

015-604 K# 9913



**AGREEMENT**

between

**East Brookfield & Spencer Railroad**

and

**AMALGAMATED TRANSIT UNION, LOCAL 22**

Effective:

**March 21, 2018 – March 20, 2020**

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## AGREEMENT

THIS AGREEMENT, made and entered into this 21<sup>st</sup> day of March, 2018, by and between: East Brookfield & Spencer Railroad, LLC. (hereinafter referred to as "the Company" or "Employer") and the Amalgamated Transit Union, Local 22, AFL-CIO (hereinafter referred to as "the Union").

### WITNESSETH:

That the purpose and intent of this agreement is to provide a working understanding between the Union and the Company, each through its duly accredited officers, to provide as satisfactory services, to provide as good working conditions for the employees as possible, and to properly protect the interests of the Company and to insure efficiency in the operations of the Company and promote friendly and respectful relations during the term of this agreement between the Company and its employees, both parties hereunto mutually agree.

### ARTICLE I – RECOGNITION

**Section 1.** The Company recognizes the Union as the exclusive bargaining representative for all employees, employed by the Employer, at its, East Brookfield, Massachusetts facility, excluding all office clerical employees, all professional employees, guards and supervisors as defined in the Act as amended. If the Local Union or the International Union or, any subordinate body attempts to assign and/or transfer any rights or obligations contained in this Agreement without the express written consent of the Employer the affected location(s) shall cease to be subject to the terms and conditions of this Agreement including but not limited to the Employers recognition of the Union as a collective bargaining agent.

**Section 2.** Wherever the masculine gender is used in this Agreement, it shall also be interpreted to include the feminine gender when appropriate.

**Section 3.** If, during the term of this agreement, the Company shall be consolidated or merged, in any way, with any other company, then and thereafter this agreement will be binding during the remainder of its term upon all parts of the merged or consolidated Company which, at the time of the merger or consolidation, formed any part of the Company owned or operated by said East Brookfield & Spencer Railroad, LLC. The same terms will apply in the event the Company is sold.

### ARTICLE II - STATEMENT OF PRINCIPLES AND UNION RESPONSIBILITIES

The Union recognizes the responsibility assumed by it as the exclusive bargaining agent for the employees covered by this Agreement. The Union further agrees that it and its membership will cooperate with the Company in its efforts to operate the facility and business of the Company covered by this Agreement as

efficiently and economically as possible, improve service, preserve equipment, prevent accidents, injuries, and strengthen good will between the Company and its employees, as well as with its customers.

### **ARTICLE III - MANAGEMENT RIGHTS**

The operations, control, and management of the facility and all other business, operations, and activities of the Company in connection therewith which are covered or affected by this Agreement and the supervision, direction, control, and discipline of the working forces in said facility, business, and operations are and shall always continue to be solely and exclusively the functions and prerogatives of the management of the Company. All of the rights, functions and prerogatives of management which are not expressly and specifically restricted or modified by one or more explicit provisions of this Agreement are reserved and retained exclusively to the Company. In no event shall any right, function or prerogative of management ever be deemed or construed to have been modified, diminished, or impaired by any past practice or course of conduct, or otherwise than by an explicit provision of this Agreement. Specifically, but without in any manner limiting or affecting the generality of the foregoing, it is distinctly understood and agreed that this Agreement does not affect and shall never be deemed or construed to impair or limit in anyway the Company's right in its sole discretion and judgment, to: determine the nature of the Company's business; the products or services to be handled, serviced, warehoused and merchandised, and the operations, business and services to be rendered and carried on by the Company; the means and methods by which such products will be manufactured, handled, warehoused and merchandised and how such operations, business and services will be rendered and carried on, and the nature and extent of the operations, business and services to be rendered or carried on by the Company; determine the customers with whom it will deal, and the prices at which and terms upon which its materials, merchandise, equipment, and supplies will be purchased, leased or otherwise acquired and its merchandise, products and services will be sold; determine the size and composition of the working force covered by this Agreement, the assignment of work, and policies affecting the selection of employees; establish and enforce production, quality and service standards for its business, merchandise, products and services; establish new departments or operations, discontinue, change and combine existing departments or operations, subject to impact bargaining; introduce new and improved warehousing, maintenance, trucking, delivery, processing, merchandising and service methods, equipment, machinery and facilities; change existing warehousing, maintenance, trucking, delivery, processing, merchandising and service methods, equipment, machinery and facilities; establish and change work quotas and standards; change, combine, establish or discontinue jobs or operations, and determine when and if vacancies in the working force shall be filled; to subcontract or procure others to do such of the servicing, warehousing, trucking, delivery, and merchandising work of the business as the Company may from time to time deem advisable or necessary, including subcontracting such work in order to obtain more favorable labor costs; discontinue temporarily or permanently, in whole or in part, the operations of the business covered or affected by this Agreement.

## **ARTICLE IV - UNION SECURITY**

**Section 1.** The Company agrees that it will not interfere with, restrain or coerce any employee for the purpose of discouraging membership in the Union, or for the purpose of discouraging union activities not prohibited by this Agreement or by law. The Union agrees that neither the Union nor any of its officers, representatives or members will interfere with, restrain or coerce any employee for the purpose of encouraging membership in the Union.

**Section 2.** All employees covered by this Agreement shall, upon the successful completion of sixty (60) calendar days of their sixty (60) calendar day probationary period, establish and maintain financial core status with the Union during the remainder of the term of this Agreement, as a condition of continued employment. Financial core status with the Union shall be deemed to have been maintained if an employee pays or tenders for payment to the Union that portion of the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union which are devoted solely and exclusively to representational activities by the Union on behalf of this bargaining unit of employees. Employees shall also have the right to join the Union as full dues paying members, which right shall entitle them to vote upon the collective bargaining agreement, and to participate in the affairs of the Union. The Union shall report in writing to the Company, the name of any employee whose dues, initiation fees or financial core payments are claimed by the Union to be delinquent. If such delinquency is not thereupon paid by such member after written notice from the Union to the member, such members shall be deemed as not having maintained his Union financial core status within the meaning of this Article. Before any dismissal pursuant to this Article becomes effective, the employee involved shall be given an opportunity to pay the delinquent dues, initiation fees or financial core payments, and if such dues, initiation fees or financial core payments are paid, his dismissal shall not be required hereunder.

**Section 3.** Both the Union and the Company shall have the right at any time and from time to time to notify individual employees orally or in writing of any provision of this Article.

**Section 4.** The Company shall furnish to the Union forty-five (45) days after the effective date hereof a true and correct list of those employees covered by this Agreement who are members of or have financial core status with the Union, and shall furnish to the Union each month thereafter a true and correct list of any changes in said list.

**Section 5.** For the convenience of the Union and its members the Company agrees that during the term of this Agreement, and subject to all the provisions of this Agreement, it will deduct from the wages of each paycheck of those employees who are members of or have financial core status with the Union and who shall execute an authorization in appropriate legal form, all union dues, initiation fees, assessments, or financial core payments consistent with the Union Bylaws, as shall be certified from time to time by the Union to the Company as being due and owing by such employees. Remittance of said dues to the Union shall be one week after the deduction from each paycheck.

**Section 6.** If for any reason an employee becomes delinquent in the payment of union dues, or financial core payments for any month, such as the case where an employee has no earnings in a month due to illness or inability to work, the Union will certify to the Company the amount of such delinquency and the Company will deduct such delinquency from the first paycheck (and if that be not sufficient, from the succeeding

paychecks) which the employee earns after returning to work, until such employee is again current in his payment of union dues or financial core payments. No more than one month's dues or financial core payments shall be deducted from any one check.

**Section 7.** The Union shall indemnify and save the Company harmless from any claims, suits, judgments, attachments, and from any form of liability as a result of making any deductions in accordance with the foregoing authorization.

#### **ARTICLE V – STEWARDS & UNION TRAINING**

**Section 1.** The Union shall designate from among the employees covered by this Agreement a Steward and shall notify the Company of said Steward so designated. The Company shall recognize and deal with the Steward in the resolution of matters pertaining to the administration of this Agreement, consistent with the provisions of this Agreement. The Steward shall investigate an alleged contract violation during non-productive time. The Union further agrees that such duties shall be performed by the Steward as expeditiously as possible. Generally, no time will be allowed for the investigation of any grievance matter while production work is needed to satisfy the demands of the Company's customers.

**Section 2.** When requesting permission to investigate an alleged contract violation, the Steward must make known to his supervisor his destination, and only after relieved, must report directly to that area. Upon completion of his investigation, the steward will immediately report back to his regular work area.

**Section 3.** The Company agrees to compensate the designated Union Steward for all mutually agreed meetings with the Company, for attendance at grievance hearings/meetings and for attendance at Union sponsored meetings, by paying the Stewards regular wages for the time devoted to such meetings/hearings. The Union will fully reimburse the Company for the Steward's time spent at Union sponsored meetings. Hours paid under the provisions contained in this Section 3 will be considered as actual hours worked during the appropriate pay period.

**Section 4.** The Company will coordinate with the Steward to arrange a one hour or less union orientation period for all newly hired union employees. Such orientation will be conducted within the first thirty (30) days of employment.

**Section 5.** Any member who accepts an International ATU position or a full time position within the Local will retain his/her seniority with the Company and when returning will be eligible for any position he/she would have been eligible for had they remained in the Company.

#### **ARTICLE VI - GRIEVANCE PROCEDURE AND ARBITRATION**

**Section 1.** For the purpose of this Agreement, a grievance is defined as any dispute, claim or complaint involving the interpretation or application of the provisions of this Agreement, not settled through the procedure outlined below. No employee may institute an action in any court or bring a procedure before any Administrative Agency unless said employee has exhausted all procedures within the grievance procedure.

All such grievances or claims shall be settled and determined exclusively by the grievance procedure. The only claims falling outside of this provision shall be limited to claims arising under the National Railway Labor Act (NRLA) which shall be reviewed to those processes established by the NRLA.

**THE FOLLOWING STEPS WILL CONSTITUTE THE GRIEVANCE PROCEDURE:**

It is the policy of the parties to this Agreement to encourage the resolution of a grievance between an employee and supervisor or between the Union and the Company official making the decision that led to the grievance before a written grievance is filed. In such cases no written decision by the Company is required, however the Company will advise the Union of the outcome unless specifically informed by the grieving employee that the matter is to be held in strict confidence.

**STEP 1** Any bargaining unit employee having a grievance or his or her designated representative, shall first present the grievance in writing to the employee's department head or his or her designated representative within seven (7) calendar days after knowledge of its occurrence. In the event that the Union is filing the grievance, such grievance must be filed with seven (7) calendar days from the date on which the Union becomes aware of the incident or occurrence. The supervisor will then attempt to adjust the matter and will respond to the employee, or his or her designated representative, within seven (7) calendar days after the presentation of the grievance.

**STEP 2** If satisfactory settlement is not reached under Step 1, the grievance shall be presented by the employee, or his or her designated representative, to the Manager, in writing, within seven (7) calendar days after the receipt of the Company's response set forth in Step 1, above. Presentation of the written grievance will be accomplished by a meeting of the employee, a Union representative, the supervisor involved in Step 1, the Manager, and a representative of the Company's Human Resource department, in order that the grievance may be fully discussed orally by the parties involved. This meeting can take place in the form of a teleconference discussion. The Human Resource department will issue a written decision to the employee, or his or her designated representative, within seven (7) calendar days from the date of the meeting.

**STEP 3** If satisfactory settlement is not reached under Step 2, the employee, or his or her designated representative, may file notice of intention to arbitrate the grievance, if such notice is filed with the Manager, or his or her designated representative within forty-five (45) calendar days after the expiration of the time limit described in Step 2, above.

**Section 2.** The time limits specified in the above stated Grievance Procedure may be extended by mutual written agreement, provided, however, that the additional time requested will not be unreasonably withheld by either party. In the event that the time limits specified in the above stated Grievance Procedure (including time limits that were extended by written agreement) are exceeded by the Company, the Union may, at its option decline to further process the grievance in which case the grievance will be awarded. In the event that the time limits (including time limits that were extended by written agreement) are exceeded by the Union, the Company may, at its option, decline to further process the grievance in which case the grievance will be considered resolved. Additionally, any Step in the grievance process may be removed from the process by written agreement of the Union and the Company.

**Section 3.** Any grievance which is arbitrable under the terms of this Agreement may be arbitrated before an impartial arbitrator or settled at any time by the Company and the Union prior to the scheduled arbitration date. The parties shall establish an annual panel of two arbitrators, whose yearly terms shall

automatically be renewed unless either party decides to replace its selectee and gives notice of same within the thirty 30 day period prior to the expiration of the one-year period. Each party shall select one (1) arbitrator to be placed on the panel from the roster of arbitrators appearing on either the Federal Mediation and Conciliation Service ("FMCS") or the American Arbitration Association ("AAA"). Each succeeding arbitration case shall then be heard by one of the panel arbitrators on a rotating basis with the first arbitrator determined by coin flip. The arbitration cases shall be governed and conducted in accordance with the established rules and regulations of the FMCS. No more than one grievance shall be submitted to any one arbitrator at the same hearing unless the Company and the Union agree otherwise in writing. The Arbitrator so selected shall have power to receive relevant testimony from the parties to the dispute and to hear such witnesses as they may desire to present. The parties (meaning the Company and the Union, but not the grievant individually) may, if they so desire, be represented by counsel in all proceedings held before the Arbitrator. At the request of either party, the Arbitrator shall hold a pre-hearing conference for the purpose of defining, simplifying and framing the issue or issues to be arbitrated, and ascertaining the positions of the respective parties concerning said issues. The Company shall bear the cost of preparing and presenting its case to the Arbitrator, including travel and lodging for its representatives. The Union shall bear the cost of preparing and presenting its case to the Arbitrator, including travel and lodging for its representatives. All other expenses of arbitration, such as but not limited to the Arbitrator's fee and expenses, the cost of recording and transcribing testimony (if the parties mutually agree to split this cost) or if the Arbitrator requests that the hearing be transcribed, and the hiring of a space in which the arbitration proceedings are held, shall be divided equally between the Company and the Union.

**Section 4.** In the event a grievance is referred to arbitration, this Agreement shall be the sole basis on which the arbitrator's decision is rendered, and in reaching his decision the arbitrator shall have no authority to amend, modify, or in any way change its terms. In discipline and discharge cases, the arbitrator shall have the authority to determine just cause.

**Section 5.** No grievance shall be arbitrable unless it involves an alleged violation by the Company of one or more specific provisions of this Agreement, which alleged violation shall be designated in writing by the Union to the Company no later than the time such grievance is appealed to Step 2 of the grievance procedure herein before set forth. No grievance shall be arbitrable if it is non-arbitrable under the "Management Rights" Article of this Agreement.

Strict compliance with the procedural requirements and time limits of the foregoing grievance procedure is a condition precedent to the Union's right to take any grievance to arbitration; it being understood and agreed, however, that any of said time limits may be extended by mutual agreement in writing between the Company and the Union.

**Section 6.** The function of the Arbitrator shall be of a judicial rather than a legislative nature. The Arbitrator shall not have the authority to add to, ignore or modify any of the terms or provisions of this Agreement. The Arbitrator shall not substitute his judgment for the Company's judgment, and where matters of judgment are involved, he shall be limited to deciding whether or not the Company acted arbitrarily, capriciously or in bad faith. The Arbitrator shall not decide issues which are not directly involved in the case submitted to him, and no decision of the Arbitrator shall require the rate or wage basis different from or the payment of any

wages in addition to, those expressly set forth in this Agreement. In any discharge or disciplinary layoff case where the Arbitrator decides that the aggrieved employee should be awarded any back pay, the Company shall be entitled to full credit on such award for the employee's gross interim earnings or, unemployment and workers' compensation benefits or disability benefits received by the employee during the period he was not working for the Company. Subject to the foregoing qualifications and limitations, the Arbitrator's award shall be final and binding upon the Company, the Union and the aggrieved employee or employees.

**Section 7.** Only the Union shall have the right to prosecute grievances under this Agreement and only the Union shall have the right to take to arbitration any grievance which is otherwise arbitrable under this Agreement; provided, however, that this limitation shall not apply to individual statutory discrimination or harassment claims which can be pursued by employees individually at their own expense. If the Union fails, refuses or declines to prosecute a grievance on behalf of an employee, or if the Company and the Union settle any grievance on behalf of an employee hereunder, the employee who has filed such grievance or on whose behalf it has been filed shall be conclusively bound thereby and both the Union and the aggrieved employee shall thereafter be stopped to revive or further prosecute said grievance.

**Section 8** The finding or decision of the arbitrator will be rendered within thirty (30) days of the date of closing of hearings, Sundays and Holidays excluded, and will be binding on the Company and the Union.

## **ARTICLE VII - DISCIPLINE AND DISCHARGE**

**Section 1.** During an employee's sixty (60) day probationary period, the Company shall have the right to discharge him with or without cause, and without recourse by the Union or by such probationary employee to the grievance procedure, Article VI, of this Agreement.

**Section 2.** The parties expressly recognize and agree that the Company's customer or custodian of the work site, may at any time demand, as a condition of operations, that an individual covered under the terms of this Agreement not be permitted to enter the area of work or perform work at the site. In such an instance, the employee may be separated from employment on that basis, regardless of any other facts, and regardless of the employee's seniority. Under such cases, the Company must show written proof that the customer or custodian has banned such individual(s) from the work site. If an employee is banned from entering the property and if the stated reason for such ban is other than that which is covered under the Company's discipline/safety policies, then, in such case the employee shall be considered as "laid-off" (with entitlement to benefits as outlined in Company policy to include not contesting claims for unemployment) and entitled to fifty (50) hours of pay at the employees regular rate for each year of employment with East Brookfield & Spencer Railroad.

**Section 3.** The Company shall have the right to discipline or discharge an employee, who has completed his probationary period, for just cause. While the Company adheres to the doctrine of progressive discipline for employees for minor infractions, it is distinctly understood that certain offenses such as but not by any means limited to the following shall be cause for immediate discharge, without warning: dishonesty, including providing false or incomplete information on employment paperwork; insubordination; fighting while on the Company's premises, or on duty; failure or refusal to wear or utilize any safety equipment required by the

Company or to follow any safety procedure prescribed by the Company; "horseplay" of such a nature as to potentially be capable of causing personal injury or property damage; drinking alcoholic beverages or being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, while on the Company's premises, while operating a Company vehicle, or during work hours; being in possession of, or using, or being under the influence of narcotics, marijuana, or hallucinatory drugs while on the Company's premises, while operating a Company vehicle, or during work hours; carrying or being in possession of a deadly weapon while on the Company's premises or on duty; conviction of or pleading guilty to a felony; falsification of Company records or reports; willful damage to tools, equipment or other Company property; or failure to report an accident or injury.

**Section 4.** It is understood and recognized that employees have a responsibility to be regular and punctual in their work attendance. The following Attendance Policy with associated discipline points will be used during the term of this Agreement:

Attendance Policy

With the exception of FMLA, Jury Duty, and Bereavement Leave, an employee is allowed a maximum of six (6) excused attendance infractions in a trailing twelve (12) month period.

If an employee cashes out an accumulated sick day he/she will increase their excused absences by one.

Excused absences include:

Doctor notes

Personal emergency as documented on an official report

An employees involvement in an accident, which is noted on a police report.

The following points are assessed for unexcused absence violations:

1 minute – 15 minutes late reporting to work	1 point
16 minutes – 5 hours late reporting to work	2 points
More than 5 hours late but prior to shift end	3 points
No Show (Call Out)	4 points
No Call / No Show	5 points

Allowed three (3) violations before assessed points for 1 minute – 15 minutes late rule. Those three violations will be documented with zero (0) points assessed.

If an employee has a sick day it must be utilized when calling out.

The following points are assessed for an employees failure to complete their shift:

Less than 2 hours remaining in shift	1 point
2 hours – 4 hours remaining in shift	2 points

More than 4 hours remaining in shift

3 points

**Section 5.** A warning notice or notices for any cause may constitute a basis for discharge for any subsequent infraction and it is understood and recognized by the parties hereto that the infractions specified in Section 3 of this Article shall be cause for immediate discharge without warning. It is further understood and recognized that, inclusive of disciplinary action issued under Section 4 of this Article, it shall be cause for discharge if an employee is assessed fourteen (14) progressive discipline points for any cause or combination of causes during the period of March 21<sup>st</sup> – March 20<sup>th</sup> of each calendar year. Discipline points will be restarted on March 21<sup>st</sup>. It is further understood that the Company maintains a list of Conduct (Discipline) Rules and Safety Rules, which are provided to the Union and each individual employee, and which, if violated, will be cause for discipline as specified in the listing. All attendance and discipline points will be reset to zero upon ratification of this Agreement. Additionally, one (1) discipline/attendance point will be removed from an employee's accumulated total for each complete calendar month the employee completes without receiving a discipline/attendance or safety related point. The employees accumulated point total will not be reduced below zero.

**Section 6.** If a bargaining unit employee invokes his Weingarten rights, the Company will make every effort to contact the Steward, and lastly the Business Agent.

**Section 7.** The following will be in effect regarding punching in at the start of shift, for lunch, missed, etc.

1. An employee will be considered late when the timeclock shows one (1) minute past the scheduled start time.

a. An employee must be prepared to begin work at their scheduled start time – that means dressed for conditions, boots on, PPE gathered, etc.

b. An employee is allowed to punch-in up to five (5) minutes prior to their scheduled start time.

2. Paid Break: If an employee leaves the site during their break they must punch out and then punch in upon their return. Employees will be paid, up to the amount of break-time entitlement, for the time they were "punched out" for. Such pay will be added weekly to the employees check.

3. Missed Punches:

a. An employee is allowed to accumulate three (3) missed punches in a twelve month period.

b. An employee will be assessed one (1) point for each missed punch after the three referenced in "a" above.

c. Accumulated missed punches will reset on July 1<sup>st</sup> of each year.

#### **ARTICLE VIII - SUPERVISORY PERSONNEL AND OTHER EXCLUDED PERSONNEL**

Notwithstanding any other provision of the Agreement, there shall be no limitation or restriction upon the nature, extent and kind of work which supervisory personnel may perform, nor shall there be any limitation or restriction as to the times or occasions on which supervisory may perform such work. In such situations the

Company will communicate to the Crew Leader the scope of work being performed. It is not the Company's intention or purpose hereunder, however, to use this provision to avoid the payment of overtime or to replace employees covered by this Agreement with supervisory and other excluded personnel.

**ARTICLE IX - DISCRETIONARY BONUSES AND OTHER GRATUITIES**

The Company shall have the right, in its sole discretion and judgment, to provide for all employee's from time to time such gifts, incentive bonuses or other gratuities in recognition of merit or hardship, or in commemoration of events or seasons of the year, as it deems appropriate. No activity under this Article on the Company's part shall be or become a practice nor shall it be considered a binding precedent.

**ARTICLE X - WAGES AND JOB CLASSIFICATIONS**

**Section 1.** The subject of wages and job classifications for all employees is fully covered in Section 3 of this Article . The rates of pay specified in Section 3 are minimum rates which the Company is contractually obligated to pay, but nothing in this Agreement shall be construed as preventing the Company, in agreement with the Union, from paying employees in specific job classification a higher rate than the employee would otherwise be entitled to under this Agreement.

**Section 2.** Stand-By Pay. Employees placed in a "stand-by" status for a period longer than four (4) hours from their original start time and subsequently "called-off" by the Company will be entitled to four (4) hours of straight time pay. Such employees may be directed to report for work at anytime during this four hour stand-by period, employees who fail to report for work, when directed to do so, will forfeit their entitlement to the aforementioned four hours of stand-by pay and may be subject to appropriate disciplinary action as prescribed in the Company's attendance and discipline rules.

**Section 3.** The following wage rates and job classifications are established for the listed job classifications:

Job Classification	Full Hourly Rate March 21, 2018 – March 20, 2019	Full Hourly Rate March 21, 2019 – March 20, 2020
Senior Switchperson	\$25.55	\$26.30
Switchperson	\$25.05	\$25.80
Junior Switchperson	\$24.05	\$24.80
Senior Repairperson	\$25.55	\$26.30
Repairperson	\$25.05	\$25.80
Junior Repairperson	\$24.05	\$24.80

**Progression Wage Scale:**

Employees hired during the period July 15, 2009 through June 5, 2012 will receive ninety percent (90%) of the above listed wage rates during their first year of employment. During their second year of employment they will

receive ninety-five percent (95%) of the above listed wage rates and they will receive one hundred percent (100%) during their third and all subsequent years of employment.

Employees hired on or after June 6, 2012 will receive the following percentage of the full hourly rate listed above:

Year of Employment	Percentage of Full Hourly Rate
1 <sup>st</sup> Year	80%
2 <sup>nd</sup> Year	85%
3 <sup>rd</sup> Year	90%
4 <sup>th</sup> Year	95%

**Annual Damage Bonus:**

If total damage to customer and/or company property during the period June 6, 2016 through June 5, 2017 is less than or equal to five thousand dollars (\$5,000.00) in the aggregate, then each employee will be paid an amount equal to twenty-five cents (\$.25) for each hour worked during this aforementioned period. This procedure will also apply to the period June 6, 2017 through June 5, 2018. This Annual Damage Bonus program will end and not extend beyond June 6, 2018.

**Job Classification:**

The Company retains the sole and exclusive right to determine the specific job related tasks and qualifications associated with both the "Senior Switchperson," "Switchperson," "Senior Repairperson," and "Repairperson" level positions and the period of time employees retain such designation.

**Crew Leader Wage Differential:**

The Company may at certain times designate an employee with certain temporary supervisory duties. In order to compensate an individual for this designation, he will receive \$1.50 per regular hour for those hours worked in the Crew Leader capacity. When the Crew Leader designation for an employee is no longer deemed necessary by the Company, the employee will no longer receive the pay differential.

**Additional Wage Differentials:**

1.) Employees with a Senior Repairperson, Repairperson, or Junior Repairperson job classification who possess a valid Engineer certification will receive an additional \$ .25 per hour.

2.) Employees designated as a "New Employee Trainer" will receive an additional \$ 1.50 per hour for those hours actually involved with the training of newly hired employees. Such designation as "New Employee Trainer" is at the Company's discretion. It's understood by both Company and Union that management may conduct the training of newly hired employees for 1 week without the use of a designated "New Employee Trainer."

Additionally, such "New Employee Trainer" designation only applies to the training of newly hired employees and does not apply to cross-training.

## **ARTICLE XI - HOURS OF WORK AND OVERTIME**

**Section 1.** The purpose of this Article is to state the normal hours of work of employees and to provide the basis for computing overtime pay. Nothing contained in this Article or in any other provision of this Agreement shall ever be construed as a guarantee of, or limitation on, the number of hours of work per day, per week or per year to be performed by employees who are covered by this Agreement. Moreover, it is understood and agreed that all employees shall perform such work as they may be required and directed by the Company to perform, notwithstanding the job classification to which they may normally and usually be assigned.

**Section 2.** The workday for employees will normally consist of five (5) workdays in the seven (7) consecutive day period, Wednesday through Tuesday, of eight (8) consecutive hours in a regular work shift, or four (4) workdays in the seven (7) consecutive day period, Wednesday through Tuesday, of ten (10) consecutive hours in a regular work shift. The Company, may, subject to notification by the customer or custodian, establish or change the normal workday or workweek for its employees at any time.

**Section 3.** The regular starting and quitting time for each employee, or group or shift of employees, and the days to be worked in any work week, shall be established from time to time by the Company, and the Company will notify employees as soon as is reasonably possible in advance of any change in their starting or quitting time or days to be worked.

**Section 4.** All hours worked in excess of forty (40) hours in any workweek and all hours worked on any of the actual holidays as set forth in Article XVI, Section 1, shall be paid for at the rate of time and one half (1 1/2) the employee's regular hourly rate of pay. Only hours which are actually worked by an employee shall be counted in the computation of overtime pay. Additionally, employees will be paid time and one-half (1 1/2) the employee's regular hourly rate of pay for all hours worked beyond ten (10) hours during a shift. Easter Sunday will not be considered a Holiday as set forth in Article XVI, Section 1, however, all hours worked on Easter Sunday will be paid at the rate of time and one-half the employee's regular hourly rate of pay.

**Section 5.** All employees covered by this Agreement may be required, at the direction of the Company, to work overtime, either in the form of additional hours per day or additional days per week. It is distinctly understood and agreed that the failure or refusal of an employee, without an excuse or reason satisfactory to the Company, to work overtime as directed will be cause for discipline or discharge. The following overtime priority selection process will be used:

1. Employees who are projected to have less than forty (40) hours of pay during the current pay period or who had less than forty (40) hours of pay on the most recently completed pay period. Such employees must indicate their desire for overtime by placing their name on the "extra board" with the annotation "short hours" – they will be first offered the opportunity to work the number of hours necessary to compensate for those hours less than forty worked during the current or previous pay period. Employees selected in this step will be in order of seniority, meaning those with the most seniority will be selected first.

2. Employees who indicate their desire to work overtime at the start of their scheduled shift.

3. Employees who have placed their name on the "extra board" outside of those covered in priority step one (1) .

4. Current shift employees with selection starting with those with the least amount of seniority.

**Section 6.** The following break/lunch policy will be followed during the term of this Agreement:

- a. Employees who work less than four (4) hours in a shift will not be given a break/lunch period;
- b. Employees who work four (4) hours but less than six (6) hours in a shift will be entitled to a ten (10) minute break;
- c. Employees who work six (6) or more hours in a shift will be entitled to a combined (ten minute break from "b" above and an additional thirty minutes) forty (40) minute break/lunch period;
- d. Employees who work eight (8) or more hours in a shift will be entitled to a combined (forty minutes described in "c" above and an additional ten minutes) fifty (50) minute break/lunch period.

**Section 7.** Non – covered service employees will not be forced to work longer than twelve (12) hours in a single shift – however, they may volunteer to work longer than twelve (12) hours during a single shift. All non-covered service employees will be given provided a minimum of eight (8) hours between scheduled shifts. The company will comply with 49 CFR Part 228 regarding Hours of Service for covered service employees

**Section 8.** For the purposes of overtime or "extra" work opportunities, the Company will maintain a log of which employees were called. For purposes of record keeping, management will attempt to contact employees at the phone number specified by the employee, there will be one (1) call per employee. If there is no answer, it shall be noted. If there is a message device, a message will be left (similar to "extra work opportunity, I've got to go by you). If no working number is provided by the employee the employee will be skipped. If the number is busy, the company will move to the next employee and so note. If an employee is missed in this process, then the employer will pay one (1) day's pay for not properly making the effort to attempt to call the employee.

**Section 9.** Any employee who is called-in to work and does report for work and is not put to work for at least four (4) hours shall be paid at the applicable rate for four (4) hours actual work on that day, except where failure to so put such employee to work is occasioned by non-operation of the facility, or a substantial part thereof, as a result of fire, Act of God, failure of power or major breakdown of equipment.

**Section 10.** Employees who have worked a minimum of six (6) hours during a scheduled shift will be provided additional work opportunities to allow for completion of an eight (8) hour shift. Employees may decline such additional work opportunity, but, if declined, the employee will not be entitled to compensation for the declined additional hours of work. All additional work opportunities will be as directed by management.

## **ARTICLE XII - PHYSICAL EXAMINATIONS**

The Company may, at its option and expense, require employees to submit to a physical or mental examination once each year by a doctor designated by the Company. Additional physical or mental examinations may be required in connection with any compensation or insurance claim or litigation, and may also be required if the Company has reason to believe that any employee has such physical or mental impairment or disease as may endanger the safety or health of other employees, the Company's customers or the public, or constitute a hazard to the employee in his employment with the Company. If such impairment or disease is revealed by such examination, the affected employee may, at the Company's option, be placed on a

leave of absence until such impairment has been corrected or such disease cured. The Union further agrees that it and all employees covered by this Agreement will cooperate fully with respect to any examinations which may be required by any public or private authority having jurisdiction or control over any phase of the Company's Operations. Nothing in this Article is meant to be, or shall be a violation of the Americans with Disabilities Act. Employees will be compensated, at their regular rate of pay, with a minimum of two hours pay, for time spent complying with either Company, Federal or State directed physical or mental examinations.

#### **ARTICLE XIII - DRUG AND ALCOHOL TESTING**

The Union recognizes that the Employer will comply with 49 Code of Federal Regulations (CFR) part 219. The Employer will provide to the Union, ten (10) days prior to their implementation, any changes to the Drug and Alcohol testing program. The rule shall have the full force and effect of contractual authority once it is implemented.

#### **ARTICLE XIV - VISITATION PRIVILEGES**

The Company agrees to admit to its facility, during its regular working hours all Union officials of Local 22 of the Amalgamated Transit Union for the purpose of observing the application of this Agreement and adjusting grievances. These activities may not cause any interruption of the Company's working schedule nor may they interfere with the work of employees, with the exception of the designated Union Steward.

The Union official shall report to the facility manager or Company supervisor on duty before any visit. The Union official must also state to the manager or supervisor the reason for the visit and observe all Company rules and safety rules while on the Company's premises. In the event of a change of agents, the Company will be notified in writing.

#### **ARTICLE XV - SENIORITY**

**Section 1.** An employee's seniority shall be computed from the date of employment by the Company. If an employee transfers from Northeast Vehicle Services to the East Brookfield & Spencer Railroad or the reverse, seniority will carry over except for bidding-in rights. Additionally, employees of either the East Brookfield & Spencer Railroad or Northeast Vehicle Services will receive special consideration in the selection process if applying for an open position with either company. An employee who transfers from either of the aforementioned companies or within job classifications of their current company will be allowed to learn the new position for thirty (30) days. Upon completion, should management determine that the employee cannot continue in the position, a meeting will be held between the union Business Agent and the manager to provide ultimately a recommendation. A new employee shall be on probation for the first sixty (60) calendar days of his employment, and during said period may be discharged with or without cause. After serving the probationary period, a new employee shall be placed on the seniority list by job classification. An employee that transferred from another work site does not have to re-serve a probation period, if he successfully served it at the other

work site. There shall be no seniority among probationary employees and there shall be no responsibility for re-employment of probationary employees if they are laid off or discharged during their probationary period.

**Section 2.** If it becomes necessary to reduce the work force, it will be on a seniority basis, by job classification, that is the least senior employee will be the first laid off. When the work force is built up after a layoff, those laid off will be given first choice, by seniority, using the following recall procedures. Employees who are laid-off are required to contact the Company manager on the first or second business day (Monday or Tuesday) of each week and inform the manager they are available for work. Recalls will be made by seniority of those who called in during the week the recall is made. When an employee who has been laid off is later taken back, the employee will be paid at the same rate as he or she was receiving prior to the lay off. If a change in the wage rate for the same work has occurred, the employee will receive the adjusted rate upon return.

**Section 3.** This section applies to all employees hired on or after June 6, 2012; for those employees so affected, it replaces section 2 above of this Article XV. If it becomes necessary to reduce the workforce, it will be on a seniority basis, by job classification, that is the least senior employee will be the first laid off. When the workforce is built up after a layoff, those laid off will be given first choice, by seniority, provided that an employee reports to work within seven (7) calendar days when notified when notified by the Company by certified mail, sent to the employee's last address appearing on the Company's records. Employees who are laid-off will retain recall rights for one hundred twenty (120) days and seniority rights for all other purposes for a period of one (1) year.

When an employee who has been laid-off is later taken back, the employee will be paid at the same rate as he or she was receiving prior to the lay-off. If a change in the wage rate for the same work has occurred, the employee will receive the adjusted rate upon return.

**Section 4.** The Company will give employees as much notice as is reasonably possible prior to layoff.

**Section 5.** Employees shall notify the Company and the Union in writing of any change of address within three (3) working days after such change has been affected. Should any question arise regarding an employee's address, the last address appearing on the Company's records shall be considered true and correct. Employees shall also have the responsibility to keep the Company properly advised of their correct telephone number.

**Section 6.** When an employee leaves the employment of the Company, or takes an official position in the Company, the employee will lose all seniority rights, provided the employee holds such official position for thirty (30) days, but this provision will not apply to the case of an employee who takes a position as a substitute for a regular official in the service of the Company, nor will it apply to employees given a leave of absence.

**Section 7.** The Company shall have the right to temporarily transfer employees from one job classification to another. Bargaining unit employees performing any work in a classification higher than that to which he or she is regularly assigned will be paid at the higher rate for all time spent working in the higher classification. An employee performing work in a lower classification will be paid at the rate of his or her regular classification.

**Section 8.** The parties agree that a short workweek may be implemented or the Company may solicit lay-off volunteers in lieu of layoff.

**Section 9.** Jobs will be "re-bid" in January and July of each calendar year. The Company will retain the authority to approve any employee move or schedule change.

#### **ARTICLE XVI - PAID HOLIDAYS**

**Section 1.** The following holidays shall be paid holidays for all employees in the active employ of the Company who have successfully completed a sixty (60) calendar day qualification period as an employee, and who worked their last full scheduled workday prior to and the first full scheduled workday after such holiday: New Years Day, Memorial Day, Patriots Day (3<sup>rd</sup> Monday in April), Independence Day, Labor Day, Veterans Day, Columbus Day, Thanksgiving Day, and Christmas Day.

**Section 2.** Holiday pay for employees entitled thereto shall be equal to the employees regularly scheduled daily work hours, with a minimum of eight (8) hours' pay, at the employee's regular hourly rate of pay.

**Section 3.** If a paid holiday falls on either a Saturday or Sunday, it will be observed on the day on which it falls, unless the union and the company agree otherwise.

**Section 4.** An employee who is required to work on a paid holiday and who is otherwise entitled to pay for the holiday under the provisions of this Article, shall be entitled to be paid at one and one-half times his regular straight-time hourly rate, in addition to holiday pay. Hours of holiday pay which are hours that are not worked, will not count towards overtime qualification calculations.

**Section 5.** Employees who are scheduled to work on a holiday and then fail to report and perform such work shall not receive holiday pay for that holiday, unless granted an authorized absence as prescribed in company policy.

#### **ARTICLE XVII - GROUP INSURANCE**

**Section 1.** The Company agrees to continue in effect for the term of this Agreement its present group insurance program so as to make available to all regular, full-time employees, who have been employed by the Company as regular, full-time employees and who have satisfactorily completed a sixty (60) working day qualification period as a regular full-time employee, the Company's basic group health, dental, and life insurance. The effective date of coverage will be the first day of the month following the date of successful completion of this qualification period. Time worked as a part-time or temporary employee does not count towards completion of the sixty (60) working day qualification period.

**Section 2.** The Company provides medical and hospitalization insurance for all its eligible employees who wish to participate. During the term of this Agreement, each participating employee must pay twenty percent (20%) of the cost of single coverage and twenty percent (20%) of the additional cost of employee and spouse coverage, employee and child(ren) coverage, and employee and family coverage. The cost of these premiums will be deducted from the participating employee's weekly pay. If an employee elects not to participate in the Company's plan, when eligible under the terms of this Article, his later participation will be subject to the approval of the Company and the insurance provider.

**Section 3.** Group term life insurance coverage is offered by the Company for all qualifying employees who wish to participate. Each participating bargaining unit member must pay twenty percent (20%) of the cost of the life insurance coverage, if they elect to participate.

**Section 4.** During the term of this Agreement, the Company will make available to its bargaining unit employees a group dental insurance plan through a carrier selected by the Company, with benefits determined by the Company and on terms as negotiated between the Company and the group carrier. Any bargaining unit employee wishing to purchase such group dental insurance will be responsible for one hundred percent (100%) of the insurance premium, regardless of the type plan selected. If a bargaining unit employee participates in the group dental plan as set forth herein, the monthly premium cost for such coverage will be pro-rated weekly and deducted from the employee's weekly paycheck.

**Section 5.** Any employee of the Company who desires the Company's aforementioned basic group life, medical, and dental insurance shall authorize the Company in writing to make a deduction for his contribution for coverage from his weekly earnings.

**Section 6.** All group medical coverage shall have the standard coordination of benefits provisions included in the group insurance policies, as normally and usually written by the insurance carrier.

**Section 7.** The Company may change insurance carriers for any of the group insurance programs as set forth in this Section, so long as such insurance coverage is available.

**Section 8.** The contracts between the Company and insurance carriers will govern in all matters related to the group life, medical, and dental coverage provided herein. The exact coverage and the conditions for coverage of the aforesaid insurance will be determined by the terms and conditions of the policy or contract, and the Company will not under any circumstances be liable as an insurer of any of the benefits to employees. The maximum age for coverage of minor children under the group medical insurance will likewise be governed by the terms of the insurance contract or policy. Disputes concerning insurance coverage shall not be subject to the grievance and arbitration procedure, but shall be resolved in accordance with the insurance carrier's internal administrative review procedures. The insurance carrier's decision shall be final and binding on the Company, the Union and the employee.

**Section 9.** If, pursuant to any Federal or State law which may become effective during the term of this Agreement, the Company is required to make contributions or pay taxes to provide any benefits or coverage's which are already provided for under the Company's group life, medical, accidental death and dismemberment, and dental insurance, then to the extent such benefits under such Company plans are required by Federal or State actions, the Company shall be relieved of the obligations to provide such benefits under the Company plans.

**Section 10.** The Company agrees that it will comply with the Health Maintenance Organization Act of 1973, as amended (hereafter "the Act"), and that to the extent required by the Act, it will offer the option of membership in a qualified health maintenance organization (hereafter "HMO") to employees covered by this Agreement, said offer to be made in accordance with the Act and the regulations issued by the Secretary of Health, and Human Services under the Act. It is understood and agreed, however, that in the event an employee elects to accept membership in the HMO, the Company's only obligation with respect to such

organization will be to make payment to the HMO in the same amount as it would otherwise have contributed on behalf of said employee to the group insurance plan in order to provide the group insurance coverage for hospital, medical, surgical and related services provided for by this Agreement. It is further understood and agreed that it shall be the sole responsibility of such electing employee to perform any and all acts necessary to maintain his membership in the HMO, including but not limited to the payment of any premium, subscription charges, dues or fees of any nature in excess of the amount paid to the HMO by the Company; provided, however, that if the premium, subscription charges, dues or fees required for the employee's participation in the HMO is greater than the amount the Company is liable to contribute under this Section, the Company agrees to deduct from the employee's pay, upon the receipt of a written authorization for such purpose from the employee, the additional amount required for full payment of the premium, subscription charge, dues or fees, on the basis of deduction commencing with the first pay day following the receipt of such written authorization. Wherever the term "Health Maintenance Organization" or "HMO" is used in This Section, it shall mean a health maintenance organization qualified in accordance with the Act.

#### **ARTICLE XVIII – VACATIONS, SICK LEAVE & SAFETY DAYS**

**Section 1.** An employee, who has completed twelve (12) to twenty-four (24) months of continuous active service in a regular status, shall be entitled annually to five (5) days of vacation (40 hours) with pay.

**Section 2.** An employee, who has completed twenty-four (24) to sixty (60) months of continuous active service in a regular status, shall be entitled annually to ten (10) days of vacation (80 hours) with pay.

**Section 3.** An employee, who has completed sixty (60) to eighty-four (84) months of continuous active service in a regular status, shall be entitled annually to fifteen (15) days of vacation (120 hours) with pay.

**Section 4.** An employee, who has completed eighty-four (84) or more months of continuous active service in a regular status, shall be entitled annually to seventeen and one-half days of vacation (140 hours) of paid vacation.

**Section 5.** All employees will be allowed to carry-over from one vacation entitlement period to the subsequent vacation entitlement period a maximum of ten (10) days (80 hours) of paid vacation any accrued vacation in excess of eighty hours may be cashed out.

**Section 6.** Vacation pay shall be computed at the straight time hourly rate of pay of the employee in effect at the time the vacation is taken. Pay for a "day of vacation" will be ten (10) times the employee's regular straight-time hourly rate of pay. Pay for a "week of vacation" will be forty (40) times that hourly rate. Hours of vacation pay (hours that are not worked) will not count towards overtime qualification calculations. Vacation pay that is "cashed out" by an employee will be paid in a check separate from the employees normal payroll check a maximum of one time per vacation entitlement year.

**Section 7.** An employee shall not be entitled to a vacation or vacation pay under any of the following circumstances:

a) If an employee is classified as a part-time or temporary employee (all time served in a part-time or temporary status does not count towards qualification for vacation or other benefits); or

b) Any accrued vacation pay will be paid-out as prescribed by Massachusetts state law.

**Section 8.** The Company shall have the right to determine the number of employees in each department who can be on vacation at any one time. Approval or disapproval of written employee requests for the use of vacation time will be provided to the employee within 2 days of submission to the manager.

**Section 9.** Vacation pay shall be based on the employee's regular straight time rate at the time the vacation is started. If a holiday recognized in Article XV falls within a vacation week, the eight (8) hours of holiday pay at straight time shall be paid to the employee on vacation. An employee entitled to vacation shall not take less than 1/2 day of vacation at any one time.

**Section 10.** The term "continuous active service" as used in this Article means uninterrupted service in the employ of the Company since the day on which the employee was last hired by the Company. Time worked as a part-time or temporary employee does not count towards completion of the time requirements to qualify for vacation pay.

**Section 11.** The Company will follow Massachusetts state law regarding sick leave; with the exception employees will be allowed to accrue and carry-over up to fifty (50) hours of sick leave.

**Section 12.** Full-time employees will be awarded one (1) "Personal Day" for every four (4) consecutive month period the employee works. A "Personal Day" is a paid (8 hour) day-off – requests to use a Personal Day must be submitted to the Manager a minimum of 48 hours prior to the date requested. Employees will be allowed to accrue a maximum of three (3) Personal Days; accumulated days in excess of three (3) may be "cashed out" by the employee. On a one time basis, all employees will be awarded two (2) personal days upon ratification of this Agreement – beyond that awarding of personal days will be as addressed in this Section.

#### **ARTICLE XIX - MILITARY SERVICE**

The Company and the Union agree that they will abide by the Veterans' Employment and Reemployment Rights Act and all valid regulations thereunder should it become necessary for an employee to leave the service of the Company to serve in the armed forces of the United States, or should an employee volunteer for service in any of the armed forces of the United States.

#### **ARTICLE XX - HEALTH AND SAFETY**

**Section 1.** The Company will take all reasonable precautions to safeguard the health and safety of its employees during their regular hours of work and to maintain recognized standards of safety and sanitation, and the Union and all employees covered by this Agreement shall cooperate in every way possible in matters concerning the health and safety of employees. Nothing contained in this Article or elsewhere in this Agreement is intended by the parties to increase, extend, broaden, or otherwise affect the Company's liability it otherwise has by law to employees for occupational injury, death or disease under the Worker's Compensation laws of Massachusetts, or otherwise, it being the intention of the parties hereto that the Worker's Compensation Act of

Massachusetts as well as all other applicable federal and state laws shall be the exclusive remedy of employees against the Company for occupational injury, death or disease, whether physical or mental.

**Section 2.** It is agreed that employees will observe all established safety rules, regulations and procedures, both as prescribed by the Company and as required by law. It is also agreed that it shall be a condition of employment that employees shall wear or utilize any safety equipment and protective devices required by the Company or by law.

**Section 3.** If the prescription eyeglasses of a bargaining unit employee are damaged in any way through no fault of the employee while the employee is performing his or her duties, the Company will pay for the cost of replacing or repairing the same, provided that the damage is reported before the employee's shift ends.

**Section 4.** If required by the Company for wear, the following safety equipment and protective devices will be issued to bargaining unit employees: hard hat, head lamp, high visibility cap, and T-shirts (summer wear). If this equipment is damaged in any way through no fault of the employee while the employee is performing his or her duties, the Company will pay for the cost of replacing or repairing the same, provided that the damage is reported before the employee's shift ends. If however, the employee was negligent in taking care of this equipment or fails to report damage or loss before their shift ends, then, the employee will be responsible for the cost of replacing such equipment.

**Section 5.** The Company will annually provide to bargaining unit employees who have completed one hundred twenty (120) days of employment in a full-time status: \$525.00 (gross payment), payable in a check separate from their normal payroll check for the purchase of company approved steel-toed work boots, rain gear and winter-weight "carharts". Employees will be required to request reimbursement in a manner prescribed by the company. There will be a minimum of 365 calendar days between payments.

**Section 6.** The Company will attempt to provide lockers for bargaining unit employees who desire them.

**Section 7.** There will be a Safety Committee consisting of a combination of Union and management personnel.

#### **ARTICLE XXI - ACCIDENT REPORTS**

When an employee is involved in an accident while on duty or on the Company's business, he shall immediately report said accident (by telephone if necessary) to his supervisor or to an official of the Company at the Company's general offices, and such report shall include as full and complete a description as possible of any personal injury, death, or property damage involved in said accident, and all other relevant facts concerning said accident. The employee shall follow all instructions which may be given to him by the Company with respect to said accident and shall complete and sign such written statements and reports concerning said accident as may be required by the Company or by law.

## **ARTICLE XXII - NO-STRIKE AND NO-LOCKOUT CLAUSE**

**Section 1.** It is agreed that during the terms of this Agreement there shall be no strike, boycott, sympathy strike, picketing, handbilling, slowdown, cessation or stoppage of work or any other interruption of or interference with the work or business of the Employer/Company located at 22 Phillip A. Quinn, Memorial Highway, East Brookfield/Spencer, Massachusetts.

It is also agreed that there shall not be any lockout by the Company during the term of this Agreement. A lockout shall not be deemed to include cessation or discontinuance of service by order of court or otherwise than by reason of a labor dispute under this Agreement.

**Section 2.** If any employee or group of employees represented by the Union should violate the intent of this section, the Union shall take immediate affirmative action to prevent such illegal acts and take all necessary steps to the end that work will be properly and orderly resumed. The Union, in such case, will promptly notify the Employer and such employee or employees, in writing, of its disapproval of such violation.

**Section 3.** The Company agrees that it will not attempt to hold the Union financially responsible or institute legal proceedings for damages against the Union for violations of the above which are not authorized, encouraged, supported, sanctioned or condoned by the Union. It is further expressly agreed by the parties hereto that nothing contained in this section hereof or in any other part of this Agreement shall be construed or used to form the basis for a claimed breach of this Agreement for the purpose of supporting any suit for damages against the other party unless and until the party complaining of such breach of contract has notified the other party hereto of the existence of such contention and the latter party shall fail or refuse to take immediate steps to correct the same.

## **ARTICLE XXIII - DISCRIMINATION**

The Company, the Union and all employees covered by this Agreement agree that there shall be no discrimination against any employee or applicant for employment on account of race, creed, color, religion, national origin, sex, disability, workers' compensation claims, age or participation in union activities, it being the intention of the Company, the Union and all employees covered by this Agreement to scrupulously comply with all laws, federal, state and local, and Executive Orders which are applicable to the Company or the Union.

No employee shall be discriminated against by the Company for living up to and observing the provisions of this Agreement, nor will they discriminate against any employee for lawfully engaging in or refraining from engaging in Union activities.

The Company agrees not to discriminate against an individual with respect to hiring, compensation, harassment, terms or conditions of employment because of such individual's race, color, religion, age, sex or national origin, veteran status, or any other prohibited basis, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, age,

sex or national origin, or any other prohibited basis. The words "he" or "his" wherever they appear in this Agreement shall apply to both males and females.

The employer agrees to be bound by all applicable federal, state and local statutes, including but not limited to the Family Medical Leave Act, the Age Discrimination Employment Act, the Americans with Disabilities Act, the Massachusetts State Statutes regarding discrimination and employment, as well as wage and hour enforcement, the Fair Labor Standards Act, Section 1981, Title VII of the Civil Rights Act, as amended, including the 1997 Amendments, ERISA, Polygraph Protection Act, USERRA as well as those set forth in Article VI. This provision is subject to the grievance procedure.

#### **ARTICLE XXIV - FUNERAL LEAVE**

For all regular employees, in the event of a death in an employee's immediate family, the employee will receive time off with pay to attend the funeral or participate in the grieving process if unable to attend the funeral. Immediate family is defined as: Spouse, Domestic Partner, Mother, Father, Sister, Brother, and Children, Step-Mother, Step-Father, Step-Children, Step-Brothers, Step-Sisters, and adopted children, Grandfather, Grandmother, Father-in-law, and Mother-in-law. Employees will be entitled to up to three (3) full day's pay in the event of a death in their immediate family, such employee will be paid the daily rate of ten (10) hours if normally scheduled for a ten (10) hour workday or eight (8) hours if normally scheduled to work an eight (8) hour work day. Such day(s) shall include only the three (3) normal scheduled day(s) of work, if any, between the day of the death and the day of the funeral. Funeral pay will not be given for such three (3) day period on which the employee would not have worked. Every effort will be made by the Company to accommodate employee requests for additional time off in the event of a death in the employee's immediate family, or for time off in the event of a death of a family member not included in the employee's immediate family, as defined above. Such time off will be without pay and shall be in full compliance with the Family Medical Leave Act (FMLA), if the Company is required to comply with such legislation. To be entitled to funeral leave pay, the employee must have satisfactorily completed a sixty (60) calendar day qualification period as a regular full-time employee, and must report to the Company: (a) Name of the deceased person and relationship to the employee; (b) Date and location of funeral and the funeral home in charge of the funeral; (c) Such other information which the Company may request.

#### **ARTICLE XXV - LEAVES OF ABSENCE**

**Section 1.** Should the Company attain the number of employees which requires it to comply with the Family Medical Leave Act (FMLA), all leaves of absence without pay on account of illness, accident or disability, shall be considered and administered by the Company in full compliance with all the terms and conditions set forth by the FMLA, a copy of which shall be made available to each employee to read at each

work site, in the Manager's office. If the Company is not required to comply with the FMLA, the following guidelines will prevail for any and all leaves of absence.

**Section 2.** Upon written application by the Union a bargaining unit employee may be granted a reasonable leave of absence without pay for a period not to exceed thirty (30) days in any calendar year. Such leave of absence may, at the discretion of the Company, be extended for an additional period of thirty (30) days or less upon written application by the Union for such extension made at least five (5) days prior to the expiration of the leave granted. Seniority will continue to accrue during any leave of absence in accordance herewith.

**Section 3.** It shall be cause for discharge if an employee, during any leave of absence granted under this policy, accepts gainful employment or becomes gainfully employed in any capacity by any other person, firm or corporation, or engages in any business for gain or profit on his own account, without first having obtained approval in writing for such other employment or business from the Company.

**Section 4.** All benefits cease on the start of any leave of absence, except as may be required by law.

#### **ARTICLE XXVI - BULLETIN BOARD**

The Company will furnish space on the plant bulletin board for the Union's use for the purpose of posting appropriate notices. Such notices shall be confined to the following:

- a) Notices of Union recreational and social affairs;
- b) Notices of Union appointments and results of Union elections;
- c) Notices of Union meetings; and
- d) Notices with respect to other legitimate Union matters.

The Union and the Company agree that no notice will be posted on any bulletin board which could be construed as being derogatory or offensive to either the Company, the Union, its customers, its employees, or its equipment and services.

#### **ARTICLE XXVII - JURY DUTY**

Employees will receive, a maximum of five (5) days in a calendar year, a full day's pay for working each day of actual jury duty, less his/her jury duty pay. Employees shall produce evidence of the amount of juror's compensation and the dates served in order to establish the amount to be paid by the Company. Time spent on jury duty will not count toward overtime. To be eligible, the Employee must promptly notify the Company when the Employee receives such notice, in order to effectively schedule coverage.

#### **ARTICLE XXVIII - RETIREMENT PLAN**

Employees will be covered by the Railroad Retirement Act, with the Company making all required contribution payments - to include both Tier I & II.

### **ARTICLE XXIX - UNAUTHORIZED ACTS**

The Union shall not be responsible for unauthorized acts of any person merely because he is a member of the Union, and the Employer shall not file any suit against the Union for damages under the Labor-Management Relations Act of 1947, as amended, based on the claim that the Union is responsible for the unauthorized act of any person solely because he is a member of the Union or because he is represented by the Union. The Company shall be privileged to discipline employees responsible for, and engaging in such unauthorized activities, including the right to discharge, which discipline by the Company shall not be subject of grievance, unless such grievance is filed by an authorized officer of the Union with seven (7) days following the effective date of the disciplinary action.

### **ARTICLE XXX - ENTIRE AGREEMENT**

This Agreement sets out the entire understanding between the Company and the Union. Neither party intends to be bound or obligated except to the extent that it has expressly so agreed herein, and this Agreement shall be strictly construed. This Agreement applies only to the collective bargaining unit defined in Article I hereof, and no employee covered by this Agreement shall ever have or be entitled to any rights, benefits or privileges in any other bargaining unit, plant or operation of the Company (now existing or hereafter established) by virtue of this Agreement. None of the benefits, rights or privileges accorded by this Agreement to the Union or to any employee covered by this Agreement, except arbitration of preexisting arbitrable grievances, disputes or claims, shall survive the expiration or termination of this Agreement or the permanent discontinuance of the business operations and bargaining unit covered by this Agreement.

### **ARTICLE XXXI - COLLECTIVE BARGAINING**

The Company and the Union each acknowledge that this Agreement has been reached as the result of collective bargaining in good faith by both parties hereto, and that both parties hereto have had the unlimited opportunity during negotiations to submit and discuss proposals on all subjects which are bargainable matters. While it is the intent and purpose of the parties hereto that each of them fully shall perform all obligations by them to be performed in accordance with the terms of this Agreement, the Union and the Company agree that the Company shall be obligated to impact bargain with the Union, during the term of this Agreement, on any and all matters pertaining to rates of pay. However, the Union agrees that the Company shall not be obligated to bargain collectively with the Union during the term of this Agreement on any matter pertaining to hours of employment, or other conditions of employment, and the Union hereby specifically waives any right which it might otherwise have to request or demand such bargaining, and acknowledges that the Company's obligation during the term of this Agreement shall be limited to the performance and discharge of its obligations under this Agreement.

**ARTICLE XXXII - SAVING CLAUSE**

In the event any provision of this Agreement is held to be in conflict with or violation of any state or federal statute, rule or decision or valid administrative rule or regulation, such statute, rule or decision or valid administrative rule or regulation shall govern and prevail, but all provisions of this Agreement not in conflict therewith shall continue in full force and effect, anything herein apparently to the contrary notwithstanding.

**ARTICLE XXXIII- DURATION OF AGREEMENT**

The effective date of this Agreement is March 21, 2018. This Agreement shall be in full force and effect from March 21, 2018, through Midnight on March 20, 2020, and from year to year thereafter, unless either party hereto shall, at least sixty (60) days prior to March 20, 2020, or the 31<sup>st</sup> day of March in any year thereafter, notify the other party in writing of its intention and desire to terminate this Agreement.

IN TESTIMONY WHEREOF, the Company and the Union by their respective officers and representatives hereunto duly authorized, have signed this Agreement on the day, month and year above first written.

**EAST BROOKFIELD & SPENCER  
RAILROAD**

By George W. Beech  
Title President  
Date 3/26/18

**LOCAL 22, AMALGAMATED  
TRANSIT UNION, AFL-CIO**

By [Signature]  
Title Business Agent  
Date 3-27-18

By Laura R. Pessa  
Title Recording Secretary  
Date 3/27/18

By [Signature]  
Title Steward  
Date 3/27/18