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Please Reply to:  
P. O. Box 840  
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.  
E-mail: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)  
Telephone Extension 21

February 6, 2012

**VIA FEDERAL EXPRESS**

Rachel Campell  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

FEB 07 2012

Part of  
Public Record

RE: Docket No. AB 167 (Sub-No. 1191X)  
Consolidated Rail Corporation -- Abandonment  
Exemption -- in Philadelphia, Pennsylvania

Docket No. AB 55 (Sub-No. 710X)  
CSX Transportation, Inc. -- Discontinuance  
Exemption -- in Philadelphia, Pennsylvania

Docket No. AB 290 (Sub-No. 552X)  
Norfolk Southern Railway Company -- Discontinuance  
Exemption -- in Philadelphia, Pennsylvania

Dear Ms. Campbell:

Enclosed please find an original of the Response to Information Requests of Eric S. Strohmeyer (Individually) and CNJ Rail Corporation Pursuant to Notice of Intent to File an Offer of Assistance, with Exhibit 2, Valuation Maps, in full size and on CD disk as requested.

Note that service is also being made on Mr. Strohmeyer and CNJ Rail Corporation, as indicated on the attached Certificate of Service. If any additional information is required, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin C. Dunlap, Jr." The signature is written in dark ink and is positioned below the word "Sincerely,".

Benjamin C. Dunlap, Jr.

BCDjr/jc  
Enclosures

cc: Eric S. Strohmeyer (via Federal Express, w/encs.)  
John Enright, Esquire

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

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*STB NO. AB 167 (SUB-NO. 1191X)*

CONSOLIDATED RAIL CORPORATION  
– ABANDONMENT EXEMPTION –  
IN PHILADELPHIA, PENNSYLVANIA

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*STB NO. AB 55 (SUB-NO. 710X)*

CSX TRANSPORTATION, INC.  
– DISCONTINUANCE EXEMPTION –  
IN PHILADELPHIA, PENNSYLVANIA

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*STB NO. AB 290 (SUB-NO. 552X)*

NORFOLK SOUTHERN RAILWAY COMPANY  
– DISCONTINUANCE EXEMPTION –  
IN PHILADELPHIA, PENNSYLVANIA

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**RESPONSE TO INFORMATION REQUESTS OF  
ERIC S. STROHMEYER (INDIVIDUALLY) AND  
CNJ RAIL CORPORATION PURSUANT TO NOTICE  
OF INTENT TO FILE AN OFFER OF FINANCIAL ASSISTANCE**

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Consolidated Rail Corporation (“Conrail”), CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”) (collectively “Applicants”) hereby jointly respond to the Requests for Information contained in paragraph 4 of the Notice of Intent to File an Offer of Financial Assistance, filed on January 30, 2012, by Eric J. Strohmeyer (Individually) (“Strohmeyer”) and CNJ Rail Corporation (“CNJ”), pursuant to the provisions of 49 U.S.C. § 10904(b) and 49 CFR § 1152.27(a) as follows:

1. An estimate of the annual subsidy and minimum purchase price to keep the line or a portion of the line in operation.

**RESPONSE:**

It is impossible for the Applicants to provide an estimate of an annual subsidy to keep the line, or any portion thereof, operational since the line has not been in operation for at least 30 years. Regarding the minimum purchase price, Conrail only owns from milepost 2.70 to 2.98. Milepost 0.60 to Milepost 2.70, was sold to the City of Philadelphia in 1978 and any rail on that portion is owned by the City. Neither Conrail nor any predecessors in interest ever owned from Milepost 0.0 to 0.60. Rather, any train operations over that portion have been pursuant to a street railroad charter, dating from the 1850s. Accordingly, any purchase price would apply just to the portion owned by Conrail, of which Strohmeyer and CNJ Rail Corporation have indicated an interest only in Milepost 2.70 to 2.80. This portion comprises 1.39 acres for which Conrail estimates a minimum purchase price of \$200,000, based upon the agreed sales price for a portion of the former line north of that for which Strohmeyer and CNJ state they intend to make an Offer of Financial Assistance, as explained further in the response to 3-III-h below. As to the portion that was sold to the City of Philadelphia, Conrail gave valuable consideration to the City (five acres of right-of-way for a dollar) for those perpetual operating rights and it is unfair for Mr. Strohmeyer and CNJ Rail Corporation to be able to step into Conrail's shoes without having to provide any consideration. Moreover, Conrail does not have an unfettered right to assign those rights. If the Board believes that Conrail must offer those rights to Mr. Strohmeyer and CNJ Rail Corporation then it would place a nominal consideration on those rights of \$25,000. As to the portion between milepost 0.0 and 0.60, Conrail estimates a purchase price of its operating rights over that segment at \$1.00.

2. The most recent reports on the physical condition of that part of the rail line involved in the proposed abandonment or discontinuance.

**RESPONSE:**

The elevated portion of the line owned by Conrail, from Milepost 2.70 at Indiana Avenue to Milepost 2.98, has not seen service for more than 30 years. To the best of

Conrail's knowledge, the rails and ties on this portion of the line have not been removed, other than some double tracking in spots and some vandalism. The remaining tracks, however, are rusted and overgrown with weeds and have not been subject to inspection by Conrail during that time frame. The tracks on the American Street segment of the line from Milepost 0.60 to 2.70 were sold to the City of Philadelphia in 1978 and Conrail retained only operating rights. To the best of Conrail's knowledge, the tracks remain in the street from Milepost 2.70 south to Thompson Street at approximately Milepost 0.60. The track from Milepost 0.00 to approximately Milepost 0.60 has been removed, as discussed below. Since there has been no rail traffic over the American Street segment for over thirty years, they have not been subject to inspection by Conrail during that time frame.

The City had purchased the American Street segment of the line as part of a redevelopment project to attract rail-served industry. The segment was rebuilt into a single-track line with approximately 15 sidings. The line terminated at the Reading Yard at Willow and Noble Street Yard next to Pier 27 on the Delaware River. However, the City's attempt at attracting rail-served industry off of the reconstructed track never materialized and many of the newly constructed sidings never saw a single rail car. It is believed there has been no service on that portion of the line in at least 30 years. At some point after the year 2000, the Schmidts Brewing Company facility near Girard Avenue was demolished as part of a redevelopment project at that time. It is believed that a substantial portion of the track between Milepost 0.00 and approximately Milepost 0.60 were removed at that time. Conrail has no record of the developer or the City seeking permission from Conrail for the removal of the tracks in this area at that or any other time.

3. Traffic revenue and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over the line, including, but not limited to:
  - I. A copy of any agreements Conrail, or any of its affiliates or subsidiaries, is a party to, which pertain in any way to the Line, including but not

limited to, any Freight Operating Rights, Freight Operating Easement(s) and any related Operating Agreements or Leases, and any agreements Conrail have, or contemplates having, involving the City of Philadelphia, any other Pennsylvania State or Local agency or entity, hereinafter "Governmental Agencies," or any other individual or legal entity.

RESPONSE:

Attached hereto as Exhibit "A" is the Operating Agreement that Conrail had with the City of Philadelphia, dated June 28, 1978.

- II. A copy of all papers, documents or agreements Conrail has received, has in their possession, or has knowledge of, which pertain in any way to any agreements any legal entity has made, or has indicated a willingness to make, which pertain in any way to the use of, or non-use of, the Line, including but not limited to any agreement(s), including any contemplated sale of the Line, licensing or lease agreements, whether executed or contemplated, any legal entity has made with Conrail, the City of Philadelphia, or any other legal entity.

RESPONSE:

The only document responsive to this request is the Operating Agreement with the City of Philadelphia attached hereto as Exhibit "A."

- III. Any other information which relates to Conrail present, prior or future use of the Line, including but not limited to:

- a. The number of times the Line was used in the past five years, and the number of rail cars delivered to and/or the number of rail cars received from, each shipper on the line, for each time the Line was used;

RESPONSE:

The rail line has not seen service in at least 30 years due to lack of business.

b. The number of times the Line was unavailable for Conrail's use in the past five years, and the reason(s) why the Line was unavailable;

RESPONSE:

The line has not been in service for at least 30 years due to lack of business.

c. The specific date the Line was taken out-of-service, if the Line was taken out-of-service;

RESPONSE:

The line has not been officially taken out of service, but the line has seen no service for at least 30 years due to lack of business.

d. The speed limits on the Line, and any other restrictions which pertain to the use of the Line, by Milepost;

RESPONSE:

As the line is in a state of significant disrepair, it currently could not be used without extensive renovations and so the request for speed limits on the line is not applicable.

f. A summary of all disagreements, misunderstandings, or points of contention between Conrail and the City of Philadelphia or any other party or entity, concerning Conrail's use of the Line, and/or its obligations to remediate any environmental concerns on any portion of the line during the past five years;

RESPONSE:

None known.

g. An indication of where CNJ would interchange rail traffic with Conrail, CSX and NS;

**RESPONSE:**

The portion of the line regarding which Strohmeyer and CNJ state their intention to make an offer of financial assistance does not connect with any other rail line and thus there is no ability to interchange rail traffic with Conrail, CSXT or NSR. The north end of the portion of the line regarding which Strohmeyer and CNJ state they intend to make an Offer of Financial Assistance at Milepost 2.80 crosses over the Richmond Industrial Track approximately twenty feet above that line and does not connect to it. On the south end, substantial track has been removed, presumably by the City and the line no longer connects to any active rail.

h. A copy of a proposed interchange agreement;

**RESPONSE:**

No such agreement is appropriate since the line does not connect to any active rail lines.

4. A copy of all valuation maps for the Line, and if not depicted on the Valuation Map(s), a listing of all deed references showing Conrail's legal interests in the Line.

**RESPONSE:**

A copy of the relevant Valuation Maps are attached hereto as Exhibit "B."

5. A copy of the records, accounts, appraisals, working papers, and other documents that would have been used in preparing a §1152.36 Exhibit 1, or other records, reports, and data in the possession of the Petitioners, that provide comparable data.

RESPONSE:

A request for records, accounts, appraisals, working papers and other documents that would have been used in preparing a § 1152.36 Exhibit 1 is not applicable, as there has been no rail service on the line for at least 30 years, and thus no such data exists. However, attached hereto as Exhibit "C" is a copy of an Agreement of Sale for a portion of the former line at about Milepost 2.9+/-, which sale price is based upon \$125,000 per acre. This sale portion is north of that portion of the former line concerning which Strohmeyer and CNJ state they intend to file an Offer of Financial Assistance, which portion ends at Milepost 2.80.

Respectfully submitted,



BENJAMIN C. DUNLAP, JR., ESQUIRE

Nauman, Smith, Shissler & Hall, LLP

200 North Third Street, 18<sup>th</sup> Floor

Harrisburg, PA 17101

(717) 236-3010, Ext. 21

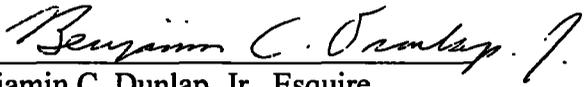
Counsel for Consolidated Rail Corporation

DATE: February 6, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of February, a copy of the foregoing Response of Consolidated Rail Corporation to Information Requests of Eric S. Strohmeyer (Individually) and CNJ Rail Corporation Pursuant to Notice of Intent to File an Offer of Financial Assistance, was served by Federal Express, overnight delivery, upon:

Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation  
81 Century Lane  
Watchung, NJ 07069

  
\_\_\_\_\_  
Benjamin C. Dunlap, Jr., Esquire  
Attorney for Consolidated Rail Corporation

COUNTERPART # 4 OF SIX

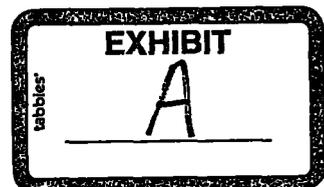
225 095

**PROJECT AGREEMENT**  
between  
**CITY OF PHILADELPHIA**  
and  
**CONSOLIDATED RAIL CORPORATION**

*Counterpart 1 of 6 to City of Phila.  
Counterpart 2 thru 4 to Council  
Counterpart 5 & 6 to City of Phila.*



**CITY OF PHILADELPHIA**  
**FRANK L. RIZZO, Mayor**  
**JUNE, 1978**



PROJECT AGREEMENT

THIS PROJECT AGREEMENT, made this <sup>28<sup>th</sup></sup> day of JUNE, 1978, by and between the City of Philadelphia, party of the first part, hereinafter called "CITY", and CONSOLIDATED RAIL CORPORATION, a Pennsylvania Corporation having its offices at 6 Penn Center Plaza, Philadelphia, Pennsylvania 19104, party of the second part, hereinafter called "CONRAIL":

WHEREAS, City has initiated a coordinated public/private venture to revitalize the American Street Corridor, a major existing industrial complex in Eastern North Philadelphia; and

WHEREAS, City proposes to repave, modernize and improve American Street, from Cadwallader Street to Indiana Avenue, as a basic element of the American Street Industrial Development Program; and

WHEREAS, City in cooperation with Conrail proposes reconstruction of the rail track system in the bed of American Street and the construction of a rail team track facility adjacent to the Berks Street Yard between Second Street and Philip Street; and

WHEREAS, City has applied for and received a formal grant approval dated August 18, 1977, from the Economic Development Administration ("EDA") of the U. S. Department of Commerce for the repaving, modernizing and improvement of American Street and of the rail track system in the bed of American Street, and the construction of a team track facility adjacent to the Berks Street Yard, utilizing funds provided by the City and the Economic Development Administration pursuant to the Public Works Act of 1965, as amended, Title IX, and applicable EDA Regulations (13 CFR SECTION 308); and

WHEREAS, Conrail owns certain tracks and land and possesses charter rights for its rail right-of-way, in American Street and operates rail service over such tracks; and

WHEREAS, City and Conrail pursuant to a Memorandum of Understanding, dated June 14, 1977, which Memorandum was part of the City's formal application for Federal funding, agreed that upon approval of such project funding, they would pursue the negotiation of appropriate agreements to permit the proposed improvements to be carried out and rail service to be operated over the improved rail facilities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and each party intending to be legally bound hereby, it is covenanted and agreed as follows:

1. Scope of Improvements

City will perform all engineering work of preparing designs, plans, specifications, proposals and contract drawings for the improvement of American Street from Cadwallader Street to Indiana Avenue, and for the construction of a rail team track facility adjacent to the Berks Street Yard of Conrail, between Second Street and Philip Street. City will advertise and award construction contract or contracts for the said improvements. The City's contractor(s) will remove existing main line tracks, siding tracks, yard facilities in the team track area, railroad crossings, crossing gates, signals, and all other appurtenances necessary for rail service (except as provided in Section 2 of this Agreement), and will construct new main line tracks and siding tracks in American Street, a new team track facility adjacent to the Berks Street Yard between Second Street and Philip Street, new railroad crossings, signals, and all other appurtenances necessary for rail service. All design and construction work herein described to be performed by the City is subject to the receipt of approved Federal funding for such work.

2. Removal of Railroad Facilities

All rail removal and new rail track construction will be performed by the City's contractor or contractors. Abandoned rails removed will become

property of the contractor(s). Conrail, with its forces will remove all salvageable elements of the existing railroad communication and signal facilities. Those communication and signal facilities not removed by Conrail shall become property of the City's contractor or contractors.

### 3. Conrail Approvals

Prior to the submission of any and all designs, plans, specifications, proposals, and contract drawings, or any amendments or changes in such designs, plans, specifications, proposals, or contract drawings, to the Pennsylvania Public Utility Commission, hereinafter called "P.U.C.", for its approval, Conrail will review and approve all such design plans, specifications, proposals, contract drawings or amendments or changes thereto.

Such review and approval by Conrail as specified in this Section shall be carried out on an expedited basis. Designs, plans, specifications, proposals, contract drawings, or any amendments or changes therein shall be submitted to the Chief Engineering Officer of Conrail with a request for approval.

### 4. Conrail Design and Construction Review

Conrail will be promptly reimbursed, upon application to the City and subject to approval of the Economic Development Administration (EDA) of the U. S. Department of Commerce, for all certified actual costs of salary and expenses of engineering design review personnel, engineering and inspection personnel necessary for the reconstruction of the railroad track facilities in the bed of American Street, the team track facilities and for the protection and maintenance of railroad traffic during the period of construction. Said reimbursement application shall be filed with the City no more frequently than monthly and shall contain such documents, and be in such standard form, as reasonably required by the City. Conrail shall be reimbursed by the City for costs as specified in this Section to the extent that said costs are not more than \$75,000.00. Should additional costs under this Section be incurred by Con-

rail this Agreement shall be amended to provide for reimbursement of such additional costs.

5. Application to the P.U.C.

City and Conrail will make application jointly to the P.U.C. for approval of the proposed rail reconstruction improvement and for any changes or amendments thereto, subject to the terms of Section 3 of this Agreement. This Agreement is conditioned upon such joint application and the approval of the P.U.C. of the proposed reconstruction improvement, and the underlying agreements thereto.

6. Insurance

In connection with all work under this agreement which will be performed by a contractor on behalf of the City, said contractor or any subcontractor of said contractor will be required to provide insurance satisfactory to City and Conrail as follows:

- (a) Contractor's Public Liability and Property Damage Liability Insurance.
- (b) Contractor's Protective Public Liability and Property Damage Liability Insurance.
- (c) Railroad Protective Liability Insurance written in the A.A.S.H.T.O. - A.A.R. form naming Conrail and the City as insured.

All three (3) types of insurance hereinabove specified shall provide for coverage of not less than \$2,000,000 single limit bodily injury and/or property damage combined. All such policies shall be endorsed to provide that City and Conrail will be notified in writing at least ten (10) days in advance by insurance carriers of any changes in the policies which concern or modify the insurance coverage provided.

7. Liability

Except as herein otherwise specifically provided, in respect to

all loss or damage to property, or in respect of injury to or death of persons, caused by or in connection with the removal and reconstruction of the railroad track facilities in the bed of American Street, the team track facilities, and all other appurtenances thereto necessary for rail service, as between the City and Conrail:

- (a) Conrail, pursuant to Section 6 of this Agreement, shall assume responsibility for and hold City harmless from all losses (including claims for injuries to employees of City or its Contractors), expenses, attorneys' fees, damages, claims, and judgments arising from or growing out of the actionable acts or omissions of Conrail, its agents or employees;
- (b) City or its contractors, pursuant to Section 6 of this Agreement shall assume responsibility for and hold Conrail harmless from all losses (including claims for injuries to employees of Conrail), expenses, attorneys' fees, damages, claims and judgments arising from or growing out of the actionable acts or omissions of City or its contractors, their agents or employees, solely or in conjunction with a third person;
- (c) Conrail and City shall equally bear all losses, expenses, attorneys' fees, damages, claims, and judgments arising from or growing out of the joint or concurring actionable acts or omissions of both parties, their respective agents or employees,

8. Disruption of Rail Operations

City and Conrail recognize that improvement and reconstruction of railroad track facilities in the bed of American Street, and the team track facilities will unavoidably require changes in the pattern of Conrail's operation

of rail service, and City and Conrail agree that in order to minimize the negative impact of such changes, as between the City and Conrail:

- (a) City will use its best efforts to schedule construction activity in such phases as will minimize to the greatest extent possible any disruption of regular rail operations in American Street, and City agrees whenever possible, to provide Conrail with sufficient advance notice of planned actions which may disrupt such operations to permit Conrail to effect alternative arrangements.
- (b) Conrail will cooperate with City to make alternative service and operating arrangements in the event of a disruption, and Conrail will use its best efforts to furnish continued rail service or alternative service to customers in the area affected by such improvement and reconstruction.

9. Rail Crossing Protection

The new rail crossing protection will be constructed by the City as part of the improvements in accord with the approval and Order of the P.U.C. The cost of new rail crossing protection will be the responsibility of the party designated by the P.U.C.

10. Conveyance-American Street

By quit-claim deed, attached as Exhibit A to this Agreement, Conrail conveys to the City any right, title, and interest which Conrail may possess in the properties described in that deed.

11. Approval of Performance

Conrail and the City agree that each portion or portions of this project, and that the completed project, shall be constructed in accordance with the designs, plans, specifications, proposals, and contract drawings, and any changes or amendments thereto, approved by Conrail and the P.U.C. Conrail shall

have the right to inspect any stage of rail removal or construction and the entire project at reasonable times and upon reasonable notice to the City. Upon completion, as defined below, of a particular portion or portions of the project, and the entire project, the City shall notify Conrail in writing. Upon such notice, Conrail will, within fourteen (14) days, conduct a final inspection of the portion or portions of the project involved, or the entire project, and notify the City in writing whether the completed portion or portions of the project or the entire project conform to approved construction designs, plans, specifications, proposals, and contract drawings. Conrail agrees to notify the City if any completed portion or portions of the project, or the entire project, shall fail to conform, as specified herein, and describe specifically such failure and any actions necessary to remedy it. The City agrees to take action promptly to remedy such failure, and to notify Conrail of such action.

Within seven (7) days of completion of remedial action by the City, Conrail shall verify that such action has remedied any failure to conform as specified herein, and shall submit to the City its written approval as to the completed portion or portions of the project, or the entire project. "Completion" shall be defined as that point in time when a particular portion or portions of rail track system is certified as complete by the City and payment to the Contractor for the work is authorized by the City.

12. Subsequently Identified Properties

It, subsequent to the conveyance by Conrail to City of any right, title, and interest which Conrail may possess in the properties described in the quit-claim deed attached as Exhibit A to this Agreement, any additional property or property rights possessed by Conrail within the confirmed City Plan width of American Street are identified and have been found to be necessary to the successful completion of the reconstruction of the railroad track facilities in the bed of American Street or the team track facilities, or the overall reconstruct-

tion and improvement of American Street, Conrail agrees to convey such additional property or properties, by separate quit-claim deed, to City, without any claim for additional compensation or damages.

### 13. Operating Rights

Subject to the terms of the Operating Rights Agreement, attached as Exhibit B to this Agreement, the City grants to Conrail a perpetual right to operate rail service (with no fee or charge as to said operating right) over the main running tracks, siding tracks, and team track facilities which will be constructed in or adjacent to American Street between Cadwallader Street and Indiana Avenue. Said perpetual right to operate shall be limited to the operation of rail service as specified herein, and shall remain in full force and effect so long as Conrail or its successors or assigns shall continue to provide rail services as specified herein and in the Operating Rights Agreement.

### 14. Maintenance of Rail Facilities

Pursuant to the terms of the Operating Rights Agreement, attached as Exhibit B to this Agreement, Conrail agrees to maintain, for the period during which rail service is operated, the main running track facilities; rail appurtenances; siding tracks to the extent specified in siding track agreements executed with industries located on or near American Street; rail crossing protection and railroad signalization systems as ordered by the Pennsylvania Public Utility Commission; rail track structures, any ramp or platform, and paving and switches in the team track area; and all other rail appurtenances which will be constructed as part of the improvement in American Street.

Conrail agrees that pavement located between the rails and for a distance of two (2) feet beyond each rail shall be maintained by Conrail, and damage which occurs thereto shall be repaired by Conrail.

The City has a continuing right to inspect all facilities and rail appurtenances to be maintained by Conrail in order to ensure Conrail's compliance

with the maintenance requirements as specified herein and in Exhibit B to this Agreement. The City agrees that any inspections carried out under this Section shall be on a regularly scheduled basis, although non-scheduled inspections may be conducted at the specific request of the City. The City further agrees that the Conrail supervisor of track or his representative shall be present at all inspections.

15. Siding Track Agreements

Conrail will enter into agreements with siding track users, to operate rail service on siding tracks under terms and conditions specified therein. Conrail shall specify in the terms and conditions of said siding track agreements that the industry shall release, indemnify and hold the City and its agents harmless as to losses when caused by fire, explosion, or other actionable acts or omissions of such industry's agents or employees.

16. General Supervision

The general supervision of the railroad track reconstruction work to be accomplished under authority of this Agreement shall be under the direction of the Streets Commissioner for the City, or his duly authorized representatives. The Chief Engineering Officer of Conrail, or his duly authorized representatives, shall supervise the performance of any duties of Conrail under this Agreement in connection with the railroad track construction work to be accomplished under the authority herein.

17. Completion of the Project

It is understood and agreed between City and Conrail that both parties will exert their best efforts to cooperate fully in the execution of the total proposed improvement of American Street as provided herein with specific attention to expediting responses to submissions, plan reviews, and construction coordination. This Agreement, the obligations specified herein, and the Exhibits attached hereto, shall be conditioned upon the timely approval of each

225 095

portion or any portions of the rail construction to be performed and of the entire project, pursuant to Section 11 of this Agreement. Said approval shall not unreasonably be withheld. The City agrees that if the new rail track system shall fail to be constructed within six (6) years, or if funding by EDA is terminated for any reason and alternate funding is unavailable, Conrail shall have the option to require that the City, by quit-claim deed, reconvey to Conrail the right, title and interest (which had been conveyed by Conrail to the City under Section 10 of this Agreement and the quit-claim deed attached as Exhibit A to this Agreement) in all those properties on which construction of rail facilities was not undertaken or was not finished. The City further agrees that any uncompleted properties involved in the project on which rail construction was undertaken shall be reconveyed to Conrail in a condition which will permit the continued, safe operation of rail service over such properties without further action by Conrail. The City further agrees that, prior to the finished construction of the new rail track system, or the expiration of six (6) years whichever is sooner, the City will not sell, lease, transfer, mortgage, or otherwise dispose of or encumber the properties or property rights conveyed to it by Conrail in the quit-claim deed attached as Exhibit A to this Agreement.

18. Section Headings

Section Headings are inserted for convenience only and shall in no way affect the meaning or interpretation of this Agreement.

19. Federal Participation

The several obligations of the parties to this Agreement shall be contingent upon acceptance of and continuance of funding by EDA.

20. Warranties and Representations of Conrail

Conrail represents and warrants as follows:

- (a) Conrail is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania.

225 095

- (b) Conrail has the authority to convey the right, title, and interest it holds in the property described in the Quit-Claim Deed attached hereto in Exhibit A.
- (c) This Agreement is a valid obligation of Conrail, subject to the terms and conditions specified herein, and has been duly authorized by the necessary corporate actions of Conrail.
- (d) Conrail has obtained or will obtain whatever regulatory and administrative approvals, if any, which may be necessary to its execution of this Agreement.
- (e) Conrail shall comply with all applicable Wage Standards and other Labor Standards as are required under applicable Federal, State and Local laws and regulations. In particular Conrail shall comply with the provisions of Section 712 of the Public Works Economic Development Administration Act of 1965, as amended.

21. Compliance With Applicable Laws

The parties hereto shall observe and comply with all regulations and Ordinances of the City of Philadelphia, the Home Rule Charter and the laws and regulations of the Commonwealth of Pennsylvania and of the United States where applicable.

Neither City nor Conrail shall unlawfully discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or physical handicap. Both City and Conrail will comply with all applicable laws and regulations pertaining to the prevention of such discrimination.

The City shall bear all responsibility for complying with any law, ordinance, order, permit, regulation or consent of any kind which may be required by any Federal, State or local government, regulatory body, or other

lawfully constituted authority in order to complete the reconstruction of the railroad track facilities in the bed of American Street and the team track facilities.

22. Waivers

Conrail or the City by written agreement, may waive any failure to comply with any provision of this Agreement. No such waiver shall extend to or affect any subsequent failure to comply with any other provision of this Agreement, or impair any right resulting therefrom.

23. Non-Exclusivity of Remedies

No remedy herein conferred upon the City or Conrail is intended to be exclusive of any other remedy, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law.

24. Amendments in Writing

No amendment of any provision of this Agreement shall be effective unless made by a written instrument duly executed by both parties. References to this Agreement shall be deemed to refer to this Agreement as so amended.

25. Directly or Indirectly

Where any provision in this Agreement refers to action which is to be taken by either the City or Conrail, or which the City or Conrail is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by either the City or Conrail.

26. Delivery of Writings

(a) Communications or notices provided for or permitted under this Agreement, except those provided for in Section 3 of this Agreement, shall be in writing (which may include telegraphic or other record communications), where necessary, and copies shall be mailed or delivered to the following addresses:

If to Conrail: Lawrence A. Huff  
Assistance Vice President -  
Real Estate  
Consolidated Rail Corporation  
Room 901 - 1528 Walnut Street  
Philadelphia, Pennsylvania 19102

If to the City: John Claypool  
Project Manager  
Office of Housing and Community Development  
City of Philadelphia  
City Hall Annex - 11th Floor S.W.  
Philadelphia, Pennsylvania 19107

(b) A properly addressed communication or notice shall be deemed to have been given upon its delivery by hand or, if mailed by registered mail, return receipt requested, upon its deposit in the United States mails. A communication or notice sent by telegram, telex, or other mode of record communication shall be deemed to have been given 24 hours after the time of dispatch.

27. Binding Effect; Assignment

This Agreement shall be binding upon and inure to the benefit of City and Conrail, and their successors and assigns. No assignment of this Agreement by either the City or Conrail shall adversely affect the rights or obligations of either the City or Conrail under this Agreement.

28. Severability

Any holding that any provision of this Agreement is invalid shall not affect the validity of the remaining provisions thereof.

29. Execution of Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall be one and the same instrument.

30. Governing Law

This Agreement shall be governed by or construed in accordance with Pennsylvania law where applicable.

31. Entire Agreement

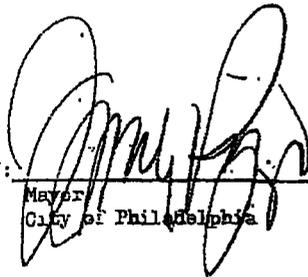
This Agreement and the Exhibits attached hereto and made a part hereof represent the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their proper officers and respective seals to be hereunto affixed and duly attested the day and year first above written.

ATTEST:

THE CITY OF PHILADELPHIA

  
John A. Gallery  
Director, OHCD

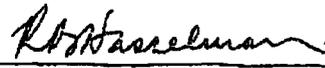
BY:   
\_\_\_\_\_  
Mayor  
City of Philadelphia

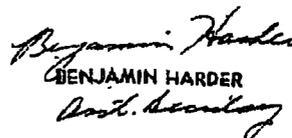
BY:   
\_\_\_\_\_  
Managing Director  
City of Philadelphia

(Seal)

THE CONSOLIDATED RAIL CORPORATION

ATTEST:

BY:   
\_\_\_\_\_  
Sr. VP. - Oper

  
BENJAMIN HARDER  
Asst. Secretary

Approved as to Form  
SHELDON L. ALBERT  
City Solicitor

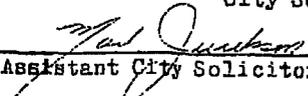
14 per.   
\_\_\_\_\_  
Assistant City Solicitor

EXHIBIT 'A'

THIS INDENTURE, made this 28<sup>th</sup> day of June in the year of Our Lord, one thousand nine hundred and seventy-eight, (1978), BETWEEN CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with an office at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, party of the first part, hereinafter called Grantor, and THE CITY OF PHILADELPHIA, of the Commonwealth of Pennsylvania, party of the second part, hereinafter called Grantee.

WITNESSETH, that the said Grantor for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, unto Grantor well and truly paid by the said Grantee, and other good and valuable consideration between Grantor and Grantee, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said Grantee, its successors and assigns,

ALL THAT CERTAIN tract or strip of land and right of way, with improvements thereon, situate in the Eighteenth (18th) and Nineteenth (19th) Wards of the City and County of Philadelphia, Commonwealth of Pennsylvania, and being a portion of the former North Pennsylvania Railroad American Street Branch of Reading Company, now Consolidated Rail Corporation (Conrail), extending in a general northerly direction along American Street one hundred and twenty (120) feet wide from a line drawn at right angles to American Street one hundred and ten (110) feet more or less, northerly of the north line of Thompson Street, fifty (50) feet wide to the northerly line of Indiana Avenue, fifty (50) feet wide, including the following six (6) described parcels:

THE FIRST THEREOF BEING,

ALL THAT CERTAIN lot or piece of ground, SITUATE in the Eighteenth (18th) Ward of the City of Philadelphia, BEGINNING at a corner formed by the intersection of the South side of Berks Street (Seventy (70) feet wide) and the West side of Second Street (Sixty (60) feet wide); thence extending along the West side of Second Street, South eleven degrees; and eight minutes West (S.11° 08' W.) four hundred ninety (490) feet to a corner at the North side of Montgomery Avenue (Fifty (50) feet wide); thence extending along the North side of Montgomery Avenue

North seventy-eight degrees and thirty-nine minutes West (N.  $78^{\circ} 39' W.$ ), One hundred ninety-one (191) feet to a point; thence extending North eleven degrees and eight minutes East (N.  $11^{\circ} 08' E.$ ), four hundred ninety (490) feet to a point on the South side of Berks Street; thence extending along the South side of Berks Street, South seventy-eight degrees and thirty-nine minutes East (S.  $78^{\circ} 39' E.$ ) One hundred ninety-one (191) feet to the first mentioned corner and place of beginning.

CONTAINING 93,590 square feet, more or less or 2.149 acres, more or less, THE SECOND THEREOF BEING,

ALL THAT CERTAIN lot or piece of ground, situate in the Eighteenth (18th) Ward of the City of Philadelphia, described in accordance with a Plan of Property made December 1, 1977 by Fred J. Kubach, Surveyor and Regulator of the Third Survey District;

BEGINNING at a point on the easterly side of American Street (one hundred twenty (120) feet wide), at the distance of ninety-five (95) feet southwardly from the southerly side of Berks Street seventy (70) feet wide; thence extending South eleven degrees, eight minutes and zero seconds west (S.  $11^{\circ} 08' 00'' W.$ ), along the said easterly side of American Street, crossing Montgomery Avenue (Fifty (50) feet wide), the distance of five hundred ninety-seven feet, ten and three-eighths inches ( $597' 10\text{-}3/8''$ ) to a point on the center-line of former Montgomery Street or Mud Lane (Fifty (50) feet wide); thence extending North fifty-one degrees, forty-four minutes and zero seconds West (N.  $51^{\circ} 44' 00'' W.$ ), along the same, the distance of one hundred thirty-four feet, ten and one-eighths inches ( $134' 10\text{-}1/8''$ ) to a point on the westerly side of said American Street; thence extending North eleven degrees, eight minutes and zero seconds East (N.  $11^{\circ} 08' 00'' E.$ ), along the said westerly side of American Street, recrossing said Montgomery Avenue, the distance of three hundred ninety-nine feet, nine and one-eighths inches ( $399' 9\text{-}1/8''$ ) to a point; thence extending North fifty-two degrees, twenty-five minutes and forty-eight seconds East, (N.  $52^{\circ} 25' 48'' E.$ ), the distance of one hundred eighty-one feet and ten inches ( $181' 10''$ ) to the first mentioned point and place of beginning.

CONTAINING 59,857 square feet, more or less or 1,374 acres, more or less, and being a portion of the bed of American Street (one hundred twenty (120) feet wide) extending from a point ninety-five (95) feet south of Berks Street, southwardly to a point approximately one hundred fifty-two (152) feet south of Montgomery Avenue.

THE THIRD THEREOF BEING,

ALL THAT CERTAIN lot or piece of ground, situate in the Eighteenth (18th) Ward of the City of Philadelphia and described in accordance with a Plan of Property made November 23, 1977 by Fred J. Kubach, Surveyor and Regulator of the Third Survey District;

BEGINNING at the point of intersection of the westerly side of American Street (one hundred twenty (120) feet) with the southerly side of Norris Street fifty (50) feet wide; thence extending North eleven degrees, eight minutes and zero second East, (N.  $11^{\circ} 08' 00''$  E.), along the said westerly side of American Street produced, the distance of twenty-five (25) feet to a point on the centerline of said Norris Street; thence extending South seventy-eight degrees, thirty-nine minutes and zero seconds East, (S.  $78^{\circ} 39' 00''$  E.), along the said centerline of Norris Street, the distance of sixty (60) feet to a point on the centerline of said American Street; thence extending South eleven degrees, eight minutes and zero seconds West (S.  $11^{\circ} 08' 00''$  W.), along the said centerline of American Street the distance of two hundred six feet, four and three-eighths inches ( $206\ 4\text{-}3/8''$ ) to a point on the centerline of former Elm Street (fifty (50) feet wide); thence extending North forty-one degrees, twenty-six minutes and fifty seconds West (N.  $41^{\circ} 26' 50''$  W.), along the said centerline of former Elm Street the distance of sixteen feet, nine and three-eighths inches ( $16\ 9\text{-}3/8''$ ) to a point; thence extending South seventy-eight degrees, twenty-six minutes and fifteen seconds West (S.  $78^{\circ} 26' 15''$  W.), the distance of twenty-eight feet and ten inches ( $28\ 10''$ ) to a point on the southwesterly side of said former Elm Street; thence extending North forty-one degrees, twenty-six minutes and fifty seconds West (N.  $41^{\circ} 26' 50''$  W.), along the said southwesterly side of former Elm Street, the distance of twenty-five feet, three and one-quarter inches ( $25\ 3\text{-}1/4''$ ) to a point on the said westerly side of American Street; thence extending North eleven degrees, eight minutes and zero seconds East (N.  $11^{\circ} 08' 00''$  E.), along the said westerly

side of American Street, the distance of one hundred sixty-seven feet, one and seven-eighths inches (167' 1-7/8") to the first mentioned point and place of beginning.

CONTAINING 12,062 square feet, more or less, or .277 of an acre, more or less, and being the westernmost sixty (60) feet portion of the bed of American Street (one hundred twenty (120) feet wide) extending from the centerline of Norris Street (fifty (50) feet wide) southwardly to a point two hundred six feet, four and three-fourth inches (206' 4 3/4") south of Norris Street.

THE FOURTH THEREOF BEING

ALL THAT CERTAIN lot or piece of ground, situate in the Eighteenth (18th) Ward of the City of Philadelphia and described in accordance with a Plan of Property made November 23, 1977 by Fred J. Kubach, Surveyor and Regulator of the Third Survey District;

BEGINNING a point on the southerly side of Diamond Street (fifty (50) feet wide), produced, at the distance of four (4) feet easterwardly from the point of intersection of the said southerly side of Diamond Street with the west house line of American Street (one hundred twenty (120) feet wide); thence extending South seventy-eight degrees, thirty-nine minutes and zero seconds East (S. 78° 39' 00" E.), along the said southerly side of Diamond Street produced, the distance of twelve (12) feet to a point; thence extending South eleven degrees, eight minutes and zero seconds West (S. 11° 08' 00" W.), the distance of fifty-seven (57) feet to a point; thence extending North seventy-eight degrees, thirty-nine minutes and zero seconds West (N. 78° 39' 00" W.), the distance of twelve (12) feet to a point; thence extending North eleven degrees, eight minutes and zero seconds East (N. 11° 08' 00" E.), the distance of fifty-seven (57) feet to the first mentioned point and place of beginning.

CONTAINING 684 square feet, more or less, or .015 of an acre, more or less, and being a portion of the bed of American Street (one hundred twenty (120) feet wide), extending from Diamond Street southerwardly fifty-seven (57) feet to a point.

THE FIFTH THEREOF BEING,

ALL THAT CERTAIN lot or piece of ground situate in the Nineteenth (19th) Ward of the City of Philadelphia, and described herein according to a Plan of Property made January 20, 1978, by Daniel W. Silverman, Surveyor and Regulator of the

Sixth Survey District, as follows:

BEGINNING at a point on the southerly side of Indiana Avenue (fifty (50) feet wide) at the distance of seventeen feet, eight and five-eighths inches (17' 8-5/8") measured westerwardly along the southerly side of Indiana Avenue from the westerly side of American Street (one hundred twenty (120) feet wide), thence extending North two degrees, twenty-two minutes and zero seconds East (N. 2° 22' 00" E.), fifty feet, seven and one-half inches (50' 7-1/2") to a point on the northerly side of Indiana Avenue; thence extending eastwardly along the same South seventy-eight degrees, thirty-nine minutes and zero seconds (S. 78° 39' 00" E.), ninety-seven feet, five and seven-eighths inches (97' 5-7/8") to a point; thence extending South four degrees, eight minutes and zero seconds East (S. 4° 08' 00" E.), thirty-seven feet, seven and three-quarter inches (37' 7-3/4") to a point in the bed of Indiana Avenue; thence extending southwardly, crossing the southerly side of Indiana Avenue produced and within the bed of American Street, South ten degrees, thirty-seven minutes and zero seconds West (S. 10° 37' 00" W.), two hundred five (205) feet to a point; thence extending in a southerly direction, still within the bed of American Street, the following two (2) courses and distances; (1) South six degrees, twenty-two minutes and zero seconds West (S. 6° 22' 00" W.), ninety-four (94) feet to a point; thence (2) South sixty-one degrees, fifty-two minutes and zero seconds West (S. 61° 52' 00" W.), seventy-six (76) feet to a point; thence extending northwardly, within the bed of American Street, North six degrees, fifty-two minutes and zero seconds East (N. 6° 52' 00" E.), one hundred thirty-five feet and six inches (135' 6") to a point; thence extending northwardly, within the bed of American Street and crossing the westerly side of American Street, North two degrees, thirty-eight minutes and zero seconds West (N. 2° 38' 00" W.), one hundred twenty-five feet and six inches (125' 6") to a point; thence extending North three degrees, twenty-two minutes and zero seconds East (N. 3° 22' 00" E.), sixty-nine (69) feet to a point; thence extending North two degrees, twenty-two minutes and zero seconds East (N. 2° 22' 00" E.), eight feet, one and five-eighths inches (8' 1-5/8") to a point on the southerly side of Indiana Avenue, being the first mentioned point and place of beginning.

CONTAINING in area 28,334 square feet, more or less, or 0.65046 of an acre, more or less.

THE SIXTH THEREOF BEING,

ALL THAT CERTAIN lot or piece of ground, situate in the Nineteenth (19th) Ward of the City of Philadelphia and described herein according to a Plan of Property made January 20, 1978 by Daniel W. Silverman, Surveyor and Regulator of the Sixth Survey District, as follows:

BEGINNING at a point on the southerly side of Indiana Avenue (fifty (50) feet wide) at the distance of forty-six feet, nine and five eighths inches (46' 9-5/8") measured westwardly along the southerly side of Indiana Avenue from the westerly side of American Street (one hundred twenty (120) feet wide); thence extending North one degree, two minutes and forty-five seconds East (N. 1° 02' 45" E.), forty feet, eight and seven-eighths inches (40' 8-7/8") to a point in the bed of Indiana Avenue; thence extending North one degree, seven minutes and fifteen seconds West (N. 1° 07' 15" W.), ten feet, one and seven-eighths inches (10' 1-7/8") to a point on the northerly side of Indiana Avenue; thence extending eastwardly along the same South seventy-eight degrees, thirty-nine minutes and zero seconds East (S. 78° 39' 00" E.), thirty feet and eight inches (30' 8") to a point; thence extending Southwardly crossing the southerly side of Indiana Avenue South two degrees, twenty-two minutes, and zero seconds West (S. 2° 22' 00" W.), fifty-eight feet, nine and one-eighths inches (58' 9-1/8") to a point; thence extending South three degrees, twenty-two minutes and zero seconds West (S. 3° 22' 00" W.), sixty-nine (69) feet to a point; thence extending southwardly crossing the westerly side of American Street South two degrees, thirty-eight minutes and zero seconds East (S. 2° 38' 00" E.), one hundred twenty-five feet and six inches (125' 6") to a point in the bed of American Street; thence extending in a southerly direction the following four (4) courses and distances within the bed of American Street; (1) South six degrees fifty-two minutes and zero seconds West (S. 6° 52' 00" W.), one hundred thirty-five feet and six inches (135' 6") to a point; thence (2) South sixty-one degrees, fifty-two minutes and zero seconds West (S. 61° 52' 00" W.), seven feet and four inches (7' 4") to a point on a curve; thence (3) thence southwardly on a curve to the right having a radius of two thousand six hundred fourteen feet, six and seven-eighths inches (2,614' 6-7/8") the radial line at the beginning of the curve

bears North eighty-one degrees, thirty-one minutes and forty-five seconds West (N.  $81^{\circ} 31' 45''$  W.), the arc distance of one hundred twenty-one feet, ten and one-half inches ( $121' 10\text{-}1/2''$ ) to a point of tangency; thence (4) South eleven degrees, eight minutes and thirty seconds West (S.  $11^{\circ} 08' 30''$  W.), forty feet, three and one-quarter inches ( $40' 3\text{-}1/4''$ ) to a point on the northerly side of Cambria Street (fifty (50) feet wide) produced; thence extending westwardly along the said northerly side of Cambria Street produced and crossing the westerly side of American Street North seventy-eight degrees, thirty-nine minutes and zero seconds West (N.  $78^{\circ} 39' 00''$  W.), thirty-five (35) feet to a point on the northerly side of Cambria Street (said point being a distance of five (5) feet measured westwardly from the westerly side of American Street); thence extending in a northerly direction the following six (6) courses and distances; (1) North eleven degrees, eight minutes and thirty seconds East (N.  $11^{\circ} 08' 30''$  E.), forty feet, one and three-quarter inches ( $40' 1\text{-}3/4''$ ) to a point; thence (2) North nine degrees, fifty-three minutes and eight seconds East (N.  $9^{\circ} 53' 08''$  E.), one hundred thirteen feet, one and one-quarter inches ( $113' 1\text{-}1/4''$ ) to a point; thence (3) North seven degrees, thirty-two minutes and forty-five seconds East (N.  $7^{\circ} 32' 45''$  E.), ninety-seven feet, six and one-half inches ( $97' 6\text{-}1/2''$ ) to a point; thence (4) North five degrees, twenty-two minutes and forty-five seconds East (N.  $5^{\circ} 22' 45''$  E.), ninety-seven feet, six and one-half inches ( $97' 6\text{-}1/2''$ ) to a point; thence (5) North three degrees, twelve minutes and forty-five seconds East (N.  $3^{\circ} 12' 45''$  E.), ninety-seven feet, six and one-half inches ( $97' 6\text{-}1/2''$ ) to a point; thence (6) North one degree, two minutes and forty-five seconds East (N.  $1^{\circ} 02' 45''$  E.), fifty-six feet, nine and five-eighths inches ( $56' 9\text{-}5/8''$ ) to a point on the southerly side of Indiana Avenue; being the first mentioned point and place of beginning.

CONTAINING in area 19,104 square feet, more or less, or 0.43857 of an acre more or less.

These properties being a portion of the same premises which the North Pennsylvania Railroad Company, by Conveyance Document No. NP-CRC-RPI-5 granted and conveyed to Consolidated Rail Corporation pursuant to Section 209(c) of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 719(c)), the Final System Plan of the United States Railway Association, and Special Court Misc. Order No. 75-3, In the Matter of the Regional Rail Reorganization Proceeding, dated March 25, 1976.

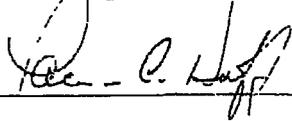
AND on June 28 , 1978, an Ordinance (Bill No. 1394 ) was approved by the Mayor of Philadelphia, which Ordinance authorized the acquisition of the hereinafore described property by the Grantee and approved the American Street Project.

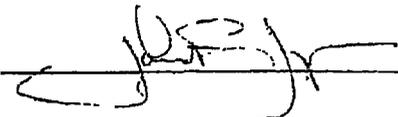
SUBJECT, however, to (1) the reservation of a perpetual right to operate rail service; (2) any easements or agreements of record, any easements which may be disclosed on the aforementioned survey plan and to any other pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances, now existing and remaining in, on, under, over and through the premises conveyed by this indenture, and to any right to maintain, repair, remove, replace, renew and use same; (3) whatever rights the public may have to the use of American Street and to any street crossing American Street within the herein described area.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever, as well at law as in equity, of the said grantor, of, in or to the premises above described, and every part and parcel thereof, with the appurtenances, SUBJECT as aforesaid.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be duly executed. Dated the day and year first herein written.

SIGNED, SEALED and DELIVERED  
in the presence of:

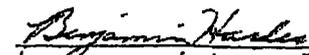
  
\_\_\_\_\_

  
\_\_\_\_\_

CONSOLIDATED RAIL CORPORATION  
By:

  
\_\_\_\_\_ Sr. V.P. - Oper.

Attest:

  
\_\_\_\_\_ BENJAMIN HARDER (Assistant Secretary)

COMMONWEALTH OF PENNSYLVANIA )  
  : SS  
COUNTY OF PHILADELPHIA )

BE IT REMEMBERED, that on this *28<sup>th</sup>* day of *June*  
in the year of our Lord One Thousand Nine Hundred and Seventy-eight (1978)  
before me the subscriber, Francis C. Flynn, the undersigned officer,  
personally appeared *R. B. Hesselman*, who acknowledge himself to be the  
*Sr. Vice President - Operations* of Consolidated Rail Corporation, and that he  
as such *Sr. Vice President - Operations*, being authorized to do so,  
executed the foregoing Indenture for the purposes therein contained by  
signing the name of the Corporation by himself as the *Sr. Vice President - Operations*

IN WITNESS WHEREOF, I have hereunto set my Hand and Official Seal.

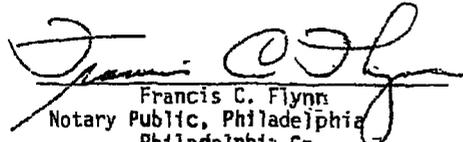
  
Francis C. Flynn  
Notary Public, Philadelphia  
Philadelphia Co.  
My Commission Expires July 2, 1979

EXHIBIT "B"

OPERATING RIGHTS AGREEMENT

THIS OPERATING RIGHTS AGREEMENT, dated as of *JUNE 28, 1978* by and between the CONSOLIDATED RAIL CORPORATION (Conrail), a Pennsylvania Corporation having its offices at 6 Penn Center Plaza, Philadelphia, Pennsylvania 19104, and the CITY OF PHILADELPHIA, PENNSYLVANIA (City).

WITNESSETH

Conrail, as recited in the PROJECT AGREEMENT, dated as of *JUNE 28, 1978* to which this Agreement is attached as Exhibit "B", and made a part thereof and incorporated therein has agreed to convey to the City by quit-claim deed attached as Exhibit "A" to the Project Agreement, any right, title and interest which Conrail may possess in the properties in American Street, Philadelphia, specified in that deed; and

The City has agreed, in the Project Agreement, to remove existing main line, siding track, team track, and install new track, turnouts, rail-road crossing, signals, siding tracks, and team tracks in accordance with applications, plans, and specifications submitted pursuant to the terms and conditions described in Sections 1, 3, and 4 of the Project Agreement, with City funds and funds provided by the United States Economic Development Administration;

NOW THEREFORE, in consideration of the premises and mutual promises hereinafter contained, it is agreed as follows:

1. Upon the execution of the quit-claim deed attached as Exhibit "A" to the Project Agreement, the City agrees that Conrail shall have the right to continue operating rail service over the track system and appurtenances thereto in American Street during the period in which the City is removing existing facilities and constructing or reconstructing new facilities.

2. The City and Conrail agree that rail service to the various industries on American Street shall not be unreasonably interrupted at any one time during the removal of existing facilities or the construction or reconstruction of new facilities, subject to the undertakings contained in Section B of the Project Agreement.

3. Conrail agrees that the City, through the Department of Streets, shall hold, retain title to, and be the sole owner of the new rail track system and all appurtenances thereto in American Street, in accordance with the provisions of Section 17 of the Project Agreement.

4. Completion shall be defined as that point in time when a particular portion or portions of rail track system is certified as complete by the City and payment to the Contractor for the work is authorized by the City.

5. Conrail shall hold and retain a perpetual right to operate rail service (with no fee or charge as to said operating right), as reserved to Conrail in the quit-claim deed attached as Exhibit "A" to the Project Agreement and as granted to Conrail by the City in Section 13 of the Project Agreement over such new rail main line, siding tracks, teamtracks and appurtenances thereto, total consideration having been paid and hereby acknowledged, for so long as such right remains in effect.

6. Conrail agrees that for so long as it operates rail service over such new main line, siding tracks, teamtracks and appurtenances thereto, including yard and loading facilities (except siding track facilities to be maintained by industries to the extent specified in agreements to be executed between Conrail and such industries), including any portion of rail signalization systems the circuitry of which is separable from the traffic signal light system functioning at each grade crossing on American Street, the maintenance of such facilities in accord with Section 14 of the Project Agreement, shall be the obligation of Conrail, and shall be carried out at its sole cost and expense, unless otherwise ordered by the Pennsylvania Public Utility Commission.

7. Conrail agrees that for so long as it operates rail service over such new main line, siding tracks, team tracks, and appurtenances thereto, as between the City and Conrail, it will assume the same liability for any injuries to persons or property, or other damages, which would be imposed upon Conrail as the owner and operator of the rail properties and appurtenances thereto.

8. The City agrees that it will maintain the traffic signal light systems, and any rail signalization system circuitry inseparably connected thereto, at its sole cost and expense.

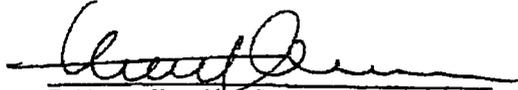
9. Conrail and the City agree that this Agreement or the rights hereunder shall be binding upon and inure to the benefit of City and Conrail

and their successors and assigns. No assignment of this Agreement shall adversely affect the rights or obligations of either the City or Conrail under this Agreement.

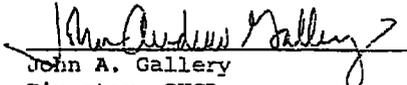
IN WITNESS WHEREOF, the parties hereto have caused this Operating Rights Agreement to be executed and their seals to be duly affixed hereto and attested by their duly authorized officers as of the day and year above written.

CITY OF PHILADELPHIA

By:

  
Title: Managing Director  
City of Philadelphia

(SEAL)  
ATTEST:

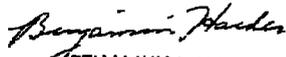
  
John A. Gallery  
Director, OHCD

CONSOLIDATED RAIL CORPORATION

By:

  
Sr. V.P. - Oper.  
Title:

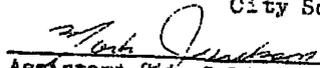
(SEAL)  
ATTEST:

  
BENJAMIN HARDER  
Asst. Secretary

Approved as to Form

SHELDON L. ALBERT  
City Solicitor

per.

  
Assistant City Solicitor

GENERAL CONTRACT RECORD

REG. NO. 225 095(B)

REGISTERED JUL 28 1978

COMMISSIONS X

CALENDAR X

MEMORANDUM OF UNDERSTANDING

225 095-B

Improvement of American Street Tracks, Philadelphia

WHEREAS, Consolidated Rail Corporation (Conrail) owns certain tracks and land, and possesses charter rights for its rail right-of-way, in American Street in Philadelphia, Pennsylvania, and operates rail service over such tracks; and

WHEREAS, the City of Philadelphia (City) proposes to improve American Street utilizing funds provided by the City and by the United States Economic Development Administration (EDA), pursuant to the Local Capital Development and Investment Act of 1976, P.L. 94-369 (90 Stat. 999) (Act) and applicable EDA Regulations (19 CFR §316.10 (f)); and

WHEREAS, the Act and EDA Regulations require that an applicant for EDA funds must obtain rights to a project site, including easements and rights-of-way, by (i) ownership of the project facility or site clear of any encumbrances, (ii) a noncancellable long-term lease on the project facility and/or site, which is defined as 20 years or the useful life of the facility, whichever is longer, or (iii) a clearly enforceable option through time of grant approval to purchase the project facility and/or site and a demonstration that it has sufficient funds available to complete the purchase; and

WHEREAS, the City has proposed to Conrail that improvement of certain rail lines and properties in American Street is an integral part of the City's plan to facilitate the movement and growth of commercial traffic in the American Street area.

IT IS THEREFORE UNDERSTOOD that subject to the approval of funding by EDA, the City and Conrail will pursue the negotiation of appropriate agreements by which, for appropriate consideration:

1. Conrail will convey to the City by quit-claim deed, any right, title

and interest, which Conrail may have within the right-of-way in American Street from Girard Avenue to Indiana Avenue.

2. Conrail will convey to the City fee title, any easement and any other right, title and interest which Conrail may have to a plot of land, size to be negotiated, between Second Street and Bodine Street, adjacent to the Berks Street Yard, for purposes of constructing a team track facility.

3. The City, with its own funds and with funds provided by EDA, will improve American Street from Girard Avenue to Indiana Avenue, including removal of existing rail trackage, construction of a new, single running track, new siding tracks as agreed upon by the City and Conrail, and a new team track, and improvement of grade crossings and signal systems.

4. The City will accept and retain title to the new rail track system and appurtenances thereto through the Philadelphia Industrial Development Corporation or other City Agency.

5. The City will grant Conrail an easement to operate rail service over the track system and appurtenances thereto.

6. The City, by agreement, will provide Conrail the right to negotiate and execute the side track agreements with rail users, pursuant to statutory and administrative requirements.

7. Conrail will assume the costs of, responsibility for, the operation and maintenance of the track system, including the signal system as developed and the team track facility.

This memorandum is executed by the City and Conrail to evidence their understanding of the above, and is not intended as a contractually binding agreement between the parties to any or all of the activities described above. The actual extent of the commitments undertaken will be the subject of any





# AGREEMENT OF SALE

Case #

THIS AGREEMENT, made as of this 2nd day of November, 2010, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation, with its principal offices at 1717 Arch Street, 32<sup>nd</sup> floor, Philadelphia, PA 19103 ("Conrail") and David Groverman, Agent, having a mailing address at 1151 Walton Road, Blue Bell, Pa 19422 ("Purchaser"), for all of Conrail's right, title and interest in and to a parcel of land, containing three (3) acres, more or less, and any improvements thereon (but exclusive of the railroad bridge over Allegheny Avenue as provided herein) being parts of Conrail's Berks Street Industrial Track right of way (Line Code 0301 at about Mile Post 2.9 +/- and known on the Philadelphia tax maps as OPA 19-3001400 or part thereof, located on the south side of Allegheny Avenue, east of 400 West Allegheny Avenue, and west of American Street on the northern portion and Second Street on the southern portion, and situate in the City of Philadelphia, Philadelphia County, PA 19133, as described and shown on Exhibit A, attached hereto and made a part hereof (the "Property") The Property, as shown on Exhibit A, is comprised of two smaller parcels, parcel A-1, comprised of 2.45 acres more or less and parcel A-2, comprised of .55 acres more or less

Broker for Conrail. None.  
Broker for the Purchaser None

**1. PURCHASE PRICE** The total purchase price for the Property shall be Three Hundred and Forty-Six Thousand, Two Hundred and Fifty Dollars (\$346,250.00) subject to Section 1(iii) below The Purchase Price for the acreage encompassed within Parcel A-1 is Three Hundred and Six Thousand, Two Hundred and Fifty Dollars (\$306,250.00) based upon a per acre purchase price of \$125,000.00. The Purchase Price for the acreage encompassed within Parcel A-2 is \$40,000.00 The Purchase Price shall be paid to Conrail by Purchaser as follows:

- (i) Deposit check, money order or letter of credit to be paid upon Purchaser's signing of this Agreement in amount of Thirty-Five Thousand, Dollars (\$35,000.00) (the "Deposit"), said Deposit to be held in escrow by Conrail;
- (ii) Certified check, cashier's check, money order, or wire transfer to be paid at time of Closing in amount Three Hundred and Eleven Thousand, Two Hundred and Fifty Dollars (\$311,250.00) or such other final Purchase Price as may be determined in accordance with Section 1(iii) below
- (iii) Notwithstanding anything to the contrary above, in the event that the survey to be completed on behalf of Purchaser by a licensed surveyor of the City of Philadelphia as provided herein in Exhibit E, results in the surveyed area being 3% more or 3% less than the three (3) acres set forth above, then the final purchase price shall be based a per acre unit price of One Hundred Twenty Five (\$125,000) times (x) the number of acres surveyed by said surveyor less .55 acres plus \$40,000.

## 2. CLOSING

- (a) The conveyance of title to the Property (the "Closing") shall take place at 1717 Arch Street, 32<sup>nd</sup> Floor, Philadelphia, PA 19103 the earlier of (i) thirty days after the removal of the railroad bridge over Allegheny Avenue as provided for in Section 2.(c) herein; or (iii) September 1, 2012, or at such other time and place in the Philadelphia Metropolitan Area as shall be mutually agreed upon, excepting as hereinafter provided.
- (b) The sale of the Property contemplated by this Agreement shall be subject to the approval of the Board of Directors of Conrail. Conrail shall advise Purchaser within five (5) business days of receiving approval from its Board of Directors If Conrail's Board of Directors approval is not obtained by February 1, 2011 this Agreement will be null and void, in which case the Deposit will be returned, without interest, within fifteen (15) days of Purchaser's written request therefore, which shall be Purchaser's sole remedy and whereupon neither party shall have any further liability hereunder
- (c) The parties acknowledge that Closing is contingent upon the issuance of a final order issued by the United States Surface Transportation Board ("STB") approving the abandonment by Conrail of its common carrier obligations with respect to Milepost 2.70 to 2.98 of the Berks Street Industrial Track (Line Code 0301), a rail line in which the Property is partially situated Conrail agrees to file for such abandonment approval from the STB as soon as practicable after receiving Conrail Board of Director approval of this sale transaction. If such STB approval is not obtained by October 31, 2011, either party may terminate this agreement and neither party shall have any obligation toward the other except for the return by Conrail of the Deposit.
- (d) Abutting the northerly portion of the Property is a rail bridge that spans Allegheny Avenue Upon approval of the STB and prior to any Closing, Conrail shall, as soon as practicable, remove that portion of the railroad bridge that spans Allegheny Avenue but, at its discretion, may leave in place the abutments that are located on either side of the bridge span .

## 3. TITLE

Conrail will deliver and Purchaser will accept a quitclaim deed without any covenants or warranties of title, express or implied, to the Property, in the form attached hereto as Exhibit B (the "Deed") At the request of Purchaser, prior to Closing, Conrail shall provide to Purchaser's title insurance company at Closing a letter of indemnity which shall indemnify and save harmless said title company



against recorded liens and judgments recorded against Conrail arising after April 1, 1976 up to an amount not to exceed the Purchase Price. Conrail's indemnity hereunder shall be effective as of the Closing and shall be in the form of the attached Exhibit "C" If an encumbrance which materially changes title to the Property as set forth in the Title Report is recorded against the Property between the date of this Agreement and Closing which is not shown on the Title Report, then Conrail, at its option, may elect to cure such encumbrance at its cost and expense and Closing shall be set off for a period not to exceed sixty (60) days. In the event that either Conrail does not elect to cure such encumbrance or said sixty (60) day period expires, then this Agreement shall terminate, and Conrail shall return the Deposit to Purchaser, without interest thereon, whereupon neither party shall have any further liability hereunder. Notwithstanding the foregoing, if acceptable to Conrail and the holder of the encumbrance or lien creating the encumbrance, Purchaser may elect to cure such encumbrance at its cost at Closing. After the execution date of this agreement, Conrail shall not enter into any agreements with any third parties to occupy any portion of the Property either above or below ground, if such occupancy is reasonably likely to materially interfere with Purchaser's use and enjoyment of the Property.

#### 4. CLOSING APPORTIONMENT AND PAYMENTS

(a) **Rentals or License Fees.** Rentals or payments for lease or license agreements will be divided as follows. The Purchaser shall be entitled to collect all rentals or license fees which, by the terms of the leases or license agreements, are billed *after* Closing. Conrail shall be entitled to retain all rentals and license fees billed *prior* to Closing in accordance with the terms of such leases or license agreements. The Purchaser shall assume all duties and obligations of Conrail contained in any such leases or license agreements arising from and after the date of Closing. Conrail shall provide Purchaser within thirty (30) days after execution of this Agreement by both parties copies of any leases and license agreements that affect the Property (redacted for any financial, pricing or other commercial terms) and that are in Conrail's possession or of which Conrail is otherwise aware. Within ninety (90) days after Closing, Conrail shall provide Purchaser with all original copies of any leases and license agreements assigned to Purchaser which are in Conrail's possession. Security deposits for any lease or license agreement, if any, shall be turned over to the Purchaser within ninety (90) days after Closing provided that the lease or license agreement has no outstanding arrearages (in which case, Conrail will be entitled to apply such security deposits to any arrearages).

(b) **Real Estate Transfer Taxes.** Payment of all transfer taxes will be borne by the Purchaser, irrespective of any local custom to the contrary.

(c) **Brokers Commissions.** No brokers are involved in this transaction.

(d) **Taxes.** Real estate taxes, water & sewer rents and other lienable charges (if any) shall be apportioned between Conrail and Purchaser as of Closing.

#### 5. CONDITION OF PROPERTY

(a) **Property to be purchased "AS IS".** Purchaser agrees to accept the Property and any improvements "AS IS" "WHERE IS", with any and all faults. Purchaser shall take title to the same in their condition as of the date of Closing, including any violations of law or ordinances, whether or not such violations are officially recorded. Conrail shall have the option of removing the rail, ties and appurtenances or leaving same in place. Conrail must make that decision and notify Purchaser within sixty days of receiving Board of Director approval of this transaction. If Conrail decides to remove the rail ties and appurtenances, it must do so prior to Closing. If Conrail decides to leave any rail, ties or appurtenances in place, they will be deemed to be the property of Purchaser upon closing to salvage or leave in place as Purchaser sees fit.

(b) **Environmental Contingency.** Notwithstanding the foregoing, Purchaser shall have the right, at its sole expense, to have the Property inspected for environmental concerns as provided below. Purchaser shall only be permitted to undertake and complete a Phase I inspection. If the Phase I inspection report calls for further testing in the nature of a Phase II inspection, Purchaser must receive written approval from Conrail to undertake the Phase II inspection. Conrail's approval for the Phase II may be withheld for any reason whatsoever. In the event the Report is not satisfactory to Purchaser in its sole opinion, then Purchaser may elect to terminate this Agreement and receive the return of its deposit, if any. The Phase I inspection must be completed on or before (60) sixty days from the date that Conrail receives Board of Director approval of this transaction. For a period of thirty days following completion of the Phase I, Purchaser shall have the option of proposing to Conrail a Phase II inspection. If such Phase II inspection is agreed to by Conrail, Purchaser shall have an additional sixty (60) days in which to perform such Phase II inspection. Conrail agrees to cooperate with the inspectors and to make the Property available for inspection on reasonable notice to Conrail. If Purchaser notifies Conrail in writing on or before seven (7) calendar days from the last day the inspection may be undertaken and completed, that it does not, for any reason approve of the Report (provided Purchaser submits to Conrail a copy of the full and complete Report with such notification) and Purchaser is unwilling to proceed with this transaction, this Agreement shall be cancelled, the Deposit, if any, shall be returned to Purchaser, and there shall be no further obligations on the part of either of the Parties. If Purchaser fails to notify Conrail within such seven day period of its disapproval of the Report, Purchaser will be deemed to approve the environmental condition of the Property and to waive its rights under this paragraph.

(c) **Restricted Use.** The parties agree that the Quitclaim Deed of Sale will contain a covenant whereby Purchaser shall acknowledge that the Property is being conveyed for use only for commercial development purposes and that Purchaser, by accepting the deed, shall covenant and agree that it, its successors, heirs, legal representatives or assignees shall not

use the Property in whole or in part for (a) residential purpose of any nature (residential use shall be defined broadly to include, without limitation, any use of the Property by individuals or families for purposes of personal living, dwelling or overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailer parks, camping sites, motels, hotels or any other dwelling use of any kind (b) any public or private school, day care or any organized long-term or short-term child care of any kind or (c) any recreational purpose (recreational use shall be defined broadly to include, without limitation, use as a public park, hiking or biking trail, athletic fields or courts, or public gathering place). Purchaser shall also covenant that it, its successors, heirs, legal representatives or assignees shall not use the groundwater underneath the Premises for human consumption, irrigation, or other purpose.

## 6. ZONING AND BUILDING APPROVALS

Purchaser's obligation to purchase the Property pursuant to this Agreement is expressly contingent upon Purchaser determining on or before ninety (90) calendar days from the date Conrail receives Board of Director approval of this transaction that Purchaser will be able to obtain the necessary zoning and building approvals to utilize the Property for the construction of Purchaser's intended development. If Purchaser is not able to utilize the Property as set forth in this paragraph, it shall have the right to terminate this Agreement on or before seven (7) days from the conclusion of said ninety (90) day period by so electing in writing or it will have waived this contingency

## 7. DEFAULT

**(a) Purchaser's Default.** Unless otherwise provided for in this Agreement, if Purchaser fails to comply with the terms and conditions hereof, Conrail may upon thirty (30) days notice to Purchaser with opportunity to cure: (i) terminate this Agreement, in which event the Deposit shall be due and payable to Conrail as its sole liquidated damages or (ii) bring an action for specific performance of Purchaser's obligations under this Agreement.

**(b) Conrail Defaults.** If Conrail fails to comply with the terms and conditions hereof, Purchaser shall have the right to (i) receive from Conrail the return of Purchaser's Deposit, without interest, or (ii) bring an action for specific performance of Conrail's obligations under this Agreement.. Purchaser acknowledges that under no circumstances, shall Conrail be liable for Purchaser's damages, consequential, actual, punitive, speculative or otherwise. Purchaser agrees that it will not, and waives all right to file a lis pendens or other attachment at law or in equity for any reason so as to affect the title to the Property except in connection with the bringing of an action for specific performance under this Agreement.

## 8. PUBLIC NOTICES

In the event any notice respecting the performance and the completion of work proposed and affecting the Property, or the installations of sewers, water or lighting facilities ("Improvements") is received by Conrail or Purchaser, or notice of confirmed special assessment is issued to Conrail or Purchaser in connection therewith after the date first set forth above and prior to Closing, then the obligations of the parties shall be as follows,

- (i) If the Improvement is requested by Purchaser or otherwise benefits the development of the Property by Purchaser Purchaser agrees to be responsible for compliance with such notice or notices, and Purchaser shall pay for work required or the assessment levied therefor.
- (ii) If the Improvement is not requested by Purchaser or otherwise does not benefit the development of the Property by Purchaser, and the Improvement must be begun or completed prior to Closing, Conrail shall be responsible for compliance with such notice or notices and shall pay for work required prior to Closing and the assessment levied therefor except that Conrail shall be reimbursed for its costs at Closing by Purchaser based on a pro-rata sharing of such costs, Conrail's pro-rata share to be equal to the time between the completion of the Improvement and Closing divided by the expected useful life of the Improvement.
- (iii) If the Improvement is not requested by Purchaser or otherwise does not benefit the development of the Property by Purchaser and is reasonably estimated to cost more than \$50,000.00, then Purchaser shall have the right to cancel this Agreement without further obligation.

## 9. ASSIGNMENT

Each and every term, covenant, condition, agreement, provision and stipulation of this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, personal representatives, successors and assigns of Conrail and Purchaser, provided that Purchaser shall not assign this Agreement without the prior consent of Conrail, which consent Conrail may withhold for any reason.

## 10. CASUALTY LOSS

No loss or casualty with respect to the Property shall, in any way, affect the terms of this Agreement

**11. CONDEMNATION**

If, prior to Closing, the Property, or any substantial portion thereof, or any interest therein, shall be affected by an exercise of the power of eminent domain, Conrail shall have the option to either: (a) terminate this Agreement, whereupon Conrail shall return to Purchaser the Deposit or (b) enforce this Agreement and assign any award or agreed upon compensation to Purchaser. Notwithstanding the foregoing, in the event that a Notice of Taking has been properly declared prior to Closing, then Purchaser shall have a right to terminate this Agreement so long as it gives Conrail notice of termination within fifteen (15) days of Purchaser being apprised of such Notice of Taking.

**12. NOTICES**

Whenever in this Agreement notice or consent is requested, desired or required to be given, same shall be given in writing and sent by prepaid overnight courier or registered or certified United States mail, return receipt requested, to the parties whose names and addresses are set forth in the heading of this Agreement. Notice shall be effective when deposited.

**13. NO REPRESENTATION**

All understandings and agreements heretofore between Conrail and Purchaser are merged into this Agreement which alone fully and completely expresses their intent. Purchaser acknowledges that Conrail, its officers, employees, representatives and any of their agents under Agreement involved in the sale of the Property have made no representations or warranties to Purchaser concerning the Property, including any representation or warranty as to the condition of the Property or the quality of Conrail's title to the Property. Any information provided to Purchaser was provided strictly as an accommodation to Purchaser, and no express or implied warranty or representation as to the accuracy or correctness of such information shall be deemed to have been made by Conrail, its officers, employees or agents or any third party. Purchaser acknowledges that this purchase is based upon Purchaser's own knowledge and information and that Purchaser shall accept the Deed at Closing and shall be deemed to have waived any and all objections to Conrail's title to the Property.

**14. VIOLATION OF LAW**

In the event the conveyance of the Property on the terms set forth in this Agreement would be contrary to any law, regulation or order of governmental authority, then the Deposit shall be refunded to Purchaser, and Purchaser hereby agrees to accept same, whereupon this Agreement shall terminate and neither party hereto shall have any further liability hereunder.

**15. ACKNOWLEDGMENT**

Purchaser acknowledges that Conrail has represented that it has none of the following reports and therefore cannot produce same:

- Title Report.
- Phase I Site Assessment.
- Survey (See Exhibit A).

**16. MISCELLANEOUS**

(a) The headings and subheadings in this Agreement are for convenience only and shall not be construed as having any legal or factual intent.

(b) It is understood and agreed that time shall be of the essence in this Agreement.

(c) Formal tender of purchase money and executed Deed is hereby waived.

(d) It shall be the Purchaser's responsibility to verify the zoning classification and any land use restrictions; Conrail makes no representations in this regard.

(e) The terms of this Agreement shall survive Closing.

(f) Neither this Agreement nor any type of memorandum thereof shall be recorded with the office of the Register of Deeds or with any other governmental agency, and any purported recordation or filing hereof by Purchaser shall constitute a default on the part of Purchaser.

(g) No omission or delay by any party in enforcing any right or remedy or in requiring performance of any of the terms of this Agreement shall constitute or be deemed to constitute a waiver of any such right or remedy, nor shall it in any way affect the right of either party to enforce such provisions thereafter unless such right or remedy is specifically waived in writing. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise of any right or remedy.

(h) The law of the state in which the Property is located shall govern the terms of this Agreement.

(i) All appendices and exhibits referred in or attached to this Agreement are intended to be, and are hereby, specifically made a part of this Agreement.

(j) This Agreement shall not be strictly interpreted against either party hereto under any rule of construction

(k) SEE ATTACHED 1031 "LIKE-KIND" EXCHANGE LANGUAGE CONTINGENCY ADDENDUM, Exhibit "D"

(l) SEE ATTACHED SURVEY/SUBDIVISION ADDENDUM, Exhibit "E".

(m) The Deposit will be held by Conrail, and WILL NOT accrue interest, nor shall Purchaser be entitled to any interest on the Deposit.

(n) Conrail shall not be under any obligation to provide to Purchaser, to its title insurance company or to any party whatsoever, an affidavit of title or any similar type of document that may be customarily used at closing on a sale of real property

(o) At Closing, Purchaser shall, upon Conrail's delivery of original executed Deed to Purchaser hereunder, sign a copy of the face sheet of said Deed acknowledging receipt and acceptance thereof. The Purchaser shall, at its sole cost and expense and within ten (10) days of Closing, properly record the executed original Deed in the Recorders Office of the County in which the Property is located. Conrail shall have the right, but not the obligation, to record an original executed Deed identical to the Deed delivered to Purchaser at Closing if Purchaser has not complied with the aforesaid obligation to record such Deed within thirty days of Closing. Purchaser shall be obligated to pay for all recording fees, transfer taxes and any reasonable legal expenses related thereto and in the recovery of such fees and taxes from Purchaser.

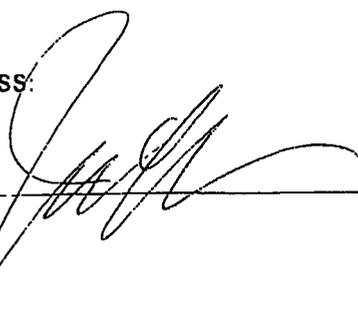
(p) If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby. All other clauses or provisions of this Agreement not found invalid or unenforceable shall be and remain valid and enforceable.

(q) The sale of the Property under this Agreement is subject to the Pennsylvania Public Utilities – Disposition of Real Property Act No 151 of 1990 and Article 2709 of said Act.

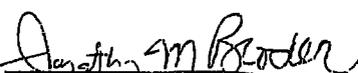
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first set forth.

WITNESS:

By:  \_\_\_\_\_

WITNESS:  \_\_\_\_\_

CONSOLIDATED RAIL CORPORATION

By:  \_\_\_\_\_  
Name: Jonathan M. Broder  
Title: VP - Corporate Development and Chief Legal Officer  
DAVID GROVERMAN, AGENT

 \_\_\_\_\_