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HONORABLE VERNON A. WILLIAMS
SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001

Re: Docket No. AB-167 (Sub-No. 1094)A

Chelsea Property Owners - Abandonment - Portion of the
Consolidated Rail Corporation's West 30TH Street Secondary Track
in New York, NY

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Dear Secretary Williams;

Enclosed for filing in the above-captioned proceeding is an original and ten copies of the "Brief of the Forty Plus Foundation / Manhattan Central Railway Systems LLC in Response to the July 28, 2003 Order of the Board." It would be appreciated if your office would please date-stamp the enclosed extra copy of this brief and return it to my attention in the self addressed, stamped envelope provided. In addition we are enclosing a 3.5 inch diskette [in Word format] with this document.

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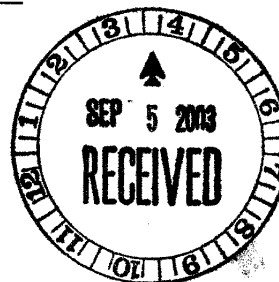
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cc: All Parties of Record



September 5, 2003

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Sincerely yours,

Tomislav R. Neuman,
Executive Director

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BEFORE THE

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Docket No. AB 167 (Sub-No. 1094)A

**CHELSEA PROPERTY OWNERS - ABANDONMENT - PORTION OF THE CONSOLIDATED RAIL
CORPORATION'S WEST 30TH STREET SECONDARY
TRACK IN NEW YORK, NEW YORK**

**BRIEF OF THE FORTY PLUS FOUNDATION & MANHATTAN CENTRAL RAILWAY SYSTEMS,
LLC ON THE PROSPECT OF REACTIVATING THE "HIGHLINE" AS A CLASS III SHORTLINE IN
RESPONSE TO ORDER DATED JULY 28, 2003**

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**FORTY PLUS FOUNDATION &
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Dated: September 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD



Docket No. AB 167 (Sub-No. 1094)A

**CHELSEA PROPERTY OWNERS – ABANDONMENT – PORTION OF THE CONSOLIDATED RAIL
CORPORATION’S WEST 30TH STREET SECONDARY
TRACK IN NEW YORK, NEW YORK**

**BRIEF OF THE FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC
IN RESPONSE TO ORDER DATED JULY 28, 2003**

By order served July 29, 2003, the Board directed the parties to submit briefs on the matter of whether the Board may issue a certificate of interim trail use (“CITU”) under 40 CFR 1132.29 in an adverse abandonment proceeding. **The Forty Plus Foundation/Manhattan Central Railway Systems, LLC (“40+”¹)** hereby submits its brief in response. 40+ respectfully submits that a certificate of interim trail use is extraordinarily premature in this case.

Presently, the prospect to reactivate the portion of the Consolidated Rail Corporation’s (“ConRail”) West 30th Street Secondary Track (“**HIGHLINE**”) ² in New York, NY is a very real option that formerly 40+ management had initiated negotiations with a very receptive ConRail management several years prior to the eventual Norfolk Southern and CSX’s respective acquisition of ConRail’s assets.

¹ “**FORTY PLUS**” established in NYC in 1939, is a **501(c)(3)** and remains America’s oldest and most effective not for profit out-placement employment support organization . **40+** has diligently expanded its successful NYC program into 21 major US Cities over the past 64+ years designed to provide gainful employment opportunities and help eliminate age, gender and race related discrimination. 40+ efforts have resulted in laudable recognition from numerous US Presidents, State Governors, local officials and community organizations that have acknowledged 40+’s contributions within their populations over the past 6+ decades resulting in the successfully placement of over 100,000 members -- earning 40+ the enviable distinction of placing 100% of its members.

² The West 30th Street Secondary Track is part of the former New York Central (later Penn Central) freight line presently extending from the DV Tower at Spuyten Duyvil (milepost 0.0), Bronx, NY, to milepost 10.47 at the northern most boundary of *Gansevoort Street*, down the west side of Manhattan, NY. The line was acquired by Conrail in 1976 as part of the conveyance of the properties of the bankrupt railroads in the Northeast and Midwest under the Regional Rail Reorganization Act, 45 U.S.C. 701 et seq. (3R Act).

A HIGHLINE REACTIVATION HISTORY OF THE FORTY PLUS FOUNDATION & MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

BACKGROUND: On or about January, 1999 -- following extensive original negotiations (over the previous several years) with CONRAIL management specifically to revitalize rail freight service(s) on the New York Central Lines LLC ("NYCLLC") *HIGHLINE* by means of a state-of-the-art "intermodal" rail freight technology -- designed to enable 40+ Manhattan Central Railway Systems, LLC ³ proposal as a **CLASS III, SHORTLINE RAILROAD** to revive and offer profitable rail freight and mass transit services to the public at competitive pricing. 40+ management's ongoing discussions with CONRAIL were understandably curtailed in 1997 & '98 due to concurrent and unrelated negotiations resulting in the eventual acquisition of CONRAIL by both CSX and NORFOLK SOUTHERN RAILROADS [NSRR].

In anticipation of the probable Congressional approval of CSX and NSRR's pending acquisition, CONRAIL management conscientiously brokered the introduction of 40+ representatives, as credible candidates, for the foreseeable acquisition of the *HIGHLINE* property to CSX management on or about January 1999. [As the Board is aware, CSX eventually "inherited" the *Highline* in June, 1999 when it took over [its] share of CONRAIL properties along with NORFOLK SOUTHERN in the division of assets, the Manhattan viaduct was allocated to CSX, and its disposition must be approved by CSX railroad]. Upon consummating the ConRail purchase, CSX management subsequently informed 40+ representatives that due to the magnitude of the CONRAIL acquisition, CSX management would require an indeterminate period of time to conduct their internal due diligence as to which potential properties within the recent CONRAIL acquisition may be candidates for liquidation. CSX subsequently commissioned a study by the internationally renowned New York based, REGIONAL PLAN ASSOCIATION [RPA] to research and publish their findings -- "*WHAT TO DO WITH THE HIGH LINE?*"⁴. This report proved somewhat inconclusive, with the exception that it did determine that a reactivation of rail service would be the best usage for the future of the line.

³ The Forty Plus Foundation, developed a for-profit company titled the "MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC" that has subsequently entered into several strategic alliances and co-ventures with partners possessing professional expertise to design, construct, manage and maintain the Highline property as a profitable Class III Shortline Railroad

⁴ A number of independent studies have been conducted since 1999 in reference to how best the community could benefit from the Highline's existence or removal. Studies conducted to date are: "*What to do with the High Line?*" - REGIONAL PLAN ASSOCIATION [RPA] JUNE 21, 1999; "*The Future of the High Line?*"-- Public Space Makers forum, Port Authority WTC, June 11, 2001; "*A Vision for the West Side Rail Yards?*"; Manhattan Borough President, Nov, 2001; "*Far West Midtown - A Framework for Development?*"-- NYC Dept. of City Planning, Dec. 2001. All studies unanimously illustrate the public's fervent support to preserve the Highline -- plus each study universally agreed that the reactivation of rail service would be a preferable resolution, but in the absence of reactivation the findings were inconclusive.

In no small measure, the terrorist attacks on Sept. 11th, played a major role in the disruption of our ongoing negotiations with CSX management -- who eventually made it clear that it [CSX] concluded that a reactivation of the Highline would not be sufficiently profitable within their established corporate model for Class I economic viability, furthermore CSX confirmed that it now had no interest in retaining the Highline. Subsequently after several meetings and correspondence, CSX management initially intrigued by 40+'s reactivation proposal and the substantial benefits generated for CSX stockholders, accordingly informed 40+ management that under the pre-existing circumstances of the "*novel legal issues*" beleaguering the Highline, CSX would now take "*no position*" in reference to the future of the Highline, other than "*to encourage the Board to decide the issue of the Highline's future as soon as reasonably possible.*"

CLASS III SHORTLINE: Both CSX and Conrail prior to the acquisition have acknowledged that a 40+ "Class III, Short Line Rail carrier" proposal could be implemented as the only offering (since rail service ended in 1980) that would realistically preserve rail freight service on the Highline [National Historic Preservation Act (16 U.S.C. §470 *et seq.*)] and rail employment on this line that would otherwise be abandoned, plus the 40+ proposal fully complies with the original rail freight designation of the Highline – which also meets the demand for public convenience and necessity. The 40+ proposal is in compliance with OSHA standards concerning environmental impacts on safety, transportation systems, land use, energy, air quality, noise, vibration, biological resources, water resources, socio-economic effects, etc. directly related to any physical changes in the environment, environmental justice and historic/cultural resources [Clean Air and Water Acts (42 U.S.C. §7401-7642 and 33 U.S.C. §1344)].

The acquisition of the Highline by 40+ will provide unprecedented customer and community "friendly" on-demand rail freight and passenger transit services by eliminating traditional trucking/surface transportation and rail freight environmental hazards and pollutants (including vibration & noise) [pertinent hazardous substances laws (42 U.S.C. §6901-6933 and §9601-9675)]. In addition the connection to the National rail system will continue to be maintained and actively utilized.

The technology to be implemented within 40+ proposal has been custom designed and stringently tested ⁵ to address local conditions unique to the Chelsea/Clinton West Manhattan environmental mitigation, addressing all present safety concerns in accordance with STB environmental rules (49CFR §1500) and the President's Council on Environmental Quality regulations (40 CFR *et seq.*), and other Federal environmental requirements. In addition

to the obvious economic feasibility and viability for the private sector to economically support the project and reinvest 100% of 40+ profits back into the community, responding to both President Bush's mandate for the private sector to help in creating jobs and our own Governor and Mayor who endorse the Presidents initiative. The 40+ proposal like no other will continually create much needed employment and employment opportunities in this faltering New York City economy ⁶ -- this proposal is designed to support and expand the mission of 40+s' legendary and internationally renowned charitable service institution (www.fortyplus.org). Since the ConRail acquisition in 1999, CSX as owner has reportedly spent in excess of \$1 million to ensure that the structure poses no public safety hazards in response to inherited violations and has maintained that the structure is sound.

B 40+ CLASS III SHORTLINE DEVELOPMENT; TEAM BACKGROUND

There are more than 500 North American short line and regional railroads in the US today, which are an important and growing component of the railroad industry. Today, they operate and maintain over 29 percent of the American railroad industry's route mileage, 50,000 miles of track is owned, maintained and operated by non-Class I railroads, and account for 9 percent of the rail industry's freight revenue and 11 percent of the railroad employment. The short line and regional railroads have a long proud history of being viable by being flexible and achieving efficiencies wherever possible and service-focused innovators in the railroad business. In many cases they have found a way to succeed where others have failed, and have saved thousands of miles of rail lines that were near abandonment.

⁵ 40+/Manhattan Central Railway Systems LLC has entered into a Joint venture agreement with "**Robotic Railway Systems**" ("RRS") who had begun testing designs and equipment for intermodal freight usage on the Highline, over the past several years, initially in both their parent companies test lab in Letonia, Ohio and manufacturing facilities in Clearwater, Fla. As of October 2002 a fully functioning \$6.2 Million beta test site has been operational in Hoboken, NJ. The automated freight handling system is now open to the public 24/7 and has performed over 60,000+ handling transactions over the past 10 month.. To underscore the designs reliability, this user friendly "self service" on demand system's advanced design seamlessly maintained uninterrupted full operational capabilities during the recent Aug. 14th catastrophic blackout that disrupted electrical power in 8 states, (including New York City & Hoboken, NJ) and Canada.

⁶ New York According to a new report issued by the **Fiscal Policy Institute**, New York's economy has suffered 50% greater losses than other states' --since the downturn that began two years ago. The Empire State has lost 265,000 jobs or 3.1 percent of its jobs since September 2001, compared to 2% nationally, a job loss rate more than fifty percent higher than the national average. New York City has been hit even harder, with a 6.4% job loss or 240,000 jobs have been lost since December 2000 -- triple the national average, many as a result of the Sept. 11th terrorist attacks. Layoffs are still running high, the report says, even though some studies suggest the recession officially ended two years ago.

Shortlines and regionals represent the “growth segment” of the rail industry. The number of small railroads has more than doubled since the Staggers Rail Act of 1980, from about 220 companies in 1980 to more than 500 today. A change in the law in 1980 revised the line sale mechanism and abandonment provisions. The effect of these changes has been to encourage the sale of lines that were identified as surplus or slated for abandonment by their Class I owner.

This approach works remarkably well and has helped to transform the rail industry. Entrepreneurs bought hundreds of light density lines across the country. With business plans that typically include more attention to customers, innovative marketing, state of the art technology, flexible and “user friendly” service, lower operating costs and a “can do” attitude, these new operators have been able to turn around the majority of these lines where their previous owners just gave up.

At the same time, the railroad industry has undergone a transformation and restructuring. The light density gathering network feeds traffic to the high volume trunk line core system. Today, the restructured U.S. rail industry is the envy of the world, and widely studied as a model of restructuring for rail efficiency.

The operators of the new, small railroads are able to profitably provide specialized community-oriented service not practical for the larger railroads. The communities served by the railroads keep rail services that help their businesses stay competitive in the world market. A small local company performs the service. It has a stake in the community, provides local jobs, appreciates the business and strives to satisfy the precise transportation needs of its shippers.

The major railroad systems are streamlining their operations and focusing on what they do best – long-haul, high volume, high speed service. At the same time, they continue to participate in moving most of the freight that originates or terminates on small railroads. For thousands of shippers in thousands of towns across the nation, small railroads provide the initial, cost-efficient connection to markets all over the globe. Small railroads can be viewed as the “retail” portion of the railroad industry. They pick up and deliver rail traffic for a variety of shippers.

Small railroads are also involved in intermodal service and provide transfer facilities in many areas. Many short lines are diversifying into warehousing, storage and other value-added services in order to meet shipper needs. As the rail network nears capacity in some areas of the country, small railroads can help bypass congested areas to

keep freight moving. The 50,000 miles of shortline and regional railroad infrastructure in the U.S. is an underutilized asset that offers opportunities for future growth.

40+ TEAM MEMBERS: Pursuant to the Agreement of Sale, 40+ will commit to a strategic alliance agreement with **NEW YORK CROSS HARBOR RAILROAD, INC. ("NYCH")** ⁷ New York City's "other" Class III Shortline Railroad Company, which conducts the business of operating the last remaining "float bridge" rail operations in the NY/NJ region, which is part of the national railroad system and holds a Surface Transportation Board certificate of convenience and necessity for the movement of rail freight by rail barge across New York Harbor management is uniquely qualified to participate in a managerial co-operative with 40+/Manhattan Central Railway Systems LLC.

NYCH management is an acknowledged industry authority and possesses the extraordinary knowledge and awareness of both the NYC market, the Highline and all related intermodal rail connections -- this *symbiotic* relationship is an superlative collaboration of management, marketing, community involvement and technology. NYCH as a local enterprise, is sensitive to the community needs and intends to provide 40+ with support and guidance to both grow and prosper, as it provides New York with an expanded vital rail freight link to the rest of the North American rail system maintaining and improving the Highline's connection to the National Rail System and using a small fleet of carfloats that efficiently eliminates the need to run over 280 extra miles up the Hudson River. In light of present day concerns for security and the environment NYCH & MCRS are offering shippers one more competitive shipping amenity.

NYCH currently has two locations: Greenville, NJ where interchange with CSX and NS takes place and Bush Terminal, Brooklyn where interchange with NYA and the South Brooklyn Railway (SBK) takes place. This railroad's business is primarily moving and interchanging freight cars from New Jersey via carfloats.

⁷ York Cross Harbor Railroad ("NYCH"), originally formed in 1901 as the New York Dock Railway Co., it is New York City's oldest continually operating Class III Shortline Railroad. NYCH management is one of the foremost authorities on Shortlines in the NYC market. The Company operates from its Greenville Terminal Yard in Jersey City, New Jersey, and Bush Terminal Yard in Brooklyn, New York. On the West Side of New York Harbor, the Company exchanges (interchanges) rail cars with the Canadian Pacific ("CP"), CSX Transportation ("CSX") and Norfolk Southern ("NS") railroads at Conrail Shared Assets Operation's ("CSAO") Oak Island interchange yard, New Jersey. On the East Side of New York Harbor, the Company interchanges rail cars with CP and the New York and Atlantic Railroad ("NYA") at Bayridge Junction interchange yard, Brooklyn, NY. The NYCH is the result of a consolidation of two Brooklyn waterfront railways. The New York Dock Railways and the Brooklyn Eastern District Terminal (BEDT) merged in 1983 to create the NYCH.

Although there were once dozens of carfloat bridges along the Brooklyn coast, today only one remains in service. The NYCH also moves a good percentage of the nation's cocoa by floating it from the Brooklyn shipping ports to the mainland. NYCH also delivers carfloats to various docks around the Brooklyn port area.

C STB REMEDIES TO RESOLVE THE FUTURE PROSPECTS OF THE HIGHLINE

The Board is unquestionably aware of the unprecedented *rabid* community interest in the future of the Highline -- interest that continues to grow in geometric proportion since the unfortunate removal in 1990 of the southern tip of the line below Gansevoort St. 40+ as an active participating member within our Manhattan community was encouraged to utilize our vast network of top executive contacts and become involved early in 1986 when its members and community residents began voicing their concerns as to "how the Highline might be saved". Today the City and the Board have experienced a passionate community based grass roots display from a stricken city, grasping at virtually any potential premise to preserve this vital rail link. It appears that the near lethal combination of ConRail's historic inability to convince the ICC of the future importance of this line within the community and the ICC's failure to recognize the Highline's importance to the City has brought us to this point.

As Board Chairman Nober succinctly stated during the STB's recent July 24th public hearing in NYC, "***the Surface Transportation Board's purpose is to preserve rail lines and protect railroad companies***" The Chairman then graciously invited concerned parties to assist the Board to arrive at a reasonable resolution to this long standing dispute since the Board has been provided with broad exemption powers by Congress and maintains the ultimate discretion to modify, change or disallow, both STB and ICC rulings to accommodate present community, environmental, national security and market conditions. **Congress clearly contemplated that the STB would use these general exemption powers broadly.** The legislative history reflects Congress' desire that the Board actively exempt railroads from unnecessary regulation, in addition, Congress also provided the Board with authority to revoke exemptions that it has issued if and when the Board finds that its regulation is indeed necessary. The STB and the ICC before it have both used broad exemption authority widely.

The facts of this case illustrate that the conditions regulating the adverse abandonment issued by the ICC over 10 years ago have not and can not be complied with by the beneficiaries of the ICC decision, namely, the Chelsea Property Owners ("CPO"). Regardless of the *raison d'être* offered for inaction on the part of CPO, The Board should take notice that in 1990 the southern "tip" of the *Highline* at **milepost 11.2 (Bank Street)** to

approximately **milepost 10.47** at the northern boundary of *Gansevoort Street* was sold by **CONRAIL**, after an unopposed abandonment application was approved by the then presiding authority [the **ICC** ¹⁰] to the **ROCKROSE DEVELOPMENT COMPANY [RDC]** who subsequently razed this **0.55-mile** segment later that year. In light of this historic fact, it is somewhat disingenuous on the part of **CPO** [who coincidentally joined **RDC's 1984** challenge to *West Side Rail Line Development Foundation* ("*West Side*") effort to acquire the Highline⁸], after prevailing in its [CPO] uphill struggle to secure the abandonment decision from the ICC, to then begin a calculatingly defiant reign of the ICC ruling and deliberately disinclined to exercise their right to raze the remaining segment of the Highline within any reasonable time frame, resulting in unnecessary added expense, confusion and the current indeterminable impasse preventing other interested parties from plausible involvement to develop the line. Interestingly, during the same early period, **RDC** in its efforts, agreed to all ICC terms & conditions and accepted 100% of the removal responsibility without delay including no expectations of any economic contribution(s) from ConRail.

The fact that CPO has been both unwilling and unable to exercise the 1992 ICC Decision to raze this structure, is compounded further when the single largest property owner affected within CPO, namely the City of New York, has now reconsidered its involvement and has withdrawn it's original support and resources to demolish the structure. Legal counsel for the City ⁹ has recently stated to the Board that:

-- the current proposal needed to satisfy the surety conditions included in the ICC's 1992 Decision in this proceeding cannot occur without City issued permits and involves a transfer of property interests and cash contributions by CSX to a tax-exempt City entity, with attendant tax benefits. Without the City's cooperation, it is certain that those benefits will not be realized; therefore it is reasonable that CSX will not want to undertake the demolition. Moreover, any arrangement that does not include the City would also remove any contribution the City would provide towards demolition costs, and would severely undermine the railroads and CPO's willingness and ability to implement an abandonment and demolition.

It is regrettable in this case that both the affected railroads and the public at large appear to have been mollified into a false sense of belief that the Highline may not be reactivated or profitable? Considering that we are discussing not only America's most lucrative commercial market, but also the only dedicated freight line specifically designed to service Manhattan.

⁸ Docket No. AB-167 (Sub-No. 493N) Conrail Abandonment of a Portion of the West 30th Street Secondary Track in NY, NY IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE (Decided: Jan. 7, 1987)

⁹ NY City correspondence; legal counsel: McLeod, Watkinson & Miller, Docket No. AB 167 (Sub-No. 1094) A Filing ID 208559, July 30, 2003.

Simple logic would dictate that knowing the sheer volume of goods shipped in and out of NYC on a daily basis, it should be outrageous for one to accept that sufficient profitability could not be generated within this market. Countless rail lines across the country have made the transition from being money losers and abandonment candidates for their previous Class I owners, to being viable small business for their new Class III owners. In the process, many thousands of miles of rail lines have been preserved and rail jobs have been saved.

Traffic kept on the rails benefits the entire rail system, including the Class I's which almost always participate in moving the freight the small railroads originate or terminate. This phenomenon, which has seen **Class III's** proliferate and prosper over the past two decades, has yielded multiple winners – small railroads, large railroads, shippers, local communities and rail employees have all reaped the benefits.

The false belief that the Highline can no longer be utilized for rail service or profitability, has been perpetuated in part due to the incessant legal wrangling that has plagued this valuable resource even prior to ConRail's valiant efforts to convince the then presiding authority ¹⁰ -- the **ICC**, that the Highline did in fact have an economically viable future, when the STB's predecessor regrettably approved the conditional abandonment of the Highline in 1990 (subsequently reaffirmed on appeal on September 16, 1992). The public, the adjacent property owners and prospective commercial interests have been further placated into believing that the Highline's demise was imminent simply due to the constant legal challenges that have added to the alienation of genuine commercial interests, plus the passage of time with essentially no apparent efforts to resurrect any commercial viability designed to reactivate the line.

RECOMMENDED SOLUTIONS: There are several methods that the Board has at its disposal that can be implemented in order to accomplish its principal mission to preserve rail service and affect a seamless transfer of ownership for the purpose of preserving rail service on the Highline. The Board normally operates on a case-by-case basis, depending on the circumstances surrounding the particular case.

In light of the seemingly obvious, that the 1992 ICC ruling is essentially moot at this point since the "winner" [CPO] of that ruling have clearly acknowledged that CPO can not [and will not] consummate the ruling

¹⁰ **ICC** [which ceased to exist on Dec. 31, 1995 -- terminated by Congress (49 U.S.C. §1001 *et seq.*) and succeeded by the **STB** established on January 1, 1996]

(or any demolition of the Highline) due to cost(s) the public climate demanding preservation plus the waning involvement of it's own membership underscored by the New York City Council's shocking recent announcement to commit an unprecedented **\$15.75 Million for the planning, design and construction costs** related to the preservation of the Highline, including the present administration retraction of the previous administrations "11th hour" authorization for demolition.

Utilizing the broad discretionary powers that Congress has conferred on the Board to facilitate wise and measured resolutions for the preservation of rail service in seemingly un-resolvable circumstances, the most obvious solution to the current impasse of this case -- that would result in a logical and lasting resolution and the ultimate "win-win-win" for all affected parties, since ConRail/CSX/CSXT has clearly declared to the Board, that it "*take[s] no position, other than to encourage the Board to decide the issues as soon as reasonably possible*" thus abrogating their position in this matter and strenuously insisted that the Board make the final decision.

OFFER OF FINANCIAL ASSISTANCE (OFA): With ConRail/CSX/CSXT's collective adherence offered to the Board, plus the Boards undeniable ability to implement it's broad discretion; for example purging chronologically sensitive provisions, there is now no impediment at this juncture to implement the **OFFER OF FINANCIAL ASSISTANCE (OFA)** procedures, which provide for any financially responsible party seeking to continue service on a line approved for abandonment (or exempted) may compel the railroad to sell or conduct subsidized operations over the line. This statute provides the Board with the discretion to find that the offeror is financially responsible and the offer is reasonable, it will give the parties an opportunity to negotiate. If negotiations are successful and the parties voluntarily enter into a purchase (or subsidy) agreement which will result in continued rail service, the Board is required to approve the transaction and dismiss the abandonment application. This would be the recommended course of action under these circumstances.

VOLUNTARY SALES AND OPERATIONS: In addition, other options may be Voluntary Sales and Operations. Parties interested in preserving rail service need not wait until abandonment is approved to negotiate a voluntary purchase of a line proposed for abandonment or for that matter any active rail line. To make purchases of lines that might otherwise be abandoned more attractive to potential buyers, the STB has exempted these purchases from regulation. There are also statutory standards for voluntary acquisitions found in 49 U.S.C. 10901, 10902, and

11323. Section 10901 applies only when (1) a non-carrier acquires a rail line, and (2) an existing carrier acquires an inactive line (a line that is already lawfully abandoned).

STAGGERS ACT : As the Board is aware, following the Staggers Act and deregulation of the railroads, large Class 1 carriers began to sell or abandon unprofitable or marginally profitable lines. Requests to acquire and continue service over these lines were usually unopposed and were almost always approved because they were in the public interest. This led the ICC to promulgate broad class exemption procedures in 1986 ¹¹.

NON-CARRIER CLASS III ACQUISITIONS: The current rules are found in 49 CFR 1150 Subpart D. Most non-carrier acquisitions and operations are now exempt from formal regulation under Section 10901, as are all carrier acquisitions of abandoned lines. When a Class II or **Class III carrier** acquires a line, it is governed by 49 U.S.C. 10902.

CLASS EXEMPTIONS: have also been established for seven kinds of transactions that would otherwise require approval under 49 U.S.C. 11323 -- the statute applicable to carrier acquisitions of active rail lines. The most important for our discussion here are (1) acquisition of a line which has already been approved for abandonment and would not constitute a major market extension, (2) acquisition of nonconnecting lines, and (3) acquisition of trackage rights. (The last two categories do have some qualifications not relevant here.) See 49 CFR 1180.2(d).

INDIVIDUAL EXEMPTION: Where no class exemption applies, an individual exemption may be sought for almost any small rail acquisition or operation, under the Board's general exemption authority at

49 U.S.C. 10502. The statute itself exempts some types of rail operations and transactions from STB regulation. The acquisition or use of spur, industrial, team, switching or side tracks is exempt under 49 U.S.C. 10906.

D CLASS III SHORTLINE - BENEFITS TO CONRAIL/CSX/CSXT'S

The benefits generated for the liquidator(s) or seller(s) of the rail line should be obvious in this case. The priority that CSX management has continually stressed is to have the company relieved of any further expense and potential liability that might be associated with eventual liquidation of the West 30th Street Secondary Track in NY, NY ["Highline"].

¹¹ The STB has modified these rules by decision served November 18, 1996 at Ex parte 529, Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers under 49 U.S.C. 10902

Revisiting 40+'s initial introduction brokered by ConRail and subsequent negotiations with CSX – [CSX] management became very intrigued by 40+'s extraordinary benefits that CSX would derive if it could “transfer” the property interests and cash contributions by CSX to a tax-exempt entity, and realize the attendant tax benefits. Since the Highline has been acknowledged as having no net liquidation value, essentially a negative cash valuation, the premise of generating an astounding tax benefit based on the estimated \$1 Billion replacement valuation (estimated by ConRail officials) would be an incomparable windfall for CSX stockholders. Since 40+ is in fact a qualifying 501(c)(3) tax-exempt entity, the prospect of cooperating for the eventual acquisition of the Highline would in fact satisfy a very attractive financial benefit not generally available to CSX. In addition, to reliving itself of the daily maintenance, legal expenses, taxes, insurance and escalating bad will growing throughout the community, 40+'s offering, in and of itself should more than satisfy CSX's objectives with this property.

The added benefits of facilitating the acquisition of the Highline by 40+, continues where no other proposal can conceivably match. Since 40+ is the only Offeror interested, capable and equip for the preservation and immediate reactivation of rail service, this “usage” would automatically eliminate the attendant inherited liability that CSX has been legitimately concerned over -- that would have naturally accompanied any demolition or alternative usage of the Highline, other than active rail service. Since the Highline would now not be demolished, but placed back into active rail service, there would be no demolition liability.

All zoning requirements are intact and the adjacent property owner's easement(s) would still remain untouched, since the easement is in fact part of the property deed(s). The property owners have acknowledged currently and in the past, that if the line was active they would not be pursuing demolition, therefore the concern over any devaluation of property value would be transformed, by a healthy active railroad providing a priceless amenity adding immeasurable value to the adjacent properties, since that was the intent when the presiding agency “West Side Improvement” originally planned the “*Life Line of New York*” first constructed in 1849, the project was so gigantic and intricate that it took 80 years of planning, acquisitions, condemnations and finally completed construction of the Highline's portion in 1934! This “*life line*” is now being given the opportunity to be taken off *life support* and continue the work it was designed to do, as the *Life Line of New York*.

Additionally, CSX will now be the enviable beneficiary of a legitimate freight line connection into the heart of the most lucrative market on the planet. Freight access to Manhattan can now only be accomplished by surface

trucking, as environmental standards are amplified, and the use of surface transportation continually increased over the past decade, the City is seriously considering restricting access since there is limited space and greater congestion caused by growing frequency of trucking into Manhattan. Presently, the 40+ Highline proposal with its innovative intermodal technology can accommodate a greater number of intermodal containers at competitive pricing than the bridges, tunnels and surface streets can allow truck volume, plus curtail pollution and congestion.

An obvious customer of the Highline would be the **US Postal Service**. The Morgan Processing Plant is the largest in the Nation, and has the unfortunate distinction of having the 2nd poorest delivery record nationally forced to rely on surface trucking. The good news is that the sidings alongside the Morgan are still in tact, the planned reactivation of intermodal freight deliveries via the Highline would have a dramatic positive impact, and CSX would be a fortunate beneficiary.

Another potential client would obviously be the **Javits Convention Center**. The Center has had great concerns over the lack of sufficient space to accommodate spent intermodal delivery trucks while shows are in session. The problem will only escalate if the West Side Rail Yards adjacent to the Convention Center becomes developed as planned, by either a proposed Sports Stadium, residential or expanded convention facilities. Presently the Convention Center management continually complains that they just do not have sufficient parking/storage for the attendee's intermodal container trucks.

Obviously, if further development occurs the Highline would be the dramatic savior for the necessary intermodal freight shipments that are the life blood of the Convention industry. Simply by providing virtually an unprecedented environmentally friendly "on demand" direct shipping amenity, without the negative necessity of wasteful parking/storage that has been and continue to be a necessary concern of the convention center, CSX would be an enviable beneficiary of this considerable business.

In addition, the current City administration has voiced its serious interests to find alternatives for rubbish removal other than the current cost prohibitive system of incorporating trucks. The administration recently proposed to modify its current inefficient fleet of sanitation trucks to a model that will accommodate sealed interchangeable standardized intermodal containers. This containerized system of rubbish removal would be an ideal candidate to utilize the intermodal technology to be incorporated within the 40+ proposal. 40+'s technology would eliminate the traditional objectionable transfer stations that have been an unwelcome necessity for

commonly utilized technology that would understandably have limitations that a safe, sanitized and sealed containerized system has completely eliminated. The results would be an unprecedented annual windfall of intermodal containerized shipping that CSX would -- as the single largest beneficiary, generate an estimated **\$150+ Million annually** -- revenues CSX would **NEVER** have had access without an innovative cooperative professional relationship that 40+ can offer. These would be realistic proposals that presently can benefit CSX and the rail industry in the near future.

E. BENEFITS TO THE COMMUNITY

New York City would be a dramatic beneficiary of the 40+ proposal, obviously any threat of demolition will be averted resulting in no taxpayer funded demolition, or traffic interruptions caused by the removal of the ***HIGHLINE***.

The irreplaceable ***HIGHLINE*** had been accurately described for over 150 years as the "*Life line of New York*" effectively serving, feeding and protecting NYC and America's interests in both boom times and throughout tragic periods such as our Civil War, WWI, WWII and all other foreign threats as well. The original designers intended the ***HIGHLINE*** to be exactly what it was... *an invaluable rail link to the world outside of Manhattan*. A comparable rail link would literally cost well over a **Billion dollars** to replicate today (if even possible to obtain its present easements). After September 11th, NYC and America needs all the support and assistance we can get to help in the massive rebuilding efforts that is now underway. NYC is fortunate that this unique "*Life Line*" is in place at no additional cost to taxpayers, and NYC will immediately benefit from 40+ new intermodal freight technology in order to continue the ***HIGHLINE'S***' original mandate -- namely, to be the "*Life line of New York*" ! **40+** will incorporate the only effective technology that can accommodate all receiving and dispatching of heavy equipment/machinery and construction materials/supplies on virtually a 24/7 schedule that is not dependent on the traditional capital & labor intensive or time & access sensitive methods of transporting material and machinery to ***Ground Zero*** (and other) *deconstruction* and construction sites. The ***HIGHLINE*** is ideally suited and situated to transport all forms of vital material(s) to convenient major Manhattan East/West transportation intersections such as West 14th W. 23rd & W. 34th streets (among others) all located adjacent to the major North/South Route 9A (West Side Express Highway). The ***HIGHLINE*** will now provide a secure and uninterrupted, labor & capital efficient freight transportation link that would greatly alleviate current traffic congestion plus air and noise pollution created by the

anticipated -- unprecedented traffic demands instigated by the accelerated burden on all bridges, tunnels and surface street thoroughfares into and throughout Manhattan.

Had our **Class III Shortline [HIGHLINE]** been operational on September 11th, **40+** technology could have easily been requisitioned to efficiently transport all necessary machinery and supplies in an uninterrupted and easily monitored process, plus resourcefully evacuate 'ground zero' debris -- in safe & secure standardized sealed containers 24/7, (all debris presently is being moved, unsealed -- spewing contaminants along all surface routes *ie: bridges, tunnels and* via river barges & vulnerable trucking -- members of organized crime have already brazenly stolen tons of **WTC** steel, by diverted truck contents to unauthorized destinations).

The citizens of New York and the United States must have this fabled "*Life line of New York*" fully operational to supplement all traditional transport options -- in every way possible in order to help address the pending massive rebuilding efforts as only the 40+ technology can deliver. In addition, had any "CITU" scenario been in effect on the **HIGHLINE** -- responding to our present National Emergency and adhering to Federal guidelines, authorities would have had to seriously consider reactivating rail usage utilizing **40+** technologies.

It is also important to note that the public understands that since September 11th we live in a different world today. The local, state and federal governments are sensitive within all communities to do everything possible to lower all known and anticipated forms of terrorist threats, by eliminating any chance for catastrophic injury as a result of potential future terrorist attacks. Since all entry onto the 1.6 mile **HIGHLINE** railroad can be easily monitored, **40+** technologies provides for unprecedented security, providing state-of-the-art "airport" quality inspection of 100% of all freight to deter contraband and would-be terrorists. The **40+** proposal will incorporate custom designed *explosive detection* systems technology incorporated that can scan freight plus passengers with systems that use *Computed Tomography* (CT, similar to CAT-scan technology) to detect explosives and contraband. The technology to be employed has been effectively used world wide in over 50 airports. Currently, these security systems are based on a technology similar to *magnetic resonance imaging* to scan baggage, parcels and mail and have accurately pin-pointed landmines and explosives in hostile environments. The technology has also been used in the lumber industry for years to scan lumber for defects or foreign objects and is used at over 300 sawmills worldwide. Today's climate dictates precautionary considerations. The **HIGHLINE** will be fully secure, **40+** will

provide a secure Germ Free Air Systems, incorporating *irradiation technology* to safeguard the public and virtually eliminate the threat of airborne bio-contaminates.

The **HIGHLINE** will be a major contributor to alleviate the every growing traffic congestion by offering shippers an intelligent and competitively priced shipping option that will dramatically help in alleviating surface congestion by replacing trucks crossing bridges and tunnels with intermodal containers being delivered by *on premises* environmentally sensitive vehicles. 40+ estimates that when fully operational it will create 100 full time jobs for our neighbors, in addition to supporting the 40+ mission that will assist over 1,000 unemployed members annually in obtaining gainful employment.

A dramatic amenity that this immediate community of 83,000+ residence and employees that live and work in the **HIGHLINE** “corridor” have dreamt about, with no prospects in sight is a non-polluting and efficient unprecedented “on demand” mass transit system, clean, safe and efficient, designed to accommodate both businesses and residents who no longer have to agonize when to expect transportation during inclement weather or in the dead of night, the 40+ “*shuttle craft*” system will be as convenient as calling an elevator only *horizontally*. All without the enormous costs with inevitable residential and business disruptions that would accompany a subway or light rail installation without totally destroying the neighborhoods mass transit was designed to service. With the prospects of a new sports stadium residential housing or convention center expansion, the 40+ “*shuttle craft*” mass transit system will have the unanticipated flexibility to accommodate the demands of our growing and vibrant City efficiently offering a great value to the public. Each “station” fully staffed 24/7 and equip with amenities such as public rest rooms, refreshments, and other services designed to assist the local traveling public.

A number of residual benefits that one may have never imaged resulting from the **HIGHLINE**’s reactivation, -- the neighborhood has been long promised, for example the community has been assured for several decades that the City will remove the garbage trucks, city buses and the tow pound for illegally parked cars from the various piers to be include in the Hudson River Park, with a Dec. 31, 2003 deadline to relocate these facilities set by the Hudson River Park Act, the administration when questioned what the City is doing to expedite getting the Sanitation garage and salt shed off Gansevoort pier, an 8-acre site, it has no adequate response at this time.

As many short lines are diversifying into warehousing, storage and other value-added services in order to meet shipper needs, 40+’s proposal will remarkably and virtually immediately provide an environmentally sensitive

solution and accommodate both the Sanitation Department's vehicles and storage of containerized salt all delivered "on demand" in addition, secure and efficient storage and retrieval (on demand) of both commuter buses – with over 700+ daily contribute to a massive volume of traffic congestion and Pier 76, the City's pier for impounded vehicles, who also contributed to illegal traffic stoppage. As the rail network nears capacity in some areas of the country, small railroads such as the **HIGHLINE** can help bypass congested areas to keep freight and traffic moving. The underutilized Highline will still be the "life line" it was designed for, but with an evolving new clientele to service an evolutionary new century

The "amenities" of public parks outlined above will result in providing over 200% of the recreational acreage that the "slim" 7 elevated acres that the **HIGHLINE** could barely offer, all at easy access street level in conjunction with a multi billion dollar riverfront park only a block away that the entire City will utilize as an alternative to limited access of an elevated *Promenade* which only a select few may frequent during restricted hours as the City has intimated to the Board. Unlike the efforts to secure a ethereal CITU, the 40+ proposal does not discriminate against the single mom living on minimum wage in Harlem, who this program targets and can provide opportunity and employment also for the gallery owner enjoying the fruits of their labors in Chelsea, benefiting from the ease of access and services their demanding clientele may have in utilizing the Highline's services.

The adjacent property owners will realize a dramatic increase in their property value without re-zoning, since they now have a priceless amenity that can provide desirable services and convenient long thought gone. As a result of the continual construction of new residence and business in the Chelsea/Meat Packing neighborhoods, over 2,000 parking spots have now been displaced with a greater demand and no additional or replaceable parking on the horizon, In addition to virtual door-to-door freight delivery, adjacent business owners will benefit with "VIP" valet quality parking services offered by the **HIGHLINE** for residences, customers, visitors and employees, transforming the Highline district into a sought after destination due to the business, residential and customer friendly environment that the 40+ **HIGHLINE** proposal can contribute greatly to.

The revitalization of the **HIGHLINE** will provide jobs and unforeseen recreational benefits thru the brilliance of its design and application that offers opportunities for immediate economic growth while improving the quality of life not only in the **HIGHLINE** corridor, but throughout NYC.

U.S. POSTAL SERVICE -- following September 11th:

It is interesting to note that both the **HIGHLINE** and Americas largest Postal processing plant the **MORGAN PROCESSING CENTER**, (located on West 30th Street & 10th Avenue, NYC), where planned and constructed concurrently and designed to increase Postal efficiency. The **HIGHLINE**'s original design dedicated six (6) tracks plus platforms intended to accommodate 36 rail cars at one time – built directly into the 2nd floor of the **MORGAN**, to receive and dispatch **over 8,000 rail cars** of mail annually through this facility from 1934 - 1980. Fortunately, this dedicated **HIGHLINE** spur is still intact at the **MORGAN** facility (although unused over the past two decades), **40+ technologies** will effortlessly reactivate this historically efficient Postal dispatch and receiving facility with our technologically advanced 21st Century safety and efficiency. We can easily reactivate a customized “siding” dedicated to the Postal Service, allowing even greater capacity than the annual 8,000+ originally engaged 1930's era mail cars -- but now utilizing our superior technology on the **HIGHLINE**.

40+RR and the Postal Service would responsibly address the legitimate public and employee safety concerns, by incorporating advanced automated technology such as proven **UV radiation** for the elimination of microorganisms. Technology that can be easily implemented devoid of human contact – technology which is commonly employed world wide in hospital operating rooms, disinfection in food processing, sterilization of contact lens solutions, etc.. **40+s' Class III Shortline** relationship with the Postal receiving and shipping facility on the **HIGHLINE** adjacent to the **MORGAN** would guarantee an additional level of secure clean and safe elimination of known airborne bio-contaminates or micro-organisms that may include *anthrax, tuberculosis, small pox* as well as common *allergens or cold and flu viruses*, that have recently [and could continue to] plagued the general public via our Postal Service, without exposing postal employees or the general public to these dangers.

The technology of *Germicidal UV* for safe air is 100% effective in a segregated enclosed environment easily avoiding risking human contact by unprotected employees -- such a secured “rail siding” dedicated to the **MORGAN** facility can easily be incorporated. This technology is perfect for the Postal Services application, in light of the technology's successful use in laboratories, schools, office buildings, homes, hospitals, doctor's offices, daycare facilities, NASA & military applications, etc., designed to remove unwanted airborne spores, bacteria, viruses and allergens within a 1 hour period and will effectively destroy airborne anthrax spores immediately when properly implemented.

With the public's safety paramount -- **40+** management intends to introduce proven technology that will set an industry standard and is much more convenient than wearing a gas mask, and safer than taking CIPRO or other Antibiotics, that health officials have warned the public of possible risk of medication side effects. The **HIGHLINE** can now provide 24 hour 7 day convenience that will greatly support Postal Service efficiency while increasing employee and the Public's confidence, reducing costs, plus add invaluable sq. footage at no additional property costs.

F BENEFITS TO FORTY PLUS FOUNDATION & MANHATTAN CENTRAL RAILWAY SYSTEMS LLC

The Benefits to the Forty Plus Foundation, would be to generate self sufficient revenues to expand 40+ program and produce 100 permanent full time jobs, and assist over 1,000 unemployed New Yorkers to secure gainful employment annually. This venture would provide resources for a permanent full time staff, state of the art computer training, employment classes, professional counseling, permanent facilities, participation in Job Fairs, Seminars and support and expand our current beta test joint venture with the PBS "Employment Channel" and our own "Employ.org TV" programming designed to provide information and education via TV and the internet for the unemployed in the Tri state area. The resources that would be generated by this venture will be reinvested within our community to expand our services and assist the unemployed in their efforts to obtain employment.

40+ management has diligently worked since 1986 to produce a viable proposal to secure and rehabilitate this invaluable property, exactly as we have rehabilitated valuable member's careers also once thought over. 40+ management has developed a for-profit company to operate the **HIGHLINE** property the "**MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC**" has successfully secured the professional services of the management of the **NEW YORK CROSS HARBOR RAILROAD** to actively assist in management and planning, plus pursuant to the AGREEMENT OF SALE, **40+** will commit to a financing, development and management agreement with the developer, manufacturer and manager of the *state-of-the-art "intermodal"* rail freight technology to be incorporated within the **HIGHLINE** -- the manufacturer, **ROBOTIC RAIL WAY SYSTEMS, INC.** a wholly owned subsidiary of **ROBOTIC PARKING, INC.**, -- an internationally respected leader of this innovative technology, based in their multi-million dollar factory complex, located in Florida, Phone #: (888) ROBOPARK or [888-762-6727], Fax #: (727) 538-1900, www.roboticparking.com, is both an investment and management partner within our fiscally credible development team. **ROBOTIC RAIL WAY SYSTEMS, INC'S** patented *MODULAR AUTOMATED*

FREIGHT SYSTEMS, integrates computerization, utilizing rails and incorporating railcars mechanical lifts, and carriers to transport, store and retrieve autonomously propelled and controlled “flatbed” railcars, operating with patented “fuzzy logic” technology directing all *intermodal* freight and passenger “*shuttle crafts*”, in a multi-level, modular facilities (ie: units that are standard in size and design, and can be arranged or retrofitted in a variety of configurations, lending the modular arrays to be particularly ideal for rail service applications), the Board is invited to visit “**ROBOTICS**” Hoboken beta site.

Our fully customized rail systems meet specific requirements and ensure optimum *24 hour & 7 day* “on demand” customer-friendly and universally compatible freight throughput. This includes (but is not limited to) the number of sidings or entrance and exit tracks, lifting devices and rail line dimensions. Our intermodal freight system is a natural evolution of present railroad technology, offering many advantages and solving a number of problems typically associated with conventional freight and passenger facilities.

With the scarcity and rapidly escalating costs of urban real estate, a major benefit is - complete *on and off-loading*, shipping, storage and retrieval freight facilities which can be simply constructed within the confines of the **HIGHLINE** dimensions, incorporating aesthetically compatible façades or architectural design in order to “*blend into*” the surrounding neighborhoods and improve the **HIGHLINE** current “*hiding in plane sight*” appearance, in addition to **40+** incorporating silent, pollution free and energy efficient technology ! **40+**’s system is completely flexible and built in sections or stages. After initial installation, systems can be modified, expanded or relocated which easily addresses future needs that cannot be hindered by fluctuating economies or changing consumer demands. From a shipper’s perspective, the intermodal freight facilities are totally “user friendly” and are designed to be easy and efficient to use, plus safer than any other conventional rail freight facility: the entire freight shipping and retrieval process is completed within minutes while patrons remain safely outside the rail stations main facility(s) at multiple well-lighted, **ADA compliant** and secure areas. The system is designed for ultimate reliability with triple+ redundancies, plus back up power -- built to demanding military specifications incorporated within the design with infallible manual overrides. Furthermore, this intermodal freight system provides peace-of-mind since patrons; the general public and unauthorized parties do not have access to the freight areas, which eliminates the chance of vandalism, terrorist activities, biological contamination, accidental damage or theft. In addition, because the rail cars are used to ship, store and retrieve freight, there is no chance for machinery-caused

damage. The rail car design also prevents toxic or corrosive liquids and other debris from landing on neighboring freight, adjoining properties or the general public while rail cars may be stored or during transport.

G FUNDING SUPPORT

Through 40+ diligent and painstaking planning, in addition to private sector interests, the **MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC, ("MCRS")** will be eligible to participate within the **Railroad Rehabilitation & Improvement Financing Program ("RRIF")**, administered thru the Department of Transportation, Federal Railroad Administration 49 CFR 260. Eligible purposes include the acquisition improvement or rehabilitation of intermodal or rail equipment and facilities including track, components of track, bridges, yards, buildings and shops. The program is designed to develop and establish new intermodal or railroad facilities. The program requires that eligible applicants be corporations, railroads and joint ventures that include at least one railroad, the strategic alliance between both **MCRS** and **NYCH** assures the participation within this program that has a statutory maximum amount of outstanding principal of **\$3.5 Billion**, of this **\$1 Billion** is reserved for projects primarily **benefiting shortline and regional railroads**, of which MCRS qualifies.

In addition, as previously mentioned the NYC Council has also generously allocated **\$15.75 million** for the planning and construction of the **HIGHLINE** in addition, 40+/MCRS will qualify for a number of Federal, State, Local Mass Transit and Freight Grant programs totaling over **\$21 Billion** -- that is more than adequate to underwrite the development, and construction, that will be sufficient to address any liability concerns that the current owner(s) of the Highline may have.

A fully operational Highline will be self sufficient and profitable in this very dynamic market, since the technology is designed to provide superior customer services and allow MCRS to address and adjust to market conditions and shipper demands in a cost efficient and timely manner therefore, not relying on any one industry for economic support, but maintaining enviable flexibility to respond to a ever changing marketplace.

G CONCLUSION

The Board has the enviable authority to conclude the indeterminable impasse that has plagued this valuable resource. **CPO** can not exercise the ICC's 1992 ruling, the facts illustrate that the ICC ruling is now moot. The present **owner(s)** of the **HIGHLINE** clearly indicates that they do not wish to own the line any longer, and insist that the Board decide how they may rid themselves of this property and be assured that they have no or limited liability.

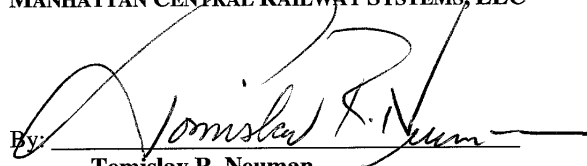
The Board's mission is clear **"to preserve rail lines"**. The community is adamant in reference to saving the **HIGHLINE**, the adjacent **property owners** are concerned that a "non functioning" **HIGHLINE** is a detriment to their property value, and the City's efforts to obtain a CITU although a commendable effort, is premature and fraught with both legal questions and compliance inconsistencies and inadequacies, with no visible means of economic stability or funding. the glaring omission that the City has no method of maintaining the critical component of the rail link to the National rail system, and have gone on record as wishing to actually truncate the line to accommodate a proposed sports stadium over the West Side Rail Yards, further complicating the issues of abandonment and potential liability for the "previous" owner(s).

The only offering that addresses the Board's true mission, namely **"preservation of rail lines"** has been proposed by the FORTY PLUS FOUNDATION a highly credible and responsible entity and the MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC. The 40+ proposal has addressed the issues of management, development, funding, community and property owner's benefits plus the economy and employment issues that affect the community and long term future of this valuable rail line. To respond to the Board's challenge on how should the Board come to a amenable resolution that can conclude with a dramatic win for all parties. There is no harm or foul to interested parties in any efforts to preserve rail service on this line, 40+ remains confident that the proposal to reactivate the **HIGHLINE** utilizing ROBOTIC RAILWAY SYSTEMS state-of-the-art intermodal technology will be the best application for this line and all concerned parties will benefit. 40+ is ready willing and able to secure possession of the **HIGHLINE** promptly, obviously 40+ is in the position to satisfy the concerns and meet the purchase requirements that the **HIGHLINE** 's owner(s) have expressed to the Board. For the reasons illustrated above, the Board has the authority to effect the sale and or transfer of ownership of the **HIGHLINE** to the FORTY PLUS FOUNDATION as a financially responsible party, as many shortlines have been successfully transferred in the past..

WHEREFORE, the Forty Plus Foundation respectfully request that the Board exercise it's Congressionally mandated discretion to encourage the owner(s) of the Highline to enter into voluntary negotiations and implement the **OFFER OF FINANCIAL ASSISTANCE (OFA)** procedures or a Voluntary sales and Operations provisions, which provide for any financially responsible party seeking to continue service on a line and may compel the railroad to sell or conduct subsidized operations over the line. This statue provides the Board with the discretion to find that the offeror is financially responsible and the offer is reasonable, it will give the parties an opportunity to negotiate. This would be the recommended course of action under these circumstances for the purpose of consummating a smooth and orderly transfer of the Highline promptly.

Respectfully submitted,

**THE FORTY PLUS FOUNDATION &
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC**

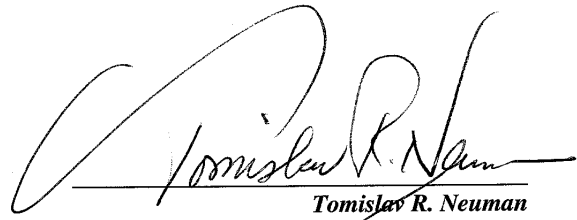
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Dated: September 5, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September 2003, copies of the forgoing Brief of the **FORTY PLUS FOUNDATION & MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC** in Response to Order Dated July 28th, 2003 to be served by first-class mail, postage prepaid, or (hand-delivery), upon all interested parties of record.


Tomislav R. Neuman