

BEFORE THE
SURFACE TRANSPORTATION BOARD

233919
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Office of Proceedings
March 7, 2013
Part of
Public Record

FD 35723

HOUSATONIC RAILROAD COMPANY, INC.
MAYBROOK RAILROAD COMPANY AND
HOUSATONIC TRANSPORTATION COMPANY

INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3) AND 49 C.F.R. § 1180.2(d)(6)

Edward J. Rodriguez
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ATTORNEY FOR HOUSATONIC RAILROAD
COMPANY, INC., MAYBROOK RAILROAD
COMPANY AND HOUSATONIC
TRANSPORTATION COMPANY

FEE RECEIVED
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Housatonic Railroad Company, Inc. (“HRRC”), a Class III common carrier by rail, Maybrook Railroad Company (“MRC”), a non-operating common carrier, and Housatonic Transportation Company (“HTC”), a non-common carrier holding company and parent corporation to HRRC hereby file this verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) and 49 C.F.R. § 1180.2(d)(6) for a corporate family transaction. Pursuant to this exemption, HTC will change from a Delaware corporation to a Connecticut corporation and will remain in control of HRRC, and HRRC will transfer ownership of a rail line in Massachusetts to MRC which HRRC would continue to operate.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), HRRC, MRC and HTC submit the following information.

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

HRRC is a class III common carrier by rail which operates lines in the states of Connecticut and Massachusetts. HRRC operates in Connecticut over lines owned by MRC and over a line owned by the Connecticut Department of Transportation, respectively, and operates over a line in Massachusetts it currently owns and another line in Massachusetts owned by Coltsville Terminal Company, Inc. (“CTC”), another HTC subsidiary.¹

HTC is a Delaware corporation having three wholly owned subsidiaries including HRRC, CTC and a non-carrier². HTC acquired control of HRRC in 1992 and CTC became a carrier in 2002 when it acquired a rail line in Pittsfield, MA from CSX pursuant to an Offer of Financial Assistance filed pursuant to 49 C.F.R. § 1152.27.

¹HRRC operates the so-called Maybrook Line owned by MRC between Derby Jct., Connecticut and the New York State Line at Danbury, CT/Southeast, NY, a distance of approximately 33.6 miles. HRRC also operates the so-called Berkshire Line between Berkshire Jct. in Danbury, CT and Pittsfield, MA, where it interconnects with CSX’s main line between Boston and Albany, a distance of approximately 86.3 miles. The Berkshire Line consists of three ownership segments: (1) the segment between Berkshire Jct. and a point in New Milford called Boardman’s Bridge, a distance of 13.65 miles is owned by MRC; (2) the segment between Boardman’s Bridge and the Massachusetts state line at North Canaan, CT/Sheffield, MA, a distance of approximately 36.35 miles, is owned by Conn. DOT and the segment between the state line and Pittsfield, MA, a distance of approximately 36.3 miles, is owned by HRRC. HRRC also operates the so-called Coltsville Branch in Pittsfield, MA, owned by CTC, a distance of 1.91 miles. The Coltsville Branch is not contiguous with other rail lines within the Housatonic corporate family. HRRC also has freight operating rights over the so-called Beacon Line owned by Metro North Railroad between its connection with the Maybrook Line at the New York/Connecticut state line and its connection with the Hudson Line in Beacon, New York, a distance of approximately 41.1 miles and over the Harlem Line owned or leased by the New York Metropolitan Transportation Authority between MP 22.0 in North White Plains, NY and MP 81.6 in Wassaic, New York. HRRC has not operated over either of the New York lines in several years because there are no freight rail customers. HRRC discontinued its common carrier obligation over the Harlem Line pursuant to a Board granted exemption.

²The non-carrier subsidiary is engaged in warehousing, reloading and transloading operations.

MRC is a Connecticut corporation which owns lines of railroad in Connecticut which it acquired from Consolidated Rail Corporation in 1992³. Said rail lines were operated by Danbury Terminal Railroad (“DTRR”) until DTRR merged into HRRC in 1996 and have been operated by HRRC since that date. MRC, HTC, CTC and HRRC are under common ownership and common control and are members of the Housatonic corporate family.⁴

HTC is incorporated in Delaware and desires to become a Connecticut corporation in lieu of continuing as a Delaware corporation and HTC desires to remain in control of HRRC and CTC. This will be accomplished by the formation of a Connecticut corporation having the same name, transfer of shares of HTC to the Connecticut corporation, and consummation a statutory parent-subsiary merger.

As noted above, HRRC currently operates the Berkshire Line between Danbury, Connecticut and Pittsfield, Massachusetts. Portions of the Berkshire Line in Connecticut are owned by MRC and Conn. DOT, respectively, and that portion of the line in Massachusetts, consisting of approximately 36.3 miles, is owned by HRRC.⁵ The purpose of this filing is to permit HRRC to transfer ownership of the portion of the Berkshire Line in Massachusetts to MRC for various financial reasons. HRRC would continue to operate the line through retained

³The lines acquired from Conrail in 1992 consist of the Maybrook Line and the portion of the Berkshire Line described in footnote 1, *supra*, as owned by MRC. MRC also acquired the Beacon Line referred to in footnote 1, *supra*, but transferred that line to Metro North Railroad in 1995. In 1992, when MRC acquired the lines from Conrail, the name of the corporation was Maybrook Properties, Inc. In 2009, the company was reincorporated in Connecticut and changed its name to Maybrook Railroad Company.

⁴The shareholders having 99% stock ownership in HTC, which in turn owns 100% of HRRC and CTC, also own 100% stock ownership in MRC.

⁵Ownership of the Berkshire Line is set forth in more detail in footnote 1, *supra*,

perpetual and exclusive common carrier freight operating rights exercised pursuant to an Operating Agreement between HRRC and MRC.

The reincorporation of HTC in Connecticut and the transfer of ownership of the Massachusetts rail line from HRRC to MRC will not result in adverse changes in service levels, will not result in any significant operational changes, and will not result in a change in the competitive balance with carriers outside the Housatonic corporate family. These transactions within a corporate family are accordingly exempt as a class under 49 C.F.R. § 1180.2(d)(3) and 49 C.F.R. § 1180.2(d)(6). The Board has on numerous occasions exempted similar transfers of rail lines, rail properties, and common carrier obligations from one corporate entity to an affiliated entity pursuant to the corporate family transaction exemption. *See, e.g., Central Midland Railway Company and Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption, FD 35616, STB served May 4, 2012; Eric Temple — Control Exemption — Portland Vancouver Junction Railroad, LLC, FD 35594, STB served Feb. 22, 2012; and New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.—Corporate Family Transaction Exemption, FD 34813, STB served July 27, 2006.*

The full name and address of the applicants herein are as follows:

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

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

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

Any questions concerning this Notice should be sent to the representative for the applicants at the following address:

Edward J. Rodriguez
Attorney at Law
8 Davis Road West
P.O. Box 687
Old Lyme, Connecticut 06371
860-434.4303

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

HRRC, MRC and HTC anticipate consummating the proposed reorganization, including the reincorporation of HTC in Connecticut and the transfer of ownership of the Massachusetts rail line from HRRC to MRC promptly upon the expiration of thirty (30) days following the filing of this notice.

Purpose Sought to be Accomplished: 49 C.F.R. § 1180.6(A)(1)(III)

The purpose of the intra family corporate reorganization is to streamline administration and enhance the financial condition of HTC and HRRC by consolidating ownership of the privately owned portion of the Berkshire Line, by relieving HRRC of the burden of the payment of a significant mortgage obligation secured by the property to be transferred and by reducing administration expenses. HTC has no property, assets or activities in Delaware and is qualified as a foreign corporation in Connecticut thus creating unnecessary corporate administration, expenses and taxes.

States in Which Applicants' Property is Located: 49 C.F.R. § 1180.6(a)(5)

HRRC owns property in Connecticut and Massachusetts and has operating rights over property owned or operated by Metro North Railroad in New York. MRC owns property in Connecticut. HTC, through its subsidiaries, owns property in Connecticut and Massachusetts.

Maps: 49 C.F.R. § 1180.6(a)(6)

Maps of the lines owned, operated or controlled by the Applicants are attached hereto and incorporated herein as Exhibit A.

Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the draft Operating Agreement between HRRC and MRC for the operation by HRRC of the Massachusetts section of the Berkshire Line is attached as Exhibit B.

Labor Protective Conditions: 49 C.F.R. § 1180(g)(1)(i)

Because the proposed transaction involves only Class III carriers or non-operating carriers, employee protective conditions may not be imposed as a condition of this exemption. See 49 U.S.C. § 11326(c).

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2), the proposed intra-family corporate reorganization is exempt from environmental reporting requirements. The proposed transaction will not result in changes in carrier operations.

Under 49 C.F.R. § 1105.8(b)(1) and (b)(2), the proposed transaction is exempt from historic preservation reporting requirements.

Respectfully submitted,

By: 

Edward J. Rodriguez
Attorney at Law
8 Davis Road West
P.O. Box 687
Old Lyme, Connecticut 06371
(860) 434-4303

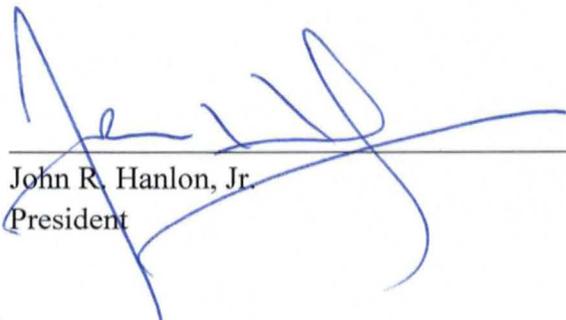
ATTORNEY FOR HOUSATONIC RAILROAD
COMPANY, INC., MAYBROOK RAILROAD
COMPANY AND HOUSATONIC
TRANSPORTATION COMPANY

Dated: March 6, 2013

VERIFICATION

State of Connecticut)
) ss: **CANAAN**
County of Litchfield)

John R. Hanlon, Jr., being duly sworn, on behalf of Housatonic Railroad Company, Inc., Housatonic Transportation Company and Maybrook Railroad Company, deposes and says that he is duly authorized to sign this verification, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated to the best of his knowledge and belief.



John R. Hanlon, Jr.
President

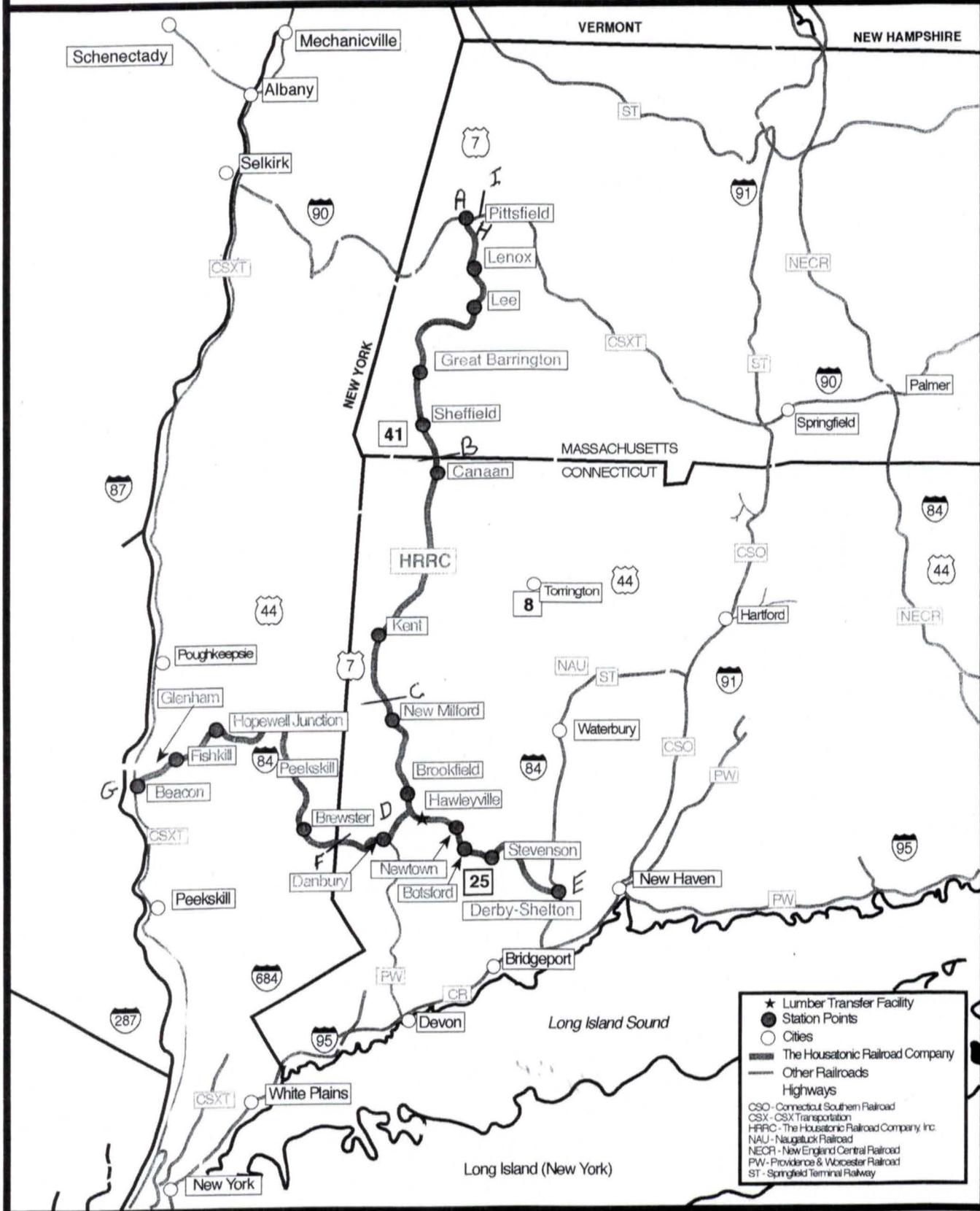
Subscribed and sworn to before me this **12th** day of March, 2013.



Notary Public Marianne Keane
My Commission expires:

**MY COMMISSION EXPIRES
FEBRUARY 28, 2014**

THE HOUSATONIC RAILROAD COMPANY, INC.



See system map legend

Exhibit A (page 2 of 2)

Housatonic Railroad Company, Inc.
System Map
Legend

- A PITTSFIELD, MA (Jct. with CSXT)
- B CT/MA STATE LINE
- C BOARDMANS BRIDGE, NEW MILFORD, CT
- D BERKSHIRE JUNCTION, CT (end of Berkshire Line at junction with Maybrook Line)
- E DERBY, CT (End of Line)
- F CT/NY STATE LINE (end of Maybrook Line and beginning of Beacon Line)
- G BEACON, NY (end of Beacon Line at junction with Hudson Line)
- H PITTSFIELD, MA (Merrill Road crossing end of CSXT - beginning of Coltsville Line)
- I PITTSFIELD, MA (End of Line, 1.91 mi north of beginning)

A – D Berkshire Line

A – B Owned by Housatonic Railroad Company

B – C Owned by Connecticut Department of Transportation

C – D Owned by Maybrook Railroad Company

E – F Maybrook Line – Owned by Maybrook Railroad Company

F – G Beacon Line – Owned by Metro North Railroad, Freight Service Trackage Rights by Housatonic Railroad Company

H – I Coltsville Line – Owned By Coltsville Terminal Company, Inc.

EXHIBIT B

OPERATING RIGHTS AGREEMENT

AGREEMENT, entered into as of the day of December, 2012 by and between HOUSATONIC RAILROAD COMPANY, INC. , a specially chartered Connecticut railroad corporation, (hereinafter referred to as "Housatonic" or "HRRC") and MAYBROOK RAILROAD COMPANY, a Connecticut corporation (hereinafter referred to as "Maybrook").

WHEREAS, Maybrook has acquired from Housatonic or is about to acquire from Housatonic a certain railroad line situated in Berkshire County, Massachusetts, comprising that portion of the Berkshire Line from the Connecticut/Massachusetts state line in Sheffield, MA (M.P. 50.0) to the northerly termination of said Berkshire Line at its connection in Pittsfield, MA (M.P. 86.3) to the CSXT line between Boston and Albany (CP 150) (hereinafter referred to as the "Line").

WHEREAS, in connection with the transfer of the Line from Housatonic to Maybrook, Housatonic reserved for itself perpetual and exclusive freight operating rights to be exercised in accordance with the provisions of this Operating Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. COMMON CARRIER RIGHTS AND OBLIGATIONS. HRRC shall continue to be a common carrier by rail with respect to the Line and shall retain all common carrier obligations with respect to rail freight service on the Line.
2. CONDUCT OF HRRC OPERATIONS. HRRC shall conduct all of its operations on the Line in strict conformity with all applicable laws, regulations and orders of government or governmental agencies.

3. HRRC USE OF THE LINE. HRRC shall use the Line and all property associated therewith in strict conformity with all applicable laws, regulations and orders of governments or governmental agencies, including, but not limited to, environmental and public safety laws and regulations.
4. INSPECTION AND MAINTENANCE OF THE LINE. HRRC shall inspect and maintain the Line, crossings, crossing protection, structures, signals and all other appurtenances, at no cost to Maybrook, in accordance with and in compliance with all applicable laws, regulations and governmental orders. Maybrook shall designate HRRC with the Federal Railroad Administration as the party responsible for such inspection and maintenance.
5. MAINTENANCE AND CAPITAL IMPROVEMENTS BY MAYBROOK OR OTHERS.
Notwithstanding the obligation of HRRC to maintain the Line, Maybrook shall be permitted, but not required, to contribute to the cost of capital improvements and maintenance to the Line and to contract with third parties to provide funding of such expenses or to provide such services.
6. OWNERSHIP OF RAIL, TIES AND OTM. As provided in the deed conveying the Line to Maybrook by Housatonic, HRRC shall retain ownership of all rail, turnouts, signals, ties and OTM on the Line as of January 1, 2013. Any rail, turnouts, signals, ties or OTM purchased and installed by HRRC at HRRC's sole cost and expense after January 1, 2013 shall remain the property of HRRC. Any rail, turnouts, signals, ties or OTM provided or paid for by Maybrook or any third party, including, but not limited to, customers or state, local or federal governmental agencies or entities shall become the property of Maybrook. If any HRRC owned rail, turnouts, signals, ties or OTM removed in connection with the replacement of such items, or the net salvage value thereof, is required by the party furnishing or paying for the replacement material to be turned over to such party or

credited against the cost of the replacement material or installation, HRRC shall not be entitled to reimbursement for such material or its salvage value.

7. PAYMENT OF FEE BY HRRC. HRRC shall not be required to pay any fee for its use or operation of the Line for rail freight services unless and until the annual gross revenue generated or derived from HRRC's use of and operation on the Line exceeds 100% of such annual gross freight revenue generated or derived from HRRC's use of and operation on the Line during 2012 (such revenue equal to 2012 gross revenue as herein described shall be referred to as "Base Revenue"). No fee shall be payable with respect to use and operation during 2013. Thereafter, the annual fee will be equal to 10% of the excess of annual gross freight revenue derived from HRRC's use and operation on the Line over the Base Revenue. Such fee shall be payable annually by January 31 of the following year. With respect to traffic that originates or terminates on the Line, gross freight revenue shall include 100% of the transportation charges collected with respect to such traffic. With respect to traffic that neither originates nor terminates on the Line but is carried over the line, gross freight revenue shall be 35% of the transportation charges collected by Housatonic with respect to such traffic. Gross freight revenue shall not include demurrage or other accessory charges.
8. LEASES, LICENSES, EASEMENTS, AND OTHER AGREEMENTS. As between the parties hereto, HRRC shall be responsible for the performance of all duties owed to others by virtue of agreements affecting the lines including, but not limited to, leases, licenses, easements, crossing agreements, occupancy agreements, maintenance agreements, service agreements, and any other agreements which may confer rights upon others. This agreement is not intended and shall not be construed to create any rights in other parties which do not already exist or to interfere with the right of Maybrook or HRRC to contest any right asserted by others.

9. PROPERTY TAXES. HRRC shall be responsible for any personal or real property taxes of any kind (including school taxes, sewer taxes, fire taxes, town, city, county and state taxes) imposed against the premises regardless of whether said taxes are imposed against Maybrook or HRRC and HRRC shall promptly pay said taxes due or reimburse Maybrook for any such taxes paid by Maybrook.
10. INDEMNIFICATION. HRRC agrees to defend with counsel acceptable to Maybrook, release, indemnify, protect and hold harmless Maybrook from and against any and all loss, cost, damage, claim or expense arising in any way out of HRRC's use, possession and maintenance of the Premises or arising from a breach of any of HRRC's obligations under this agreement including, without limitation, (i) all claims or suits for loss or damage to property of any description or natural resources, (ii) personal injury, sickness or death of any person, (iii) consequential damages, (iv) all matters relating to the alteration of wetlands by or at the direction of HRRC, (v) breach of any law, particularly any alleged release of oil or hazardous or otherwise harmful materials or substances (including, but not limited to costs for assessment, remedial or response actions), or (vi) other damages arising in any way out of HRRC's use, maintenance or possession of the Premises, whether such loss, cost, damage, or expense is suffered by HRRC, Maybrook, their affiliates, successors, assigns, lessees, licensees and all other lawful occupants of the Premises, or the officers, agents, employees or representatives of any of them, or by others.
11. INSURANCE. HRRC shall carry comprehensive general liability insurance, railroad liability insurance, and such other coverage in such amount as may be required, from time to time, by Maybrook in companies approved by Maybrook, and will provide to Maybrook an insurance certificate evidencing such coverage. Maybrook shall be named as a named insured on all HRRC policies. HRRC shall pay the premiums on all of said policies and on all

policies of insurance, including property damage and liability insurance, carried by Maybrook on or relating to said Lines.

12. DISCONTINUANCE AND ABANDONMENT. HRRRC shall not discontinue service over all or any portion of the Lines without first receiving STB approval or exemption therefrom. Maybrook shall not abandon all or any portion of the Lines without first receiving STB approval or exemption therefrom. Maybrook agrees to cooperate with HRRRC and to not oppose any application by HRRRC to discontinue service over all or any portion of the Line. HRRRC agrees to cooperate with Maybrook and to not oppose an application by Maybrook to abandon all or any portion of the Lines with respect to which HRRRC has filed an application to discontinue service.
13. SALE OF MAYBROOK'S INTERESTS IN THE LINES. Maybrook shall have the right to sell all or any portion of the property or rights in and to the property which constitutes the Line at any time, subject to HRRRC's Operating Rights hereunder, provided that any such sale does not substantially interfere with HRRRC's ability to operate and to perform its common carrier obligations.
14. ASSIGNMENT. HRRRC may not assign any of its rights hereunder without the prior written consent of Maybrook. Maybrook may, but shall not be required to, assign its rights hereunder in connection with its sale of the Line or any portion thereof.
15. GOVERNING LAW. This agreement shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

HOUSATONIC RAILROAD COMPANY, INC.

MAYBROOK RAILROAD COMPANY, INC.

By: _____
Edward J. Rodriguez
Vice President

By: _____
John R. Hanlon, Jr.
President