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213142

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Of Counsel:  
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January 31, 2005

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

ENTERED  
Office of Proceedings

FEB 1 2005

Part of  
Public Record

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

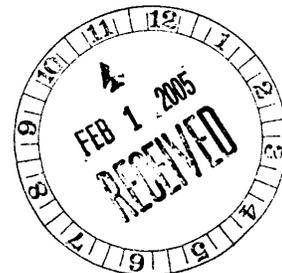
Dear Mr. Williams:

My office represents 511 West 23<sup>rd</sup> Street Associates, LLC ("511"). Pursuant to the order of the Surface Transportation Board ("STB") dated January 4, 2005, enclosed please find our Reply on behalf of 511.

Respectfully submitted,

  
MICHAEL A. HASKEL

enc.  
cc: All parties on service lists



BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

213142

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

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

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

Honorable Vernon Williams  
-----X

**PRELIMINARY STATEMENT**

In accordance with the order of the Surface Transportation Board ("STB") dated January 4, 2005, this Reply is timely submitted on behalf of 511 West 23<sup>rd</sup> Street Associates, LLC ("511"): (1) in further opposition to the December 17, 2003 request of the City of New York ("City") for a Certificate of Interim Trail Use ("CITU"); and (2) in response to the City's reply to 511's motion. The City has completely ignored several arguments made by 511, as intervener, and has made misleading, misguided and often oblique attacks upon other of 511's arguments. For the reasons stated in 511's original application and herein, the City's request for the issuance of the CITU should be denied.

**POINT I**

**THE HIGH LINE IS ALREADY PHYSICALLY SEPARATED  
FROM THE NATIONAL RAIL SYSTEM AT THE MORGAN  
STREET STATION, AND WILL BE PERMANENTLY  
SEVERED WHEN THE CITY IMPLEMENTS ITS  
PLANS FOR THE HUDSON YARDS**

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The City does not deny that the High Line is already physically severed from the National

Railway System at the Morgan station (see 511 opening statement, p. 4, ¶ 15). Moreover, the City has admitted that it plans to further physically separate the High Line from the National Rail System when structures, including a stadium, are erected at the Hudson Yards (Ricks Aff., ¶ 8). As 511 demonstrated in its opening papers, separation of the High Line from the National Rail System defeats the STB's jurisdiction and *perforce* renders the CITU application a pointless exercise (see 511's Opening Statement, p. 17, ¶ 60). Even the City does not deny that when a railroad line is separated from the National Rail System, the banking of the local rail easement does not further the purposes of the Trails Act, 16 U.S.C. § 1247(d).

While the City does not challenge material facts surrounding the physical separation of the High Line from the National Rail System, the City argues instead that it will retain all of the rights necessary to physically restore the connection which the City admits involves "*reconstructing* the rail viaduct within the *new* easement area". See affidavit of Marc Ricks, sworn to January 5, 2005 ("Ricks Aff."), ¶ 15. In so conceding, the City recognizes that the *old* easement will be subjected to substantial structural alterations, thereby physically severing it from the rest of the High Line and making restoration of the High Line on the *old* easement a physical impossibility. This is not what the Trails Act envisions, Congress intended the restoration of rail service on the existing rail corridor, not on some imaginary as yet non-existent structure. See 49 C.F.R. 1152.29 (requiring the preservation of "any facility necessary to maintain the integrity of the rail corridor and rail bank").

The concept behind the Rails to Trails Act is the preservation of the existing rail corridor upon which rail service can be restored. Here, the City even admits that it may demolish a portion of the High Line east of 11<sup>th</sup> Avenue and at west 30<sup>th</sup> Street (see Ricks Aff., ¶ 8); the City

further admits that it plans to build a stadium and other structures west of 30<sup>th</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues, including upon the area over which the High Line now runs, though it is already physically severed from the National Rail System at the Morgan Street station (Ricks Aff., ¶ 6).. The City claims it is sufficient that an alternative easement be provided to the west of the existing corridor. However, the Trails Act envisions a trail over the existing rail corridor, which is why the tracks can be removed, but structures constituting the rail corridors cannot be demolished. See 49 C.F.R. § 1152.29. What the City plans is not rails to trails, it is rails to castles-in-the-sky, viz., a rail banked vapor "trail".

The case of Central Kansas Railway, STB Docket No. AB-406 (Sub No 6X) relied upon by the City, supports 511's position concerning the distinction between potential restoration of service, on the one hand, and physical separation of the rail bank from the National Rail System, on the other. The cited case involved the issue of whether the sale of certain lots that were on the railroad right of way prevented restoration of rail service, thereby making future use of the rail bank corridor a practical impossibility. The STB reasoned:

Should a State court determine that [the railroad] has indeed severed the right of way, then [the STB] remain(s) available to consider whether all or part of the line has been abandoned as a result and/or whether eventual restoration of rail service has been rendered impossible so as to terminate our jurisdiction over the continuing rail banking/interim trail use. *Id.*, p. 7 (N 12),

The STB observed that as to physically severed segments of the railroad right-of-way, the STB loses jurisdiction, but that remaining parts of the track can be rail banked provided they remain connected to the National Rail System:

. . . even if the right-of-way had been severed by one or more of the three disputed land sales . . . this does not necessarily mean that the

*rest* of the 33.4-mile line (which connects with other rail lines at both ends) would not continue to be available for future rail service . . . (emphasis added)

The City also cites City of Detroit v. Canadian National Ry. Co., 9 ICC 2d 1208, *aff'd sub nom* Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (DC Cir. 1995). However, City of Detroit was not a Rails to Trails case, but dealt with the issue of whether a railroad corridor could be moved 100 feet while maintaining existing rail service. Moreover, unlike the City's plans for an air trail approximately 30 feet above street level, with no supporting structure, the City of Detroit involved a physical rail corridor blasted through a mountain to continue rail service. The DC Circuit in the City of Detroit case at 1316, noted that the "[mere] relocation of the main track . . . which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, may not come within [§ 10901(a)]", citing Railroad Commission v. Southern Pack Co., 264 U.S. 331, 345 (1934). In contrast, the City's plans for the High Line involves not only abandonment, but the physical destruction of a substantial portion of the existing rail corridor, thereby effectuating a further physical severance of the High Line from the National Rail System, an issue which was never implicated in the Detroit case.

The City also cites Southern Pacific Transportation, AB-12 (Sub No 148X), where the railroad initially abandoned a 32.05 mile section of track, then filed a Notice of Interim Trail Use ("NITU"), and later sought to reopen the proceeding to vacate a portion of the NITU. The trail operator, the Texas Department of Transportation ("TXDOT"), was also the owner of the right-of-way. In the absence of any opposition, the STB granted the petition of the TXDOT. Never addressed was the question of whether the remaining track that was subject to the NITU was

being disconnected from the National Rail System. Notably, even though the midway section was to be removed, it may be presumed that there was no separation of the remaining two segments of the track from the National Railway System along the remaining "ends". See Central Kansas case, *supra*. Certainly, it cannot be presumed, as the City urges, that the Southern Pacific case, which does not mention any severance, was meant to implicitly overrule fundamental jurisprudence concerning the purpose of the Rails to Trails Act. Nor does the Southern Pacific case support the City's argument that Rail to Trails use is available when there is a physical disconnect of the subject rail from the National Rail System.

In short, the City's convoluted proposal to rebuild if called upon to restore rail service, the railroad corridor over the busy West Side Highway is a subversion for the purposes of rail banking. See Idaho N. and Pac R.R.- Abandonment Exemption - STB Docket No. AB 433 (Sub No 0X) (identifying the STB's chief concerns in a Rails to Trails case as being the determination of whether rail banking is compromised, in which event the railroad's ability to use the right of way at some future time is precluded and rail service cannot be revived).

If rail banking is to have any meaning, it cannot be applied in these circumstances. The physical severance of the line from the National Rail System cannot be ignored by resort to fantastic theories that suggest that physical separation from the system can be excused if an alternate easement on a non-existent corridor has been proposed for the disconnected rail segment. In any event, the need to build an "extensive infrastructure" to physically reconnect the line provides an alternative ground for rejecting the CITU application, as will now be discussed.

## POINT II

### **THE CITY'S PROPOSED USE OF AN ALTERNATE RAILWAY EASEMENT OVER THE WEST SIDE HIGHWAY IS A PRACTICAL IMPOSSIBILITY**

The City's plan for an alternate easement for that segment of corridor which is to be severed from the National Railway System would entail building a rail corridor over the busy West Side Highway if service was to be restored. In implementing this plan, the City concedes "the High Line must remain capable, *legally and practically*, of connecting with the National Rail Network" (*Ricks Aff.*, p. 2, ¶ 5) (emphasis added). However, the City's view of its obligation is neither "legally" consistent with 16 U.S.C. § 1247(d), as discussed in POINT I above, nor is it "practically" feasible. If the STB agrees with 511's argument set forth in POINT I, this would lead to a dismissal of the CITU without the need to consider additional issues. If the STB disagrees, the CITU application should still be denied on the basis of the additional grounds that 511 will now discuss. As to the impracticality issue, there are at least four (4) aspects, *viz.* : (1) the practical impossibility of restoring rail service on the *new* easement; (2) the lack of any plans for renovating the High Line itself and maintaining same so as to permit reactivation; (3) the lack of any financial ability to effectuate these plans; and (4) the ability to restore rail service within an appropriate time frame.

First, as a general proposition, the contemplated restoration of rail service in the future cannot be so impractical as to be a mere abstraction. The City admits as much when it argues that the STB's regulations "envision a use that does not require an *extensive infrastructure* required to run a railroad" (*Reply of City*, p. 5) (emphasis added). What is practical will depend on the circumstances. The City plans upon erecting several structures at what is now known as

the Hudson Yards, (see Exh. 3 to Ricks Aff.). Even the City realizes that it would be a practical impossibility to restore the railroad corridor over the current easement after the stadium is built. The City has therefore proposed alternate rail easement which would extend over the West Side Highway (*id.*). Yet, this is an equally unrealistic proposal. The future construction of an elevated rail viaduct for a distance of four City blocks in a northerly direction, and extending from a point between 11<sup>th</sup> and 12<sup>th</sup> Avenues at West 30<sup>th</sup> Street to a point west of 12<sup>th</sup> Avenue, then east to 34<sup>th</sup> Street, involves thousands of feet of line, far from what is described as the "old" easement. This project would take years, at a cost of hundreds of millions of dollars. It would contravene the Trails Act because it would require the construction, in the City's own words, of an "extensive infrastructure" before rail service could be restored.

The City cites Iowa Power, Inc., 8 ICC 2d 858 (1990) in support of its argument that "specific contingency plans for reactivation" are unnecessary (City Reply, p. 8). However, it is not the lack of a "specific" contingency plan which is troublesome, but the lack of feasibility of the "general" proposal which is fatal to the City's CITU application. It is perhaps because the general plan is so chimerical that, more than two (2) years after the City first applied for the CITU, the official responsible for the High Line restoration admits that "a more thorough investigation of existing condition" is necessary, and that the "plans for the renovation are [incomplete]" (see Ricks Aff., ¶ 18). The City still does not know if the High Line east of 11<sup>th</sup> Avenue at West 30<sup>th</sup> Street will be "rehabilitated, demolished and replaced by a platform, or simply demolished" (Ricks Aff., ¶ 8). As to the remaining High Line west of 11<sup>th</sup> Avenue at 30<sup>th</sup> Street, the City apparently plans to build a sports complex, including a stadium (Ricks Aff., ¶ 9).

However, the "General Project Plan" is a nebulous collection of hypotheticals. What appears certain is that the existing High Line will be demolished between 30<sup>th</sup> Street and 34<sup>th</sup> Street..

Against this background, the City is asking the STB to rubberstamp its application, which invites the STB to turn a blind eye to the practical impossibility of constructing the new rail viaduct over one of Manhattan's most heavily trafficked highways which, at the time of such reconstruction, would run near a sports stadium and complex hosting major events. As 511 argues in its opening papers, the STB is a practical agency. It should not elevate fiction, parading as form, over substance.

Second, the construction of an extensive infrastructure over the *new* easement would run afoul of yet another consideration which the City admits must be addressed in a Rails to Trails application, viz., "the key question [of . . . ] whether a CITU proponent would be able to fully restore the corridor to use for rail service *at the appropriate time*" (City Reply, pp. 5-6) (emphasis added). The construction of a viaduct over the West Side Highway would take years. Considering the fact that the City has no idea from where would come the funds for building the new viaduct for the restoration of rail service, that the political opposition would likely be fierce for this massive restoration project, and would result in and the tremendous inconvenience for travelers on the West Side Highway, one begins to appreciate that restoration would perhaps take longer than even this abandonment proceeding. It is clear that the City's claim that rail service could be restored "at the appropriate time" is a cloud built myth.

Third, the plan for converting the High Line to a pedestrian walkway, and for maintaining the highway are, even as general propositions, vapory pipe dreams. The plans have been expressed in the vaguest of terms, and it is obvious that they are entirely impractical. Two (2)

years after the CITU application was made, the City tells us that it needs a "more thorough investigation of existing conditions" before it can even calculate the costs of renovating the High Line, far less the cost of building the viaduct (Ricks Aff., ¶ 18). While contingency plans for reactivation of rail service may not need to be detailed down to the last nail and rivet, one would have expected at this late stage that the City would have completed a viable general plan for renovation and maintenance of the High Line.

Fourth, the illusory nature of the City's proposal for the High Line is also apparent in its approach to finances. It has already been demonstrated that the City has no clue as to how to raise the funds necessary to construct the imaginary rail corridor over the new "alternate" easement. Yet, even with respect to the restoration and maintenance of the High Line itself, the City's approach shows enormous wishful thinking. Even the City Planning official responsible for this project admits "[t]he City does not pretend that all funds necessary for the High Line rehabilitation would be forthcoming within a single year or that the High Line rehabilitation would be completed at once" (Ricks Aff., ¶ 18).

Apparently, the finances for the High Line project are dependent upon such elusive factors as "an increase in the property values adjacent to and in general vicinity of the High Line, thereby resulting in higher assessed values and increased real estate taxes from such properties" (Ricks Aff., ¶ 18). It has been over two years since the City applied for a CITU. In the context of this proceeding, which follows the DC Circuit's 1992 decision providing for a conditional abandonment, the City cannot expect to hide behind presumptions or a promise that the City will come up with a viable plan that is consistent with the Trails Act.

While the STB's role in a CITU application may be somewhat limited, it does not involve the perfunctory approval of CITU applications. If Congress intended to strip the STB of all discretion, it would have said so in the Trails Act. More so in this twenty-year-old case than in other situations, with a history that shows that the railroad's real interest has been to avoid future financial responsibility for the High Line, the STB should be more exacting. The City's claims that the restoration of rail service is possible should be recognized as a facade. Restoration of rail service is the last thing on the agenda of the City or Conrail.

**THE CITY AND CONRAIL HAVE NO INTENTION OF RESTORING  
RAIL SERVICE AS DEMONSTRATED IN THE CITY'S REPLY**

Although the City encloses a new draft of the proposed Trails Use agreement, it should be noted that the section that demonstrates the City's true intention of never restoring rail service is still in the new draft, even though the City now includes another subsection dealing with its obligations to preserve the ability to restore rail service. Section 2(c) of the proposed agreement states:

In case CITU is revoked, terminated or for any reason whatsoever ceases to be in effect... CSXT shall cooperate with the City in the filing with the federal Surface Transportation Board....of a formal application for abandonment of the High Line., in order to permit and facilitate the City's an/or ESDC's *demolition, removal and other physical and legal disposition of the High Line.* (emphasis added)

This is not rail banking. This is rail elimination.

The City states that this section is simply there to reiterate the City's obligations under the law, but the law does not require the High Line's "demolition, removal and other physical and legal disposition". According to the City, "if any circumstance occurs in the future that causes it to surrender the CITU, and no other party comes forward to accept the responsibility, an

abandonment order will likely follow” (City's Reply of January 6, 2005, p. 15). However, the omission to mention future rail service in this passage suggests that even the City does not consider this a realistic possibility. This approach is confirmed by the language of § 2(b) of the proposed Trail Use Agreement. The current version of the Trail Use Agreement is undated and presumably will be signed sometime in 2005 if the CITU is granted. No doubt the current version elaborates upon previous drafts to reflect litigation concerns rather than the actual restoration of rail service. This would explain why § 2(b) of the latest proposed agreement only mentions restoration in the context of the City's obligation to indemnify the railroads. Section 2(b) demonstrates the intention of the City and railroads to never restore rail service; the section is gossamer; when examined critically, the section suggests that the superficial treatment of rail service restoration was added as an afterthought.

**THE CITY'S CITU APPLICATION IS CLEARLY PRECLUDED  
BY THE DOCTRINE OF COLLATERAL ESTOPPEL**

The City argues that the ICC decision issued in 1992, Docket No. AB-167 (Sub-No. 1094), Chelsea Property Owners – Abandonment, 8 I.C.C. 2d 773 (1992), and the decision of the D.C. Circuit, Consolidated Rail Corp. v. I.C.C., 29 F. 3d 706 (D.C. Cir. 1994) which upheld the I.C.C. 1992 determination, are limited to the issues presented at that time. Surprisingly, the City never addressed the actual language in the decision that concerned the issue of Rail to Trail conversion, which was, in fact, considered. The Court determined the question in the following fashion:

The ICC's finding of no potential High Line traffic negates the condition necessary to invoke the Trails Amendments, that is the use is subject to restoration for rail service.” Consolidated Rail Corp. v. I.C.C., 29 F. 3d 706, 713 (D.C. Cir. 1994).

It is the Court's finding on this issue that is entitled to preclusive effect, not the practicality and feasibility of the waste haulage project.

The finding of the Circuit Court satisfies the first two prongs of the test presented in Irish Lesbian and Gay Org. v. Giuliani, 143 F. 3d 638 (2d Cir. 1998), i. e. identity of the issues presented and that the issues were litigated and decided in the prior proceeding. Furthermore, the proceedings before the ICC and the District of Columbia Circuit Court included the City and Conrail, both indispensable parties to the proceedings, which had an opportunity to contest the D.C. Circuit's determination. Now, they are fully bound by that determination.

It is unavailing for the City to argue that the law of the case, rather than the doctrine of collateral estoppel, applies. Insofar as there has been a judicial determination, the ICC is bound by the judicial determination in accordance with the doctrine of issue preclusion. See Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77 (1984).

The DC Circuit's findings ten years ago are even more true today than they were then. There is no practical possibility of restoring rail service over the High Line. The last proposed rail use was found to be unfeasible, and no further proposals have been made in the ten years since. The rejection of the possibility of Rail to Trail's use is also more unrealistic at this time as it was then. Departing from the 1992 Decision would only encourage cases with as tortured history as this one, where railroads are emboldened to resist adverse abandonment proceedings to ignore its responsibility to demolish the line. Conrail should not be rewarded for its prolongation of these proceedings until Conrail achieved its purpose, viz., to escape the cost of demolishing the High Line. The STB should not allow this cynical use of the Trails Act under the guise that

rail service may be restored. The Rails to Trails Act has a legitimate purpose, but its application in this case is not justifiable.

### POINT III

#### **THE CITU IS NOT AVAILABLE IN THE CONTEXT OF THE ADVERSE ABANDONMENT PROCEEDING**

Arguing that there is essentially no difference between adverse abandonment proceeding and the abandonment proceedings brought by a railroad, the City cites case law in an attempt to show that the standard governing the two types of proceedings is essentially the same. What the City is disregarding, however is the difference in purpose between the two proceedings. In a conventional abandonment case, the railroad has an economic interest in removing the line from the interstate rail system. That interest consists of eliminating losses associated with the continued maintenance and operation of the line. No such interest is presented in any adverse abandonment proceeding, where typically the railroad has long stopped providing any services. In such cases the regulator agency permit third party applications for adverse abandonment in order to avoid “allow[ing the Commission’s] jurisdiction to be used to shield a carrier from the legitimate process of State law when there is no overriding Federal interest in interstate commerce.” Modern Aircraft, Inc. – Abandonment in Jackson Co, Mo., 363 I.C.C. 969, 972 (1981). If the STB allows the CITU to be issued in an adverse abandonment proceeding that purpose will be undermined, particularly in a case with as long a history as this one, including a Circuit Court decision that rail service is no longer practical. As the intervener stated in its opening brief, the railroad’s only goal in the CITU application appears to be abandonment of the High Line at the City’s expense. Such avoidance of the adverse abandonment proceeding would

not be consistent with the Trails Act Amendments , the purposes of which are to allow for preservation of the rail tracks. Here, the City's and the railroad's intentions are to never restore rail service for which there is no potential. The railroad, which had no intention to reinstitute the service over the line for decades, has an added incentive to collude with the City: avoidance of the cost of demolition.

The City is, of course, arguing that there is no collusion, only compliance with the regulations. Once again, the City confuses compliance with law with the intentions of the parties. Here, it is clear that Conrail's intent was to never operate the railroad again but at the same time to avoid paying for its demolition. The railroad found a perfect way out of the situation by negotiating a Trails Use Agreement with the City. This hardly suggests the absence of collusion. On the contrary, the City and Conrail both have an interest in avoiding the restoration of rail service, precisely the goal that the Rail to Trails Act seeks to achieve. It is for this reason and others that CITU applications should not be permitted in the context of an adverse abandonment proceeding. The intent of a railroad, which has resisted abandonment to force the costs of demolition of the line upon others and which suddenly seeks to rail bank its line, is suspect. The provisions for the restoration of rail services is simply of no interest to Conrail, just as Conrail had no interest in restoring rail service for the past twenty years. The railroad simply wants to unburden itself of the responsibility of this line in the cheapest possible fashion.

### **511 SHOULD HAVE BEEN SERVED**

It is admitted that 511 was never served in this proceeding.<sup>1</sup> In response to 511's

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<sup>1</sup>It is not believed that 511 was ever a member of CPO and there is certainly no proof that it was in any stage of these proceedings.

argument that it should have been served with process in connection with the City's CITU application, the City argues that the issue of service upon owners adversely affected by a CITU application has been addressed long ago and that no such notice is required. The City relies upon National Ass'n. of Reversionary Property Owners v. STB, 158 F.3d 135, 139 (DC Circuit 1998) in support of its position. That case held that individual owners did not have to be served because it is likely that they would receive notice of the proceeding through local publicity.

However, in the context of a CITU application, in which the easement of adjoining owners is directly affected and is subject to condemnation if the application is granted, is the kind of proceeding which, because it affects significant property rights, requires notice. See Goldberg v. Kelly, 397 U.S. 259 (1970). Where property rights are at stake, the need to provide the affected party with the fundamental due process rights of adequate notice and the opportunity to be heard cannot be avoided. See United States v. \$8,850, 461 US 555 (1983).

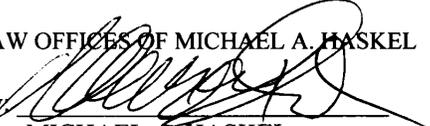
#### **CONCLUSION**

For the reasons stated above, and for all of the considerations stated in the 511 Motion and Reply to the CITU Request in Further Support of Adverse Abandonment proceeding, the City's Request for the issuance of CITU should be denied, and the CPO's request for abandonment should be granted.

Dated: Mineola, New York  
January 30, 2005

Respectfully submitted,

LAW OFFICES OF MICHAEL A. HASKEL

By 

MICHAEL A. HASKEL  
167 Willis Avenue  
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(516) 294-0250

Of Counsel:  
Michael A. Haskel, Esq.  
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Seanan L. Reidy, Esq.

**VERIFICATION**

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

Dated: Mineola, NY  
January 31, 2005



MICHAEL A. HASKEL

## AFFIRMATION OF SERVICE

SEANAN L. REIDY, being duly admitted to practice law in the State of New York, affirms the truth of the following under penalties of perjury:

On January 31, 2005, I served the within Reply to CITU Request in Further Support of Adverse Abandonment Proceeding upon:

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Washington, DC 20001-1401

by depositing a true copy thereof enclosed in a wrapper addressed as shown above, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery.

On January 31, 2005, I served the within Reply to CITU Request in Further Support of Adverse Abandonment Proceeding upon:

Fredric Bell  
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Kimberly Miller  
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Dennis G. Lyons  
Arnold & Porter  
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Washington D.C. 20004-1206

Mary Habstritt  
40 West 77<sup>th</sup> Street  
New York, NY 10024

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

Dated: Mineola, New York  
January 31, 2005



SEANAN L. REIDY