

After Recording, Return to:
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attention: Bradford S. Babbitt, Esq.

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT AND AGREEMENT

This **TEMPORARY ACCESS AND CONSTRUCTION EASEMENT AND AGREEMENT** (this "Easement") is made as of September 25, 2015 (the "Effective Date") by **ROBERT P. NEUBIG**, an individual residing at 10 Signal Hill Road, Wallingford, Connecticut 06492 Connecticut ("Grantor") in favor of **NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK**, a District of Columbia corporation with its principal offices located at 60 Massachusetts Avenue, N.E., Washington, D.C., 20002 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of the real property and improvements located at 480 Valley Service Road, North Haven, Connecticut, as more particularly described in Schedule A attached hereto and made a part hereof and as shown on Assessor's Map No. 85, Lot 1 ("Grantor's Parcel");

WHEREAS, Grantee operates a passenger rail service with railroad tracks traversing North Haven, Connecticut;

WHEREAS, in connection with such passenger rail service, Grantee owns real property bearing railroad tracks that run from New Haven, Connecticut through North Haven, Connecticut, to Springfield, Massachusetts and various locations to the North, known as the Springfield Line;

WHEREAS, in connection with the Springfield Line, Grantee owns real property adjacent to and abutting Grantor's Parcel ("Grantee's Parcel");

WHEREAS, in November and December, 2014, Grantor excavated a significant amount of soil, including but not limited to sand, as well as vegetation, including but not limited to trees, from Grantor's Parcel along the west side of the Springfield line at mile post 9.1, adjacent to Grantor's Parcel, as well as from Grantee's Parcel;

WHEREAS, Grantor's excavation of soil from Grantor's Parcel and from Grantee's Parcel compromised the slopes on Grantor's Parcel and on Grantee's Parcel, thereby undermining the railbed beneath the Springfield Line located on Grantee's Parcel and endangering the security and safety of rail traffic on the Springfield Line;

WHEREAS, Grantee plans to restore the railbed under the Springfield Line located on Grantee's Parcel and the adjacent slopes located on Grantor's Parcel to a condition that will ensure the safety and security of the Springfield Line ("Restoration Work"), all as more particularly shown on that certain plan entitled "Amtrak Springfield Line (MP 9.1) Slope Stabilization Project, Drawings, 100% Submission", dated May 27, 2015, and prepared by Parson Brinckerhoff ("Restoration Plans");

WHEREAS, the Restoration Work will include grading and the creation of slopes on Grantor's Parcel (the "Slopes") for the purpose of providing structural support for the Springfield Line;

WHEREAS, Grantor and Grantee acknowledge that the Restoration Work, including the creation of Slopes, will require the temporary use of, and access to, over and across portions of Grantor's Parcel;

WHEREAS, the long-term stability and structural integrity of the Springfield Line requires that the Slopes be maintained in the same condition as they are at the time the Restoration Work is completed;

WHEREAS, Grantor acknowledges that it will not disturb the Slopes and will take reasonable steps to avoid any activities that could prevent the Slopes from remaining in the same condition as they are at the time the Restoration Work is completed; and

WHEREAS, Grantor and Grantee desire that Grantor should grant to Grantee certain easements hereinafter set forth over the portions of Grantor's Parcel described herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Temporary Access and Construction Easement. Grantor hereby grants, conveys and declares, for the benefit of Grantee (and its contractors, subcontractors and other designees) and Grantee's Parcel, the temporary, exclusive right in, on, over and under a portion of Grantor's Parcel consisting of the area shown as "Temporary Construction Easement" on the plan entitled "Amtrak Springfield Line MP 9.1 Slope Stabilization, Plan", Sheet SP-01 of the Restoration Plans (the "Easement Map"), attached hereto as Schedule B and made a part hereof (the "Temporary Easement Area"), for the purposes of (a) performing the Restoration Work and related site work; (b) grading, excavating and filling to create the Slopes for structural support of the Springfield Line; (c) allowing workers and construction vehicles to cross and recross the Temporary Easement Area; and (d) staging and/or storing equipment and supplies in the Temporary Easement Area, together with the right to pass and repass over Grantor's Parcel as necessary for the purpose of exercising the rights herein granted.
2. Term. The term of this Temporary Access and Construction Easement shall commence on the Effective Date and shall automatically terminate, without need for execution or recording of a release or termination agreement to confirm the date of termination, on the earlier of (a) the date that is six (6) months after Grantee has confirmed completion of the Restoration Work or (b) the date that is two hundred (270) days after the Effective Date.
3. Indemnification.
 - a. Grantee covenants at all times to indemnify and save harmless Grantor from and against any and all claims, actions, damages, liabilities and expenses, including

but not limited to, reasonable attorneys' and other professional fees and expenses, in connection with loss of life, personal injury and/or damage to the Temporary Easement Area arising solely from the use of the Temporary Easement Area by Grantee, its contractors, subcontractors or other designees pursuant to this Easement.

- b. Grantor acknowledges and agrees that Grantee has not created or contributed to the presence of any oil, petroleum, hazardous materials, hazardous substances, hazardous waste, pollutants, asbestos, undetected hazardous subsurface conditions, or other potentially dangerous substances (individually and collectively, "**Hazardous Materials**") at, on, in or under the Temporary Easement Area as of the date hereof. Grantor covenants that it has previously informed and documented for Grantee any and all knowledge of the release or presence, or the past or present use, of Hazardous Materials at, on, in or under the Temporary Easement Area.

Except to the extent proximately caused or exacerbated by Grantee, Grantor shall defend, reimburse, indemnify and hold harmless Grantee, its subcontractors, consultants, agents, officers, directors and employees from and against any and all claims for damages and all costs, liability or expense, including reasonable attorneys' fees, and court and arbitration costs, sustained or alleged by any person or entity based upon or arising in connection with any Hazardous Materials at, on, in or under the Temporary Easement Area, including but not limited to:

- i. A release of or the presence of Hazardous Materials;
 - ii. Bodily injury including death and property damage (real or personal) or any other claim of damage, expense or loss, caused by the release, removal, remediation, assessment, evaluation or investigation of Hazardous Materials;
 - iii. Removal, assessment, evaluation or investigation of, or remedial action taken because of, the release or suspected release or presence of Hazardous Materials;
 - iv. Any federal, state, local or other governmental fines or penalties related to Hazardous Materials;
 - v. Failure of Grantor to disclose to Grantee the known use or presence of any Hazardous Materials at, on, in or under the Temporary Easement Area; or
 - vi. The detection, abatement, removal, or replacement of products, materials, or processes containing asbestos.
4. **Insurance.** At all times during the term hereof, the Grantee shall procure, at its sole cost and expense, workers' compensation (or in the alternative, will otherwise comply with the requirements of the Federal Employers' Liability Act), public liability and property damage insurance against all claims for personal injury, death or property damage

resulting from or in connection with Grantee's use of Grantor's Parcel hereunder. Public liability insurance shall name Grantor as an additional insured and shall afford protection in the following amounts:

- a. Not less than Two Million Dollars (\$2,000,000.00) for bodily injury or death to a single person; and
- b. Not less than Four Million Dollars (\$4,000,000.00) for injury or death as a result of any one (1) occurrence.

Notwithstanding the foregoing, Amtrak reserves the right to self-insure for the coverage listed in this paragraph.

- 5. Default. A violation of the terms herein contained constitutes an event of default ("Event of Default") under this Easement. If such Event of Default shall continue for more than fifteen (15) days after the non-offending party's written notice of such event or failure is received by the offending party, the non-offending party shall have the right to injunctive relief as well as any other relief available at law or equity, provided, however, it is expressly agreed that no Event of Default or breach of this Easement shall entitle any party to cancel, rescind or otherwise terminate or modify this Easement.
- 6. Notices. All notices, demands, consents, approvals and other communications (each, a "Notice") which are required or desired to be given by either party to the other under this Easement shall be in writing and shall be (a) hand delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or (c) sent by reputable overnight courier service, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by Notice to the other. Notices shall be deemed given when delivered. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. Notice addresses for the parties are as follows:

To Grantor: Robert P. Neubig
 10 Signal Hill Road
 Wallingford, Connecticut 06492

With a copy to: [_____]
 [_____]
 [_____]

To Grantee: Saul V. Babcock
 Amtrak Engineering Contracts Manager
 30th Street Station, 4th Floor South, Box 56
 Philadelphia, Pennsylvania 19104

With a copy to: Robinson & Cole LLP
 280 Trumbull Street

Hartford, Connecticut 06103
Attention: Bradford S. Babbitt, Esq.

Notice may be given by counsel for the parties, and such Notice shall be deemed given by Grantor or Grantee, as the case may be, for all purposes under this Easement.

7. Miscellaneous.

- a. Connecticut Law. This Easement shall be construed in accordance with, and governed by, the laws of the State of Connecticut without regard to principles of conflicts of laws.
- b. Entire Agreement; Recitals, Definitions and Exhibits. This Easement, together with all Exhibits attached hereto, contains and embodies the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties which are not contained and embodied in this Easement (including said Exhibits) shall be of any force or effect. All Exhibits attached to and recitals contained in this Easement are hereby incorporated herein and shall be deemed to be a portion of the enforceable provisions hereof as if restated within the body of this Easement.
- c. Severability. In the event that any term or provision of this Easement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Easement, shall not affect the validity of the remainder of this Easement, and all of the other provisions of this Easement, including such illegal, invalid or unenforceable provision to the fullest extent not illegal, invalid or unenforceable, will continue in full force and effect. It is understood and agreed that each such provision shall be valid and enforceable to the fullest extent allowed by, and be construed wherever possible as being consistent with, applicable law.
- d. No Construction Covenant. Notwithstanding anything to the contrary contained herein, no provision of this Easement shall be construed to contain a covenant, express or implied, by Grantee to complete the Restoration Work. The foregoing shall not be deemed to modify any existing agreements between the parties.
- e. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- f. Amendments. This Easement may not be amended, modified, supplemented, changed or terminated except by the written and recorded agreement of the parties.
- g. Costs of Preparation and Recordation. Each party shall bear its own legal expenses in the review and approval of this Easement (including any modifications thereof or other documents required to be prepared in connection

herewith). Grantor shall pay all transfer or recording taxes or charges, if any, payable at the time of recordation of this Easement (and any other instruments required to be recorded, now or in the future) with respect hereto.

- h. Authority. Grantor represents and warrants that it has the right, power and authority to execute and deliver this Easement, and this Easement has been duly authorized, executed and delivered by it and is a valid and binding obligation of it enforceable against it in accordance with the terms hereof.
- i. No Waiver. Any waiver or failure to enforce any provision of this Easement in a particular situation shall not be a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation or of any other provision of this Easement. The failure of any party to enforce any provision herein contained shall in no event be a waiver of the right to do so thereafter nor of the right to enforce any other provision.
- j. Successors and Assigns. This Easement shall be binding upon and inure to the benefit of and be enforceable by the successors (including successors in title) and assigns of the parties hereto. The easement rights granted herein also shall benefit the agents, employees, contractors, subcontractors, designees, licensees and invitees of Grantee.

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SIGNATURE PAGE
FOR
TEMPORARY ACCESS AND CONSTRUCTION EASEMENT AND AGREEMENT
BETWEEN
ROBERT P. NEUBIG
AND
NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK

IN WITNESS WHEREOF, the parties have executed this Temporary Access and Construction Easement and Agreement, intending to be legally bound hereby as of the Effective Date.

GRANTOR:

Signed and Delivered
In the Presence of:

Robert P. Neubig, Individually

Print Name: _____

Print Name: _____

STATE OF CONNECTICUT

ss:.

COUNTY OF _____

On this the ____ day of _____ 2015, before me, the undersigned officer, personally appeared Robert P. Neubig, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal.

Name: _____
Commissioner of the Superior Court
Notary Public
My Commission Expires: _____

[Signatures continue on following page.]

SIGNATURE PAGE
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IN WITNESS WHEREOF, the parties have executed this Temporary Access and Construction Easement and Agreement, intending to be legally bound hereby as of the Effective Date.

Signed and Delivered
In the Presence of:

GRANTEE:

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,
a District of Columbia corporation

Print Name: _____

By: _____
Name: _____
Title: _____
Hereunto duly authorized

Print Name: _____

STATE OF _____

ss.: _____

COUNTY OF _____

On this the ____ day of _____ 2015, before me, the undersigned officer, personally appeared _____ who acknowledged himself/herself to be the _____ of National Railroad Passenger Corporation d/b/a Amtrak, a District of Columbia corporation, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my the official seal the day and year first above written.

Printed Name: _____
Notary Public Residing at _____
My Commission Expires: _____

Schedule A

Legal Description of Grantor's Parcel

ALL THAT CERTAIN piece or parcel of land situated in the Town of North Haven, County of New Haven and State of Connecticut known as 480 Valley Service Road, North Haven Connecticut and more particularly designated as, "Parcel B" on a certain map entitled "Boundary Survey, Properties of American Refractories & Crucible Corporation 345 Washington Avenue, Route 5, North Haven, Conn. Scale 1'=60' dated April 25, 1990, rev'd April 27, 1990 prepared by Conklin & Soroka, Inc." on file or to be filed in the land records of the Town of North Haven (Map J-247-C, to which reference may be had).

The said property is remaining property of two deeds of conveyance, specifically a Warranty Deed dated August 9, 1957 and recorded in Volume 157 at Page 93 of the North Haven Land Records and a deed dated June 26, 1962 and recorded in Volume 192 at Page 374 of the said land records.

EXCEPTING THEREFROM those pieces or parcels of land conveyed by a Warranty Deed dated September 21, 1962 and recorded in Volume 192 at Page 561 of the said land records; and conveyed by Deed dated September 13, 1971 and recorded in Volume 261 at Page 247 of the said land records.

Further reference may be had to a certain map entitled "Property Survey Land of Morganite Crucible Inc. 480 Valley Service Road North Haven, Connecticut;', which map is dated October 29, 2009 and prepared by Conklin & Soroka, Inc., Land Surveyors, on file or to be filed in the land records of the Town of North Haven.

Schedule B
Easement Map