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ENTERED
Office of Proceedings
October 17, 2018
Part of
Public Record

October 15, 2018

Via UPS Delivery

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024



Re: Vermont Railway Inc. - Docket No. FD 36210 (Redocketed STB AB-265 (sub-No.4))

Dear Sir or Madam,

Pursuant to the Board's Decision of September 14, 2018 in the above-referenced docket, please find enclosed a Lease Agreement dated October 9, 2018 ("Lease") between the State of Vermont Agency of Transportation, Vermont Railway, Inc. and the Town of Bennington, Vermont, for interim trail use/rail banking.

Pursuant to the terms of the Lease, the Town assumes the full responsibility for:

- i. Managing the right-of-way (Article VIII);
- ii. Legal liability arising out of the transfer or use of the right-of-way (Articles XI-XII); and
- iii. Payment of any and all taxes that may be levied against the right-of-way (Article X).

As always, please contact me with any questions or concerns with regard to the enclosed Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Merrill E. Bent', is written over a horizontal line.

Merrill E. Bent

Enc.

CC: VT Railway Inc.
State of Vermont, Department of Transportation
Town of Bennington

ROBERT E. WOOLMINGTON EDGAR T. CAMPBELL MERRILL E. BENT JOHN D. STASNY
DANIEL J. DUBÉ

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October 17, 2018

Via First-Class Mail

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024
ATTN: Jeffrey Herzig

Re: Vermont Railway Inc. - Docket No. FD 36210 (Redocketed STB AB-265 (sub-No.4))

Dear Mr. Herzig,

Per your office's request, enclosed please find a copy of a certificate of service reflecting service of the interim trail use agreement filed with the Surface Transportation Board on October 16, 2018 upon party of record Richard Walsh, of the National Association of Reversionary Property Owners.

Sincerely,


Merrill E. Bent

Enc.

CC: VT Railway Inc.
State of Vermont, Department of Transportation
Town of Bennington
Richard Walsh

ROBERT E. WOOLMINGTON EDGAR T. CAMPBELL MERRILL E. BENT JOHN D. STASNY
DANIEL J. DUBÉ

Surface Transportation Board

Re: Vermont Railway, Inc. – Docket No. FD 36210 (Redocketed STB AB-265 (sub-No.4))

Certificate of Service

I, Merrill E. Bent certify that on October 17, 2018, I sent a copy of the Lease Agreement dated October 9, 2018 between the State of Vermont Agency of Transportation, Vermont Railway, Inc., and the Town of Bennington Vermont, for interim trail use/railbanking, and a copy of the cover letter to the STB concerning same, by first-class mail to the following party of record:

Richard Walsh
National Association of Reversionary Property Owners (NARPO)
227 Bellvue Way Ne Pmb 719
Bellvue, WA 98004

Dated at Manchester, Vermont on this October 17, 2018.


Merrill E. Bent, Esq.
Woolmington, Campbell, Bent & Stasny, PC
4900 Main Street, PO Box 2748
Manchester Center, VT 05255
(802) 362-2560
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**LEASE AGREEMENT
BETWEEN
STATE OF VERMONT, AGENCY OF TRANSPORTATION,
JOINED BY VERMONT RAILWAY, INC.,
AND
TOWN OF BENNINGTON**

THIS AGREEMENT, entered into as of this 9th day of October, 2018, by and between the STATE OF VERMONT, a sovereign state, acting by and through its Agency of Transportation, with its principal office at One National Life Drive, Montpelier, Vermont 05633-5001 ("STATE"), joined by VERMONT RAILWAY, INC., a Vermont corporation with its principal office at One Railway Lane, Burlington, Vermont 05401 ("RAILWAY"), and the TOWN OF BENNINGTON, a municipal corporation with its principal office at P.O. Box 469, Bennington, Vermont 05201-0469 ("USER").

WITNESSETH:

WHEREAS, the STATE is the owner of a line of railroad extending through the Town of Bennington, Vermont; and

WHEREAS, the STATE-owned railroad line extending through the Town of Bennington is included in the RAILWAY's September 19, 1990 lease with the STATE, a memorandum of which is recorded in the Town of Bennington land records at Book 0-228, Page 83, having been received for record on October 30, 1990; and

WHEREAS, in Sec. 48 of Act No. 164 of 2008 (eff. June 21, 2008), the General Assembly authorized railbanking of a segment of the STATE-owned railroad line between River Street (TH #332) in Bennington village (Chatham Subdivision MP 57.36) and valuation station 3103+00 (Chatham Subdivision MP 58.77) in the Town of Bennington ("the Line"); and

WHEREAS, the Line is railbanked and is to be used for interim trail use, in accordance with authorization from the federal Surface Transportation Board in *State of Vermont and Vermont Railway, Inc. - Discontinuance of Service Exemption - In Bennington County, VT*, STB Docket No. AB-265 (Sub-No. 4X) (served _____, 2016); and

WHEREAS, the parties hereto desire to enter into a long-term lease to govern the USER's usage of the Line as a year-round, multi-use recreational path (including associated parking areas within the trail corridor);

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

**ARTICLE I
DEFINITIONS; DESCRIPTION**

1.1. Meaning of Terms Used in this Agreement. Except as otherwise specifically provided, the following capitalized terms shall have the meanings specified below whenever used in this Agreement:

"Agreement" shall mean this Lease.

"Article" shall mean the major divisions of this Agreement, which are composed of one or more Sections.

"Highway" shall mean a road open to public travel that is part of the state highway system or has been accepted by a town or other municipal corporation.

"Lease" shall mean this Agreement.

"Line" means the State-owned railroad corridor in the Town of Bennington between Chatham Subdivision valuation stations 3028+08 (River Street) and 3111+30 (just north of the northerly pier of Bridge No. 56 over Furnace Creek) in the Town of Bennington.

"Multi-use" shall mean all forms of non-motorized transportation and recreation, as well as motorized transportation and recreation that is allowed under 23 U.S.C § 217(h) and Federal Highway Administration (FHWA) guidelines and regulations for the Transportation Alternatives Program.

"Party" or "Parties" shall mean the signatories to this Agreement, unless otherwise specified.

1.2. Description. The STATE hereby leases to the USER the following described premises ("the Demised Premises") in "as is" condition:

Being a certain tract or parcel of the STATE's land situated (approximately) between valuation station 3028+08 (River Street) in the Town of Bennington, Vermont, and extending northerly approximately 1.57 miles to valuation station 3111+30, also in the Town of Bennington.

In aid of the foregoing description, reference also may be had to certain valuation plans, prepared in accordance with standards prescribed by the former Interstate Commerce Commission, and entitled in part:

RIGHT-OF-WAY AND TRACK MAP
RUTLAND RAILROAD COMPANY
CHATHAM SUBDIVISION
OPERATED BY
RUTLAND RAILROAD COMPANY
SCALE: 1-IN. = 100-FT. JUNE 30, 1917

which are numbered V7/7 through V7/8.

ARTICLE II PERMITTED USE OF THE LINE

2.1. Trail Use. Subject to the terms and conditions of this Agreement, the terms and conditions of 23 U.S.C. § 101(a)(35) and Federal Highway Administration ("FHWA") guidelines and regulations for the Transportation Alternatives Program, USER shall have the right to construct, operate, maintain, and replace a year-round, multi-use recreational trail along the Line for the entire term of this Agreement.

2.2. Reactivation of Rail Service. In accordance with 49 C.F.R. § 1152.29 (Prospective use of rights-of-way for interim trail use and rail banking), USER acknowledges that use of the Line's right-of-way is subject to possible reconstruction and reactivation of the right-of-way for rail service.

2.3. Exclusive Control and Management. Except as provided in this Agreement, USER shall have exclusive control and management of trail operations on the Line.

2.4. All-terrain Vehicle Access. All requests for all-terrain vehicle crossings and/or access to the Line shall be forwarded to the STATE for processing in accordance with FHWA guidelines and regulations for the Transportation Alternatives Program and STATE statutes and policies. STATE will consult with USER on each request to address concerns. All construction, maintenance, replacement and safety improvements to the Line as a result of all-terrain vehicle crossings and/or access will be the responsibility of the all-terrain vehicle organization requesting the crossing/access.

ARTICLE III RESTRICTIONS ON USE OF THE LINE

3.1. Restrictions on USER's Use of the Line. USER shall not, without prior written consent of STATE:

- a. Allow use of the Line by motorized vehicles other than snowmobiles, emergency vehicles, authorized maintenance vehicles or all-terrain vehicles in STATE authorized areas which are identified and approved by the STATE;
- b. Allow use of the Line by motorized vehicles other than emergency vehicles before 6:00 a.m. or after 11:00 p.m.;
- c. Grant any easement, lease, license or right of occupancy in, on, under, through, above, across or along the Line, or any portion thereof, to any third party; or
- d. Cause or knowingly allow the creation of any encumbrance or lien on the Line or any portion of the Line.

ARTICLE IV RENT

4.1. Rent. The STATE reserves as rent and USER covenants to pay or cause to be paid to the STATE as and for the annual rental of the premises, the sum of One and no/100 Dollars (\$1.00).

4.2. Adjustment of Rent. In the event USER, with the STATE's approval, assigns this Agreement to any entity other than a municipal corporation or a non-profit corporation for continued

public use, the STATE reserves the right to increase rent to fair market value levels.

ARTICLE V ASSIGNMENT OF CONTRACTS

5.1. Third-Party Agreements; Assignment by STATE to USER. STATE shall assign to USER its rights in any easements, crossing agreements and other agreements ("Assigned Contracts") affecting the use, occupancy or possession of all or any portion of the Line, to the extent such rights are necessary for USER to conduct authorized USER operations on the Line. A schedule of Assigned Contracts is attached hereto as Exhibit A. USER shall be responsible for any and all liabilities under the Assigned Contracts and, except as provided in Article XIII, below, shall be entitled to any and all benefits under the Assigned Contracts, to the extent such liabilities and benefits are applicable to its authorized operations along the Line.

5.2. Third-Party Agreements; Assignment by USER to the STATE or the STATE's Designee. Upon expiration or termination of this Agreement, USER shall immediately transfer, assign and/or convey to the STATE or the STATE's designee the USER's rights under (i) the Assigned Contracts and (ii) any easements, crossing agreements and other agreements entered into during the term of this Agreement and shall not be liable for any obligations or eligible for any benefits arising from the Assigned Contracts or any agreements entered into during the term of this Agreement that accrue after the date of termination or expiration.

ARTICLE VI TERM AND TERMINATION

6.1. Effective Date. This Agreement shall become effective on the latter of (a) the execution of this Agreement by all parties, or (b) the effective date of the federal Surface Transportation Board's Notice of Interim Trail Use ("NITU") (the "Effective Date").

6.2. Initial Term. This Agreement shall continue in full force and effect for a period from the Effective Date through 11:59 p.m. on June 30, 2026 (the "Initial Term") unless sooner terminated for cause by STATE or for any reason by mutual agreement of the parties.

6.3. USER's Renewal Option. Prior to each renewal term, the STATE and the USER shall hold joint public meetings regarding planning, construction, operation, and maintenance of the multi-use trail. If USER performs all the agreements to be performed on its part, then it shall have the right, at the expiration of the current term (11:59 p.m. on June 30, 2026) to renew this Agreement for two (2) additional terms of ten (10) years each:

Description	Beginning Date	Ending Date
Initial term	Effective Date	June 30, 2026
First renewal term	July 1, 2025	June 30, 2036
Second renewal term	July 1, 2035	June 30, 2046

6.4. Survival of Obligations. Expiration or termination of this Agreement shall not relieve or release either party to this Agreement 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 its termination.

6.5. Reactivation for Rail Service. Notwithstanding any other provision of this Agreement, the STATE and RAILWAY, either jointly or severally, reserve the right to terminate this Agreement upon one year's notice should the right-of-way be required for reactivation for rail service.

6.6. Holding Over. Should the TOWN, with the consent of STATE and RAILWAY, continue to occupy the Demised Premises after the expiration of the initial term or any renewal or extension period, then this Lease shall be considered as renewed and shall continue in effect from year to year, subject, however, to termination as provided in this Lease, upon the same term and conditions as contained in this Lease.

ARTICLE VII REPAIRS AND CAPITAL IMPROVEMENTS

7.1. Cooperation with STATE Forces and Contractors. Notwithstanding that the STATE may have no obligation under this Agreement to do so, USER acknowledges that the STATE, as part of its general interest in improving Vermont's transportation infrastructure, mitigating flood hazards, and protecting water quality, may from time to time desire to make repairs and improvements to the Line, including but not limited to rehabilitation and upgrading of bridges and crossings and removal of flood-plain encroachments. Should the STATE undertake any such repair or improvement, USER agrees that it will cooperate fully with STATE forces or any STATE-authorized contractor toward the reasonable accomplishment of such work, including but not limited to, coordinating its maintenance and operational functions with those of STATE forces and/or any such STATE-authorized contractor, allowing joint use of facilities, providing personnel as required for technical inspection and providing storage for materials, all at reasonable rates. The STATE agrees that reconstruction of the trail surface required as a result of work done to remove flood-plain encroachments shall be the responsibility of the STATE and shall comply with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual (Vermont Agency of Transportation, December 2002). The STATE further agrees that no undue property management costs shall accrue to USER as a result of the STATE's flood-plain encroachment mitigation activities. The STATE agrees that it will require the following of any such STATE-authorized contractor:

- a. When the contract involves work on, over or under the Line's right-of-way, the contractor shall carry, with respect to operations performed by the contractor and by the contractor's subcontractors, liability insurance in form and amount as specified in the specifications for the project. The contractor's liability insurance policy shall remain in force until all work required to be performed within the Line's right-of-way is completed to the satisfaction of the USER and the STATE's Chief Engineer (or other designee).
- b. The contractor shall defend, indemnify and save harmless the USER and its officers, employees and agents against any claim or liability arising from or based on activities or omissions of the contractor or the contractor's subcontractors within or affecting the Line's right-of-way.
- c. Unless otherwise agreed between STATE and USER, contractors will be required to furnish a labor and materials bond and a compliance bond, both with sufficient sureties, in accordance with 19 V.S.A. § 10(8). The bonds shall guarantee the faithful performance and completion of the work to be done under the contract and the payment in full of all bills and accounts for material and labor used in the work.

7.2. Cooperation with USER. The STATE agrees that its forces and/or contractor will cooperate with and allow the USER or its agents free and full access to the project during construction

with all materials and equipment necessary for the USER's duly authorized employees and agents to undertake all inspection deemed necessary by the USER.

7.3. Avoidance of Interference with USER's Operations. All work to be performed with the Line's right-of-way by the STATE's forces and/or contractors shall be done in a manner reasonably satisfactory to the USER and, unless otherwise agreed between the STATE and the USER, shall be performed at such times and in such manner as to minimize disruptions to trail use along the Line.

7.4. Emergency Repairs. Notwithstanding any provision of this Agreement, the STATE reserves the right to enter and occupy the Demised Premises for emergency repairs, including but not limited to work needed to protect the Line, nearby highways, and private property.

ARTICLE VIII OPERATIONS AND MAINTENANCE

8.1. Compliance with Laws and Regulations; Indemnification by USER. Except for STATE-assumed obligations set forth in Article IX below, USER shall operate and maintain the Line in compliance with all applicable federal, state and local laws, rules and regulations relating to the operation and maintenance of the Line. USER shall indemnify, protect, defend, and save harmless STATE, RAILWAY, and their officials, agents and employees from and against any and all fines, penalties and uninsured liabilities imposed upon USER or its subsidiaries and affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction over the Line, when attributable to the failure of USER to comply with its obligations in this regard.

8.2. Farm Crossings; Fences. Without limitation of Section 8.1 above, USER shall be responsible for all railroad obligations along the Line with respect to farm crossings, highway crossings, cattle guards, fences and water courses, all as set forth in the Vermont Statutes Annotated, Title 5 (Aeronautics and Surface Transportation), Chapter 68 (Construction and Operation of the Road), Subchapter 4 (Farm Crossings, Cattle Guards, Fences and Watercourses).

8.3. Additions or Alterations; Responsibilities of USER. If any changes in, additions and betterments to or retirements from the Line are required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction over the Line, USER shall construct the additional or altered facilities and shall be responsible for maintaining, repairing and renewing the additional or altered facilities throughout the term of this Agreement at its sole cost and expense. Notwithstanding the foregoing, nothing in this section shall limit the USER from seeking loans, grants, or other financial assistance for such costs from the State of Vermont, the United States of America, or any other third party.

8.4. Extent of USER's Maintenance Obligation; Title to New and Removed Property; Disposal of Removed Property. The USER's obligation to maintain shall include the obligation to inspect, clean, repair, rehabilitate, and replace embankments, bridges, abutments, piers, culverts, ditches, retaining walls, etc. as may be necessary to keep the Line in the condition required by this Agreement, comply with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual (Vermont Agency of Transportation, December 2002), comply with current Agency of Transportation Vermont State Standards, and prevent injury to nearby property, both public and private. In the event of such replacement by USER, the new property shall become the property of STATE and the removed property shall become the property of USER regardless of whether the removed property is sold or retained by USER as materials and supplies. The USER shall promptly remove from the Line and dispose of in a lawful manner any removed property (including but not limited to salvaged bridge timbers and crossies)

that constitute hazardous materials under any federal or state laws. If USER determines that any buildings or other facilities are not essential to its operations, it may request that STATE relieve it of its obligations in this Article VIII with respect to those portions of the Line. If it is decided that non-essential buildings or other facilities should be dismantled or removed, USER shall pay to STATE the net salvage value thereof, as it reasonably may be determined by STATE.

8.5. TOWN's Obligation to Construct and Maintain Northerly Access. The TOWN, at its own expense and concurrent with the construction of the rail trail, shall construct, operate, and maintain a formal access path connecting to the northerly terminus of the rail trail. The Town shall construct or cause to be constructed a formal pathway to connect the terminus of the rail trail with either the Applegate Housing complex or Northside Drive.

ARTICLE IX BRIDGES AND HIGHWAY CROSSINGS

9.1. Obligations of the STATE. During the term of this Agreement and any renewal of this Agreement, the STATE shall:

- a. Maintain, repair, replace and install when necessary all state highways at grade crossings on the Line;
- b. Maintain, repair, replace, and install when necessary all structures, including approaches, carrying state and town highways over the Line; and
- c. Maintain, repair, replace and install when necessary all state highways going under the Line.

9.2. Highway Grade-Separation Structures. A list of the structures carrying highways over the Line within the meaning of Section 9.1(b) above is attached to this Agreement as "Exhibit B" and is incorporated by reference.

9.3. Third-Party Obligations to Maintain Crossings, Bridges, Fences, etc. Nothing in this Article shall impair any obligation of any municipality or other third party to maintain highway crossings, bridges, fences, structures, or any other statutory, regulatory or contractual obligations of any municipality or other third party.

9.4. Inability of STATE to Perform; Limitation on Remedies. If the STATE, because of the unavailability of appropriated funds or otherwise, is unable to perform its obligations under this Article, it will so notify USER, in which event USER's sole remedy will be to perform at USER's expense such installation, repair or maintenance as STATE and USER agree is necessary to permit USER to fulfill its obligations under this Agreement or to terminate this Agreement.

9.5. Grade Separations; STATE's Right to Substitute At-grade Crossings. Notwithstanding anything in this Agreement, the STATE, in its discretion, may substitute at-grade crossings for existing grade separations between the Line and public highways. Any at-grade crossing thus substituted shall comply with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual (Vermont Agency of Transportation, December 2002) and any applicable requirements of the Americans with Disabilities Act (ADA).

9.6. Grade Separations; USER's Right to Substitute At-grade Crossings. Notwithstanding anything in this Agreement, the USER, with approval of the STATE, may substitute at-grade crossings

for existing grade separations carrying the Line over public highways. Any at-grade crossing thus substituted shall comply with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual (Vermont Agency of Transportation, December 2002) and any applicable requirements of the Americans with Disabilities Act (ADA).

ARTICLE X TAXES AND UTILITIES

10.1. Responsibility for Property and Other Taxes. USER shall be responsible for the payment of all taxes that may be assessed, levied, charged, confirmed or imposed by any governmental authority on the Line.

10.2. Responsibility for Utility Services. USER shall initiate, contract for and obtain, in its own name, any and all utility services required on the Line during the term of this Agreement, including gas, electricity, telephone, water and sewer connections and services, and USER shall bear and pay all charges for those services as they become due during the term of this Agreement.

10.3. General Responsibility. Except as otherwise expressly provided herein, USER shall be solely responsible for all costs, expenses, charges, obligations and liabilities, of any nature and kind, relating to or arising from its use, occupancy, interest in, maintenance of or trail operations on the Line during the term of this Agreement.

ARTICLE XI INDEPENDENCE; LIABILITY

11.1. Independence; Liability. The USER will act in an independent capacity and not as officers or employees of the STATE or RAILWAY.

The USER shall defend the STATE, RAILWAY, and their officers and employees against all claims or suits arising in whole or in part from any act or omission of the USER or of any agent of the USER. The STATE or RAILWAY shall notify the USER in the event of any such claim or suit, and the USER shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement, the USER may request recoupment of specific defense costs and may file suit in the Washington Superior Court requesting recoupment. The USER shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the USER.

The USER shall indemnify the STATE, RAILWAY, and their officers and employees in the event that the STATE, RAILWAY, or their officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the USER.

ARTICLE XII INSURANCE

12.1. Insurance. Before entering into possession of the Demised Premises the USER must provide certificates of insurance to show that the following minimum coverages are in effect. It is the

responsibility of the USER to maintain current certificates of insurance on file with the STATE and RAILWAY through the term of this Lease Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the USER for the USER's operations. These are solely minimums that have been established to protect the interests of the STATE and RAILWAY.

Workers Compensation: With respect to all operations performed, the USER shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the USER shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/Legal Liability

USER shall name the STATE, RAILWAY, and their officers and employees as additional insureds for liability arising out of this Lease Agreement.

Automotive Liability: The USER shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the contract. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

USER shall name the STATE, RAILWAY, and their officers and employees as additional insureds for liability arising out of this Lease Agreement.

12.2. Increases in Required Minimum Insurance. The STATE and RAILWAY reserve the right, upon thirty (30) days' written notice, to require reasonable increases in the foregoing required minimum insurance.

12.3. Certificates of Insurance; Minimum Period for Notice of Lapse or Material Changes in Insurance. The certificates of insurance required to be provided by the USER shall specifically state that the insurance company shall furnish to STATE and RAILWAY at least thirty (30) days' notice of any lapse or material changes in such insurance. This provision shall not, however, be deemed to establish the liability of STATE or RAILWAY for the payment of any premiums or other charges for the insurance coverage.

12.4. Indemnification; Obligation of USER Unaffected by Failure or Inadequacy of Insurance Coverage. The complete or partial failure of an insurance carrier, for any reason whatsoever, to protect and indemnify the USER, or the inadequacy of insurance coverage obtained by the USER, shall not affect the obligation of the USER to indemnify STATE and/or RAILWAY as provided in Article XI or elsewhere in this Agreement.

ARTICLE XIII THIRD-PARTY AGREEMENTS

13.1. Third-Party Agreements; STATE's Entitlement to Rents and Fees. Notwithstanding Article V above, the STATE shall have the right to any and all rents, license fees and permit fees arising from present and future easements, leases, licenses or other agreements with third parties (including any renewals thereof) to use or access the Line, including but not limited to rents, license fees and other revenues paid by utilities occupying a portion of the Line with poles and wires, and all revenues arising from the rights assigned to the STATE by the Rutland Railway Corporation or other railroad operators. Such future easements, licenses or other agreements with third parties (including any renewals thereof) shall not unreasonably interfere with USER's operations on the Line.

13.2. Leases and Licenses to Third Parties. Notwithstanding Section 1.2 above, the STATE reserves the exclusive right to lease to third parties portions of the Line's right-of-way which lie more than fifteen feet (15') from the former centerline of track, which have not been developed by the USER for trail amenities (such as parking areas or scenic overlooks), and which are not required for USER's actual operations along the Line. The STATE further reserves the exclusive right to license to third parties access to or crossing of the trail in areas that do not in the STATE's sole judgment interfere with the operation of the trail. The STATE shall consult with, and coordinate third-party leases and licenses with the USER.

13.3 Special Use Permits. The USER may authorize or issue non-renewable permits for special events which do not exceed 10 days and are recreational in nature. Notwithstanding Section 13.1 above, the USER shall be entitled to any fees arising from such use. The USER shall consult with and coordinate all special use permits with the STATE.

13.4. Telecommunications. The STATE and RAILWAY reserve the right to install, or license third parties to install, telecommunications facilities (including but not limited to fiber optic lines) along the Line's right-of-way. Such installations or licenses shall not unreasonably interfere with USER's operations on the Line.

ARTICLE XIV [Deliberately omitted.]

ARTICLE XV DEFAULT AND TERMINATION

15.1. Termination Upon USER's Failure to Cure Default. In the event of any substantial failure on the part of USER to perform any of its obligations under this Agreement and its continuance in default for a period of thirty (30) days after written notice of the default sent by certified mail from STATE, STATE shall have the right at its option, and notwithstanding any waiver by STATE of any prior breach, to terminate USER's right to use the Line under this Agreement, subject to and in accordance with any applicable laws or government regulations.

ARTICLE XVI [Deliberately omitted.]

**ARTICLE XVII
DISPUTE RESOLUTION;
EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17.1. Initial Reference of Disputes. All questions or disputes arising under the terms of this Agreement shall, in the first instance, be referred for decision to the Director of the STATE's Division of Policy, Planning, and Intermodal Development (the "Director").

17.2. Appeal to Secretary of Transportation. If the USER is aggrieved by the Director's decision, then the USER may appeal in writing to the STATE's Secretary of Transportation (the "Secretary") through the Director. Any such notice of appeal must be filed with the Director within 30 days of the decision from which the appeal is taken and shall fully describe the nature and extent of the questions or disputes appealed, together with any supporting documentation.

17.3. Appeal to Transportation Board. If the USER is aggrieved by the Secretary's decision, then the USER may appeal in writing to the STATE's Transportation Board (the "Board") under 19 V.S.A. § 5(d)(4). In accordance with 19 V.S.A. § 5(h), the notice of appeal must be filed with the Secretary within 30 days of the decision from which the appeal is taken. The Secretary shall promptly forward the notice of appeal to the Board, together with the Agency's record of decision.

17.4. Judicial Review of Transportation Board Decision. In accordance with 19 V.S.A. § 5(c), a final order of the Board may be reviewed on the record by the Supreme Court.

**ARTICLE XVIII
SUCCESSORS AND ASSIGNS**

18.1. 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, to any person, firm, or corporation without obtaining the prior consent of STATE, which consent may be withheld by STATE in its sole discretion.

**ARTICLE XIX
INSPECTION**

19.1. STATE's and RAILWAY's Right of Inspection. The STATE, RAILWAY, and their designees shall have the right of entry for the purpose of inspection of the Line. Except in emergency circumstances, this right of entry shall be exercised during normal working hours.

**ARTICLE XX
FORCE MAJEURE**

20.1. Force Majeure; Exceptions to Default. A party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed for purposes hereof to mean any cause beyond the control of such party including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor stoppage, sabotage, and restraint by court or public authority, which such party could not reasonably have been expected to avoid, and which by exercise of due diligence it shall be unable to overcome.

20.2. Normal Winter Weather. For purposes of this Article, the term "uncontrollable forces" shall not include normal winter weather (including but not limited to snow, ice, freezing rain and subfreezing temperatures) that occurs between November 15 and April 15.

ARTICLE XXI NOTICE

21.1. Manner of Notice. Any notice required, given or made by any one party to any other party under this Agreement shall be deemed given on the date sent by certified mail, Federal Express or similar overnight courier service, or by such other means as the parties may agree, and shall be addressed as follows:

If to STATE: Secretary of Transportation
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001

With copy to: Assistant Attorney General
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001

If to RAILWAY: President
Vermont Railway, Inc.
One Railway Lane
Burlington, VT 05401

If to USER: Town Manager
Town of Bennington
P.O. Box 469
Bennington, VT 05201-0469

21.2. Change of Address. Any party may provide changes in the above addresses to the other party by personal service or United States mail.

ARTICLE XXII MISCELLANEOUS PROVISIONS

22.1. No Third-Party Benefit. Except as may be specifically provided for in this Agreement, this Agreement and each and every provision hereof is for the exclusive benefit of the parties to this Agreement and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties to this Agreement.

22.2. Previous Oral Understandings Superseded by this Agreement. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties with respect to the subject matter of this Agreement.

22.3. Amendments to be in Writing. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.

22.4. Interpretation of Words, Terms and Phrases. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the transportation industry.

22.5. Article and Section Headings for Convenience Only. All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

22.6. Agreement Result of Mutual Negotiations. This Agreement is the result of mutual negotiations of the parties hereto, neither of which shall be considered the drafter for purposes of contract construction.

22.7. Default; Limitation of Waiver. Any waiver at any time by either party hereto of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right hereunder shall be deemed to be a waiver of such right.

22.8. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

22.9. Historic Preservation. To facilitate the STATE's compliance with the Vermont Historic Preservation Act, 22 V.S.A. Chapter 14, the USER agrees that it will consult the Vermont Advisory Council on Historic Preservation before engaging in activities that would alter any State-owned property or resource along the Line that is potentially of historical, architectural, archaeological or cultural significance including any property listed on or eligible for the State Register of Historic Properties.

22.10. Tax Compliance. Pursuant to 32 V.S.A. § 3113, USER hereby certifies, under the pains and penalties of perjury (maximum penalty: 15 years in prison, a \$10,000.00 fine, or both), that it is in good standing with respect to, or in full compliance with a plan approved by the Commissioner of Taxes to pay, any and all taxes due the State of Vermont as of the date of this Agreement. Notwithstanding any other provision of this Agreement, STATE reserves the right to deny any renewal, extension, consent, or permission under this Agreement unless USER and any proposed assignee first provide STATE with written certification of tax compliance in accordance with 32 V.S.A. § 3113.

22.11. Recording. The TOWN, at its own expense, will record this Lease Agreement in the Town of Bennington land records. As soon as they are available, the TOWN will notify STATE and RAILWAY of the recording data (book, page, and date received for record).

22.12. Document Preparation, Review, and Processing Fee. In addition to the rent specified above, the TOWN agrees to pay the RAILWAY the non-refundable sum of \$500.00, representing a portion of its cost of preparing, reviewing, and processing this document.

ARTICLE XXIII HAZARDOUS MATERIALS; ENVIRONMENTAL REPORTS

23.1. Compliance with Cleanup Laws. The USER, at its own expense, shall comply with all present and hereinafter enacted environmental/cleanup responsibility laws ("Cleanup Laws") and the user will not permit any spills or discharges of hazardous substances or wastes on the Demised Premises during the USER's occupancy of the Demised Premises. The USER, at its own expense, shall promptly notify the STATE of any such spills or discharges of hazardous substances or wastes occurring during the term of this Agreement and it shall make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authorities (the "Authorities") under the Cleanup Laws. Should the Authority(ies) determine that a cleanup plan be prepared and that a cleanup be undertaken because of any spills or discharges of hazardous substances or wastes on the Demised Premises occurring during the term of this Agreement, then USER, at its own expense, shall prepare and submit the required plans and financial assurances and carry out the approved plans.

23.2. USER Responsibilities. The USER's obligations under this Article shall arise if there is any closing, terminating or transferring of operations of USER's establishment pursuant to the Cleanup Laws. At no expense to the STATE, the USER shall promptly provide all information requested by the STATE to determine the applicability of the Cleanup Laws to the Demised Premises, and shall sign the affidavits or submissions promptly when requested to do so by the STATE.

23.3. Defense and Indemnification. The USER shall indemnify, defend and hold harmless the STATE and RAILWAY from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes on the demised premises arising out of USER's operations during the term of this Agreement; and from all fines, suits, procedures, claims and actions of any kind arising out of the USER's failure to provide all information, make all submissions and take all steps required by the Authority(ies) under the Cleanup Laws or any other environmental laws.

23.4. Notification to STATE and RAILWAY. The USER shall promptly supply the STATE and RAILWAY with any notices, correspondence and submissions made by the USER to any Authority(ies), including the United States Environmental Protection Agency ("EPA"), the United States Occupational Safety and Health Administration ("OSHA"), or any other local, state or federal authority that requires submission of any information concerning environmental matters or hazardous wastes or substances.

23.5. Survival of USER Obligations. The USER's obligations and liabilities under this Article shall continue so long as the STATE or RAILWAY remains responsible for any spills or discharges of hazardous substances or wastes on the Demised Premises that occur during the term of this Agreement.

ARTICLE XXIV STORAGE, HANDLING AND TRANSPORTATION OF HAZARDOUS MATERIALS AND WASTES

24.1. USER's Obligations. The USER shall comply with all present and hereinafter enacted federal, state and local laws, ordinances, rules and regulations dealing with the storage, handling and transportation of hazardous substances and wastes. Without limitation of the foregoing, the USER's attention is directed to Titles 40 and 49 of the Code of Federal Regulations (storage and handling of hazardous materials) and the applicable laws and regulations of federal and state departments and agencies dealing with agriculture, public utility regulation, labor and industry, environment and natural

resources, public health, safety, health, emergency management, and forests, parks and recreation, as well as any other department or agency concerned with hazardous substances or wastes.

* * * [Signature pages follow] * * *

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this 9 day of OCT., 2018, by Joe Flynn, its Secretary of Transportation and duly authorized agent.

STATE OF VERMONT
("STATE")

By:

Wayne Hammell
for Joe Flynn, Its Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this 9th day of October, 2018, personally appeared Wayne Hammell for Joe Flynn and acknowledged the foregoing instrument, by him/her as Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,

JoAnn Maguire
Notary Public
(My commission expires Feb. 10, 2019)

APPROVED AS TO FORM:

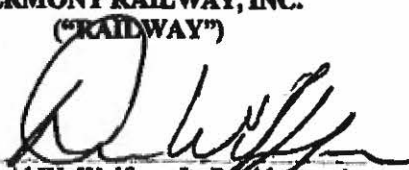
DATED: 10/3/2018

Paul L. J.
ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, VERMONT RAILWAY, INC. has caused this instrument to be signed in its corporate name by David W. Wulfson, its President and duly authorized agent, this 5 day of OCTOBER, 2018.

VERMONT RAILWAY, INC.
("RAILWAY")

By:


David W. Wulfson, Its President and
Duly Authorized Agent

STATE OF VERMONT)
CHITTENDEN COUNTY, ss)

At Burlington, this 5 day of OCTOBER, 2018 personally appeared David W. Wulfson and acknowledged the foregoing instrument, by him/her as President of VERMONT RAILWAY, INC. subscribed, to be his/her free act and deed and the free act and deed of VERMONT RAILWAY, INC.

Before me,


Notary Public
(My commission expires Feb. 10, 2019)

IN WITNESS WHEREOF, the TOWN OF BENNINGTON has caused this instrument to be signed by ~~Stuart A. Hurd~~ ^{Daniel W. Monks, Asst.}, its Town Manager and duly authorized agent, this 17th day of September, 2018.

TOWN OF BENNINGTON
("USER")

By: [Signature]
~~Daniel W. Monks~~ ^{Stuart A. Hurd}, Its Town Manager
and Duly Authorized Agent
Asst.

STATE OF VERMONT)
BENNINGTON COUNTY, ss)

At Bennington, this 17th day of September, 2018, personally appeared ~~Daniel W. Monks~~ ^{Stuart A. Hurd} and acknowledged the foregoing instrument, by him/her as ^{Asst.} Town Manager of the TOWN OF BENNINGTON subscribed, to be his/her free act and deed and the free act and deed of the TOWN OF BENNINGTON.

Before me,

[Signature]
Notary Public
(My commission expires Feb. 10, 2019)

SCHEDULE OF ASSIGNED CONTRACTS

[illegible]

EXHIBIT B
SCHEDULE OF BRIDGES CARRYING PUBLIC HIGHWAYS OVER THE LINE

<i>Bridge No.</i>	<i>Mile Post</i>	<i>Location</i>	<i>Feature Crossed</i>	<i>Number of Spans</i>	<i>Length in Feet</i>	<i>Type of Bridge</i>	<i>Year Built</i>