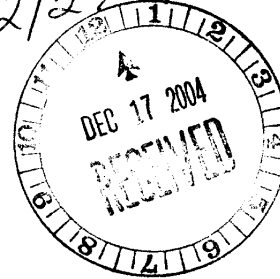


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Of Counsel:
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December 15, 2004

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

ENTERED
Office of Proceedings

DEC 17 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 Mr. Williams:

My office represent 511 West 23rd Street Associates, LLC ("511"), an owner of property under the Highline that is the subject of the above-referenced proceeding and CITU application. Pursuant to the accompanying papers, 511 seeks to intervene in the above proceeding.

We understand that there is currently a request by Chelsea Property Owners ("CPO") to extend the time to submit papers until December 16, 2004. Insofar as the CPO appears to be withdrawing its opposition to the CITU application, we seek to file.

Respectfully submitted,

MICHAEL A. HASKEL

LG/fh
enc.

cc: All parties on service list (See attached Affidavit of Service)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

MICHAEL A. HASKEL, being duly sworn, deposes and says: I am not a party to the action, I am over the age of 18 years, and I reside in Oceanside, New York.

On December 15, 2004, I served the within Notice of Motion to Intervene and Supporting Papers upon:

Addressees on annexed service list at addresses shown

by depositing a true copy of same securely enclosed in a post paid wrapper, marked , in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

MICHAEL A. HASSEL

Sworn to before me this 15th day of December, 2004

~~Notary Public~~

SEANAN L. REIDY, Esq.
Notary Public - State of New York
No. 02RE6017474 Qualified in Bronx County
Commission Expires Feb. 18, 2015

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Department Of State
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Governor Of New York
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Honorable Jerrold Nadler,
U.S. House Of Representatives
Washington, DC 20515

New York State Department Of
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Freight & Economic Development Div.
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Office Of Parks Rec. & History Preservation
Agency Building #1
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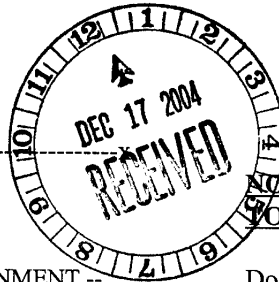
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



NOTICE OF MOTION
TO INTERVENE

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

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

Honorable Vernon Williams
Oral Argument Requested

-----X

PLEASE TAKE NOTICE that upon the affidavit of Michael A. Haskel, Esq., sworn to on the 15th day of December, 2004, all pleadings and other papers heretofore served herein, and upon the ground that the above-entitled action involves the disposition, distribution, title, or claim injury to, property, and that 511 West 23rd Street Associates, LLC ("511") may be affected adversely by any judgment thereupon, a motion will be made before the Secretary of the Surface Transportation Board located in Washington, DC 20423, for an order for all or part of the following requests: (1) permitting 511 to intervene in the above-entitled action and to serve the accompanying reply to the request for a Certificate of Interim Trail Use ("CITU") of the City of New York ("City"), filed on December 17, 2002, and the joint supplemental statement of the City, New York State Urban Development Corporation d/b/a Empire State Development Corporation, CSX Corporation, and Consolidated Rail Corporation, filed on September 22, 2004, within thirty days after entry of the above requested order; (2) permitting 511 to supplement or amend its reply within thirty (30) days of the order; and (3) such other and further relief as may be just, proper, and equitable.

The above-entitled action involves the abandonment of the Highline, the City's request

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for a CITU, and the plans of the City, state agencies, and other entities concerning the areas of the City through and over which the Highline passes.

Dated: Mineola, New York
December 15, 2004

Yours, etc.,

LAW OFFICES OF MICHAEL A. HASKEL

By: 
Michael A. Haskel
Attorneys for Proposed Intervening
511 W.23rd St. Associates, LLC
167 Willis Avenue
Mineola, New York 11501
Tel.: (516) 294-0250

To: All parties on service list (See attached Affidavit of service)

-----X

Docket No.:
AB 167 (Sub-No. 1094)A
Honorable Vernon Williams

MICHAEL A. HASKEL, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law in the State of New York, and am counsel for 511 West 23rd Street Associates, LLC ("511"), a limited liability company which seeks to intervene in the above-entitled action as a party, and I am familiar with the facts and circumstances relevant to this matter.
2. The above-entitled action was brought by Chelsea Property Owners ("CPO"), which own property adjacent to a 1.5 mile elevated rail track that runs from the corner of West 34th Street and 11th Avenue, to Gansevoort Street, in the Borough of Manhattan, City of New York ("Highline"). The Highline, unused for over twenty (20) years, is owned by the Consolidated Rail Corporation ("Conrail").
3. In this adverse abandonment case, the CPO presented evidence that the Highline had not been used since in or about 1980, and that it was not practical or economically feasible to restore service for use proposed by Conrail. Over Conrail's objections, in 1992 the ICC determined that the Highline had been abandoned, and held that a certificate of abandonment

would be issued, subject to the execution of an agreement for the demolition of the elevated Highline structure, track and appurtenances. See Chelsea Property Owners - Abandonment - Consol. R. Corp., 8 - ICC 2d 773 (1982). The D.C. Circuit Court affirmed (29 F.3d 706 [D.C. Cir. 1994]). It was the expectation of the CPO that the railroad easement pursuant to which the Highline existed, should revert to the CPO and to other owners of properties affected by the easement.

4. After much effort to secure an agreement concerning the demolition of the Highline, public interest groups clashed over whether the demolition of the Highline best served the City of New York ("City"). After the City itself subscribed to a contract pursuant to which the City agreed to participate in the abandonment of the Highline and in its demolition, the railroads refrained from executing the contract. As a consequence of the railroads' failure to act, CPO made an application to Surface Transportation board ("Board") for relief.

5. The CPO sought a declaratory judgment that the Highline had been abandoned, and that the City faced consequences if it did not proceed accordingly. At that time, the City, while acknowledging that it had executed an agreement, took the position that the agreement had not been finalized because it had not been executed by Conrail. Furthermore, the City argued that any determination based on an abandonment would be premature, because the City was uncertain as to the position it would be taking in the adverse abandonment proceeding. The City stated that its plans were not finalized, and indicated that it might be filing for a Certificate of Interim Trail Use ("CITU").

6. In the decision dated November 27, 2002, the Board denied the CPO's request for declaratory relief. On December 17, 2002, the City then filed a request for a CITU, but did not

serve 511. That request was followed by a joint supplemental statement by the City, certain state agencies and other entities, which was filed on September 22, 2004. The joint supplemental statement was not served on 511.

7. 511 owns property affected by the Highline which passes directly over 511's commercial improved lot. 511 had supported CPO's efforts to obtain an adverse abandonment of the Highline, and had relied upon the CPO to protect its interests as concerns the Highline.

8. It appears, however, that the CPO has recently resolved differences that it had with the City, has been promised various concessions by way of zoning amendments, and other blandishments, and that the CPO is now at the point where it is close to entering into an agreement with the City, if it has not already done so, pursuant to which the CPO would withdraw its opposition to the City's request for a CITU.

9. In the face of such recent turn of events, and in an effort to protect its interests, 511 took steps to protect its interests, including a review of extensive proceedings that had unfolded before this Board.

10. Upon withdrawal of the CPO from this proceeding, the rights of 511 will be unprotected. Absent such a voice, the proceedings will not constitute a full and complete hearing.

11. It is your affiant's understanding that the CPO's time to reply to the application for a CITU was extended until December 13, 2004, and that further request for an extension to December 16, 2004 was filed. This later request was prompted by the efforts by the CPO and the City to resolve any remaining differences between them and enter into an agreement pursuant to which they would substitute their adversarial position to one of cooperation.

12. Significant issues are at stake. Only by allowing 511 to intervene will such issues be presented.

13. In light of the very limited time that 511 has had to prepare papers to advance the positions that are dependent upon knowledge of an extensive file with an extremely long and complicated history, 511 requests not only the right to intervene at this time, but requests the indulgence of the Board for an additional thirty (30) days to supplement the reply which accompanies this affidavit. This matter has been pending for over twenty (20) years, and has taken a sharply different direction only recently.

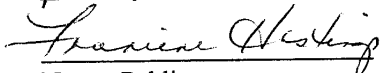
14. The interest of equity is served by affording an additional thirty (30) days to 511 to supplement or amend its reply, which is served in good faith as a demonstration that 511 is earnest in its position.

WHEREFORE, your affiant respectfully requests that an order be issued permitting 511 to intervene in the above action, accepting 511's reply, and allowing 511 to supplement or amend its reply within thirty (30) days of the issuance of an order addressing this motion, and for such other and further relief as may seem just, proper and equitable.



MICHAEL A. HASKELL

Sworn to before me this
15th day of December, 2004



Notary Public

FRANCINE HASTINGS
Notary Public, State of New York
No. 30-4665514
Qualified in Nassau County
Commission Expires Oct. 31, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

-----X
**REPLY TO CITU REQUEST IN
FURTHER SUPPORT OF
ADVERSE ABANDONMENT
PROCEEDING**

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

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

Honorable Vernon Williams
-----X

PRELIMINARY STATEMENT

1. This Reply is submitted on behalf of 511 West 23rd Street Associates, LLC ("511") in further support of the application for an adverse abandonment of a certain brief expanse of Consolidated Rail Corporation's ("Conrail's") West 30th Street Secondary Track, which is an elevated and long-unused rail line in Manhattan ("Highline"); it is also submitted in opposition to the request dated December 17, 2002 for a Certificate of Interim Trail Use ("CITU") and in reply to the joint supplemental statement in further support of the CITU filed by the City of New York ("City"), state agencies, and other entities on September 22, 2004.

2. This prolonged proceeding, initially filed by Chelsea Property Owners ("CPO"), is based upon the undisputed fact that the Highline has been unused for over twenty (20) years. Through proposed zoning changes the City has attempted to neutralize the opposition of various owners adjacent to the Highline, including the CPO. In the wake of the CPO's decision not to oppose the CITU, 511 has sought to intervene, thereby filling the void created by the withdrawal of CPO from this proceeding which it began. The proceeding, however, remains well-founded

and the opposition to the request for a CITU is grounded in well established law and undisputed facts.

3. Over ten (10) years ago, there was a determination that the only future use that the Conrail could then proffer was impractical and economically unfeasible. This use, which was for waste haulage, was the only use conceived by Conrail at that time, and no other employment of the Highline as a rail system has ever been contemplated, far less shown to be viable.

4. For more than a decade, the City supported the abandonment of the Highline, and indeed, at various points in time, Conrail itself favored this relief, which would have resulted in a termination of the easement that burdens the affected properties, the owners of which include 511.

5. However, following a change in administration within the City, and under pressure from certain activist groups, the City changed its position, opposed abandonment, and requested a CITU. Though Conrail joined in this request, it is clear that one of Conrail's intentions is to avoid the costs of demolition of the track. See Chelsea Property Owners -- Abandonment -- Conrail's West 30th Street Secondary, 8 I.C.C. 2d 773, 791 (1992), *aff'd sub nom.*, 29 F.3d 706, 709 (D.C. Cir. 1994). It cannot be reasonably suggested that after the CITU is issued, the rail use which the Highline had once supported, will again be resumed as part of the National Rail System. This highlights the problem with the CITU request, which is a naked attempt to utilize the Rail to Trails provisions of the Transportation Act in a way that subverts its purpose of preserving for future potential use, rail lines that are part of the interstate rail network.

6. Here, the restoration of rail service across the Highline will never occur and the City's intended use of the trail will guarantee that it will be both impractical and economically

unfeasible for the Highline to return to the interstate rail system. The request to warehouse the Highline for future possible rail use improperly seeks to invoke the jurisdiction of the Safety Transportation Board ("Board") over what is an intrastate rail segment that has fallen into disuse, and is now, at most, a local problem with only local consequences.

THE PARTIES

7. 511 is a limited liability company which owns the properties known as 511- 517 West 23rd Street, New York, New York 10011-1102. The property is a through lot that continues to West 24th Street. The Highline runs directly above the 511's property for a distance of approximately 30 feet from west to east and extends from front to back a length of approximately 200 feet. (See survey attached hereto as Exhibit A). A diagram of the Highline is annexed hereto as Exhibit B. (Map of the Highline from Friends of the Highline Website).

8. The CPO is an entity that represents certain owners of property located adjacent to the Highline. Upon information and belief, Edison Properties, LLC is affiliated with these owners and is the leading force behind the CPO.

9. The CPO filed an adverse abandonment proceeding in 1989, AB-167-(Sub-No 1094)A, Chelsea Property Owners-Abandonment -Portion of the Consolidated Rail Corporation West 30th Street Secondary Track, New York, NY ("the Abandonment Proceeding") seeking a mandatory adverse abandonment of Conrail's West 30th Street Secondary track in New York City.

10. 511 expected to have its interests advanced by the CPO.

11. The Highline structure and its easement are possessed by New York Central Lines ("New York Central"), a wholly owned subsidiary of Conrail.

12. CSX Corporation ("CSX"), a railroad conglomerate, currently manages the Highline.

13. City has requested the issuance of the CITU as part of the plan that contemplates radical changes on the west side of Manhattan.

BACKGROUND

14. Built in the 1930s, the Highline is a 1.45 mile long elevated rail line, most of which is approximately 34 feet above grade. The Highline runs a loop track around Caemmerer Yard also known as the 30th Street Rail Yards it begins between Eleventh and Twelfth Avenue along West 34th Street, runs south on Twelfth Avenue, and west on 30th Street where it turns south to run along Tenth Avenue to Gansevoort Street. Pursuant to the easements that permit its existence, the Highline structure encumbers properties owned by the City and twenty-two (22) private entities¹. While in use, the Highline was connected to the National Rail System at West 34th Street, via the Amtrak line.

15. Following World War II, rail service over the Highline became increasingly intermittent. By the early 1980s, all stations and team tracks² were eliminated, and the Highline had fallen into complete disuse. The Highline was last used for freight in 1980. During the ensuing twenty-four (24) years, there has been absolutely no traffic on the line, and it has become overgrown with weeds, otherwise deteriorated, an eyesore to the community and an obstacle to economic development. See Chelsea Property Owners -- Abandonment -- Conrail's West 30th Street Secondary, 8 I.C.C. 2d 773, 791 (1992), *aff'd sub nom.*, 29 F.3d 706, 709 (D.C. Cir. 1994).

¹By law, the Highline right-of-way easement, temporarily in the possession of Conrail, would revert back to 511 if the adverse abandonment proceeding is granted against Conrail.

²Team tracks are facilities where freight is loaded and unloaded.

In addition, there is a break in the Highline track, severing it from the national rail system. This broken connection is at the Morgan General Mail Facility, located at 30th Street and 10th Avenue. (Exhibit C, New York City Department of City Planning Website, Environmental Impact Statement; Chapter 9 Architectural Historic Resources, pp. 21-22).

THE FACTS

16. In 1989, when the Highline was no longer being utilized for rail service, the CPO brought the Abandonment Proceeding before the Interstate Commerce Commission ("ICC").

17. In September 1992, the ICC addressed the Abandonment Proceeding and found against Conrail, which opposed the Abandonment Proceeding by arguing that there was a possible future use of the Highline for the haulage of waste. The ICC found that proffered use was "neither practicable nor economically feasible". See Chelsea Property Owners -- Abandonment -- Conrail's West 30th Street Secondary, 8 I.C.C. 2d 773, 791 (1992), *aff'd sub nom.*, 29 F.3d 706 (D.C. Cir. 1994).

18. The ICC granted the CPO's petition for adverse abandonment, subject to the condition that the CPO post a surety bond to protect Conrail from liability for demolition and other costs of removing the Highline to the extent such costs were in excess of \$7 Million. The D.C. Circuit affirmed the ICC's findings. *Id.*

19. In 2001, the CPO reached an agreement ("2001 Agreement") with Conrail, the affiliated railroads and the City involving the terms and conditions of the abandonment and demolition of the unused Highline as well as for the indemnification of Conrail and affiliated railroads in accordance with the ICC's surety bond condition.

20. The City signed the 2001 Agreement, which was approved by the Guiliani administration, and the 2001 Agreement was then delivered to Conrail for execution. According to the City, Conrail refused to sign.

21. Following a change in the City's administration, the City, confronted by various contending groups, including but not limited to, the Friends of the Highline ("FOH"),³ concerning how to address the Highline, began altering its position.

22. In 2002, the CPO sought a declaratory judgment that the Highline had been abandoned and that the 2001 Agreement should be enforced. The City took the position that the agreement had not gone into effect because Conrail had not executed same. The City indicated that it was contemplating filing an application for a Certificate of Interim Trail Use ("CITU") with respect to the Highline, but then the City denied having any concrete plans for the Highline's severance from the National Rail System.

23. The ICC denied the CPO's request for declaratory relief (See Exhibit D, STB Decision STB Finance Docket No. 34259).

24. On December 17, 2002, the City made an application for a CITU (Exhibit E, The City's application for a CITU).

25. On September 22, 2004, the City, joined with state agencies and other entities, submitted a supplemental statement in support of a request for the CITU.

³ FOH is a non-profit founded in 1999 by neighborhood residents to preserve the Highline for reuse as an elevated public space.

26. CPO has apparently entered into an agreement with the City or is about to enter into an agreement, pursuant to which CPO is intending to withdraw its adverse possession proceeding and any objection to the CITU.

27. The request for the CITU is part of the plan which involves extensive changes to the west side of Manhattan, including the area known as Hudson Yards, an area that extends from West 28th Street on the South, Seventh and Eighth Avenues on the East, West 43rd Street on the North and the Hudson River on the West. The plan concerning the Hudson Yards is called the Hudson Yards Redevelopment Plan ("HYRP"). The HYRP conceives that the cost of removing the Highline could be avoided, and that the reversionary interests in the easements burdening the affected properties would not be returned to their owners.

28. The HYRP involves substantial re-zoning and conversion of the Hudson Yards to a mix use community with new residential and commercial space and a substantial amount of open space.

29. The HYRP includes the extension of the No. 7 Subway to serve the Hudson Yards, the extension of the Jacob Javits Convention Center ("Javits Center") and a network of parks and open space throughout Hudson Yards.

30. The New York City Planning Commission has already voted to approve rezoning of Hudson Yards (Exhibit F, Press release dated November 22, 2004 from the New York City, Department of City Planning Website).

31. In addition, the New York Sports and Convention Center Land Use Improvement Project and Civic Project ("NYSCC Project") has been established as a project under the New York State Urban Development Corporation Act ("the UDC Act"). The goal of the Project is to

develop the New York Sports and Convention Center ("NYSCC") as a multi-use facility that will be suitable for professional and college sporting events, as a convention center, for trade shows and any other event that requires large occupancy capacity. In addition, the NYSCC is also being designed to accommodate Olympic specifications in the event that the City is successful in its bid to host the 2012 Olympics. The NYSCC Project is being undertaken by the New York State Urban Development Corporation d/b/a/ the Empire State Development Corporation ("ESDC") the City, the Metropolitan Transit Authority ("MTA"), the New York Jets LLC ("Jets") and the New York Jets Development, LLC ("Jets Development").

32. The NYSCC Project is independent of the HYRP and may proceed with or without HYRP.

33. However, both the HYRP and the NYSCC Project would require that the rail yards at West 30th Street ("West 30th Street Yards") be covered over with a "deck".(Exhibit G, New York City Department of City Planning Website, Environmental Impact Statement; Chapter 9 Architectural Historic Resources, p 60) This deck will serve as a base for the construction of the convention center expansion, an area for open space and the NYSCC, if approved.. (Exhibit H, General Project Plan, NYSCC Project Plan, p 2).

34. The open space includes a six acre public square to be built on the platform between West 30th and West 33rd Street ("Park System"). The Park System would be linked to the Highline, which will be used as a pedestrian walkway and a park. Currently, the Highline turns west along the north side of 30th Street and proceeds to 12th Avenue, where the line turns north and begins to descend. At 33rd Street the Highline turns northeast and completes the

descent to grade at 34th Street where the Highline was connected to the Amtrak cutting. Amtrak is the only point where the Highline was connected to the National Rail System.

35. Even if there is no existing break at 30th Street and 10th Avenue, it is anticipated that HYRP will physically separate the Highline from the National Rail System at West 34th Street. (Exhibit I, New York City Department of City Planning Website, Environmental Impact Statement; Chapter 25 Unavoidable Adverse Impacts, p 1; Chapter 9 Architectural Historic Resources, p 62). This circumstance is known to both the City and Conrail as evidenced by their considerations of a transfer easement for a possible future rail connection with the Amtrak line, but this potential consideration is an admission that the current right-of-way would be severed. Moreover, the transfer easement would not be feasible, and appears to place the rail line right-of-way above the West Side Highway (Exhibit J, General Project Plan, NYSCC Project p13).

36. Even if there is no further physical break with the National Rail System, future restoration of rail service along the Highline viaduct is a practical impossibility in light of the cost of restoration and the need to undo the changes that the City intends to accompany the HYRP.

37. Clear evidence of such impossibility is a draft of the Trail Use Agreement to be entered into between the City and the Conrail (Exhibit K). Section 2(c) of the draft states that if the CITU is revoked, terminated or ceases to be in effect, Conrail shall cooperate with the City in the filing with the Board of a formal application for abandonment of the Highline, "in order to permit an facilitate the City's and/or ESDC's demolition, removal and other physical and legal disposition of the Highline." It is obvious from this draft of the agreement that neither the City nor the railroads plan on any restoration of the rail service.

38. Moreover, the Highline aspect of the HYRP involves various financial arrangements which are unclear and which may never become effective (Exhibit L, The Villager Volume 74, Number 24).

39. The cost of maintaining the project and of conversion of the trail is estimated to be from Sixty to One Hundred Million Dollars, and the source of these funds is at best speculative. (See Exhibit L).

40. As part of the plan, the City will indemnify the railroad with respect to the Highline (Exhibit M, Indemnification Agreement). It also appears that if the CITU is revoked, terminated, or the Highline ceases to be used as a trail, the City will itself bear the costs of the demolition (see ¶37, supra)

THERE HAS BEEN RECENT STATE COURT LITIGATION IN WHICH THE CITY TOOK A POSITION INCONSISTENT WITH ITS CITU APPLICATION

41. The issue of the Highline was the subject of recent New York State litigation. The New York City Council ("Council") and other petitioners sought to compel the City to follow the New York State Uniform Planned Use Review Procedure ("ULURP") concerning what was believed to be the City's intention to have the Highline deemed adversely abandoned. The City opposed the Council's Article 78 proceeding, New York's mandamus statute, to compel the City to follow the ULURP. The City lost in the lower court, but appealed the decision.

42. The Appellate Division, First Department, in New York City Council v. City of New York, 4 A.D. 3d 85 (1st Dept. 2004), found that the City was not obligated to follow the ULURP. Associate Justice Louis Gonzalez, who accepted the City's arguments, found that on December 20, 2001, the City of New York, New York Central, and the owners of 23 parcels of private property burdened by the Highline, along with others, had voluntarily executed an

agreement entitled "Agreement for the Voluntary Abandonment and for Charitable Contribution", under which the parties would "consent to the abandonment and demolition of the Highline and New York Central would surrender the easements and the segment of the Highline structure to the 23 owners whose properties had been so encumbered, including the City of New York. Id. at 88.

43. At that time, the City argued against ULURP review by taking the position that the "extinguishment of easements over City property" does not constitute an "[a]cquisition by the City of real property" within the meaning of the City Charter, § 197-c(a)(11). Id. at 89.

Consequently, it was the City's position that there was no need to follow ULURP.

44. The City, however, has now done a complete turnabout, for the CITU would eventually lead to the City's acquisition of the Highline easement. While the City may now engage in a ULURP review, this is hardly the point. The City cannot alter its position on the basis of convenience. See Roth v. McAllister Bros., Inc., 316 F.2d 143, 145 (2d Cir. 1963) (holding that a party may not assume one position in a legal proceeding and thereafter assume a contrary position in a subsequent proceeding elsewhere simply because its interests have changed, especially if the change prejudices the opposing party). The City's inconsistencies are accompanied by its effort to avoid and order of the District of Columbia Circuit Court, as discussed below.

**THERE HAS BEEN A JUDICIAL FACTUAL DETERMINATION THAT THERE IS NO
POTENTIAL FOR FUTURE RAIL TRAFFIC ON THE
HIGHLINE AND THUS RESTORATION OF RAIL SERVICE IS IMPOSSIBLE ON
THE BASIS OF PRACTICAL CONSIDERATIONS.**

45. In September 1992, the Interstate Commerce Commission ("ICC"), now the Board, issued a conditional certificate of abandonment of the Highline, finding that the proposed

continued use of the Highline for waste haulage – the only future use of which Conrail could conceive – was neither practical nor economically feasible. See Chelsea Property Owners -- Abandonment -- Conrail's West 30th Street Secondary, 8 I.C.C. 2d 773, 791 (1992), *aff'd sub nom.*, 29 F.3d 706 (D.C. Cir. 1994).

46. Conrail, which had opposed the adverse abandonment proceeding, appealed to the District of Columbia Circuit Court, which affirmed the ICC's decision. See Consolidated Rail Corp. v. Interstate Commerce Comm., 29 F.3d 706, 710 (D.C. Cir. 1994). The Circuit Court (per Hon. Karen LeCraft Henderson) opined that the ICC will generally deny an adverse abandonment claim "if there is potential for future operation on the line and the carrier has taken reasonable steps to attract traffic" (*id.* at 711); however in the case of the Highline, the DC Circuit held that the ICC correctly concluded "that there was essentially no possibility of future traffic on the Highline despite Conrail's efforts to attract traffic" *Id.*. The Court affirmed the ICC's finding that public convenience and necessity permitted the abandonment. *Id.*

47. The analysis of Conrail's proposed use of the Highline by the ICC and the D.C. Circuit Court addressed the issues of whether the proposed use was practical or economical. The Court found that the record supported the ICC's conclusion that the future proposed use was neither practical nor economically feasible .

48. The D.C. Circuit Court also found that the position of other parties in favor of adverse abandonment "constitute[d] strong evidence that demolition of the viaduct would further the public interest in New York City." citing ICC Order, 81 ICC 2d at 783.

49. When confronted with the argument that the Highline could be converted to a trail under the Trails Amendments, the Court stated: "...The ICC's finding of no potential Highline

traffic negates the condition necessary to invoke the Trails Amendments, that is the use is subject to restoration for rail service" *Id.* at 713 (emphasis added). The Court's finding on this issue is entitled to a collateral estoppel effect.

**THE CITY AND CONRAIL SHOULD BE COLLATERALLY ESTOPPED FROM
CLAIMING THERE IS A POSSIBILITY OF FUTURE RAIL SERVICE ON THE
HIGHLINE**

50. The Supreme Court in Preseault v. Interstate Commerce Commission, 494 US 1 (1990) found that in enacting the Trails Amendment Congress believed that "every line is a potentially valuable national asset that merits preservation." *Id.* at 925. However, The Presault Court certainly did not hold that in every instance such potential would be realized. There is no suggestion in Presault that the ICC, now the Board, could automatically issue a CITU when a request was made. Rather, the task of determining whether there is a "potential" of future rail service was left up to the ICC and the lower courts. In Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Circ. 1994), the D.C. Circuit Court upheld the ICC finding of no potential Highline traffic, and addressed the possibility of an CITU application. As to the later possibility, the Court found that the condition necessary to invoke the Trails Amendments was lacking, i.e that the use is subject to restoration of rail service, and that there was "no potential" for such restoration. Certainly nothing has changed in the past ten years since the decision that would make it more likely that rail service will be restored. On the contrary, there is now overwhelming evidence that rail service will never again occur over the Highline. *Per force*, there is no reason to revisit the D.C. Circuit Court's determination. It is clear that the decision should be given a collateral estoppel effect.

51. In order to apply collateral estoppel, the party must show: (1) the issues of both proceedings are identical, (2) the relevant issues were actually litigated and decided in a prior proceeding, (3) there was a full and fair opportunity for the litigation of the issues in the prior proceeding, and (4) the issues were necessary to support a valid and final judgment on the merits. See Irish Lesbian and Gay Organization v. Giuliani, 143 F.3d 638, 646 (2d Cir. 1998).

52. The proceeding before the ICC and the D.C. Circuit Court, in which a finding of the impossibility of future rail service was made, included the City and Conrail, both indispensable parties to the proceedings. Having resolved this issue, it is not now subject to collateral attack. See National Fuel Gas Distribution Corp. v. TGX Corp., 950 F.2d 829, 838 (2d Cir. 1991) (holding that collateral estoppel is to be applied in rendering quasi-judicial determinations of administrative agencies rendered pursuant to procedures substantially similar to those used in a court of law); Norfolk and Western Railway Co. and New York, Chicago and St. Louis Railroad Co. – Merger, Etc., FD 21510 6 (November 25, 1996 STB Decision) (barring party from re-litigating claims litigated in a previous proceeding).

53. Of course, the issue of the demolition of the Highline was left open in the D.C. Circuit Court's order, but that question is only relevant to satisfy the condition necessary for the issuance of the certification of abandonment. Whether there will ever be future rail service over the Highline is a separate and distinct matter from the cost of demolishing the Highline, and the two issues are unrelated. However, the former issue is related to whether a rails to trails conversion is in keeping with the preservation of the rail within the National Rail System. If there is no "potential" for future rail service over the Highline, as the D.C. Circuit Court found, then the warehousing of the rail is not in keeping with the Trailway Amendments.

**THE APPLICATION FOR A CITU SHOULD BE REJECTED
UNDER THE TRAILWAY AMENDMENTS**

54. 16 U.S.C. § 1247(d) deals with the issue of the preservation of established railroad rights of way for future reactivation of railway service. The legislation intended to provide the railroad with an option to enter into a trails agreement with a state political subdivision or qualified organization to permit an interim use of the right of way as a trail or retaining wall in the national railway system. The amendment itself states:

. . . Consistent with the purposes of that Act, and **in furtherance of the national policy to preserve established railroad rights-of way for future reactivation of rail service**, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, **if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.** [paragraph broken up for clarity].

If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and **shall not permit abandonment or discontinuance inconsistent or disruptive of such use.** (emphasis added).

55. As was held in Consolidated Rail Corp. v. Interstate Commerce Comm., 29 F.3d 706 (D.C. Cir. 1994), Congress did not mandate that the rights of way of the railroad be preserved. It permitted such result only in cases where the interim use was consistent with use of the trail as a way of preserving the national rail system *provided* the interim trail use was consistent with the warehousing of the rail way as part of the National Rail System.

56. From this statutory language and the relevant case law, it is obvious that a CITU should not be issued under circumstances where it amounts to a condemnation of the right of way of a significant stretch of tracks that: (a) is not now an active viable part of the national rail system; (b) will not be reactivated as a rail line for practical and economic reasons; or, (c) with the implementation of the HYRP, will be severed from the National Rail System, if this is not already the case.

57. The statute talks of "interim" trail use and clearly articulates an expectation that there will be a potential for future use of the right of way as part of the national rail system. See 16 U.S.C.A. §§ 1247(d) (stating that the statute was ratified "in furtherance of the national policy to preserve established railroad rights-of-way *for future reactivation of rail service*" and that a rail line will not be deemed abandoned "*if such interim use is subject to restoration or reconstruction for railroad purposes*") (emphasis supplied). Where Congress has made its intent clear, the courts are to give effect to that intent. See Miller v. French, 530 US 327 (2000). The task of the courts is to interpret the statute in light of the purposes expressed by the legislature. Chapman v. Houston Welfare Rights Organization, 441 US 600 (1979).

58. In this case, the railroad has no interest whatsoever in maintaining the easement. Indeed, Conrail, which previously sought to abandon the property, and later only opposed the Abandonment Proceeding because it desired to avoid the cost of the demolition of the Highline, has no interest in maintaining the Highline as part of the National Rail System. This is why it is the City and the FOH that are promoting the conversion to trails use, not Conrail, which has assumed a passive position.

59. As evidenced by the recent draft of a proposed "Trail Use Agreement", Conrail never intends to restore rail service, and fully intends to apply for abandonment if the CITU request if the CITU is revoked or terminated: "In the event the that the CITU is revoked, terminated or for any reason whatsoever ceases to be in effect...[Conrail] shall cooperate with the City in the filing with [the Board] of a formal application for abandonment of the Highline, in order to permit and facilitate the City's and/or ESDC's demolition, removal and other physical and legal disposition of the Highline." (See Exhibit K, ¶2(c)). If the CITU is revoked or terminated, it appears that the City will assume the cost of demolishing the Highline. Presumably this is the "cost" of obtaining Conrail's cooperation in this CITU application. It is further evidence that Conrails's approach is avoidance of demolition costs, not preservation of the Highline for future rail service.

60. The Board is reality oriented. See Consolidated Rail Corp. v. Interstate Commerce Comm., 29 F.3d 706, 710 (D.C. Cir. 1994) (noting that the ICC, n/k/a the STB, bases its determinations on practicalities, including public convenience and necessity). Reality here is the physical separation of the Highline from the National Rail System, and the absence of any reasonable possibility that rail service will be restored along the Highline. As set forth above, existing plans show that the Hudson Yards would be covered over by a park and other structures, including a possible NYSCC, and that there is every expectation that the Highline would be partially demolished to make way for these structures, and hence severed from the National Rail System. *Per force*, the Highline south of West 30th Street would at most be an intra state line over which the STB would have no jurisdiction. See Birded v. Surface Transp. Bd., 90 F.3d 580, 585, 319 U.S.App.D.C. 357 (D.C. Cir. 1996). That the easement may be "transferred" over the

West Side Highway does not alter the fact that the line will be separated from the National Rail System. On the contrary, the fiction that rail service over the West Side Highway would have been established if the rail line were to be removed from its theoretical warehouse, only underscores the fact that the line is planned to be severed now. That such right-of-way would extend over the West Side Highway also emphasizes the utter absurdity of the suggestion that rail service will ever be restored over the Highline.

61. Moreover, even assuming that the line remains wholly intact, it is clear that the dramatic changes that are proposed would make the restoration of rail service impractical and unfeasible not only in the “foreseeable” future but in any “conceivable” future. The determination of whether to effect conversion of a rail to trail use is made by evaluating economic factors and by drawing conclusions supported by evidence of probabilities, not fantasies and unsupported and unsupportable theories. See Consolidated Rail Corp. v. Interstate Commerce Commission, 29 F.3d at 710. As shown above, the D.C. Circuit Court in Consolidated Rail Corp. upheld ICC’s ruling that such restoration of service has “no potential.” That was over a decade ago.

62. Furthermore, it is the burden of the CITU applicant to demonstrate that the intended use is feasible. See Illig v. U.S., 58 Fed.Cl. 619, 631 (U.S. Ct. of Fed. Claims 2003) (holding that a CITU sponsor must itself ensure that any and all uses made of the right-of-way are consistent with the restoration of rail service). The City's proposals to convert the Highline into a version of the Promenade Plantee in Paris are dependent upon many factors, but all of them suggest that if the plan is ever implemented, it will guarantee that the Highline will never see railroad use again. Considering the enormous expenditures necessary for the conversion, it

would be disastrous for the City to invest hundreds of millions of dollars to build structures which might someday be removed for rail use restoration. This will never happen.

**THE TRAILS ACT SHOULD NOT BE USED TO FRUSTRATE THE ADVERSE
ABANDONMENT PROCEEDING**

63. 49 USC §10903 requires Board approval before a railroad can abandon a line, but the courts have long recognized that railroads may not make such an application for tactical considerations. One of the reasons is that the railroad may wish to use the application process for leverage, refusing to cooperate, and thereby frustrating state or local plans concerning the lines, or increasing the costs of such plans. As a consequence, the owner of the inactive railroad may force localities, as the price of the application to abandon, to absorb the cost of demolition even though the railroads are responsible. To provide a remedy in such situations, the courts have allowed actions by third parties for adverse abandonments. See Railroad Commission of California v. Southern Pak Co., 264 U.S. 331(1924); Atchison T & S.F. re: Ry v Railroad Commission of California, 283 U.S. 380 (1931).

64. The Court reiterated the doctrine of adverse abandonment in the case of Thompson v Texas Mexican RR Co., 328 U.S. 134 (1946), brought under the section that was a predecessor. In that case, the Court opined (*id.* at 145):

There is no requirement in s 1(18) that the application [to the Commission] be made by the carrier whose operations are sought to be abandoned. It has been recognized that persons other than carriers '[w]ho have a proper interest in the subject-matter' may take the initiative. See Atchison. T. & S.F. Ry. Co. v. Railroad Commission, 283 U.S. 380, 393, 51 S. Ct. 553, 75 L. Ed. 1128. An application by a city and County for abandonment of a part of the Colorado & Southern line was indeed entertained. Colorado & Southern Ry. Co. Abandonment, 166 I.C.C. 470. Tex-Mex has even a more immediate interest in the operations over this line. Its property is involved, and the amount being paid for the use of its property is deemed by it insufficient.

65. In the case of Modern Handcraft, Inc. – Abandonment in Jackson County, Mo., 363 I.C.C. 969, 972 (1981), the Commission itself addressed the question of adverse abandonments and recognized that its purpose was to avoid the situation where a rail line had fallen to long disuse. Without any reasonable prospect of restoring service, there was no public benefit from permitting the line to continue.

66. Clearly, the remedy afforded by permitting an adverse abandonment proceeding has a long history and there is significant reason supporting its application where a railroad resists the abandonment process. In this case, the issue is now presented, whether the City and Conrail can seek a CITU in an adverse abandonment proceeding. They should not be allowed to do so within the context of this case.

67. The Trails Act Amendments were designed to provide the railroad with an option to enter into a trails agreement with a state or qualified organization for interim trail use. It was not conceived as a way to avoid an adverse abandonment claim. Allowing a CITU application to defeat an abandonment when there has been a determination that restoration of rail service is not a potentiality and would be economically unfeasible, would be contrary to the logic discussed above that in the absence of potential future rail service restoration, the CITU request should be denied. Indeed, allowing the frustration of an adverse abandonment proceeding through a CITU application invites the railroad to collude with the municipality for the railroad's cooperation, even if the railroad and municipality have no intention of restoring service. A railroad's manipulation of the abandonment process is what an adverse abandonment proceeding is designed to avoid. It would be ironic if the adverse abandonment process could be frustrated by

PROCEDURAL CONSIDERATIONS

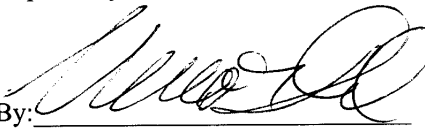
67. Notice is a basic procedural right. All parties affected by the CITU application, including owners of all properties that are encumbered by the Conrail easement, should have been served with the application. See Mullane v. Central Hanover Bank and Trust Co, 339 US 306 (1950) (if feasible, notice must be provided to one whose property rights are in jeopardy); Walker v. City of Hutchinson, 352 US 112 (1956) (newspaper publication is an inadequate notice in condemnation proceedings). 511 was not served with notice of CITU application or the supplemental statement. Presumably, owners of other affected properties, with the exception of CPO, were not served with such notice either. Because 511 may be affected by the conversion of the Highline to a trail, it should have been served. Consequently, the CITU application is jurisdictionally defective.

CONCLUSION

68. The application for the CITU should be denied, and a certificate of abandonment should issue unconditionally.

Dated: Mineola, New York
December 15, 2004

Respectfully submitted,

By: 

MICHAEL A. HASKEL
LAW OFFICES OF MICHAEL A. HASKEL
167 Willis Avenue
Mineola, New York 11501
(516) 294-0250

VERIFICATION

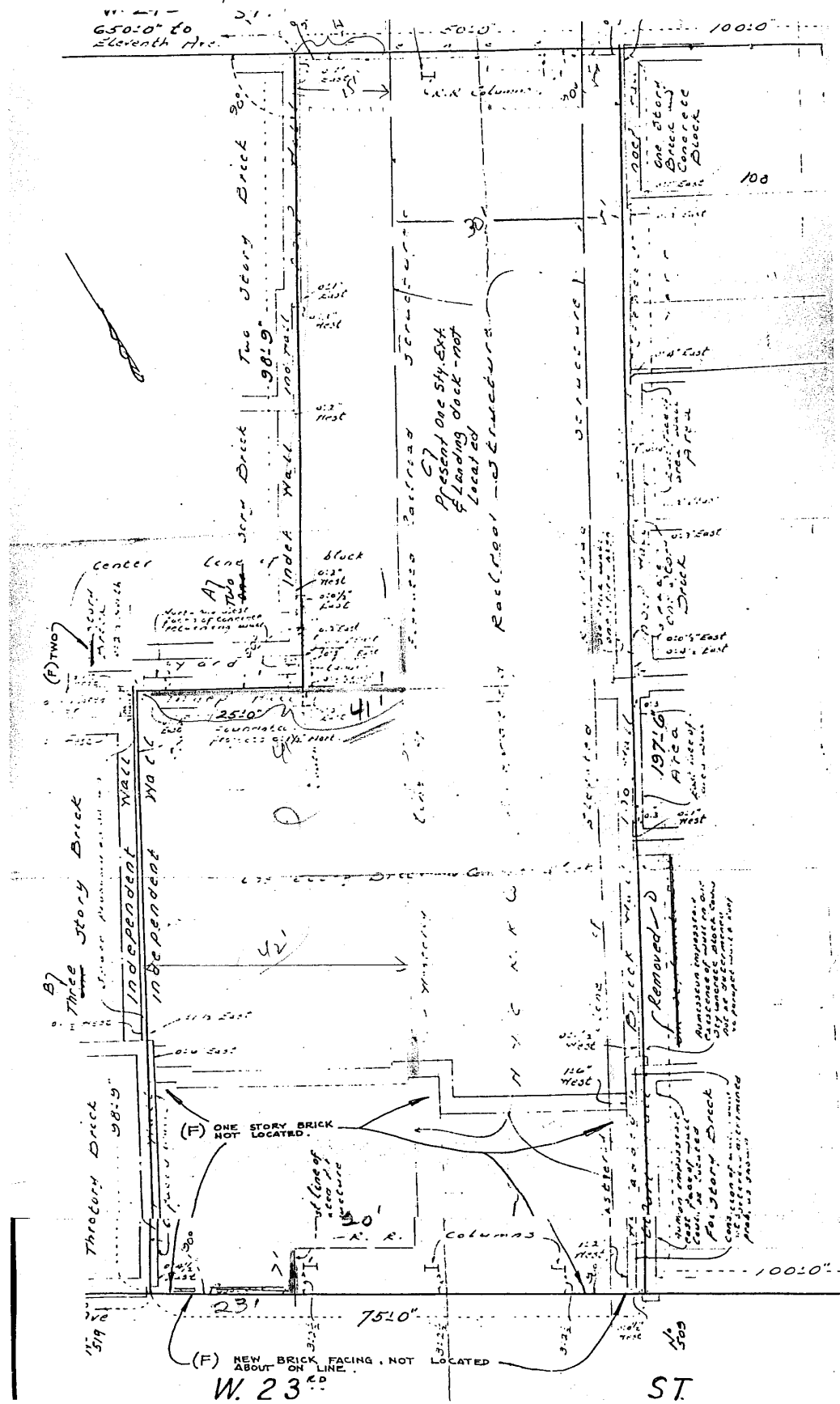
I, Michael A. Haskel declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Dated: Mineola, NY
December 15, 2004



MICHAEL A. HASKEL

Exhibit A



W. 23

ST.

Exhibit B

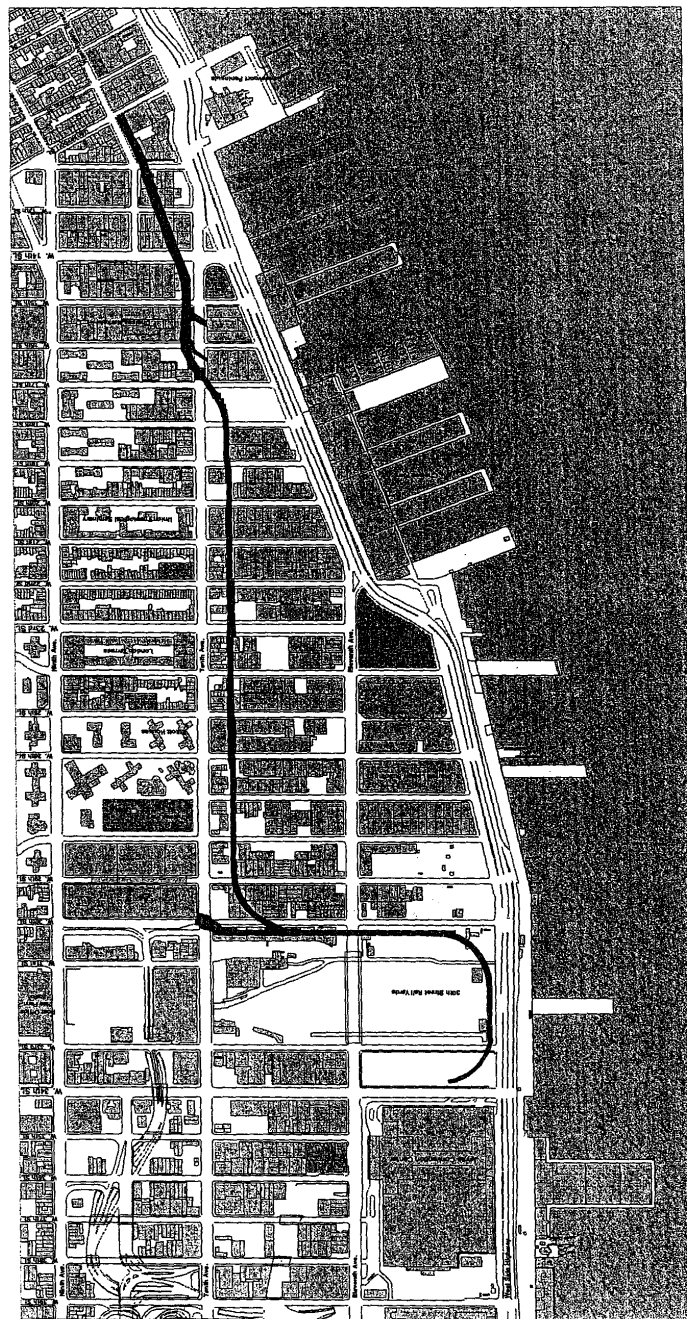


Exhibit C

High Line (#27)

The High Line (S/NR-eligible) is an unused, freight railroad viaduct on the west side of Manhattan. Completed in 1934 as part of the West Side Improvement Project, it replaced the New York Central freight railroad along West Street and Tenth Avenue to eliminate dangerous traffic conflicts at grade. The West Side Improvement Project also included construction of the West Side Highway. In the Project APE, the High Line runs in a loop track around Caemmerer Yard along West 34th Street, Twelfth Avenue, and West 30th Street, where it turns south to run along Tenth Avenue (Figures 9-20 through 9-24). In the 1980s, the northernmost existing section between West 33rd and West 34th Streets was reconstructed and a section between West 34th and West 35th Streets was removed. The OPRHP, in a letter dated February 20, 2004, found the full length of the High Line between West 34th Street and Gansevoort Street to meet National Register eligibility Criterion A as a significant transportation structure from the 20th-century industrial development of the City. In addition, the OPRHP found that the High Line retains much of its historic integrity, despite the removal of the section between West 35th and West 34th Streets (and the removal of the southernmost section outside the Project APE between Little West 12th and Bank Streets).

Between Gansevoort Street and West 29th Street, the High Line runs along Tenth Avenue (image 27a of Figure 9-20), occasionally passing through buildings or connecting to adjacent buildings with private rail sidings, which formerly allowed for the delivery of goods. At West 29th Street, the High Line begins to curve west to run along the north side of West 30th Street toward Twelfth Avenue, forming a loop track around the former 30th Street Freight Yard (now Caemmerer Yard). At West 30th Street, a spur runs east to Tenth Avenue, where there is a large, double-track platform over the avenue adjacent to the Morgan General Mail Facility (#17) (image 27b of Figure 9-20 and image 27c of Figure 9-21). The platform over Tenth Avenue originally connected to the Morgan General Mail Facility to allow mail trains to simultaneously enter and leave the building.

Along the north side of West 30th Street between Tenth and Eleventh Avenues, both the eastward spur and the loop track viaduct run above a connected series of one-story brick warehouses (image 27d of Figure 9-21 and image 27e of Figure 9-22). The loop track viaduct crosses over Eleventh Avenue on a trestle (image 27f of Figure 9-22) and then curves northward as it reaches Twelfth Avenue (Figure 9-23). It then runs north, crossing over West 33rd Street, at which point it declines on a ramp that curves eastward to parallel West 34th Street (Figure 9-24). The rail line eventually

No. 7 Subway Extension—Hudson Yards Rezoning and Development Program FGEIS

runs at-grade on an embankment and then proceeds below-grade to Eleventh Avenue, which it passes under to connect to a north-bound rail cut—that runs between Eleventh and Tenth Avenues—that originally ran to the New York Central Railroad 60th Street Yard and that now serves as the Amtrak Empire Line.

Along West 30th Street, both the loop track and spur have a concrete parapet simply ornamented with recessed panels and a tubular steel railing broken up with square concrete posts. As it parallels Twelfth Avenue between West 30th and West 33rd Streets, the loop track viaduct has a decorative steel parapet and railing similar to those on the Tenth Avenue platform and the trestles south of West 30th Street, including the trestle over that street. On the north side of West 33rd Street, the High Line changes appearance due to an early 1980s reconstruction (discussed below). The portion of the loop track that curves northeastward from West 33rd Street to parallel West 34th Street has a modern, concrete and steel beam and girder form, and it is supported on concrete abutments.

The High Line loop track originally traversed West 34th Street and then curved northeastward to parallel West 35th Street, eventually passing under Eleventh Avenue and connecting to the north-bound rail cut. In the early 1980s, the section of the High Line between West 34th and West 35th Streets was demolished for construction of the Jacob K. Javits Convention Center, and the section between West 33rd and West 34th Streets was rebuilt to its current configuration that maintains the connection to the north-bound rail cut. Within the Project APE, other alterations to the High Line include the broken connection to the Morgan General Mail Facility, billboards attached to the Tenth Avenue platform, and rusting and spalling of some of the viaduct's steel and concrete elements.

Exhibit D

33141
DO

SERVICE DATE - NOVEMBER 27, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34259

CHELSEA PROPERTY OWNERS-PETITION FOR DECLARATORY ORDER-HIGHLINE

Decided: November 25, 2002

Chelsea Property Owners (CPO) has requested the issuance of a declaratory order to resolve two issues relating to a 1.45-mile elevated rail line (known as the Highline) owned by Consolidated Rail Corporation (Conrail) in the Borough of Manhattan, NY.¹ Specifically, CPO requests a determination of whether: (1) the Board, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), would retain jurisdiction over the portion of the Highline south of 30th Street if the portion north of 30th Street were abandoned (thus depriving the southern portion of a connection to the national rail system); and (2) the demolition of the Highline north of 30th Street and the construction of an Olympic stadium over the right-of-way would be consistent with interim trail use under the Trails Act. For the reasons discussed below, the request for a declaratory order will be denied.

BACKGROUND

In a decision served in Chelsea Property Owners-Aban.-The Consol. R. Corp., 8 I.C.C.2d 773 (1992) (Chelsea), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994), the Interstate Commerce Commission (ICC) authorized the abandonment of the Highline. Underlying the proceeding was an "adverse abandonment" application filed by CPO, a group seeking to redevelop the real estate occupied by the Highline. CPO asked for the abandonment authority in order to remove plenary Federal jurisdiction over the rail line and permit the condemnation of the property.

Conrail operated over the Highline pursuant to an easement whose termination terms require Conrail to absorb the cost of demolishing the viaduct. An abandonment constitutes termination under

¹ The Highline is a segment of Conrail's West 30th Street Secondary Track. It rises from grade level on steel columns near the corner of 34th Street and Eleventh Avenue just to the north of the 30th Street Rail Yards; loops around the northern, western, and southern perimeter of the 30th Street Rail Yards before turning south at 30th Street near Tenth Avenue; and extends south on a viaduct mostly to the west of Tenth Avenue until terminating at Gansevoort Street.

the easement. Based on CPO's representations, the ICC conditioned the abandonment authorization on CPO agreeing to indemnify Conrail for all demolition costs in excess of \$7 million and posting "an appropriate surety bond or similar security" to ensure payment. Chelsea at 792 and 794.

On August 14, 2002, CPO filed a motion in 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, requesting that an order be issued finding that a settlement agreement CPO negotiated with involved railroad and government interests, including The City of New York (City),² satisfies the indemnity condition. Friends of the High Line, Inc. (Friends), filed a reply in opposition to that motion on September 6, 2002. Friends also filed a petition to reopen the Chelsea decision on August 16, 2002. By decision served on October 29, 2002, the City has been granted an extension until December 17, 2002, to reply to CPO's August 14 motion and Friends' August 16 petition to reopen.

CPO filed the petition for a declaratory order at issue here on October 1, 2002. On October 23, 2002, Conrail and CSX filed replies without taking positions on the merits of the petition, and Friends and the City filed replies in opposition.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A review of CPO's petition indicates that there is no basis for instituting a declaratory order proceeding.

CPO contends that the City has submitted a bid to the United States Olympic Committee to be the United States candidate to host the 2012 Olympic games, that the bid commits the City to constructing an 86,000-seat Olympic stadium over the 30th Street Rail Yards which would necessitate the abandonment and demolition of the Highline in that location; and that this would sever the Highline south of 30th Street from its connection to the national rail system. At the same time, CPO claims that the City is considering whether to file a trail use request to preserve either the Highline structure and easements south of 30th Street or, in the alternative, the entire Highline south and north of 30th Street.

² Rail interests include Conrail, Conrail Inc., New York Central Lines, LLC, and CSX Corporation and CSX Transportation, Inc. (jointly referred to as CSX). Besides the City, government interests include the New York City Economic Development Corporation, the New York Convention Center Development Corporation, the Metropolitan Transportation Authority, and the Triborough Bridge and Tunnel Authority.

Under either alternative, CPO claims that the Highline north of 30th Street would have to be abandoned and demolished.³ CPO argues that this would sever the Highline south of 30th Street from the national rail system. According to CPO, the Board would lose jurisdiction over, and as a result be precluded from accepting trail use requests with respect to, the Highline south of 30th Street if that portion of the Highline were severed from the national rail system.

CPO contends that the City's interest in filing for trail use is based on a misunderstanding of the Board's jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, and contrary to the Trails Act and that it is threatening to undermine the settlement agreement in STB Docket No. AB-167 (Sub-No. 1094)A and put at risk the City's bid to host the 2012 Olympics. CPO claims that the proposed declaratory order proceeding should be instituted on an expedited schedule to clarify that trail use as envisioned by the City is not possible and that this would end the trail use controversy and allow CPO and the City to resolve remaining issues relating to the Highline's future.

The City contends that there is no controversy and as a result no basis for instituting a declaratory order proceeding. The City states that it has not yet taken a position on the legal principles governing the Board's jurisdiction, much less a position contrary to CPO's view that the Highline, if rail banked, must maintain a connection to the national rail system. The City claims that it is still reviewing studies and other materials analyzing the feasibility of trail use and ways to maintain a rail link between the Highline and the national rail system in a manner consistent with the development goals of the 30th Street Rail Yards. Asserting that it has not yet decided whether to file for trail use or the form such a request would take, the City argues that it would be premature to institute a declaratory order proceeding at this time.

There is no reason to institute a declaratory order proceeding to resolve issues that may never arise. The City's reply to CPO's motion and Friends' petition in STB Docket No. AB-167 (Sub-No. 1094)A is due on December 17, 2002. The issues CPO raises can be considered in the event the City's reply includes a trail use request.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for a declaratory order is denied.

³ CPO contends that no alternative right-of-way is available to carry the Highline from its grade level connection with the national rail system near 34th Street and Eleventh Avenue to the viaduct at 30th Street near Tenth Avenue.

STB Finance Docket No. 34259

2. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

Exhibit E



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel



December 17, 2002

266 870

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

ENTERED
Office of Proceedings

DEC 17 2002

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:

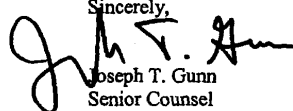
I am enclosing for filing the original and 10 copies of the Reply of The City of New York to Motion by Chelsea Property Owners that a Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding (the "Reply"). The Reply contains an application for a Certificate of Interim Trail Use.

In accordance with the Board's regulations I am also enclosing a diskette that includes the text of this document.

I have also enclosed one additional copy, that I ask you to date stamp and return to our messenger.

Thank you.

Sincerely,


Joseph T. Gunn
Senior Counsel

www.nyc.gov

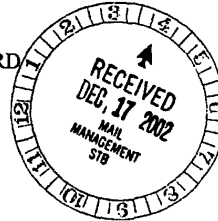
BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

DEC 17 2002

Part of
Public Record

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

REPLY OF THE CITY OF NEW YORK TO MOTION BY CHELSEA PROPERTY OWNERS
THAT A CERTAIN SETTLEMENT AGREEMENT SATISFIES THE SURETY CONDITION
IN THE ICC'S SEPTEMBER 16, 1992 ORDER IN THIS PROCEEDING

The City of New York (the "City") replies to the motion of the Chelsea Property Owners ("CPO") That A Certain Settlement Agreement Satisfies the Surety Condition in the ICC's September 16, 1992 Order in this Proceeding. The City does not dispute that the form of Settlement Agreement, if executed and delivered, and the closing contemplated thereunder brought to fruition in accordance with the terms of the Settlement Agreement, would satisfy the 1992 ICC surety condition. However, CPO's Motion is premature -- the Settlement Agreement is not final and it is not clear that all of the pieces of the complicated puzzle that must be assembled have in fact been brought together in a way that would permit the STB or the interested parties to conclude that the puzzle is, in fact, complete. In addition, the City seeks a Certificate of Interim Trail Use for the Highline viaduct.

A. The Settlement Agreement is Not Final

1. There is no final, fully executed and delivered Settlement Agreement at this time, and there is serious doubt whether or not a Settlement Agreement will ever become a final, valid and binding agreement among the parties thereto. The reasons, in summary, are as follows: (i) the Settlement Agreement has not been executed by all the property owners whose properties are encumbered by the High Line, (ii) since the City signed the Settlement Agreement nearly one (1) year ago, both the railroad parties and the City have requested changes to the terms of the Settlement Agreement which, to the City's knowledge, have not been accepted by any of the other property owner-parties to the Settlement Agreement; therefore the final terms of the Settlement Agreement are unsettled; (iii) the Settlement Agreement is by its terms subject to certain approvals, which approvals are by no means assured; and (iv) there is no appropriation in the City's capital budget for certain City monies CPO is depending upon which for funding demolition, and it is doubtful that such monies will be appropriated.

2. The City signed the Settlement Agreement in December 2001, during the last days of Mayor Giuliani's final term of office. The Settlement Agreement was delivered to counsel to the railroad with the understanding that fully executed originals would be returned to the City within four weeks¹ of the City's execution of same (See Exhibit A).

3. Under contract law, when a party signs a written agreement and delivers it to the other party or parties thereto, the first party has made an offer. That offer must be accepted by signing the agreement (as-is) and returning a fully executed original to the offeror within the period of time specified by the offeror, and if none is specified, within a reasonable period of

¹ The four week period stated in counsel to the City's letter for full execution and delivery of the Settlement Agreement was arrived at in consultation and agreement with counsel to CPO.

time. See 22 NYJur2d, Contracts Sec. 41. In this case, it was the City's understanding that fully executed originals would be returned to the City within four (4) weeks of execution by the City. As of today, nearly one year later, the City understands that there is at least one owner -- the Metropolitan Transportation Authority -- that has not signed the Settlement Agreement. As a result, it is not a final, binding document.

4. By letter dated March 6, 2002, counsel to CSX Corporation ("CSX") informed counsel to CPO that certain changes would be required to the Settlement Agreement before the railroad parties would sign. CPO apparently embarked upon a public relations campaign in response to The Friends of the High Line, Inc.'s ("FOHL") mobilizing public support for converting the Highline to public trail use. The railroad parties have evidently taken offense at CPO's characterization of the Highline's condition, and in response seek the right to terminate the Settlement Agreement in the event of further disparagement of the Highline by any party. The railroad parties further seek an indemnification from CPO and related entities for any damages resulting from such disparagement. To the City's knowledge neither CPO nor any of the other property owner-parties have agreed to the terms required by the railroad parties. Accordingly, there is not finality on terms of the Settlement Agreement submitted to the Board as Exhibit 1 to CPO's motion.

5. It is a fundamental principle of contract law that a request for a change to a contract by the offeree (i.e., the railroad parties) prior to acceptance constitutes a rejection of the offer which cannot thereafter be accepted to form a contract (Keryakos Textiles, Inc. v. CRA Development, Inc. (1990, 3d Dept.) 167 AppDiv2d 738, 563 NYS2d 308; 22 NYJur2d Sec. 43).

parties to the Settlement Agreement. Accordingly, the Settlement Agreement is not in final form nor is it binding on the parties thereto.³

8. The Settlement Agreement, by its terms, is subject to the approval of New York City Economic Development Corporation's⁴ ("EDC") Board of Directors, or a duly constituted committee thereof (i.e., the Executive Committee)(Settlement Agreement, Section 9.18(a)(Exhibit D)). The Settlement Agreement is further subject to the execution by EDC and CPO of a "Funding Agreement"⁵, and approval of the Funding Agreement (and other agreements) by EDC's Executive Committee.

9. Since EDC signed the Settlement Agreement in December 2001, EDC has a new President, its management has been restructured and it has added new senior staff, generally as a result in the change in the City's Mayor. EDC staff is aware of FOHL's efforts and the City's willingness to pursue a CITU. In the event that the Settlement Agreement is presented to EDC's Executive Committee for approval, EDC staff will, of course, disclose to the Executive Committee FOHL's initiative, and the City's interest in securing a CITU. Given the change in

³ Further, it is the City's position that neither the City nor EDC are presently bound to remain parties to the Settlement Agreement and are permitted under law to withdraw from same.

⁴ EDC is a not-for-profit local development corporation that serves as the City's instrumentality for economic development pursuant to two (2) annual contracts entered into between the City and EDC (one contract for maritime matters, and one contract for all other matters). The Mayor directly or indirectly appoints all of the directors of EDC.

⁵ EDC is a party to the Settlement Agreement for purposes of disbursing the \$7 million contribution for demolition by the railroads, as well as a City contribution to demolition costs. Because EDC is a not-for-profit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, the \$7,000,000 contribution by the railroad parties will be tax deductible, an important factor in the railroad parties' willingness to enter into the Settlement Agreement.

6. In August 2002² counsel to the City informed CSX's counsel that the City had some concerns with the proposed language, and requested certain modifications in response. In addition, counsel to the City has advised counsel to CSX and counsel to CPO that the City wants to add a provision to the Settlement Agreement giving the City the express right thereunder to support an application for a Certificate of Interim Trail Use ("CITU"), without being in breach of the Settlement Agreement (Exhibit B). A conversation between the City's counsel and counsel to CPO on the City's proposal was inconclusive. By correspondence dated December 6, 2002, counsel to the City reiterated to CPO the City's position that the Settlement Agreement be modified to provide the City with the express right to support or file a CITU without being in breach of the Settlement Agreement. (Exhibit C). The City has not yet received a definitive response from CPO.

7. The status of the Settlement Agreement is that an offer was made a year ago by the City to enter into the Settlement Agreement. That offer was never fully accepted, either within the time frame fixed by the City (four weeks) or since. Subsequently, the railroad parties effectively rejected the offer and made a counter-offer. Subsequent to that, the City effectively rejected the railroad parties' counteroffer, withdrew the original offer and made its own counter offer. None of these offers and counteroffers have been definitively accepted by any of the

² The City's counsel had been sent a copy by FAX on CSX's counsel's March 6 letter; however, the letter was faxed to a line at 100 Church Street, which at the time was vacated by the City's Law Department due to its proximity to the World Trade Center. The City's Law Department moved back to 100 Church Street in the middle of April. The March 6 letter surfaced some weeks later.

parties to the Settlement Agreement. Accordingly, the Settlement Agreement is not in final form nor is it binding on the parties thereto.³

8. The Settlement Agreement, by its terms, is subject to the approval of New York City Economic Development Corporation's⁴ ("EDC") Board of Directors, or a duly constituted committee thereof (i.e., the Executive Committee)(Settlement Agreement, Section 9.18(a)(Exhibit D)). The Settlement Agreement is further subject to the execution by EDC and CPO of a "Funding Agreement"⁵, and approval of the Funding Agreement (and other agreements) by EDC's Executive Committee.

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circumstances since the Settlement Agreement was signed in December 2001, approval of the Settlement Agreement by EDC is by no means assured. See Verified Statement of Robert Balder ("VS Balder"), Exhibit E at pars. 10 and 12.

10. EDC's new administration has not undertaken at this time any serious review of the draft Funding Agreement between EDC and CPO or the agreements ancillary to the Funding Agreement which are referred to in Settlement Agreement Section 9.18(a). There is no assurance that once EDC's staff undertakes its review of the Funding Agreement and ancillary agreements, they will be acceptable to EDC's current administration. Furthermore, there is no assurance that EDC's Executive Committee, which will take cognizance of the direction taken by the new Mayoral administration, will approve the draft Funding Agreement. See VS Balder at pars. 10 and 12.

11. A further complication to EDC's executing the Funding Agreement and the Executive Committee's approving the Settlement Agreement is one of the lack of available capital funding for the City's share of demolition costs. The prior Mayoral administration informally decided that the City would seek to contribute \$381,000 (the "City Contribution") to the demolition of the Highline. Although \$381,000 may not seem significant in the scheme of a \$7,000,000 demolition project (plus several million dollars in soft costs), the City's contribution is, in fact, critical. CPO had originally presented the City with the offer to demolish the Highline at no cost to the City, if the City would cooperate with CPO in the endeavor. Later, CPO informed the City that it needed a contribution from the City of approximately \$270,000 as "seed money"; that is, to induce other property owners to contribute to bridge the gap between total demolition costs and the \$7,000,000 railroad contribution. Subsequently, due primarily to increased insurance costs, the City was asked to increase its contribution to \$381,000; again, to

induce other parties to increase their contributions to demolition costs. Under regular City financing practices, the City Contribution would be allocated by the City, from the City's capital budget, to EDC for disbursement for demolition under the Funding Agreement (along with the railroad parties' \$7 million contribution). In order for the City to allocate such funding from its capital budget, an appropriation is needed. The City budget process is, basically and in pertinent part, for the Mayor to prepare a preliminary budget in January and submit same to the City Council (New York City Charter Section 236 (Exhibit F)). Thereafter in April, the Mayor submits an executive budget to the City Council (New York City Charter Section 249 (Exhibit F)) for adoption by the City Council, which generally occurs in June (New York City Charter Sections 253, 254 (Exhibit F)). At the present time, no capital appropriation has been made for Highline demolition. It is highly unlikely that at this time the City Council will appropriate capital budget funds to demolish the Highline. As discussed below, the City Council has sued the office of the Mayor to stop the demolition of the Highline. Furthermore, City funding for Highline demolition is less likely to be forthcoming in view of the City's well publicized serious fiscal problems. It is EDC's general policy and practice not to enter into a funding agreement unless and until capital budget funds are available from the City for disbursement, nor to seek Executive Committee approval for same without available City funding. See VS Balder at par. 13.

B. Litigation Over City Land Use Issues Raises Further Questions About the Finality and Ultimate Viability of the Settlement Agreement

1. The New York City Council, the City's Manhattan Borough President and others have brought an action against the office of the Mayor, claiming that the City's accepting a surrender of the easements for the Highline from the railroads is an "acquisition" for purposes of the Uniform Land Use Review Procedure pursuant to Section 197-c of the New York City

Charter ("ULURP"). The plaintiff's also allege that extinguishing the easements requires a mapping action⁶ by the City, which, if correct, would be subject to ULURP. See Exhibit G.

2. ULURP involves filing a completed application with the Department of City Planning, which is then reviewed, within time frames set forth in the City Charter, by the local community board, the applicable Borough President, and the City Planning Commission. The application is then filed with the City Council pursuant to New York City Charter Section 197-d (Exhibit G). Under certain circumstances, the application is automatically reviewed by the City Council; in other circumstances, the City Council must vote to consider the application. The ULURP process generally takes from eight months to a year to complete, though it could take much longer, especially with respect to mapping actions⁷.

3. The City's Law Department maintains that no ULURP is required for the City to participate in the Settlement Agreement. However, plaintiffs have obtained a ruling from the New York Supreme Court adverse to the City's position. See Exhibit H. That ruling has been appealed to the New York Appellate Division. As of today, no decision has issued from the appeal. However the Appellate Division rules, it is fairly certain that the losing party will seek relief from the New York Court of Appeals. There is no way to predict how long it will take for

⁶ A "mapping action" is an action which requires a change in the City map. Generally, a change in the City map is required for actions which remove publicly used property from public use or add non-publicly used property for public use. Examples would be the opening of streets, parks or rights-of-way. Plaintiff's cause of action in the above-described action hinges primarily on peculiar language set forth in the New York State legislation authorizing governmental action for the development of the Highline.

⁷ Mapping actions are often the most cumbersome of ULURP actions because of the number of City agencies often involved, depending upon the nature of the mapping action (e.g., Department of City Planning, Department of Transportation, Department of Parks and Recreation, Department of Environmental Conservation, applicable Borough President), as well as public utility companies.

all appeals to be exhausted, much less to predict the outcome. However, even if the position of the Law Department taken on behalf of the Mayor is vindicated, that vindication may well be a year away; maybe less, possibly more. Therefore, it is probable that the one year period from the issuance of a final order of abandonment in which the railroad parties must file a Notice of Consummation will expire before such notice can be filed, solely on account of the subject litigation.

4. If ULURP is required in order for the City to advance with the Settlement Agreement, that is, if the City Council has review and approval rights over the Settlement Agreement, then, for the present time, the Settlement Agreement will for all intents and purposes be a nullity.

C. The City Is Seeking A Certificate of Interim Trail Use

1. Pursuant to 49 C.F.R. §1152.29, the City hereby advises that it is interested in using the track that is the subject of this proceeding for interim trail use and rail banking pursuant to 16 U.S.C. §1247(d).

2. Good cause exists for accepting this statement of the City's intent at this time. CPO's initial petition for adverse abandonment of this line was presented at a time when the development and resurgence of the area of the City through which the Highline runs had not reached the level it enjoys today. The City respectfully refers the Board to pages 28 to 36 of The Friends of the High Line, Inc.'s Petition to Reopen the 1992 Abandonment Decision, which are attached hereto as Exhibit I.

3. Moreover, there has been not just one but three changes in the City's leadership since the proceeding was commenced in 1989.

4. In view of the numerous changes in circumstances since this proceeding was commenced in 1989 and the procedural schedule was established, good cause (as required by 49 C.F.R. §1152.29(b)(3)) exists for accepting this late-filed statement of intent.

5. In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the City is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by NYCLLC and operated by CSX Transportation, Inc. The property, known as the 30th Street Secondary Track, or the Highline, extends from 75-95 Gansevoort Street through 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association, a distance of approximately 1.45 miles, in the City and County of New York in the State of New York. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-167 (Sub-No. 1094A).

6. A map of the property depicting the right-of-way is attached as Exhibit J.

7. The City acknowledges that use of the right-of-way is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

8. The City has also advised Stephen Crosby, President of CSX Real Property, Inc., of its intent to file this request, as well as counsel to CSX (Exhibit K). While the railroad parties have stated that they have consistently worked to comply with the Board in this proceeding regarding the ICC surety condition, the railroad parties in the Settlement Agreement (Section

2.3) also contemplate the possibility of a "prefiled or late-filed trail use statement for procurement" of a CITU.⁸ In the past, in the course of general discussions on the Settlement Agreement and on the future of the Highline, CSX has indicated certain general conditions required for a CITU agreement. The City believes it can satisfy those conditions and hopes to have the negotiation of the terms and conditions for the CITU completed by no later than March 31, 2002. The City's execution and delivery of a CITU agreement with the railroad parties will be subject to the City's compliance with applicable environmental review procedures under State and City statutes and regulations.

9. The obstacles that CPO has raised to potential use of the Highline are hypothetical and cannot serve as a basis for this Board to conclude that a CITU is not permitted or possible.

10. It is premature to argue that any use of the Highline for a public trail would sever the line south of 30th Street from the interstate rail network. To the City's knowledge, no final development plans for the MTA Yard at 30th Street or for any other facilities on the line have been adopted or approved by the MTA, or by the City.

11. There is no doubt that there has been much speculation about possible use of some or all of the Highline right-of-way for a new stadium, for facilities related to the City's bid to host the 2012 Olympics or for other commercial, public or residential development. If any of those developments occur, then the City and any other parties to the project will need to bear in mind the legal obligations that attend the City's acceptance of the obligations recited in paragraphs 5 and 7 above. Neither CPO nor anyone else can argue credibly that the City is not

⁸ The City maintains, however, that the protections afforded the railroad parties under Settlement Agreement Section 2.3 are unnecessary, in that there is no final executed and binding Settlement Agreement.

mindful of those obligations. Nor can anyone allege with any validity at all that any plans have been approved that would cause the City or any other party to violate any such obligations.

12. Moreover, the City has received a copy of a study of the engineering feasibility of preserving a connection between the line south of 30th Street and the interstate rail network in the event that any proposed use of the MTA Yard at 30th Street were to involve use or reconfiguration of some portion of the existing Highline right-of-way.

13. The study was performed by Parsons Brinckerhoff Quade and Douglas, Inc. to examine the "engineering feasibility of an easement to connect the High Line (sic) to the LIRR Hudson Yards in the event that the existing connection is severed to facilitate the construction of a stadium or other development north of 30th Street." A copy of the letter describing three possible options is attached as Exhibit L.

14. This study is useful to demonstrate that retaining the connection to the interstate network is operationally feasible according to one engineering expert.⁹ This analysis is preliminary and neither the City nor Parsons Brinckerhoff pretends that this is an exhaustive presentation of the options that may be available. No such exhaustive presentation can be made at this time, of course, because there is no final plan or proposal extant for which issues have been identified that require a solution.

15. In addition, this study recognizes that there has been no analysis of whether any of these options is cost-effective. This study is preliminary because there has been no

⁹ The City cautions against engaging in extensive debate about whether circumstances will arise requiring implementation of any of these three particular options or any other possible solutions, and what constraints or opportunities may underlie such circumstances.

determination made that any development will occur that would in fact sever the existing connection.

16. However, the study is introduced to underscore the invalidity of two essential points that CPO has attempted to make in its aborted effort to seek a declaration of legal rights and obligations from this Board in Finance Docket No. 34359, *Chelsea Property Owners – Petition for Declaratory Order – Highline*.¹⁰ First, the City and other parties understand the issues, rights and obligations that are implicated by any decision to consider development of any of the property through or over which the Highline currently runs. Second, the City and other parties are taking those issues, rights and obligations into account as they consider the plethora of proposals, ideas, and projects that are involved in the many concepts for improving the quality of life of the residents and businesses in the City.

17. In the event that demolition of any portion of the Highline to accommodate MTA rail yard development is required, the City will, prior to undertaking any demolition, secure any rights of easement or other property interests as may be required in order to maintain the Highline's connection with the interstate rail network and pendant Board jurisdiction.

D. Conclusion

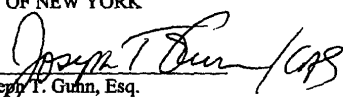
1. In view of all of the foregoing, the City submits that any finding by this Board that the Settlement Agreement satisfies the Surety Condition of the 1992 decision in this proceeding would be premature.

¹⁰ In the Decision served on November 27, 2002, in that proceeding, this Board has correctly denied the request for a Declaratory Order because the issues are not ripe - - - no declaratory order can issue where there is no dispute.

2. The City respectfully submits as well that a Certificate of Interim Trail Use is appropriate in this proceeding and commits to negotiation of an agreement to that effect with the railroads.

Respectfully submitted,

THE CITY OF NEW YORK

By: 

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Dated: December 17, 2002

Certificate of Service

I, Joseph Gunn, certify that on the 17th day of December, 2002, I caused a copy of the foregoing
REPLY OF THE CITY OF NEW YORK TO MOTION BY CHELSEA PROPERTY OWNERS
THAT A CERTAIN SETTLEMENT AGREEMENT SATISFIES THE SURETY CONDITION
IN THE ICC'S SEPTEMBER 16, 1992 ORDER IN THIS PROCEEDING to be served by first
class mail on the parties listed below.

Counsel

Represents

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(CPO)

Dated: December 17, 2002

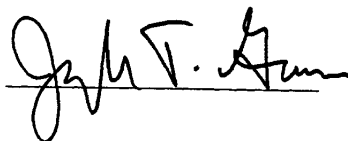


Exhibit F

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Press Release - New York City Department of City Planning

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FOR IMMEDIATE RELEASE

November 22, 2004

CONTACT: RACHAELE RAYNOFF, PRESS SECRETARY (212) 720-3471, fax: (212) 720-3219

CITY PLANNING COMMISSION VOTES TO APPROVE COMPREHENSIVE HUDSON YARDS REDEVELOPMENT PLAN

November 22, 2004 - The City Planning Commission (CPC) today voted to approve the comprehensive plan to redevelop the Hudson Yards on Manhattan's west side as a vibrant, transit-rich 24/7 commercial and residential neighborhood with more than 20 acres of open space, CPC Chair Amanda M. Burden announced. The 59-block rezoning will be supported by the planned extension of the Number 7 train, and together with the proposed convention corridor development, will fuel New York's economy with an estimated 200,000 private sector jobs plus thousands of construction jobs over coming decades.

The vote incorporates changes to the plan made during the public review process by community leaders and civic organizations, including:

- an increase in residential development and an expanded affordable housing program to produce or preserve roughly 2,600 affordable housing units with a total of 13,600 new units in the area,
- a reduction in commercial development of 2 million square feet and redistribution of remaining 26 million square feet,
- a zoning bonus that would encourage construction of small theaters to revitalize the western portion of 42nd Street, and
- a zoning incentive to create a pedestrian passage on West 32nd Street linking the soon-to-be-constructed Moynihan Station with the new six-acre public square on 11th Avenue.

"This comprehensive and far reaching Hudson Yards plan is essential to securing New York City's future," said Ms. Burden. "The close involvement of the many stakeholders in the review process has greatly improved this plan to reclaim the west side as a spectacular place to work, live and raise families for generations to come."

The Hudson Yards Redevelopment Plan includes the area from West 30th Street to West 43rd Street, and Seventh and Eighth Avenues to Twelfth Avenue. It is bordered by Clinton to the north, Chelsea to the south, the Hudson River to the west and the Garment Center and Midtown to the east. The changes approved today are expected to create opportunities for development in the area over the next 30 to 40 years and create, at buildout, annual revenues of \$1.6 billion (in 2003 dollars) for the City and State.

"I am gratified that today the City Planning Commission resoundingly endorsed one of the largest rezonings in the City's history - the penultimate step towards a sweeping transformation of Manhattan's West Side," said Vishaan Chakrabarti, DCP Manhattan Borough Director. "By leveraging the future land value of this largely underutilized area, the plan sets a new precedent for the creation of affordable housing, mass transportation, and acres of open space."

The CPC voted 10-1 to approve the modified plan and send it on to the City Council for the final step in the review process. This action follows the CPC's sign-off last week of a notice of completion of the final environmental impact statement, an exhaustive seven-volume

analysis of the proposal. It builds on the support of the Manhattan borough board for the rezoning and the approval earlier this fall by the Manhattan Borough President.

Complete information on the Hudson Yards [plan](#) is available at the Department of City Planning's website.

City Planning:

The Department of City Planning is responsible for the City's physical and socioeconomic planning, including land use and environmental review; preparation of plans and policies; and provision of technical assistance and planning information to government agencies, public officials, and community boards.

[Return to the Press Release Archive](#)

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Exhibit G

b) Open Space

It is anticipated that by 2010, assemblage of parcels and initial construction of the open space corridor between West 33rd and West 34th Streets would have begun. There are no architectural resources located close enough (within 90 feet) to the section of the open space corridor south of West 34th Street to potentially be affected by adverse physical impacts from adjacent construction activities.

By 2010, a large public square would be constructed on a deck built over the eastern portion of Caemmerer Yard, on the block between West 30th and West 33rd Streets and Tenth and Eleventh Avenues. Although the design and the specific program for the new open space have not been planned at this time, construction of the deck in accordance with the development plan for the eastern portion of Caemmerer Yard would remove sections of the High Line along West 30th Street between Tenth and Eleventh Avenues. In addition, as discussed more fully in Chapter 2, "Description of the Proposed Action," NYCT would relocate the Quill Bus Depot to Caemmerer Yard to accommodate the Convention Center Expansion, discussed below. Relocation of the Quill Bus Depot would remove sections of the High Line on West 30th Street between Tenth and Eleventh Avenues. Removal of portions of the High Line would constitute a significant adverse impact. Mitigation for the adverse impact to the High Line is stipulated in two separate LORs with the OPRHP—the ESDC LOR and the MTA LOR. Both LORs stipulate such mitigation to include documentation to Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) Level 2 standards to salvage and create an historical exhibit on the High Line. The two LORs are included in Appendix J. Mitigation measures for this adverse impact—as well as other adverse impacts identified for other project components—are described in more detail below, under "Mitigation."

Exhibit H

The Project is an important component of the No. 7 Subway Extension – Hudson Yards Rezoning and Development Program for the far west midtown area of Manhattan (the “Hudson Yards Program”) that is being proposed by the City. The Hudson Yards Program envisions, among other improvements, the rezoning of the far west side, an expansion of the Jacob Javits Convention Center (the “Javits Center”), the extension of the No. 7 subway line and a network of parks and open space throughout the Hudson Yards, including a publicly accessible open space located between West 33rd and West 34th Streets and 11th and 12th Avenues (the “Open Space”) which could accommodate retail and other active uses. Although those improvements may impact and benefit the Project, the Project is independent of those actions and may proceed with or without the other elements of the Hudson Yards Program.

Project Description

The Project site, located on the far west side of Manhattan, is generally bounded by West 30th Street, West 33rd Street, 11th Avenue and 12th Avenue (a/k/a Route 9A) (the “Railyards”). The Project site also includes certain airspace over the street beds of West 30th Street and West 33rd Street between 11th and 12th Avenues (the “City Parcels”) and a pedestrian bridge that will cross over Route 9A (the “9A Parcel”). (The airspace over the Railyards, the City Parcels and 9A Parcel are collectively hereinafter referred to as the “Project Site”.) As a result of the Project, West 33rd Street will be permanently closed to vehicular traffic between 11th and 12th Avenues. A site plan is attached hereto as Exhibit A.

The Railyards are currently owned by the Triborough Bridge and Tunnel Authority (“TBTA”), an affiliate of the MTA, and the portion between West 31st and West 33rd Streets is operated as an active rail yard by the Long Island Rail Road (“LIRR”), also an affiliate of the MTA.

The Project includes the development and construction of a steel and concrete platform (the “Platform”) over the Railyards. The Platform will serve as an enclosure for the LIRR rail operations and potentially other MTA facilities, such as a bus garage, that would be located between West 30th and West 31st Street. It is expected that there will be minimal disruption to the LIRR operations at the Railyards during construction of the Platform and operations will continue unimpeded thereafter. The Platform is expected to be approximately 27 feet above existing grade.

The Platform will serve as the base for the construction of the approximately 2.2 million square foot NYSCC. The NYSCC will be constructed to permit (i) an approximately 75,000 seat configuration for open air stadium type events; (ii) an approximately 180,000 square foot exhibition hall for convention, trade shows, plenary sessions and other events; and (iii) approximately 18,000 square feet of meeting rooms to serve conventions, trade shows, plenary sessions and other events. The NYSCC will have a retractable roof and be usable year round.

The NYSCC will largely be a steel and glass structure. The fixed roof of the enclosed building will rise approximately 200 feet above the Platform, with the north and south walls extending an additional 100 feet above the fixed roof. In order to convert from stadium mode to convention configuration, the NYSCC is expected to include a removable palletized artificial playing

Exhibit I

Chapter 25: Unavoidable Adverse Impacts

A. INTRODUCTION

As described in previous chapters of this FGEIS, most of the potential significant adverse impacts of the Proposed Action could be avoided or mitigated by implementing a broad range of measures. However, there are a number of significant adverse impacts for which there are no reasonably practical mitigation measures or reasonable alternatives that would eliminate the impacts and meet the purpose and need of the Proposed Action. These include unavoidable adverse effects on architectural historic resources, archaeological resources, traffic, transit, pedestrians, and construction period air quality and noise.

Between the DGEIS and FGEIS additional and more refined analyses have shown that some of the significant adverse environmental impacts identified in the DGEIS would not occur. Further analyses have been completed between the DGEIS and the FGEIS to identify additional measures that could be implemented to avoid or mitigate significant adverse environmental impacts. As a result of such analyses, the remaining unavoidable adverse impacts from the Proposed Action are identified below.

B. SUMMARY OF UNAVOIDABLE ADVERSE IMPACTS

1. Architectural Historic Resources

As described in Chapter 9, "Architectural Historic Resources," construction of the Multi-Use Facility would partially remove sections of the High Line viaduct north of West 30th Street and west of Eleventh Avenue by 2010. Except for partial demolition of the High Line, a structure identified by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) as having historic significance, no adverse impacts to designated (architectural) cultural resources in the Project Area are anticipated by 2010 due to avoidance, protective, and mitigation measures that would be implemented during the design and construction phases of the project. Two separate Letters of Resolution (LORs) with OPRHP specify mitigation for the adverse impacts to the High Line, including photographic documentation and best efforts to salvage the removed portions (see Chapter 9, "Historic Resources").

By 2025, the Proposed Action would result in an unavoidable adverse impact on one additional architectural resource that would be removed for constructing the open space corridor. Mitigation for this impact could include documentation according to Historic American Buildings Survey (HABS) standards.

The Proposed Action would also result in unmitigated significant adverse impacts on eleven architectural resources that could be removed or altered for projected or potential development. These impacts would be unmitigated, because there are no mechanisms for implementing mitigation measures for as-of-right development.

The Proposed Action would result in shadow impacts on the Eighth Avenue façade of the Farley Building, for which there would be no reasonable or feasible means of avoidance or mitigation. Additionally, impacts on St. Raphael's RC Church could be partially mitigated. There is no feasible mitigation for the impacts on the church's west transept rose window.

2. Archaeological Resources

As described in Chapter 10, "Archaeological Resources," the Proposed Action could potentially result in significant unmitigated adverse impacts at two sites where archaeological resources could be present.

d) **Convention Center, Multi-Use Facility, and Waterfront**

Construction of the Convention Center Expansion and Multi-Use Facility would result in a significant adverse physical impact to one architectural resource. The Proposed Action would remove sections of the S/NR-eligible High Line (#27) that run east-west on West 30th Street between Eleventh and Twelfth Avenues and then north-south along Twelfth Avenue between West 30th and West 34th Streets. While the portion of the High Line below West 30th Street would not be affected by the Proposed Action, removal of the section north of West 30th Street and west of Eleventh Avenue would result in a significant adverse impact to the architectural resource. Mitigation for the adverse impact to the High Line is stipulated in the ESDC LOR and will include documentation to HABS/HAER Level 2 standards to salvage and create an historical exhibit on the High Line.

Although the proposed Convention Center Expansion, as currently contemplated, would partially envelop the two S/NR-eligible Lincoln Tunnel ventilation structures (#19b and #19b) located on the expansion site, there would be no adverse direct impact to them from adjacent construction, because the Port Authority of New York and New Jersey would require the implementation of construction protection measures. No other architectural resources are located close enough to the Convention Center Expansion site or the Multi-Use Facility site to be affected by construction-related physical impacts.

Exhibit J

High Line

Consistent with the Hudson Yards Program to redevelop the far west side of Manhattan, the City expects to convert portions of an elevated railway viaduct that extends from Gansevoort Street to approximately 34th Street (the "High Line") to public space. Portions of the existing High Line, including that portion within the Project Site, which is approximately 30 feet wide, and extends along an irregular path from 11th Avenue at West 30th Street to West 33rd Street between 11th and 12th Avenues, will be removed. In place of the portion on West 30th Street between 11th and 12th Avenues, Jets Development will build a pedestrian walkway. As the High Line is an eligible resource for listing on the State and National Registers of Historic Structures, its removal would constitute an adverse effect and mitigation will be required. A Letter of Resolution among ESDC, Jets Development and the State Office of Parks Recreation and Historic Preservation has been prepared to stipulate the mitigation measures agreed upon.

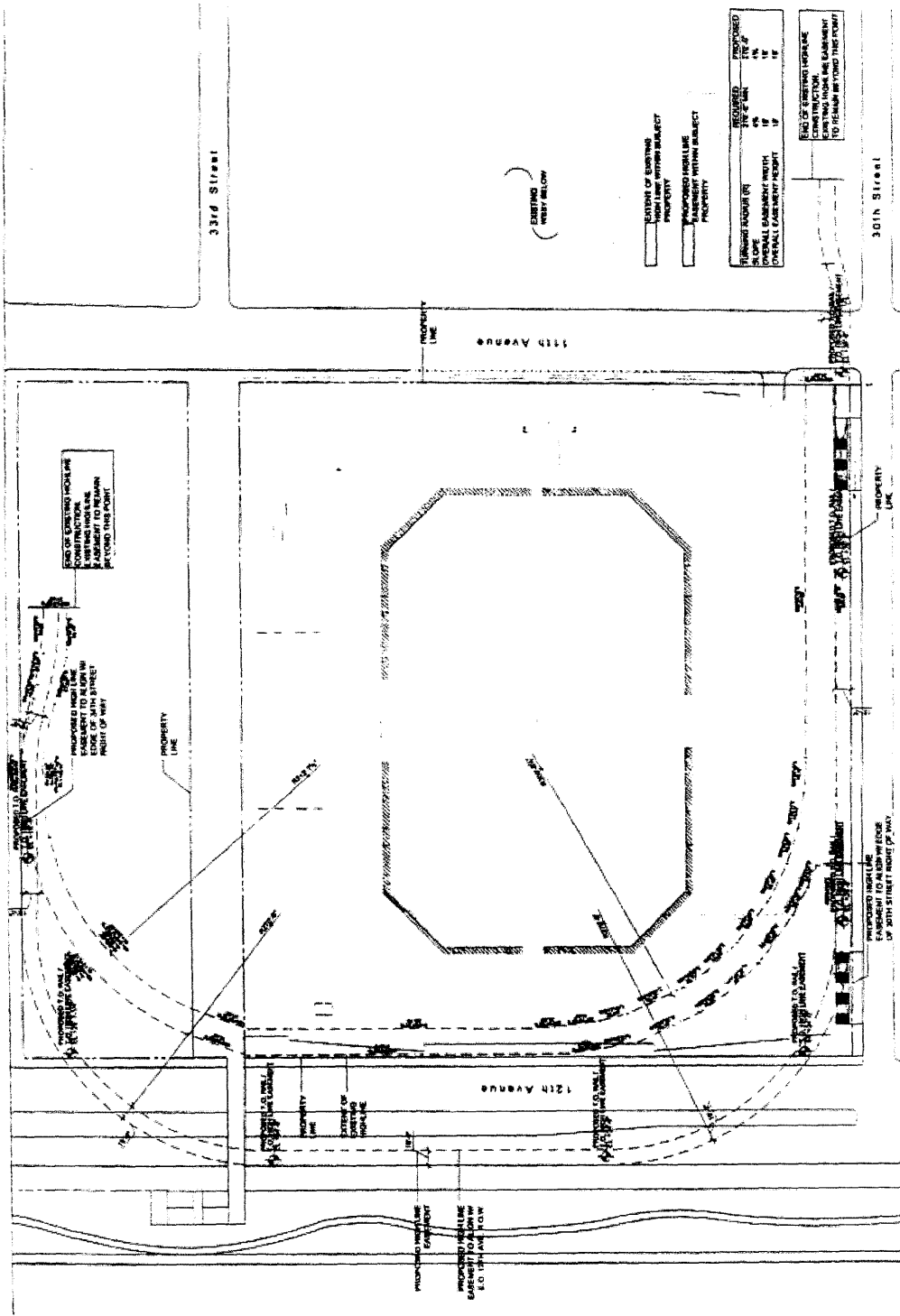
The High Line structure within the Project Site is located within an easement granted, or to be granted, to the Consolidated Railroad Corporation. It is expected that ESDC or a subsidiary of ESDC, MTA and other parties will enter into agreements with the Consolidated Railroad Corporation and other parties in furtherance of the High Line project to, among other things, (i) allow for the removal of the High Line structure within the Project Site; (ii) provide for a relocation of the existing easement, which now runs between 30th Street and 33rd Street, within the Project Site, to permit the development of the NYSCC and (iii) provide for the future restoration of freight service along the relocated easement if mandated by the federal Surface Transportation Board. Furthermore, in order to accommodate the foregoing goals, it is expected that ESDC will join the City in applying to the Surface Transportation Board for issuance of a Certificate of Interim Trail Use. The City will agree to perform any obligations that ESDC, or any subsidiary of ESDC, is liable for under the aforesaid agreements and will fully indemnify ESDC.

A depiction of the existing High Line easement within the Project Site and the proposed relocated site of the easement is set forth in Exhibit C hereto.

Site Investigation and Hazardous Materials

The Railyards have been utilized for decades for railroad and related industrial purposes. Hazardous substances may be present on the surface or in the subsurface. Under the terms of a Temporary Entry License Permit between MTA and Jets Development, Jets Development and their consultants have been provided access to the Railyards to gather information and data that will be utilized (i) by the City and MTA in the preparation of the Final Generic Environmental Impact State for the Hudson Yards Program and (ii) Jets Development to perform certain geotechnical analysis that will be required for the construction of the Project.

Collectively, under the terms of the License and the transaction documents, Jets Development will be obligated to perform any mitigation or remedial program that may be required under applicable laws and regulations or as otherwise agreed to among ESDC, the MTA and Jets Development. Pursuant to terms to be agreed to among ESDC, Jets Development and the City, it



EXTENT OF EXISTING
 HIGH LINE WITHIN SUBJECT
 PROPERTY
 PROPOSED HIGH LINE
 EASEMENT WITHIN SUBJECT
 PROPERTY

REQUIRE DEDICATION	10'	PROPOSED	10'
TO 33RD STREET	10'	TO 33RD STREET	10'
TO 30TH STREET	10'	TO 30TH STREET	10'
TO 12TH STREET	10'	TO 12TH STREET	10'
TO 11TH STREET	10'	TO 11TH STREET	10'

END OF EXISTING HIGH LINE
 CONSTRUCTION
 TO REMAIN WITHIN THE EASEMENT
 TO 33RD STREET

Project No. 1500 01
 Date 08-22-04
 Scale NTS
 Revision Date
 KPF
 255A
 THE OVERALL PLAN
 HIGH LINE EASEMENT PROPERTY
 NY

Exhibit K

8/25

TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement"), made as of the ____ day of _____, 2005, by and among **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation whose mailing address is Two Commerce Square, 29th Floor, 2001 Market Street, Philadelphia, PA 19103 ("CRC"), and ~~the~~ **THE CITY OF NEW YORK**, a municipal corporation having its principal place of business at City Hall, New York, New York 10007 (the "City"), and the **NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a the EMPIRE STATE DEVELOPMENT CORPORATION**, a public benefit corporation having its principal place of business at 633 Third Avenue, New York, New York 10037 (the "ESDC").

WITNESSETH:

WHEREAS, the City, by Quit-Claim Deed from CRC of even date herewith (a copy of which is attached as Exhibit B-1 annexed hereto and hereby made a part hereof), is the title-holder to an elevated railway viaduct with highway-railroad grade separation structures and street-level railway improvements known collectively as the "Highline" or the "West 30th Street Secondary Track" in New York City, New York, extending from 75-95 Gansevoort Street and running northerly and westerly to where it crosses 11th Avenue just north of West 30th Street, identified as Line Code 4225 in the records of the United States Railway Association (the "Viaduct"), including those certain easements, within which and upon which said viaduct is constructed, held by CRC's predecessors-in-title (collectively, the "Easements", more specifically identified on Exhibit A-1 annexed hereto and hereby made a part hereof, and together with the Viaduct and the Property-Specific Easements [as hereinafter defined], the "Highline"), held in accordance with (i) agreements relating to the Easements (collectively, the "1929 Agreements", more specifically identified on Exhibit A-2 annexed hereto and hereby made a part hereof) and (ii) those further easement agreements relating solely to individual properties encumbered by the Easements (the "Property-Specific Easements", more specifically identified on Exhibit A-3 annexed hereto and hereby made a part hereof), said Highline having been conveyed to CRC by deed recorded December 15, 1978 from Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, as grantor, and CRC, as grantee, recorded in the Office of the City Register, New York County (the "Official Records") in Reel 463, Page 1563-A (the Highline being identified in Reel 463, Page 1567), and thereafter conveyed (to the extent not previously abandoned and subsequently conveyed to Rockrose Construction (Kelly) Corp. by Assignment and Assumption Regarding Easements dated as of November 25, 1990, and recorded in the Official Records in Reel 1747, Page 1584) by CRC to New York Central Lines LLC ("NYCLLC") by deed dated as of June 1, 1999, and recorded in the Official Records on March 1, 2000, in Reel 3067, Page 1110, and thereafter conveyed by NYCLLC to CRC by corrective quitclaim deed dated as of July ___, 2004, and recorded in the Official Records on ___, 2004, in Reel ___, Page ___, and

WHEREAS, ESDC, by Quit-Claim Deed from CRC of even date herewith (a copy of which is attached as Exhibit B-2 annexed hereto and hereby made a part hereof)

is the title-holder to the Viaduct, including the Easements, extending from 11th Avenue just north of West 30th Street through 547-55 West 34th Street and the West 34th Street roadbed; and

WHEREAS, NYCLLC is a single-member limited liability company, of which the single member is CRC; CRC is a wholly-owned subsidiary of Conrail, Inc. ("Conrail"); and Conrail is owned in part by Norfolk Southern Corporation ("NS") and in part by CSX Corporation ("CSXC"), the parent of CSX Transportation, Inc. ("CSXT"); and

WHEREAS, the Highline encumbers the properties beneath it more fully described in the metes-and-bounds descriptions set forth in Exhibit A-4 annexed hereto and hereby made a part hereof; and

WHEREAS, the City and ESDC each wish to use and operate the Highline (for the City's portion, as general municipal property) for railbanking and as public space and are each willing to assume financial responsibility therefor pursuant to and in accordance with and 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), and in accordance with the Railbanking Legislation, the City and ESDC have been issued a Certificate of Interim Trail Use ("CITU") a copy of which is annexed as Exhibit C hereto; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in other agreements among the parties hereto, and for the sum of Ten and No/100 Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CRC and the City and ESDC agree as follows:

1. RAILBANKING OBLIGATIONS

(a) The City and ESDC both agree that, during all periods during which the CITU shall be effective, the City and ESDC shall jointly and severally assume the following obligations in respect of the Highline in accordance with the Statement of Willingness to Assume Financial Responsibility submitted in application for the CITU (the "SWAFR", attached as Exhibit D annexed hereto and hereby made a part hereof), and otherwise in accordance with the Railbanking Legislation: (w) all responsibility for the management of the Highline; (x) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Highline, including but not limited to the performance of the obligations of the grantee under the Easements; (y) all responsibility for the payment of any and all taxes that may be levied or assessed against the Highline in connection with its existence, use or transfer, physical relocation and/or augmentation, or any activities conducted thereupon; and (z) all other obligations arising under the Easements, the CITU, the SWAFR, and/or the Railbanking Legislation as it applies to the Highline, whether or not such obligations are explicitly described, detailed, or otherwise set forth herein (clauses (w) through z), collectively, the "Railbanking Obligations"). Nothing in this Agreement is intended to

prevent the City and the ESDC, by separate agreement between them, allocating to one or the other by such agreement the individual respective obligations of each for discharge of the foregoing Railbanking Obligations or any of them. Nothing in this Agreement is intended to effect an assignment of CRC's pre-existing common carrier obligation, with respect to the Highline, to the City or to ESDC, or to effect an assumption of any such obligation by the City and/or ESDC from CRC. In the event the City and/or ESDC shall come under an obligation, during the term of this Agreement, to provide freight service over the Highline, the City or ESDC may at its respective option (and in accordance with the procedures and requirements of the Surface Transportation Board or any successor Federal agency regulating railroad freight traffic) assign or otherwise transfer any such obligation to an individual or entity which is, in the sole opinion of the City or of ESDC, as the case may be, financially sound and able to fulfill that obligation. CRC agrees that it shall not seek nor permit any "CRC Affiliate" (defined in Section 2(g) below) to seek reinstitution of rail service on the Highline for its own account or that of any CRC Affiliates.

2. RELOCATION AND AUGMENTATION; TERMINATION OF CITU; INDEMNITIES.

(a) Relocation and Augmentation. In the event that any physical relocation or/or augmentation (e.g., stairways or ramps for pedestrian access) of the Highline or any part thereof shall in the opinion of the City and/or ESDC be necessary or desirable during the term of the CITU. CRC hereby consents in advance to any such relocation and/or augmentation, *provided that* (i) such relocation or augmentation, as the case may be (including, without limitation, all preparatory and post-completion surveys, engineering and architectural plans and specifications and all environmental reports, all negotiation and other legal relations with property owners encumbered by the Highline, and all demolition and construction contracts, subcontracts and insurance policy coverages) shall be done at the sole cost of the City and/or ESDC and in no event shall CRC be deemed to bear any responsibility whatsoever for any such relocation or any costs thereof or any liability arising therefrom, and (ii) the ability to recreate or reconstruct a fully connected Highline easement corridor in a box easement, not smaller than sixty (60) feet in width and thirty (30) feet in height (except where and in what dimensions otherwise agreed in writing by CRC), from its southernmost terminus to 34th Street and 11th Avenue, New York City, and the ability to connect the Highline easement corridor, through a usable and operationally feasible connection, with the interstate rail network, shall be maintained.

(b) Post-Railbanking Restoration and Removal. In fulfillment of the foregoing proviso (ii) in Section 2(a) above, the City and the ESDC each covenant and agree that, (a) in the event that either the City or ESDC, after the date of issuance of the CITU, has removed any railroad tracks or other railroad equipment or supporting apparatus within the said Easements and/or Property-Specific Easements (the "Easement Structure/Equipment"), or, below the elevation of the lower plane(s) of such easements, the columns, column brackets, footings, foundations, supports and drainage pipes necessary or convenient for the support of the tracks, structures, appliances and facilities with the easement areas (collectively, the "Supporting Structures"), except as to such

Easement Structure/Equipment or such Supporting Structures the removal of which has been approved in writing by CRC's Chief Engineer without requirement of future restoration hereunder, or (b) in the event that any equipment or improvements ("Post-Railbanking Installations") have been constructed or installed, after the date of issuance of the CITU, within the Easements or the Property-Specific Easements (including but not limited to same as they may have been relocated north of West 30th Street) which Post-Railbanking Installations, in the sole opinion of CRC, its successors and assigns, would prevent or otherwise impede the restoration of rail service ~~at the instigation of CRC, its successors and assigns,~~ permitted under the Railbanking Legislation, then and in such event either the City, as to its deeded portion of the Highline south of West 30th Street and east of Eleventh Avenue, or ESDC, as to its deeded portion of the Highline north of West 30th Street and west of Eleventh Avenue, each at its own sole cost and expense, shall, within ninety (90) days following notice from CRC to the title-holder in question that CRC ~~intends is obligated~~ to reinstitute rail service upon and through the Easements and/or the Property-Specific Easements consistent with CRC's covenants under this Agreement, or is obligated to pay or reimburse any non-CRC Affiliates for the return, restoration or replacement of any (1) Easement Structure/Equipment or (2) Supporting Structures, or the removal of any Post-Railbanking Installations, in connection with the reinstitution of rail service upon and through the Easements and/or the Property Specific Easements, (A) in the case of such CRC reinstitution of rail service, (x) return and restore or replace all Easement Structure/Equipment and Supporting Structures (the restoration of which has not been previously waived in writing as hereinabove set forth) and/or (y) remove all Post-Railbanking Installations, or (B) in the case of CRC's paying or reimbursing any non-CRC Affiliates for same, pay CRC for the cost of the return, restoration or replacement of all such Easement Structure/Equipment and/or Supporting Structures and the removal of any Post-Railbanking Installations. The City and ESDC shall and hereby do jointly and severally indemnify and hold CRC harmless, as set forth in Section 2(f) hereof, from and against all costs and liabilities associated with or arising from any of the actions, matters or activities, or from the failure to timely perform any such actions, described in Section 2(a) above and in this Section 2(b). The covenants set forth in this paragraph 2(b) are for the exclusive benefit of CRC and CRC Affiliates and no other party shall be a third party beneficiary thereof.

(c) Cooperation by CRC. In the event that the CITU is revoked, terminated, or for any reason whatsoever ceases to be in effect, or if the City seeks formal abandonment of the Highline, CRC shall cooperate with the City in the filing with the federal Surface Transportation Board or its successor-in-function (the "STB"), or any successor agency thereto, of a formal application for abandonment of the Highline, in order to permit and facilitate the City's and/or ESDC's demolition, removal and other physical and legal disposition of the Highline. Such cooperation shall be upon reasonable advance request by the City and/or ESDC and at the City's and ESDC's sole expense in reimbursement of CRC's reasonable legal fees and disbursements in effecting such filing for abandonment and the submission of information, filings or applications to the STB or successor or other governing agency or regulatory body having or claiming jurisdiction as may be necessary to enable such abandonment and subsequent demolition, removal, and/or other physical and legal disposition of the Highline. As used in this Section 2(bg), "demolition, removal and/or physical and legal disposition" by the City and ESDC shall include, without limitation, structural demolition, hauling, disposal, environmental

protection and remediation and the protection, restoration of extant properties or structures appurtenant or servient to the Highline. As used in this Section 2, "legal disposition" shall include, without limitation, the extinguishment and/or modification of easements, payment of all real estate transfer and real property taxes, discharge of liens and other encumbrances on the Highline and settlement of other title matters, causing to be changed any governmental records (such as municipal or tax maps) as necessary in connection with the removal of the Highline, obtaining all necessary permits, licenses, certificates and other permissions or approvals for the work described in this Section 2(c), including, without limitation, the prosecution of supplementary filings and proceedings before the STB for the formal abandonment and/or transfer of the Highline. The foregoing notwithstanding, the surrender or other termination of the CITU and the issuance of an order of abandonment or other order to similar effect by the STB shall not in any way require the demolition, removal or disposition of the Highline so long as (a) the Highline is being used or is intended to be used for linear public space, public trail use or other public recreational purpose, as general municipal property, and not for any rail service ("Public Space") in accordance with the terms of this Agreement and any other agreement between CRC and the City and/or ESDC (which may include other parties) relating to the Highline, (b) the City and ESDC are not in default after notice and the expiration of any applicable cure periods under this Agreement or any other agreement between CRC and the City and/or ESDC (which may include other parties) relating to the Highline, and (c) the City and/or ESDC continue to fulfill their SWAER covenants of management of, liability for, and real estate tax payment for the Highline. Any requirement or condition herein or in the CITU or other agreement between the City and/or ESDC and CRC (which may include other parties) relating to the Highline that the Highline be used or be intended to be used for Public Space shall not be construed to require or create any condition that any portion of the Highline over or adjacent to the rail yards north of 30th Street be improved, developed, operated, used or maintained for Public Space purposes. Notwithstanding the foregoing, in no event shall CRC be deemed to bear any responsibility whatsoever for any demolition, removal or other physical or legal disposition of the Highline or any costs or liabilities arising therefrom or arising from CRC's cooperation with the City and ESDC in connection therewith, and the City and ESDC shall and hereby do jointly and severally indemnify and hold CRC harmless, as set forth in Section 2(g) hereof, from and against all costs and liabilities associated with or arising from any of the actions, matters or activities described in this Section 2(c).

(d) Indemnity for Demolition and/or Disposition. In the event that the City and/or ESDC undertakes the demolition, removal or other physical or legal disposition of the Highline as contemplated in Sections 2(a) and 2(b) above, all such actions and undertakings shall be the sole responsibility of the City and ESDC and in no event shall CRC be deemed to bear any responsibility therefor or any cost thereof or any liability arising therefrom. The City and ESDC shall and hereby do jointly and severally indemnify and hold CRC harmless, as set forth in Section 2(g) hereof, from and against all costs and liabilities associated with or arising from any of the actions, matters or activities described in this Section 2(d).

(e) Indemnity for Subsequently Arising Obligation of CRC. In the event that any finally determined action or cause of action, or any finally determined

ruling, decision or determination of the STB or any successor thereto or any other judicial or regulatory agency or body having or claiming jurisdiction or any process of alternative dispute resolution shall, whether directly or by operation of law, obligate CRC to demolish or otherwise undertake the physical or legal disposition of the Highline, or to bear any cost thereof or any liability arising therefrom, the City and ESDC shall, at the City's and ESDC's sole expense, undertake and perform any such action so required to be performed by CRC as if such action were required to be performed by the City and/or ESDC by the terms of such action, ruling, decision or determination. In addition to the foregoing, the City and ESDC shall and hereby do jointly and severally indemnify and hold CRC harmless, as set forth in Section 2(g) hereof, from and against all costs and liabilities associated with or arising from any of the actions, matters or activities described in this Section 2(e).

(f) Disputes and Legal Proceedings. In the event of any legal proceeding before the STB or any successor agency or any other judicial or regulatory agency or body having or claiming jurisdiction, or any other action, proceeding or other dispute arising in connection with the CITU or its effectiveness or continuation or revocation, CRC shall cooperate with the City and ESDC in the City's and/or ESDC's prosecution or defense thereof or participation therein. Such cooperation shall be upon reasonable advance request by the City and/or ESDC and at the City's and/or ESDC's sole expense and shall include, without limitation, the provision of documents to the City and/or ESDC reasonably necessary to such prosecution, defense, or participation and also the submission of information, filings or applications to the STB or other governing agency or regulatory body, to the extent such actions cannot be accomplished by the City and/or ESDC. The City and ESDC shall and hereby do jointly and severally indemnify and hold CRC harmless, as set forth in Section 2(g) hereof, from and against all costs and liabilities associated with or arising from any of the actions, matters or activities described in this Section 2(f), and shall reimburse CRC upon demand for all reasonable legal and other professional fees and expenses incurred in connection with rendering such cooperation.

(g) Indemnification.

(i) For the purposes of this Section 2, "CRC" shall be deemed to include all affiliates of CRC, individually, collectively and in any combination, such affiliates including NYCLLC, Conrail, NS, CSXC, and CSXT, as well as any persons or entities which may hereafter control, be controlled by or be under common control with CRC or its successors in interest (the "CRC Affiliates").

(ii) Each of the City and ESDC hereby assumes, releases and shall defend (as set forth in Section 2(g) hereof) reimburse, indemnify, protect and save CRC and CRC's (and each of CRC Affiliates') officers, directors, attorneys, consultants and agents, to the extent permitted by law, harmless from and against any and all liability, damage (including, but not limited to special, direct or indirect, or for personal injury, death or property damage), action, cause of action, demand, suit, loss, fine, penalty, claim, cost or expense of any kind or nature whatsoever, whether direct or indirect, or consequential, absolute or contingent, and whether based on any federal or state laws or other statutory regulations, including, without limitation, claims under law, admiralty or equity, and whether

based in common law, contract, tort, strict liability, negligence (irrespective of the negligence, except the gross negligence, of the party being indemnified) or otherwise, arising from:

(A) The relocation and/or augmentation of the Highline as described in Section 2(a) hereof, and/or the post-railbanking restoration and removal as described in Section 2(b) hereof;

(B) CRC's cooperation with the City and/or ESDC in the City's and/or ESDC demolition, removal, or other physical or legal disposition of the Highline or within the Highline as described, respectively, in Sections 2(a) and (b) hereof;

(C) The City's and/or ESDC's demolition, removal or other physical or legal disposition of the Highline as described in Section 2(d) hereof;

(D) Any ruling, decision, determination or other obligation arising after the date hereof by which CRC shall be required to undertake the demolition, removal, or other physical or legal disposition of the Highline as described in Section 2(d) hereof;

(E) Any legal proceeding or other action or dispute relating to the Highline as described in Section 2(f) hereof;

(F) Any breach of this Agreement by the City and/or ESDC.

(h) Notice of Claims: Indemnification Procedures. Upon receipt of notice by CRC (or by CRC on behalf of one or more CRC Affiliates), as applicable, of any loss, event, happening or occurrence which would be the basis of a claim by CRC (or one or more CRC Affiliates) under the provisions of this Agreement (an "Indemnified Claim"), CRC shall immediately provide written notice to both the City and ESDC of such Indemnified Claim. The City (or ESDC, if agreed with the City by separate agreement) shall retain sole responsibility for the cost of, and primary responsibility for the conducting of, any legal and/or administrative action or other proceeding regarding any such Indemnified Claim (an "Indemnified Claim Proceedings") and the defense (and any appropriate appeal) thereof. Nothing contained herein shall in any way limit CRC's right to participate and/or retain independent legal counsel, at CRC's expense, with respect to any Indemnified Claim Proceeding, but CRC shall cooperate with the City and the ESDC, as the case may be, and coordinate CRC's participation and/or use of such independent counsel in a matter not inconsistent with City's positions and interests in such Indemnified Claim Proceeding, to the extent reasonably possible and not adverse to the interests of CRC. City's or ESDC's obligation to conduct and undertake any required Indemnified Claim Proceeding or the defense (or appeal) thereof, and to bear the costs incurred with respect thereto, shall apply even in the event that there is an ultimate adjudication or other determination of liability of CRC attributable to the negligence, gross negligence, willful misconduct or other tortious conduct of CRC. Any settlement

of an Indemnified Claim shall be subject to the written approval of both CRC and the City (and/or ESDC, as the case may be), not to be unreasonably withheld or delayed. Indemnification payment shall be made within ninety (90) days of such approval.

(i) Survival. The terms, covenants and conditions of this Section 2 shall survive the surrender or other termination of the CITU and the termination of this Agreement.

3. INSURANCE

In addition to any other insurance the City and ESDC may obtain or carry with respect to the Highline, unless the CITU is in full force and effect (in which event the City and ESDC shall not be under the following insurance obligation), the City and ESDC shall each, to cover each's respective portion of the Viaduct, purchase and maintain Railroad Protective Liability Insurance ("RPL"). Said RPL policy shall be written on the form prescribed in the Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, as amended from time to time, or as superseded by the AAR/AAHSTO form, or on an ISO/RIMA form, and shall provide available limits of not less than \$1,000,000 per occurrence, \$5,000,000 aggregate for bodily injury and property damage. Such policy shall provide that the insurance not be canceled, non-renewed or coverage materially reduced unless thirty (30) days advance notice is given to NYCLLC. The original of said RPL policy shall be furnished to and approved by Risk Management Department, CSX Corporation, 500 Water Street (J907), Jacksonville, Florida 32202, prior to the commencement of any entry upon the Highline or other operations under this Agreement. Acceptance and approval of RPL insurance shall be at the sole discretion of said Risk Management Department. If either the City or ESDC fails to provide CRC with such policy, CRC may obtain such coverage and the cost of such coverage shall be reimbursed to CRC on demand. CRC agrees that the City may add to its RPL policy, as additional insureds, the private property owners or any of them whose real estate is encumbered by the Highline, *provided, however*, that no failure of the City to add or to name correctly any such private property owner shall invalidate or otherwise affect coverage of the primary insured, CRC.

4. NOTICES

General. Unless otherwise provided herein, all notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be (a) delivered personally, (b) sent by facsimile transmission with subsequently transmitted confirmation of receipt, (c) sent by overnight commercial air courier (such as Federal Express), or (d) mailed, postage prepaid, certified or registered mail, return receipt requested; to the parties at the following addresses or facsimile numbers or at such other address(es) or facsimile number(s) of which a party shall have duly notified the other party:

CRC:

Consolidated Rail Corporation

2001 Market Street 29
Philadelphia, PA 19103
Attention: Vice President - Law
Facsimile No. (215) 209-4819

City of New York:

The City of New York
City Hall
New York, New York 10007
Attention: Deputy Mayor for
Economic Development and Rebuilding
Fax: (212) 788-2867[?]

With copy to:

New York City Economic Development
Corporation
110 William Street
New York, New York 10038
Attention: Executive Vice President,
Property Management
Fax: (212) 312-3919

With copy to:

New York City Law Department
Attn: Chief, Economic Development
Division
Office of the Corporation Counsel
100 Church Street, 6th Floor
New York, New York 10007-2601
Fax: (212) 227-5648

ESDC:

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
Fax: () -

With copy to:

Fax: () -

Any such notice, communication or delivery shall be deemed delivered upon the earliest to occur of: (a) actual delivery; (b) the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday); (c) one (1) business day after shipment by commercial air courier as aforesaid; or (d) three (3) business days after certified or registered mailing as aforesaid.

5. GENERAL TERMS

(a) Entire Agreement. This Agreement, and any exhibits or amendments which may be attached hereto from time to time, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be modified only by a writing executed by both parties.

(b) Incorporation by Reference. This Agreement, as amended by the parties hereto from time to time in accordance herewith, shall be incorporated by reference into any separate finance agreement or other related documents between the parties hereto, and such incorporation shall include all amendments and exhibits hereto, even if made or attached subsequent to the date of this Agreement.

(c) No Third Party Beneficiaries. Except as otherwise provided herein, nothing contained in this Agreement, in any provision or exhibit hereof, or in any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

(d) Interpretation. Neither the form of this Agreement, nor any provision herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

(e) [intentionally deleted]

(f) Parties. Wherever used herein, the terms "CRC" and "the City" and "ESDC" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(g) Severability. This Agreement is executed under the current interpretations of applicable federal, state, county, municipal and local statutes, ordinances and laws. However, each separate division (section, paragraph, clause, item, term, condition, covenant or agreement) hereof shall have independent and severable status for the determination of the legality thereof. If any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

(h) Governing Law. This Agreement shall be construed and governed under the laws of the State of New York, exclusive of the conflicts of laws provisions. It is the particular intent of the parties that all waiver, release and indemnity obligations provided herein, including those relating to punitive and/or exemplary damages, shall be enforceable to the extent permitted by law.

(i) Assignability.

(i) Except as provided herein, the City and the ESDC shall not assign this Agreement or transfer any right or interest herein, subject to any applicable STB approval, without the prior written consent of CRC, which consent may be withheld in CRC's sole discretion; provided, however, that in the event the City and/or ESDC shall come under an obligation, during the term of this Agreement, to provide freight service over the Highline, the City and/or ESDC may at its option assign or otherwise transfer any such obligation to an

individual or entity that is, in the sole opinion of the City and ESDC, financially sound and able to fulfill that obligation, that no such assignment or transfer shall relieve the City or ESDC of its obligations under this Agreement or any other document or instrument between the City and/or ESDC on the one hand and CRC or any CRC Affiliate thereof on the other, and provided that the assignee assumes the obligations of the City or ESDC, as applicable, under this Agreement.

(ii) CRC may, in its discretion, assign this Agreement in whole or in part, or any rights or interests of CRC hereunder, to any CRC Affiliate or any entity in connection with any merger or consolidation of CRC or any CRC Affiliate thereof, and in such event such CRC Affiliate shall be deemed to assume the obligations of CRC hereunder.

(j) Time is of Essence. Time is of the essence in the performance of each party's obligations under this Agreement.

(k) Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated by this reference and made a part of this Agreement for all purposes.

(l) Multiple Counterparts. This Agreement may be executed in several counterparts each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(m) WAIVER OF JURY TRIAL. CRC AND THE CITY AND ESDC EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS, RIGHTS OR OBLIGATIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO AND ACCEPT THIS AGREEMENT—.

(n) Authorization. CRC and the City and ESDC each represent and warrant to the other parties hereto that each has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement does not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound.

(o) Recording. This Agreement shall be recorded, by CRC and by ESDC, each against its respective property segment of the Highline, at the City's sole cost and expense, in the Office of the Recorder of Deeds in and for the City of New York.

(c) Termination. The Agreement shall terminate upon the earlier of (i) issuance of an order of abandonment by the STB for the (entire) Highline; and (ii) reinstitution of rail service on the Highline.

Remainder of page intentionally left blank.

EXECUTED as of the date first herein written.

Witness:

**CONSOLIDATED RAIL
CORPORATION**

By: _____
Name: _____
Title: _____

Witness:

THE CITY OF NEW YORK

By: _____
Name: _____
Title: Deputy Mayor for Economic
Development and Rebuilding

Approved as to form:

By: _____
Name: _____
Acting Corporation Counsel

Witness:

**NEW YORK STATE URBAN
DEVELOPMENT CORPORATION,
d/b/a/ EMPIRE STATE
DEVELOPMENT CORPORATION**

By: _____
Name: _____
Title: _____

Exhibit L

Volume 74, Number 24 | October 13 - 19, 2004



Villager photos by Ramin Talaie

Gathering on the High Line near the Gansevoort Market end on Oct. 6 to celebrate the imminent conversion of the derelict rail viaduct into a 1.5-mile elevated park were, left to right, Christine Glassner, of the Empire State Development Corp., State Senator Tom Duane; City Councilmember Christine Quinn; Council Speaker Gifford Miller; Assemblymember Richard Gottfried; Commissioner of Parks and Recreation Adrian Benepe; Mayor Bloomberg; City Planning Commissioner Amanda Burden; Andrew Alper, president of the city Economic Development Corp.; and Joshua David and Robert Hammond, founders of Friends of the High Line, the group promoting the project.

State and owner get aboard the High Line greenway plan

By Albert Amateau

Mayor Mike Bloomberg went up onto the High Line last week to celebrate three events that could fast-track the beginning of construction to transform the 1.5-mile derelict railroad viaduct that traverses West Chelsea into a spectacular elevated park.

Under a cloudless sky on Wed., Oct. 6, the mayor, joined by local elected officials, Friends of the High Line leaders and state representatives, announced that the state and CSX, the railroad that owns the viaduct, have joined the city in a formal application to the federal State Surface Transportation Board to transfer the rail line into the federal rail-banking program.

It marks the first time that the railroad company and the state, the largest owner of property along the High Line right-of-way, have joined the city and Friends of the High Line in requesting that the High Line be preserved for the federal Rails to Trails program.

The mayor and City Council Speaker Gifford Miller also announced the dedication of \$27.7 million in new funds in the 2006-2008 budget for the project, making a total of \$43.25 million available so far for creating the linear park running more than 20 feet above street level from the Gansevoort Market to the Javits Convention Center.

Although the funding is short of the \$60 million to \$100 million estimated total cost, it is enough to start work on the project by the team led by Field Operations, headed by James

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ADVERTISING

Corner, with the architects Diller Scofidio + Renfro. Corner's team, selected in August, was officially designated at the Wednesday event as the High Line project master planner.

"This investment will pay a handsome dividend in park and open space that will leverage added tax revenues of \$13 million a year," said Bloomberg at the ceremony where City Planning Commissioner Amanda Burden and Christine Glassner, representing Governor Pataki and Empire State Development Corporation, were among the guests.

Bloomberg noted that Congressman Jerrold Nadler has included \$5 million for the High Line in the six-year federal transportation bill now moving through Congress, and Senators Chuck Schumer and Hillary Clinton are working to supplement the money while the bill is in the Senate.

Corner, who is also head of the University of Pennsylvania Graduate School of Architecture, predicted the High Line would become "one of the world's most spectacular open spaces." The structure, built 70 years ago to raise dangerous freight traffic from the surface of 10th Ave., ranges from 30-to-60-foot wide. It formerly extended south to the St. John's rail terminal near Canal St. but the sections south of Gansevoort St. were demolished more than 10 years ago.

Corner's team was selected over three rivals on the basis of a concept design. The project will be built in stages beginning at the south end. The master plan could be completed in time to allow groundbreaking by early next year and the opening of a section from Gansevoort St. to 14th St. by the spring of 2006, Corner said. The High Line plan will be the subject of a three-hour meeting for public participation beginning at 7 p.m. Tues., Oct. 19, at the Manhattan Pavilion, 110 W. 19th St.

Robert Hammond, co-founder of Friends of the High Line with Joshua David, recalled the beginning of the High Line movement.

"Five and a half years ago when we started this effort, we were called dreamers," Hammond said. He paid tribute to Bloomberg for supporting the High Line as a mayoral candidate.

Bloomberg and Planning Commissioner Burden see the proposed elevated park as linking three revitalized West Side neighborhoods: the Gansevoort Historic District, a new West Chelsea gallery area and the redeveloped Hudson Yards district to the north, including the controversial New York Sports and Convention Center stadium proposed for the rail yards south of the Javits Convention Center.

Responding to a question about how he came to support the preservation of the High Line, Bloomberg acknowledged that he first thought it was a crazy idea. "Then I took a look at it and thought 'Why not?' We don't have anything like it and there should be one of everything in New York. That's what New York is about," he said.

In a prepared statement, Governor Pataki said the state has taken an important step forward to realize the full potential of the High Line. "Thanks to great cooperation at all levels of government, the High Line can now be transformed into a new open space for all New Yorkers to enjoy," the statement said.

Ed Norton, the actor and member of the Friends of the High Line board of directors, recalled first seeing the High Line several years ago from the roof of a Horatio St. building and becoming an activist when he learned that neighbors were organizing to save the structure.

City Councilmember Christine Quinn, State Senator Tom Duane and Assemblymembers Richard Gottfried and Deborah Glick stood up with the mayor along with Parks Commissioner Adrian Benepe.

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www.LowRateSource.co

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railroading Turn of 1
century trains & eq
www.edshortline.us

Exhibit M

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement"), made and entered into as of this ____ day of ____, 2004, by **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation whose mailing address is Two Commerce Square, 29th Floor, 2001 Market Street, Philadelphia, PA 19101 and which is, by Quitclaim Corrective Deed dated as of ____ 2004, and recorded ____, 2004 in the office of the City Register, New York County, in Reel ____ at Page ____, successor in interest to New York Central Lines LLC, and **THE CITY OF NEW YORK**, a municipal corporation formed pursuant to the laws of the State of New York, having its principal office at City Hall, New York, New York 10007 (the "City"), acting by and through its Deputy Mayor for Economic Development and Rebuilding

WITNESSETH

A. WHEREAS, CRC is the title-holder to an elevated railway viaduct with highway-railroad grade separation structures and street-level railway improvements known collectively as the "Highline" or the "West 30th Street Secondary Track" in New York City, New York, extending from 75-95 Gansevoort Street and running northerly and westerly through 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association (the "Highline"), including those certain easements, within which and upon which said viaduct is constructed, held by CRC's predecessors-in-title (collectively, the "Easements", more specifically identified on Exhibit A-1 annexed hereto and hereby made a part hereof), held in accordance with (i) agreements relating to the Easements (collectively, the "1929 Agreements", more specifically identified on Exhibit A-2 annexed hereto and hereby made a part hereof) and (ii) those further easement agreements relating solely to individual properties encumbered by the Easements (the "Property-Specific

Easements", more specifically identified on Exhibit A-3 annexed hereto and hereby made a part hereof, said Highline having been conveyed to CRC by deed recorded December 15, 1978 from Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, as grantor, and Conrail, as grantee, recorded in the Office of the City Register, New York County (the "Official Records") in Reel 463, Page 1563-A (the Highline being identified in Reel 463, Page 1567), and thereafter conveyed (to the extent not previously abandoned and subsequently conveyed to Rockrose Construction (Kelly) Corp. by Assignment and Assumption Regarding Easements dated as of November 25, 1990, and recorded in the Official Records in Reel 1747, Page 1584) by CRC to New York Central Lines LLC ("NYCLLC") by quitclaim deed dated as of June 1, 1999, and recorded in the Official Records on March 1, 2000, in Reel 3067, Page 1110, and by NYCLLC to CRC by quitclaim corrective deed dated as of ____, 2004, and recorded in the Official Records on ____, 2004; and

B. WHEREAS, the City wishes to implement certain initiatives for the improvement and redevelopment of the area including and surrounding the Highline (the "Highline Initiatives"), including (i) a re-zoning of said area and (ii) the conversion of the Highline to a public space use, pursuant to 49 C.F.R. Section 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, the "Railbanking Legislation"), and pursuant to such Certificate of Interim Trail Use for the Highline (the "Highline CITU") as may be issued by the federal Surface Transportation Board in accordance with the Railbanking Legislation (such process, collectively, "railbanking"); and

C. WHEREAS, CRC and its predecessors in interest have conducted no rail service over the Highline since 1982, and CRC now desires to contribute the Highline to the City in furtherance of said initiatives; and

D. WHEREAS, the City, desiring to encourage and induce said initiatives, has agreed to indemnify CRC, NYCLLC, and Norfolk Southern Corporation, CSX Corporation, CSX Transportation, Inc., and Conrail, Inc. (each, a "CRC Affiliate" and collectively, "CRC Affiliates"; CRC and all the CRC Affiliates, collectively, the "Railroads") in furtherance thereof; and

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, CRC and the City covenant and agree as follows:

1. Indemnification. (a) The City agrees to defend, hold harmless and indemnify the Railroads and each of them from and against any claim for personal injury (including death) or damage to property in connection with the acts and omissions of the City occurring on or after the City's or its designee's receipt of the Contribution (as defined in the Escrow Agreement) in connection with the Highline, including City's or its designee's operation, improvement, maintenance and repair of the Highline for railbanking (if not caused by the negligence or willful act of the party seeking the indemnity).

(b) The City agrees to defend, hold harmless and indemnify the Railroads and each of them, and their and each's officers, directors, employees, agents, representatives and or insurers, for the satisfaction of any liability, debt, damages, controversy, trespass, judgment,

execution, demand or claim of any nature whatsoever, whether in law or in equity, whether known or unknown, that arises out of or is any way connected to:

(i) Damages (as hereinafter defined) arising out of or resulting at any time whatsoever, in any matter whatsoever, from the presence, past or present Release (as hereinafter defined) or threatened Release of Contaminants (as hereinafter defined) on, at, to, from or under the Highline and/or a Servient Property (as hereinafter defined) and/or any real property to which any entity other than CRC or any CRC Affiliate sends any Contaminant or other material from the Highline or any property encumbered by the Highline (a "Servient Property") for treatment, storage, disposal, recycling or re-use, or any other aspect(s) of the environmental condition of the Highline and/or of a Servient Property, including but not limited to any Damages arising under any Environmental Law (as hereinafter defined) respecting or affecting the Highline and/or a Servient Property; and

(ii) all actions, causes of action, suits, debts, dues, sums of money, accounts, reconings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity (collectively, "Claims"), which against CRC and/or CRC Affiliates, any owner of any Servient Property ("Owner"), or Owner's heirs, executors, administrators, successors and assigns ever had from the beginning of the world to the date of this Agreement, now have, or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatever, including without limitation (w) any Claims relating to or arising from the railbanking of the Highline pursuant to the Railbanking Legislation; (x) failure to demolish or to abandon all or any portion of the Highline; (y) the incurrence of any past or present expenses in connection with such railbanking or such failure to demolish or abandon the

Highline; and (z) expenses arising from the demolition of all or any portion of the Highline running from 30th Street along the perimeter of and/or over the Hudson railyard (the "Hudson Yards Highline Segment") and the relocation or reconstruction thereof or the failure to relocate or reconstruct the same, or the location, construction, planning, designation or reservation of an alternative rout for the Easements over said Hudson railyard area; and

(iii) the issuance, existence and/or revocation or surrender of the Highline CITU; and

(iv) all rights or claims or judgments, if any, against CRC, its predecessors in title as titleholder to the Easements, and CRC Affiliates, arising under the Easements, the Property-Specific Easements and/or the 1929 Agreements, in arbitration of disputes or litigation of claims against CRC, and or its predecessors-in-title, and/or CRC Affiliates, for any alleged breach or non-performance of obligations of CRC and/or CRC Affiliates under such agreements or any of them arising prior to or after the date hereof, including but not limited to any obligation to repair or restore any Servient Property and/or adjoining public streets and ways, and

(v) Claims, as defined above, arising out of

(i) the relocation and/or augmentation of the Highline; and

(ii) CRC's cooperation with the City in the City's demolition, removal, or other physical or legal disposition of the Highline; and

(iii) the City's demolition, removal or other physical or legal disposition of the Highline; and

(iii) "Contaminant" means any waste, pollutant, hazardous substance, hazardous material, hazardous waste, special waste, solid waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls ("PCBs"), or any constituent of any such substance or waste, which is defined in or regulated by any Environmental Law.

(iv) "Environmental Law" shall mean any of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. §6362, the Coastal Zone Management Act of 1972, 16 U.S.C. §1451 et seq., Executive order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 11, 1994), the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq., the Federal Water Pollution Control Act, 42 U.S.C. §1251 et seq., the Hazardous Materials Transportation Act, 42 U.S.C. §§5101 et seq., or the New York Environmental Conservation Law, §§1-0101 et seq., all of which as have been amended or may be amended in the future, or under any other federal, state or local law, statute, rule, regulation or common law theory now or hereafter in effect, and designed to protect human health or the environment.

(d) Notwithstanding anything contained in this Agreement to the contrary, CRC, on behalf of itself and of each of the CRC Affiliates, and the City agree that this indemnification by the City under this paragraph 1 does not cover or include any claims or damages relating to or arising in any manner whatsoever out of (i) any breach by CRC or CRC Affiliates of any term, covenant, representation or warranty set forth in this Agreement or in any other agreement relating to the Highline Initiatives to which CRC or the CRC Affiliate in question is a party (an "Agreement Breach"), (ii) any Claim for any matter described in subparagraphs (a) and (b) of

this paragraph 1 to the extent that it arises from and after the date of restoration of rail service by CRC or any CRC Affiliate on or over the Highline or any segment thereof (the "CRC Restored Segment") which passes over all or any part of a Servient Property (a "CRC Restored Service Claim"), (iii) any matter described in subparagraphs (a) and (b) of this paragraph 1 to the extent that any such matter is raised, asserted, alleged, or similarly claimed or demanded with respect to real property other than a Servient Property, or any property which any material or contaminant from a Servient Property or the Highline was sent for treatment, storage, disposal, recycling or re-use, in either case, by any third party (*i.e.*, a person which is not as of the date hereof, or any time hereafter, either [x] a principal or affiliate of said Servient Property's Owner or any such Owner's successor or assign, or [y] a licensee or ground or space lessee or other legal or illegal occupant of the Servient Property in question, or [z] in the chain of fee title-holders to the Servient Property in question after the date hereof, any and all such described persons being deemed excluded from the definition of "third party" hereunder), including, without limitation, any governmental or quasi-governmental agency (including any environmental agency), against the City or its successors or assigns to the extent arising by virtue of any act or omission of CRC or any of the CRC Affiliates and/or their respective agents, employees, contractors or representatives occurring prior to the date of this Agreement (hereinafter, such claim or demand being a "Third Party Claim"), (iv) any Claim asserted by any third party (as the term "third party" is used in this subparagraph (d) of this paragraph 1) against the City or its successors or assigns for personal injury, death, or property damage, to the extent based solely on the condition of the Highline and arising prior to the date of this Agreement (hereinafter, such Claim being a "Tort Claim"), or (v) any Claim asserted, by notice to CRC in the form required under the Owner's Release, Waiver and Covenant Not to Sue Agreement with CRC given prior to the



effective date of the Contribution, by an Owner or its successors or assigns for personal injury, death or property damage occurring (a) on or under the Highline within the metes and bounds of Owner's Servient Property and (b) after the date of that agreement and prior to the effective date of the Contribution (thean "Asserted ClaimsClaim"), it being understood and agreed that the City for itself and its successors and assigns as fee title holder to the Highline hereby reserves its rights, if any, with respect to (i) any Agreement Breach, (ii) any CRC Restored Service Claim, (iii) any Third Party Claim (including, without limitation, claim for contribution with regard to a Third Party Claim), (iv) any Tort Claim, or (v) any Asserted Claim which the City or its successors and assigns may have against CRC or any CRC Affiliates as a result of any matter described in this subparagraph (d).

2. Conditions. The indemnification contained in paragraph 1(a) is subject to (A) if applicable, CRC or CRC Affiliates providing access to their respective affected property for inspection, repair, maintenance and stabilization, and the indemnifications contained in paragraphs 1(a) and (b) are subject to (B) the cooperation (without incurring any liability or material out-of-pocket expenses, other than legal fees and expenses) of the indemnified party with the City or its designee or any insurer in the defense of such claim, (C) timely notice by the indemnified party of any claim, and (D) consent by an indemnified party to any reasonable settlement made at no cost to the indemnified party.

3. Governing Law. This Agreement shall be governed and construed in accordance with the internal laws of the State of New York, exclusive of the conflicts of laws provisions.

4. Separability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the

remainder of this Agreement, or the application of such term or provisions to persons or circumstances to which it is valid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

5. Recording. This Agreement shall be recorded in the Office of the Recorder of CRC at Owner's sole cost and expense.

6. Captions; Plurals; Gender. Section headings, captions, titles and exhibit headings to this Agreement are for convenience and reference only, and are in no way to be construed as defining, limiting, or modifying the scope or intent of the various provisions of this Agreement. The plural shall be substituted for the singular, and the singular for the plural, where appropriate, and the words of any gender shall mean and include any other gender.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of CRC, the CRC Affiliates, and the City, and their respective heirs, personal representatives, successors and assigns.

8. Exhibits. All Exhibits attached hereto are incorporated by reference and hereby made a part hereof.

9. Entire Agreement; No Amendment. All understandings and agreements heretofore made between the parties are merged in this Agreement, which alone fully and completely expresses their agreements. Neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, waiver, discharge or termination is sought.

10. No Waivers. The failure of CRC or the City to seek redress for violations or to insist upon the strict performance of any covenant, agreement, provision or condition of this

Agreement shall not constitute a waiver thereof and CRC or the City, as the case may be, shall have all remedies provided herein and under applicable law with respect to any subsequent act which originally would have constituted a violation or default hereunder.

11. Survival. Subject to and except as limited by the other terms of this Agreement, the obligations, undertakings, duties, and covenants of each of CRC and the City shall survive the delivery and recording of this Agreement.

12. Notices. Any notice, request, consent or other communication under this Agreement ("Notice" or "notice") shall be in writing and sent by Registered or Certified Mail, return receipt requested, or by courier, express mail or overnight delivery with a receipt service. The date such notice shall be deemed to have been given shall be the date of receipt, the first calendar day after the date sent by courier, express or overnight ("next day delivery"), or the third calendar day after the postmark on the envelope if mailed, whichever occurs first. Notices to CRC shall be sent to:

Consolidated Rail Corporation
Two Commerce Square
29th Floor
2001 Market Street
Philadelphia, Pennsylvania 19103
Attention: Jonathan Broder, Esq., General Counsel

with a copy at the same time to:

CSX Corporation
1331 Pennsylvania Avenue NW
Suite 560
Washington, D.C. 20004
Attention: Peter J. Shudtz, Esq.,
Senior Vice President, Regulatory Affairs and Washington Counsel

and to:

David Alan Richards, Esq.
McCarter & English LLP

245 Park Avenue
New York, New York 10167

Notices to the City shall be sent to:

Attention: _____ XXXXX

with a copy at the same time to:

[counsel]

Attention: _____, Esq. XXXXX

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in the manner described in this Article of the Agreement. Any counsel designated above or any replacement counsel is hereby authorized to give notices hereunder on behalf of its client.

13. Due Authorization; Complete Agreement. The persons executing this Agreement on behalf of each of CRC and the City represent and warrant, each for himself or herself and the respective principal parties, that each has been duly authorized to execute this Agreement for and on behalf of such parties, respectively. All understandings and agreements heretofore made between the parties hereto relating to the particular subject matter hereof are merged in this Agreement, which alone fully and completely expresses the agreement between CRC and the City on such matters

IN WITNESS WHEREOF, and intending to be legally bound hereby, this Agreement has been duly executed by the parties hereto as of the date first above written.

CORPORATION

CONSOLIDATE RAIL

r

By: _____
Name: _____
Office: _____

CITY:

By: _____
Name: _____
Title: _____

Approved as to Form

Acting Corporation Counsel

[Acknowledgments]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On the ____ day of _____ in the year 2004 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On the ____ day of _____ in the year 2004 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

EXHIBIT A-1

Schedule of Easements

1. Indenture dated July 2, 1929, executed by the City of New York and the New York Central Railroad Company ("NY Central"), and recorded on August 6, 1929 in Liber 3736 Cp 8 et seq.
2. Indenture dated June 10, 1935, executed by The City of NY and NY Central, recorded on September 9, 1935, in Liber 3909 Cp 289 et seq.
3. Deed from Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, as Grantor, to Consolidated Rail Corporation, as Grantee, dated March 30, 1976, and recorded in Reel 463, Page 1563, in the Office of the City Register, New York County, on December 15, 1978.
4. Real Property Identification Document from Despatch Shops, as Transferor, to Consolidated Rail Corporation, as Transferee, recorded in Reel 463, Page 1624 in the Office of the City Register, New York County, on December 15, 1978.

EXHIBIT A-2
Schedule of Agreements Relating to Easements

1. Agreement dated July 2, 1929, executed by The City of New York and New York Central made pursuant to Section 5 of Chapter 677 of the Laws of 1928, as Amended by Chapter 431 of the Laws of 1929 (the "NYC-NY Central Agreement").
2. The Enlarged Plan (as such term is defined in the NYC-NY Central Agreement) and all amendments and modifications to the Enlarged Plan.

EXHIBIT A-3

Property-Specific Easements

Address:

Tax Block and Lot

1. 75-95 Gansevoort Street, a/k/a 820 Washington Street

Block 644 Lot 10

Easement Source: Indenture from City of New York ("CNY") to The New York Central Railroad Company ("NYCRC") dated July 2, 1929 and recorded August 6, 1929, in Liber 3736 at Cp 8 (the "1929 City Deed") (being Parcel 16 at Cp 54); as amended by Indenture from CNY to NYCRC dated June 10, 1935 and recorded September 9, 1935 in Liber 3909 at Cp 289 (the "1935 City Deed") (being Parcel 7 at Cp 298)—particular parcel description also includes Block 44 Lot 1 (42-62 Little West 12th Street) and Gansevoort St. streetbed and Little West 12th St. streetbed

2. 42-62 Little West 12th Street, a/k/a 555 West Street

Block 644 Lot 1

Easement Source: See for Parcel 1 above

3. 838-58 Washington Street

Block 645 Lot 11

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3836 Cp 226 (Parcel No. 1 therein), as amended by Indenture from Despatch Shops Inc. to Consolidated Rail Corporation dated March 22, 1977, and recorded April 12, 1977 in Reel 397, Page 265; and reservations contained in Deed from Despatch Shops Inc. to Washington Refrigeration Inc. dated March 29, 1977 and recorded April 7, 1977, in Reel 396, Page 1727

4. 40-46 10th Avenue

Block 646 Lot 1

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932, and recorded June 10, 1932 in Liber 3836 Cp 226 (Parcel No. 2 therein), as modified by Indenture from Despatch Shops, Inc. to NYCRC dated July 3, 1964, and recorded July 8, 1964 in Liber 5285, Cp 443, as further reserved under Indenture from Despatch Shops to Forty-Two Tenth Ave. Corp. dated July 6, 1964 and recorded July 9, 1964 in Liber 5285, Cp 460

5. 450-56 West 14th Street, a/k/a 439 W. 13th St.

Block 646 Lot 10

Easement Source: Indenture from New York State Realty and Terminal Company to NYCRC dated June 8, 1932, and recorded June 10, 1932 in Liber 3836 Cp 226 as modified by Indenture from Despatch Shops., Inc. to NYCRC dated July 3, 1964, and recorded July 8, 1964, in Liber 5285, Cp 443, and as reserved by Deeds from Despatch Shops (i) to Forty-Two Tenth Avenue Corp. dated July 6, 1964 and recorded July 9, 1964 in Liber 5285 Cp 460, (ii) to Washington Refrigeration Inc. dated March 29, 1977, and recorded April 7, 1977 in Reel 396 Page 727, and (iii) to 450 West 14th St. Corp. dated October 31, 1977 and recorded January 4, 1978 in Reel 424 Page 406

6. 449 W. 13th St.

Block 646 Lot 20

Easement Source: See for Parcel 5 above.

7. 62-76 10th Avenue

Block 712 Lot 1

Easement Source: Indenture ("Nabisco Indenture") from National Biscuit Company to NYCRC dated July 25, 1932, and recorded July 29, 1932 in Liber 3844, Cp 18 (Parcels 1 and 4 in Indenture)

8. 78-92 10th Avenue, a/k/a 401 W. 15th St.

Block 713 Lot 1

Easement Source: Indenture ("Nabisco Indenture") from National Biscuit Company to NYCRC dated July 25, 1932, and recorded July 29, 1932, in Liber 3844, Cp 18 (Parcels 2 and 5 in Indenture)

9. 96-110 10th Avenue

Block 714 Lot 1

Easement Source: Indenture ("West 16th St. Indenture") from New York State Realty and Terminal Company to NYCRC dated July 22, 1932 and recorded July 25, 1932 in Liber 3838, Cp 181; and Indenture ("Nabisco Indenture") from National Biscuit Company to NYCRC dated July 25, 1932, and recorded July 29, 1932 in Liber 3844, Cp 18 (Parcel 3 in Indenture)

10. 113-27 10th Avenue, a/k/a 501 W. 17th St.

Block 689 Lot 17

Easement Source: Indenture from NYCRC to 10-42 Corporation dated January 5, 1960, and recorded January 20, 1960, in Liber 5103, Cp 584

11. 131-149 10th Avenue

Block 690 Lot 29

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 13 in Indenture); and reservation in Deed from NYCRC to National Garage Co., Inc. dated September 13, 1959, and recorded October 6, 1959, in Liber 5093, Cp 448

12. 507 W. 19th Street

Block 691 Lot 27

Easement Source: Indenture from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (southern portion of Parcel 14 in Indenture), as modified by Indenture ("W. 19th St. Indenture") from New York State Realty and Terminal Company to NYCRC dated May 14, 1947 and recorded June 13, 1947 in Liber 4517, Cp 375

13. 504-06 West 20th Street

Block 691 Lot 37

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp. 383 (northern portion of Parcel 14 in Indenture), as modified by Indenture ("W. 19th St. Indenture") from New York State Realty and Terminal Company to NYCRC dated May 14, 1947 and recorded June 13, 1947 in Liber 4517, Cp 375

14. 507-09 West 20th Street

Block 692 Lot 28

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company ("NYSRTC") to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp. 383 (Parcel 15 in Indenture), as modified by Indenture from NYSRTC to NYCRC dated June 24, 1957 (Parcel 15)

15. 507-09 West 21st Street

Block 693 Lot 28

Easement Source: See for Parcel 14 above (Parcel 16 in Blanket Indenture and in 6/24/57 Indenture)

16. 512 West 23rd Street

Block 694 Lot 40

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 17 in Indenture), as amended by Indenture from New York State Realty and

Terminal Company to NYCRC dated September 29, 1958 and recorded October 1, 1958, in Liber 5051, Cp 661

17. 511-17 West 23rd Street

Block 695 Lot 27

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 18 in Indenture) as amended by Indenture from New York State Realty and Terminal Company to NYCRC dated December 3, 1958 and recorded December 5, 1958 in Liber 5059, Cp 163

18. 507-11 West 24th Street

Block 696 Lot 28

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 19 in Indenture), as amended by Indenture from New York State Realty and Terminal Company to NYCRC dated November 4, 1957 and recorded November 13, 1957 in Liber 5020, Cp 177

19. 507-09 West 25th Street

Block 697 Lot 27

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 20 in Indenture)

20. 507-11 West 26th Street

Block 689 Lot 28

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 21 in Indenture), as amended by Indenture from New York State Realty and Terminal Company to NYCRC dated November 13, 1957 and recorded December 2, 1957 in Liber 5021, Cp 383

21. 505 West 27th Street

Block 699 Lot 27

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 22 in Indenture), as amended by Indenture from New York State Realty and Terminal Company to NYCRC dated June 9, 1959 and recorded June 12, 1959 in Liber 5080, Cp 455

22. 507-15 West 28th Street

Block 700 Lot 27

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (southern portion of Parcel 23 in Indenture), as amended by Indenture from New York State Realty and Terminal Company to NYCRC dated September 14, 1959 and recorded September 23, 1959 in Liber 5092, Cp. 193

23. 506 West 29th Street

Block 700 Lot 38

Easement Source: See above for Parcel 23

24. 511-13 West 29th Street
506-16 West 30th Street
518-22 West 30th Street

Block 701 Lot 30
Block 701 Lot 45
Block 701 Lot 52

Easement Source: Indenture ("Blanket Indenture") from New York State Realty and Terminal Company to NYCRC dated June 8, 1932 and recorded June 10, 1932 in Liber 3829, Cp 383 (Parcel 24), as amended (for Block 701, Lots 45 and 52) by Indenture from New York State Realty and Terminal Company to NYCRC dated March 17, 1947 and recorded April 29, 1947 in Liber 4508, Cp 667

25. 501-57 West 30th St.

Block 702 Lot 50

Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Eastern Starr Associates, dated January 30, 1981, and recorded February 6, 1981, in Reel 554 Page 324, as corrected by Correction Deed from Grantor to Eastern Starr Associates dated March 2, 1983, and recorded March 24, 1983 in Reel 674, Page 1917

26. (No Street Address): South side
32nd St. Between 10th and 11th Aves.

Block 702 Lot 1

Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority ("TBTA") dated December 15, 1980, and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582, Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982, in Reel 619, Page 626

27. 320 12th Avenue

Block 676 Lot 3

Easement Source: Deed from the Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority dated December 15, 1980 and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582 Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982 in Reel 619, Page 626

28. 651-59 West 33rd Street, a/k/a 651 12th Ave.

Block 679 Lot 1

Easement Source: 1999 Conrail Deed, referencing a Relocatable Loop Trace Easement, as reserved by Deed from The Owasco River Railway, Inc. and Despatch Shops, Inc., to New York Convention Center Development Corporation, dated October 17, 1979, and recorded October 19, 1979 in Reel 499, Page 744, under which relocation was effected in accordance with (a) Indenture from Consolidated Rail Corporation to Despatch Shops, Inc. dated September 17, 1979 and recorded October 19, 1979 in Reel 499 Page 752, and (b) Indenture from Consolidated Rail Corporation to The Owasco River Railway, Inc., dated September 17, 1979 and recorded October 19, 1979 in Reel 499, Page 759

NY1: 60928.01

Exhibit N

HIGHLINE TERM SHEET

BETWEEN AND AMONG

**THE CITY OF NEW YORK, ACTING THROUGH ITS DEPUTY MAYOR FOR
ECONOMIC DEVELOPMENT AND REBUILDING,
(the "City")**

**METROPOLITAN TRANSPORTATION AUTHORITY,
("MTA")**

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, ("TBTA")

**NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION,
("CCDC")**

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a the EMPIRE
STATE DEVELOPMENT CORPORATION,
("ESDC")**

**CHELSEA PROPERTY OWNERS,
("CPO")**

and

**CSX TRANSPORTATION, INC.,
("CSXT")
CONRAIL, INC.,
CONSOLIDATED RAIL CORP.,
CSX CORPORATION, and**

(CSXT and other railroad companies are collectively referred to as the "RAILROADS")

This describes actions to be taken and conditions to be satisfied in connection with the initiative by the City to proceed with the public actions required to (i) seek and obtain the amendment to the Zoning Resolution creating a Special West Chelsea District for residential and other uses described in Exhibit A to this Term Sheet (the "Zoning Amendment"), (ii) obtain a voluntary contribution (the "Contribution"), by two quitclaim deeds, of the easements (the "Easements")

and appurtenant rail viaduct structure as, with respect to the City-owned property, general municipal property (the "Rail Viaduct", the Easements and Rail Viaduct, together with all spurs and sidetracks, whether or not owned by CSXT, is hereinafter referred to as the "Highline") by CSXT (or its successor and assign) to (a) the City or a not-for-profit designee of the City, for the Highline from its southernmost point to the point where it crosses 11th Avenue at 30th Street, and (b) ESDC for the Highline west of 11th Avenue and north of 30th Street, (iii) obtain a voluntary contribution (the "Sidetrack and Spur Contribution"), by quitclaim deed, of all sidetracks and spurs owned by the Owners (as defined below) and appurtenant to the Rail Viaduct, and (iv) convert the Highline to linear public space, public trail use or other public recreational purpose, as general municipal property, within the limits of the Easement, but not for any passenger or other rail service (collectively, "Public Space") pursuant to a "Certificate of Interim Trail Use" ("CITU") from the federal Surface Transportation Board (the "STB"), including but not limited to the Voluntary Railbanking Agreement and the Trail Use Agreement (each as hereinafter defined in Section 10), or other mechanism (consistent with the provisions of this Term Sheet) upon which the City and the Railroads may agree; provided, however, that the parties acknowledge that the use as Public Space shall be subject to any future restoration of rail service. Those properties which are encumbered by the Easements (other than the MTA, TBTA, CCDC and City-owned properties) are referred to as the "Properties", and those persons or entities with fee ownership interests in the Properties are referred to as the "Owners" (the encumbered properties owned by the MTA, TBTA, CCDC and the City are referred to as the "MTA Property", the "TBTA Property", the "CCDC Property" and the "City Properties", respectively). The Rail Viaduct segment located on the MTA Property, the TBTA Property and the CCDC Property is collectively referred to as the "Hudson Yards Highline Segment").

1. Title reports. The Railroads, working with Chicago Title Insurance Company, have caused Chicago Title to furnish a current title report for the Highline, and for each of the Properties, the CCDC Property, the TBTA Property and the MTA Property, including copies of the Easements themselves (other than the Easements granted by the City). Title insurance for fee ownership of the Highline, to be issued to the City or its designee and to the ESDC, in an amount acceptable to the City, shall be procured by or on behalf of the City and the cost shall be borne by or on behalf of the City (but not by CPO or the Owners).

2. CPO actions with Owners. CPO agrees to use its best efforts (without the obligation to incur any liability or material out-of-pocket expenses, other than legal fees) to cause each and every one of the Owners to deliver the instruments contemplated hereunder, and to (a) provide all reasonable assistance and cooperation to the City and its instrumentalities (without the obligation to incur any liability or material out-of-pocket expenses, other than legal fees) in the City's efforts to obtain Final Approval (as defined in Section 7 of this Term Sheet) and (b) provide the item specifically required by this Term Sheet with respect to the CITU. In reliance on such covenant, the City will seek review and approval of the Zoning Amendment and Contribution in accordance with this Term Sheet. Non-compliance in delivery of all required documents into escrow by any Owner may be waived by the Railroads and/or the City, each in its sole discretion but only the dual waiver shall permit an act of non-compliance to be waived, except that, notwithstanding any provision of this Term Sheet to the contrary, compliance with this Term Sheet or in the delivery of any required document by the Owner of a Property which is not rezoned pursuant to the Zoning Amendment will not be required and will not constitute a condition to the release of the Escrow Documents (as defined in Section 7 of this Term Sheet).

3. Instruments to be delivered by Owners and CPO. CPO will use its best efforts (without the obligation to incur any liability or material out-of-pocket expenses, other than legal fees) to obtain from each of the Owners the following (and CPO will use its best efforts, without the obligation to incur any liability or material out-of-pocket expenses, other than legal fees, to deliver the documents described in this Section 3, as applicable), which would be placed into escrow:

(a) Waiver, release and covenant not to sue in favor of:

(i) the Railroads, in the form of document attached as Exhibit B, with respect to (A) any liability or claim, past or present, relating to the Highline, including, without limitation, in connection with the past, present, or future presence, discharge and/or release of any "Hazardous Substance" (as defined in Section 13 of this Term Sheet), and (B) the railbanking of, or failure to abandon or demolish, all or any portion of the Highline, and incurrence of any past, present, or future costs, expenses or damages in connection therewith, including without limitation the demolition of all or any portion of the Hudson Yards Highline Segment and the relocation or reconstruction of, or alternate Rail Viaduct route for, or failure to relocate or reconstruct, all or any portion thereof, with (C) a covenant for further assurances upon reasonable post-closing request of the Railroads; and (D) a waiver, release and covenant in favor of the Railroads and The United States of America and all its departments and agencies not to sue or join any action seeking compensation from the Railroads or The United States of America relating to the CITU, and a further covenant to the effect that the

Owner will not participate with and will withdraw from any class action seeking compensation from the Railroads or The United States of America relating to the CITU;

(ii) the City, in the form of document attached as Exhibit C, with respect to (A) any liability for any act or omission with respect to the Highline arising prior to the date the City receives the Contribution in accordance with the "VRA" (as defined in Section 10 of this Term Sheet), including any liability arising in connection with the presence, discharge and/or release of any Hazardous Substance, (B) the railbanking of, or failure to abandon or demolish, all or any portion of the Highline, and incurrence of any past, present, or future costs, expenses or damages in connection therewith, including, without limitation, the demolition of all or any portion of the Hudson Yards Highline Segment and the relocation or reconstruction of, or alternate Rail Viaduct route for, or failure to relocate or reconstruct, all or any portion thereof, as long as the Highline is intended to be used or is being used for Public Space (and is not being used in a manner inconsistent with Public Space), (C) any condemnation or similar award for public taking in connection with the Highline as long as it is intended to be or is being used for Public Space (and is not being used in a manner inconsistent with Public Space), and (D) the City's accepting the Contribution, or taking possession and control of the Highline, or expending or receiving any public or private funds in connection with the Highline, or any mapping of the Highline for Public Space, provided that nothing herein shall relieve the City from any liability to the Owners arising from claims by the Owners or of any third party against an

Owner for personal injury, death or property damage during any period in which the City or its designee has had possession and control of the Highline (provided, however, that nothing herein shall be construed to create such liability); and provided further that nothing herein shall relieve the City from any liability to the Owners arising from a future obligation of the City that the City demolish the Highline (nothing herein shall be construed to create or imply such an obligation to the Owners), and (E) a waiver, release and covenant in favor of the City and The United States of America and all its departments and agencies not to sue or join any action seeking compensation from the City or The United States of America relating to the CITU, and a further covenant to the effect that the Owner will not participate with and will withdraw from any class action seeking compensation from the City or The United States of America relating to the CITU, and (F) a covenant in favor of the City and CCDC (the covenant in favor of CCDC to be contained in the document attached as Exhibit D, as described below) that if any Owner seeks and obtains restoration of rail service or use of the Highline for passenger or other rail service, the Owner seeking restoration will reimburse the City for the unamortized costs of the permanent improvements made to the Highline in that portion of the Highline to be restored to passenger or other rail service (i.e., the point of destination and north thereof), whether funded with City funds or otherwise, and shall pay any eminent domain award for any portion of the Highline (south of such destination point) which the City may have to condemn in order to maintain the use thereof for Public Space, and any inverse condemnation award which the City may be required to pay for any such portion

of the Highline, and will reimburse CCDC for the unamortized costs of any improvements that must be demolished or reconstructed in order to restore passenger or other rail service. The amortization referred to in this Section will be based on a level amortization using the longest period of probable usefulness applicable to any such permanent improvement under the New York State Local Finance Law. Such covenant shall include the agreement of the City or CCDC that, in the event the City or CCDC seeks such restoration or use, the City or CCDC will compensate an affected Owner for any diminution in value of the Property because of such passenger or other rail service; and

In addition, the waiver, release, and covenant not to sue in favor of the City shall include an indemnification from the City indemnifying the Owners pursuant to the terms of Section 5 of this Term Sheet.

(iii) the MTA, the TBTA, the CCDC, and ESDC in the form of document attached as Exhibit D, in connection with the railbanking of or failure to abandon or demolish, all or any portion of the Highline, and incurrence of any past, present, or future costs, expenses or damages in connection therewith, including, without limitation, the demolition of all or any portion of the Hudson Yards Highline Segment and the relocation or reconstruction of, or alternate Rail Viaduct route for, or failure to relocate or reconstruct, all or any portion thereof. Such document shall also contain the covenant in favor of CCDC described in Section 3(a)(ii), above.

(b) Documents for the settlement and dismissal of all federal and state lawsuits and administrative proceedings pending against the Railroads relating to the Highline, to the extent of the Owners that are parties to such proceedings, including without limitation, the action brought by Edison Mini-Storage Corporation, Eleventh Avenue Development LLC, JWG Janeway, LLC, Food Resources, Inc., Gansevoort Holding Corporation against the Railroads in April 1999 in Supreme Court of the State of New York, County of New York (Index No. 108107/99) which case was removed to and is pending in the United States District Court of the Southern District of New York (99 Civ. 2868 (MBM)) (as to such action, in the form of document attached as Exhibit E), all to be dismissed with prejudice, but not including the adverse abandonment proceeding before the STB *sub nom.* Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, reported in Chelsea Property Owners—Aban.—The Consol. R. Corp., 8 I.C.C. 2d 773 (1992), *aff'd sub nom.* Consolidated Rail Corp. v. I.C.C., 29 F.3d 706 (D.C. Cir. 1994) (which will be the basis for obtaining the CITU), but under such separate document, not to be placed in escrow, CPO will file at the STB, as described in Section 8, a statement withdrawing its objections to a CITU in connection with an adverse abandonment.

(c) One or more grants by the Owners to the City, in the form of document attached as Exhibit F, or its designee, of a restriction in perpetuity (or similar grant), each such grant qualifying as a qualified conservation contribution pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended,

and all such grants collectively providing for: (i) consent to the development, improvement, operation and use of the Highline for Public Space; (ii) a covenant not to sue to seek extinguishment of any Easement or any Spur and Sidetrack Contribution for as long as the Highline is intended to be or is being used for Public Space (and is not being used in a manner inconsistent with Public Space); (iii) such rights of access and rights of consent to Property improvements that physically affect the Highline for the City or its designees as may be reasonably necessary for the improvement, maintenance, repair, replacement, operation and integrity of the Highline for Public Space; similar in scope and purpose to such rights as are presently provided for under the Easements for the benefit of the Railroad-owner thereof; and which will include the City's agreement to repair the Highline and maintain it in a safe condition; and (iv) contribution by the Owner, by quitclaim deed, of the Sidetrack and Spur Contribution.

(d) Each Owner will deliver evidence of due authorization to enter into the transactions contemplated by this Term Sheet, including without limitation the Escrow Agreement, as may be reasonably required by the City and the Railroads, such as good standing certificates, and corporate resolutions, general partner certifications or member certifications, as applicable (samples of such documentation are attached hereto as Exhibit G).

(e) Such other documents and instruments containing reasonable further assurances necessary or convenient in order for the City to consummate a VRA or other similar agreement with the Railroads (but not statements of support).

(f) Such other documents and instruments containing reasonable further assurances necessary or convenient in order to provide for an alternate Rail Viaduct route and Easement through the Hudson Yards, including, without limitation, if any alternate Viaduct Route has been determined prior to the execution of such instrument, consent to such alternate route.

4. MTA, TBTA and CCDC Documents. The MTA, TBTA, and CCDC will execute and deliver (A) instruments to the effect of Sections 3(a)(i) and (ii), 3(b), (c), (d), and (e), and 5(b)(B), and (B) an indemnification agreement for the benefit of the Railroads, to the effect of Section 5(a) below, with respect to each such party's respective portion of the Hudson Yards Highline Segment, all in the form of documents attached as Exhibit H.

5. City Indemnity and other Documents by the City and Railroads.

(a) The City will agree, in the form of document attached as Exhibit I(1), and ESDC will agree, in the form of document attached as Exhibit I(2), to defend, hold harmless and indemnify the Railroads and each Owner (to be memorialized in a separate agreement or in the release by the Owner to the City, as appropriate), and, effective so long as the respective portions of the Hudson Yards Highline Segment stand, the MTA, TBTA and CCDC (as well as the State of New York ("State") and the Convention Center Operating Corporation ("CCOC") to the extent that the State and CCOC have leasehold interests in the relevant property or are legally charged with its operation and maintenance), from and against any claim for personal injury (including death) or damage to property in connection with the acts and omissions of the City occurring on or after the City's or its designee's receipt of the Contribution in connection with the City's or its designee's operation, improvement, maintenance and repair of the Highline for

Public Space, provided that such injury or damage is not caused by the negligence or willful act of the Owner seeking the indemnification. Notwithstanding the above, the City will not have the foregoing obligations regarding the Hudson Yards Highline Segment to the extent that the easements over the MTA, TBTA Property, and/or CCDC Properties are relocated so that the Hudson Yards Highline Segment no longer stands within the easement or easements existing as of the date of this agreement. The foregoing covenant will be subject to reasonable conditions such as (A) the Owner's or MTA's or TBTA's or CCDC's providing access to the affected Property or MTA Property or TBTA Property or CCDC Property for inspection, repair, maintenance and stabilization, (B) the cooperation (without incurring any liability or material out-of-pocket expenses, other than legal fees) of the indemnified party with the City or its designee or any insurer in the defense of such claim, (C) timely notice by the indemnified party of any claim, and (D) consent by an indemnified party to any reasonable settlement made at no cost to the indemnified party.

(b) The City will execute and deliver (A) an instrument, in the form of document attached as Exhibit J, to the effect of Section 3(a)(i) in its role as the owner of certain properties encumbered by the Easements, and (B) a waiver, release and covenant not to sue, in the form of document attached as Exhibit K, in favor of CPO with respect to the Highline, the CITU, the railbanking, the Contribution, or the failure to abandon or demolish all or any portion of the Highline (and incurrence of any past, present, or future costs, expenses or damages in connection therewith); the demolition of all or any portion of the Hudson Yards Highline Segment, including the relocation or reconstruction of, or alternate railway viaduct route for, or failure to relocate or reconstruct, all or any portion of the Hudson Yards Highline Segment; provided, however, that such waiver, release and covenant not to sue shall not apply to any claims arising

from a claim that CPO has breached any term, covenant, representation or warranty set forth in any agreement between CPO and any party to this Term Sheet or the Escrow Agreement (which may include more than one party) relating to the Highline, and provided further that such waiver, release and covenant not to sue shall not apply to any claims arising from a claim concerning CPO by any Owner.

(c) The Railroads will execute and deliver an instrument, in the form of document attached as Exhibit L, to the effect of Section 5(b)(B).

6. Contribution ULURP. If the City and the Railroads deem it necessary or advisable to seek approval of the City's acceptance of the Contribution pursuant to ULURP (defined as Sections 197-c, 197-d, and 200 of the City Charter), then the City will prepare and submit an application for such approval (the "ULURP Contribution Application"). In the event that the City and the Railroads elect not to seek ULURP approval of the Contribution, then, notwithstanding anything to the contrary set forth in this Term Sheet, the ULURP Contribution Application and ULURP approval of the Contribution will for purposes of this Term Sheet not constitute any condition to release of the Escrow Documents for recording.

7. Escrow Agreement. Each of the instruments described in Sections 3, 4 and 5 above, and any other documents elsewhere stated in this Term Sheet to be placed in escrow pursuant to this Section (the "Escrow Documents") will be signed, dated, acknowledged where required, and placed into escrow under an agreement (the "Escrow Agreement"), in the form of document attached as Exhibit M, signed by all the parties delivering one or more of such instruments. The escrow agent under the Escrow Agreement will be the New York City Law Department. All of the waivers, releases, covenants and other terms set forth in such instrument will be stated to run

with the land and (as applicable) bind each Owner, the City, the Railroads and the MTA, TBTA and CCDC and their respective successors in interest. Each Owner, and the MTA, TBTA, CCDC and their respective successors in interest, as owners, respectively, of the Properties, MTA Property, TBTA Property, and CCDC Property, will covenant in the Escrow Agreement that they shall not sell or otherwise convey such respective property during the term of the Escrow Agreement without first securing from the transferee an executed and delivered substitute for the Escrow Agreement and for each Escrow Document entered into by such party.

Furthermore, each party to the Escrow Agreement (excluding the escrow agent) will covenant in the Escrow Agreement that, unless there is "Final Disapproval" (as defined below in this Section) of the Zoning Amendment, it will not, directly or indirectly, bring or cause to be brought any proceeding (or make any motion or use any similar procedure in an existing proceeding) before the STB or any other agency or court regarding the jurisdiction of the STB to grant the CITU or the validity of the CITU, including any proceeding based on this Agreement or any document contemplated herein (including without limitation, the Easement Relocation and Conveyance Agreement and the Trail Use Agreement), nor bring any other proceeding (or make any motion or use any similar procedure in an existing proceeding) which, if successful, or because of passage of time, would result in the conditions for the release of the Escrow Documents to the parties to the Escrow Agreement not being satisfied, including without limitation any proceeding relating to the ULURP Zoning Application or the ULURP Contribution Application or any approval granted as a result of or any action taken in furtherance of any of same. Notwithstanding the preceding sentence, a "Withdrawing Owner" (as defined below in this Section) shall not be bound by the covenant in this paragraph following withdrawal and a Withdrawing Owner shall not be deemed an Owner. In addition, nothing in this paragraph

shall preclude the City and ESDC from pursuing issuance of the CITU (and the Railroads consenting thereto) or filing requests for extension of the CITU (and the Railroads consenting thereto), or from challenging in a court of competent jurisdiction a decision by the STB to deny the request for a CITU, or from defending any challenge to the CITU by an individual or entity that is not a party to the Escrow Agreement.

A memorandum of the Escrow Agreement, in the form of document attached as Exhibit N, will be recorded in the Register's Office for the Borough of Manhattan (the "Register's Office") against each Property owned by an Owner that is a party to the Escrow Agreement, the MTA Property, the TBTA Property, and the CCDC Property. The Escrow Agreement will state that (a) the instruments held thereunder will remain in escrow pending "Final Approval" (defined below in this Section), (b) upon Final Approval the Escrow Documents will be released from escrow and delivered for recording in the Register's Office, and (c) (X) if Final Approval is not obtained within twenty-two months of the date of execution and delivery of the Escrow Agreement by all the parties thereto (the "Escrow Date")—time being of the essence with respect to that date, so that such period shall not be extended if Final Approval is not obtained within twenty-two months of the Escrow Date for any reason except by an agreement signed and delivered by all of the parties to the Escrow Agreement (provided, however, that such date shall be extended for up to an aggregate of 24 months past twenty-two months of the Escrow Date if Final Approval is (i) restrained or enjoined (or if some other restraining order or injunction is obtained (e.g., against issuance of the CITU) that prevents progress of the Highline project) as a result of a suit by a non-party to the Escrow Agreement or by any Owner that is then a party to the Escrow Agreement, for the period of time that the injunction is in effect, and/or (ii) delayed due to an event of "Force Majeure" (defined as an act of terrorism or an act out of the reasonable

control of the City that causes a significant disruption of the normal governmental functioning of the City)—or (Y) if the Zoning Amendment receives “Final Disapproval” (defined below in this Section), or (Z) if the City terminates or chooses not to renew its license agreement with the Railroads dated January 1, 2004, then, upon the occurrence of any such event, the instruments held thereunder will be destroyed by the escrow agent, and a termination of the Escrow Agreement, in the form of document attached as Exhibit O, executed at the time of the execution and delivery of the Escrow Agreement and held by the escrow agent, will be recorded in the Register’s Office against each Property, the MTA Property, the TBTA Property, and the CCDC Property.

The Railroads and the City and ESDC will promptly take such actions as may be necessary to pursue the CITU. The City, if it has not already done so, will endeavor to cause the application for approval of the Zoning Amendment pursuant to ULURP (the “ULURP Zoning Application”) and the ULURP Contribution Application to be certified as complete by the New York City Department of City Planning (“DCP”) within ninety (90) days from the Escrow Date, except as set forth below. The Escrow Agreement will state that, in the event that DCP has not certified such Applications by such date, then the instruments held pursuant to the Escrow Agreement will be destroyed by the escrow agent, and the above-referenced termination of the Escrow Agreement will be recorded in the Register’s Office against each Property, the MTA Property, the TBTA Property, and the CCDC Property; provided, however, that such destruction and recordation will not occur if the STB has not made a determination as to the CITU application within ninety (90) days from the Escrow Date. In such event, DCP shall have thirty (30) days from issuance of the CITU to certify the Applications as complete, and such destruction and recordation as described above may not occur unless DCP does not so certify by such date. In

the event that the application for a CITU is denied, then such destruction and recordation may occur. In the event of a failure to obtain Final Approval, or if the zoning is later held to be invalid, the City will withdraw the CITU, and such destruction and recordation will occur.

“Final Approval” shall mean obtaining the last approval or deemed last approval under ULURP for (i) the Zoning Amendment and (ii) if sought, the Contribution, and the expiration of 130 days following the latest of such last approval or deemed last approval.

“Final Disapproval” shall mean the last disapproval or deemed last disapproval under ULURP for the Zoning Amendment and, if sought, the Contribution, or, after the certification by DCP of the ULURP Zoning Application and, if sought, the ULURP Contribution Application as complete, the withdrawal of those applications by the City in the event that modifications are reasonably expected to be made by the approving governmental bodies to the ULURP Zoning Application, the effect of which would be to substantially alter the planning purposes and goals of the ULURP Zoning Application. Any Owner will have the right to have the instruments related to its Property held pursuant to the Escrow Agreement destroyed and terminate the Escrow Agreement in relation to it and its Property if any approving governmental body requires a change to the Zoning Amendment that is “substantially adverse” to such Owner, as such term is defined in Section D of Exhibit A to this Term Sheet. Such Owner exercising such rights shall be known as a “Withdrawing Owner.”

The destruction of the Escrow Documents and the recording of the termination of Escrow Agreement will be the sole and exclusive remedy of any and all parties hereto for failure to obtain Final Approval.

8. Statement of No Objection. Simultaneous with the delivery of the Escrow Agreement, each Owner, MTA, TBTA and CCDC, will execute and deliver instruments, containing statements, which the City and the Railroads may use as reasonably appropriate, that it has no objection to the following:

- (a) the City's initiative to accept the Contribution and develop and use the Highline for Public Space;
- (b) (i) the ULURP approval for the ULURP Zoning Application and, if sought, the ULURP Contribution Application, (ii) the City's acquiring the interest in and possession and control of the Highline for Public Space as set forth in this Term Sheet, and (iii) the creation of an improved and accessible public open space on the "Improvement Sites" (as defined in Exhibit A to this Term Sheet), as provided in Exhibit A to this Term Sheet (the statements in Sections 8(a) and 8(b) to be in the form attached as Exhibit P(1); and
- (c) the instrument executed and delivered by CPO as described below, such statement to be in the form attached as Exhibit P(2).

Such statements may contain such conditions and qualifications requested by the Owner, the MTA, TBTA, or CCDC, as applicable, as the City and the Railroads may in their sole collective discretion approve.

In addition, simultaneous with the execution of this Term Sheet by the City, CPO, and the Railroads, CPO will execute and deliver an instrument under which CPO will withdraw its objections to a CITU in connection with an adverse abandonment (attached as Exhibit P(3)).

The statements by their terms will be of no further force or effect upon the occurrence of Final Disapproval or the termination of the Escrow Agreement, or, with respect to a Withdrawing Owner, upon its withdrawal from the Escrow Agreement.

9. Access. Each Owner will agree (such agreement to be memorialized in the Escrow Agreement and Easement, as applicable) to allow the City, and its agencies and instrumentalities, and any consultant and any contractor and other designee of any of the foregoing, reasonable access across each Property and, to the extent the Hudson Yards Highline Segment remains intact, the MTA Property, the TBTA Property and CCDC Property, for purposes of title or conditions surveys, site inspections, test borings, repairs, and stabilization and safety work relating to the Highline, both prior to and after the closing of the Contribution. If any such consultant, contractor or designee is performing any construction work on the Highline, the Owner through whose property the Highline is being accessed for such work will be named as an additional insured on a liability insurance policy to be required of the consultant, contractor, or designee to be carried under its agreements with the City or its instrumentalities. The City and such contractor, consultant, or designee will be obligated to defend, hold harmless and indemnify the Owner (and, as relevant, the MTA, TBTA, CCDC, as well as the State and CCOC to the extent they have leasehold interests in the relevant property) providing such access against any damage or injury to persons or property resulting from the work being undertaken by such

consultant, contractor, or designee, provided, however, that such indemnification shall not extend to claims caused by the negligence or willful act of the Owner.

10. Voluntary Railbanking Agreement. The City and the Railroads (as may be appropriate) will execute and place in escrow as one of the Escrow Documents a Voluntary Railbanking Agreement (attached to this Term Sheet as Exhibit Q) and ancillary agreements (collectively, the "VRA") for the City's obtaining the Contribution, by quitclaim deed, to be delivered by the Railroads at closing (as contemplated in Section 12 of this Term Sheet). The Voluntary Railbanking Agreement is a contract of purchase and sale between CSXT, as grantor, and the City or its designee as grantee and ESDC as grantee, under which CSXT agrees to make to said grantee the Contribution, by conveyance of the Highline by delivery of the Deeds to each of the City or its designee and ESDC, the FIRPTA certificates, certificates of corporate resolutions and corollary real estate transfer tax returns and title affidavits and other certificates. The Trail Use Agreement is the agreement between CSXT and the City or its designee and ESDC, meant to parallel the CITU but establishing the non-governmental terms and conditions for the City's and ESDC's operation and maintenance of and tax payment for the railbanked Highline. Under the VRA, the Railroads will agree to make, and each of the City or a not-for-profit City-designee and the ESDC will agree to accept, the Contribution through a CITU issued to both the City or its designee and ESDC or (at the City's and ESDC's and the Railroads' option) an alternate mechanism consistent with the terms of this Term Sheet. Final closing of the VRA will be contingent on Final Approval. The VRA will state that it will terminate, and the CITU will be surrendered upon the earlier of (i) the failure to obtain Final Approval within the time period set forth in the Escrow Agreement, or (ii) Final Disapproval, or (iii) the City's withdrawal of the ULURP Zoning Application after certification of same by DCP (as permitted under this Term

Sheet). Under the Trail Use Agreement, in the form of document attached as Exhibit R, the City and ESDC will agree to purchase and maintain Railroad Protective Liability Insurance ("RPL") to cover each's respective portion of the Viaduct, in addition to any other insurance the City and ESDC may obtain or carry with respect to the Highline, unless the CITU is in full force and effect (in which event the City and ESDC shall not be under such RPL insurance obligation). The City agrees to add to its RPL policy, as additional insureds, the Owners or any of them whose real estate is encumbered by the Highline, *provided, however*, that no failure of the City to add or to name correctly any such Owner shall invalidate or otherwise affect coverage of the primary insured, CSXT.

11. Hudson Yards Easement Segment Relocation. The City, the MTA, TBTA, CCDC, and the Railroads—as well as the State and CCOC to the extent they have leasehold interests in the relevant property—will enter into an agreement for the relocation of all or a portion of the Hudson Yards Highline Segment (the "Easement Relocation and Conveyance Agreement", or "ERCA"), in a form substantially similar to the one attached to this Term Sheet as Exhibit S. The Railroads, the MTA, TBTA, CCDC, ESDC and the City hereby agree and consent to the reconfiguration of the portion of the Easement for the Hudson Yards Highline Segment in accordance with the reconfiguration map attached hereto as Exhibit T. A metes and bounds description consistent with such configuration will be attached as an exhibit to the ERCA and the VRA, and the relocated viaduct will only be constructed when and if rail service is reactivated. The parties to the ERCA acknowledge that the Hudson Yards Highline Segment and its associated easement (the "Hudson Yards Easement") exist on property on which the development of a multi-use facility is intended, and that the continued existence of the Hudson Yards Easement, as relocated, is consistent with such development. In the event that

development of the multi-use facility is finally abandoned, the City agrees that it will make best efforts to pursue the further reconfiguration of the Hudson Yards Easement and relocation of the Hudson Yards Highline Segment (provided that the relocated viaduct will only be constructed when and if rail service is reactivated).

12. Contribution Closing. Within thirty (30) business days of Final Approval, the closing will take place. At the closing will be delivered the following:

- (a) From the City, stipulation as to the inapplicability of NYS Railroad Law Section 21 to Highline demolition and waiver of Railroads' liability under New York State Railroad Law Section 93-b, in the form of document attached as Exhibit U.
- (b) From the City, or its designee, environmental pollution insurance policy for the Railroads respecting historic pollution of property bordering (not underlying) the Highline, in amount of \$30 million (\$30M of indemnification and \$30M for defense costs) for 10-year term, with evidence of payment of the initial premium thereon.
- (c) From the City (or its designee), and from ESDC, Part IV of IRS Form(s) 8283 (each form to be completed by CSXT signature as donor) and Letter(s) of Acknowledgment, all in the form of documents attached as Exhibit V, for (i) CSXT's contribution of Easements and Rail Viaduct to the City (or its not-for-profit purpose-formed designee) and to ESDC, and (ii) each qualified conservation contribution made by the Owners to the City (or its designee) pursuant to Section 3(c) of this Term Sheet.

limited to the Energy Policy and Conservation Act, 42 U.S.C. Section 6362, the Coastal Zone Management Act of 1972, 16 U.S.C. Sections 1451 *et seq.*, Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 11, 1994), the Toxic Substances Control Act, 15 U.S.C. Sections 2601 *et seq.*, the Federal Water Pollution Control Act, 42 U.S.C. Sections 1251 *et seq.*, and the New York Environmental Conservation Law, Sections 1-0101 *et seq.*

14. CPO. The parties acknowledge that CPO will be representing only those Owners that enter into the Escrow Agreement, and any actions taken or agreed to be taken by CPO under this Term Sheet or otherwise are only on behalf of those Owners.

15. Miscellaneous. In the event any Owner is required to perform structural work on the Highline, as set forth in the Exhibits to this Term Sheet, the City shall provide reasonable cooperation to such Owner in connection with any such work on or over streets, in order to minimize cost and time, subject to applicable rules, regulations and permit requirements of the City.

16. In the event of any conflict between the provisions described herein for any of the exhibits to this Term Sheet and an exhibit itself, the terms of the exhibit itself shall take precedence.

17. This Term Sheet may be signed in counterparts and by facsimile signatures.

IN WITNESS WHEREOF, the City, MTA, TBTA, CCDC, ESDC, CPO, and the Railroads have caused this Agreement to be signed as of the ____ day of December 2004.

THE CITY OF NEW YORK

Approved as to form
Certified as to legal authority:

Howard Friedman
Acting Corporation Counsel

By: _____
Name: _____
Title: _____

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name: _____
Title: _____

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

By: _____
Name: _____
Title: _____

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a the EMPIRE STATE DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

CHELSEA PROPERTY OWNERS

By: _____
Name: _____
Title: _____

[CONSOLIDATED RAIL CORPORATION]

STATE OF NEW YORK)

COUNTY OF

Notary Public

STATE OF NEW YORK)

COUNTY OF

Notary Public

STATE OF NEW YORK)

COUNTY OF _____) ss.: _____)

On the ___ day of _____, [2004,]200 , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK _____)
_____) ss.: _____)
COUNTY OF _____)

On the ___ day of _____, 200 , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK _____)
_____) ss.: _____)
COUNTY OF _____)

On the ___ day of _____, 200 , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK _____)
_____) ss.: _____)

COUNTY OF _____)

On the day of _____, 200 , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the day of _____, 200 , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity; and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

MICHAEL A. HASKEL, being duly sworn, deposes and says: I am not a party to the action, I am over the age of 18 years, and I reside in Oceanside, New York.

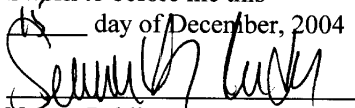
On December 15, 2004, I served the within Notice of Motion to Intervene and Supporting Papers upon:

Addressees on annexed service list at addresses shown

by depositing a true copy of same securely enclosed in a post paid wrapper, marked , in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


MICHAEL A. HASKEL

Sworn to before me this
15 day of December, 2004


Notary Public

SEANAN L. REIDY, Esq.
Notary Public - State of New York
No. 02RE6087474 Qualified in Bronx County
Commission Expires Feb. 18, 2007

Service List

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

Ronald Adams
31 Bank Street Ste 3R
New York, NY 10014

Fredric Bell
Aia New York Chapter
200 Lexington Avenue
New York, NY 10016

Andrew Berman
232 East 11Th Street
New York, NY 10003

Elizabeth Bradford
655 West 34Th Street
New York, NY 10001-1188

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John H Broadley & Associates P C
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Charles Chotkowski,
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Covington & Burling
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John F. Guinan,
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J Michael Hemmer
Union Pacific Railroad Company
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Manhattan Community Board No. 4
330 West 42Nd Street, 26Th Floor
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457 Madison Avenue
New York, NY 10022

Anthony P. Semancik,
The Metropolitan Transportation
Authority Of The State Of New York
347 Madison Avenue
New York, NY 10017-3706

Ethel Sheffer
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Peter J. Shudtz
Csx Corporation
1331 Pennsylvania Avenue,
N.W., Suite 560
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Lerner Group, Inc.
404 Park Avenue South
New York, NY 10016-8403

Charles A. Spitulnik,
McLeod Watkinson & Miller
One Massachusetts Avenue Nw Suite 800
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Sprague, Mary Gabrielle
Arnold & Porter
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Washington, DC 20004-1206

Adrian L. Steel Jr
Mayer, Brown, Rowe & Maw, Llp
1909 K Street, N.W.
Washington, DC 20006-1101

Scott N. Stone
Patton Boggs, Llp
2550 M Street Nw
Washington, DC 20037

Attn: Nanop-R U. S. Army
Corps Of Engineers
26 Federal Plz
New York, NY 10278-0004

Joseph M. Calisi
P. O. BOX 1369
Bronx, NY 10475

Department Of Environmental
Conservation
50 Wold Road
Albany, NY 12233

Division Of Coastal Resources
& Water. Rev.
Department Of State
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