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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION
OPERATING AGREEMENT
FOR
RAIL SERVICE CONTINUATION.
WITH
MASSACHUSETTS CENTRAL RAILROAD CORPORATION

OPERATING AGREEMENT
FOR
RAIL SERVICE CONTINUATION

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COMMONWEALTH OF MASSACHUSETTS
OPERATING AGREEMENT
FOR
RAIL SERVICE CONTINUATION

THIS AGREEMENT made and entered into this *6th* day of *November*, 1979 by and between MASSACHUSETTS CENTRAL RAILROAD CORPORATION, a Massachusetts corporation, Thirteen Railroad Street, Amherst, Massachusetts 01002, ("Operator") and the COMMONWEALTH OF MASSACHUSETTS, ("Commonwealth"), acting by and through the Executive Office of Transportation and Construction, Room 1610, One Ashburton Place, Boston, Massachusetts 02108.

WHEREAS, Operator has been designated by Commonwealth, as provided in section 304 of the Regional Rail Reorganization Act as amended by section 803 (d)(c) of the Railroad Revitalization and Regulatory Reform Act of 1976, to conduct rail service on the rail line subject to this Agreement, and

WHEREAS, Operator is willing to provide this service as designated operator for Commonwealth;

WHEREAS, the Executive Office of Transportation and Construction is authorized to enter into operating agreements by Section 5 of Chapter 161C of the Massachusetts General Laws;

WHEREAS, the owners of the rail facilities have or will have leased or otherwise made such facilities available to Commonwealth for operations hereunder;

NOW, THEREFORE, the parties do hereby mutually agree that Operator shall perform rail freight services and shall be compensated therefore by Commonwealth as follows:

ARTICLE ONE - DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings ascribed to them in 49 C.F.R. Part 1125 unless the context clearly determines otherwise:

"Accelerated maintenance" means replacing ties, and other track and structural materials, sufficient functionally to restore the existing rail service facilities to the level necessary for such facilities to be maintained in compliance with FRA Class I Track Safety Standards.

"Attributable revenue" means the revenue attributable to the rail facilities as defined and included in the RSPO Standards.

"Costs of providing service" means and shall include all costs of Operator which are allowed as reimbursable pursuant to Section 702.

"Cost-revenue deficit" means the deficit created when the attributable revenue of the rail facilities does not exceed the avoidable costs of providing service on the rail facilities, plus a reasonable management fee.

"Cost-revenue surplus" means the surplus created when the attributable revenue of the rail facilities does exceed the avoidable costs of providing service on the rail facilities, plus a reasonable management fee.

"Crew" means the individual train and engine personnel employed to perform the rail freight service described in Attachment I hereto.

"Designated operator" means an operator as defined in Section 304(d) of the Regional Rail Reorganization Act of 1973 as amended by Section 804 (d)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 USCA 744) (d)(C) and in the Interstate Commerce Commission notice of March 8, 1976 entitled: "Continuation of Rail Service Under Subsidy by Designated Carrier."

"Excess subsidy payments" means the balance of rail continuation payments remaining after accounting adjustments are made at the end of the service year.

"Excess revenues" means and shall include revenue produced on a segment that is greater than the amount necessary to cover all costs of providing service; including any maintenance, accelerated maintenance, or rehabilitation approved by the Federal Railroad Administration.

"Lessor" means the legal entity from whom the rail facilities are leased by the Commonwealth.

"Maintenance" means the normal and regular work required to keep the rail facility in the condition necessary to continuously perform the level of rail service required by this Agreement.

"RRRA" means the Regional Rail Reorganization Act of 1973, Public Law 93-236 (87 Stat. 985), as amended.

"RRRRA" means the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210 (90 Stat. 31), as amended.

"RSPO Standards" means those standards promulgated by the Rail Service Planning Office of the Interstate Commerce Commission, entitled "Standards for Determining Rail Service Continuation Subsidies" (49 CFR 1125, as amended).

"Rail facilities" means the track, bridges, signals, switches, structures and related transportation property located on United States Railway Association line 8 from milepost 1.6 (Palmer, Massachusetts) to milepost 25.0 (South Barre, Massachusetts).

"Rail service" means that service to be provided by Operator pursuant to this Agreement, as more fully described in the "Local Freight Service Characteristics" in Attachment I hereto.

"Rehabilitation" or "Modernization" means capital improvement work to improve or upgrade the condition of a rail facility at a level above FRA Class I Track Safety Standards.

"Service year" shall mean the twelve month period beginning on the Effective Date hereof.

"Total liability costs" means and shall include the following Interstate Commerce Commission accounts: 274 (Injuries-Maintenance of Way), 275 (Insurance-Maintenance of Way), 332 (Injuries-Maintenance of Equipment), 333 (Insurance-Maintenance of Equipment), 357 (Insurance-Traffic), 414 (Insurance-Transportation), 415 (Clearing Wrecks), 416 (Damage to Property), 417 (Damage to Livestock), 418 (Loss and Damage-Freight), 420 (Injuries-Transportation), and 455 (Insurance-General).

ARTICLE TWO - OPERATING PLAN

Section 201. Provision of Service.

(a) Operator agrees to provide on the rail facilities, a rail freight service more fully described as to operations, equipment and frequency in Attachment I hereto entitled "Expected Local Freight Service Characteristics." Operator, on reasonable notice to the Commonwealth and with the prior approval of the Commonwealth, may in the interest of greater efficiency change the base of operations, service frequency, or other aspects of the service and appropriately adjust the costs of providing the rail service, providing that the cost adjustments are within the limitations set forth in Section 702. The Commonwealth may reject changes in the base of operations which would result in an increase in the billing to the Commonwealth, or any change in service frequency. The Commonwealth may propose and

Operator shall adopt a reasonable number of changes in service frequency per segment during the service year. Such proposals shall be implemented by Operator no later than 120 days after the day they are proposed by the Commonwealth.

(b) If additional industries request service, Operator shall provide such service after approval by the Commonwealth and appropriate amendments to Attachments 1 and 2 hereto.

(c) Operator shall provide rail freight service in a manner which is safe for: (1) the personnel and property of the operator, (2) the persons and property within the communities and area through which the rail freight service is provided, and (3) the property of the Lessor. Operator shall observe and follow all applicable statutes, rules, regulations, ordinances, orders, writs, injunctions or decrees of any court, administrative agency or governmental body which require certain conditions or actions to insure the safe operation of rail service on the rail facilities.

Section 202. Operational Rights. The Commonwealth has acquired rights to use the rail facilities from the owners thereof and hereby assigns to Operator all necessary rights and licenses to enter upon and operate the rail freight service on the effective date of this Agreement. Unless expressly required by law or by a lawful order of the Interstate Commerce Commission to be so obligated, Operator disclaims any and all obligations which are not explicitly undertaken in this Agreement.

Section 203. Force Majeure; Excuse.

(a) The parties hereto will be excused from performance of any

of their respective obligations hereunder which performance is prevented by an event beyond their respective control, which shall include, without limitation, any actions of any federal, state or local agency or instrumentality, or acts of God.

(b) Where one party's obligations are so excused the other party's obligations shall be correspondingly reduced or adjusted.

ARTICLE THREE - MANAGEMENT AND CONTROL

Section 301. Control. Operator shall have exclusive control in the management and operation of the rail freight service, including the dispatching and control of trains, assignment of available cars in good order, assignment of crews and other employees and assignment and utilization of power, provided it endeavors to provide such service in an efficient and safe manner.

Section 302. Operating Rules and Regulations. Operator shall have exclusive authority to promulgate and adopt rules and regulations for the safe operation of the rail freight service, provided that those rules are consistent with all applicable State and Federal statutes, Rules and Regulations, and practice and procedure. Operator shall submit a copy of said rules and regulations to the Commonwealth. Operator shall comply with the rules and regulations as submitted to the Commonwealth.

Section 303. Use by Others. Operator shall have the right to permit the rail facilities to be used by other railroad companies upon approval of such use by the Commonwealth. The Commonwealth approval of such use shall be granted if: (1) such use is consistent with this Agreement and any lease agreement governing use of the rail facilities; (2) the other railroad company carries adequate insurance and the in-

insurance policy lists the Operator, the Commonwealth, and Lessor harmless from any liability caused by operation of the other railroad;

(3) Operator is satisfied that the other railroad has a safe operation; and (4) reasonable compensation is received by Operator from the other railroad. Revenue received by Operator from the other railroad shall for purposes of this agreement be revenue attributable to the rail facilities. If the Commonwealth contemplates joint use of the facilities by Operator and another railroad company, any such joint use shall have the prior approval of Operator, which prior approval shall not be unreasonably withheld.

ARTICLE FOUR - MAINTENANCE

Section 401. Responsibility.

(a) Operator shall perform all maintenance on the rail facilities subject to the rules and regulations of all Federal and State railroad safety agencies. Operator shall be compensated for the performance of such maintenance in accordance with budget estimates in Attachment 2, subject to adjustment as provided for in Section 401(b).

(b) Operator shall perform emergency maintenance including, without limitation, snow removal, washout repair, repair of derailments and compliance with railroad safety citations. If the costs of performing such emergency maintenance exceeds the budget estimates in Attachment 2, Operator shall obtain the Commonwealth approval orally and confirmed in writing prior to performing the emergency maintenance, and submit invoices to the Commonwealth for compensation.

Section 402. Safety Inspections. Operator shall conduct the inspections of the rail facilities as required by the Federal Railroad Administration track safety standards. Operator shall permit qualified

representatives of the Commonwealth to accompany its inspectors. Records of such inspections shall be made available to the Commonwealth according to the provisions of Section 1104 below. Operator shall send to the Commonwealth copies of all correspondence concerning safety standards and inspections between Operator and federal or state agencies.

ARTICLE FIVE - REHABILITATION AND CAPITAL IMPROVEMENTS

Section 501. Accelerated Maintenance. If the Commonwealth or a third party performs Accelerated Maintenance or Rehabilitation projects, Operator shall provide an inspector for the duration of the project. The expense of providing inspections may be included by Operator as a cost of providing service. Accelerated Maintenance and Rehabilitation of the rail facilities, if and where required, shall be the subject of a separate contract and such costs shall not be considered a cost of providing service hereunder.

ARTICLE SIX - LIABILITY

Section 601. Operator's Liability. When any loss, damage, destruction, injury or death occurs as a result of the management, maintenance, control, use, or operation of rail services on the rail facilities by Operator or any of its agents, employees, licensees, or other persons contracting with it, Operator agrees to indemnify, insure, and hold the Commonwealth and Lessors harmless from any such loss or liability including all related costs and counsel fees. Said loss or liability shall include loss or liability accruing after accelerated

maintenance or rehabilitation of the rail facilities where such work has been performed by third parties and approved by Operator.

Section 602. Liability Costs. Operator will purchase insurance, in the face amount of at least two-million dollars (\$2,000,000.00), with a deductible limit no greater than twenty-five thousand dollars (\$25,000.00), naming the Lessors and the Commonwealth as additional insured parties, covering property damage, personal injury, death, or other such loss. The expenses of such insurance shall be considered a cost of providing rail service. A copy of the Insurance Policy purchased pursuant to this section by Operator is attached as a part of this Agreement as Attachment 3.

Section 603. Losses Under \$25,000.00.

(a) If Operator incurs a legal liability to pay damages pursuant to the assumption of liabilities in Section 601, the payment by Operator of said damages shall be a cost of providing service subject to the following conditions:

(i) The Commonwealth must approve any settlement of any claim arising out of such an accident or incident, but such approval shall not be unreasonably withheld.

(ii) If the damages, losses, or expenses arising out of a single accident or incident exceed twenty-five thousand dollars (\$25,000.00), no amount over twenty-five thousand dollars (25,000.00) shall be a cost of providing service and shall not be reimbursed.

(b) If Operator incurs a legal liability to pay damages which is determined to be a cost of providing service pursuant to section (a) above, Operator shall submit a request for payment on forms required and approved by the Commonwealth and shall be paid as soon as funds are

received by the Commonwealth which are allocable to the loss.

ARTICLE SEVEN - PAYMENTS

Section 701. Compensation. As compensation for providing rail service, Operator shall receive rail service continuation payments equal to the cost-revenue deficit on the rail facilities; provided, however, that the total payment shall not exceed 115% of the total estimated cost-revenue deficit shown on Attachment 2, unless the Commonwealth has given written approval prior to the incurring of all costs which caused the cost-revenue deficit to exceed 115% of said total estimated cost-revenue deficit.

Section 702. Payments.

(a) Payments due the Operator from the Commonwealth according to the terms of any grant or other agreement between the Commonwealth and the Federal Railroad Administration shall be paid to Operator in monthly payments at the rate of one-twelfth (1/12th) of the estimated cost-revenue deficit for the service year; provided, however, that the 1/12 ratio may be adjusted in accordance with the following conditions:

(1) The first payment made by the Commonwealth shall include an additional amount up to \$13,000 for maintenance of equipment expenses as set forth on Attachment 2;

(2) The first payment made by the Commonwealth shall include reimbursement up to the amount of \$13,000 for that portion of Operator's insurance premium that is attributable to the operations described herein, as set forth on Attachment 2;

(3) Upon payment under Section 702 (a)(1) and/or (a)(2) above, the amount paid shall be subtracted from the estimated cost-revenue deficit. The monthly payments thereafter shall be one-twelfth (1/12th) of the remainder of the estimated cost-revenue deficit, subject to Section 702 (c) of this Agreement. Such remainder shall thereafter be considered the estimated cost-revenue deficit under all terms of this Agreement.

(4) The payment may exceed one-twelfth of the estimated cost-revenue estimate subject to Section 702(c) of this Agreement.

To receive the monthly subsidy payment, Operator shall submit a request for payment on forms required and approved by the Commonwealth, in accordance with usual State procedure then prevailing, and shall be paid in arrears on or before the fifteenth (15th) day of the second (2nd) and each succeeding month, for services provided in the prior month. The estimated cost-revenue deficit for the service year shall be equal to the amount of the deficit created when the estimated attributable revenue of the rail facilities does not exceed the estimated costs of providing service on the rail facilities as determined by Attachment 2.

(b) In the event that the scope of rail freight operations is changed to the extent that a substantial change in Attachment 1 or 2 results, the monthly payment shall be appropriately adjusted.

(c) Each individual expense item which is incurred by Operator during the service year, for the purpose of conducting rail service on the rail facilities, shall be allowed as reimbursable only if the expense satisfies all of the limitations set forth below in this Section:

- (1) The expense item is an allocable cost pursuant to the RSPO Standards.
- (2) The maximum amount of expenses that shall be allowed as Costs of Providing Service shall be One Hundred and Fifteen Percent (115%) of the Estimated Costs of

Providing Service as set forth in Attachment 2, unless the Commonwealth has given written approval prior to Operator's incurring a cost which exceeds 115% of said estimated costs.

(d) Subject to subsection (c) above, if the annual report issued pursuant to Section 1102 or an audit by state or federal agencies reveals that the dollar amount of the total monthly subsidy payments for the subsidy year is in excess of the subsidy required by the actual results of operation, this excess subsidy shall be placed in a separate interest-bearing escrow account held by Operator for the benefit of the Commonwealth. This escrow account shall be utilized as follows:

(1) If the subsidy continues into next year, the funds in the escrow account and the interest realized from those funds shall be made available to the Commonwealth as a credit in that year of operation;

(2) If the subsidy does not continue in the next year, the funds in the escrow account and the interest realized from those funds shall be returned to the Commonwealth within thirty (30) days after delivery of the annual report or audit by state or federal agencies.

(f) Forty-five (45) days prior to the close of each service year, Operator shall provide the Commonwealth with the estimated cost-revenue deficit for the rail line for the upcoming service year.

Section 703. Excess Revenues. Excess Revenues shall be placed by Operator in one of three interest-bearing escrow accounts, within five days of issuance of the annual report, as follows:

(a) Excess Revenues shall be placed in a "maintenance and rehabilitation account" and used on the segment for either accelerated maintenance or rehabilitation, or both.

(b) Excess Revenues may be transferred at the request of the State from the "maintenance and rehabilitation account" of one segment to the same

account of another segment, provided that such other segment is operated by Operator, and is included in the Title IV program.

(c) Excess Revenues beyond those necessary for maintenance and/or rehabilitation may be transferred subject to the approval of the Commonwealth and FRA from the "maintenance and rehabilitation account" to an "acquisition account" at the end of a service year. The "acquisition account" may be used by the Commonwealth or by Operator upon approval by the Commonwealth to acquire by purchase or lease a segment, provided that such acquisition is consistent with the Massachusetts State Rail Plan and is approved by the Federal Railroad Administration.

(d) Excess Revenues may be transferred, subject to approval by the Federal Railroad Administration and the Commonwealth, from any "maintenance and rehabilitation account" or from any "acquisition account" to a "special project account". "Special project accounts" may be created to pay the costs of any project that is an approved part of the Massachusetts State Rail Plan.

(e) In the event that it is determined after audit of the annual report that Operator accrued excess revenues which were not deposited pursuant to this section, Operator shall, upon written request by the Commonwealth, reimburse the Commonwealth for lease payments and/or payments for program maintenance, accelerated maintenance, emergency maintenance, and rehabilitation for the segment made by the State for the service year up to the amount of the segment's extra revenues.

ARTICLE EIGHT - ESTIMATED FINANCIAL INFORMATION

Section 801. Estimated Cost-Revenue Deficit. The monthly payment made to Operator pursuant to Section 702 shall be based on estimates which are to be included on Attachment 2 entitled "Estimated Attributable Revenue and Estimated Costs of Providing Service." The following estimates shall be included on Attachment 2:

- (i) Estimated Attributable Revenues;
- (ii) Estimated Costs of Providing Service;
- (iii) Estimated Cost-Revenue Deficit, or Estimated Cost-Revenue Surplus.

ARTICLE NINE - MANAGEMENT FEE

Section 901. Management Fee. Operator shall receive a management fee for providing rail freight service on the rail facilities in an amount equal to 8.0% of attributable revenue. The Operator shall receive the management fee in the same manner as the receipt of the rail service continuation payments as provided for Section 702.

ARTICLE TEN - FREIGHT CHARGES AND ADJUSTMENTS

Section 1001. Freight Charges. Operator will on the effective date of this Agreement continue the applicable tariffs then in effect for traffic on the rail facilities.

Section 1002. Changes. Operator may from time to time seek changes in tariffs, rates and divisions. Any proposed changes will be submitted to the appropriate regulatory authorities. The Commonwealth shall have the right to propose new tariffs to Operator applicable to the rail facilities and Operator shall use its best efforts to implement the proposed tariffs.

ARTICLE ELEVEN - ACCOUNTING REPORTS

Section 1101. Record Keeping. Operator will keep accounting records in accordance with the applicable RSPO standards.

Section 1102. Report Schedule. A quarterly report covering the first three months of operation under this agreement, based upon an accrual method to determine revenues and costs (adjusted in a manner agreed to by the parties to reflect the estimated effects of inflation) of providing service will be issued to the Commonwealth within fifty (50) days after the end of that quarter. Subsequently, nine monthly reports of the same nature will be issued to the Commonwealth for each of the nine (9) remaining months, each report to be issued to the Commonwealth within ninety (90) days after the close of each service year.

Section 1103. Audit and Inspection. The Operator shall

maintain, and shall require any subcontractor to maintain, the following until the expiration of four years after the date of the submission of the final accounting by the Commonwealth to the FRA and for any longer period necessary to resolve audit-findings or disputes:

(i) A separate set of accounts which identify the sources and applications of funds from the Commonwealth and the Federal government and which contain information pertaining to obligations, assets, liabilities, outlays and income, which records are to be made available to the FRA upon request;

(ii) Supporting source documents;

(iii) Any other records which in the future are required by an amendment to Federal law:

(iv) Records that are necessary to show monitoring of this Agreement by the Commonwealth;

(v) Any other records necessary to disclose fully the amount and disposition of funds under this Agreement, and such other books, records and documents as will permit a full and complete verification of the Operator's responsibilities and all payments and charges.... under this Agreement;

(vi) Documents evidencing in detail the nature and propriety of all costs charged to this Agreement. The Operator shall impose this requirement on any subcontract to this Agreement.

The Commonwealth, the U.S. Secretary of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers and records of the Operator which may be related to this Agreement. The Operator shall

impose this requirement on any subcontract to this Agreement.

Section 1104. Inspection. Upon request, the Commonwealth, its agents, or any governmental agency having jurisdiction, may inspect the rail facilities, equipment used thereon, and the records of inspections made by Operator. The Operator shall impose this requirement on any subcontract to this Agreement.

ARTICLE TWELVE - CONTRACT TERM, RENEWAL AND RENEGOTIATION

Section 1201. Term. This Agreement shall commence the day and year first above written and shall expire at 11:59 P.M. on the twelfth month thereafter, subject to the termination provisions of Article Thirteen hereof. All additional terms of this Agreement, if any, shall consist of twelve (12) successive months commencing with the first day of the month immediately following the month of expiration of the previous term.

Operator shall notify the Commonwealth by certified mail sixty (60) days in advance of the termination date of this Agreement if Operator wishes to continue the service for an additional year.

Section 1202. Renewal of Agreement. The original or successive term of this Agreement may be renewed by the Commonwealth by notifying Operator, by certified mail, forty-five (45) days in advance of the termination of the first and each succeeding term of this Agreement. that the Commonwealth wishes Operator to continue to provide service hereunder. In the event that the parties have not concluded negotiations by the expiration date, rail service shall continue during the negotiation period. Upon execution of the renegotiated or renewal agreement, its terms shall be retroactive to the period after the expiration date of the prior agreement.

Section 1203. Renegotiation. This Agreement may be renegotiated at any time during its term upon the written consent of both parties hereto. Rail service shall continue under the terms of this agreement during such renegotiations.

ARTICLE THIRTEEN - TERMINATION

Section 1301. a. Termination for Money Default. In the event of any failure on the part of either party to perform its obligations regarding payments of cost of providing service, including but not limited to transmittal of scheduled contractual payments under this Agreement, and the continuance by such party in such default for a period of ten (10) days, the other party shall have the right, at its option, after first giving twenty (20) days' written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

b. Termination for Non-Money Default.

(1) In the event of any substantial failure on the part of either party to perform its obligations under this Agreement, other than payments for costs of providing service, and the continuance by such party in such default for a period of sixty (60) days, the other party shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement and

the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

(2) Any default by the State under the terms of an application to, agreement with, or grant from the Federal Railroad Administration pertaining to the rail service continuation program under the RRRRA or RRRRA shall constitute a default under this Agreement and shall be subject to the termination provisions of subparagraph (a) above.

Section 1302. Commonwealth's Termination. The Commonwealth may terminate this Agreement for good cause, in whole or with respect to a segment or any portion of a segment, on thirty (30) days' notice.

Section 1303. Expenses of Termination. If either party terminates this Agreement, the expenses of termination shall be a cost of providing service. Operator shall mitigate the expenses of termination to the extent possible.

Section 1304. Contractual Obligations. Except as provided in Section 1203 or as otherwise agreed by the parties in writing, Operator's obligations to provide rail freight service under this Agreement shall cease on the effective date of the termination hereof, but all other obligations then accrued by the parties described in this Agreement shall remain in full force and effect. Both parties shall make reasonable efforts to satisfy their surviving obligations promptly after termination.

ARTICLE FOURTEEN - REPRESENTATIONS AND WARRANTIES

Section 1401. Operator. Operator represents and warrants the following:

(a) Operator is a corporation duly chartered, validly existing and in good standing under the laws of the State of Massachusetts;

(b) Operator has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken in this Agreement;

(c) The execution of this Agreement and the operation of the rail freight service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body; and

(d) Operator agrees to cooperate with the Commonwealth in all respects necessary to meet the obligations of the Commonwealth under any grant agreement between the Commonwealth and the Federal Railroad Administration.

Section 1402. Commonwealth. The Commonwealth represents and warrants the following:

(a) The Executive Office of Transportation and Construction as an Executive Office for the Commonwealth of Massachusetts has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement;

(b) The entering into and performance of this Agreement on the part of the Commonwealth does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

(c) The Commonwealth has duly and validly acquired or will acquire the right to use the rail facilities and has made or will have made those rights available to Operator without charge prior to the commencement of the rail freight service specified herein. Copies of any agreements between owners of the segments comprising the rail facilities and the Commonwealth regarding these rights will be furnished to Operator.

ARTICLE FIFTEEN - GENERAL PROVISIONS

Section 1501. Captions. The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of this Agreement.

Section 1502. Entire Agreement. This Agreement and the Attachments annexed hereto and incorporated herein contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

Section 1503. Amendment. No term or provisions of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided, however, that when an emergency situation arises, such as emergency maintenance, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.

Section 1504. Notices. Except as provided in Section 1503 above, all notices, requests, demands and other communications hereunder shall

be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, postage prepaid, or by telegram to the addresses set forth at the beginning hereof or at such other address as may be designated in writing by notice similarly given.

Section 1505. Governmental Approval. Whenever an action of one of the parties as required by the Agreement is subject to the approval or consent of a governmental agency, the requirement of this Agreement shall be deemed satisfied if the party has applied for that approval and uses and continues to use its best efforts to obtain such approval or consent without delay.

Section 1506. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any party or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to parties or circumstances other than those as to which it is held invalid, or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If the obligations of one party are reduced by action of this section, then the obligations of the other party shall be equitably adjusted.

Section 1507. Nondiscrimination Clause.

(1) As a condition to receiving Federal financial assistance under the Railroad Revitalization and Regulatory Reform Act of 1976

("Act"), or the provisions of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.), or the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 501 et seq.) amended by the Act (collectively called, together with the Act, the "Rail Acts"), the Operator hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through such assistance.

(2) The following specific discriminatory actions are prohibited:

(i) Operator under any project, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefits under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under such project, program or activity.

(ii) Operator in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity, with respect to individuals of a particular race, color, national origin or sex.

(iii) In determining the site or location of facilities, an Operator shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program or activity to

to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(iv) The Operator shall not discriminate against any employee or applicant for employment because of race, color, national origin, or sex. Except as otherwise required by the regulations or orders of the Administrator, the Operator shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the agency's representative setting forth the provisions of these non-discrimination clauses. The Operator understands and agrees that it shall not be an excuse for the Operator's failure to provide affirmative action that the labor organizations with which the Operator has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent Operator from implementing its affirmative action program.

(v) The Operator shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers, or owners. Except as otherwise required by the regulations or orders of the Administrator

the Operator shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(3) As used in these clauses, the services, financial aid, or other benefits provided under a project, program, or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(4) The enumeration of specific forms of prohibited discrimination does not limit the generality of the prohibition in paragraph (a) (1) (i) of this section.

(5) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effects are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, Operator's operations or activities on the grounds of race, color, national origin, or sex. Where prior discriminatory or other practice or usage tends on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or to subject them to discrimination under any project, program or activity to which these clauses apply, the Operator must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the Operator is expected to take affirmative action to insure that no person is excluded from

participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(6) The Operator agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (1) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(7) The Operator shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the Operator, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract, without regard to race, color, national origin or sex.

(8) The Operator shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or workers' representative of the recipient's commitments under

section 905 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(9) The Operator shall comply with all provisions of section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act, and with the rules, regulations, and orders issued under such acts.

(10) The Operator shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (9) hereof.

(11) Operator shall furnish such relevant procurement information, not included in its affirmative action program as may be requested by the Minority Business Resource Center. Upon the request of the Operator, the Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(12) In the event of the Operator's noncompliance with the nondiscrimination clauses of this Agreement, or with the provisions of section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this contract will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be canceled, terminated, or suspended in whole or in part and the Operator may be declared ineligible for further

Federal financial assistance in accordance with procedures authorized in section 905 of the Act, or as otherwise provided by law.

(13) The Operator shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contract, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The Operator shall insure that the clauses required by 41 CFR 60-1.46 implementing executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(14) The Operator agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to section 265.17 of Title 49 CFR.

(15) The Operator agrees to notify the Administrator promptly of any law suit or complaint filed against it alleging discrimination on the basis of race, color, national origin or sex.

(16) The Operator shall include the preceding provisions of paragraphs (1) through (15) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements

or for construction relating to projects, programs or activities financed in whole or in part under the Rail Acts. The Operator shall cause each such contractor or vendor to include the provisions of paragraphs (1) through (15) in every subcontract. The Operator will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Operator becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, the Operator may request the United States to enter into such litigation.

(17) The Operator will comply with all requirements of Title 49, Code of Federal Regulations, Part 265, if the Operator enters into any subcontracting agreement.

Section 1508. Prohibited Interests. No member, officer, or employee of the Commonwealth of Massachusetts during his tenure or for one year thereafter shall have any interest, directly or indirect, in this Agreement or the proceeds thereof.

If any such present or former member, officer, or employee of the Commonwealth involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Commonwealth and such disclosure is entered upon these public records of the Commonwealth, the Commonwealth with the prior approval of the Administrator of the FRA may waive the prohibition contained in this Article. No present member, officer or employee of the Commonwealth shall participate in any action by the Commonwealth relating to this Agreement, any subcontract to this Agreement, or any

arrangement connected with this Agreement or any property related to this Agreement.

Neither the Operator nor any subcontractor under this Agreement shall enter into any contract, subcontract, or other arrangement which may affect the activities for which assistance is available from the Federal government if any officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in the arrangement unless the arrangement shall have been approved by the Administrator of the FRA after the Administrator has been advised of such interest.

Section 1509. Environmental Protection. Operator agrees to perform rail freight service work pursuant to this Agreement in compliance with all the requirements of Section 114 of the Clear Air Act (42 U.S.C. 18570-9), Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318), and all regulations issued thereunder. Operator will notify the Commonwealth of the receipt of any communication from the Environmental Protection Agency which indicates that a rail facility is under consideration for inclusion of the Environmental Protection Agency's List of Violating Facilities.

Section 1510. Claims. Operator agrees not to make any monetary claims or bring any action whatsoever against the Commonwealth in any court of law or equity because of acts or failures to act by anyone other than duly authorized representatives of the Commonwealth.

Section 1511. Choice of Law. All questions arising under this Agreement shall be governed by Massachusetts law, including statutes and regulations, unless state law on the question has been pre-empted by federal law.

Section 1512. Boycotts. Operator warrants, represents and agrees that during the time this Agreement is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151 E, Massachusetts General Laws. If there is a breach in the warranty, representation and agreement contained in this section, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by Operator or by a person or persons or business entity or entities directly owning at least 51% of the ownership interests of the Operator or which directly or indirectly owns at least 51% of the ownership interests of the Operator.

Section 1513. Cargo Preference - Use of United States-Flag Vessels.
Pursuant to 46 U.S.C. 1241(b), the Operator agrees-

(a) to utilize privately-owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of any equipment, materials or commodities which are both (1) procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced under this Agreement and (2) transported by ocean vessel, to the extent such United States-flag commercial vessels are available at fair and reasonable rates;

(b) to furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to both the Administrator of the FRA (through the Commonwealth in the case of contractor and subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20320; and

(c) to insert the substance of the provisions of paragraphs (a) and (b) of this section in all contracts issued pursuant to this Agreement and to cause such provisions to be inserted in all subcontracts issued pursuant to this Agreement.

EXPECTED LOCAL FREIGHT SERVICE CHARACTERISTICS
 September 1, 1979-August 31, 1980

Identification Number(s): 8/8a/9
 Name of the Line: Ware River (Secondary)
 Termini: Palmer (1.6) - So. Barre (25.0)

Normal Train Symbol(s)----- PW1, WP2/PG1, GP2
 Type of service----- Local

Crew Assignment:

1. Home Terminal----- Ware
2. Turning point on the line----- Ware/Gilbertville
3. Frequency----- 3-2/week
4. Number of annual round trips
 Ware/Gilbertville----- 156/104
5. Expected time serving the line
 per round trip----- 4-6 hours
6. Overhead running time (if applicable) -----
7. Additional assignments (if applicable) Switching
 Ware and/or Bondsville
8. Number of Employees normally
 assigned to train----- 2-3 persons

Serving yard----- Ware
 FACT Terminal/Agency Station----- Amherst
 Number of units normally required----- One (1)
 Miscellaneous Branch Line Expenses (if applicable) -----

ATTACHMENT NO. 2

ESTIMATED ATTRIBUTABLE REVENUE AND ESTIMATED
COSTS OF PROVIDING SERVICES

CFR § 1125

APPENDIX I

REVENUES ESTIMATED

1. Freight revenues	\$ 30,000
2. All other revenues and income	-
3. Total estimated revenues (line 1 plus 2)	30,000

AVOIDABLE COST ESTIMATES

4. On-branch costs (lines 4A through 4L):	120,300
A. Maintenance of way and structures	30,000
B. Rehabilitation	-
C. Maintenance of equipment	38,000
D. Transportation	26,700
E. General Administrative expenses*	18,500
F. Deadheading, taxi and hotel costs	-
G. Overhead movement costs	-
H. Freight car costs	7,100
I. Taxes	-
J. Administrative fee	-
K. Casualty reserve account	-
L. Termination costs	-
5. Off-branch costs (ratio times line 1)	-
6. Management fee	2,400
7. Total avoidable cost estimate (lines 4,5,and 6)	122,700

RETURN ON VALUE ESTIMATE

8.	-
9. Not applicable	-
10.	-

ESTIMATED SUBSIDY PAYMENT

11. Estimated subsidy payment (line 3 minus lines 7 & 10)	\$ 92,700
* Shortline Railroad Liability Insurance, Deposit Premium	\$13,000.

ATTACHMENT NO. 3

INSURANCE POLICY

SHORTLINE RAILROAD LIABILITY POLICY

A. Carrier: Midland Insurance Company, New York, N.Y.

B. Face Amount: \$1,975,000 in excess of \$25,000.

C. Endorsements:

Named Insured amended to include:

Lessors and the Commonwealth of Massachusetts

D. Effective Date:

Effective date of Commonwealth/MassCentral Operating Agreement for Rail Service Continuation

Enclosure

No. **GL 702818**
NEW



MIDLANE INSURANCE COMPANY

160 Water St., New York, N. Y. 10038
Coverage Innovators Ltd
8501 LaSalle Road
Suite 308
Towson, Maryland 21204

DECLARATIONS

Item 1. Named Insured and Address: (No., Street, Town or City, County, State)

Massachusetts Central R. R. Corp.
13 Railroad Street
Amherst, Massachusetts 01002

Item 2. Policy Period: (Mo. Day Yr.)

From 12/1/79 to 12/1/82
12:01 A.M., standard time at the address of the named insured as stated herein.

The named insured is:

Individual Partnership Corporation Joint Venture Other: _____

Business of the named insured is: (ENTER BELOW)

Shortline Railroad

Item 3. The insurance afforded is only with respect to the Coverage Part(s) indicated below by specific premium charge(s) and attached to and forming a part of this policy

Advance Premiums	Coverage Part No(s).	Coverage Part(s)	Advance Premiums	Coverage Part No(s).	Coverage Part(s)
\$		Automobile Medical Payments Insurance	\$		Hospital Professional Liability Insurance
\$		Automobile Physical Damage Insurance (Dealers)	\$		Manufacturers' and Contractors' Liability Insurance
\$		Automobile Physical Damage Insurance (Fleet Automatic)	\$		Owner's and Contractor's Protective Liability Insurance
\$		Automobile Physical Damage Insurance (Non-Fleet)	\$		Owners', Landlords' and Tenants' Liability Insurance
\$		Basic Automobile Liability Insurance	\$		Personal Injury Liability Insurance
\$		Completed Operations and Products Liability Insurance	\$		Physicians', Surgeons' and Dentists' Professional Liability Insurance
\$		Comprehensive Automobile Liability Insurance	\$		Premises Medical Payments Insurance
\$		Comprehensive General Liability Insurance	\$		Special Protective and Highway Liability Insurance - New York Department of Transportation
\$		Comprehensive Personal Insurance	\$		Storekeeper's Insurance
\$		Contractual Liability Insurance	\$		Uninsured Motorist Insurance
\$		Druggists' Liability Insurance	\$		
\$		Elevator Collision Insurance	\$		
\$		Farm Employers' Liability and Farm Employees' Medical Payments Insurance	15,000.	UND 81-1	Shortline Railroad
\$		Farmer's Comprehensive Personal Insurance	\$	-2	Liability
\$		Farmer's Medical Payments Insurance	\$		
\$		Garage Insurance	\$		

\$ UNDB0 (1); UND78 (2); UND79 (3); UND262 (4-6)

Form numbers of endorsements, other than those entered on Coverage Part(s), attached at issue

\$ 15,000. Total Advance Premium for this policy.
\$ 15,000. Deposit Premium

* If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on:

Effective Date 1st Anniversary 2nd Anniversary Audit Period:
\$ \$ \$ Annually; Monthly; Quarterly; Other

Item 4. During the past three years no insurer has cancelled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated herein.

Countersigned:

*Not applicable in Texas

By Alexandra L. Wenz
Authorized Representative

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

~~COMPREHENSIVE GENERAL LIABILITY~~
SHORTLINE RAILROAD LIABILITY

IN CONSIDERATION OF THE PREMIUM CHARGED IT IS AGREED THAT THE FOLLOWING ARE DELETED IN THEIR ENTIRETY FROM POLICY PROVISIONS- PART A:

1. SUPPLEMENTARY PAYMENTS
2. DEFINITIONS
3. CONDITIONS

IT IS FURTHER AGREED THAT THE NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM) REMAINS UNCHANGED.

(The information below is required to be completed only when this endorsement is issued subsequent to the policy effective date.)

Effective 12/1/79, this endorsement forms a part of Policy No. GL 702818
issued to Massachusetts Central Railroad Corp.
by MIDLAND INSURANCE COMPANY

Alexandra L. Wenz
AUTHORIZED REPRESENTATIVE

Endt. #1

Endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

SHORTLINE RAILROAD LIABILITY

IT IS AGREED THAT CONDITION G "DEFINITIONS" IS ADDED TO PARAGRAPH VI CONDITIONS OF SHORT LINE RAILROAD COMPREHENSIVE LIABILITY FORM ATTACHED TO THIS POLICY.

G DEFINITION:

OCCURENCE. THE WORD "OCCURRENCE" WHEREVER USED IN THIS POLICY MEANS ONE HAPPENING OR SERIES OF HAPPENINGS ARISING OUT OF ONE EVENT TAKING PLACE DURING THE TERM OF THIS POLICY.

(The information below is required to be completed only when this endorsement is issued subsequent to the policy effective date.)

Effective 12/1/79, this endorsement forms a part of Policy No. GL 702818
issued to Massachusetts Central Railroad Corp.
by MIDLAND INSURANCE COMPANY

Alexandra L. Wenz
AUTHORIZED REPRESENTATIVE

SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the insured (or reinsured), will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon THE INSURANCE COMMISSIONER ANY STATE and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

THE DESIGNATED INSURANCE COMMISSIONER is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that he will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured (or reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Attached to and forming part of Policy No. GL 702818

Issued to: Massachusetts Central Railroad Corp.

By: MIDLAND INSURANCE COMPANY

Dated: November 30, 1979

By: Alexandra L. Wenz

Endt. #3

Consideration of the premium as hereinafter provided it is understood and agreed that this policy shall indemnify the Assured for any and all sums which the Assured shall be legally obligated to pay as damages and expenses for personal injuries and damage to property arising out of occurrences during the period of this policy and resulting from the operations of the Assured's Short Line Railroad. Such operations shall be deemed to include the assumption of liability under contracts that are normal and incidental to the operation of a railroad.

- II. The Assured under this policy shall include partners, officers, directors, stockholders and employees, while acting as such in connection with the operations covered, but it is understood and agreed that this inclusion does not increase the Company's limit of liability in respect of any one occurrence as hereinafter stated.
- III. It is specifically understood and agreed that the intention of paragraph 1 is to include coverage for the Assured's liability for injury, death, sickness or disease to any persons, including employees and including liability under any Workmen's Compensation Act or the Federal Employer's Liability Act, as well as damage to any property of others including property under bills of lading and foreign rolling stock.
- IV. The limit of coverage hereunder shall be \$ 1,975,000. any one occurrence and shall apply only in excess of \$ \$25,000. ultimate net loss in respect of each occurrence. Ultimate net loss shall consist of the amounts paid for settlement of losses for which the Assured is liable after making deductions for all recoveries, salvages and other insurances, but shall include expenses and costs incurred in connection therewith (other than expenses for salaried employees, retained counsel and office expenses of the Assured) not covered by other insurance.

V. Exclusions

This policy does not apply:

- (a) To any loss which at the time of the happening of such loss, is insured by, or would, but for the existence of this policy be insured by any other existing policy or policies of valid and collectible insurance, except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this insurance not been in effect;
- (b) To any loss arising out of the Assured's operation, maintenance or use of automobiles and/or buses and/or aircraft and/or vessels and/or watercraft.

VI. Conditions

A. Notice of Occurrence — Co-operation over claims.

The Assured shall immediately give written notice to The Canton Agency and/or Midland Insurance Company of any occurrence or claim which could reasonably be anticipated by the Assured to involve an amount in excess of the underlying limits should the Assured be ultimately held legally liable for the occurrence or claim. Solely for the purposes of reporting claims or occurrences, the Assured shall in all instances consider himself legally liable for such claims or occurrences.

The course to be adopted by the Assured in connection with the defense or settlement of such claim or claims shall be determined between the Assured and the Company or their representatives. The Assured shall cooperate with the representatives of the Company in the defense of suits and actions by rendering aid and in effecting settlements, securing evidence and prosecuting appeals as may be reasonably requested by the Company or their representatives. The Assured shall not without the consent of the Company or their representatives litigate any such claim or claims.

In case of difference of opinion the parties agree to follow the advice of a referee to be mutually agreed.

B. Subrogation

Inasmuch as this policy is "Excess coverage", the Assured's right of recovery against any person or other entity cannot be exclusively subrogated to the Company. It is, therefore, understood and agreed that in case of any payment hereunder, the Company will act in concert with all other interests (including the Assured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Assured) that shall have paid an amount over and above any payment hereunder shall first be reimbursed up to the amount paid by them; the Company is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly the interests (including the Assured) of whom this coverage is an excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Assured) concerned, in the ratio of their respective recoveries as finally settled.

ruptcy and Insolvency.

the event of the bankruptcy or insolvency of the Assured, or any entity comprising the Assured, the company shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

D. Inspection and Audit.

The Company shall be permitted at all reasonable times during the continuance of this policy to inspect the premises, plants, machinery and appliances used in connection with the Assured's trade, business or work, and to examine during the continuance of this policy or within one year after its termination the Assured's books or other records so far as they relate to the basis of the premium computation of this policy.

E. Cancellation.

This policy may be cancelled at any time at the written request of the Assured or by the Company or their representatives with or without the return or tender of the unearned premium by giving thirty days notice of such cancellation, in which event the earned premium shall be adjusted in the customary short rate basis should the policy be cancelled by the Assured or on a pro rata basis should the policy be cancelled by the Company.

F. Premium Computation.

It is understood and agreed that the premium shown hereon is provisional and the final premium shall be computed at a rate of flat charge ~~\$100 of gross receipts~~ per \$100 of gross receipts from the operations covered. The annual minimum premium for this policy shall be \$15,000.

All other Terms and Conditions remained unchanged.

Attached to and forming part of Policy No. GL 702818

Broker/Agent: Coverage Innovators Ltd.

Date of Issue: November 30, 1979

MIDLAND INSURANCE COMPANY

B. *Alexandra J. Wenz*

EXCLUSION

(CONTAMINATION OR POLLUTION)

It is agreed that the insurance does not apply to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

Effective 12/1/79 12:01 AM Standard Time, this Endorsement No. 4
attached to and made a part of Policy No. GL 702818 of MIDLAND INSURANCE COMPANY
issued to Massachusetts Central Railroad Corp.

(The information above is required only when this endorsement is issued subsequent to preparation of the policy.)

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of this policy other than as above stated.


.....
J. Powell, Secretary


.....
M.S. Chensault, President

By Oliverandra L. Wenz
.....
Authorized Representative

ENDORSEMENT

It is hereby agreed that the insurance with respect to Railroad Operations does not apply to Bodily Injury to any passenger being carried for a consideration while in or upon, entering or alighting from any such train, cars or equipment.

Effective 12/1/79 12:01 AM Standard Time, this Endorsement No. 5
attached to and made a part of Policy No. GL 702818 of MIDLAND INSURANCE COMPANY
issued to Massachusetts Central Railroad Corp.

(The information above is required only when this endorsement is issued subsequent to preparation of the policy.)

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of this policy other than as above stated.


.....
J. Powell, Secretary


.....
M.S. Chenault, President

By Alexandra L. Wenz
.....
Authorized Representative

ENDORSEMENT


It is hereby understood and agreed Item #1, Named Insured is amend to include:

- (1) Trustees of Boston & Maine Corporation, Debtor, Benjamin H. Lacy and Robert W. Meserve.
- (2) Trustees of Penn Central
- (3) Commonwealth of Massachusetts, Dept. of Transportation, 1 Ashburton Pl., Boston, Massachusetts 02108

Effective 12/1/79 12:01 AM Standard Time, this Endorsement No. 6
attached to and made a part of Policy No. GL 702818 of MIDLAND INSURANCE COMPANY
issued to Massachusetts Central Railroad Corp.

(The information above is required only when this endorsement is issued subsequent to preparation of the policy.)

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of this policy other than as above stated.


.....
J. Powell, Secretary


.....
M.S. Cheneault, President

By 
.....
Authorized Representative

MIDLAND INSURANCE COMPANY

New York, New York

(A stock insurance company, herein called the company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the named insured as follows:

When used in this policy (including endorsements forming a part hereof):

"**automobile**" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"**bodily injury**" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"**collapse hazard**" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the insured under an incidental contract;

"**completed operations hazard**" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the named insured under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"**elevator**" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a building or material hoist used in alteration, construction or demolition operations, or a hoist or inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"**explosion hazard**" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the named insured by independent contractors, or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the insured under an incidental contract.

SUPPLEMENTARY PAYMENTS

The company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the company, all costs taxed against the insured in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to reverse judgment, in any such suit for an amount not in excess of the applicable limit of liability of the policy and the cost of all bonds required

DEFINITIONS

pleted operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the insured under an incidental contract;

"**incidental contract**" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) side-track agreement, or (5) elevator maintenance agreement;

"**insured**" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability;

"**mobile equipment**" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"**named insured**" means the person or organization named in Item 1. of the declarations of this policy;

"**named insured's products**" means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but "named insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"**occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

"**policy territory**" means:

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"**products hazard**" includes bodily injury and property damage arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

"**property damage**" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period;

"**underground property damage hazard**" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the insured under an incidental contract.

of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the company shall have no obligation to apply for or furnish any such bonds;

- (c) expenses incurred by the insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the insured at the company's request in assisting the company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

ATTACHMENT 4

VOTE OF THE BOARD OF DIRECTORS OF
MASSACHUSETTS CENTRAL RAILROAD CORPORATION

At a meeting of the Board of Directors of Massachusetts Central Railroad Corporation, each member thereof having been duly notified, and a quorum being present and voting, held at the Hotel Northampton on August 24, 1979 at 8:30 p.m. the Board of Directors of the said Massachusetts Central Railroad Corporation was presented, for its consideration and vote, a proposed contract for Rail Service on the Ware River Secondary by and between the Commonwealth of Massachusetts and Massachusetts Central Railroad Corporation. After the said proposal for adoption was duly presented and discussed, the Board of Directors of Massachusetts Central Railroad Corporation voted unanimously to authorize its Executive Vice President and General Manager Peter M. Dearnness to execute the said agreement in and on behalf of Massachusetts Central Railroad Corporation.

A handwritten signature in cursive script, reading "Russell A. Peterson", is written over a horizontal line.

Secretary

AMENDMENT
TO THE
OPERATING AGREEMENT
FOR
RAIL SERVICE CONTINUATION
BETWEEN
THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION
AND
THE MASSACHUSETTS CENTRAL RAILROAD CORPORATION

AGREEMENT AMENDMENT

The agreement dated November 6, 1979 by and between the Commonwealth of Massachusetts, acting by and through the Executive Office of Transportation and Construction, and Massachusetts Central Railroad Corporation for rail service continuation over United States Railway Association Line No. 8 is hereby amended by the substitution of the appended Attachment No. 1 for Attachment No. 1 incorporated in said agreement and by the substitution of the appended Attachment No. 2 for Attachment No. 2 which was also incorporated in the said agreement.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION
AND CONSTRUCTION

DATE: 2/29/80

BY: [Signature]

Barry M. Locke
Secretary

THE OPERATOR

Approved by the Attorney General
as to form:

BY: [Signature]

Peter M. Dearness
Vice President & General Manager
Massachusetts Central Railroad

BY: _____

ATTACHMENT NO. 1

EXPECTED LOCAL FREIGHT SERVICE CHARACTERISTICS

December 11, 1979 - November 5, 1980

Identification Number(s): 8/8a/9

Name of the Line: Ware River Secondary Track

Termini: Palmer (1.6) - South Barre (25.0)

Normal Train Symbol (s) - - - - -PW1, WP2/PG1, GP2/PB1, BP2
Type of Service - - - - -Local

Crew Assignment:

1. Home Terminal - - - - -Ware
2. Turning point on the line- - - - -Ware/Gilbertville/So. Barre
3. Frequency- - - - -3/2/2/week
4. Number of annual round trips
Ware/Gilbertville/So. Barre- - -156/104/104
5. Expected time serving the line
per round trip - - - - -4/6/9 hours
6. Overhead running time (if applicable) - -
7. Additional assignments (if applicable)
Switching
Ware and/or Bondsville
8. Number of Employees normally
assigned to train- - - - -3 persons

Serving yard- - - - -Ware
FACT Terminal/Agency Station- - - - -Amherst
Number of units normally required - - - - -One (1)
Miscellaneous Branch Line Expenses (If applicable) - -

ATTACHMENT NO. 2

ESTIMATED ATTRIBUTABLE REVENUE AND ESTIMATED
COSTS OF PROVIDING SERVICES

CFR S 1125

APPENDIX I

REVENUES ESTIMATED

1.	Freight revenues	\$	45,000
2.	All other revenues and income		--
3.	Total estimated revenues (line 1 plus 2)	\$	45,000

AVOIDABLE COST ESTIMATES

4.	On-branch costs (line 4A through 4L):	\$	179,600
	A. Maintenance of way and structures		55,500
	B. Rehabilitation		--
	C. Maintenance of equipment		41,800
	D. Transportation		44,700
	E. General Administrative Expenses		26,300
	F. Deadheading, Taxi and Hotel Costs		--
	G. Overhead movement costs		--
	H. Freight car costs		11,300
	I. Taxes		--
	J. Administrative Fee		--
	K. Casualty reserve account		--
	L. Termination costs		--
5.	Off-branch costs (ratio times line 1)		--
6.	Management Fee	\$	3,600
7.	Total Avoidable Cost	\$	183,200

RETURN ON VALUE ESTIMATE

8.			--
9.	Not Applicable		--
10.			--

ESTIMATED SUBSIDY PAYMENT

11.	Estimated subsidy payment (line 3 minus lines 7 & 10)	\$	138,200
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