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January 27, 2011

ENTERED
Office of Proceedings

JAN 27 2011

Part of
Public Record

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

RE: Docket No. AB-254 (Sub-No. 10), Providence and Worcester Railroad Company – Adverse Abandonment – Track of Housatonic Railroad Company, Inc. in Fairfield and New Haven Counties, Connecticut – Providence and Worcester Petition for Leave to Supplement the Record

Dear Ms. Brown:

Please find attached hereto the Petition for Leave to Supplement the Record, submitted on behalf of Providence and Worcester Railroad Company ("P&W"). P&W seeks leave to supplement the record with the Trackage Rights Agreement (attached to the Petition) requested by the Board's staff.

Please do not hesitate to contact me if you have any questions regarding the enclosed Petition.

Respectfully submitted,



David K. Monroe
Attorney for Providence and
Worcester Railroad Company



An International Association of Independent Law Firms in Major World Centers

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-254 (SUB-NO. 10)

ENTERED
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**PROVIDENCE AND WORCESTER RAILROAD COMPANY – ADVERSE
ABANDONMENT – TRACK OF HOUSATONIC RAILROAD COMPANY, INC.
IN FAIRFIELD AND NEW HAVEN COUNTIES, CONNECTICUT**

**PETITION OF PROVIDENCE AND WORCESTER RAILROAD COMPANY
FOR LEAVE TO SUPPLEMENT THE RECORD**

Providence and Worcester Railroad Company (“P&W”) hereby submits its petition for leave to supplement the record in this proceeding, at the request of the Surface Transportation Board’s (the “Board”) staff, with the attached trackage rights agreement relating to the rail line at issue (the “Danbury Secondary Line”).

On September 10, 2010, P&W submitted a Petition for Waiver of the filing fee applicable to abandonment proceedings. P&W’s petition concerns the Danbury Secondary Line over which P&W has trackage rights. On or about January 26, 2011, the Board’s staff requested that P&W provide a copy of the 1993 Trackage Rights Agreement relating to the Danbury Secondary Line. (A copy of the 1993 Trackage Rights Agreement is attached hereto as Exhibit 1.)

In order to ensure that the requested agreement is submitted on the record in this proceeding, P&W asks that the Board (1) grant leave to allow P&W to supplement the record by filing the attached Trackage Rights Agreement in the above-referenced Docket, and (2) upon the grant of P&W’s Petition for Leave to Supplement, deem the attached Trackage Rights Agreement filed on the record of this proceeding.

P&W submits that there is good cause to grant leave to supplement the record, as the attached agreement directly relates to the rail line at issue in P&W's Petition for Waiver, and has been requested by the Board's staff.

For all the foregoing reasons, P&W respectfully requests that its Petition for Leave to Supplement the Record be granted.

Respectfully submitted,



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Attorneys for
Providence and Worcester Railroad
Company

Dated: January 27, 2011

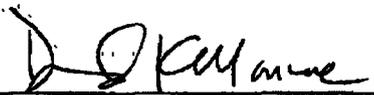
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition to Strike of the Providence and Worcester Railroad Company was served by electronic and first-class mail this date on the following parties:

Edward J. Rodriguez, Esquire
Housatonic Railroad Company, Inc.
8 Davis Road West
P.O. Box 687
Old Lyme, CT 06371

Housatonic Railroad Company, Inc.
One Railroad Street
P.O. Box 1146
Canaan, CT 06018

Dated this 27th day of January 2011.



David K. Monroe

EXHIBIT 1

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 15th day of March, 1993, by and between CONNECTICUT RAIL SYSTEMS, INC. (hereinafter referred to as "User" or "CRSI") and DANBURY TERMINAL RAILROAD COMPANY (hereinafter referred to as "Owner" or "DTRR")

WHEREAS, Connecticut Rail Systems Inc. has acquired a certain portion of the Middletown Secondary Line from Conrail;

WHEREAS, Connecticut Rail Systems Inc. is a wholly-owned subsidiary of P&W;

WHEREAS, Danbury Terminal Railroad Company has acquired the operating rights on the Danbury Secondary Line;

WHEREAS, Tilcon, Inc. has a facility in East Wallingford, Connecticut on CRSI's railroad line, a facility in Branford, Connecticut on P & W's railroad line, and a facility in Danbury, Connecticut on DTRR's railroad line and desires to move rail shipments between the three facilities;

WHEREAS, It is efficient and desirable for rail movements between the three Tilcon, Inc. facilities to be performed by one carrier; and

WHEREAS, DTRR is willing to grant to CRSI trackage rights on a portion of the Danbury Secondary and certain freight service rights to Tilcon, Inc's. facility in Danbury, Connecticut,

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS ON THE DANBURY SECONDARY

Subject to the terms and conditions herein provided, owner hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Subject Trackage"):

That portion of Owner's Danbury Secondary Line from approximately Mile Post 104.8 (Derby Junction, CT) to approximately Mile Post 76.9 (Danbury, CT) , to and through Danbury Yard and to the connection between Danbury Yard and the Danbury Branch. The Subject Trackage constitutes a one-way distance of approximately 27.9 miles.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) During the term of this Agreement, User shall have the right to use the Subject Trackage to provide freight service to Tilcon, Inc.'s facility in Danbury, Connecticut and to any other Tilcon, Inc, facility which may be established on the Subject Trackage in the future or to any successor in interest to any such facility, as more fully described herein . User shall have

the right to use all or any part of the Subject Trackage described above to accomplish such service.

User shall further have the right to use the Subject Trackage for overhead purposes to service the Danbury Branch and to move cars interchanged with Owner pursuant to an appropriate interchange agreement and hauled for Owner pursuant to an appropriate haulage agreement.

(b) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement, except as specifically provided herein with respect to User's rights to serve Tilcon's facilities. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage, not inconsistent with the rights granted herein.

(c) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(d) User shall not use any part of the Subject Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except to accomplish switching services for Tilcon's facilities located on the Subject Trackage as described above. Nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by owner for such purpose.

(e) User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3. RESTRICTIONS OF USE

The Trackage Rights herein granted are granted for the sole purpose of User using same for the movement and delivery of traffic described in Section 2.(a) above.

SECTION 4. TILCON INC.'S FACILITIES

User's trackage rights with respect to the transportation of freight to and from Tilcon Inc.'s existing facility in Danbury, Connecticut and to and from any future Tilcon, Inc. facility which may in the future be established on the Subject Trackage, shall be limited to the right to transport stone, sand, and other aggregate traffic originating or terminating on any point on the User's system or that of P&W, User's parent, now or in the future, and to any traffic in which User or P&W is named in the routing. User's right to transport such freight shall be exclusive, subject to the provisions hereinafter set forth. User's right does not include the right to transport traffic between two or more Tilcon, Inc. facilities located on the Subject Trackage.

With respect to the Tilcon traffic to be transported by User, User agrees to provide reasonable and adequate service to Tilcon Inc.'s Danbury facility and, in any event, to maintain a level of service which is sufficient to satisfy Owner's common carrier obligation to its customer (Tilcon, Inc.) with respect to such traffic. In the event that User fails to maintain, or in the event that Tilcon asserts that User has failed to maintain, a sufficient

level of service to satisfy Owner's common carrier obligations with respect to such traffic, then, in that event, User's rights with respect to that traffic shall cease to be exclusive and Owner may serve or make other arrangements for the provision of service to Tilcon with respect to such traffic.

Except as specifically set forth above, User shall have no rights to provide service to Tilcon, Inc.'s Danbury facility and Owner shall have all rights with respect to the provision of rail transportation services to such customer including, without limiting the generality of the foregoing, the right to provide or arrange for the provision of service between the Danbury facility and points not located on the lines of User or P & W or routed via those lines, the right to provide any other rail transportation services or facilities, the rights to enter into contracts and arrangements with and to publish and enforce tariffs with respect to such customer and, in general, to exercise all rights which Owner would have in the absence of this Agreement except the right to transport the freight traffic which User has the exclusive right to transport, during the period of such exclusivity.

SECTION 5. I.C.C. APPROVAL

User agrees that prior to the exercise of any trackage rights hereunder, User shall, at its sole cost and expense, obtain any required approval or exemption from approval of the Interstate Commerce Commission and shall furnish Owner with copies of all

documents filed with or issued by the I.C.C. In addition, User will furnish Owner with an opinion of counsel reasonably satisfactory to Owner certifying that the grant and exercise of the trackage rights hereunder are not in violation of any applicable law or regulation and that the User has received any required approval, or exemption therefrom, of the Interstate Commerce Commission and any other governmental agency having jurisdiction over said trackage rights.

User agrees that it will exercise its rights hereunder in full compliance with all applicable laws, and all regulations and orders of the Interstate Commerce Commission and will, during the term hereof and any renewals and extensions thereof, at its sole cost and expense, make any applications, petitions or other filings and institute and prosecute all proceedings before the Interstate Commerce Commission and any other governmental agency which is necessary or required in order that User's exercise of its rights hereunder be in full compliance with all legal requirements.

The parties acknowledge that this Agreement is within the jurisdiction of the Interstate Commerce Commission, that the provisions of the Agreement are subject to and are to be interpreted to be subject to and consistent with the provisions of the Interstate Commerce Act and the rules, regulations, decisions and orders of the Interstate Commerce Commission. User agrees to indemnify Owner and hold it harmless from any fines, penalties,

charges, proceedings and expenses, including attorney's fees, incurred by or assessed against Owner in connection with any action, claim or proceeding involving an allegation by any person or entity that this Agreement, or any provision hereof, or any act or activity of User, is in violation of law, or of any regulation or order.

SECTION 6. THIRD PARTY BENEFICIARIES

The rights and obligations established by this agreement are for the exclusive benefit of the parties hereto and are not intended and shall not be construed to create any rights of enforcement or any other rights in any other party, including but not limited to, Tilcon, Inc. The parties to this agreement reserve the right to modify the provisions hereof, or to terminate the Agreement in its entirety, without obtaining the consent of any other person or entity except the consent of the Interstate Commerce Commission if such consent is required by law.

SECTION 7. FEE PAYABLE BY USER

(a) For the privilege of operating on Owner's railroad, User will pay to Owner a fee based upon a charge of \$0.292 per car mile (hereinafter referred to as the "Current Charge"). The charge will be payable on both loaded and empty cars. Such charge shall not apply to any cars transported by User for Owner pursuant to an

interchange agreement or haulage agreement. Subject to temporary rerouting by User in its reasonable discretion because of track conditions and operational contingencies, the normal route for traffic to and from Tilcon, Inc.'s Danbury facility shall be the same for loaded and empty cars.

(b) User will pay owner a sum computed by multiplying: (i) the Current Charge by, (ii) the number of cars (loaded or empty), locomotive, and caboose units moved by User with its own crews and power over the Subject Trackage by, (iii) the miles of Subject Trackage used. For the purpose of this Agreement, each locomotive unit, each caboose and each platform of an articulated car shall be counted as one car.

(c) Within fifteen (15) days following the end of each month, User will furnish to Owner a statement of the number of cars, locomotives, cabooses, and total car miles operated by User over the Subject Trackage during the month, together with a check in payment of the trackage rights charges, computed in accordance with the provisions of this section, for User's use of the Subject Trackage.

SECTION 8. REVISION OF CURRENT CHARGE

(a) The Current Charge set forth in Section 7 above shall be revised effective July 1 of each year, beginning July 1, 1994, to compensate for the increase or decrease in the cost of labor and

material, excluding fuel, to reflect the change in the "Material prices, wage rates and supplements combined (excl. fuel)" index as contained in Table A, Annual Indexes of Chargeout Prices and Wage Rates (1977=100) - East, Series RCR included in "AAR Railroad Cost Indexes"; published by the Association of American Railroads. The Current Charge shall be revised by calculating the percentage of increase, or decrease, in the index of the year to be revised as related to the index of the prior calendar year and then applying that percentage to the Current Charge.

(b) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the year prior to the year to be revised; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year to be revised; "C" to be the Current Charge; "D" to be the percentage of increase or decrease, the new reviewed Current Charge would be determined by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (C \times D) + C = \text{New revised Current Charge, effective July 1 of the year being escalated.}$$

(c) If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes of

Chargeout Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 9. PAYMENT OF BILLS

(a) Except as provided in Paragraph 7 (c) , all payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 7 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner.

SECTION 10. MAINTENANCE OF SUBJECT TRACKAGE

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage to Federal Railroad Administration ("FRA") Class 1 standards as such standards were defined on March 1, 1993. User shall have the right at reasonable times to inspect the Subject Trackage and to notify Owner of any condition requiring maintenance or repair and Owner shall perform such maintenance or repair as necessary to restore the track to Class 1 standards within sixty (60) days from the date of written notice from User that such condition exists (or such longer period as may be reasonably required in view of weather conditions or other factors)

If Owner fails to do so, User may then give Owner written notice of User's intention to effect such maintenance or repair at Owner's expense. User may effect such maintenance and repair at Owner's expense, subject to the terms of this Section 10. As between Owner and User, User shall have the responsibility to maintain switches, turnouts and sidings at any Tilcon, Inc's. facility on the Danbury Secondary serviced by User.

If User maintains or repairs the track at Owner's expense as provided in this section, the expenses of User for which Owner shall be responsible shall consist only of (1) actual reasonable cost of materials, however Owner shall be given a reasonable opportunity to furnish the materials prior to purchase of materials by User, (2) actual cost of labor employed in the repairs consisting of wages, payroll taxes and fringe benefits calculated on a marginal cost basis, (3) fuel actually consumed, (4) actual out of pocket costs for transporting materials and equipment to the repair site; and (5) costs of equipment used in performing the repair at rates set forth in the General Managers' Association "Schedule of Equipment Rental and Other Rental Rates for Use Between Carriers", however Owner shall be given a reasonable opportunity to furnish any equipment needed for the repairs. All costs shall be computed on a marginal cost basis and shall not include charges for general and administrative overhead, depreciation, travel time or expenses of employees from points further than New Haven, charges for clerical, engineering or supervisory personnel, profit, or any other charges which do not represent charges actually incurred solely for the performance of the maintenance and repair of the Subject Trackage.

Any charges or expenses for maintenance and repair of the Subject Trackage by User for which Owner is responsible to User under the provisions of this Section 10 shall be deducted from the Trackage Rights Fees due to Owner from User under the

provisions of Section 7. Notwithstanding the foregoing, deduction of such charges and expenses from the trackage rights fees shall not reduce the fees payable to Owner by more than 75%. Such reduction shall continue during the term of this agreement until all said charges and expenses are paid in full. Said reduction shall be the exclusive method of payment and Owner shall have no obligation to make any additional payments to User with respect thereto.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

(c) Owner does not guarantee the condition of the Subject Trackage or that operations thereon will not be interrupted. Furthermore, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against the Owner or its directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from such failure or neglect, including, but not limited to consequential and incidental damages. Nothing in this subparagraph shall limit in any way User's right to seek relief in an appropriate forum to compel Owner to perform the maintenance pursuant to section 10 (a) above.

SECTION 11. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage. Notwithstanding anything to the contrary in this subparagraph, owner shall not make any such changes, additions, betterments or retirements which would have a material adverse effect on User's ability to exercise the trackage rights being granted herein for their intended purpose.

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes beyond that required for Owner's operation, owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request, but such request shall not be unreasonably denied.

SECTION 12. MANAGEMENT AND OPERATIONS

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include six axle locomotives or locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, or in Owner's timetable provided that the Subject Trackage must be capable of handling movement of 100

ton loaded cars (263,000 lbs. gross weight). Except when performing switching services for Tilcon, Inc., all working locomotives shall be at the head end of the train, unless Owner consents in writing to other placement of a locomotive. No train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) User shall make such arrangement with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereon, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) Owner may refuse to qualify or exclude from its property any employee of User if Owner determines after a good faith review that the employee is unqualified to operate on the Subject

Trackage, or, without limiting the generality of the foregoing, if an employee has a history of violations of operating or other rules, current drug or alcohol abuse, criminal or motor vehicle violations of a serious nature or which affect said employee's ability to operate on the Subject Trackage, or for any other reason, which, in the sole judgment of Owner, indicate that the operation or presence of said employee on Owner's property would create a safety risk, jeopardize the morale of Owner's employees, or create a risk of work action or other labor unrest on the part of Owner's employees. Notwithstanding the above, Owner will not refuse to qualify nor exclude from its property any employee for a reason which is unlawful under any applicable law. Upon request of Owner, User agrees to furnish to Owner a copy of all records of User with respect to the above matters for any employee which User proposes to work on Owner's property, except records which are confidential and may not be furnished to Owner under provisions of applicable law.

(e) Owner may, without a hearing or investigation, exclude from the Subject Trackage any employee of User determined by Owner to be in violation of Owner's rules, regulations, orders, practices or instructions. If Owner takes any such action to exclude such employee, Owner will reasonably cooperate with User concerning User's compliance with the requirements of any collective bargaining agreement concerning investigation and hearing. User will bear any expense of such compliance.

(f) Owner shall incur no liability or obligation to either User or User's employee as a result of any action taken by Owner in connection with the qualification, refusal to qualify, exclusion, or suspension of any employee of User, and User agrees to indemnify Owner and hold it harmless from any claims or actions of any employee or former employee of User or representative thereof asserted against Owner as a result of any such action by Owner.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option 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 Subject Trackage, and User shall reimburse owner for the cost of rendering any such assistance. Owner shall not be liable for any damage to any such cars or equipment caused by such actions of Owner unless caused by the gross negligence or willful misconduct of DTRR or its employees.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work may be done by Owner and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

(j) Prior to transporting any Hazardous Materials over the Subject Trackage, User shall, at its expense, comply with all applicable laws and regulations concerning the transportation of hazardous materials by rail, whether said obligations are otherwise imposed on Owner or User, including, but not limited to, preparation and implementation of an emergency response plan and filing of any required plans or documents with any governmental official or agency. User shall furnish Owner with a copy of the emergency response plan and all documents and correspondence transmitted to or received from any governmental agency or official and relating to the transportation of hazardous materials on the line. User shall indemnify Owner and hold it harmless from any and all liability, fine, penalty, cost and expense, including attorney's fees, incurred or arising from User's transportation of hazardous materials on the Subject Trackage or from the failure of User or Owner to comply with any law, order or regulation pertaining thereto.

SECTION 13. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains, except cars being moved by User for Owner, on the Subject Trackage shall be assumed by User.

SECTION 14. CLEARING OF WRECKS AND DERAILMENTS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, including the repair and restoration of roadbed, track, and structures damaged by a wreck or derailment, Owner shall perform such service, unless Owner requests User to perform such service or any portion thereof. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever (including damage to the Subject Trackage) and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 15 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

SECTION 15. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, or operation of User on the Subject Trackage, shall be determined as follows:

(a) User agrees to protect, defend, indemnify and save harmless Owner, irrespective of any negligence or fault of Owner or Owner's Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any User Employee, or for loss of, damage to, or destruction of the property of any such User Employee. "User Employee" means a person who is an employee of User or any agent or contractor of User (other than Owner), or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor.

(b) User agrees to protect, defend, indemnify and save harmless Owner, irrespective of any negligence or fault of Owner or Owner's Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to, or destruction of any User Property. "User Property" means any locomotive, railroad car, including contents, and any other

property, real or personal, owned, leased, used by or otherwise in the custody or possession of User, other than any User rolling stock operating in Owner's trains.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account, of, User being involved, without the trains, locomotives, cars, or equipment of Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including and expense referred to in Section 14 hereof, and shall forever protect, defend, indemnify, and save harmless owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(d) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air water, wildlife, and vegetation, occurs with the trains,

locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of User being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 14 hereof, but excluding liability for injury to or death of User's employees or damage to User's property which shall be governed by the provisions of subparagraphs (a) and (b) hereof, and shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(e) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and

for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Section 14 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(f) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation,

occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or cabooses of, or in the account of, User where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, User shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 14 hereof, and User shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(g) User agrees to protect, defend, indemnify and save harmless Owner irrespective of any negligence or fault of Owner or Owner's Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, for loss of, damage to, or destruction of any property, if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a train of User at the intersection at grade, of a street or road, whether public or private, and the tracks over which such train of User is operating, (ii) arises from a collision of a vehicle or a

person with a train of User on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a train of User.

(h) Notwithstanding any other provision of this Section 15, User agrees to indemnify and save harmless Owner irrespective of any negligence or fault of Owner or Owner's employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, where such injury, death, loss, damage or destruction arises from the transportation in trains of User of hazardous or toxic materials as defined in applicable federal or state laws or regulations, and including petroleum, crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance by such federal or state laws or regulations. Hazardous or toxic materials shall also include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Notwithstanding any provisions of this Agreement to the contrary, damage for which User is responsible under the

preceding paragraph shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and remediation of hazardous or toxic materials on such property. User shall perform or cause to be performed such clean-up, removal or remediation.

(i) Notwithstanding the provisions of paragraph 10(e), but subject to the provisions of paragraph 10 (a), (b), (c), (g) and (h), whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the train of, Owner where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, Owner shall assume and bear all liability, cost, and expense in connection with the loss, damage destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 14 hereof, and Owner shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(j) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(k) For purposes of this Section 15, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on board or getting on or off trains of User.

(l) Notwithstanding the provisions of Section 22(f) of this Agreement, for the purposes of this Section 15 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of any occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 16. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in the Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand (\$10,000).

(f) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 14 hereof.

SECTION 17. EMPLOYEE PROTECTION

Each party to this Agreement shall be responsible for its employees claims, (and as between the parties to this agreement, User shall be responsible for the claims of Conrail employees arising out of User's acquisition of the Middletown Secondary Track and the acquisition or exercise of the trackage rights acquired herein) predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the Interstate Commerce Commission or are predicated on the Railway Labor Act or labor agreements, and shall hold the other party harmless therefrom.

SECTION 18. INSURANCE PROVISION

During the term, and any continued term, of this Agreement, User shall provide and maintain in effect a policy of public liability insurance, including contractual liability assumed by User under the provisions of this Agreement, which names Owner and Maybrook Properties, Inc. as additional insureds and provides for a minimum of forty (40) days advance notice to owner before any changes or cancellation. Said insurance shall be in limits of not less than \$3 million single limit bodily injury and/or property damage, subject to retentions and co-insurance as User may in its reasonable discretion deem appropriate, and shall be in companies and form reasonably acceptable to Owner. Owner, in consultation with User, shall have the right to require reasonable increases in minimum coverage consistent with industry practices. User shall forward annually evidence of the amount of public liability insurance currently in effect to:

Danbury Terminal Railroad Company

P.O. Box 537

Old Saybrook, CT 06475

User shall promptly notify Owner of any termination, decrease, lapse, or other adverse change in coverage.

SECTION 19. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement, and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. If User cures any such failure to perform before the expiration of such notice period, User's rights shall not be terminated. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

If, at any time, User shall fail to maintain the insurance required by this Agreement, Owner may immediately suspend User's rights to operate under this Agreement until User supplies evidence of insurance as required by this Agreement.

SECTION 20. REGULATORY APPROVAL

Should implementation of this agreement require the taking of any action by User and/or the Interstate Commerce Commission under 49 U.S.C. Sections 10505, 11343 or 11344, User at its own cost and expense will initiate and thereafter diligently prosecute such action and this Agreement shall take effect on the date User

commences operations over the Subject Trackage (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event action under such sections is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to meet the requirements of the aforesaid sections.

SECTION 21. ABANDONMENT OF SUBJECT TRACKAGE

(a) Notwithstanding the provisions of Section 26 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals thereof, upon giving User not less than one hundred twenty (120) days notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. User agrees that it will not oppose nor will it cause any other person or entity to oppose any petition by Owner to the Interstate Commerce Commission to abandon or discontinue rail service on the Subject Trackage, or any portion thereof, or any other action by Owner to abandon or discontinue rail service on said Subject Trackage or any portion thereof. In the event of any such abandonment or discontinuance, User shall be provided the opportunity to acquire the portion abandoned or on which rail service is discontinued, or any portion thereof, for the

net liquidation value or such other amount as User and Owner may agree. In the event User breaches its agreement not to oppose an abandonment or discontinuance as set forth above, its trackage rights will automatically terminate and Owner may record an instrument evidencing such termination without further authorization from User.

(b) In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, unless User or another carrier acquires the Subject Trackage from Owner or subsidizes operations pursuant to 49 U.S.C. Section 10905 or unless User acquires the subject trackage pursuant to Section 21(a) above. Otherwise Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 22. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) The rights granted User hereunder are subject to any rights in favor of Connecticut Department of Transportation and Metro North Commuter Railroad as set forth in a certain agreement entitled "Trackage Rights Agreement between Metro North Commuter Railroad, Metro North Commuter Railroad, Metropolitan Transportation Authority, Connecticut Department of Transportation and Consolidated Rail Corporation Effective as of January 1, 1983".

(d) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(e) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(f) 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 one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement, and are in the possession or account of the other party to this agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(g) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally accepted definition or meaning of such words, terms, and phrases in the railroad industry.

(h) Owner will be excused from its obligations under this Agreement to provide and maintain Owner's property where non-performance is occasioned by any event beyond its control, including, without limiting the generality of the foregoing, a catastrophic event which causes damage to the Subject Trackage, which damage Owner determines not to repair. In the event that Owner takes a portion of the Subject Trackage out of service on a permanent basis because of track conditions, Owner will, upon the request of User, institute abandonment proceedings with the Interstate Commerce Commission. In the event Owner and User

disagree as to whether a portion of the Subject Trackage has been taken out of service on a permanent basis, either party may, upon written notice to the other party, submit such issue to arbitration to a panel of arbitrators selected in the same manner as set forth in Section 26.

SECTION 23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of Owner. Owner will not unreasonably withhold its consent to an assignment by User of its rights to Providence & Worcester Railroad provided that the assignee agrees to be bound to the terms hereof and the obligations of User hereunder and under other agreements then in effect between DTRR and CRSI and related to the Subject Trackage or traffic moving over the Subject Trackage, provided that any such assignment is otherwise lawful and has been approved or by the Interstate Commerce Commission or exempted from approval thereby, and provided that the assignee agrees to indemnify Owner and hold it harmless from any costs, expenses or liability, including any labor protection obligations, caused by the assignment.

SECTION 24 MORTGAGES

(a) Owner agrees that any mortgage or other lien placed on the Subject Trackage by Owner and recorded prior to the execution of the Agreement will be subordinated to the Agreement. In the alternative, Owner will request any such mortgagee or lien holder to execute a nondisturbance agreement with User, reasonably satisfactory to User's and Conrail's counsel (when relating to a Conrail mortgage or lien) providing that the rights granted in the Agreement to User will not be affected or disturbed by such mortgagee or lienholder in the exercise of any of its or their rights and remedies in such mortgage, lien, note or other evidence of indebtedness or other document, provided User is not in default under the terms of the Agreement.

SECTION 25. NOTICE

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

(a) If to Owner

Danbury Terminal Railroad Company

P.O. Box 537

Old Saybrook, CT 06475

(b) If to User:

Connecticut Rail Systems, Inc.

75 Hammond Street

Worcester, MA 01610

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 26. TERM

(a) The Trackage Rights granted in this Agreement shall continue in full force and effect for a period of thirty (30) years from the Commencement Date, as hereinabove defined. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

(b) User shall have the right to renew the Trackage Rights for one (1) additional Thirty (30) year term, subject to User's above-stated right to terminate, by giving written notice thereof to Owner at least six (6) months prior to expiration of the initial term of this Agreement.

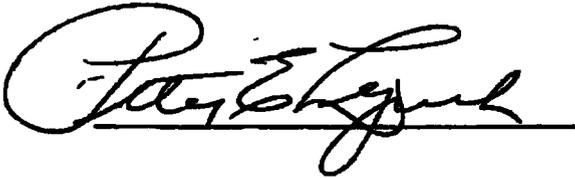
(c) Upon the giving by User of the notice referred to in paragraph (b) above, the parties shall, in good faith, renegotiate the terms and conditions of this Agreement, and shall adjust such terms and conditions as may be reasonable and equitable in light of circumstances existing at the time of renewal. In the event the

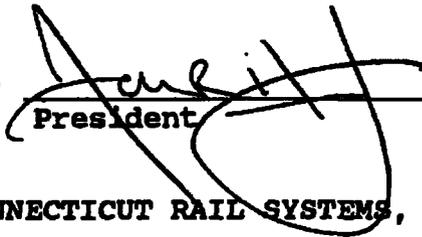
parties fail to reach agreement upon such renegotiation, then the parties agree to submit the unresolved issues to the Interstate Commerce Commission for decision. If the Interstate Commerce Commission declines to decide the issues, then the parties agree to submit the unresolved issues to arbitration before a panel of three arbitrators selected as follows: each party shall select an arbitrator and the two party-appointed arbitrators shall jointly select a third arbitrator. In the event the party appointed arbitrators fail to agree on a third arbitrator, the parties shall petition a court of competent jurisdiction in the State of Connecticut to name the third arbitrator. The panel of arbitrators shall give due regard to industry standards and practice in resolving disputed matters.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the 5th day of ~~April~~^{March}, 1993.

WITNESS:

DANBURY TERMINAL RAILROAD COMPANY

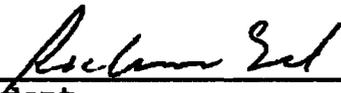


BY: 
President

WITNESS:

CONNECTICUT RAIL SYSTEMS, INC.



BY: 
President

STATE OF Massachusetts
COUNTY OF Worcester

*Bob Edel has
original. Notary
page*

In Worcester, Ma. on April 7/1994 ^{APR 7 1994} April, 1993,
before me personally appeared Ric President of
CONNECTICUT RAIL SYSTEMS, INC., to me to be
the party executing the foregoing i acknowledged
said instrument by him executed to be free act and deed and the
free act and deed of CONNECTICUT RAIL SYSTEMS, INC.

Notary Public James S. Brown
My Commission Expires 4/1/99

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

In DANBURY on the 21st day of April, 1993,
before me personally appeared John R. Hanlon, Jr., President of
DANBURY TERMINAL RAILROAD COMPANY, to me known and known by me to
be the party executing the foregoing instrument and he acknowledged
said instrument by him executed to be his free act and deed and the
free act and deed of DANBURY TERMINAL RAILROAD COMPANY.

~~Notary Public~~ Edward J. Polyzos
~~My Commission Expires~~ Commissioner of the Superior Court

Trackage Rights Agreement

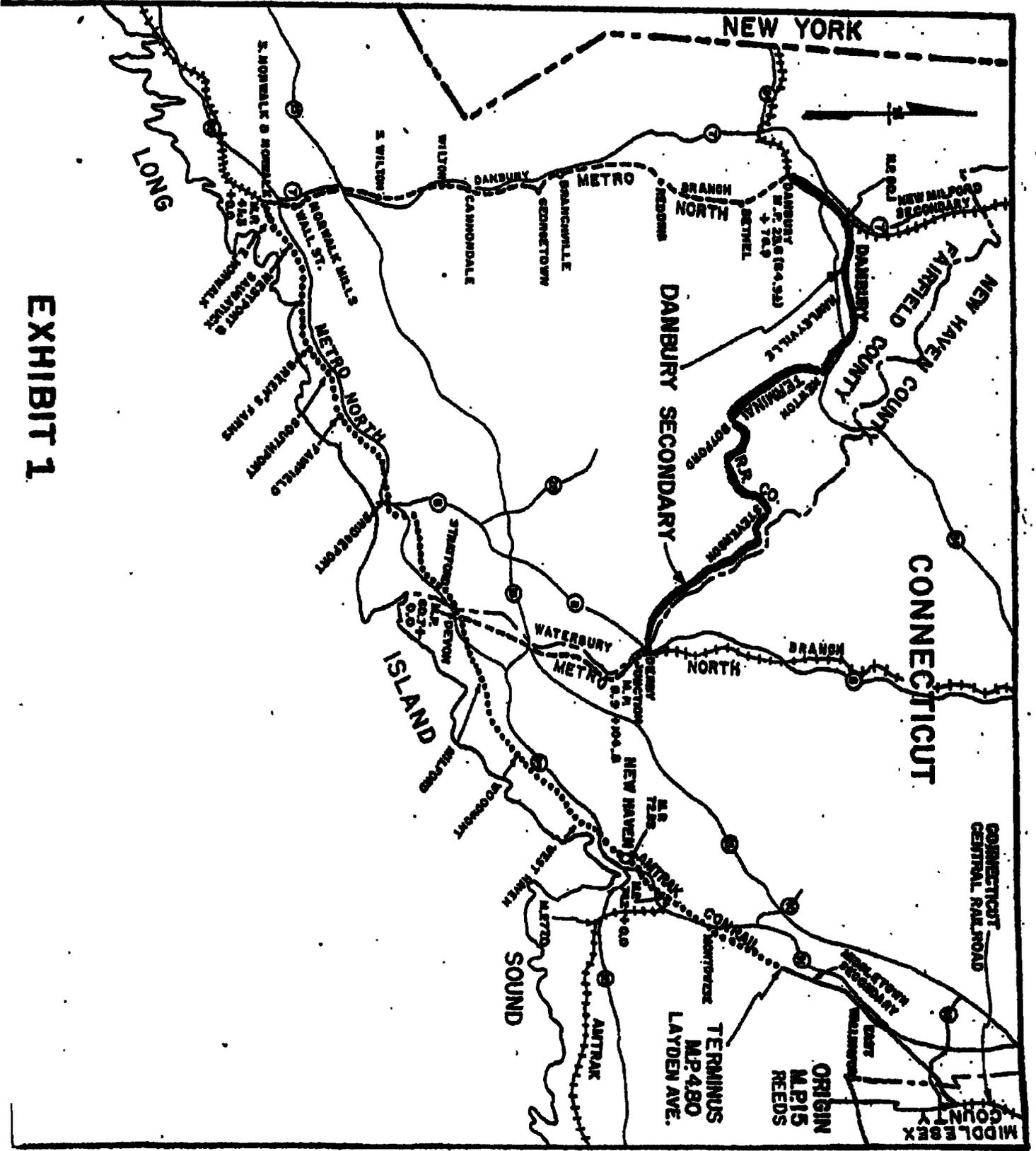


EXHIBIT 1