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April 26, 2004

210687

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
APR 26 2004
Part of
Public Record

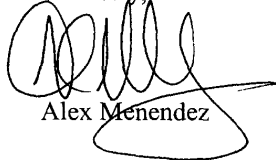
Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners –
Abandonment – Portion of the Consolidated Rail Corporation's West 30th
Street Secondary Track in New York, NY*

Dear Sir:

I am enclosing for filing an original and ten copies of each of the 1) Motion of the City of New York, NY For Leave to File A Reply to Reply of The Forty Plus Foundation/Manhattan Central Railway System; and 2) The City of New York, NY Reply to The Forty Plus Foundation/Manhattan Central Railway System Opposition to the City of New York and the Chelsea Property Owners' Request for Abeyance in this proceeding. An extra copy of each document is enclosed for date stamp and return to our messenger. In addition, we are enclosing a 3.5 inch diskette with these documents.

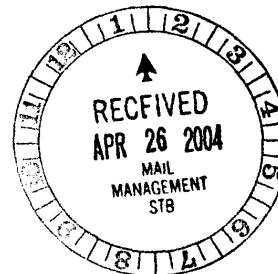
Thank you.

Sincerely,


Alex Menendez

Enclosures

cc: All Parties of Record



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

210682

**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**

**THE CITY OF NEW YORK, NY REPLY TO THE FORTY PLUS
FOUNDATION/MANHATTAN CENTRAL RAILWAY SYSTEM
OPPOSITION TO THE CITY OF NEW YORK AND
THE CHELSEA PROPERTY OWNERS'
REQUEST FOR ABEYANCE**

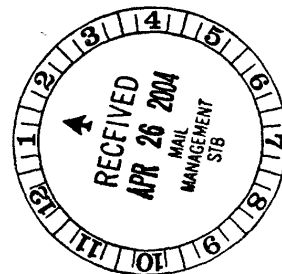
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Dated: April 26, 2004



**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
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**THE CITY OF NEW YORK, NY REPLY TO THE FORTY PLUS
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OPPOSITION TO THE CITY OF NEW YORK AND
THE CHELSEA PROPERTY OWNERS'
REQUEST FOR ABEYANCE**

The City Of New York ("New York" or "City"), pursuant to 49 C.F.R. § 1117.1 respectfully submits this reply to The Forty Plus Foundation/Manhattan Central Railway Systems ("Forty Plus") Opposition To The City Of New York And The Chelsea Property Owners Request For Abeyance ("Forty Plus Reply") filed on or about April 14, 2004. In support thereof New York states as follows:

I. Argument

It is well settled that the Surface Transportation Board ("Board") favors the private resolution of disputes wherever possible and, in fact, has actively encouraged the parties to negotiate a settlement in the instant action. See *Chelsea Property Owners--Abandonment-Portion Of The Consolidated Rail Corporation's West 30th Street Secondary Track In New York, NY*, STB Docket No. AB-167 (Sub-No. 1094)A (Service Date: March 15, 2004).

The instant proceeding is one that has a long history involving a number of different parties and numerous complex legal and factual issues. As the Board is aware this matter involves the High Line, a 1.45-mile rail line that extends between West 34th Street and

Gansevoort Street in the Borough of Manhattan, NY that was constructed in 1930. Since the Interstate Commerce Commission ("ICC") decided in 1992 to conditionally approve abandonment of the Highline, a number of issues relating to that authorization have arisen. These include, but are not limited to: 1) the question whether terms of an agreement negotiated among Chelsea Property Owners (CPO), railroad and government interests, including the City, satisfies the indemnity condition that accompanied the adverse abandonment authorization; 2) a request that the Board reopen the adverse abandonment authorization to re-examine the environmental impacts of the abandonment and demolition of the High Line; and 3) a proposed Certificate of Interim Trail Use.

A public hearing was held in New York City on July 24, 2003, and thereafter, on October 7, 2003 the Board granted a joint request of New York and CPO and ordered that this proceeding be held in abeyance for 90 days, until January 5, 2004. On January 7, 2004, the Board granted the City's request to continue holding the proceeding in abeyance for another 90 days, until April 5, 2004. The City and CPO have asked for a further abeyance for another 90 days. The purpose of these requests has been to pursue good faith and constructive negotiations to resolve the many issues presented by the instant action. These negotiations have the potential to lead to a privately negotiated resolution to this matter, a process that is favored by the Board. *See* 49 C.F.R. Parts 1108, 1109.

Forty Plus, however, alleges that it is contrary to the public interest to grant an additional abeyance "in light of the 'novel legal issues' and extraordinary chronology of this case with its current de facto 14+ year abeyance." Forty Plus Reply at p. 2. Furthermore, Forty Plus states that "the request for an additional abeyances [sic] should not be granted and the Board should encourage [sic] all parties to negotiate freely with no artificial delays on encumbrances." *Id.*

However, as this Board noted in its denial of Forty Plus' appeal of an order in these proceedings granting an earlier extension¹:

Forty Plus requests that the abeyance decision be revoked and that Conrail be encouraged to negotiate for the sale or subsidized operation of the High Line. The Board favors the private resolution of disputes wherever possible and has actively encouraged the parties to negotiate a settlement here. Forty Plus contends that the settlement being negotiated would not be in the public interest, but fails to demonstrate how the Board's decisions holding the proceeding in abeyance to permit negotiations have prevented Forty Plus from pursuing efforts directed at restoring rail service over the High Line.

Chelsea Property Owners--Abandonment-Portion Of The Consolidated Rail Corporation's West 30th Street Secondary Track In New York, NY, STB Docket No. AB-167 (Sub-No. 1094)A

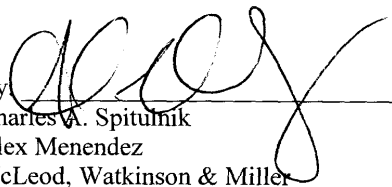
(Service Date: March 15, 2004). Forty Plus has still failed to "demonstrate how the Board's decisions holding the proceeding in abeyance to permit negotiations have prevented Forty Plus from pursuing efforts directed at restoring rail service over the High Line." Forty Plus does state that its "reasonable objections focus on the cunningly crafted caveats within these (3) abeyances that effectively thwarts other parties from freely negotiating with the owners of the line, or inhibits the STB to render [sic] timely decision(s) on briefs submitted last year." However, Forty Plus fails to specifically set forth how the abeyances have thwarted or encumbered any negotiations. It has made no request to negotiate its own arrangement with the City, and has failed to demonstrate any legitimate proposal for immediate restoration of rail service that would give the City, this Board or any other party cause to believe that the proposal merits further decision.

¹ Forty Plus appealed the Board's October 7 abeyance decision, which was denied, and the Board also affirmed its January 7 decision holding the proceeding in abeyance until April 5, 2004. *Chelsea Property Owners--Abandonment-Portion Of The Consolidated Rail Corporation's West 30th Street Secondary Track In New York, NY*, STB Docket No. AB-167 (Sub-No. 1094)A (Service Date: March 15, 2004)

The City's request for an abeyance, on the other hand, is intended to give the parties who have been pursuing discussions actively since the hearing in July 2003 (and before that date as well) to continue them. The City's request for further abeyance should be granted.

WHEREFORE, the City Of New York respectfully reaffirms its request that the Board grant the request for abeyance in this matter.

Respectfully submitted,

By 
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Dated: April 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2004, a copy of the foregoing THE CITY OF NEW YORK, NY REPLY TO THE FORTY PLUS FOUNDATION/MANHATTAN CENTRAL RAILWAY SYSTEM'S OPPOSITION TO THE CITY OF NEW YORK AND THE CHELSEA PROPERTY OWNERS' REQUEST FOR ABEYANCE was served by first class mail, postage prepaid, upon:

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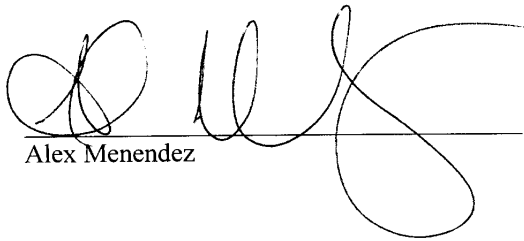
Municipal Art Society
of New York

Friends of the High
Line

New York Metro
Charter

Lerner Group Inc.

CSX Corporation
CSX Transportation



Alex Menendez