

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36526

**CAPE MAY SEASHORE LINES, INC.
– TRACKAGE RIGHTS EXEMPTION –
NEW JERSEY TRANSIT CORPORATION**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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ENTERED
Office of Proceedings
December 1, 2021
Part of
Public Record

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Cape May Seashore Lines, Inc.*

Dated: December 1, 2021

FILED
December 1, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 1, 2021
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**CAPE MAY SEASHORE LINES, INC.
– TRACKAGE RIGHTS EXEMPTION –
NEW JERSEY TRANSIT CORPORATION**

VERIFIED NOTICE OF EXEMPTION

Cape May Seashore Lines, Inc. (“CMSL”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for CMSL’s acquisition of local trackage rights over a line of railroad owned by New Jersey Transit Corporation (“NJ Transit”) pursuant to a written trackage rights agreement among CMSL, NJ Transit and Consolidated Rail Corporation (“Conrail”).¹ NJ Transit has agreed to grant local trackage rights to CMSL on a line of railroad comprised of a portion of the Cape May Branch between MP 27.02± at Winslow Junction and MP 53.0± at Tuckahoe, and the Ocean City Branch between MP 53.0± at Tuckahoe and MP 58.7± at Palermo, a total distance of approximately 31.68 miles (the “Subject Trackage”). Maps of the Subject Trackage are attached hereto as Exhibit A. The trackage rights will be effective on or after the effective date of the Board’s decision.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if

¹ Conrail currently has local trackage rights over the Subject Trackage. Conrail is retaining the right to use the Subject Trackage for limited overhead trackage rights and for interchange, and consents to NJ Transit’s grant of local trackage rights to CMSL.

the rights are: (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this Notice are based upon a written agreement, a copy of which is attached hereto as Exhibit B, and is not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), CMSL provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) Description of Proposed Transaction

NJ Transit acquired ownership of the Subject Trackage (along with other rail properties) from Conrail subject to Conrail's retention of an easement to operate freight service on, *inter alia*, the Subject Trackage. NJ Transit does not have any common carrier obligations on the Subject Trackage. NJ Transit and Conrail are parties to a 1984 Trackage Rights Agreement, as amended several times (the "1984 Agreement"). The 1984 Agreement provides the terms and conditions for Conrail's provision of freight service over the NJ Transit rail properties over which Conrail retained a freight easement, including the Subject Trackage. The 1984 Agreement permits NJ Transit the right to grant other parties access to the Subject Trackage. Under the Trackage Rights Agreement that is subject of this Notice, CMSL will provide local freight service over the Subject Trackage, in lieu of and with the consent of Conrail, with Conrail retaining limited overhead trackage and interchange rights.

The name, business address and telephone number of Applicant are:

Cape May Seashore Lines, Inc.
P.O. Box 1101
Hammonton, NJ 08037
609-602-1264

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Eric M. Hocky
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(a)(1)(ii) Consummation Date

CMSL intends to commence operations on or after December 31, 2021, the anticipated effective date of the notice.

(a)(1)(iii) Purpose of Transaction

NJ Transit is granting CMSL local trackage rights on the Subject Trackage to allow CMSL to serve local industries.

(a)(5) States in which Property of the Applicant is Situated

CMSL currently operates in the State of New Jersey, and the Subject Trackage is also located in the State of New Jersey.

(a)(6) Map

Maps showing the Subject Trackage are attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the Trackage Rights Agreement is attached as Exhibit B.

Labor Protection

Under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. §11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because only a Class III carrier is involved.²

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

² The trackage rights are being granted by NJ Transit (which is not a freight carrier, and which has no common carrier obligation on the Subject Trackage) to CMSL (a Class III carrier).

Conclusion

Based on the information provided above, CMSL requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,

/s/ Eric M. Hocky

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*Attorneys for
Cape May Seashore Lines, Inc.*

Dated: December 1, 2021

VERIFICATION

I, Anthony C. Macrie, verify under penalty of perjury that I am authorized to make this verification on behalf of Cape May Seashore Lines, Inc., and that the information included in the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.

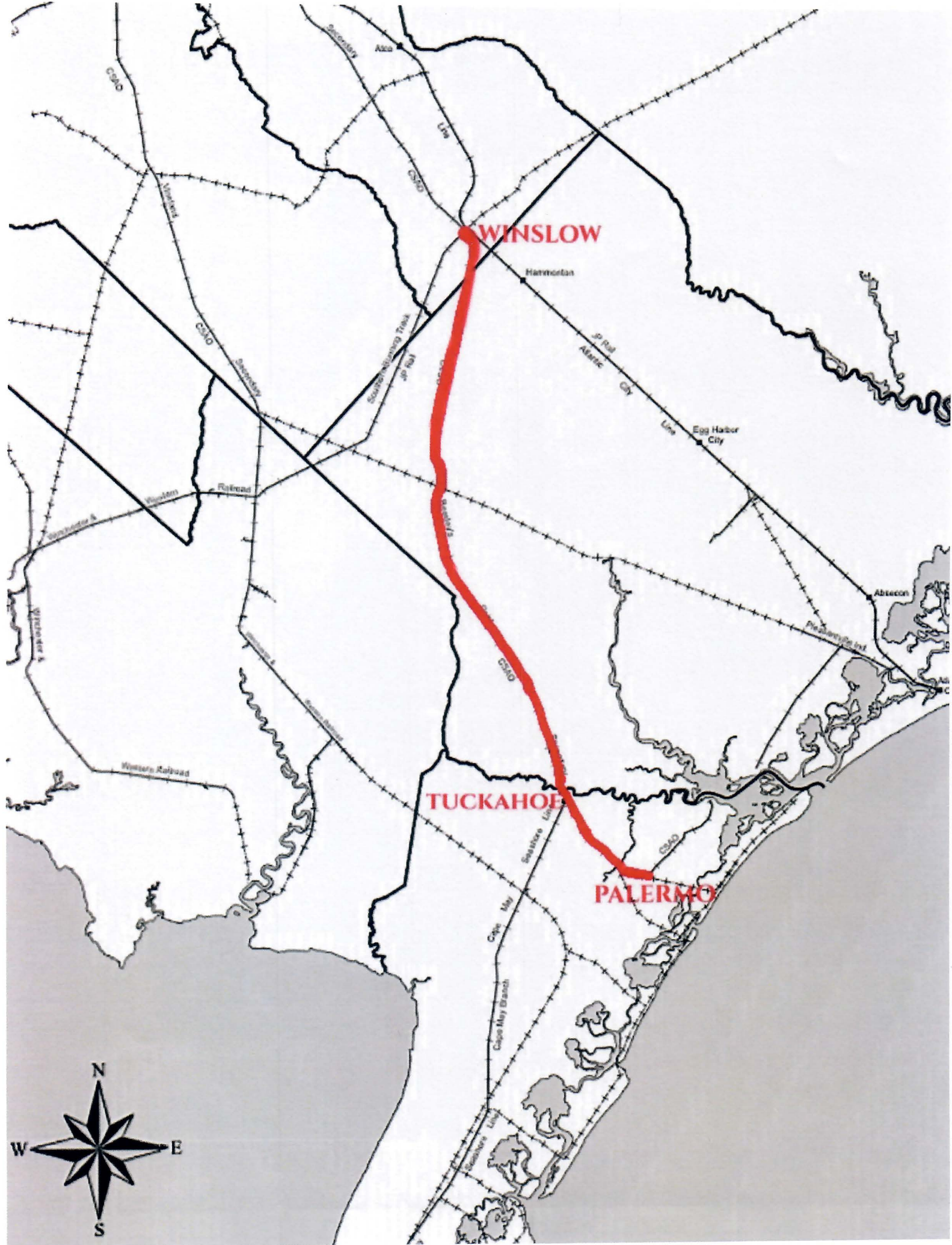
/s/ Anthony C. Macrie

Anthony C. Macrie
President

Dated: December 1, 2021

EXHIBIT A

MAPS



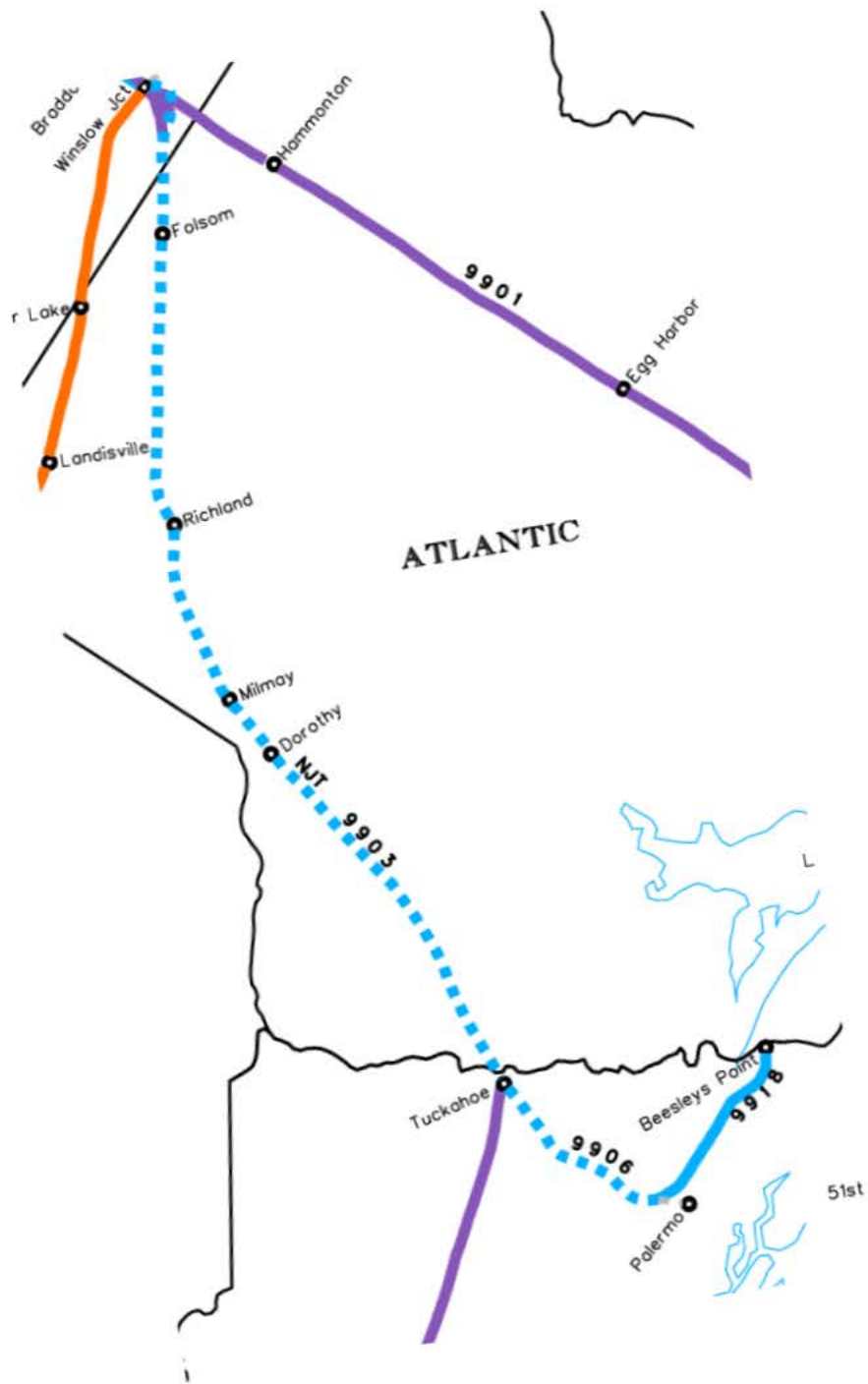


EXHIBIT B

TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT

Among

CAPE MAY SEASHORE LINES, INC.

And

NEW JERSEY TRANSIT CORPORATION

And

CONSOLIDATED RAIL CORPORATION

THIS TRACKAGE RIGHTS AGREEMENT ("2021 Agreement") is entered into as of this 30th day of November, 2021 (the "Effective Date"), by and among CAPE MAY SEASHORE LINES, INC., a New Jersey Corporation ("CMSL"), NEW JERSEY TRANSIT CORPORATION, an instrumentality of the State of New Jersey ("NJ TRANSIT"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Conrail").

WHEREAS, NJ TRANSIT and Conrail entered into a Trackage Rights Agreement effective October 1, 1984, and amended several times (collectively, the "1984 Agreement"), with respect to NJ TRANSIT-owned Rail Properties and Conrail-owned Rail Properties; and

WHEREAS, among other things, the 1984 Agreement provides the terms and conditions for Conrail's provision of freight service over the NJ TRANSIT Rail Properties over which Conrail retained an exclusive freight easement; and

WHEREAS, unless and until finally determined otherwise, Article 2.01(b) of the 1984 Agreement permits NJ TRANSIT to grant others access to the NJ TRANSIT Rail Properties; and

WHEREAS, two of the NJ TRANSIT Rail Properties subject to the 1984 Agreement are the Cape May Branch, between Winslow Junction and Tuckahoe, and the Ocean City Branch, between Tuckahoe and Palermo, all in the state of New Jersey; and

WHEREAS, the Cape May Branch and the Ocean City Branch are, collectively, known as the "Beesley's Point Secondary," which is classified as a Category NF Rail Property under the 1984 Agreement; and

WHEREAS, CMSL now desires to provide local freight service over the Subject Trackage, in lieu of Conrail, with Conrail continuing to exercise overhead operating rights over the Subject Trackage to reach its connection with the Beesley's Point Industrial Track at M.P. 58.7 +/-, which Conrail owns, and to interchange freight traffic with CMSL in the vicinity of Winslow Junction, subject to the terms and conditions set forth herein; and

WHEREAS, NJ TRANSIT is willing to grant CMSL trackage rights over the Subject Trackage, and Conrail is willing to consent to such trackage rights, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties contained herein, intending to be legally bound, CMSL, NJ TRANSIT and Conrail agree as follows:

The recitals set forth above are hereby incorporated by reference into this 2021 Agreement as if fully set forth herein.

DEFINITIONS

- (a) **"1984 Agreement"** means the Trackage Rights Agreement, entered into by NJ TRANSIT and Conrail effective October 1, 1984.
- (b) **"2021 Agreement"** has the meaning given to it in the recitals.
- (c) **"Beesley's Point Secondary"** means, together, the portion of the Cape May Branch

between Winslow Junction and Tuckahoe, and the portion of the Ocean City Branch between Tuckahoe and Palermo, all as shown on Exhibits A-1-A-10, attached hereto and made a part hereof.

- (d) **“Beesley’s Point Industrial Track”** means that line of railroad connecting to the Beesley’s Point Secondary Track at M.P. 58.7+/-, as shown on Exhibit A-10 attached hereto and made a part hereof.
- (e) **“Cape May Branch”** means the portion of the rail property owned by NJ TRANSIT between M.P. 27.02+/- at Winslow Jct. and M.P. 53.0+/- at Tuckahoe, including all sidings, as shown on Exhibits A-1-A-9.
- (f) **“Category NF Rail Properties”** are those properties owned by NJ TRANSIT over which Conrail has retained an easement for its freight operations and which are not used for passenger operations.
- (g) **“Category NFP Rail Properties”** are those properties owned by NJ TRANSIT over which Conrail has retained an easement for its freight operations and which are also used for passenger operations.
- (h) **“CMSL”** means the Cape May Seashore Lines, Inc., a corporation organized under the laws of the State of New Jersey.
- (i) **“Commencement Date”** means a date mutually agreed to in writing between CMSL, Conrail, and NJ TRANSIT, which date shall not occur until the effective date of any required STB authorization or exemption of CMSL’s trackage rights granted by this 2021 Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).
- (j) **“Conrail”** or **“CONRAIL”** means Consolidated Rail Corporation, a corporation organized under the laws of Pennsylvania pursuant to the Regional Railroad Reorganization Act of 1973, as amended, 45 U.S.C. § 5701, *et seq.* (the “RRR Act”).
- (k) **“CSX”** means CSX Transportation, Inc., an affiliated company of Conrail.
- (l) **“Declaration of Default”** means, in an Event of Default, a written notice from a Party not in default to a defaulting Party.
- (m) **“Effective Date of the 2021 Agreement”** has the meaning given to it in the recitals.
- (n) **“Event of Default”** shall have the meaning set forth in Article 9.4 of this 2021 Agreement.
- (o) **“Excursion Service”** means non-commuter passenger rail service powered by internal combustion engines.
- (p) **“FRA”** means the Federal Railroad Administration.
- (q) **“NJ TRANSIT”** means the New Jersey Transit Corporation, an instrumentality of the State of New Jersey, successor to the former Commuter Operating Agency pursuant to N.J.S.A. 27:25-1, *et seq.* Whenever reference is made to NJ TRANSIT, it shall include New Jersey Transit Corporation and its wholly owned subsidiary New Jersey Transit Rail Operations, Inc.
- (r) **“NJ TRANSIT Employee”** means, a person who, while on duty, is an employee of

NJ TRANSIT or any agent or contractor of NJ TRANSIT.

- (s) **“NJ TRANSIT Rail Properties”** means properties owned or leased by NJ TRANSIT identified in Exhibit 1 to the 1984 Agreement and described therein as the following two categories:
 - (i) Category NF Rail Properties; and
 - (ii) Category NFP Rail Properties.
- (t) **“NS”** or **“NSR”** means Norfolk Southern Railway, an affiliated company of Conrail.
- (u) **“Ocean City Branch”** means the portion of the rail line owned by NJ TRANSIT between M.P. 53.0+/- at Tuckahoe and M.P. 58.7+/- at Palermo, including all sidings, as shown on Exhibits A-9-A-10.
- (v) **“Overhead Rights”** means the rights of Conrail and its affiliated companies, CSX and NS, to operate their trains, locomotives, cars, and equipment with their own crews over the Subject Trackage for the purposes of providing freight service to and from Conrail’s Beesley’s Point Industrial Track and interchanging freight traffic with CMSL in the vicinity of Winslow Junction.
- (w) **“Party”** or **“the Parties”** means each of, and collectively, CMSL, CONRAIL and NJ TRANSIT.
- (x) **“Rail Properties”** means:
 - (i) the NJ TRANSIT-owned Rail Properties; and
 - (ii) the CONRAIL-owned Rail Properties, as set forth in Exhibits 1 and 2 to the 1984 Agreement.
- (y) **“STB”** means the Surface Transportation Board.
- (z) **“Subject Trackage”** means the Beesley’s Point Secondary between M.P. 27.02+/- at Winslow Jct. and M.P. 58.7+/- at Palermo, including all sidings, as shown on Exhibits A-1-A-10.
- (aa) **“Trackage Rights”** means the right to enter upon the Subject Trackage to operate trains, locomotives, cars, and equipment with CMSL’s own crews solely for the purpose of performing local and overhead freight service, moving non-revenue equipment over the Subject Trackage, the temporary staging of rail cars, and securing its property and equipment.

ARTICLE 1. **GRANT OF TRACKAGE RIGHTS TO CMSL FOR THE PROVISION OF FREIGHT SERVICE OVER THE SUBJECT TRACKAGE**

- 1.1 Subject to the terms and conditions herein provided, NJ TRANSIT hereby grants CMSL the right to enter upon the Subject Trackage and to operate trains, locomotives, cars and equipment with CMSL’s own crews solely for the purpose of performing local freight service, moving non-revenue equipment over the Subject Trackage, the temporary staging of rail cars, and securing its property and equipment (“Trackage Rights,” as defined in (aa) above). NJ TRANSIT’s grant of the above Trackage Rights to CMSL is in addition to, and does not replace, Conrail’s rights or obligations under the 1984 Agreement to provide freight service over the Subject

Trackage. Notwithstanding, Conrail agrees that, during the Term of this 2021 Agreement, Conrail's operations will be limited to the exercise of its Overhead Rights as set forth in Article 1.6 and Article 3. Conrail's obligations in the event of expiration or termination of this 2021 Agreement (or in the event CMSL fails to provide common carrier service on the Subject Trackage) are addressed in Article 13.

- 1.2 The Subject Trackage is designated in the 1984 Agreement as a Category NF Rail Property. NJ TRANSIT, upon thirty (30) days' written notice to CMSL and Conrail, reserves the right to re-designate the Subject Trackage from one category to another to reflect changes, or planned changes, in the nature of services operated over the Subject Trackage. In the event NJ TRANSIT re-classifies the Subject Trackage as an NFP Rail Property pursuant to the 1984 Agreement, the Parties agree to amend this 2021 Agreement.
- 1.3 NJ TRANSIT retains the right to establish the overall policies governing the management and operational control of the Subject Trackage, including, but not limited to, the dispatching and control of all trains. However, NJ TRANSIT authorizes CMSL as the Party to establish the overall policies governing the management and control of the Subject Trackage, including, but not limited to, the dispatching and control of all trains. CMSL's right shall not be exercised in a manner that would unreasonably interfere with NJ TRANSIT's rights to use the Subject Trackage or Conrail's exercise of its Overhead Rights. CMSL and Conrail shall develop mutually acceptable protocols governing Conrail's exercise of its Overhead Rights.
- 1.4
 - (a) CMSL's Trackage Rights described in this 2021 Agreement are for the sole purpose of permitting CMSL to operate its road and local freight trains, as well as emergency trains, locomotives, switching movements and movements of non-revenue equipment, and other on-track equipment, and for no other purpose. CMSL shall also have the right to temporarily stage railcars (including cars for interchange) on the Subject Property, provided that such use would not unreasonably interfere with NJ TRANSIT's rights to use the Subject Trackage or Conrail's exercise of its Overhead Rights. In no event will CMSL utilize the Milmay Siding to stage or store rail cars for a period in excess of five business days.
 - (b) Any CMSL Excursion Service operations over the trackage between Tuckahoe and Richland shall continue to be governed by the Sixth Supplemental Agreement to the 1984 Agreement dated September 15, 2008 and the Sixth Amendatory Agreement between NJ TRANSIT and CMSL dated November 28, 2012, as amended from time to time.
- 1.5 NJ TRANSIT retains the right to operate special or emergency trains and other on-track equipment over the Subject Trackage.
- 1.6 Notwithstanding NJ TRANSIT's grant of Trackage Rights to CMSL, Conrail, along with its affiliated companies CSX and NS, (collectively, as used in this Article 1.6, "Conrail"), may operate their trains, locomotives, cars, and equipment with their own crews over the Subject Trackage for the purposes of providing freight service to and from Conrail's Beesley's Point Industrial Track and interchanging freight traffic with CMSL in the vicinity of Winslow Junction (hereinafter "Overhead Rights") as long

as Conrail, NS, and CSX comply with all terms and conditions of the 1984 Agreement and this 2021 Agreement and qualify their employees to operate on the Subject Trackage. During the term of this 2021 Agreement, Conrail shall not provide local freight service on the Subject Trackage.

ARTICLE 2. GENERAL OPERATING PROVISIONS

- 2.1 As used in this 2021 Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the control of, CMSL, Conrail (along with its affiliated companies CSX and NS) or NJ TRANSIT, such expression means the trains, locomotives, cars or equipment in the possession of or operated by that Party (or its affiliated companies) and includes such trains, locomotives, cars or equipment which are owned by, leased to, or the responsibility of such Party. Whenever such locomotives, cars or equipment are owned or leased by a Party and are in the possession or control of another Party, such locomotives, cars or equipment shall be considered those of the possessing or controlling Party.
- 2.2 Each Party shall, and Conrail shall ensure that NS and CSX shall, comply with all applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. The Parties shall indemnify, protect, defend, and save each other, and their officers, agents, and employees, harmless from all fines, penalties, and liabilities imposed upon the Parties under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of a Party to comply with its obligations in this regard.
- 2.3 CMSL shall be responsible for compliance with the provisions of applicable regulations of the FRA and other entities with regulatory authority over the rail industry as well as applicable federal, state, and municipal laws regarding the condition of the Subject Trackage and shall indemnify, protect and defend NJ TRANSIT and Conrail (along with its affiliates NS and CSX) against all fines, penalties, and liabilities imposed under such applicable laws and regulations. Conrail represents that as of the Commencement Date, the Subject Trackage will be in a minimum of FRA Class 1 standards. CMSL shall maintain the Subject Trackage to a minimum of FRA Class 1 standards.
- 2.4 As the party responsible for maintaining the Subject Trackage, CMSL is responsible for furnishing main track height and width clearances of the Subject Trackage and maintaining appropriate records. In the event any clearances in effect on the Commencement Date of this 2021 Agreement are amended, either increased or reduced, CMSL shall notify NJ TRANSIT and Conrail either prior to the occurrence or as soon as possible thereafter. It is understood and agreed that clearances shall not be reduced without mutual consent of Conrail and NJ TRANSIT.
- 2.5 Notwithstanding the foregoing, Conrail shall be responsible to NJT for ensuring that CMSL complies with its obligations under this Article.

ARTICLE 3. CONRAIL'S EXERCISE OF OVERHEAD RIGHTS

- 3.1 As used in this Article 3, "Conrail" shall mean, together, Conrail and its affiliated companies, CSX and NS.
- 3.2 The operating rules governing the Subject Trackage shall be NORAC rules as amended from time to time, and any supplemental orders or operating rules issued by CMSL, and Conrail, in exercising its Overhead Rights, shall comply in all respects with those operating rules, which rules shall comply with any applicable federal, state and local laws and regulations. The movement of Conrail's trains, locomotives, cars and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CMSL and generally applicable restrictions such as clearance and weight restrictions; provided, however, that CMSL shall not place discriminatory equipment restrictions on Conrail's exercise of its Overhead Rights.
- 3.3 Conrail, in exercising its Overhead Rights, shall comply with all applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. Conrail shall indemnify, protect, defend and save NJ TRANSIT and CMSL, and their officers, agents, and employees, harmless from all fines, penalties, and liabilities imposed upon NJ TRANSIT and/or CMSL under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of Conrail to comply with its obligations in this regard.
- 3.4 Conrail shall make such arrangements with CMSL as may be required to have all of Conrail's employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover.
- 3.5 In the event CMSL conducts an investigation or hearing concerning the violation of any operating rule or practice of CMSL by an employee of Conrail or NJ TRANSIT, Conrail or NJ TRANSIT, as applicable, shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by Conrail, or NJ TRANSIT and shall be conducted in accordance with the applicable collective bargaining agreements, if any, that pertain to said employee or employees. Nothing contained in this Article shall obligate CMSL to conduct any investigation or hearing. NJ TRANSIT shall have no obligation to participate in any such investigation or hearing.
- 3.6 CMSL shall have the right to exclude from the Subject Trackage any employee of Conrail or NJ TRANSIT, as determined by CMSL pursuant to any such investigation or hearing described above, to be in violation of CMSL's rules, regulations, orders, practices or instructions issued by timetable or otherwise. Conrail shall release, indemnify, defend and save harmless CMSL and NJ TRANSIT and their respective officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 3.7 If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of Conrail becomes stalled and unable to proceed under its own power, or fails to maintain the speed required on the Subject

Trackage, or if in emergencies crippled or otherwise defective cars are set out of Conrail's trains on the Subject Trackage, Conrail shall have the option of allowing CMSL, if CMSL is able and agrees to do so, to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to promptly move the disabled equipment off the Subject Trackage, or Conrail may perform the necessary functions. Conrail shall reimburse CMSL for the cost of rendering any such assistance in accordance with the provisions of Article 5 of this 2021 Agreement.

- 3.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall, at the option of Conrail, be done by CMSL, if CMSL is able and agrees to do so, or Conrail. Conrail shall reimburse CMSL for the cost of rendering any such assistance in accordance with the provisions of Article 5 of this 2021 Agreement.

ARTICLE 4. MAINTENANCE AND CONSTRUCTION ON SUBJECT TRACKAGE

- 4.1 On and after the Commencement Date, and for so long as the Subject Trackage is classified as a Category NF Rail Property under the 1984 Agreement, CMSL, at its sole cost and expense, shall maintain, repair, replace and renew the Subject Trackage, including all bridges, grade crossings, signal systems, grade crossing protection signs and devices, and all other appurtenances. CMSL shall discharge its maintenance obligations in a manner designed to maintain the Subject Trackage in substantially the same condition it is in as of the Commencement Date. If NJ TRANSIT intends to institute passenger service over the Subject Trackage, CMSL shall not have any obligation to restore the Subject Trackage from the condition of the Subject Trackage as of the Commencement Date to the level of maintenance as of January 1, 1983, as provided in Article 4.01(d) of the 1984 Agreement. In such event, CMSL does not guarantee the condition of the Subject Trackage or that operation thereover will not be interrupted. Furthermore, Conrail shall not, by reason of the failure or neglect on the part of CMSL to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CMSL or its subsidiaries and affiliates, or any of their respective directors, officers, agents or employees, for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by a party resulting from any such failure or neglect. If Conrail's Overhead Service is at any time interrupted or traffic thereon is delayed for any cause, CMSL shall with reasonable diligence restore the Subject Trackage for the exercise of such overhead rights.
- 4.2 CMSL shall also be responsible for complying with the provisions of applicable regulations of the FRA, including those governing the assignment and assumption of maintenance responsibility for the Subject Trackage, and other entities with regulatory authority over the rail industry as well as applicable federal, state and municipal laws regarding the condition of the Subject Trackage and its appurtenances.
- 4.3 CMSL shall also be responsible for all costs and expenses associated with the operation of the Subject Trackage, including the cost of supplying utilities and clearing brush and debris.

- 4.4 CMSL shall not make any material modifications to, or remove or reconfigure any portion(s) of, the Subject Trackage without first submitting plans and specifications therefor and obtaining the prior, written consent of both NJ TRANSIT and Conrail.
- 4.5 NJ TRANSIT retains the right to establish the overall policies governing, and the implementation thereof, routine and non-routine maintenance, replacement, construction, reconstruction, alteration and removal of all Subject Trackage.
- 4.6 Construction of New Industrial Sidetracks or Freight Facilities on Subject Trackage
- (a) NJ TRANSIT authorizes CMSL to negotiate with industries located along the Subject Trackage and to contract with those industries for the installation, construction, maintenance, alteration, and removal of industrial sidetracks which will be on or connected to the Subject Trackage. CMSL's contract with such industries shall allocate as between them the responsibility for the cost of such installation, construction, maintenance, alteration, and/or removal, and NJ TRANSIT shall not bear any such costs. In the event CMSL wishes to have installed such industrial sidetracks, NJ TRANSIT shall establish a rental rate for the use of NJ TRANSIT property by a third party and establish any other terms and conditions as necessary.
- (b) CMSL shall arrange for the industry to negotiate a suitable permit arrangement with NJ TRANSIT. For industrial sidetracks and freight facilities for CMSL's use, CMSL shall obtain a permit from NJ TRANSIT. Said permit shall define the purposes to which the such trackage shall be used.
- (c) Whenever CMSL proposes a new industrial sidetrack which will be constructed on or connected to the Subject Trackage, CMSL shall submit to NJ TRANSIT for NJ TRANSIT's review and approval, engineering plans and drawings showing the location, dimension, grade and alignment as well as material specifications of such sidetrack together with plans and drawings for any construction adjacent to or in support thereof. Said engineering plans and drawings shall be submitted in quadruplicate.
- (d) For work other than new industrial sidetracks, CMSL and NJ TRANSIT shall enter into a separate agreement covering the scope of work to be performed, submission and approval of plans and drawings, schedule of payments as well as other terms and conditions.
- (e) Approval of plans for sidetrack or other freight facility installation which are consistent with NJ TRANSIT's operating requirements and general installations and material specifications will not be unreasonably withheld or delayed.
- 4.7 Removal of Freight Facilities
- (a) CMSL shall not remove any freight facilities or improvements, including but not limited to, track, turnouts, crossovers or sidings, without first obtaining NJ TRANSIT's and Conrail's written approval, which approval shall not be unreasonably withheld.
- (b) As to the Folsom Team Track turnout, and any future main track turnouts and crossovers constructed during the term of this 2021 Agreement, it is agreed and understood that if it is determined, as provided by this 2021 Agreement, that a main

track turnout or crossover is subsequently no longer required for freight service, it may be removed at CMSL's sole cost and expense. The net salvage therefrom shall accrue as follows:

(i) Net salvage from main track turnouts or crossovers constructed prior to October 1, 1984 shall accrue to NJ TRANSIT.

(ii) Net salvage from main track turnouts or crossovers constructed after October 1, 1984 and prior to the Effective Date as provided by the 2021 Agreement shall accrue to Conrail.

(iii) Net salvage from main track turnouts or crossovers constructed after the Effective Date of this 2021 Agreement shall accrue to CMSL.

(iv) The Richland Siding was paid for by CMSL, and salvage from its removal will accrue to CMSL.

ARTICLE 5. **COMPENSATION**

- 5.1 Conrail agrees to continue to pay the return on investment payment to NJ TRANSIT due with respect to the Subject Trackage pursuant to Article 5.02 of the 1984 Agreement ("Annual Payment"), currently \$13,394.02 per year. Conrail shall pay NJ TRANSIT one-twelfth 1/12th of this amount on a monthly basis and shall pay NJ TRANSIT'S invoice to Conrail therefore within forty-five (45) days of receipt thereof.
- 5.2 Conrail (which, for the purposes of this Article 5.2 includes its affiliated companies CSX and NS), in exercising its Overhead Rights to reach the Beesley's Point Industrial Track, shall compensate CMSL in the amount of \$2,500 per round trip movement of locomotives, rail cars and/or other on-track equipment over the Subject Trackage. For purposes of this Article 5.2, a round trip movement shall consist of Conrail traversing the entirety of the Subject Trackage from Winslow Junction to Conrail's Beesley's Point Industrial Track and then returning over the entirety of the Subject Trackage to Winslow Junction. Beginning July 1, 2022, and each July 1 thereafter, the per round trip charge will be increased or decreased effective as of the previous January on the same basis as the billable car-mile rate is revised under Article 5.04 of the 1984 Agreement. CMSL shall invoice Conrail for charges incurred in Conrail's, CSX's and NS' exercise of their Overhead Rights.
- 5.3 All invoices issued pursuant to this 2021 Agreement shall be due and payable within forty-five (45) days of receipt thereof.
- 5.4 Interest charges on all unpaid amounts shall commence forty-five (45) days after receipt of an invoice.
- 5.5 The interest charge shall be based on the prime interest rate of Citibank, N.A., plus two percent (2%), in effect as of the due date of the invoice. Such interest shall be compounded monthly until such time as the invoice is paid in full.
- 5.6 Billing information, including invoices, shall be directed *via* first class mail or email to:

If to CMSL:

President
Cape May Seashore Lines, Inc.
P.O. Box 1101
Hammonton, NJ 08037
Email: acmacrie@verizon.net

If to Conrail:

Consolidated Rail Corporation
330 Fellowship Road, 3rd Floor
Mount Laurel, NJ 08054
Attn: Engineering

If to NJ TRANSIT:

Director, Inter-Carrier Agreements
NJ TRANSIT Rail Operations
One Penn Plaza East, 3rd Floor
Newark, NJ 07105-2246

- 5.7 In the event there is a dispute as to the amount to be paid, the undisputed portion of the invoice amount shall be remitted. Within forty-five (45) days after the due date of payment, the billed party shall fully explain in writing to the other Party the reason or reasons for withholding full payment of invoice as rendered. If a mutual agreement cannot be reached within thirty (30) days after the billing Party's receipt of the written exception the matter may be referred by any of the Parties to dispute resolution as set forth in Article 10 of this 2021 Agreement.
- 5.8 If it is determined that there are monies due to the billing Party, there shall be an interest charge based on the prime interest rate of Citibank, N.A., in effect as of the due date of the invoice, plus two percent (2%). Such interest shall be compounded monthly and computed based on the period of time between the original due date of the payment and the date the amount due is remitted.
- 5.9 Neither CMSL nor Conrail shall have the right to offset payments due under any other agreement with NJ TRANSIT against amounts owed under other provisions of this 2021 Agreement.
- 5.10 Unless agreed otherwise, each Party shall keep and maintain its books, records, accounts, and supporting workpapers which relate to its operations, maintenance, and costs of the Subject Trackage for a period of three (3) years from the date of payment. During normal business hours, any Party shall have the right to inspect, examine, audit, and reproduce all such books, records, accounts, and supporting workpapers of any other Party that relate to the operations, maintenance and costs of the Subject Trackage in support of billings as rendered.

ARTICLE 6. **LIABILITY AND INSURANCE**

- 6.1 Financial responsibility for liability for personal injury or property damage which may result from activities conducted hereunder shall be allocated between CMSL, Conrail and NJ TRANSIT as follows in this Article 6; provided, however, that this Article 6 shall not apply to any such liability which may arise out of activities or events that occurred prior to the Effective Date of this 2021 Agreement. In no case will any Party seek to recover lost revenue from another Party.
- 6.2 Except with respect to liability arising from the exercise of Overhead Rights by Conrail, CSX or NS, the following provisions regarding liabilities and insurance shall apply regardless of negligence or fault. Except as otherwise provided herein, for purposes of this Article 6, Conrail shall be considered a third party, and neither CMSL nor NJ TRANSIT shall have any claim against Conrail for financial responsibility for liability for personal injury or property damage that may result from activities conducted hereunder solely by reason of Conrail's agreement to the arrangement set forth in this 2021 Agreement; provided, however, that nothing in this 2021 Agreement shall preclude CMSL and/or NJ TRANSIT from bringing an action or making a claim against Conrail for financial responsibility for liability for personal injury or property damage that may result from actions or inactions of Conrail, NS or CSX, including actions or inactions arising from Conrail's exercise of its Overhead Rights, other than Conrail's agreement to the arrangement set forth in this 2021 Agreement.
- 6.3 (a) Except as otherwise provided in this Article 6, with respect to the Subject Trackage, as between NJ TRANSIT and CMSL, and for so long as the Subject Trackage is among the Category NF Rail Properties, CMSL agrees to release, indemnify, defend, protect, and save harmless NJ TRANSIT, its successors, assigns, agents, and officials, from all costs and expenses resulting from any loss of life or property, or injury or damage to any person, or the property of any firm or corporation, and from and against any and all claims, demands, liabilities, or actions for such loss, injury or damage arising under this 2021 Agreement or CMSL's use of the Subject Trackage.
- (b) In its use of the Subject Trackage, CMSL shall, at its sole cost and expense, comply with all federal, state and local laws, rules and regulations applicable to its operation designed to prevent or control the discharge of substances into the land, water and air, and hold harmless and defend NJ TRANSIT and Conrail from and against any and all suits, actions, proceedings, fines and claims arising from or alleged to have arisen from a violation of any such environmental law, rule or regulation by CMSL during its use of such property whenever such suits, actions, claims or proceedings shall be commenced.
- (c) In its exercise of Overhead Rights, Conrail, NS and CSX shall, at their sole cost and expense, comply with all federal, state and local laws, rules and regulations applicable to its operation designed to prevent or control the discharge of substances into the land, water and air, and hold harmless and defend NJ TRANSIT and CMSL from and against any and all suits, actions, proceedings, fines and claims arising from or alleged to have arisen from a violation of any such environmental law, rule or

regulation by Conrail, NS and CSX during their use of such property whenever such suits, actions, claims or proceedings shall be commenced.

- 6.4 Conrail and CMSL, as determined under Article 6.6, agree to release, indemnify, defend, protect, and save harmless NJ TRANSIT, its successors, assigns, agents, and officials, from all costs and expenses resulting from any loss of life or property, or injury or damage to any person, or the property of any firm or corporation, and from and against any and all claims, demands, liabilities, or actions for such loss, injury or damage arising from Conrail's exercise of its Overhead Rights.
- 6.5 As between Conrail and NJ TRANSIT, Claims (as defined in Article 6.6 below) arising from Conrail's, CSX's, and NS' exercise of their Overhead Rights shall be considered Claims arising from Conrail's exercise of its Overhead Rights. Conrail shall indemnify and hold NJ TRANSIT harmless for any and all Claims that may arise from the exercise of Overhead Rights by Conrail, NS or CSX. As between NJ TRANSIT and Conrail, CSX or NS, financial responsibility for liability for personal injury or property damage which may result from this Agreement shall be allocated pursuant to Article VI of the 1984 Agreement. Nothing in this Article 6 shall be construed as limiting any liability that NS or CSX may have to NJ TRANSIT.
- 6.6 As between CMSL and Conrail (as defined in Article 1.6 of this Agreement), responsibility for Claims caused by, arising out of or occurring in connection with, or resulting from Conrail's exercise of, its Overhead Rights, including obligations to NJ TRANSIT under Article 6.3, shall be apportioned as follows:
- (a) Whenever any loss of, or damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, except employees of a Party, occurs with the trains, locomotives, cars or on track equipment of only Conrail being involved, Conrail shall be responsible for all Claims arising therefrom.
 - (b) Whenever any loss of, or damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, except employees of a Party, occurs with the trains, locomotives, cars or on track equipment of only CMSL being involved, CMSL shall be responsible for all Claims arising therefrom.
 - (c) Whenever any loss of, or damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, except employees of a Party, occurs with the trains, locomotives, cars or on track equipment of both CMSL and Conrail being involved, CMSL and Conrail shall separately assume all liability for the loss of or damage to the respective trains, locomotives, cars (including without limitation lading) or on track equipment operated by it, and for injury to or death of each of its respective employees. Costs related to the restoration of the Subject Trackage shall be borne equally,
 - (d) CMSL shall be responsible for Claims arising from the presence of trespassers, vandals or other unauthorized persons on the Subject Trackage.
 - (e) The negligence of any tenant, invitee, licensee or grantee of a Party occurring on the Subject Trackage shall be deemed the negligence of that Party. For

purposes of this Article 6.6, Conrail shall not be considered to be a tenant, invitee, licensee or grantee of CMSL.

(f) Except as otherwise provided in this Article 6.6, the party which is responsible for any Claim shall release the other party from all responsibility for such Claim and shall defend, indemnify, protect, and save harmless the other party and its directors, officers, agents, and employees from and against such Claim.

(g) CMSL and Conrail shall each be responsible for all employee costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by, or on behalf of, or lawsuits brought by, or on behalf of, its own respective employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this 2021 Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of: (i) the protection of its own employees under employee protective conditions that may be imposed, and (ii) grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party shall be responsible for Claims arising out of claims, lawsuits and actions brought by or on behalf of its own employees for employment-related actions (*e.g.*, for wrongful discharge, employment discrimination, FELA, *etc.*) pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this 2021 Agreement.

(h) CMSL and Conrail each waive any constitutional, statutory or decisional immunity which would invalidate CMSL's or Conrail's obligation to indemnify the other party with respect to Claims asserted by its respective employees as set forth in Article 6.9 of this 2021 Agreement.

(i) The word "Claims" as used in this Article 6.6 shall mean all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, costs and expenses of every character (including, without limitation, reasonable attorneys' fees) for any injury to or death of any person or persons, for any damage to or loss or destruction of property of any kind, including, but not limited to, car repair, re-railing and track repair costs (including to the Subject Trackage), and for any damage to the environment. Except as may otherwise be specifically set forth in this 2021 Agreement, neither Party shall be liable for consequential, punitive, exemplary or special damages under this 2021 Agreement.

(j) As between Conrail and CMSL, for purposes of this Article 6.6, Claims arising from CSX's and NS' exercise of their Overhead Rights shall be considered Claims arising from Conrail's exercise of its Overhead Rights.

- 6.7 Notwithstanding any other provision of this Article 6, liability arising from, or associated with, CMSL's conduct of Excursion Service on the trackage between Tuckahoe and Richland shall be apportioned pursuant to the Sixth Amendatory Agreement amending and supplementing the Agreement between NJ TRANSIT and CMSL for Tourist Passenger Service on the Cape May Branch.

- 6.8 NJ TRANSIT shall bear full responsibility for injury to or death of any NJ TRANSIT Employee, or for loss of, damage to, or destruction of any property of any such NJ TRANSIT Employee, howsoever the same shall occur or be caused.
- 6.9 Each of CMSL and Conrail (as such term is defined in Article 1.6 of this 2021 Agreement) shall bear full responsibility for injury to or death of any of its Employees, or for loss of, damage to, or destruction of any property of such Employee, howsoever the same shall occur or be caused. "CMSL or Conrail Employee" means a person who, while on duty, is an employee of that respective Party or of any agent or contractor of that respective Party (other than NJ TRANSIT). CMSL Employees who are involved in CMSL's provision of services to NJ TRANSIT under this 2021 Agreement shall be regarded as employees of CMSL, and not of NJ TRANSIT.
- 6.10 Any other provision of this Article 6 to the contrary notwithstanding, and to the fullest extent permitted by law, CMSL shall indemnify and save NJ TRANSIT harmless, irrespective of any negligence or fault of NJ TRANSIT or NJ TRANSIT Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, including NJ TRANSIT passengers and NJ TRANSIT employees, or for loss of, damage to, or destruction of any property, including NJ TRANSIT property, resulting from the transportation in CMSL trains or equipment of Hazardous Substances or Municipal Solid Waste or CMSL's use of Hazardous Substances, toxic or explosive materials as set forth in applicable federal or state laws or regulations.
- (a) For purposes of this 2021 Agreement, "Municipal Solid Waste" shall mean everyday items such as product packaging, yard trimmings, furniture, clothing, bottles and cans, food, newspapers, appliances, electronics and batteries. Sources of Municipal Solid Waste include residential waste (including waste from multi-family housing) and waste from commercial and institutional locations, such as businesses, schools and hospitals. For purposes of this 2021 Agreement, Municipal Solid Waste does not include industrial, or construction and demolition (C&D) waste.
- (b) For the purposes of this 2021 Agreement, "Hazardous Substances" shall mean any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to: Section 311 of the Clean Water Act, 33 U.S.C. § 1321, *et seq.*; Section 1004 of the Resource and Conservation and Recovery Act, 42 U.S.C. § 6903, *et seq.*; Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, and the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, *et seq.*, as all may be hereinafter amended.
- 6.11 CMSL Insurance Coverages During the Term of the Agreement:
- CMSL shall procure and maintain in effect during the life of this 2021 Agreement a policy or policies of insurance covering the liability to which it is or may be subject under this 2021 Agreement. Such insurance shall be in minimum limits set forth below:

- (a) Federal Employers Liability Act (FELA) Insurance as required, to be included in the Railroad Liability insurance described in Article 6.11(b).
- (b) Railroad Liability (“RL”) insurance covering liability of CMSL with respect to all Operations to be performed and all obligations assumed by CMSL under the terms of this 2021 Agreement. Products-completed operations, independent contractors and contractual liability coverages are to be included, with no exclusions for Explosion/Collapse/Underground (X-C-U) applicable or added. The policy shall name NJ TRANSIT and the State of New Jersey as additional insureds with respect to the operations to be performed. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance or self-insurance the additional insureds may carry. Coverage under this policy shall have limits of liability of not less than Ten Million Dollars (\$10,000,000) each occurrence and Twenty Million Dollars (\$20,000,000) in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary Commercial General Liability policy and a following form excess or umbrella liability.
- (c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by CMSL in the performance of this 2021 Agreement, with a combined single limit of not less than Two Million Dollars (\$2,000,000).
- (d) Umbrella/Excess Liability insurance may apply to meet the limits of each of the coverages set forth above in Articles 6.11(a) (FELA), 6.11(b) (RL), and 6.11(c) (Commercial Automobile Liability), if not met by the underlying primary insurance. A combination of primary insurance policies and Umbrella/Excess Liability policies will be acceptable to meet the limits specifically required.
- (e) The insurance provided under this Article 6.11 shall be in the form of a Claims Made Policy. CMSL agrees to purchase whatever supplemental or replacement coverage may be necessary to provide continuous coverage of its potential liability under this 2021 Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least three (3) years following the termination of this 2021 Agreement. CMSL further agrees to give written notice to NJ TRANSIT, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.
- (f) On or before any anniversary date of this 2021 Agreement which occurs more than one (1) year after the Commencement Date, NJ TRANSIT may require an increase in the amount of insurance coverage required by this Article 6.11, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year this 2021 Agreement has been in effect.
- (g) Every policy of insurance obtained by CMSL pursuant to the requirements of this Article 6.11 shall contain provisions requiring that the insurance carriers give NJ TRANSIT at least thirty (30) days’ notice, in writing, of any proposed policy

cancellation and of any material modification of the terms and conditions of the policy. In addition, said policy or policies shall be endorsed to name NJ TRANSIT as an additional insured and shall include a severability of interests provision. The terms and conditions of each policy of insurance obtained by CMSL to satisfy the requirements of this Article 6.11 will be subject to the approval of NJ TRANSIT.

All insurance coverage required under this 2021 Agreement shall be written by insurance companies acceptable to NJ TRANSIT and having ratings of A/VIII or better in the Best's Key Rating Insurance Guide. Further, all policies shall: (i) be primary and non-contributory with respect to any and all other insurance or self-insurance maintained by NJ TRANSIT, and shall not seek contribution from any and all other insurance or self-insurance maintained by NJ TRANSIT; (ii) contain standard cross-liability provisions where applicable; and (iii) provide for a waiver of all rights of subrogation against NJ TRANSIT by CMSL and its insurers. Any self-insured retention, or any deductible, maintained by CMSL or any of its Contractors shall cover any liability imposed upon CMSL with respect to the operations and obligations assumed by CMSL under this 2021 Agreement. CMSL represents that any such deductible(s) or retention(s) provide(s) NJ TRANSIT and any of the Indemnified Parties with all rights and protections that would be provided by traditional independent insurance, included but not limited, defense obligations that insurers are required to undertake under liability policies pursuant to the terms of this agreement. If CMSL carries higher limits those shall be made available to pay claims and to provide defense.

(h) Within thirty (30) days of execution of this 2021 Agreement, CMSL shall furnish to NJ TRANSIT an accurate copy of insurance obtained pursuant to the requirements of this 2021 Agreement. Compliance with this requirement shall not relieve CMSL of any other obligation under this 2021 Agreement and will in no way limit or modify CMSL's obligation to provide the specific insurance coverage required by this 2021 Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to NJ TRANSIT by copy of a certificate of insurance along with all applicable policy endorsements.

6.12 Third-Party Contractor Insurance Coverages During Construction:

In this Article 6.12 "Third-Party Contractor" shall mean a party identified as "CMSL's Contractor" in an agreement to perform project work ("Project Work") on the Subject Trackage, or the party with whom CMSL has contracted in another agreement (*e.g.*, Preliminary Engineering Agreement, Design and/or Construction Phase Agreement, *etc.*), as well as the Third-Party Contractor's officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Third-Party Contractor. "Operations" shall mean activities of, or work performed by, Third-Party Contractor. In this Article 6.12, "Agreement" shall mean an agreement to perform Project Work or other such agreement, as applicable.

Third-Party Contractor shall be required to procure and maintain, at its sole cost, the types of insurance specified below:

(a) Workers' Compensation insurance complying with the requirements of the statutes of the jurisdiction(s) in which the Project Work or Operations will be

performed, covering all employees of Contractor. Employer's Liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident or illness shall be included. If any of the employees are considered Rail Employees, then the policy shall include Federal Employers Liability Act (FELA) Insurance with limits no less than that required to be maintained by CMSL under Article 6.11 per claim. In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and an Outer Continental Lands Act Endorsement are required.

(b) Commercial General Liability ("CGL") insurance covering liability of Contractor with respect to the Project Work or Operations to be performed and all obligations assumed by the Contractor. Products-completed operations, ongoing operations, independent contractors, and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and no exclusions for Explosion/Collapse/Underground (X-C-U) applicable or added. In addition to CMSL, the policy shall name NJ TRANSIT and the State of New Jersey as additional insureds with respect to the Project Work or Operations to be performed. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance or self-insurance the additional insureds may carry. Coverage under this policy shall have limits of liability of not less than Five Million Dollars (\$5,000,000) each occurrence and Five Million Dollars (\$5,000,000) in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of primary insurance policies and a following form excess or umbrella liability. The liability policy(ies) shall not include any exclusions for "action over claims" (insured vs. insured).

(c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by Contractor or its subcontractors, with a combined single limit of not less than Two Million Dollars (\$2,000,000). Policy shall: (i) in addition to CMSL, name NJ TRANSIT and the State of New Jersey as additional insureds with respect to the Project Work or Operations to be performed; (ii) coverage shall include bodily injury (including disease or death), personal injury and property damage (including loss of use) liability and cover damages resulted from loading and unloading activities; (iii) in the event Contractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to Five Million Dollars (\$5,000,000) each occurrence.

(d) Umbrella/Excess Liability insurance may apply to meet the limits of each of the coverages set forth above in Article 6.12(a) Employer's Liability, (b) CGL, and (c) Commercial Automobile Liability, if not met by the primary underlying insurance. A combination of CGL and Umbrella/Excess Liability policies will be acceptable to meet the limits specifically required.

(e) When applicable, Pollution Legal Liability Insurance/Contractors Pollution Liability/Environmental is required if any hazardous material, handling, transporting, disposing, or performing work or operations with Hazardous Materials, contaminants, waste, toxic materials, or any potential pollutants, or waste is to be transported or disposed of off of the site. Contractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site and must provide a certificate of insurance from the disposal facility to NJ TRANSIT. In addition to CMSL, the policy shall name NJ TRANSIT as additional insureds, with limits of liability of not less than Five Million Dollars (\$5,000,000) per claim and Ten Million Dollars (\$10,000,000) annual aggregate.

(f) When applicable, Product Liability Insurance with a limit of not less than Ten Million Dollars (\$10,000,000) for each occurrence, covering bodily injuries and property damage caused by defective products. The policy shall include design defects, manufacturer defects, and marketing defects.

(g) When applicable, Professional Liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000) per claim where any Project Work or Operations involve or include design, architectural, engineering, consulting, or any professional services. If the Project Work includes software development, systems development, or outsourced systems, the insurance shall include coverage for liability arising from intellectual property infringement, information technology, and software development services. If the Professional Liability insurance is claims-made, the coverage shall remain in place for three (3) years from the completion of the Project Work. There shall be no exclusions in coverage for the insured's interest in a Joint Venture or Limited Liability Company or Limited Liability Partnership. There shall be no exclusions in coverage for pollution, mold or asbestos. The policy shall include contractual liability coverage.

(h) Contractor shall furnish evidence in the form of one signed copy and one certified copy of the Railroad Protective Public Liability Insurance Policy that, with respect to the Project Work or Operations the Contractor or any of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (ISO CG 00 35 form) in the name of NJ TRANSIT and NJ TRANSIT Rail Operations, providing for a limit of not less than Three Million Dollars (\$3,000,000) single limit bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than Six Million Dollars (\$6,000,000) for all damages as a result of more than one occurrence. (Reference: "Standard Provisions for General Liability Policies" as contained in U.S. Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, Attachment 1, as amended).

6.13 Conrail shall continue to maintain insurance coverage as provided for in the Seventh Supplemental Agreement to the 1984 Agreement.

ARTICLE 7. CLEARING WRECKS

- 7.1 When, as a result of CMSL's sole use of the Subject Trackage, re-railing, wrecking service or wrecking train service is required, CMSL shall, at its sole expense, perform such services, including, but not limited to, the removal of damaged equipment, repair of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right-of-way structures. Such repair and restoration shall be to a condition immediately preceding the incident precipitating the services.
- 7.2 When, as a result of Conrail's sole use of the Subject Trackage while exercising its Overhead Rights, re-railing, wrecking service or wrecking train service is required, Conrail shall, at its sole expense, perform such services, including, but not limited to, the removal of damaged equipment, repair of damaged equipment, repair and restoration of roadbed, track, signals, communication systems and all other right-of-way structures. Such repair and restoration shall be to a condition immediately preceding the incident precipitating the services. For the purposes of this Article 7, references to Conrail include its affiliates CSX and NS.
- 7.3 When, as a result of CMSL's and Conrail's joint use of the Subject Trackage, re-railing, wrecking service or wrecking train service is required, Conrail, with the cooperation and assistance of CMSL, shall have the option of performing such services itself or requesting CMSL to perform such services (which request CMSL may accept or not in CMSL's sole discretion), including, but not limited to, the removal and/or repair of damaged equipment, and the repair and restoration of roadbed, track, signals, communication systems and all other right-of-way structures. All expenses, including but not limited to liability costs, will be apportioned in accordance with the provisions of Article 6 of this 2021 Agreement. For the purposes of this Article 7, references to Conrail include its affiliates CSX and NS.
- 7.4 CMSL, to the extent it accepts a request by Conrail, will furnish manpower, equipment, tools, and supplies required to re-rail and/or remove any and all locomotives, cars and equipment. All expenses, including, but not limited to, liability costs, will be apportioned in accordance with the provisions of Article 6 of this 2021 Agreement.
- 7.5 All CMSL locomotives, cars, equipment, lading (including loss thereof) and salvage from any such wreck or derailment shall remain the property and responsibility of CMSL. Any Conrail locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property and responsibility of Conrail.
- 7.6 All billing for work under this Article 7 shall be in accordance with Article 5 of this 2021 Agreement.

ARTICLE 8. NOT USED

ARTICLE 9. TERM, TERMINATION, DEFAULT, DISCONTINUANCE

- 9.1 This 2021 Agreement shall be for a term of five (5) years from the Commencement Date, unless sooner terminated under applicable provisions of this 2021 Agreement.

Provided CMSL is not in default under this 2021 Agreement, CMSL shall have the right to renew this 2021 Agreement for an additional five (5) year term upon written notice to NJ TRANSIT and Conrail provided at least six (6) months prior to the end of the original term of this 2021 Agreement.

9.2 This 2021 Agreement shall continue in full force and effect as set forth in Article 9.1 unless terminated as follows:

(a) NJ TRANSIT, CMSL, or Conrail may elect to terminate this 2021 Agreement immediately upon notice to the other two in writing should there be a transfer of NJ TRANSIT's rights or control or ownership to an entity or party other than an instrumentality of the State of New Jersey or to Conrail. NJ TRANSIT may elect to terminate this 2021 Agreement immediately upon notice to the other two Parties in the event of a transfer of control of CMSL or any parent corporation of CMSL. Any party exercising its right to terminate the 2021 Agreement under this Article 9.2(a) must do so within ninety (90) days of the date of any such notification, triggering transfer or acquisition, and notification to the other two Parties must be made no less than sixty (60) days prior to the consummation of the triggering transfer or acquisition.

(b) If NJ TRANSIT terminates this 2021 Agreement under Article 9.5, NJ TRANSIT shall: (i) if Conrail identifies a replacement operator, approve or disapprove of the operator within forty-five (45) days of Conrail's written request, such consent not to be unreasonably conditioned or withheld; or (ii) if Conrail seeks to discontinue or abandon its common carrier obligation, refrain from objecting to such a discontinuance or abandonment. During the term of this 2021 Agreement, Conrail agrees not to abandon its common carrier obligation with respect to the Subject Trackage notwithstanding any rights to do so under Article 9.05 of the 1984 Agreement. Nothing herein shall prevent Conrail from terminating its Overhead Rights on ninety (90) days' prior written notice to NJ TRANSIT and CMSL.

(c) NJ TRANSIT, Conrail or CMSL may elect to terminate this 2021 Agreement if an Event of Default is not cured or satisfied within sixty (60) days of any party's issuance of a Declaration of Default pursuant to Articles 9.4 and 9.5.

(d) CMSL shall, within sixty (60) days of the date of termination or expiration of this 2021 Agreement, or the date that the obligation to discontinue the Trackage Rights arises for any other reason under the terms of this 2021 Agreement, initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction to authorize abandonment or discontinuance of the Trackage Rights herein granted. If CMSL fails to file within sixty (60) days, CMSL hereby expressly grants to NJ TRANSIT an irrevocable power of attorney for purposes of consenting to and making any STB filing with respect to any termination of this 2021 Agreement in accordance with its terms. Conrail agrees to support such a filing, and if NJ TRANSIT is required to seek discontinuance or abandonment of CMSL's rights and obligations at the STB, Conrail shall share equally in the costs (filing fees, reasonable attorneys' fees and all other costs associated with preparation, submission and completion of any proceeding at the

STB) incurred by NJ TRANSIT in such proceeding, and CMSL further agrees to reimburse NJ TRANSIT and Conrail for all such costs incurred.

- 9.3 Without waiving any of NJ TRANSIT's rights or remedies under law and equity, upon termination of this 2021 Agreement for an Event of Default, CMSL shall immediately surrender use and occupancy of the Subject Trackage, and Conrail shall immediately resume the exercise of its freight common carrier obligations in accordance with the obligations of Article 13 of this 2021 Agreement pursuant to all the terms and obligations of the 1984 Agreement. In no case will NJ TRANSIT assume or be subject to a freight common carrier obligation with respect to the Subject Trackage.
- 9.4 Each of the following shall constitute an event of default (an "Event of Default") under this 2021 Agreement:
- (a) The failure of any party to pay monies owing pursuant to Article 5 when due; or
 - (b) CMSL's or Conrail's failure to comply with the insurance obligations set forth in Articles 6.11-6.13 of this 2021 Agreement; or
 - (c) CMSL's failure to fulfill the freight common carrier obligation over the Subject Trackage as determined by the STB or other regulatory body having jurisdiction; or
 - (d) CMSL's interference with Conrail's exercise of its Overhead Rights; or
 - (e) Conrail's interference with CMSL's exercise of its trackage rights under this 2021 Agreement; or
 - (f) The failure of a Party to observe any other covenant or obligation contained in this 2021 Agreement, provided, however, that: (i) in the case of a curable failure, such failure continues for a period of thirty (30) days from the date of receipt of written notice of such failure from a non-breaching party demanding performance thereof, or (ii) in the case of a failure that cannot be reasonably cured within a period of thirty (30) days, the breaching Party (A) fails to commence performance to cure such failure within thirty (30) business days following its receipt of written notice of such failure from a non-breaching Party, or (B) fails to diligently proceed to completion of the performance of such cure, however, NJ TRANSIT shall have the right, in the exercise of its sole discretion, to determine if CMSL is diligently proceeding to complete the performance of such cure; or
 - (g) Any proceeding shall be commenced by or against a Party which might result in any modification of the obligations of such party hereunder under any bankruptcy, insolvency or similar law, unless, the proceeding is dismissed or all of the obligations of such party under this 2021 Agreement shall have been duly assumed by a trustee or successor to such party, within sixty (60) days after such proceeding shall have commenced; or

- (h) The appropriate governmental entities shall have failed to renew, extend or fulfill commitments to or agreements with NJ TRANSIT for the availability of funds requisite to NJ TRANSIT's performance of this 2021 Agreement.
- 9.5 In the event an Event of Default shall have occurred and be continuing hereunder, a Party not in default may make a declaration of default hereunder and exercise any or all of the following remedies:
 - (a) Terminate this 2021 Agreement by and upon sixty (60) days' written notice to the Party in default along with all other Parties to this 2021 Agreement; and
 - (b) Pursue any other remedy at law or in equity in any court of competent jurisdiction.
- 9.6 Failure of a Party to make a Declaration of Default shall not be considered a waiver of any remedies available to it under this 2021 Agreement or otherwise. Nor shall an Event of Default be considered wiped out or satisfied by failure of a party to make a Declaration of Default with respect thereto.
- 9.7 Notwithstanding the provisions of this 2021 Agreement, CMSL, with the prior consent of Conrail, which consent may be withheld for any reason or reasons, may seek regulatory authority to wholly discontinue its freight operations over the Subject Trackage during the term of this 2021 Agreement. If CMSL seeks regulatory authority to discontinue its freight operations, this 2021 Agreement will terminate, and Conrail shall resume conduct of freight operations as described in Article 13 of this 2021 Agreement.
- 9.8 Termination of this 2021 Agreement pursuant to this Article 9 shall not prevent Conrail from seeking future STB approval to discontinue or abandon its freight service obligation over the Subject Trackage.

ARTICLE 10. DISPUTE RESOLUTION

- 10.1 Any Party shall have the right to submit a disputed matter under this 2021 Agreement for dispute resolution pursuant to this 2021 Agreement. Except as otherwise provided herein, the following procedure shall be implemented to resolve such a dispute between the Parties:
 - (a) The dissatisfied Party shall provide the other Parties with written notification describing its dispute; and
 - (b) Representatives of the Parties shall meet within ten (10) days after the receipt of said written notification to resolve such dispute.
- 10.2 If the representatives of the Parties are unable to resolve the dispute then the Senior Vice President and General Manager of NJ TRANSIT, the President of CMSL and/or the President and/or General Counsel of Conrail shall meet within thirty (30) days thereafter to resolve such dissatisfaction.
- 10.3 Lacking resolution of such dispute, the matter may be litigated in the U.S. District Court for the District of New Jersey or the New Jersey state courts in and for Mercer County, and shall be heard by a judge sitting without a jury.

ARTICLE 11. REGULATORY APPROVAL

- 11.1 CMSL and Conrail shall each have the obligation to obtain any respective necessary regulatory or other approvals for its entering into this 2021 Agreement, any modification or amendment of this 2021 Agreement, or to comply with any of the provisions of this 2021 Agreement. NJ TRANSIT, as owner of the Subject Trackage, shall cooperate with CMSL and Conrail to obtain any such regulatory or other approvals. In addition to any other regulatory compliance that may be required of CMSL, CMSL shall seek, at its own cost, and promptly upon execution of this 2021 Agreement, any required authority or exemption from the STB with respect to its exercise of the rights granted under this 2021 Agreement and shall provide NJ TRANSIT and Conrail with a copy of any decision or notice from the STB that confirms that CMSL has secured the required authority or exemption.
- 11.2 NJ TRANSIT shall be under no obligation to comply with any requested modification or amendment of this 2021 Agreement, or to comply with any provision of this 2021 Agreement, if it determines that such modification or amendment or proposed action under this 2021 Agreement requires the approval of any regulatory body unless and until the CMSL provides to NJ TRANSIT sufficient evidence that such approval has been obtained or is not required.

ARTICLE 12. GENERAL PROVISIONS

- 12.1 CMSL agrees that its entrance upon, and use of, the Subject Trackage is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of CMSL's employees or its contractors with respect to any other current or future use of the Subject Trackage.
- 12.2 Nothing contained in this 2021 Agreement shall require any party to perform any service or take any action which would violate any term or condition of any then current labor agreement between the respective Parties and any organization representing any of their respective employees or applicable to the respective Parties by reason of operation of law.
- 12.3 Subject to the provisions of this 2021 Agreement, this 2021 Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, except that neither CMSL, NJ TRANSIT nor Conrail shall assign or transfer this 2021 Agreement, or any of its rights hereunder, to any person, firm or corporation without obtaining the prior written consent of the other two Parties.
- 12.4 CMSL shall be excused from any obligation under this 2021 Agreement to provide, operate or maintain the Subject Trackage where non-performance is occasioned by any event beyond its control, including, but not limited to, an order, rule or regulation of any federal, state, or local government body, agent, or instrumentality, work stoppage, accident, act of terrorism, environmental or natural disaster, or public health emergency. Performance shall be excused only so long as and to the extent that any such event shall reasonably prevent performance.
- 12.5 Pursuant to N.J.S.A. 27:25-17, all expenses incurred by NJ TRANSIT shall be payable from funds available to NJ TRANSIT therefor, and no liability or obligation shall be incurred by it beyond the extent to which monies are available. Furthermore,

no debt or liability of NJ TRANSIT shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the State of New Jersey. In accordance with N.J.S.A. 27:25-17, all obligations of NJ TRANSIT established by this 2021 Agreement which require expenditure of funds are subject to the availability of funds.

12.6 No term or provision of this 2021 Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Parties to this 2021 Agreement. All approvals and consents required under this 2021 Agreement shall be in writing, signed by a person designated in writing for such purpose unless otherwise provided in this 2021 Agreement or agreed to in writing by all of the Parties. Any oral notices shall be promptly confirmed in writing. The exhibits to this 2021 Agreement shall be changed from time to time as required in writing as provided for in Article 12.7.

12.7 Except as otherwise provided in Article 5.6 of this 2021 Agreement with respect to billing, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this 2021 Agreement to be made upon, given or furnished to, or filed with a party by another party shall be in writing and shall be delivered by hand or by deposit in the registered mails of the United States, postage paid, in an envelope addressed as follows:

If to NJ TRANSIT:

Senior Vice President and General Manager
NJ TRANSIT Rail Operations, Inc.
1 Penn Plaza East
Newark, New Jersey 07105

If to CMSL:

President
Cape May Seashore Lines, Inc.
PO Box 1101
Hammonton, NJ 08037

If to Conrail, NS and/or CSX:

President & Chief Operating Officer
Consolidated Rail Corporation
330 Fellowship Road, 3rd Floor
Mount Laurel, NJ 08054

12.8 Any Party to this 2021 Agreement may re-designate the recipient or change the address of the recipient of notifications hereunder by notifying the other Parties to this 2021 Agreement of such change.

12.9 The Parties do not, by reason of their execution of this 2021 Agreement and the performance of their obligations thereunder, assume any other obligations or

liabilities not imposed upon them by law.

- 12.10 Except as expressly provided herein, the Parties make no representations or warranties and waive no rights or remedies. Waiver by a Party or the Parties of one Article or paragraph of this 2021 Agreement shall not be considered a waiver of the remainder of the provisions of this 2021 Agreement.
- 12.11 Each Party shall promptly notify the others of any legal impediment, change of circumstances or any other event or conditions which may adversely affect such Party's ability to carry out any of its obligations under this 2021 Agreement.
- 12.12 The Parties do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31, *et seq.*, as amended and supplemented, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereunto, are hereby made a part of this 2021 Agreement as set forth in Exhibit B, attached hereto and made a part hereof, and are binding upon them.
- 12.13 This 2021 Agreement shall be governed by the laws of the state of New Jersey.
- 12.14 All obligations and indemnification which arise and are not satisfied during the term of this 2021 Agreement shall survive termination of this 2021 Agreement.
- 12.15 Except for revenues attributable to freight (including tariff, transportation, *per diem*, demurrage and switching car revenues or charges) or excursion operations, all other revenues related to the use and occupancy of the Subject Trackage shall accrue to NJ TRANSIT. In addition to receiving rental payments for new industrial sidetracks constructed on the Subject Trackage, NJ TRANSIT shall receive any rental paid for any use and occupancy of the existing sidetracks situated in all or in part on the Subject Trackage, including, but not limited to, use and occupancy of the Subject Trackage by any third party utilities or advertisers. In the event a new agreement must be entered into covering an existing sidetrack, CMSL shall arrange for the industry to negotiate a suitable permit arrangement for the use and occupancy of the Subject Trackage with NJ TRANSIT. NJ TRANSIT reserves the right to negotiate or renegotiate the terms and conditions related to the use and occupancy of the Subject Trackage on all existing sidetracks.
- 12.16 While the Parties have specific responsibilities under this 2021 Agreement, the Parties shall also make every effort to cooperate and exchange information to minimize disruption to operations over the Subject Trackage.
- 12.17 The Effective Date for purposes of this 2021 Agreement shall be the date first above written. However, CMSL's operations over the Subject Trackage shall not commence until the Commencement Date. All prior discussions and understandings concerning such scope and subject matter are superseded by this 2021 Agreement.
- 12.18 This 2021 Agreement embodies the entire agreement between the Parties as to the subject matter thereof. It may not be modified or terminated except as provided herein. If any provision is held to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.
- 12.19 Each Party represents that the individual executing this 2021 Agreement on behalf of the respective party is fully authorized to do so and that the execution of this 2021

Agreement on the part of such individual shall bind that Party to its obligations set forth in this 2021 Agreement.

ARTICLE 13. CONRAIL'S CONSENT AND EFFECT ON CONRAIL'S OBLIGATIONS UNDER THE 1984 AGREEMENT

- 13.1 Conrail hereby consents to NJ TRANSIT granting the Trackage Rights to CMSL, and CMSL only, under the terms and conditions specified in this 2021 Agreement and will refrain from asserting its claim to exclusive freight trackage rights over the Subject Trackage during the term of this 2021 Agreement.
- 13.2 Beginning on the Commencement Date, and continuing until this 2021 Agreement is terminated in accordance with Article 9 hereof, the rights and obligations of Conrail to provide freight service and to fulfill its common carrier obligations on the Subject Trackage, other than the exercise of its Overhead Rights, shall be held in abeyance, and only the obligations of Conrail and NJ TRANSIT to each other under the 1984 Agreement set forth below with respect to the Subject Trackage will be suspended for so long as this 2021 Agreement is in effect. For purpose of clarity, such suspended obligations include, but are not limited to:
- (a) Conrail's obligation to perform freight service over the Subject Trackage except with respect to the exercise of its Overhead Rights;
 - (b) Conrail's maintenance responsibilities related to the Subject Trackage pursuant to Article 4;
 - (c) Conrail's obligation to pay NJ TRANSIT maintenance expenses related to the Subject Trackage except as provided for in Article 5.1; and
 - (d) Obligations related to clearing wrecks on the Subject Trackage pursuant to Article 7.
- 13.3 However, and notwithstanding the foregoing, Conrail shall be responsible to ensure that CMSL is complying with the terms, covenants and conditions of this 2021 Agreement.
- 13.4 Further, NJ TRANSIT agrees that in no case will CMSL's operations be deemed Conrail's operations for purposes of liability under Article VI of the 1984 Agreement or the Sixth Supplemental Agreement to the 1984 Agreement. CMSL and Conrail will conduct their own independent and separate operations to provide transportation services to customers.

[signature page follows]

IN WITNESS WHEREOF, the authorized representatives of the Parties have caused this 2021 Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

**NEW JERSEY TRANSIT CORPORATION through
its subsidiary NJ TRANSIT RAIL OPERATIONS,
INC.**

By: _____

Title: _____

James Sincaglia

Senior Vice President – Rail Operations (Acting)

This 2021 Agreement has been reviewed and approved as to form.

Kaplan Kirsch and Rockwell, attorneys for NJ TRANSIT

By: _____

Suzanne L. Silverman

CAPE MAY SEASHORE LINES, INC.

By: A. C. Macrie

Title: PRESIDENT

CONSOLIDATED RAIL CORPORATION

By: _____

Title: _____

IN WITNESS WHEREOF, the authorized representatives of the Parties have caused this 2021 Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

NEW JERSEY TRANSIT CORPORATION through
its subsidiary NJ TRANSIT RAIL OPERATIONS,
INC.

By: 

Title: SR VP/GM

James Sincaglia

Senior Vice President – Rail Operations (Acting)

This 2021 Agreement has been reviewed and approved as to form.

Kaplan Kirsch and Rockwell, attorneys for NJ TRANSIT

By: 

Suzanne L. Silverman

CAPE MAY SEASHORE LINES, INC.

By: _____

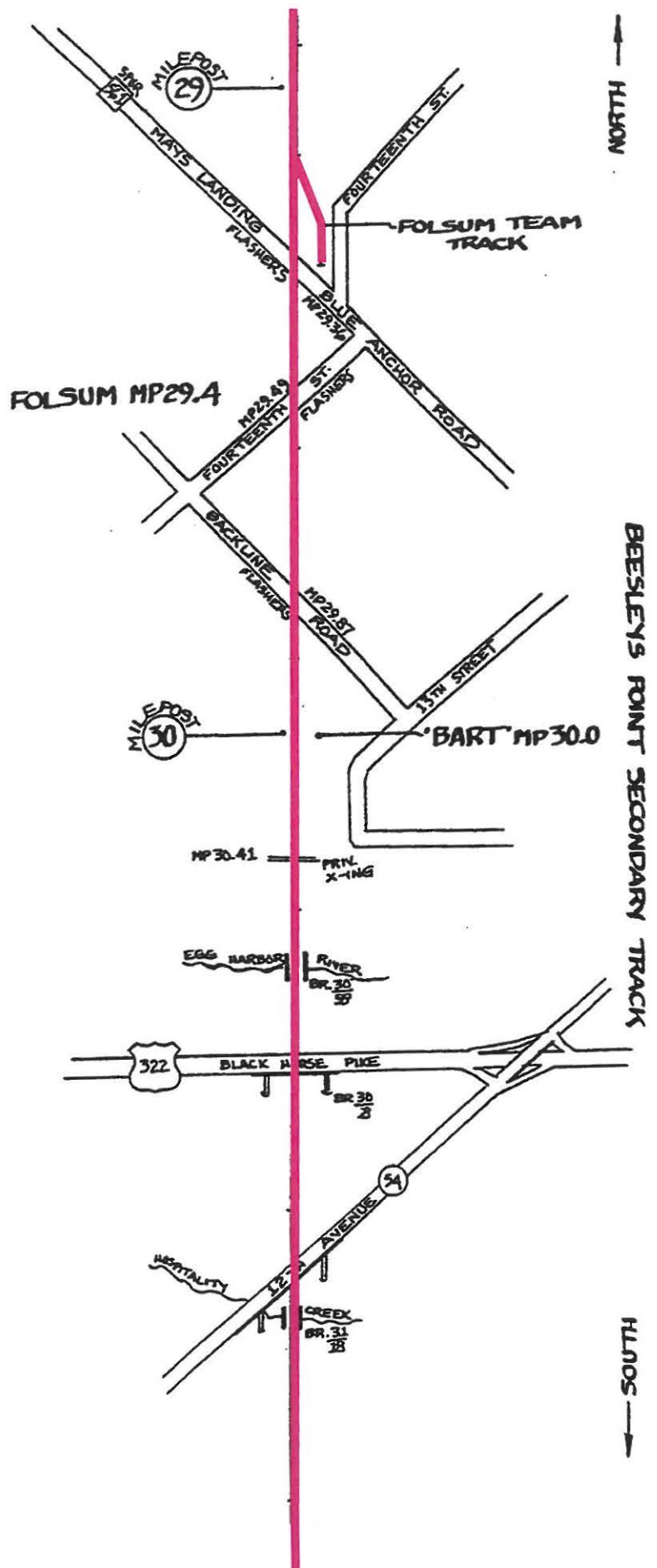
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CONSOLIDATED RAIL CORPORATION

By: 

Title: V.P. ENGINEERING & MECHANICAL

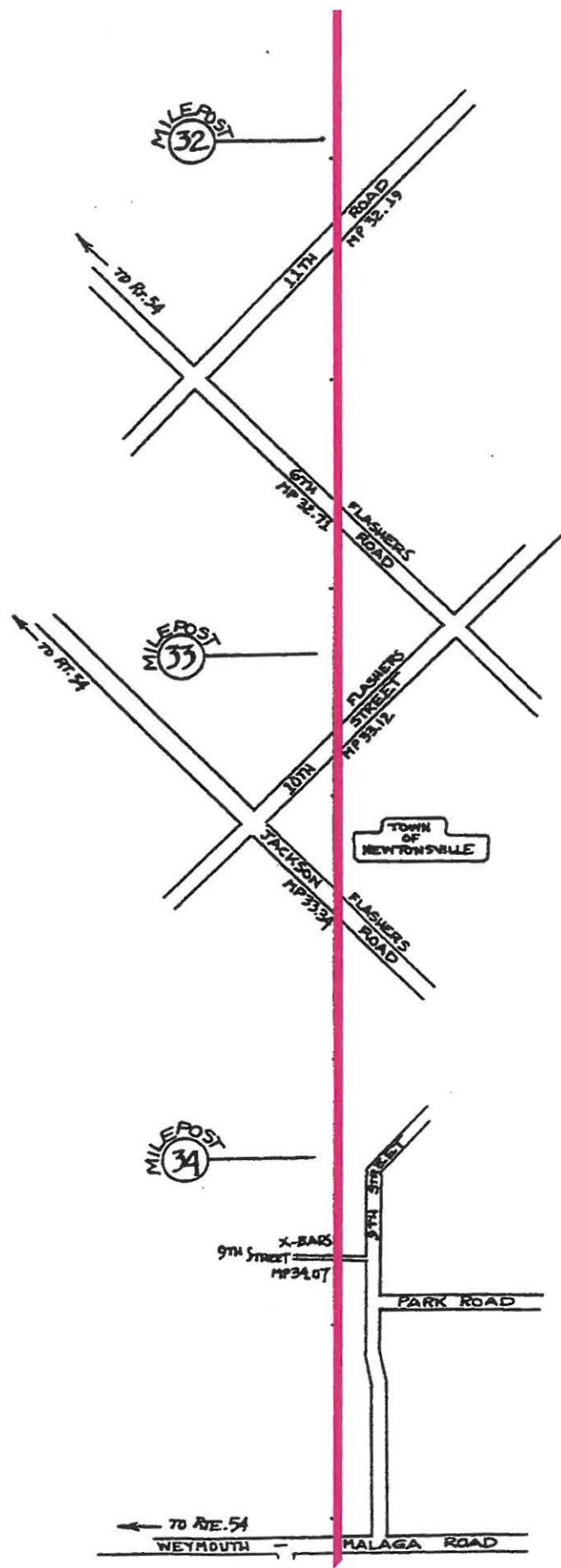




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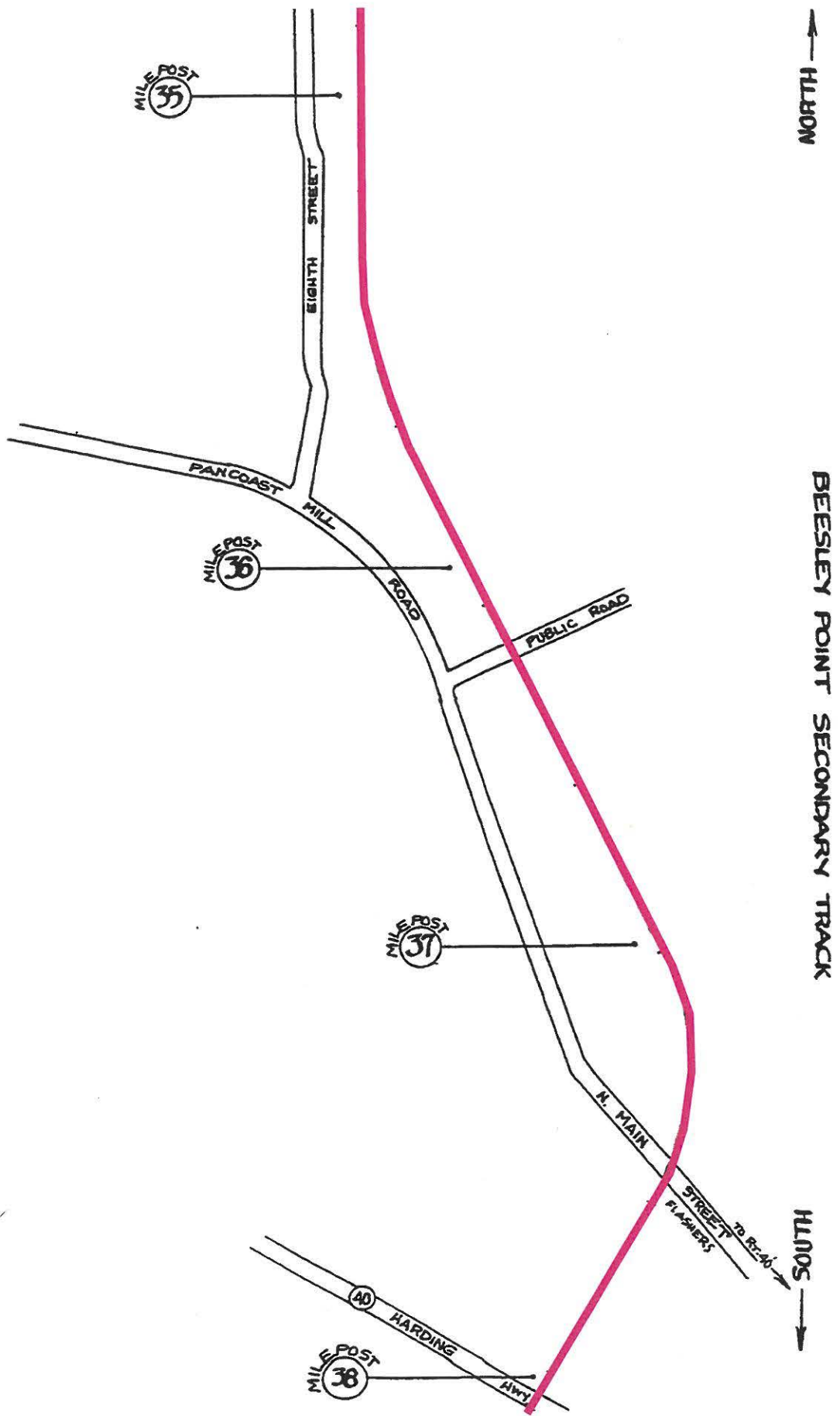


EXHIBIT A-4 of 10

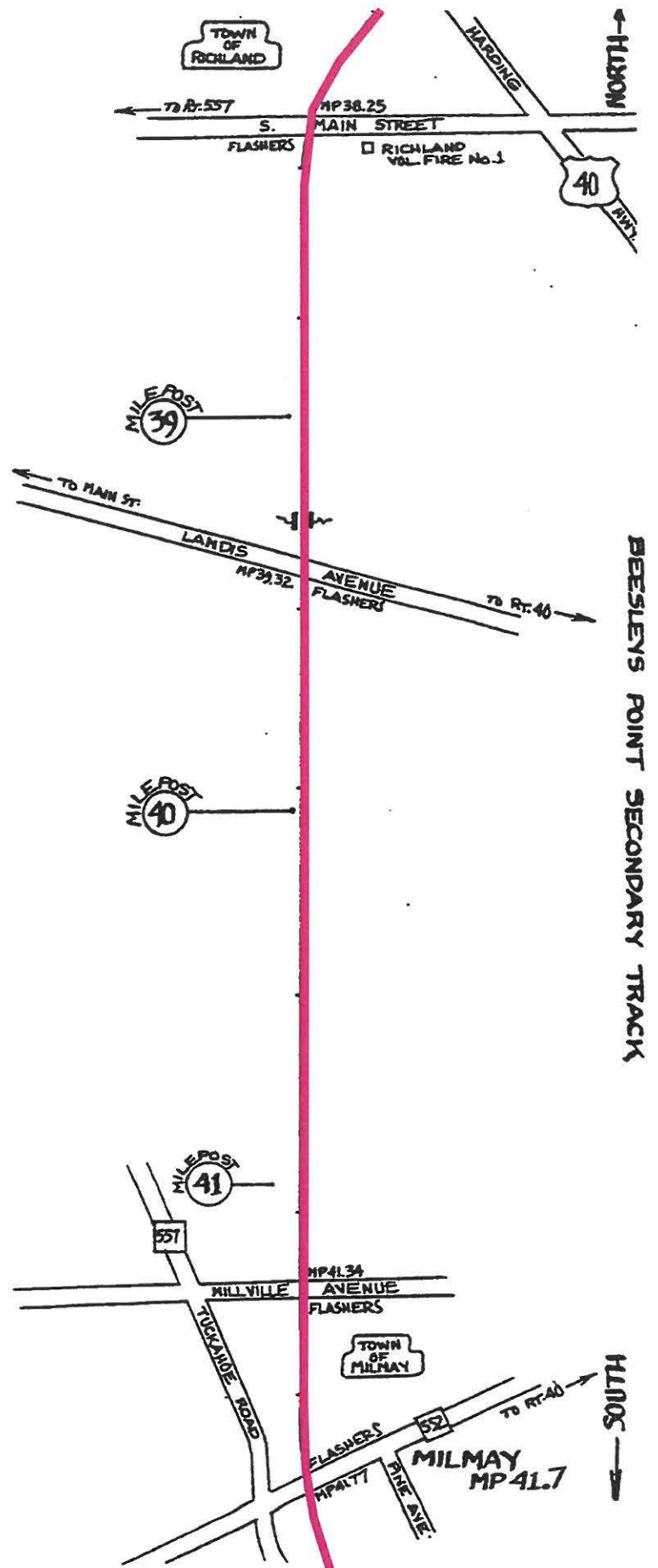
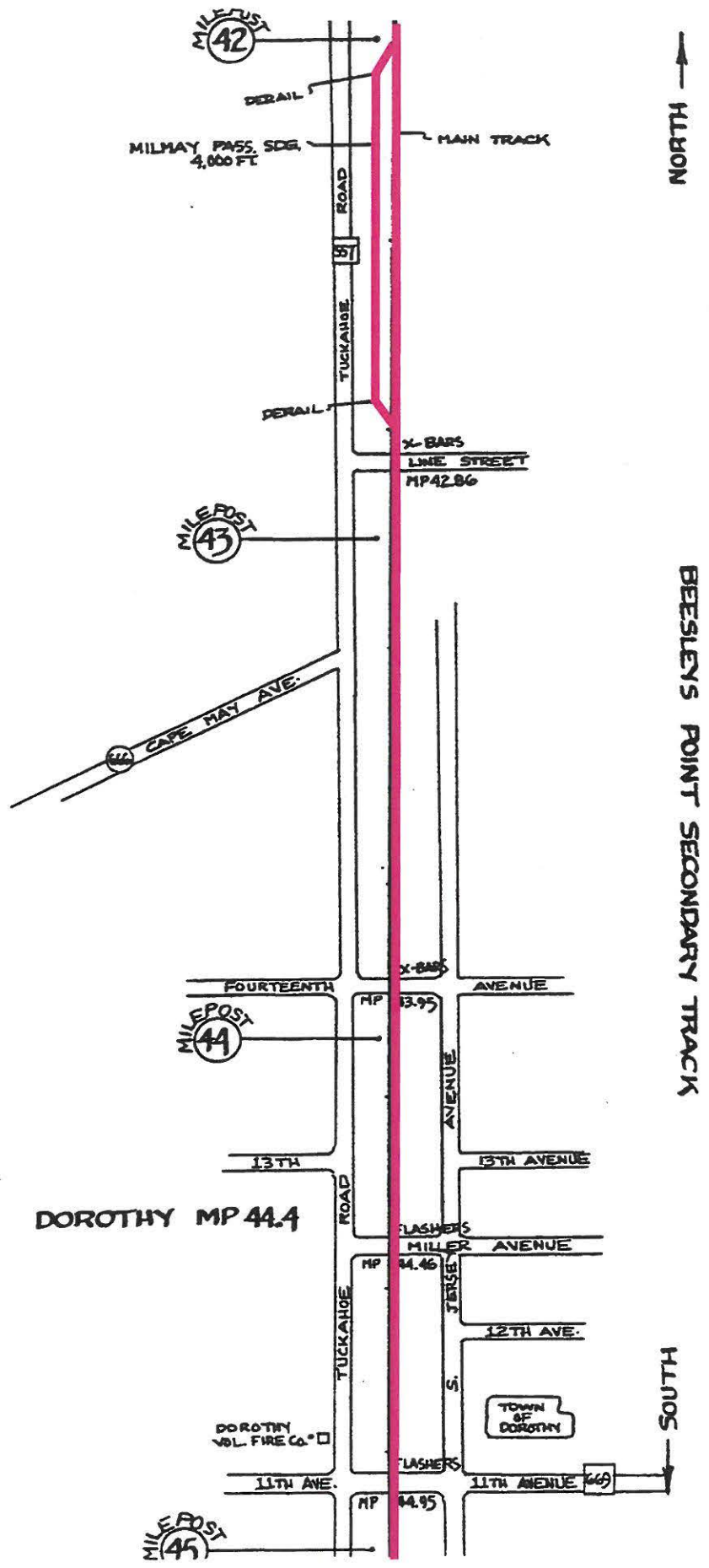
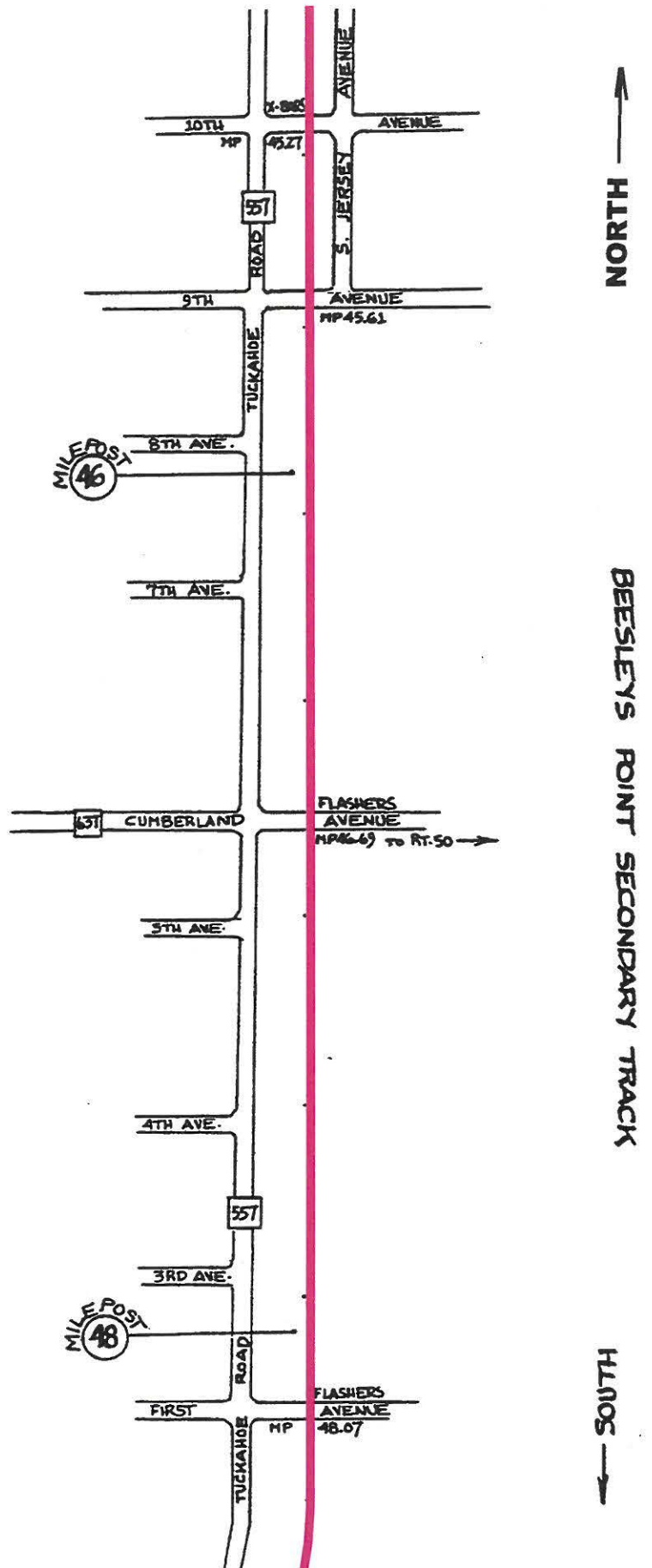
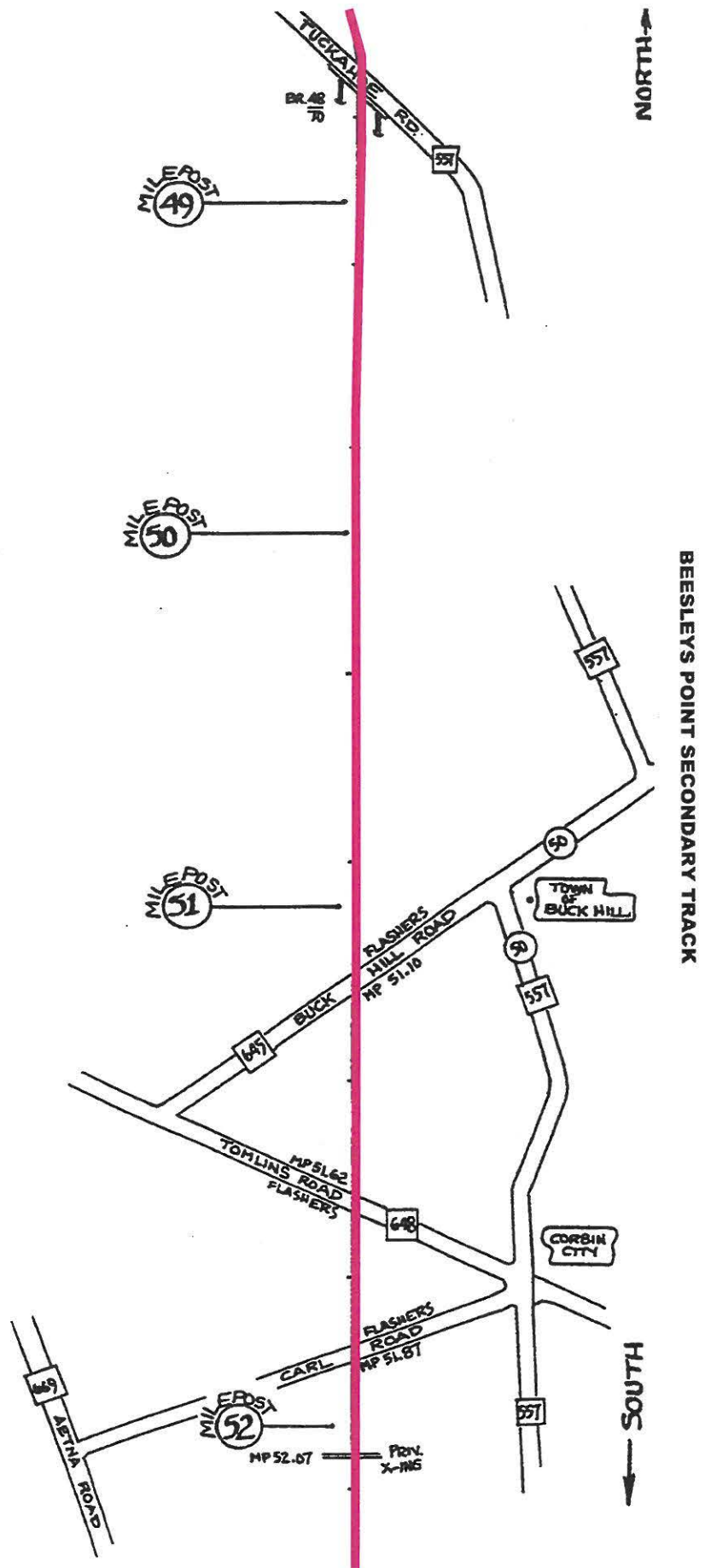


EXHIBIT A-5 of 10







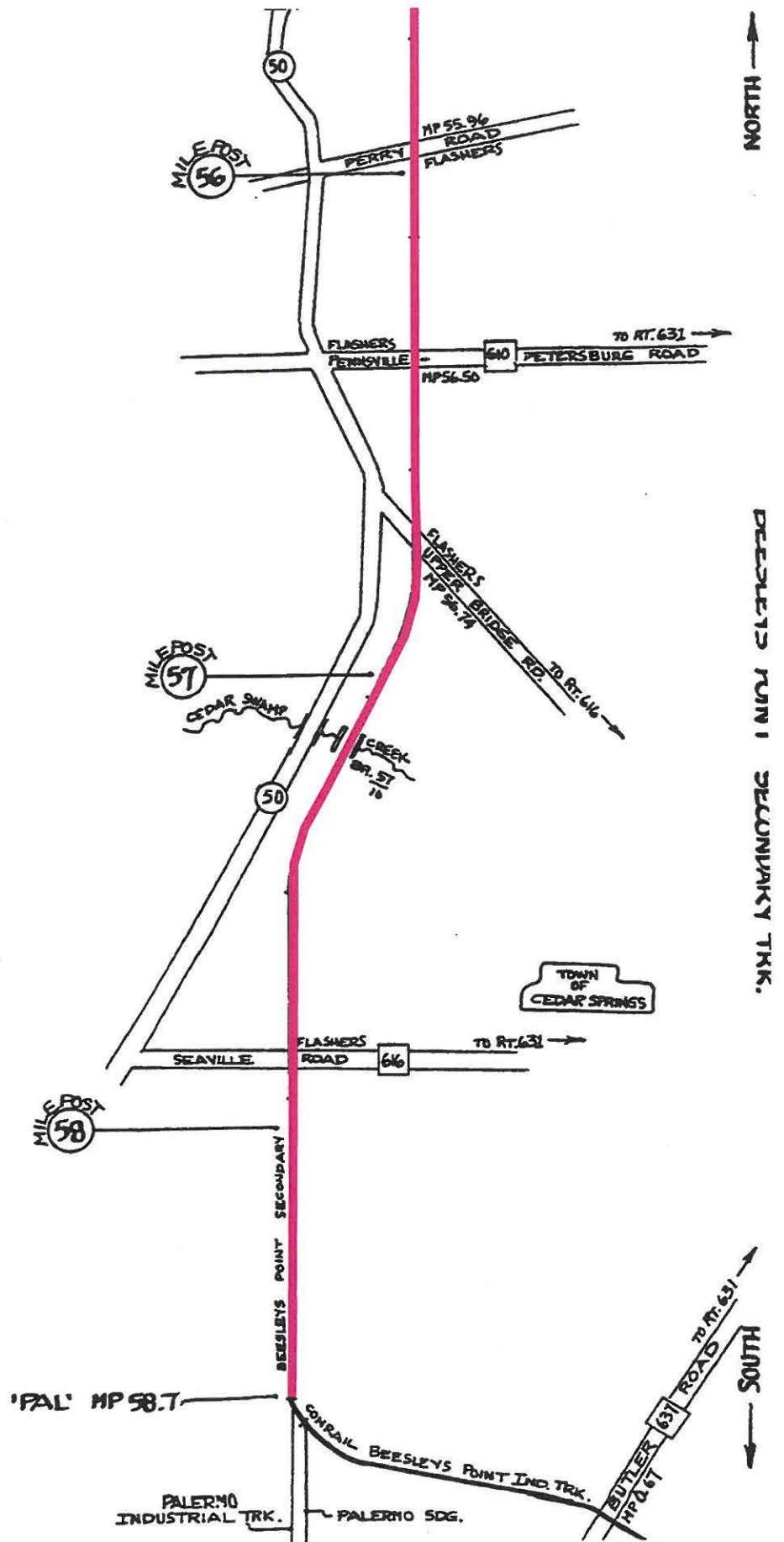


EXHIBIT A-10 of 10

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127)

N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The consultant or subconsultant, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The consultant or subconsultant, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the consultant, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The consultant or subconsultant will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the consultant's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The consultant or subconsultant, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The consultant or subconsultant agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The consultant or subconsultant agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The consultant or subconsultant agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the consultant or subconsultant agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The consultant shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.state.nj.us/treasury/contract_compliance).

The consultant and its subconsultants shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Docket No. FD 36526

**CAPE MAY SEASHORE LINES, INC.
– TRACKAGE RIGHTS –
NEW JERSEY TRANSIT CORPORATION**

New Jersey Transit (“NJ Transit”) has agreed to grant local trackage rights to Cape May Seashore Lines, Inc. (“CMSL”) over the portion of NJ Transit’s rail line comprised of a portion of the Cape May Branch between MP 27.02± at Winslow Junction and MP 53.0± at Tuckahoe, and the Ocean City Branch between MP 53.0± at Tuckahoe and MP 58.7± at Palermo , a total distance of approximately 31.68 miles (the “Subject Trackage”). Consolidated Rail Corporation (“Conrail”) holds an exclusive freight easement on the Subject Trackage and currently provides freight service pursuant to a 1984 trackage rights agreement, as amended, between Conrail and NJ Transit. CMSL will provide local freight service over the Subject Trackage, in lieu of and with the consent of Conrail, with Conrail retaining limited overhead trackage and interchange rights over the Subject Trackage. CMSL intends to commence operations on or after December 31, 2021, after the effective date of the notice.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings