
 - Four crossings now, plus;
 - Four more funded through section 130
 - Private crossings encountered will addressed with either tie or rail work
- 26 switches (14 are 130 lb, 4 are 112 lb or larger and 8 are 107 lb rigid braces)
 - Replace eight (8) 107# switches
- 30 miles of rail used to obtain the greatest benefit [JDR to confirm]
 - Four (4) full rail trains [JDR to confirm]
 - Plates will be Pandrol with screw lags, “e” clips
- Re-ballast and surfacing
 - Figure 1,000 tons per mile ballast
 - Surface 195,360 feet of track with 2” – 3” lift
- Specific site work mud spots
 - Ditching 12,000 feet
- Bolts and joint work as required
- Bridge and culvert work is an unknown and will draw from a lump sum item budget (\$15 million) [JDR to confirm]
 - Where rail is installed on bridges need new timber with “J” bolts and blocking adding guard rails.

The general project description is subject to adjustment in accordance with field conditions.

Passenger Improvements

Phase 2 Rehabilitation Improvements shall be scheduled in coordination with the institution of Commonwealth Passenger Service such that the Phase 2 Rehabilitation Improvements will be completed before the institution of any such service.

Phase 2 Rehabilitation Improvements shall include all improvements necessary to safely and efficiently accommodate inter-city passenger service in accordance with MassDOT and MBTA specifications, and shall include, but not be limited to:

Replacement of all main line rail, switches and ties not replaced in connection with the Phase 1 Rehabilitation Project

Ballast as required to achieve the required elevations

Surfacing

Grade Crossing renewal and/or replacement as needed

Signal system as needed

PTC if required by law or otherwise specified by MassDOT

Ditching, drainage and similar site work as required

Bridge and Culvert work

Construction of passing sidings and other sidings as are reasonably required for joint use and to achieve maintenance of required freight clearances

The foregoing description shall not be construed as an undertaking by MassDOT to construct or complete the Phase 2 Rehabilitation Project or any component thereof, or any specific design, programming or mix of improvements.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION Exemption –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

MOTION TO DISMISS

EXHIBIT D

DRAFT

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

This instrument prepared by
or under the direction of:

RELEASE DEED

THIS RELEASE DEED, made this ____ day of _____, 2014, between HOUSATONIC RAILROAD COMPANY, INC. a specially chartered Massachusetts railroad corporation, having an address of 1 Railroad Street, PO Box 1146, Canaan, Connecticut 06018 (“**HRRC**”) and MAYBROOK RAILROAD COMPANY, a Connecticut corporation authorized to transact business in Massachusetts, having an address of 8 Davis Road West, PO Box 687, Old Lyme, Connecticut 06371 (“**MRRC**” and hereinafter, collectively with HRRC, called “**Grantor**”), and the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, whose mailing address is 10 Park Plaza, Boston, Massachusetts 02116, hereinafter called “**Grantee**,”

8091547.3

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

WITNESSETH:

WHEREAS, Grantor has interests in a line of railroad over which rail freight service is presently conducted, consisting of the Berkshire Line, from the junction with the CSX Boston and Albany Line in Pittsfield, Massachusetts to the Massachusetts-Connecticut Border, between Milepost 86.6 in Pittsfield, Massachusetts and Milepost 50.0 in Sheffield, Massachusetts and certain adjoining property; and

WHEREAS, pursuant to a certain Purchase and Sale Contract dated as of October __, 2014, between Grantee and Grantor, 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 passenger rail service, and other public purposes including the continued provision of rail freight service by HRRC and rail passenger service; and

WHEREAS, the parties desire that Grantee acquire Grantor's interest in such properties and line of railroad and that HRRC retain, and not transfer to the Grantee: (i) a perpetual exclusive easement in gross to provide rail freight service, both local and overhead, over the line, subject to the terms and conditions set forth herein, and (ii) the Retained Right of Reclamation (defined below);

WHEREAS, it being the intention of the parties that HRRC 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;

NOW THEREFORE, that Grantor, in consideration of the sum of Twelve Million One Hundred Thirty Thousand Dollars (\$12,130,000.00) paid, does hereby grant to Grantee all right, title and interest of Grantor in and to those certain tracts or parcels of land situate, lying and being in Berkshire County, Massachusetts, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "**Land**");

BUT EXCLUDING and excepting unto HRRC those 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 rights and interests, and the rights and interests related to the Retained Freight Easement (as hereinafter defined) (the "**Excluded Property**");

TOGETHER WITH all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed as of the date hereof to the Land (other than any such property included within the Excluded Property) as well as 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 hereof; (b) the Retained Freight Easement (as hereinafter defined); (c) the Retained Right of Reclamation (as hereinafter defined); and (d) all easements, restrictions, conditions and agreements of record, if any, now in force and applicable.

RESERVING unto HRRC, its successors and assigns, an EASEMENT IN GROSS (the "**Retained Freight Easement**") IN PERPETUITY (as hereinafter defined) FOR FREIGHT RAILROAD PURPOSES (as hereinafter defined) in, over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; and with respect thereto the Parties agree:

1. The retained freight easement shall be exercised in accordance with the terms, conditions and limitations of that certain Operating Agreement dated effective _____, 2014, between HRRC and Grantee (the "**Operating Agreement**").

2. 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.

3. Grantor and Grantee agree that certain Included Fixtures located on the Land at the time of conveyance, specifically any rail, switches, and tie plates subsequently removed by the Grantee in connection with construction on the Line (defined below) and not re-installed on the Land as part of such construction, shall be conveyed to Grantee subject to the retained right of HRRC to reclaim any such rail, switches, and tie plates subsequently removed by Grantee in connection with construction of improvements on or along the Berkshire Line and not reinstalled on the Land as part of such construction (the "**Retained Right of Reclamation**"); provided, however, that the Retained Right of Reclamation shall expire on the earlier to occur of: (i) the completion of construction of the Rehabilitation Project (as defined in the Operating Agreement), or (ii) the date that is twenty (20) years from the date hereof. In connection with the Retained Right of Reclamation, Grantee shall notify HRRC of any rail, switches, and tie plates removed from the Land as part of the construction and not reinstalled on the Land, and HRRC shall notify Grantee as to which of such material HRRC wishes to reclaim. Grantee shall, at no cost or expense to HRRC, load such material into railcars or vehicles supplied by HRRC, or stockpile such material at a mutually agreeable location for loading by HRRC.

4. Grantor and Grantee agree that the Retained Freight Easement is not retained to the exclusion of the use of the Property by Grantee and its assigns, except that HRRC shall be the exclusive provider of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said Operating Agreement.

5. Transfer of the Retained Freight Easement shall be governed by the provisions of **Exhibit D** and **Exhibit E** attached hereto.

6. Definitions of Retained Freight Easement Terms:

(a) Perpetuity: Until this Retained Freight Easement is abandoned or terminated, as may be provided in the Operating Agreement herein referenced. In the event of abandonment or termination of any portion of this Retained Freight Easement as may be 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 (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, subject to the Retained Right of Reclamation.

(c) Freight 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 its assignees may use said Trackage for its own freight needs in connection with the provision of passenger rail service, being the transport of railroad material and equipment, ballast, rails, and the like owned by Grantee or its contractors, 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 pursuant to the Operating Agreement.

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 and the Operating Agreement, the provisions of the Operating Agreement shall control over the provisions of this Deed. The Operating Agreement is retained at the offices of the Grantee.

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, each of HOUSATONIC RAILROAD COMPANY, INC. and MAYBROOK RAILROAD COMPANY, pursuant to its respective corporate authority, has caused its name to be executed under seal by its officers hereunto duly authorized.

HOUSATONIC RAILROAD COMPANY, INC.

By: _____
John R. Hanlon, Jr.
President

MAYBROOK RAILROAD COMPANY, INC.

By: _____
John R. Hanlon, Jr.
President

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this ____ day of _____, 2014, before me, the undersigned Notary Public, personally appeared the above-named John R. Hanlon, Jr., 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 President of Housatonic Railroad, Inc., and as President of Maybrook Railroad Company, Inc.

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

EXHIBIT A
Description of Land

[To be inserted]

EXHIBIT B
Excluded Property Description

1. The Retained Freight Easement (as defined in the deed to which this exhibit is attached).
2. The Retained Right of Reclamation (as defined in the deed to which this exhibit is attached).
3. The Operating Agreement (as defined in the deed to which this exhibit is attached).

EXHIBIT C

List of Title Exceptions

[To be added by title counsel]

EXHIBIT D
Provisions Relating to Transfer of Retained Freight Easement

The entirety of the Retained Freight Easement with respect to all or a portion of the Property shall be assignable, provided, however, that HRRC shall not have the right to split or share the Retained Freight Easement with respect to the Property or any portion thereof. Except as hereinafter set forth with respect to transfers to a Related Party (hereinafter defined), neither HRRC, a Related Party, as hereinafter defined, nor any subsequent holder of the benefit of the Retained Freight Easement (each of HRRC, 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 Retained Freight 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**"). HRRC, 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 HRRC, 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. For the purposes of the this Deed, "**Related Party**" shall mean any person, firm, partnership, corporation or other entity now or hereafter affiliated with such Benefitted Holder or with which HRRC enters into a merger, reorganization, or sale of all or substantially all of such Benefitted Holder's assets.

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 Retained Freight 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 Retained 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 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.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION Exemption –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

MOTION TO DISMISS

EXHIBIT E

VERIFIED STATEMENT OF JOHN R. HANLON, JR.

My name is John R. Hanlon, Jr. I am president of Housatonic Railroad Company, Inc. ("HRRC") and I have served in my current position since 1983. As president, my responsibilities include directing and overseeing Operations Planning, including capacity analysis, passenger train policy and development and passenger access and the negotiation of asset sales and operating agreements.

HRRC is a Class III rail carrier operating a line of railroad commonly known as the "Berkshire Line" extending from Pittsfield, Massachusetts, to Danbury, Connecticut, a distance of approximately 86.6 miles, and another line of railroad commonly known as the "Maybrook Line" extending from Derby, Connecticut, to the New York state line at Danbury, Connecticut, a distance of approximately 33.5 miles. (HRRC also has operating rights on other lines, which it does not currently exercise).

HRRC has reached agreement with the Commonwealth of Massachusetts, acting by and through the Commonwealth of Massachusetts Department of Transportation ("MassDOT"), to sell to MassDOT HRRC's ownership interests in the portion of the Berkshire Line situated in Massachusetts, a distance of approximately 36.6 miles from Pittsfield to the Connecticut state line at Sheffield, Massachusetts (the "Line"). The sale is explicitly made subject to HRRC's retention of a permanent and exclusive easement enabling HRRC to continue to provide freight common carrier service over the Line without undue interference from MassDOT. HRRC alone will retain the common carrier rail freight operating rights and obligations; MassDOT intends to acquire no such common carrier status.

The Commonwealth of Massachusetts (the "Commonwealth") plans to institute passenger service in the future between Pittsfield and New York City. The passenger trains would operate on the Berkshire Line and a portion of the Maybrook Line between Pittsfield and Danbury to connect with Metro-North Commuter Railroad in Danbury. The Commonwealth's passenger rail plans are the driving force behind HRRC's sale (subject to the retained freight service easement) of the Line, which would constitute the Massachusetts portion of the Pittsfield-New York City passenger train route.

HRRC's future operations over the Line as a freight easement holder will be governed by an Operating Agreement among HRRC, MassDOT and the Massachusetts Bay Transportation Authority. I am familiar with the terms of this Operating Agreement, and had a hand in the development of that agreement. In so doing, my objective was to ensure that HRRC would continue be able to meet the rail service needs of its current and future customers under MassDOT's rail asset ownership regime. For the reasons explained below, I am confident that the arrangements in place governing HRRC's future use of the line will permit HRRC to provide adequate common carrier service to its customers without undue Commonwealth interference.

As background, currently, HRRC typically operates one daily round trip through train over the Line and one local train. Among its key elements, the Operating Agreement provides that, prior to the institution of Commonwealth-sponsored passenger service (which I understand may take several years to implement), HRRC will retain complete operating, maintenance, dispatching and scheduling authority over the Line. Thus, for the foreseeable future, I anticipate that the MassDOT purchase will not affect HRRC's operations negatively. In fact, MassDOT ownership will benefit freight service

very quickly due to extensive track rehabilitation to be completed by Mass DOT in connection with Mass DOT's purchase of the line. These near-term track improvements will enhance the safety, service reliability and track speeds for HRRC's freight service, both in the very near future and after the institution of passenger service.

Upon the commencement of Commonwealth-sponsored passenger train service, the Operating Agreement entitles HRRC to operate as many as eight daily train movements on the Line (four through train movements and two local trains, each of which may operate as a single "round trip" operation). The Operating Agreement requires HRRC to consult with MassDOT concerning freight train scheduling, but it also accords HRRC priority in scheduling two of the daily allotment of "Freight Service Capacity" trains, subject to the Commonwealth's interest in preserving "commuter rush hours" as prime passenger train operating timeframes. I believe that two round trip through trains and two round-trip local trains allotment will be adequate to accommodate HRRC's projected freight requirements, as the Operating Agreement allows for a 100% increase in freight train frequency compared to current operating circumstances. Moreover, I believe that the scheduling provisions governing joint freight and passenger operations adequately protect HRRC's future ability to meet customer requirements.

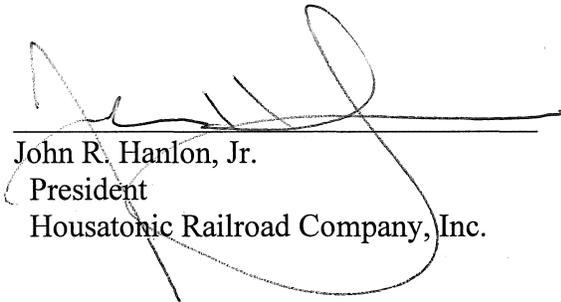
If additional freight operations are required beyond the Operating Agreement's freight capacity allotment, the Operating Agreement permits additional trains to be scheduled around the passenger service, and allows HRC considerable discretion to add infrastructure on the Line to accommodate significant freight traffic increases. The number of passenger trains that I understand are anticipated to operate over the Line in the future is such that I do not expect a freight-passenger capacity issue to develop.

As I have mentioned above, dispatching of the Line will remain with HRRC for the foreseeable future. The Operating Agreement provides for the possibility of the future transfer of dispatching responsibilities to MassDOT or MassDOT's designee upon the institution of passenger service. It is possible HRRC will become the passenger service provider, and also that HRRC could be MassDOT's train dispatching designee. But even if HRRC is ultimately not selected to continue train dispatching upon the commencement of Commonwealth-sponsored passenger train service, I am confident that the Operating Agreement's dispatching provisions adequately provide for HRRC's ability to fulfill its common carrier freight obligations and to provide safe and efficient service to its customers.

As an individual who has had a hand in the development of the sale of HRRC's ownership interests in the Line to MassDOT, including the Operating Agreement that will govern HRRC's operations as an easement holder, it is my opinion that the proposed transaction will enhance and improve freight service by HRRC on the affected portion of the Berkshire Line, and will, by extension, improve service and reliability of freight service to other customers on the entire Berkshire and Maybrook Lines. More fundamentally, I am confident that HRRC's ability to provide freight service to customers over the Line will not be unduly compromised (and should, in fact, be enhanced both now and in the longer-term future) as a consequence of the railroad asset sale.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Housatonic Railroad Company, Inc., and that the foregoing statement is true and correct to the best of my knowledge and belief.



John R. Hanlon, Jr.
President
Housatonic Railroad Company, Inc.

September 24, 2014