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NAME: HONORABLE VERNON A. WILLIAMS, SECRETARY
COMPANY: SURFACE TRANSPORTATION BOARD
OFFICE: 202-565-1674
FAX: 202-565-9002
DATE: October 26, 2004
of PAGES: - 45 -

FACSIMILE FROM

NAME: Tomislav R. Neuman
COMPANY: MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC
PHONE: 732-222-4327
FAX: 732-222-4758
E-MAIL: tomislavneuman@aol.com

Re: Docket No. FD 34606 *A tie Highline*
Chelsea Property Owners - Abandonment - Portion of the
Consolidated Rail Corporation's West 30th Street Secondary Track
in New York, NY

Dear Secretary Williams;

Attached for filing in the above-captioned proceeding is a facsimile of FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC, [MCRS]; NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION, for filing with the Board in the above referenced matter.

Please be advised that our formal request (including ten (10) copies) is being directed to your attention via priority mail. MCRS looks forward to working closely with the Board in order to consummate a mutually beneficial acquisition of the above referenced rail line.

Respectfully submitted,

Tomislav R. Neuman,
Executive Director
FORTY PLUS FOUNDATION &
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

TRN/jm

Attachments
cc: All Parties of Record

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NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION
BEFORE THE

SURFACE TRANSPORTATION BOARD



Docket No. *FD 34606*

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

NOTICE OF INTENT TO FILE
FEEDER RAILROAD DEVELOPMENT APPLICATION

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**FORTY PLUS FOUNDATION &
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Dated: October 26, 2004

NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION



Office of Proceedings
2004
Secretary

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. **FD 34606**

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

**NOTICE OF INTENT TO FILE
FEEDER RAILROAD DEVELOPMENT APPLICATION**

Comes now the **FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC** (“MCRS” OR “APPLICANT”) and files this Notice of Intent to File a **Feeder Railroad Development Program (“FEEDER LINE”) Application** pursuant to 49 U.S.C. Section 10907 (2000) and 49 C.F.R. Part 1151 (2002), to acquire the line of railroad known as the **West 30th Street Secondary Track** (“*Highline*”) currently owned by **Consolidated Rail Corporation (CONRAIL)** and **CSX Corporation** and **CSX Transportation, Inc.** (collectively “**CSX**”) (**CSX** and **Conrail** are collectively referred to as “**RAILROADS**”), located in the borough of Manhattan, New York City, extending (initially below grade) at approximately **milepost 9.35** near **West 37th Street** between **Eleventh and Tenth Avenues**, gradually ascends to street level at approximately **milepost 9.75** near **West 33rd Street** and **Eleventh Avenue** and subsequently becomes an elevated railroad trestle where the *Highline* viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south (downtown) at **30th Street & 10th Avenue** running along its elevated viaduct “*easement*” with varying widths of 30’ to 80 feet and a track height of approximately 30 feet – presently terminating at approximately 1.6-mile in length at **milepost**

NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION

10.47 at the northern boundary of Gansevoort Street. In consideration of its application, MCRS offers to grant RAILROADS access to the portion of the track north of milepost 9.40 to provide service to national shippers at rates to be determined. In support of its application MCRS shows the following.

Part of the former New York Central (later Penn Central) freight line (Highline). The line was acquired by ConRail in 1976 as part of the conveyance of the properties of the bankrupt railroads in the northeast and Midwest under the Regional Rail Reorganization Act, 45 U.S.C. 701 et seq. (3R Act) – an approximate 1.6-mile rail line originating today from a deep cut at approximately milepost 9.35 near West 37th Street between Eleventh and Tenth Avenues, where it veers south-westerly away from AMTRAK's service line... the upstate New York Empire (AMTRAK runs down the West Side and into Penn Station). The Highline, continues south, then gradually ascends to street level at approximately milepost 9.75 near West 33rd Street and Eleventh Avenue and subsequently becomes an elevated railroad trestle that, in order to accommodate all trains emerging from beneath street level it must make a 0.48 mile long "¾" [west-south-easterly] great loop around the outer perimeter of the Long Island Rail Road's John D. Caemmerer West 30th Street Rail Yards - in order to eliminate any potential street level crossings. Once emerged, the Highline viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south at 30th Street & 10th Avenue. The Highline, is generally situated just west of Tenth Avenue as it proceeds in a somewhat "meandering" comportment between and through buildings, continuing downtown (south) running along it's elevated viaduct "easement" with varying widths of 30' to 80 feet and a track height of approximately 30 feet – presently terminating at approximately milepost 10.47 at the northern boundary of Gansevoort Street, intersecting at Washington St. near the West Side Highway (Rt. 9A) in the popularly referred to 'Meat Packing District' in the Borough of Manhattan, NY. The Highline is elevated on a steel and concrete viaduct that was constructed in 1930. ConRail operated over the Highline pursuant to easements negotiated over a 40 year planning period from 1885 thru 1925, with the original owners of the properties underlying the Highline for the purpose of shipping and receiving rail freight thought the west side of Manhattan Island on a grade separated right-of-way to replace the original 1849 perilous street-level tracks laid along 10th and 11th Avenues.

NOTICE OF INTENT TO FILE FEEDER RAILROAD DEVELOPMENT APPLICATION
IDENTIFICATION OF APPLICANT AND LINE AT ISSUE

(1) IDENTIFICATION OF THE LINE TO BE PURCHASED INCLUDING:

(i) The name of the owning carrier –

The line to be purchased is currently owned by CONSOLIDATED RAIL CORPORATION (CONRAIL) and CSX CORPORATION and CSX TRANSPORTATION, INC. (collectively "CSX") (CSX and CONRAIL are collectively referred to as "RAILROADS"). WHEREAS, NEW YORK CENTRAL LINES LLC (NYCLLC) is the title-holder to the elevated railway viaduct with highway-railroad grade separations structures and street-level railway improvements known collectively as the "*Highline*" or the "*West 30th Street Secondary Track*" in New York City, NY, extending from 75-95 Gansevoort Street and running northerly and westerly through 547-55 West 34th Street and West 34th Street streetbed, identified as Line Coder 4225 in the records of the United States Railway Association (the "*Highline*"), connecting to the national rail system via the AMTRAK service line the upstate New York Empire, at milepost 9.35 near West 37th Street between Tenth & Eleventh Avenues. built within and upon certain easements held by NYCLLC's predecessors-in-title held in accordance with (i) agreements relating to the Easements (collectively, the "1929 Agreements") and (ii) those further easements agreements relating solely to individual properties encumbered by the Easements, said *Highline* having been conveyed to NYCLLC's immediate predecessor-in-interest CONRAIL by deed recorded December 15, 1978 from Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, as grantor, and CONRAIL, as grantee, recorded in the Office of the City Register, New York county (the "Official Records") in Reel 463, Page 1563-A (the *Highline* being identified in Reel 463, Page 1567), and thereafter conveyed (to the extent not previously abandoned and subsequently conveyed to ROCKROSE CONSTRUCTION (KELLY) CORP. by Assignment and Assumption Regarding Easements dated as of November 25, 1990, and recorded in the Official Records in Reel 1747, Page 1584) by CONRAIL to NYCLLC by deed dated

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as of June 1, 1999, and recorded in the Official Records on March 1, 2000, in Reel 3067 Page 1110.

WHEAREAS, NYCLLC is a single-member limited liability company, of which the single member is CRC; CRC is a wholly-owned subsidiary of CONRAIL; and CONRAIL is owned in part by NORFOLK SOUTHERN CORPORATION ("NS") and in part by CSXC.

WHEAREAS, CSXT is a wholly-owned subsidiary of CSXC, and is also the Operator of the *Highline* under that certain Operating Agreement dated as of June 1, 1999, by and between NYCLLC as Owner and CSXT as Operator (the "Operating Agreement").

- (ii) **The history and exact location of the line, including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line –**

Originally part of the former New York Central (later Penn Central) freight line, The line [*Highline*] was acquired by ConRail in 1976 as part of the conveyance of the properties of the bankrupt railroads in the northeast and Midwest under the Regional Rail Reorganization Act, 45 U.S.C. 701 *et seq.* (3R Act) -- an approximate 1.6-mile rail line originating today from a deep cut at approximately milepost 9.35 near West 37th Street between Eleventh and Tenth Avenues, where it veers south-westerly away from AMTRAK'S service line -- the upstate New York Empire (AMTRAK runs down the West Side and into Penn Station). The *Highline*, continues south, then gradually ascends to street level at approximately milepost 9.75 near West 33rd Street and Eleventh Avenue and subsequently becomes an elevated railroad trestle that, in order to accommodate all trains emerging from beneath street level it must make a 0.48 mile long "¼" [west-south-easterly] great loop around the outer perimeter of the Long Island Rail Road's *John D. Caemmerer* West 30th Street Rail Yards - in order to eliminate any potential street level crossings. Once emerged, the *Highline* viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south at 30th Street & 10th Avenue. The *Highline*, is generally situated just west of Tenth Avenue as it proceeds in a somewhat "meandering"

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comportment between and through buildings, continuing downtown (south) running along it's elevated viaduct "easement" with varying widths of 30' to 80 feet and a track height of approximately 30 feet -- presently terminating at approximately **milepost 10.47** at the northern boundary of Gansevoort Street, intersecting at Washington St. near the West Side Highway [Rt. 9A] in the popularly referred to '*Meat Packing District*' in the Borough of Manhattan, NY. The **Highline** is elevated on a steel and concrete viaduct that was constructed in 1930. **ConRail** operated over the **Highline** pursuant to easements negotiated over a 40 year planning period from 1885 thru 1925, with the original owners of the properties underlying the **Highline** for the purpose of shipping and receiving rail freight thought the west side of Manhattan Island on a grade separated right-of-way to replace the original 1849 perilous street-level tracks laid along 10th and 11th Avenues.

It is imperative that THE BOARD be made aware that the present deficiency of rail service on the **Highline** is not from the lack of interest from potential shippers, but can be summarized by a combination of events -- primarily the aggressive advent of the trucking industry in the 1970's negatively impacting an overconfident and unprepared established rail industry resulting in massive bankruptcies within the railroads in the Northeast and Midwest that have led to a series of essential emergency measures such as the formation of CONRAIL, designed to save the rail industry from extinction. While these upheavals in the rail industry were taking place, in spite of the industry wide losses, the **Highline** continued to operate profitably until it had to abruptly curtail operations in the 1980's as a "temporary" alteration to have its connection to the national rail system "re-routed" to accommodate the construction of the JACOB JAVITS CONVENTION CENTER. This considerate gesture unfortunately irreparably forced the **Highline's** shippers to commit to other industries for their shipping needs and in some cases dramatically forced to leave the City in order to survive. Subsequently, due to circumstances beyond the control of both CONRAIL and the **Highline's** shippers -- primarily the unanticipated and arguably intentional

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delays on the part of both the State and Convention Center's management to fulfill their obligations and properly reconnect the *Highline* to the national rail system – which to this day has yet to be connected. The Line has been the unwitting victim of these anomalous circumstances resulting in the current state of “limbo”.

Fortunately the rail industry has recently successfully reinvented itself and is rebounding dramatically as testament to the recent CSX and NORFOLK SOUTHERN'S acquisition of CONRAIL, to work in concert with all other shipping industries utilizing state of the art intermodal technology. In hindsight, CONRAIL'S efforts to revitalize the *Highline* under the ICC authority over two decades ago for continued rail services would most definitely have resulted in an unprecedented economic windfall for NYC that can now only be regretted as a monumental and tragic lost opportunity for all parties concerned.

THE BOARD has a statutory duty to preserve and promote continued rail service and to provide the public with a degree of protection against unnecessary discontinuance, cessation, interruption or obstruction of rail service, See e.g., Western Stock Show Association, supra, 2 S.T.B. at 131; Salt Lake, supra, slip op. at 6. Although impediments to State and local government projects are entitled to some weight, agency precedent clearly states that those interests are subordinate to its statutory duty to preserve and promote continued rail service where a carrier (APPLICANT) has expressed a desire to continue or establish operations and has taken reasonable steps to acquire traffic. Chelsea Property Owners – Aban. – The Consol. R. Corp. supra. 8 I.C.C. 2d 773, 778-9 (1992).

THE BOARD, has been continually requested by the RAILROADS to intervene on their behalf; the RAILROADS have clearly outlined their [RAILROADS] position;

“Consolidated Rail Corporation (“Conrail”) takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible”
Conrail/CSX/CSXT - Aug 26, 2003 Brief to the Board

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This places THE BOARD in the enviable position to correct this wearisome state of affairs immediately on behalf of the public convenience and necessity under the feeder line statute 49 U.S.C. 10907 (c)(1) and satisfy the demands of both local and national shippers that would willingly commit to the only environmentally sensitive direct rail link in and out of Manhattan.

(2) **IDENTIFICATION OF APPLICANT INCLUDING:**

(i) **The applicant's name and address:**

FORTY PLUS FOUNDATION¹
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC²
7 Monmouth Road,
Suite 1
Oakhurst, NJ 07755

(ii) **The name, address and phone number of the representative to receive correspondence concerning this application;**

All correspondence, pleadings, etc., directed to Applicant in this matter should be sent to:

Mr. Tomislav R. Neuman, *Executive Director*
FORTY PLUS FOUNDATION/MCRS
7 Monmouth Road
Suite 1
Oakhurst, NJ 07755
Phone: (732) 222-4327
Facsimile: (732) 222-4758
Email: tomislavneuman@aol.com

- (2) "FORTY PLUS" [40+] established in NYC in 1939, is a 501(c)(3) charitable organization and remains America's oldest and most effective not for profit out-placement employment support organization. 40+ has diligently expanded its successful NYC program into 21 major US Cities over the past 65+ years, designed to provide gainful employment opportunities and successfully lobbied both State and Federal legislative agencies to eliminate age, gender and race related discrimination. 40+ efforts have resulted in laudable recognition from numerous US Presidents, Governors, local officials and community organizations that have acknowledged 40+'s vital contributions within their respective constituencies over the past 7 decades, resulting in the successful placement of over 100,000 members - earning 40+ the enviable diction of placing 100% of its membership.
- (3) The FORTY PLUS FOUNDATION has developed a for-profit company titled the "MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC" that has subsequently entered into several strategic alliances and co-ventures with partners possessing professional expertise in design, construction, management and maintenance of the *HIGHLINE* property and it's intermodal equipment as a profitable Class III Shortline Railroad.

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(iii) **A description of applicants affiliation with any railroad;**

MCRS as a *Class III Shortline railroad* is affiliated with **NY CROSS HARBOR RAILROAD, INC. ("NYCH")**. New York City's "other" Class III Shortline Railroad Company, which conducts the business of operating the last remaining "float bridge" rail operations in the NY/NJ region, -- which is part of the national railroad system and holds a SURFACE TRANSPORTATION BOARD certificate of convenience and necessity for the movement of rail freight by rail barge across New York Harbor. **NYCH** is uniquely qualified to participate in our co-operative with APPLICANT.

NYCH originally formed in 1901 as the **NEW YORK DOCK RAILWAY, Co.**, at 103 years old is New York Cities oldest continually operating Class III Shortline Railroad. **NYCH** management is one of the foremost authorities on Shortlines in the NYC market. **NYCH** operates from its Greenville Terminal Yard in Jersey City, NJ and Bush Terminal Yard in Brooklyn, NY, on the West Side of New York Harbor. **NYCH** exchanges (interchanges) rail cars with the **CANADIAN PACIFIC ("CP")**, **CSX TRANSPORTATION ("CSX")** and **NORFOLK SOUTHERN ("NS")** railroads at **CONRAIL Shared Assets Operations ("CSAO")** Oak Island interchange yard, NJ. On the East Side of New York Harbor, **NYCH** interchanges rail cars with **CP** and the **NEW YORK AND ATLANTIC RAILROAD ("NYA")** at Bayridge Junction interchange yard, Brooklyn, NY. The **NYCH** is the result of a consolidation of two Brooklyn waterfront railways. The **NEW YORK DOCK RAILWAYS** and the **BROOKLYN EASTERN DISTRICT TERMINAL (BEDT)** merged in 1983 to create **NYCH**. Although there were once dozens of carfloat bridges along the Brooklyn coast, today only **NYCH** remains in service. **NYCH** also moves a major percentage of the nation's cocoa by floating it from the Brooklyn shipping ports to the mainland. **NYCH** also delivers carfloats to various docks around the Brooklyn port area.

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NYCH management is an acknowledged NY Rail Freight industry authority and possesses the extraordinary knowledge and awareness of both the NYC market, the *HIGHLINE* and all relevant intermodal technology and rail connections – this symbiotic relationship is a superlative collaboration of management, marketing, community involvement and technology. NYCH, as a local enterprise is particularly sensitive to the local community needs and intends to provide MCRS with support and guidance to both grow and prosper, as APPLICANT provides New York City with an efficient expanded and vital rail freight link to the North American rail system maintaining and improving the *HIGHLINE*'s connection to the National Rail System. In light of present day concerns over security and the escalating expense of fuel, dramatically increasing cost to shippers plus the growing environmental damage contributed by the trucking industry, NYCH and MCRS will be offering shipper's one more secure, cost efficient and environmentally sensitive competitive shipping amenity.

And

- (iv) **If the applicant is a corporation, the names and addresses of its officers and directors:**

The officers and directors of MCRS are as follows:

Tomislav R. Neuman	Director: President
Leonard Blacovitch	Director: Treasurer
James McEnroe	Director: Secretary

MAILING ADDRESS:

FORTY PLUS FOUNDATION/MCRS

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FINANCIAL INFORMATION ABOUT THE APPLICANT

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estimates) that would translate into an incomparable windfall for the RAILROADS shareholders (essentially this benefit is not available within any other offering presently before THE BOARD), plus, the RAILROADS would donate a minimum of \$7 Million to the 501(c)(3) charitable organization as further consideration to assure the potential elimination of future liability and assist the buyer in meeting taxes and maintenance responsibilities. As a significant consequence of MCRS' reactivation of rail services, this "usage" would automatically eliminate the attendant inherent liability that the RAILROADS has legitimately agonized over since it acquired the *Highline*. It is important to note that outside active rail service, problematic liability would have naturally accompanied any demolition or alternative CITU usage of the Line.

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

The granting of this application will provide unprecedented customer and community "friendly" on-demand rail freight and passenger transit services by eliminating

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traditional trucking/surface transportation and rail freight environmental hazards, reducing vehicular accidents effecting pedestrians and property just as the *Highline* was originally designed to do plus reduce pollutants (including vibration & noise) [pertinent hazardous substance laws (42 U.S.C. § 6901-6933 and § 9601-9675)]. In addition the connection to the National rail system will be maintained and actively utilized.

The technology to be implemented within APPLICANT'S proposal has been custom designed and stringently tested⁵ to address local conditions unique to the Chelsea/Clinton West Manhattan environmental mitigation, addressing all present safety concern in accordance with STB environmental rules (49 CFR § 1500) and the PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS (40 CFR *et seq.*), and other Federal environmental requirements.

In addition to the obvious economic feasibility and viability for the private sector to economically support the project and reinvest 100% of APPLICANTS profits back into the community, responding to both the President's mandate for the private sector to help in creating jobs and our own Governor and Mayor who endorse the Presidents initiative. The APPLICANTS proposal like no other will continually create much needed employment opportunities in this economy – APPLICANTS proposal is designed to support and expand the mission of 40+, the legendary and internationally renowned charitable service institution.

⁵ Applicant has entered into a Joint Venture agreement with "ROBOTIC RAILWAY SYSTEMS" ("RPS") who had begun testing designs and equipment for intermodal freight usage on the Highline, over the past several years, initially in both their parent companies test labs in Letonia, Ohio and manufacturing facilities in Clearwater, Fla. As of October 2002, a fully functioning \$6.2 million beta test site has been operational in Hoboken, NJ, closely emulating a "mini" Highline corridor environment. The automated freight handling system is now open to the public 24/7 and has performed over 145,000+ handling transactions over the past 24 months. To underscore the designs reliability, this user friendly "self service" on demand system's advanced design seamlessly maintained uninterrupted full operational capability during last years Aug. 14th catastrophic blackout that disrupted electrical power in 8 states (including NYC and Hoboken NJ) and Canada.

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Upon THE BOARD granting MCRS' application, the HIGHLINE would now not be demolished (or permanently eviscerated as a result of a proposed CITU), but placed back into active rail service -- there would be no demolition/alternative usage liabilities. APPLICANT is sensitive to the concerns of CSX and intends to make every effort to cooperate in order to assure a mutually beneficial and seamless transfer of ownership of the Line for the purpose of the reactivation of rail services.

Well intentioned but disquieting efforts currently underway to essentially adulterate the original purpose of the Line raise serious questions whether the Trails Act can be interpreted as permitting a railroad to collude with a potential "trail operator" to circumvent the purposes for which THE BOARD permits the continuation of active rail services.

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

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

Traffic kept on the rails benefits the entire rail system, including the Class I's which almost always participate in moving the freight that the small railroads originate or

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terminate. This phenomenon, which has seen Class III's proliferate and prosper over the past two decades, has yielded multiple winners – small railroads, large railroads, shippers, local communities and rail employees have all reaped the benefits.

The unfortunate and bewildered belief that the *Highline* may no longer be viable for rail service or profitability has been perpetrated in part due to the incessant legal wrangling and special interests, that has plagued this valuable resource even prior to CONRAIL's valiant efforts to convince the then presiding authority, the ICC, that the Line did in fact have an economically viable future. When the STB's predecessor regrettably approved the conditional abandonment presently governing the future of the Line, the public, the adjacent property owners and prospective commercial rail/shipper interest were placated into believing that the *Highline's* demise was imminent simply due to the constant legal challenges that have added to the alienation of genuine commercial vitality, plus, the passage of time with essential no apparent efforts to resurrect any commercially viable design to support the Line.

Since the STB's July, 2003 public hearing in NYC, when Chairman Nober directed all parties to submit a brief on the matter of whether THE BOARD may issue a certificate of interim trail use under 40 CFR 1121.29 in an adverse abandonment proceeding -- there have since been many developments affecting the *Highline* which bear on it's immediate future. Presently a "*perfect storm*" of events has now transpired where virtually all parties for the first time are now in universal agreement that the *Highline* should not be demolished, but preserved. During the July '03 hearing representatives for the RAILROADS stated that, in reference to the reactivation of the Line;

"if the abandonment were not approved, the railroads would begin to examine possible uses for rail transportation on the Highline."

In particular, the RAILROADS mentioned;

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"...using the line to haul waste out of Manhattan and other potential uses may emerge in the future."

As THE BOARD is aware, one indisputable fact remains -- a trail use application has never been granted in any adverse abandonment proceeding, or when a legitimate application to reactivate/continue rail service is before THE BOARD. THE BOARD'S responsibility is for the preservation of rail lines for the purposes of transportation use that is in the public interest. Congress has determined that preserving the line for future transportation use -- as opposed to abandonment -- is in the public interest. See *Prescott*, 494 U.S. at 6; cf. 49 C.F.R. § 1152.29(b)(1)(II). Accordingly, the policy considerations underlying adverse abandonment and the FEEDER LINE Application are compatible. Indeed, because the railroad in an adverse abandonment proceeding is opposed to abandonment and instead wishes to keep a line within the Board's jurisdiction for possible future transportation use, FEEDER LINE is absolutely consistent with an adverse abandonment proceeding more so that any CITU could ever aspire to.

It would be unprecedented in this case, since all CITUs' are conditional on the future reactivation of rail services in order to qualify -- it has been one of the worst kept secrets in railroad history, that the current CITU proposal being advanced in this case involves plans to "*develop*" the *Highline* in a manner inconsistent with its return to rail use by deliberately demolishing the *Highline* over the HUDSON YARDS without any intention of providing an alternative right-of-way. The State agencies participating have gone to trivial lengths to convolute several highly suspect and unworkable and exorbitant "*Rube Goldberg-ish*" re-connection notions in a feeble attempt to convince THE BOARD to justify their intentions to sever the *Highline* from the national rail system -- resulting in an abandonment of the entire line and removal of the *Highline* from THE BOARD'S

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jurisdiction. The State and City's interests for the segment of the *Highline* over the HUDSON YARDS have become much more firm and clearer.

Second, the plans of the City itself to develop the *Highline* south of 30th Street have now become public and demonstrate that the City's proposed use is again inconsistent with the Trails Act as it will render the resumption of rail service on the *Highline* south of 30th Street all but impossible. Recent public presentations illustrate the City's plans to "*peel up*" the deck above 23rd Street to create an informal outdoor amphitheater and a section of the deck would be;

"cut away to create stunning view of cars streaming by below, the opening to be framed by a perfectly manicured lawn...." "Further to the north, a public swimming pool would be embedded into the deck's concrete surface.... A large concrete panel lifts up at one end of the pool to support a faux urban beach. Concrete piers extend out into the water like giant fingers."

Furthermore, the latest City and State co-sponsored advertising campaign promoting the development of an Olympic/Jets stadium over the HUDSON YARDS, has illustrated an edifice with the *Highline* removed. During our own discussions with members of the Cities 2012 OLYMPIC solicitation team, have clearly stated that the "*Highline must go*", for no other reason than it simply does not fit into the architect's *aesthetic* vision of a new Stadium. When asked if it could possibly co-exist within the 2012 committee's plans, the *Highline* was referred to as "*the tail that wags the dog*".

It is important for THE BOARD to note that the *Highline* obviously does not interfere in any form with the "foot print" of any development over the HUDSON YARDS, whether it be a Stadium, expansion of the JAVITS CONVENTION CENTER or residential and office development. The benefits that the *Highline* as an active rail line could offer to any one of the above development scenarios would be priceless and complement any development. Initially, all construction would benefit immeasurably by an "*on site*" rail line... once

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construction was completed, the *Highline* would be instrumental in providing unprecedented state of the art on demand mass transit services that has been a demand of the surrounding community for decades, to the new and current facilities, the Line would be astatically blended into it's surroundings and like the *Highline*, *hide in plane sight*..

The unfortunate short sighted view that has been pervasive concerning the reactivation of rail services on the *Highline* have shortchanged both the viability of new development and the immeasurable economic benefits both to the City and the resulting *geometric* appreciation of adjacent property valuations brought on by a healthy reactivated *Highline*. In addition, it is inconceivable that a CITU could successfully compete with the current ongoing development of a *Multi-Billion dollar* Hudson River front public park directly adjacent to the *Highline* -- which, APPLICANT's active rail line would be instrumental in providing mass transit services to the multitudes wishing to visit for health, relaxation, recreation and take advantage of an unrestricted user friendly beautiful Hudson River Park. As all evidence suggests, the City and the State agencies naively plan to use the *Highline* in a manner inconsistent with the Trails Act placing the entire Line in jeopardy of certain devastation.

In light of APPLICANT offering the only viable reactivation proposal, New York City would be the dramatic beneficiary of the APPLICANT's proposal. Obviously any threat of demolition will be averted resulting in no taxpayer funded demolition, or expensive traffic interruptions caused by the removal of the *Highline*, or in the event of a CITU the massive financial commitment required on the part of the City taxpayers to guarantee the Line from falling into disrepair and abandonment. It has been argued that with its palpably restrictive usage, it would be much more cost efficient to charter the Concord and provide transportation to the limited number of beneficiaries of this CITU to Paris to visit the real *Promenade Plantée* the CITU wishes to emulate.

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The irreplaceable *Highline* has been accurately described for over 150 years as the “*Life line of New York*” effectively serving, feeding and protecting NYC and Americas interest in both boom times and throughout tragic periods such as our Civil War thru to Vietnam. Now, after September 11th, NYC and America need all the support and assistance we can get to help in the massive rebuilding efforts that is now underway. NYC is fortunate that this unique “*Life Line*” is in place at no additional cost to the taxpayer. NYC will immediately benefit from APPLICANT’S intermodal freight technology in order to continue the *Highline’s* original mandate – namely the “*Life line of New York*”

This APPLICANT will incorporate the only effective technology that can accommodate all receiving and dispatching of heavy equipment, machinery and construction materials/supplies on virtually a 24/7 schedule that is not dependent on the traditional capital and labor intensive plus time and access sensitive methods of transporting material and machinery to construction sites throughout Manhattan. The Line is ideally suited and situated to transport all forms of vital material(s) to convenient major Manhattan East/West transportation access, all located adjacent to the major North/South Route 9A (West Side Express Highway). The Line will now provide a secure and uninterrupted, labor and capital efficient freight transportation link that would greatly alleviate current massive traffic congestion, quality of life threatening air and noise pollution as a result of the ever growing traffic demands created by the accelerated burden on all bridges, tunnels and surface street thoroughfares into and throughout Manhattan.

As THE BOARD is well aware, FORTY PLUS is a nationally renown 501(c)(3) credible and qualifying tax-exempt charitable organization and is willing to accept the line as a donation or outright purchase. APPLICANT’S proposal is the only Offeror interested, capable and equip for the preservation and immediate reactivation of rail service. In addition, APPLICANT is fully eligible to participate within the **Railroad Rehabilitation &**

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Improvement Financing Program ("RRIF"), administered thru the Department of Transportation, Federal Railroad Administration 49 CFR 260. Eligible purposes include the acquisition improvement or rehabilitation of intermodal or rail equipment and facilities including track, components of track, bridges, yards, buildings and shops. The program is designed to develop and establish new intermodal or railroad facilities. The program requires that eligible applicants be corporations, railroads and joint ventures that include at least one railroad. The strategic alliance between both MCRS and NYCH assures the participation within this program that has a statutory maximum amount of outstanding principal of **\$3.5 Billion**, of this **\$1 Billion** is reserved for projects primarily benefiting Shortline and Regional Railroads, of which MCRS qualifies. In addition, MCRS will also qualify for a number of Federal, State, Local Mass Transit and Freight Grant programs totaling over **\$21 Billion** – that is more than adequate to underwrite the development and construction of the Line and will be sufficient to address any liability concerns that the current owner of the Line may have to operate the Line for a minimum of three years following acquisition. Accordingly, APPLICANT should be found to be a "financially responsible person" in making its offer for the Line.

Moreover, a fully operational *HIGHLINE* will be self sufficient and profitable in this very dynamic market, since APPLICANT'S environmentally sensitive *state of the art* technology designed for this Line provides superior customer services and allow APPLICANT to address and adjust to market conditions and shippers demands in a cost efficient and timely manner -- therefore, not relying on any one industry for economic support, but maintaining enviable flexibility to respond to an ever changing marketplace. Simply stated, if one can conceivably envision the possibility of an ethereal "*hovering park*" in existence on this Line, it should be no effort at all for one to envision the successful reactivation of rail services on this valuable "*Life line of New York*" resource.

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

For years, there has been a rabid demand among local shippers to find a cost efficient alternative to the current labor and capital intensive, plus environmentally challenged trucking industry that local and national shippers are forced to rely upon. The citizens of New York and the U.S. must have this fabled "*Life line of New York*" fully operational to supplement all traditional transport options -- in every way possible in order to help address the massive rebuilding efforts as only the APPLICANT'S proposal can deliver. The public understands that since September 11th we live in a different world today. The local, state and federal governments are sensitive within all communities to do everything possible to lower all known and anticipated forms of terrorist threats, by

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eliminating any chance for catastrophic injury as a result of potential future terrorist attacks.

Since all entry onto the 1.6 mile *Highline* railroad can be easily monitored, APPLICANT'S technologies provides for unprecedented security, providing state-of-the-art "airport" quality inspection of 100% of all freight to deter contraband and would-be terrorists. APPLICANT'S proposal will incorporate custom designed explosive detection systems, technology incorporated that can scan all freight plus passengers with systems that employ *Computed Tomography* ("CT", similar to CAT-scan technology) to detect explosives and contraband. The technology to be employed is being effectively utilized world wide in over 50 airports. Currently, these security systems are based on a technology similar to *magnetic resonance imaging* to scan freight, baggage, parcels and mail and have accurately pin-pointed landmines and explosives in hostile environments. The technology has also been used in the lumber industry for years to scan lumber for defects or foreign objects and is used at over 300 sawmills worldwide. Today, and tomorrows climate dictates precautionary considerations. The *Highline* will be fully secure, in addition will provide a secure Germ Free Air System, incorporating *irradiation technology* to safeguard the public and virtually eliminate the threat of airborne bio-contaminates.

In response to potential use of the Line, CSX subsequently commissioned a study by the internationally renowned New York based REGIONAL PLAN ASSOCIATION [RPA] to research and publish their findings - "WHAT TO DO WITH THE HIGH LINE?"⁴. This report is encouraging since it determined that the obvious solution would be the reactivation of rail service for the lines future, absent reactivation, it proved inconclusive of what alternative usage may satisfy the public. To date over \$1 million in studies have been commissioned to determine the *Highline's* future.

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A number of major NYC shippers are presently adjacent to the Line, for example: as THE BOARD may be aware, both the HIGHLINE and Americas largest Postal processing plan the MORGAN PROCESSING CENTER (located on West 30th Street & 10th Avenue NYC), where planned and constructed concurrently and designed to increase Postal efficiency. The HIGHLINE's original design dedicated six (6) tracks plus platforms intended to accommodate 36 rail cars at one time – build directly into the 2nd floor of the MORGAN, to receive and dispatch over 8,000 rail cars of mail annually though this facility from 1934 – 1980 (when service was interrupted to accommodate the construction of the JAVITS CENTER and unfortunately never reconnected per guaranteed). Fortunately, the dedicated *Highline* “postal” spur is still intact at the MORGAN facility. Recently AMTRAK announced that it will eliminate mail service plus the MORGAN is currently anxious to deal with the inevitable loss of NYC based storage for its large postal trucks presently on a monthly storage arrangement and the ominous anticipated additional restrictions on vehicles entering Manhattan. APPLICANT's technologies will effortlessly help in improving the MORGAN's unfortunate 2nd poorest national delivery rating by reactivating this historically efficient Postal dispatch and receiving facility with our technologically advanced 21st Century safety and efficient rail freight technology. APPLICANT can easily reactivate a customized “*siding*” dedicated to the Postal Service, allowing even greater capacity, efficiency and security than historically possible.

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

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Another obvious client would be the JAVITS CONVENTION CENTER'S numerous vendors, exhibitors and attendees. The Center has had great concerns over the lack of sufficient space to accommodate *spent* intermodal delivery trucks and containers while shows are in session. The problem will only escalate when the HUDSON YARDS adjacent to the Convention Center become developed as previously illustrated. Presently the Convention Center management habitually complains that there is insufficient parking/storage for the attendee's intermodal containers and trucks. A reactivated *Highline* would be the dramatic savior for the necessary intermodal freight shipments that are the *life blood* of the Convention industry. Simply by providing virtually an unprecedented environmentally friendly "*on demand*" direct shipping amenity, without the negative necessity of wasteful parking/storage that has been, and continues to be a necessary concern of the convention center, the RAILROADS would also be an enviable beneficiary of this considerable commerce.

APPLICANT'S proposal will be a major contributor to alleviate the every growing traffic congestion by offering shippers an intelligent and competitively priced shipping option that will dramatically help in alleviating surface congestion by replacing trucks over exploitation of bridges and tunnels with "smart" intermodal containers being delivered by on-premises non-polluting environmentally sensitive vehicles. APPLICANT estimates when fully operational this offering will create 100 full time jobs for our neighbors, in addition to supporting the mission of 40+ that will further assist over 1,000 unemployed New Yorkers annually in obtaining gainful employment.

The current City administration has voiced its frustration to find alternatives for the age old problem of rubbish removal, currently dependent on cost prohibitive truck transport. The administration recently proposed to modify its current inefficient fleet of

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sanitation trucks to a model that will accommodate sealed interchangeable and standardized intermodal containers. This intermodal system would completely eliminate objectionable transfer stations and would be an ideal candidate to benefit from APPLICANT'S technology and the *Highline* reactivation. The resulting environmentally sensitive efficiency would result in dramatic cost savings for the City, eliminate an environmental hazard plus an unprecedented bonus of intermodal containerized shipping that could easily generate over \$150 Million annually for the RAILROADS which would NEVER have had access to this windfall without an innovative cooperative professional relationship that a reactivated *Highline* that APPLICANT is offering.

APPLICANT is aware of a number of private sector industries that would be euphoric if they could take advantage of the customized shipping services that a reactivated intermodal savvy *Highline* could offer thus assuring long term economic vitality of this enterprise. With the introduction of APPLICANT'S intelligent proposal we essentially have designed a virtual "turn key" railroad enterprise that can be a standard for other Class III Shortline railroads to emulate.

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

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

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

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

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

The major railroad systems are streamlining their operations and focusing on what they do best – long-haul, high volume, high speed service. At the same time, they continue to participate in moving most of the freight that originates or terminates on small railroads.

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For thousands of shippers in thousands of towns across the nation, small railroads provide the initial, cost-efficient connection to markets all over the country. Small railroads can be viewed as the "retail" portion of the railroad industry. They pick up and deliver rail traffic for a variety of shippers.

Small railroads are also involved in intermodal service and provide transfer facilities in many areas. Many short lines are diversifying into warehousing, storage and other value-added services in order to meet shipper's needs. As the rail network nears capacity in some areas of the country, small railroads such as APPLICANT'S proposal, dramatically help bypass congested areas to keep freight moving. The 50,000 miles of Shortline and regional railroad infrastructure in the U.S. is an underutilized asset that offers opportunities for future growth. Short line and regional railroads today operate many of the secondary routes and branch lines spun off by Class I railroads. Many portions of this country depend exclusively on short line and regional railroads for their rail service needs. In addition, Short lines also fill a vital transportation function providing local rail service for small shippers and by operating alternative routings for bridge traffic.

In legislative matters before the Congress and in regulatory and legal proceedings before THE BOARD, other federal agencies and in the courts, the AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION "ASLRRA" advocates enlightened public policies which promote a strong regional and short line rail component for the national transportation infrastructure. With regard to the APPLICANT'S interests in the *Hightline*, it is significant that no public project or alternate use for the right of way is being impeded by the proposed operation of rail service on the line. Short line railroads, are locally based and have the knowledge of the local economy and the flexibility to develop rail opportunities that may have not been imaginable in the past. Indeed, in buying low-density rail lines from Class I railroads, they rely on these abilities to grow and succeed.

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Thus, so long as APPLICANT is making good faith reasonable efforts to develop rail uses for the line, it should be given the opportunity to preserve rail service opportunities.

The ASLRRRA strongly believes that adverse abandonment cases such as the one now before THE BOARD present a serious threat to the long-term viability of the national rail infrastructure. They particularly threaten short lines for whom these seemingly small and insignificant pieces of rail line are much more critical to their economic and operational viability than to vast and powerful Class I national railroads.

If FEEDER LINE applications like this one are not granted by THE BOARD, it will slowly but surely chip away small chunks and pieces of the national rail infrastructure to the detriment of future generations of shippers whose rail transportation needs, though unimagined today, must nevertheless be protected today if they are to be accommodated in the future. Taken alone, small FEEDER LINE requests may seem insignificant, but like drops of water they can collectively strengthen the national rail infrastructure and help short line businesses to grow and prosper, as the necessity of a strong rail system for the future becomes clearer every day.

A number of residual benefits that one may have never imaged resulting from the *Highline's* reactivation, -- the neighborhood has long been promised for several decades (*but unable to deliver*) that the City would remove the garbage trucks, city buses and the automotive tow pound from the various piers to be included in the new Hudson River Park (located adjacent to the Highline). APPLICANT'S offering can effectively assist the City to keep its long overdue (and somewhat forgotten) commitments, which would provide the *Highline* corridors residence with over twice the area of the *Highline's* total deck with a generous 14+ acres of recreational landscape on the river conveniently located next to the *Highline* with gracious ease of access at street level by the public.

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As many short lines are diversifying into warehousing, storage and other value-added services in order to meet shippers needs, APPLICANT'S proposal will remarkably and virtually immediately provide an environmentally sensitive solution and accommodate both the Sanitation Department's vehicles plus storage of equipment and containerized supplies – all delivered "on demand" in addition, secure and efficiently storage and retrieval (on demand) of both commuter buses – with over 700+ arriving daily, contributing to massive volumes of traffic congestion and pollutants, and Pier 76, the City's tow pound. As the rail network nears capacity in some areas of the country, small railroads such as the *Highline* can help bypass congested areas to keep freight and traffic moving. The underutilized *Highline* will still be the "life line" it was designed to be, but with an evolving new clientele to service an evolutionary new century.

APPLICANT expects to rely on its strong relationship with FORTY PLUS' vast network of corporate contacts, donors and financial institutions to obtain financing from both private and public resources to support this acquisition. The strategic alliance with MCRS and NYCH underscores a solid history of profitably operations within a dynamic changing marketplace where NYCH thru dogged determination, flexibility, versatility and persistence has successfully survived for 103 years. Even during the confusion of 9/11 and 2003 massive East Coast power black out NYCH continued operations uninterrupted. This history of success along with the growing crescendo within our community to preserve and reactivate rail services on the *HIGHLINE* and FORTY PLUS, a highly credible and responsible entity's own dramatic impact within both NYC and the Nation by placing over 100,000 Americans in gainful employment -- demonstrates the universal support that this proposal has generate within both the private and public sectors.

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(2) **AN ESTIMATE OF THE NLV AND THE GCV OF THE LINE AND EVIDENCE IN SUPPORT OF THESE ESTIMATES.**

CONRAIL has consistently and publicly stated that line has a zero net liquidation value because CONRAIL did not own the right-of-way underlying the elevated line, and the astronomical cost of dismantling the line offset its salvage value. By decision served September 28, 1984, the INTERSTATE COMMERCE COMMISSION (ICC) fixed the purchase price of the line at \$10.00 and set terms and conditions for the purchase.

APPLICANT estimates the net liquidation value ("NLV") of the line to be \$41.00 (considering inflation) based on the ICC 1984 decision. Further, APPLICANT believes that the rights and interests that APPLICANT seeks to acquire from the RAILROADS have no GCV to the RAILROADS since the line has been dormant over the past 20 years. Accordingly, APPLICANT bases its application and offer to purchase on NLV.

NLV: Since little has changed since 1984 in regards to the Line when the ICC had fixed the purchase price of the line at \$10.00 -- with the exception that there has been understandable deterioration (plus vandalization) of possible salvageable material since 1984, and the cost to salvage has risen geometrically, although CSX maintains that the viaduct is structurally sound, factoring in inflation MCRS estimates the NLV of the line at \$41.00, comprised of unusable rail and track material removal costs and \$-0- for real estate. This is the higher of two, in short, CSX has already documented to the Board that CSX believes that the *Highline* has a negative NLV and no GCV to CSX. Accordingly, the rights and interest that APPLICANT seeks in this proceeding will not deprive CSX of anything to which CSX would ascribe GCV.

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While APPLICANT believes that the Line as a whole is valuable, CSX has treated the Line since it's acquisition of CONRAIL as an unwanted liability and a major distraction from its core businesses. Accordingly, APPLICANT submits its offer for the Line based on the NLV thereof.

- (3) **AN OFFER TO PURCHASE THE LINE AT THE HIGHER OF THE TWO ESTIMATES SUBMITTED PURSUANT TO PARAGRAPH (A)(4) OF THIS SECTION.**

APPLICANT hereby offers to purchase all of CSX's right, title and interest in the *Highline* between Mileposts 9.35 and 10.47 for \$41.00 the Line's NLV. Furthermore, APPLICANT also offers in the alternative to the RAILROADS, to accept the Line as a charitable donation along with a minimum \$7 Million cash contribution in which the RAILROADS may obtain a tax deductible benefit and be relieved of all future liability and expenses.

PROPOSED OPERATION

- (4) **THE DATES FOR THE PROPOSED PERIOD OF OPERATION OF THE LINE COVERED BY THE APPLICATION.**

APPLICANT intends to close on its purchase of the Line as soon as possible following THE BOARD's approval of its application, hopefully within 30 days after that approval is received. APPLICANT intends to operate the line on a continuing basis, being not less than three years from the date APPLICANT acquires the Line.

- (5) **An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.**

APPLICANT will be the operator of the line. APPLICANT will, as a result of this application, interchange with the RAILROADS and AMTRAK at or near milepost 9.35 and along AMTRAK'S service line the upstate New York Empire – the former NEW YORK CENTRAL (later PENN CENTRAL) freight line extending from the DV Tower at Spuyten Duyvil (milepost 0.0), Bronx, NY. APPLICANT will coordinate with NYCH in management and planning in the development of ROBOTIC RAIL WAY SYSTEMS, INC. patented MODULAR AUTOMATED FREIGHT SYSTEMS, the

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state-of-the-art "intermodal" rail freight technology to be incorporated within the Highline.

APPLICANT fully customized rail systems meet specific requirements and ensure optimum 24 hour & 7 day "on demand" shipper-friendly and universally compatible freight throughput. APPLICANTS' intermodal freight system is a natural evolution of present railroad technology, offering many advantages and solving a number of problems typically associated with conventional freight and passenger facilities. The *Highline* will be silent, pollution free and energy efficient.

APPLICANT will provide the shipper with totally "*user friendly*" technology designed to be easy and efficient to use, plus safer than any conventional rail freight facility: the entire freight shipping and/or retrieval process is completed within minutes in secure ADA compliant and comfortable facilities. The system is designed for ultimate reliability with triple + redundancies, including back up power – built to demanding military specifications incorporated within the design with infallible manual overrides. Furthermore, this intermodal freight system provides the ultimate peace-of-mind since shippers; the general public and unauthorized parties do not have access to the freight areas, which eliminates the threat of vandalism, accidental damage or theft. In addition, since the rail cars are used to ship, store and retrieve freight, there is no chance for machinery-caused damage.

APPLICANT has designed this system to provide services that meet the service needs of our target audience, both local and national shippers. Initially, service will be offered locally along the *Highline*, and expanded Nationally as soon as the connection to the national rail system *via* the AMTRAK'S service line is completed and tested. Since APPLICANT'S intermodal technology is automated and "on demand", there would be no traditional "train schedules" to restrict shippers access -- that will mean service on a 24 hour 7 day basis. As traffic levels are increased APPLICANT anticipates being able to provide greater access and availability to address our shippers needs on the Line. Based on anticipated traffic levels, APPLICANT

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estimates that it will cost \$50,000 per month for the first 12 months to operate the Line. Additionally, during that time, \$10 million will be required to restore the track structure to safe Class 1 track condition, to provide efficient and safe operating conditions on the Line. After the first 12 months of operation, APPLICANT anticipates the need to increase services and access to the facility to prepare for National shipping demand. While this will increase operating costs, there will also be a resulting increase in revenue.

Altogether, APPLICANT estimates the cost of rehabilitating the Line and operating it at the service levels discussed in the preceding paragraph to be \$30 million for the first three years. These operations are anticipated to yield revenues of approximately \$38 million.

- (6) **A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the trackage rights.**

The APPLICANT will maintain insurance that covers claims arising from personal injury and property damage in the event of derailments or other accidents or occurrences.

- (7) **Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Board approval. (This Statement Will be Binding Upon Applicant if the Application is Approved.)**

Absent Board approval, no preconditions will be placed upon shippers in order to receive service. Applicant is not seeking Board approval for any such conditions at this time.

- (8) **The name and address of any person(s) who will subsidize the operation of the line.**

No person is expected to subsidize operation of the Line. The strategic alliance between both MCRS and NYCH assures the participation within the Railroad Rehabilitation & Improvement Financing Program ("RRIF") that has a statutory maximum amount of outstanding principal of \$3.5 Billion, of this \$1 Billion is reserved for projects primarily

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benefiting Shortline and Regional Railroads, of which MCRS qualifies. In addition, MCRS will also qualify for a number of Federal, State, Local Mass Transit and Freight Grant programs totaling over \$21 Billion – that is more than adequate to underwrite the development and construction of the Line and will be sufficient to address all insurance requirements and any liability concerns that the current owner of the Line may have to operate the Line for a minimum of three years following acquisition. APPLICANT anticipates that any future funding needs will be satisfied from revenues generated by operations, financing from public and private sources or commercial loans. Moreover, a fully operational *HIGHLINE* will be self sufficient and profitable in this very dynamic market, since APPLICANT’S environmentally sensitive *state of the art* technology designed for this Line provides superior customer services and allows APPLICANT to address and adjust to market conditions and shippers demands in a cost efficient and timely manner -- therefore, not relying on any one industry for economic support, but maintaining enviable flexibility to respond to an ever changing marketplace. Accordingly, APPLICANT should be found to be a “financially responsible person” in making its offer for the Line.

THE LINE MEETS THE REQUIREMENTS OF 49 U.S.C. SECTION 10907

- (9) **A statement that the applicant will seek a finding by the Board that the public convenience and necessity (“PC&N”) permit or require acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad’s system diagram map.**

APPLICANT seeks a finding by the Board that the public convenience and necessity requires or permits that sale of the Line to APPLICANT.

(i) **If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that:**

- (A) **The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;**

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the RAILROADS has made it crystal clear to THE BOARD and APPLICANT that it would take "no position" in reference to the future of the Line and;

"encourage the Board to decide the issue of the Highline's future as soon as reasonably possible."

Since the CONRAIL acquisition in 1999, CSX as owner; to ensure that the structure poses no public safety hazards in response to inherited building violations and continually maintains that the structure is sound.

"Conrail and CSX Corporation and CSX Transportation, Inc. ("CSX") have spent millions of dollars in maintenance expenses, property and other taxes and counsel and consulting fees in connection with the Highline since the railroads' efforts to reach a Settlement Agreement began over four years ago. Additional delay in resolving the disposition of the Highline will impose substantial additional costs on the railroads" July 29, 2003 CONRAIL response to the Board

(B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

As THE BOARD is aware the Line has been "*in limbo*" for the past 2 decades.

(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

APPLICANT'S offer will not harm the RAILROADS' finances. Rather, through substantial tax benefits and the elimination of legal, maintenance and taxes, it will dramatically improve the RAILROADS' finances (as previously illustrated) plus allow the RAILROADS to relieve itself of an acknowledged liability that the RAILROADS clearly documented in August 26, 2003 :

"Consolidated Rail Corporation ("Conrail") takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible. Conrail and CSX Corporation and CSX Transportation, Inc. ("CSX") have spent millions of dollars in maintenance expenses, property and other taxes and counsel and consulting fees in connection with the Highline since the railroads' efforts to reach a Settlement Agreement began over four years ago. Additional delay in resolving the disposition of the Highline will impose substantial additional costs on the railroads."

"Conrail and CSX have devoted enormous time and expense to the matter of the Highline. We have worked hard to try to accommodate the interests of as

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many parties as possible, but the current state of limbo should not be allowed to continue. Once again, Conrail encourages the Board to move forward as rapidly as reasonably possible to decide the motions before it."

"Statement of "Consolidated Rail Corporation in Response to July 29, 2003 Order of the Board";

APPLICANT'S offer will allow the RAILROADS to dispose of an asset (liability) it does not want -- and once APPLICANT reactivates the *Highline*, we will provide the RAILROADS shippers an attractive option of ready direct access into the most lucrative market in the country. Accordingly, because APPLICANT'S offer will allow the RAILROADS to shed an asset it does not want, plus maintain access to a potential limitless market -- the RAILROADS will not be harmed financially by a grant of this application.

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

For the reasons set forth under paragraph "C" immediately above a grant of this application will have no negative impact on the RAILROADS operations what so ever. Upon the acquisition of the *Highline* by CSXC on June 1, 1999, the RAILROADS management has carefully reviewed the feasibility of maintaining the *Highline* in light of CSX efforts to streamline their operations and focusing on what they do best -- long-haul, high volume, high speed service CSX management has concluded that the *Highline* would not be economically viable within CSX Class I economic objectives. Subsequently, in view of the "novel legal issues" that have plagued this line and predate the RAILROADS ownership, plus the ongoing expense of maintaining the legally encumbered *Highline*, the RAILROADS management concluded that the *Highline* would be an excellent candidate for liquidation. Subsequently in response to the growing community demand to preserve the *Highline*, the RAILROADS management recruited the STB board to assist in the transfer of ownership. The adjacent property owners will also realize a dramatic bonanza with welcomed appreciation in their property value without re-zoning, since they now will have a priceless amenity that can provide desirable services and convenience long thought gone.

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With shipping and mass transit amenities adjacent to their properties, these owners will be the envy of the City and experience the demand that the original pioneering property owners had received when the *Highline* was first opened in the 1930's. The revitalization of the *Highline* will provide employment and unforeseen recreational and quality of life benefits thru the brilliance of its design and purpose that offers opportunities for immediate economic growth and being a proud *catalyst* for improving the quality of life not only in the *Highline* corridor but throughout NYC.

(E) **The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.**

For the reasons set forth under paragraph "B" above a grant of this application will immediately reactivate this Line and dramatically provide railroad transportation for shippers who wish to transport traffic over the Line. The principal difference between the RAILROADS, THE CITY and CPO with respect to the Line is that APPLICANT wants to operate the Line; the RAILROADS, THE CITY and CPO do not.

APPLICANT will also bring an aggressive, forward thinking approach to service on the Line as a **Class III Short line**, incorporating state-of-the-art and environmentally responsible, non-polluting intermodal freight technology to generate self-sufficient profitability and competitively priced rail services designed to address current and growing local and national shipper's demands. APPLICANT will provide valuable freight redundancy that will dramatically alleviate surface street congestion, reduce pollution, contribute to pedestrian safety and the quality of life in NYC while further be instrumental in reducing hydro-carbons and oxides of caustic nitrogen per mile generated by inefficient and costly truck transports that congest city streets and who's pollutants double as each vehicle ages and furthermore contribute vast volumes of carbon monoxide that lead to

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principal causes of global warming plus debilitating and even lethal respiratory health ailments within our community.

APPLICANT'S acquisition will generate much needed employment plus institute essential community employment support programs funded by a reactivated *Highline*. Presently the battle is to make New York's economy healthy as the biggest and richest freight port on the East Coast – and create thousands of freight/transportation dependent jobs – this hinges on the future of NYC's fabled transportation infrastructure. Experts predict that in 10 years with the freight industry adopting an airline-style *hub-and-feeder* system, there will be only one major East Coast port between Canada and Mexico. If we do not aggressively support benefits new freight transport technology offers our New York-New Jersey market (presently the third-busiest port in the nation) NYC/NJ loses its competitive advantage. The New York region could lose 40% of its current 230,000+ freight-dependent jobs, according to a Port Authority study, that is over 92,000 jobs at risk! The same study illustrated if New York were to upgrade its transportation infrastructure, it would multiply freight commerce and jobs by 800% to 1,000% during the next 40 years. **FORTY PLUS** (established in NYC in 1939 and parent of MCRS) is a national and local authority on how to generate employment – we recognize the dramatic impact that a reactivated *Highline* would contribute in our tri-state region.

PORT AUTHORITY studies show the NY-NJ ports are now operating at 90% capacity and that demand for cargo space will triple in the next 15 years. Complicating future shipping development is the severe difficulty of accommodating shipper's goods into and out of Manhattan.

A new study recently reported that Drivers could save an astonishing 53 hours a year in travel time if 25 percent of freight shipments were brought into the City on the rails and not the roads. The report also found that New Yorkers could each save 254 gallons of

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fuel a year, reducing congestion and pollution. "*Rail freight is a significant part of the solution for New York's highway gridlock problems,*" reported Wendell Cox, a transportation expert who authored the study.

New rail freight development such as a reactivated *Highline* would boost the city's economy, reduce traffic congestion and improve air quality. A recent NEW YORK UNIVERSITY study analyzed the environmental and public health effects associated with living near pollution sources, including waste transfer stations and major expressways dealing with respiratory related health issues in New York City. The study confirmed that New Yorkers suffer from the worst rates of asthma in the country, with over 10 percent of schoolchildren and more than 6 percent of the total population affected by the chronic respiratory disease. Behind this respiratory illness epidemic are several local factors that contribute to this alarming explosion. Diesel trucks are omnipresent; creating dangerous levels of air pollution – the study, using a mobile van laboratory to analyze hourly concentrations of diesel exhausts reveals that the concentrations of nitrogen dioxide, sulfur dioxide and carbon monoxide are substantially higher than samples taken from rooftop monitoring sites. Air pollution is often more severe closer to the ground, and so it is important that it be studied where people actually are (on the ground) the pollution from these trucks has been specifically linked to severe asthma attacks.

Asthma, for example, is the number one cause of student absenteeism in New York City schools, where children are hospitalized for asthma at a rate 1000 percent higher than the rate for children in New York State as a whole. The study underscores how poor New Yorkers bear a disproportionate share of the burden of our city's air-borne disease. As it stands now; many of NYC children only get their asthma treated when it becomes so bad that they have to go to the emergency room.

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This illustrates that we should pursue technological and transportation solutions to environmental challenges, more environmentally friendly companies such as APPLICANT provide economic growth, solutions and a cleaner environment shattering one of the great myths of our day that holds that environmental protection and economic growth are incongruous.

Today, in the interests of national security, officials feel the time is right for a bold plan proposed more than 80 years ago: a \$7 billion rail freight tunnel under NY harbor. More than 90% of everything that comes into NYC is *via* the George Washington and Verrazano bridges. According to a new environmental impact study the development of rail freight alternatives would generate more than 30,000 new jobs and remove more than 1 million trucks off the city's street per year. As freight demand grows the necessity of providing the City with additional secure and environmentally sensitive freight redundancy confirms the importance of rehabilitating and reactivating the Highline ASAP. As in the *Highline's* prime and now imminent future, it can continue to be the "*lifeline of NYC*" for the hope and health of our City and Nation -- as Manhattan's only environmentally sensitive direct rail freight link. MCRS, by this application is committing itself to work to develop traffic, provide service needed by shippers, to engage in industrial development efforts, and to upgrade the Line. All of these will lead to a better and environmentally sound alternative to shippers. New routes and new pricing opportunities will be available to shippers; in short, shippers will have the benefit of competition which they have not had before. Local and National shippers will benefit from the grant of this application.

Finally, community support for the preservation and reactivation of this Line shows that shippers and the community will be better served by the APPLICANT than with any

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other offerings to date. Such support has been exhibited throughout the proceedings relating to this Line.

- (ii) **If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application:**

APPLICANT does not seek a finding that line is shown in Category 1 or 2 on the RAILROADS system diagram map.

ADDITIONAL INFORMATION

- (10) **A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)**

APPLICANT does not choose to be exempt from of Title 49 of the U.S. Code pursuant to authority available under 49 U.S.C. Section 10907(g).

- (11) **A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange or traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.**

APPLICANT is not requesting trackage rights over the RAILROADS for purposes of interchange or to move equipment between noncontiguous feeder lines. APPLICANT will, as a result of this application, interchange with the RAILROADS and AMTRAK at or near milepost 9.35 and along AMTRAK's service line the upstate New York Empire - the former New York Central (later PENN CENTRAL) freight line extending from the DV Tower at Spuyten Duyvil (milepost 0.0), Bronx, NY

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- (12) **If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:**
- (i) The railroad(s) involved;
 - (ii) The estimated revenues that will result from the division(s)
 - (iii) The total costs of operating the line segment purchased (including any trackage rights fees).
 - (iv) Information sufficient to allow the Board to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year; and
 - (v) Any other pertinent information.

APPLICANT does not request the establishment of joint rates and divisions at this time.

- (13) **The extent to which the owning railroad's employees who normally service the line will be used.**

In light of the current condition of the Line and the rehabilitation that will begin upon THE BOARD granting of this application it is not anticipated that APPLICANT will require additional operating employees in the near term in order to provide service on the Line. To the extend that rehabilitation of the Line is required, APPLICANT intends to perform that work with its own forces or to use outside contractors.

Because the RAILROADS has never actually "operated" the Line, it is not anticipated that this transaction will result in any displacement of current the RAILROADS operating employees. Similarly, the RAILROADS has performed little or no maintenance on the Line (other than to conform to several NYC building code violations several years ago) as a result of the interruption of service over the past 20 years, while the approximately 1.6 miles of trackage has required only limited if any maintenance other than security. Accordingly, APPLICANT does not anticipate that any of the RAILROADS employees have spent a majority of their working time performing labor that would be discontinued as a result of selling the Line to APPLICANT.

Should current RAILROADS employees be displaced as a direct result of this transaction and should APPLICANT require additional employees in order to conduct operations on the

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Line, APPLICANT is willing to accept employment applications from former RAILROADS employees and to accord such persons priority over other, equally-qualified applicants. To be hired, all applicants must be qualified by training and other capabilities to fill an available position and be willing to accept employment under the terms and conditions available to APPLICANT'S employees.

- (14) **A certificate stating that the service requirements of § 1151.2(a) have been met.**

See Certificate of Service attached hereto.

Respectfully submitted,



Tomislav R. Neuman,
Executive Director

**FORTY PLUS FOUNDATION &
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Dated: October 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2004, copies of the forgoing Notice of Intent to File FEEDER RAILROAD DEVELOPMENT APPLICATION of the Forty Plus Foundation & Manhattan Central Railway Systems, LLC was served by first-class mail, postage prepaid, or (hand-delivery), upon all required parties of record.


Tomislav R. Neuman