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January 13, 2003

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

207034

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of "Reply of Consolidated Rail Corporation to the Pleading Filed December 17, 2002 by the City of New York." Please date-stamp the enclosed extra copy and return it to our representative. Also enclosed is a diskette containing the Reply in electronic format.

Sincerely yours,


Robert M. Jenkins III

RMJ/bs

Enclosures

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Office of Proceedings

JAN 13 2003

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-167 (SUB-NO. 1094)A

CHELSEA PROPERTY OWNERS – ABANDONMENT – PORTION
OF THE CONSOLIDATED RAIL CORPORATION'S
WEST 30TH STREET SECONDARY TRACK IN NEW YORK, N.Y.

**REPLY OF CONSOLIDATED RAIL CORPORATION
TO THE PLEADING FILED DECEMBER 17, 2002
BY THE CITY OF NEW YORK**



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On December 17, 2002, the City of New York (the "City") filed a pleading ("City Reply") in which it both (1) replied to an earlier motion by Chelsea Property Owners ("CPO") for an order finding that a form of Settlement Agreement attached to CPO's motion satisfies the surety condition in the ICC's September 16, 1992 order in this proceeding and (2) notified the Board that the City is seeking a Certificate of Interim Trail Use ("CITU") for the West 30th Street Line (the "Highline"). As the City implicitly recognized in its pleading, these two matters are related, and Consolidated Rail Corporation ("Conrail") replies here to the City's position on both.¹

The City concedes that the form of Settlement Agreement attached to CPO's August 14, 2002 motion, if executed and consummated as written, would satisfy the surety condition in the ICC's September 16, 1992 order. City Reply at 1. The City takes the position, however, that

¹ Insofar as Conrail's comments on the City's position regarding the Settlement Agreement may be considered a reply to a reply, 49 CFR 1104.13(c), Conrail hereby seeks leave to file such a reply.

CPO's motion is premature, because the Settlement Agreement is not final. Id. This misses the point of CPO's filing. As detailed in the attached verified statement by David Alan Richards, the parties have spent years negotiating a form of Settlement Agreement that meets the requirements of the ICC's September 16, 1992 order. In addition, Conrail and CSX Corporation and CSX Transportation, Inc. have spent millions of dollars in maintenance and taxes for the facility and for counsel and consulting fees in dealing with various claims, expressions of interest, and substantial work in developing the Settlement Agreement. The Board itself, in its decision served July 14, 1999, in this proceeding, reaffirmed the importance of strict compliance with the ICC's order.² All CPO is seeking now is confirmation that the parties have arrived at a form of agreement that meets the ICC's and the Board's requirements. Everyone recognizes that there are numerous conditions that must be met before demolition could proceed. But if the parties have confirmation that their proposed Settlement Agreement passes muster with the Board, then they can address the contractual and funding issues without fear of having the sufficiency of the form of the agreement collaterally attacked before the Board.³

² See Docket No. AB-167 (Sub-No. 1094)A, *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, unprinted decision served July 14, 1999 (denying CPO's motion for issuance of certificate of abandonment).

³ This is not a merely hypothetical concern. The Friends of the High Line ("FHL"), for example, has suggested that the proposed Settlement Agreement does not provide adequate protection for Conrail against environmental liability. See Friends of the High Line Inc.'s Opposition to Chelsea Property Owners' Motion for an Order Authorizing Abandonment of the High Line, filed in Docket No. AB-167 (Sub-No. 1094)A on September 6, 2002, at 6-8. Conrail, which is in the best position to know whether it has sufficiently protected itself against environmental liability, disagrees with FHL's position. See Reply of Consolidated Rail Corporation to "The Friends of the High Line, Inc.'s Petition to Reopen the 1992 Abandonment Decision," filed in Docket No. AB-167 (Sub-No. 1094)A on Sept. 12, 2002, at 2 n.1. See also Richards, ¶ 8. A decision by the Board that the proposed Settlement Agreement adequately protects Conrail against all types of liability, within the meaning of the ICC's September 16,

(cont'd)

The City devotes a number of pages in its pleading to raising questions about whether the City is legally bound by the Settlement Agreement and whether all of the approvals contemplated by the Agreement will be forthcoming. See City Reply at 2-9. The Board need not decide those questions. Indeed, the City does not ask the Board to decide them. The City's only point appears to be that the Settlement Agreement may not ultimately be consummated. But that is no reason for the Board not to decide that the form of the agreement meets the requirements of the ICC's and the Board's orders. Certainly, as Mr. Richards' statement makes clear, the parties have devoted enough time and effort to this Settlement Agreement that there can be no doubt it is a fully formed, concrete proposal. Contrary to the City's suggestion, it is by no means premature for the Board to determine whether that proposal passes muster under the ICC's and the Board's orders.

Regarding the City's interest in a CITU, the first point to be made is that there is no inconsistency between granting CPO's motion regarding the proposed Settlement Agreement and the Board's consideration of an interim trail use statement. The Settlement Agreement itself reserves the right for the railroad parties to entertain a lawful trail use request. See Richards, ¶ 15. However, it is incumbent on the Board to determine whether the City's request is lawful. In effect, the City is making a request to late-file an interim trail use statement, which can only be permitted under the Board's regulations for good cause. City Reply at 10; 49 CFR 1152.29(b)(3). Whether the City has met that burden is an issue for the Board on which Conrail takes no position. Further, whether the City or any other party is entitled to seek a CITU at all in

(... cont'd)

1992 order and the Board's July 14, 1999 decision in this proceeding, would remove any uncertainty on this point.

the unusual context of an "adverse abandonment" proceeding is an issue the Board should decide. While Conrail takes no position on this significant issue, it is a serious question on which we seek the Board's guidance.

Finally, Conrail wishes to emphasize that the City is not the first to suggest the possibility of a CITU for the Highline. The railroad parties have consistently made clear that they have no interest in negotiating any Trails Act use of the Highline unless Conrail receives the same insulation against all potential liability that is provided by the Settlement Agreement that CPO has already negotiated.⁴ While the City states that it believes it can satisfy the "general conditions" the railroads have set (City Reply at 11), the City has yet to notify the railroads that it intends to meet the specific CITU conditions the railroads set in a memorandum dated October 2, 2002, which was provided to the City. See Richards, ¶ 9. If the Board determines that the City is lawfully entitled to seek a CITU in this case, Conrail is prepared to negotiate with the City and the State of New York, but they must be prepared to meet the specific conditions that the railroad parties have set.

For the foregoing reasons, Conrail respectfully requests:

- (1) that the Board grant CPO's motion for an order that the proposed Settlement Agreement attached to CPO's motion meets the surety condition of the ICC's September 16, 1992 order;
- (2) that the Board advise the parties whether the City may lawfully seek a CITU in this case; and
- (3) in the event that the Board determines that the City may lawfully seek a CITU, that the Board withhold issuance of a CITU until such time as the railroad parties notify the Board that they have received satisfactory assurances from the City and State of

⁴ The law is clear that Conrail must agree to any Trails Act use of the Highline. 16 USC 1247(d); 49 CFR 1152.29.

New York that the City and State are prepared to meet the specific conditions for a CITU previously set by the railroad parties.

Respectfully submitted,

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Attorneys for Consolidated Rail Corporation

Dated: January 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply have been served this 13th day of
January 2003, by first-class mail, postage prepaid, or hand-delivery, upon the following persons:

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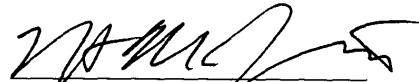
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Robert M. Jenkins III

BEFORE THE SURFACE TRANSPORTATION BOARD

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

CHELSEA PROPERTY OWNERS – ABANDONMENT – PORTION
OF THE CONSOLIDATED RAIL CORPORATION'S
WEST 30TH STREET SECONDARY TRACK IN NEW YORK, N.Y.

VERIFIED STATEMENT OF DAVID ALAN RICHARDS

1. I am David Alan Richards, partner in the real estate group of McCarter & English LLP (New York City office).

2. I am submitting this statement in support of the response (the "Response") of Conrail, Inc. ("Conrail") to The City of New York (the "City") with regard to its Reply (the "Reply") to Chelsea Property Owners' ("CPO") Motion for an Order Authorizing Abandonment (the "Motion"). The Motion respects an Agreement for Voluntary Abandonment and Charitable Contribution ("VAA" or "Settlement Agreement", in the Reply's parlance) among CPO, Conrail, its wholly-owned subsidiary Consolidated Rail Corp. ("CRC"), New York Central Lines, LLC ("NYCLLC", a limited liability company of which CRC is the single member), CSX Corporation ("CSXC", part owner of and asset manager for Conrail), CSX Transportation, Inc. ("CSXT", a wholly-owned subsidiary of CSXC and operator of the Highline viaduct with NYCLLC under an operating agreement) (Conrail, CRC, NYCLLC, CSXC, and CSXT, collectively, the "Railroads"), and certain property owners on and over whose properties the Highline rail viaduct (the "Highline") is situated, including the City, the Metropolitan Transit Authority (the "MTA"), the Triborough Bridge and Tunnel Authority (the "TBTA"), the New York City Convention Center Development Corporation ("Javits") (the City, MTA, TBTA, and Javits, collectively, the "Public Property Owners"), and twenty private property owners (collectively, the "Private Property Owners").

3. CPO, on behalf of the Private Property Owners, commenced the present involuntary abandonment proceeding (the "Proceeding") before the Interstate Commerce Commission in 1989 and a conditional abandonment authorization was issued in the ICC's September 16, 1992 Order in this Proceeding (the "September 1992 Order"). On July 14, 1999 (service date) (Docket No. AB-167 [Sub. No. 1094]A), the STB reaffirmed the September 1992 Order, holding that CPO had not met the conditions of that Order in its most recent submissions of a demolition contract draft and letter commitment for a surety bond (the "July 1999 Decision").

4. The two City mayoral administrations prior to the current administration of Mayor Michael Bloomberg believed the Highline to be a "dangerous and unsightly structure", as indicated in a letter from Mayor David N. Dinkins to ICC Secretary Sidney L. Strickland, Jr., dated August 10, 1990 (Exhibit M to the VAA) submitted as part of the Proceeding, and "a

blighting condition over the public streetbeds", as indicated by the fifth Recital to the VAA (p. 4) in language required in the VAA by the Giuliani Administration. In 1999, the City of New York posted notices of building violation on the Highline, the discharge of which cost Conrail in excess of \$1 million (the "Building Violations").

5. The MTA, in a litigation commenced in 1998, *sub nomine*, *Consolidated Rail Corporation vs. Mid-Town Development, LP, et al.*, Index No. 25678/92 (Dec. 18, 1998), countersued Conrail to compel the demolition of the Highline over the West Side Rail Yards, and since the settlement of that litigation, has consistently maintained to Conrail that the MTA desires the Highline to be removed from its property. Javits, which relocated and rebuilt the Highline viaduct's northern end, now ending in the Javits truck marshalling yard south of West 34th Street, also has long desired the Highline to be removed (and has executed the VAA). The MTA and Javits sought a finding that the Highline be removed as a nuisance in the original Proceeding, but this request for state law relief was preempted by the ICC's exclusive jurisdiction over federally regulated rights of way like the Highline.

6. Edison Mini-Storage Corporation ("Edison") and three other Private Property Owners commenced an action on April 9, 1999, now pending in the United States District Court for the Southern District of New York (99 Civ. 2868 (MBM)) (the "Edison Action"), suing Conrail and NYCLLC for hundreds of millions of dollars in damages for alleged tortious interference with third party contract for failure to demolish and remove the Highline from over those owners' respective properties.

7. In the light of the Edison Action, the Building Violations, and the Highline demolition desire of the City, MTA, and Javits, and the imminence of what soon became the July 1999 Decision, I was retained by the Railroads June 24, 1999 to lead negotiations in an omnibus settlement of both the Proceeding and the Edison Action, through a voluntary abandonment of the Highline, the terms of which would meet the condition of the September 1992 Order.

8. The fundamental condition of the September 1992 Order authorizing abandonment (the "Condition"), as reaffirmed in the July 1999 Decision, is that "CPO indemnify Conrail for all demolition costs in excess of \$7 million by posting an 'appropriate surety bond or similar security' to ensure payment" (July 1999 Decision, p. 1). The terms of the sixth and last version of the Voluntary Abandonment Agreement (the "Settlement Agreement/VAA"), negotiated over two and one-half years among 32 parties, and signed by the City and the New York City Economic Development Corporation ("EDC") on December 19, 2001, met that condition to the satisfaction of the Proceeding's parties in the following manner:

a. The Railroads would contribute \$7 million to the EDC, to be administered with additional monies subscribed by all the property owners under a Funding Agreement to fund the demolition on a progress payment basis under a demolition contract reviewed by the Railroad Signatories and approved by the City and all other property owners;

b. The property owners would purchase and deliver payment and performance surety bonds, benefiting the Railroad Signatories and the City, in the amount of one hundred twenty five percent (125%) of the demolition contract cost, and the demolition would be managed by a

City-approved contractor whose performance was guaranteed by Bovis Lend Lease, Inc. (a contractor for the World Trade Center debris removal), with a guarantor's net worth of \$130 million, and comprehensive general liability policies (the "CGL Policies");

c. All property owners under the Settlement Agreement/VAA closing documents (the "Property Owners' Waivers and Indemnifications") would release and indemnify the Railroads from all claims of any kind whatsoever, from the building of the Highline in 1929 onward, whether for violation of the maintenance covenants of the easement agreements, environmental claims, or any other reason (thus ending the Edison Action and the prospect of any other such action by any underlying property owner), or for any damages to persons or property resulting from the demolition (except the City, which--alone of all Public Property Owners and Private Property Owners--refused to give such an indemnity); and

d. The property owners would purchase for the Railroads a \$30 million, 10 year-term environmental insurance policy (the "Environmental Policy") against claims from property owners bordering properties encumbered by the Highline, to protect against lawsuits anticipated in the development activity which would follow the viaduct's demolition.

9. During the protracted negotiation of the Settlement Agreement/VAA, the Railroad Signatories were approached by various entities seeking to discuss terms for a railbanking of the Highline under a CITU issued in accordance with the Rails-to-Trails legislation, including but not limited to Friends of the Highline ("FHL"). In response to such approaches, all interested parties (including the City, FHL, CPO, the Trust for Public Lands, and the Rails-to-Trails Conservancy) were provided with a memorandum prepared by me dated 2 October 2002, attached hereto as Exhibit 1, entitled "Railbanking Requirements of CSX/Conrail for Highline" (the "Railbanking Memorandum"). The Railbanking Memorandum, which is referenced by the City in Paragraph 8 of the Reply without further description, requires the following, in order to replicate, from the Railroads' perspective, the terms of the Settlement Agreement/VAA:

a. A demonstration of creditworthiness to assume financial responsibility for the refurbishment and maintenance, real estate taxes, and other operating costs of the Highline, and potential environmental claims, under a business plan to be reviewed by the Railroads, including the CITU applicant's covenant to demolish the Highline at its own cost and expense upon revocation or surrender of the CITU;

b. Delivery of an indemnification agreement respecting future demolition costs and claims from the underlying Private Property Owners and Public Property Owners, in a minimum amount of \$100 million (the "Demolition Indemnity");

c. Agreement by the Applicant that, in the event of revocation or surrender of the CITU, the Railroads will petition the STB for final abandonment upon receipt of (*inter alia*) (i) all Property Owners' Waivers and Indemnifications, (ii) a new Demolition Contract, (iii) new Surety Bonds, (iv) new CGL Policies, (v) a new Environmental Policy, and (vi) a new Demolition Indemnity (collectively, the "Final Abandonment Documents"). Failure to timely deliver the Final Abandonment Documents will enable the Railroads to draw upon the original Demolition Indemnity, and demolish the Highline.

10. To date, the Railroads have received no business plan from any potential CITU applicant, and none is included in the City's Reply. Notably, the City indicates in Paragraph 11 thereof that it cannot contribute \$381,000 under the Funding Agreement toward the Highline's demolition under the Settlement Agreement/VAA, and so the ability and willingness of the City as CITU applicant to meet the creditworthiness requirements (a) and (b) of the Railbanking Memorandum, is in serious question.

11. Furthermore, railbanking of the Highline would give the City ownership of the viaduct easement over four city blocks of property owned by the MTA and the Javits, each an agency of New York State. Execution and delivery of the VAA by the City (achieved) and Javits (achieved) and the MTA (not achieved to date) would indicate agreement among these governmental entities on the future of the Highline. The City's Reply does not indicate that it has procured the agreement of the State of New York that the City have dominion over the future development of the West Side Yards through the medium of railbanking.

12. In light of the concerns raised in the prior two Paragraphs regarding the creditworthiness of the City, and the necessary political agreement of the State of New York as expressed through its affected agencies, and in order to be consistent with the long-published requirements of the Railbanking Memorandum, the State of New York should join in the execution and delivery of the Demolition Indemnity, so that the Railroads have the assurance of an ability to collect thereunder, and assurance that the City and State are in agreement as to the future location and ultimate disposition of the Highline.

13. With regard to the Settlement Agreement/VAA, it is true that the City delivered the signatures of the City and the EDC to such Agreement in late December 2001 on the understanding that all exhibits be provided and all other signatures (other than the Railroads') be obtained within four weeks. All of those exhibits were delivered, and all of those signatures have been obtained, except for the MTA's. My clients are unaware of the reason for this delay (especially in light of the Javits's execution of the document), but prior to the filing of the City's Reply, the City had not complained of the delay, or challenged the binding nature of the Settlement Agreement/VAA as signed by all parties except the Railroads (as permitted under the Settlement Agreement/VAA's terms).

14. The City argues that the Settlement Agreement/VAA is not binding because (a) a fully-executed document was not returned within the four-week time frame fixed by the city in its covering letter of December 20, 2001, and (b) certain language changes in the Settlement Agreement/VAA were sought by various counsels' correspondence with other parties after that delivery. The City notes (in Reply Paragraph 4) that I as counsel to CSX sought certain changes in the Settlement Agreement from counsel to CPO, but in that same letter (not appended as an Exhibit by the City to its Reply) I maintained that these did not "fundamentally revise the understandings" of the Settlement Agreement to require new signatures from the City or EDC, and the City never made oral or written response to me protesting the requested change or alleging any effect on the City's post-execution provision.

15. Furthermore, as shown by Exhibit B to the City's Reply, a letter dated August 15, 2002, from counsel to the City to counsel for CPO, the City apparently waived its own four-week delivery deadline some eight (8) months after setting it, by itself seeking a language change from CPO, allowing the City to file for a CITU without being deemed in breach of the Settlement Agreement (a request repeated in the City counsel's letter to CPO of December 6, 2002 (Reply Exhibit C). The request may have been superfluous, as the Settlement Agreement (Section 2.3, page 10) already says that the "Signatory Owners and other parties [thus including CPO] hereby agree" that the Railroads may negotiate "with a proposed private entity railbanker or *public entity railbanker*...under the Railbank Legislation following the filing of the STB petition" (emphasis supplied), and so the Private Property owners and/or CPO would be hard-pressed to complain of a breach if public entity City of New York sought a CITU after the (unamended) Settlement Agreement was completely executed and delivered. Consequently, the City's argument that the Settlement Agreement has somehow been nullified by delay in complete execution, or requests for changes, is unpersuasive.

16. The parties, including the City, have negotiated the Settlement Agreement/VAA over the period of the past 30 months, at great cost and expense to all. Whatever the outcome of the CITU negotiations with the City, it is the belief of all parties, including the City (p. 1 of its Reply), that the form of the Settlement Agreement/VAA, "if executed and delivered, and the closing contemplated thereunder brought to fruition in accordance with the terms of the Settlement Agreement, would satisfy the 1992 ICC surety condition."

RAILBANKING REQUIREMENTS OF CSX/CONRAIL FOR HIGHLINE

An applicant ("Applicant") for a Certificate of Interim Use ("CITU") under the National Trails System Act (the "Railbanking Law") for railbanking the the Highline viaduct in New York City (the "Highline") will be required to do the following:

- demonstrate to CSX/Conrail (collectively, the "Railroads") the possession of or access to financial resources, whether in hand or in reasonable prospect as more particularly described in a business plan prepared for the Railroads' review, to assume financial responsibility for refurbishment and maintenance, real estate taxes, and other operating costs of the Highline, all as required by the Railbanking Law, under the Applicant's business plan, which shall include Applicant's covenant to demolish the Highline at its own cost and expense in the event the CITU shall be voluntarily surrendered or involuntarily revoked;
- enter into written agreement with CSX/Conrail providing for the following:
 - (a) the delivery, at the closing of title transferring the Highline to the Applicant ("Title Closing"), of an indemnification agreement respecting future demolition costs of the Highline and potential environmental claims against the Railroads from underlying landowners, in the amount of \$100 million (the "Conveyance Indemnity"), from Applicant or a creditworthy indemnitor;
 - (b) the delivery, at the Title Closing, of an environmental pollution insurance policy (insuring the Railroads only) respecting historic pollution of property bordering (not underlying) the Highline, in the amount of \$30 million (\$30 million for indemnification, and \$30 million for defense costs) for a ten-year term (the "Initial Environmental Policy");
 - (c) the delivery, at the Title Closing, of a power of attorney coupled with an interest in recordable form running to the Railroads (the "Power of Attorney"), permitting the Railroads, in the event of the surrender or revocation of the CITU with the failure of the Applicant to make timely delivery of the Final Abandonment Documents (as hereinafter defined and described), to convey the Highline on Applicant's behalf back to Railroads to permit demolition of the Highline by the Railroads at Applicant's indemnitor's cost under the Conveyance Indemnity.
 - (d) agreement by the Railroads that in the event Applicant (or its successor in title to the Highline) should elect to surrender the CITU and request that NYCLLC petition the Surface Transportation Board ("STB") for final and complete abandonment of the railbanked Highline, then upon Applicant's notice of intent to surrender and the delivery of the following items into escrow with the Railroads, the Railroads will petition the STB for final abandonment:
 - (i) from each and every underlying property owner, an instrument of indemnification, waiver and release, waiving and releasing any claims against the Railroads and indemnifying the Railroads against any costs or claims respecting the demolition of the Highline over that owner's segment (collectively, the "Property Owners' Waivers") (or in the absence of same for any underlying owner, in the Railroads' sole discretion, the Railroads' agreement to accept indemnification for such matters from a creditworthy indemnitor);

(ii) a signed demolition contract for the demolition of the Highline in its entirety (the "Demolition Contract"); the demolition contractor's demolition permit from the City of New York (the "Demolition Permit"); surety payment and performance bonds bonding the price and scope of the work under the demolition contract with the Railroads as co-obligees (the "Surety Bonds"); a comprehensive general liability policy covering the work under the Demolition Contract in an amount of not less than \$50 million (aggregate, with \$30 million each occurrence for bodily injury and property damage) and otherwise satisfactory to the Railroads and commensurate with the scope of the work and price of the Demolition Contract (the "CGL Policy"); a "cost cap" insurance policy in an amount equal to triple the price of the Demolition Contract (the "Cost Cap Policy" (or a new indemnification agreement [the "Demolition Indemnity"], substantially in the form of the Conveyance Indemnity, from a creditworthy entity having assets in an amount of quadruple the price of the demolition contract);

(iii) a new, prepaid Environmental Policy (the "Replacement Environmental Policy"), with \$30 million coverage adjusted upwards for the increase in the Consumer Price Index in the interim, with a term of 10 years;

(iv) from the City of New York, a waiver of the Railroads' street-restoration cost bearing and other obligations under Section 21 of the NYS Railroad Law, and of the Railroads' highway-railroad separation cost-bearing and other obligations under Section 93-b of the NYS Railroad Law (collectively, the "Railroad Law Waivers");

(v) an executed and acknowledged declaration of termination of easements ("Declaration of Termination") terminating all easements respecting the Highline.

(all of the foregoing, collectively, the "Final Abandonment Documents").

Upon receipt of the foregoing documents, the Railroads shall petition the STB for final abandonment of the railbanked Highline, and upon issuance of the STB's final abandonment order, the Railroads as escrowee of the Final Abandonment Documents shall (x) release from escrow and retain for itself the Property Owner Waivers, the Surety Bonds, the CGL Policy, the Cost Cap Policy and/or Demolition Indemnity, the Replacement Environmental Policy, and the Railroad Law Waivers, and (y) return to the Applicant the Demolition Contract, the Demolition Permit, and the Declaration of Termination. Thereafter, Applicant shall cause the demolition of the Highline to be effected under the Demolition Contract (as insured under the CGL Policy and Cost Cap Policy, and bonded by the Surety Bonds), and following completion of such demolition, shall record the Declaration of Termination, upon the recording of which the Demolition Indemnity shall become null and void provided demolition has been completed.

In the event that Applicant shall have its CITU revoked or cancelled by the STB for cause under the Railbank Legislation, the Conveyance Indemnity shall be and be deemed to be in full force and effect until such time as Applicant shall have delivered the Final Abandonment Documents, and in the even that the Final Abandonment Documents are not delivered within six (six) months from the CITU revocation date, the Railroads may, at their option, commence suit for specific performance against Applicant for demolition of the Highline and against Applicant's indemnitor under the Conveyance Indemnity, or act under the Power of Attorney to convey the Highline

back to the Railroads and effect the demolition at Applicant's indemnitor's expense under the Conveyance Indemnity (which shall remain in full force and affect indefinitely).

Note: Under the Settlement Agreement for Voluntary Abandonment (the "Voluntary Abandonment Agreement") currently being negotiated by the Railroads with Chelsea Property Owners, Inc., and all the underlying property owners, including New York City, the MTA, TBTA, and the New York City Convention Center Development Corporation, those parties have agreed to deliver to the Railroads each and all of the Property Owners Waivers, the Surety Bonds, the CGL Policy, the Cost Cap Policy, the Environmental Policy, the Railroad Law Waivers, the Demolition Contract, and the Demolition Permit, all in contemplation of the proposed demolition of the Highline under that Voluntary Abandonment Agreement. Consequently, the Railroads would expect that the Applicant would similarly be able to deliver such documents and instruments in the future, and proposed forms thereof as currently negotiated are available for examination from David Alan Richards, Esq., at Sidley & Austin, 875 Third Avenue, New York, New York 10022 (212/906-2305; fax 212/906-2021; email: drichard@sidley.com).

2 October 2000

DECLARATION UNDER 49 C.F.R. Sec. 1104.5(b)

I, David Alan Richards, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.
Executed on December 31, 2002

David Alan Richards