



KAPLAN KIRSCH ROCKWELL

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May 21, 2018
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May 21, 2018

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *New Jersey Transit Corporation – Acquisition Exemption – Consolidated Rail Corporation, In the County of Middlesex, NJ*, STB Docket No. FD 36195

Dear Ms. Brown:

I am attaching an original and ten (10) copies of the following documents to initiate the above-captioned proceeding:

- New Jersey Transit Corporation's (NJT) Notice of Exemption for the acquisition from Consolidated Rail Corporation (Conrail) of real property underlying active track; and
- NJT's Motion to Dismiss the Exemption

With respect to the filing fee, we have enclosed a check in the amount of \$1900. However, NJT, an instrumentality of the State of New Jersey, is seeking a waiver of the filing fee based on the fact that it is a state government entity filing the Notice of Exemption and Motion to Dismiss on behalf of the general public. See 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by...a state or local government agency." NJT is a state government agency filing the request on behalf of the general public. Accordingly, NJT requests that the filing fee submitted with the Notice of Exemption be waived.

Please date stamp the extra copy and return to our messenger. Please note that a CD containing an electronic copy of this filing is enclosed.

Sincerely,

Charles A. Spitulnik

Counsel for New Jersey Transit Corporation



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May 21, 2018
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CONTAINS COLOR MAPS

**Before the
Surface Transportation Board**

Finance Docket No. 36195

**NEW JERSEY TRANSIT CORPORATION
– ACQUISITION EXEMPTION –
CONSOLIDATED RAIL CORPORATION
IN THE COUNTY OF MIDDLESEX, NEW JERSEY**

VERIFIED NOTICE OF EXEMPTION

Dated: May 21, 2018

Communications with respect to this
document should be addressed to:

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Counsel for New Jersey Transit Corporation



**Before the
Surface Transportation Board**

Finance Docket No. 36195

**NEW JERSEY TRANSIT CORPORATION
– ACQUISITION EXEMPTION –
CONSOLIDATED RAIL CORPORATION
IN THE COUNTY OF MIDDLESEX, NEW JERSEY**

VERIFIED NOTICE OF EXEMPTION

The New Jersey Transit Corporation (“NJ Transit”), an instrumentality of the State of New Jersey pursuant to New Jersey Statutes Annotated 27:25-1 *et seq.*, hereby submits this Notice that it intends to acquire from Consolidated Rail Corporation (“Conrail”) a portion of the property commonly known as the “Delco Industrial Lead” in order to begin providing commuter service on that track as part of its transit operation. NJ Transit will acquire ownership of the track and Conrail will retain an exclusive freight easement thereon. The parties here completed the negotiations and NJT will acquire that 3.3 mile long Delco Industrial Lead in Middlesex County, New Jersey (the “Line”). The Line is shown on the map that is attached at **Exhibit 1** hereto.

Conrail will retain an exclusive freight easement for the trackage on the Line preserving its exclusive right to operate freight service on the track. NJ Transit will acquire no right or obligation to provide freight service on the Line, and is acquiring the property for the purpose of providing commuter rail service. NJ Transit is an instrumentality of the State of New Jersey with legal authority only to operate mass transportation services pursuant to New Jersey Statutes Annotated 27:25-1 *et seq.* Usage of the Line will continue to be governed by the Trackage

Rights Agreement between NJ Transit, New Jersey Transit Rail Operations, Inc., and Conrail, effective as of October 1, 1984. Relevant portions of the Trackage Rights Agreement are attached as **Exhibit 2**. A copy of the Ninth Supplemental Agreement that amends the Trackage Rights Agreement for the purposes of this transfer is attached in **Exhibit 3**.

The Trackage Rights Agreement has allowed Conrail to provide freight service over tracks used jointly with NJ Transit, including the Line, for many years. NJ Transit's acquisition will not affect or impair Conrail's ability to provide freight service to existing or future shippers over the Line. As set forth in detail below, NJ Transit will not acquire sufficient control of the Line to interfere with Conrail's freight operations.

This Notice of Exemption is filed under 49 C.F.R. § 1150.31(1) *et seq.* because NJ Transit is a non-carrier. *See New Jersey Transit Corporation – Acquisition Exemption – Certain Assets of Consolidated Rail Corporation*, STB Finance Docket No. 33786 (Service Date Feb. 15, 2000) (Dismissing Notice of Exemption for acquisition by NJ Transit of the 31.83 mile Bordentown Secondary Track from Conrail). Because NJ Transit will not acquire either rights or obligations that implicate in any way the existing freight common carrier operations on the Line, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, NJ Transit is simultaneously filing a Motion to Dismiss this Notice of Exemption.

In accordance with the requirements of 49 C.F.R. § 1150.33, NJ Transit submits the following information:

- (a) *The full name and address of the applicant*, 49 C.F.R. § 1150.33(a)

New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07105-02246

- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence, 49 C.F.R. § 1150.33(b)*

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Allison I. Fultz

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- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached, 49 C.F.R. § 1150.33(c)*

NJ Transit and Conrail have completed the negotiations for several agreements related to NJ Transit's acquisition of the Line, and will execute the documents and relating to this transaction in escrow pending completion of the proceedings at this Board related to the Notice of Exemption and related Motion to Dismiss. NJ Transit and Conrail plan to execute the documents and place them in escrow on or about June 5, 2018. The parties will execute an agreement of sale, which sets forth their agreement for Conrail to transfer to NJT a segment of track known as the Delco Industrial Lead and for Conrail to retain an exclusive freight easement thereon. A copy of the agreement of sale (without exhibits, because the exhibits either are provided separately or do not relate to the transfer of common carrier rights and obligations) is attached hereto as **Exhibit 4**. At the same time, Conrail will execute a Quitclaim Deed for the Line in favor of NJ Transit, which includes a reservation for Conrail of an exclusive, perpetual railroad easement for the purpose of permitting Conrail to continue providing freight service on the Line. A copy of the Quitclaim Deed is attached hereto as **Exhibit 5**.

- (d) *The operator of the property, 49 C.F.R. § 1150.33(d)*

The Quitclaim Deed will transfer to NJ Transit legal title of the Line, *provided however* that Conrail will retain "the exclusive, perpetual, transferable, assignable and irrevocable retained rail freight rights" on the entire rail line. *See*, Quitclaim Deed (**Exhibit 5** to this Notice). Conrail therefore will retain the ongoing exclusive obligation to provide freight service on the Line and NJ Transit will not acquire any such rights or obligations.

(e) *A brief summary of the proposed transaction, 49 C.F.R. § 1150.33(e)*

(1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.33(e)(1)*

Consolidated Rail Corporation
1717 Arch Street, Suite 1310
Philadelphia, PA 19103

(2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.33(e)(2)*

NJ Transit and Conrail expect to execute the transaction documents on May 18, 2018. The agreements will be placed in escrow pending the conclusion of this exemption proceeding, at which time the transaction will be consummated.

(3) *The mile-posts of the subject property, including any branch lines, 49 C.F.R. § 1150.33(e)(3)*

The portion of the Delco Industrial Lead acquired by NJ Transit from M.P. 33.1 to M.P. 36.4 in Middlesex County, New Jersey.

(4) *The total route miles being acquired, 49 C.F.R. § 1150.33(e)(4)*

The total mileage of the lines to be acquired is approximately 3.3 miles.

(f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states*

See **Exhibit 1**.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier*

NJ Transit would not conduct any freight operations and therefore the projected freight rail carrier revenues of NJ Transit would not exceed those that would qualify NJ Transit as a Class III rail carrier. See NJ Transit's Verification and Certification, attached.

(h) *Transactions Imposing Interchange Commitments*

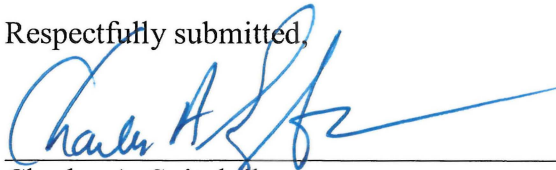
The proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

Pursuant to 49 C.F.R. § 1105.6(c)(2), NJ Transit's proposed acquisition of the Line is exempt from environmental reporting requirements because the railroad operations on the line segment that is subject to the Board's jurisdiction will not be affected by the acquisition by NJ Transit. *See* 49 C.F.R. § 1105.6(c)(2).

Similarly, under 49 C.F.R. § 1105.8(b)(1), NJ Transit's proposed acquisition of the Line is exempt from historic preservation reporting requirements. The proposed acquisition and operating agreement are for the purpose of continuing the status quo. Further Board approval would be required for Conrail to discontinue or abandon any freight service that Conrail currently offers or is able to offer on the Line. No changes to any existing facilities are proposed as the result of or in connection with the transaction. Therefore, the acquisition will not have any effect on properties subject to Board jurisdiction that are fifty years old or older.

A proposed caption summary for publication in the Federal Register is attached hereto as **Exhibit 6.**

Respectfully submitted,



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Tel: (202) 955-5600
Emails: csputulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for New Jersey Transit Corporation

Dated: May 21, 2018

VERIFICATION AND CERTIFICATION

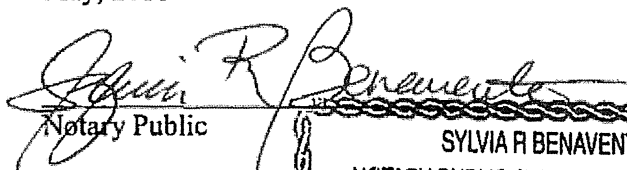
I, ERIC DALEO, Assistant Executive Director, Capital Planning and Programs, of the New Jersey Transit Corporation, verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that, because the New Jersey Transit Corporation will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.



Eric Daleo
Assistant Executive Director
Capital Planning and Programs
New Jersey Transit Corporation

Subscribed and sworn to
before me this 18 day of
May, 2018


Notary Public

My commission expires:

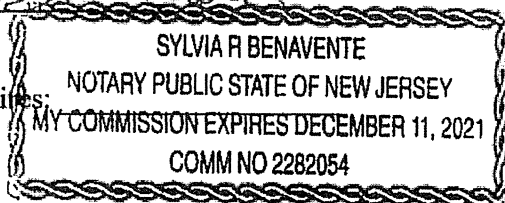
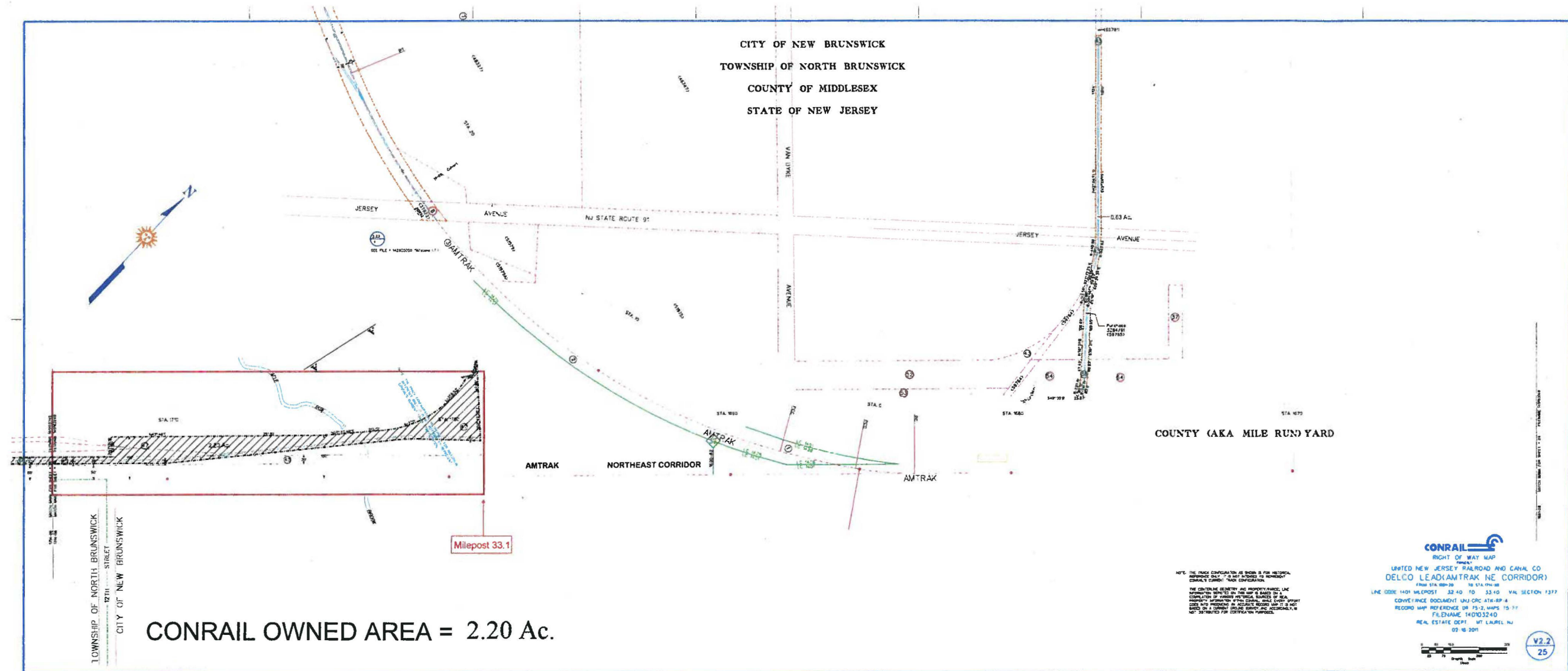


Exhibit 1

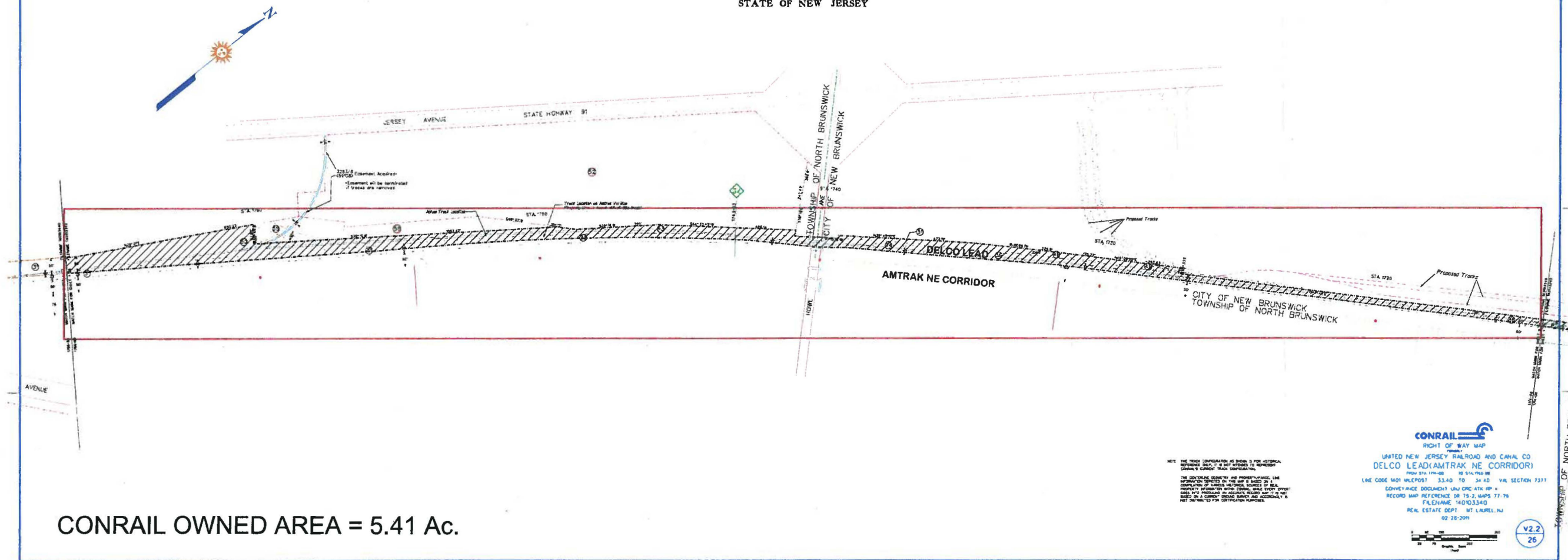
Map of the Line

[attached hereto]

CITY OF NEW BRUNSWICK
TOWNSHIP OF NORTH BRUNSWICK
COUNTY OF MIDDLESEX
STATE OF NEW JERSEY



CITY OF NEW BRUNSWICK
TOWNSHIP OF NORTH BRUNSWICK
COUNTY OF MIDDLESEX
STATE OF NEW JERSEY





TOWNSHIP OF NORTH BRUNSWICK
COUNTY OF MIDDLESEX
STATE OF NEW JERSEY

Milepost 36.40

STA 1870

STA 1880

STA 1890

FELICIA STREET
STA 1840

MARGARET STREET

EDWIN STREET

CORDELLA STREET

HALIA STREET
STA 1830

ELIZABETH STREET

ADAMS STREET

ADAMS

ADAMS BOULEVARD

DELCO LEAD 10.35 Ac.

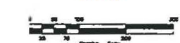
FORMER STUDEBAKER YARD

6.13 Ac.

CONRAIL OWNED AREA = 10.35 Ac.

NOTES: THE ROAD CENTERLINE IS SHOWN FOR HISTORICAL
REFERENCE ONLY. IT IS NOT INTENDED TO REPRESENT
EXISTING OR PROPOSED ROAD CENTERLINES.
THE CONRAIL OWNED AREA IS SHOWN BY A HATCHED LINE
AND IS NOT INTENDED TO REPRESENT A BOUNDARY OF ANY
PROPERTY. THE CONRAIL OWNED AREA IS NOT
INTENDED TO REPRESENT A BOUNDARY OF ANY
PROPERTY. THE CONRAIL OWNED AREA IS NOT
INTENDED TO REPRESENT A BOUNDARY OF ANY
PROPERTY.

CONRAIL
RIGHT OF WAY MAP
UNITED NEW JERSEY RAILROAD AND CANAL CO.
DELCO LEAD
FROM STA 1870-00 TO STA 1870-10
LINE CODE: 1011 MILEPOST: 36.40 TO 36.40 VAL SECTION: 1337
CONVEYANCE DOCUMENT: UAU-CRC STA 1870-4
RECORD MAP REFERENCE: DR 75-3 MAPS 3-5
FILENAME: 140103540
REAL ESTATE DEPT.: MT. LAUREL, NJ
03-08-2011



V2.2
28

Exhibit 2

Trackage Rights Agreement - Excerpts

[attached hereto]

Excerpts

TRackage RIGHTS AGREEMENT

BETWEEN

NEW JERSEY TRANSIT CORPORATION,
NEW JERSEY TRANSIT RAIL OPERATIONS, INC.

AND

CONSOLIDATED RAIL CORPORATION,

EFFECTIVE OCTOBER 1, 1984

ARTICLE III
MANAGEMENT AND OPERATIONS

Section 3.01 NJTRANSIT Rail Properties

(a) NJTRANSIT retains the right to establish the overall policies governing the management and operational control of NJTRANSIT Rail Properties, including, but not limited to the dispatching and control of all trains. NJTRANSIT's right shall not be exercised in a manner which would unreasonably interfere with Conrail's Trackage Rights.

(b) The scheduling and movement of passenger trains and equipment shall take preference over all other train scheduling and movements. NJTRANSIT shall provide thirty (30) days written notice of changes in passenger train schedules of more than 10 minutes from origin or destination or changes by way of additional train service.

(c) Conrail's freight operating rights described in this Agreement are for the sole purpose of permitting Conrail to operate its road and local freight trains, as identified in Exhibit No. 3, as well as emergency trains, special trains, locomotives, switching movements, and other on-track equipment.

(d) Subject to thirty (30) days written notice to NJTRANSIT, Conrail shall have the right to amend the level of its freight service described in Exhibit No. 3 (Conrail's Classification and Schedule of Freight Service dated 10/1/84); provided, however, that the character, scheduling or extent of the amended freight service to be rendered under this Agreement shall not unreasonably interfere with existing or planned uses of NJTRANSIT Rail Properties.

(e) NJTRANSIT reserves the right to operate special or emergency trains and other on-track equipment over NJTRANSIT Category NF Rail Properties.

ARTICLE IV

MAINTENANCE AND CONSTRUCTION ON RAIL PROPERTIES

Section 4.01 Responsibility For Maintenance, Replacement,
Construction, Reconstruction, and Alteration
of NJTRANSIT Rail Properties

(a) NJTRANSIT Rail Properties

(1) NJTRANSIT has the right to establish the overall policies governing, and the implementation thereof, routine and non-routine maintenance, replacement, construction, reconstruction, alteration and removal of all NJTRANSIT Rail Properties.

(b) NFP Property - NJTRANSIT Responsibility

(1) NJTRANSIT or designee shall perform routine and non-routine track maintenance together with the maintenance of signal appliances and derails, if any, for the portion of solely freight sidings located between the point of switch and the clearance point and any solely freight crossover out of the main track.

All routine and non-routine maintenance expenses incurred by NJTRANSIT related to these facilities are not included in car-mile reimbursement in Section 5.02 (a) hereto. The expenses will be billed to Conrail. Such facilities are listed on Exhibit No. 5. For turnouts designated by Note 1 on Exhibit No. 5, NJTRANSIT shall perform the routine maintenance at its sole cost and expense and Conrail shall be responsible only for non-routine maintenance expenses only.

For purposes of this Agreement, routine maintenance shall be that work performed by section forces generally limited to inspections, switch stand and rod adjustments, lubricating, welding, respiking, spot surfacing and tamping, signal department tests and inspection, and programmed turnout surfacing by either section or program forces. The cost of such work shall be charged to Conrail in accordance with Section 5.05(d). Non-routine maintenance shall be that work generally performed and programmed on a cycle, on a project or emergency basis, consisting of partial or entire replacement of switch timbers, ties, metal materials, ballast, switch stands, signal apparatus, and details, if any. This may be performed by program gang or section forces. The cost of such work shall be charged to Conrail in accordance with Section 5.06.'

Whenever in the sole opinion of NJTRANSIT, any existing solely freight facility located between the point of switch and the clearance point and any solely freight crossover out of the main track requires non-routine maintenance, NJTRANSIT shall prepare and provide to Conrail an estimate of the costs based on the provisions set forth in Section 5.06 for the work required. Within sixty (60) days after receipt of the aforesaid estimate Conrail shall advise NJTRANSIT whether the solely freight facility is required for the performance of Conrail's freight service. In the event that Conrail advises that said solely freight facility is required for the performance of Conrail's freight service, NJTRANSIT, shall perform or arrange to have performed the aforesaid non-routine maintenance, Conrail shall pay NJTRANSIT in accordance with the provisions of Section 5.06. In the event that Conrail advises that said solely freight facility is not required for the performance of Conrail's

freight service, as provided for in this Agreement, the provisions of Section 4.03 shall apply. In the event that Conrail fails to reply to the estimate prepared by NJTRANSIT, NJTRANSIT shall submit a second notice to Conrail. If Conrail has not replied within forty-five (45) days to the second notice, NJTRANSIT shall have the right to remove such facility. In the event an emergency situation occurs which requires the total or partial replacement of a solely freight facility, NJTRANSIT shall proceed with the work and bill Conrail in accordance with the provisions of Section 5.06 or 5.07 as applicable.

(2) With respect to certain solely freight facilities located beyond the clearance point as identified in Exhibit No. 6, NJTRANSIT or designee agrees to perform routine and non-routine maintenance as defined herein at Conrail's sole cost and expense. Conrail agrees that the level of maintenance to be performed by NJTRANSIT shall be at FPA Class I.

For purposes of this Agreement, routine maintenance of the facilities shall be that work performed by section forces generally limited to inspection, lubricating, welding, respiking, spot surfacing and tamping. The cost of such work shall be charged to Conrail in accordance with Section 5.05(e).

For purposes of this Agreement, nonroutine maintenance of the facilities shall be that work generally performed and programmed on a cycle or project basis, consisting of partial or entire replacement of ties, metal materials, ballast, switch stands, signal apparatus and derails, if any. This work may be performed by program or section forces. Replacement, construction, reconstruction, and alteration are also considered as non-routine maintenance. Whenever

in the sole opinion of NJTRANSIT, any existing solely freight facility requires non-routine maintenance, NJTRANSIT shall prepare and provide to Conrail an estimate of the cost based on the provisions set forth in Section 5.07 for the work required. Within sixty (60) days after receipt of the aforesaid estimate Conrail shall advise NJTRANSIT whether the solely freight facility is required for the performance of Conrail's freight service. In the event that Conrail advises that said solely freight facility is required for the performance of Conrail's freight service, NJTRANSIT shall perform or arrange to have performed the aforesaid non-routine maintenance, and Conrail shall pay NJTRANSIT in accordance with the provisions of Section 5.07. In the event that Conrail notifies NJTRANSIT that it does not wish to have the work performed, NJTRANSIT's maintenance responsibility shall terminate. In the event Conrail fails to reply to the estimate prepared by NJTRANSIT, NJTRANSIT shall submit a second notice to Conrail. If Conrail has not replied within forty-five (45) days to the second notice, NJTRANSIT's maintenance responsibility shall terminate. In the event a derailment or other event occurs which destroys a solely freight facility and requires the total or partial replacement, NJTRANSIT shall proceed with the work and bill Conrail in accordance with the provisions of Section 5.07.

(c) NPP Rail Properties - Solely Freight Facilities -- Conrail Responsibility

(1) Except for those facilities maintained by NJTRANSIT pursuant to Section 4.01(b)(2) and Exhibit No. 6 of this Agreement, NJTRANSIT, for the sum of one dollar, hereby leases to Conrail those

portions of NJTRANSIT Category NPP Rail Properties not now maintained by or leased to third parties beyond the clearance point of each main track freight turnout for the purpose of Conrail's maintenance obligations included but not limited to utilities, brush control, etc., set forth in this Agreement.

(2) This lease shall commence on the execution of this Agreement and shall automatically terminate for each portion of NJTRANSIT Category NPP Properties when Conrail abandons service on that portion pursuant to Section 9 of this Agreement. Conrail may enter into a sublease for such properties.

(3) In the event that any replacement, construction or alteration will result in a change in weight of rail, grade, alignment or location, as well as removal, Conrail shall obtain the written approval of NJTRANSIT prior to undertaking any work whose approval shall not be unreasonably withheld.

(4) Conrail shall be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration including, but not limited to, a petition to the FRA the assignment of maintenance responsibilities pursuant to 9 C.F.R. 213.5 and other entities with regulatory authority over the rail industry as well as federal, state and municipal laws regarding the condition of the solely freight facilities on NPP Rail Properties. Conrail shall also indemnify, protect, and defend against all fines, penalties, and liabilities imposed under such laws and regulations.

(d) NP Rail Properties - Conrail Responsibility

(1) Maintenance of right of way and maintenance of facilities located on NP Rail Properties shall be performed by Conrail or its designee at its sole cost and expense.

(2) Conrail, subject to Section 3.03(a)(3), shall determine the level of and requirements for maintenance as long as no NJTRANSIT use is scheduled for these facilities or until freight service thereon is abandoned by Conrail. If NJTRANSIT intends to institute passenger service over Category NP lines, Conrail shall have one hundred twenty (120) days after NJTRANSIT's written notice to restore the track to the level of maintenance as of January 1, 1983. In the event that NJTRANSIT initiates passenger service or Conrail discontinues freight service on any of these properties, and it is then determined that Conrail has not maintained these properties at or brought them to, the level of maintenance as of January 1, 1983, NJTRANSIT shall have the right to perform the necessary work within one (1) year from the date of the Conrail's abandonment of service and Conrail shall reimburse NJTRANSIT for the cost thereof pursuant to Section 5.07.

(3) In the event that any such replacement, construction or alteration will result in a change in weight of rail, grade, alignment or location, as well as removal, Conrail shall obtain the written approval of NJTRANSIT prior to undertaking any work. NJTRANSIT's approvals shall not be unreasonably withheld.

(4) Conrail shall also be responsible for compliance with the provisions of applicable regulations of the Federal Railroad Administration including, but not limited to, a petition to the FRA for the assignment of maintenance responsibilities pursuant to 49 C.F.R. 213.5 and other entities with regulatory authority over the rail industry as well as federal, state and municipal laws regarding the condition of Rail Properties. Conrail shall also indemnify, protect, and defend against all fines, penalties, and liabilities imposed under such regulations.

(5) Conrail shall also be responsible for all costs associated with the operation of the facilities including but not limited to utilities, brush control, etc.

Exhibit 3

Ninth Supplemental Agreement to Trackage Rights Agreement

NINTH SUPPLEMENTAL AGREEMENT

This Ninth Supplemental Agreement, to be effective _____ (the "Effective Date"), is by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail") and NEW JERSEY TRANSIT CORPORATION (hereinafter referred to as "NJ TRANSIT", collectively, the "Parties").

WHEREAS, Conrail and NJ TRANSIT entered into a certain Trackage Rights Agreement, which became effective as of October 1, 1984 (hereinafter referred to as the "Trackage Rights Agreement"), in order to establish appropriate rights, maintenance responsibilities, and financial arrangements between Conrail and NJ TRANSIT for continued operation of passenger and freight service over NJ TRANSIT and Conrail rail properties; and

WHEREAS, Conrail and NJ TRANSIT subsequently entered into eight (8) Supplemental Agreements, which became effective as of January 1, 1990, May 1, 1994 (the latter as modified by Letter Agreement dated March 29, 1995), December 11, 1995, July 29, 1997, March 3, 2004, September 12, 2008, November 14, 2011 and May 8, 2013; and

WHEREAS, pursuant to the Transfer Agreement between the Parties dated December 31, 1982, NJ TRANSIT has advised Conrail that it intends to commence commuter rail service on the Delco Industrial Lead (the "Delco Property") and that it requires additional use of the Delco Property and County Yard for NJ TRANSIT rail operations; and

WHEREAS, the Delco Property is designated as a lead track owned in fee by Conrail pursuant to a deed from the Bankruptcy Trustee of the United New Jersey Railroad and Canal Co. dated March 31, 1976, from mile post 32.8+/- to mile post 36.45+/- of Amtrak's Northeast Corridor and adjacent to and connecting therewith, located in New Brunswick and North Brunswick, NJ; and

WHEREAS, NJ TRANSIT, by deed of even date herewith, acquired Conrail's interest in the Delco Property, with Conrail reserving a perpetual freight service easement thereover to provide freight rail service to its existing and future customers located along the Delco Property; and

WHEREAS, NJ TRANSIT intends to construct new passenger rail facilities, tracks, storage tracks and related railroad infrastructure (such as electrification and signal systems) on the Delco Property ("the "Project"); and

WHEREAS, NJ TRANSIT, at its sole cost and expense, will undertake the Project pursuant to the terms of the Trackage Rights Agreement as well as other agreements to be negotiated by the Parties hereto; and

WHEREAS, NJ TRANSIT, in connection with the Project, shall remove certain inactive turnouts along the Delco Property that Conrail has not used to provide service for many years prior to the Effective Date; and

WHEREAS, NJ TRANSIT will install certain turnouts, signals and infrastructure along the Delco Property required to maintain freight service to Conrail's active customers.

NOW THEREFORE, Conrail and NJ TRANSIT, intending to be legally bound, agree to supplement the Trackage Rights Agreement as follows:

1. Incorporation. Except as otherwise provided herein, all terms, covenants and conditions of the Trackage Rights Agreement and its supplements are hereby incorporated by reference and made a part of this Ninth Supplemental Agreement.

2. Property. The Delco Property shall be designated a "Category NFP Property" in accordance with Article I, Section 1.01(g) of the Trackage Rights Agreement, and Exhibit No. 1 to the Trackage Rights Agreement is hereby amended to add the Delco Property thereto.

3. Freight Clearance. All freight activity on the Delco Property is restricted to "Plate F" vertical and horizontal clearances.

4. Turnouts.

A. In order to implement the Project, NJ TRANSIT shall replace all existing track on the Delco Property at its sole cost and expense, with the salvage value of such materials accruing to NJ TRANSIT. NJ TRANSIT, upon Conrail's approval, shall remove existing turnouts along the Delco Property that do not serve existing Conrail customers. Those turnouts which do not serve existing customers as of the Effective Date are identified in **Exhibit A**. With respect to the turnouts identified in Exhibit A that are to be removed, Sections 4.03(c)-(d) of the Trackage Rights Agreement is hereby revised to provide that said turnouts will be removed by NJ TRANSIT at NJ TRANSIT's sole expense, with the salvage value of the materials accruing to NJ TRANSIT, and not to Conrail.

B. Existing turnouts on the Delco Property that serve currently active Conrail customers as of the Effective Date, as identified in **Exhibit A**, shall be retained and reinstalled as part of the Project.

C. In the event Conrail shall require new No. 10 turnouts ("New Turnouts") along the Delco Property for future customers, Section 4.02(b) is hereby revised to provide that "Construction, installation, or modification of New Turnouts on the Delco Property shall be performed by NJ TRANSIT employees or contractors at a cost to Conrail's customers of \$100,000 subject to the AAR inflation index, base year 2017." Any New Turnouts shall be installed by NJ TRANSIT in a timely manner. The portions of any new customer sidings located on the Delco Property beyond the clearance point of the switch shall be deemed leased to Conrail pursuant to Section 4.01(c)(1) of the Trackage Rights Agreement.

D. NJ TRANSIT and Conrail shall review applications for new Conrail customer sidetracks within thirty (30) days of receipt by NJ TRANSIT of the application by the Conrail customer.

E. Except for the U.S. Detergent turnout, which shall be retired and removed by NJ TRANSIT, turnouts, catenary poles, drainage swales and ditches along the Delco Property which have historically served Conrail customers shall remain in place and available to Conrail for potential future use as identified on **Exhibit A**. Conrail is retaining a permanent, perpetual, exclusive, transferable, assignable and irrevocable freight rights along the Delco Property pursuant to the deed between Conrail and NJ TRANSIT of even date herewith. NJ TRANSIT acknowledges Conrail's retained rights.

5. Existing Leases. NJ TRANSIT acknowledges that three portions of the Delco Property are currently leased by Conrail to third parties. These leased portions, identified on **Exhibit B**, are hereby deemed leased to Conrail to Conrail pursuant to Section 4.01(c)(1) of the Trackage Rights Agreement, and the leases to the third parties for the three portions of the Delco Property are hereby deemed acceptable subleases pursuant to Section 4.01(c)(2) of the Trackage Rights Agreement.

6. Term. The term of this Ninth Supplemental Agreement continue as long as the Trackage Rights Agreement remains in full force and effect.

[signature page follows]

IN WITNESS WHEREOF, NJ TRANSIT and CONRAIL, by their authorized representatives, hereby cause this Ninth Supplemental Agreement to be executed as of the Effective Date.

Witness: CONSOLIDATED RAIL CORPORATION

By: _____

Witness: NEW JERSEY TRANSIT CORPORATION
Acting by and through its operating subsidiary
New Jersey Transit Rail Operations

By: _____

This Ninth Supplemental Agreement has been reviewed and approved as to form only:

Gurbir S. Grewal

Attorney General of New Jersey

By: _____

Deputy Attorney General

EXHIBIT A

Turnouts

EXHIBIT B

Conrail Leases

Exhibit 4

Agreement of Sale

[attached hereto]



AGREEMENT OF SALE



Case # 73436

THIS AGREEMENT ("Agreement"), made as of this ___ day of _____, 2018, between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation, with its principal offices at 1717 Arch Street, Suite 1310, Philadelphia, PA 19103 ("Conrail"), and **NEW JERSEY TRANSIT CORPORATION**, an instrumentality of the State of New Jersey, having a mailing address at 1 Penn Plaza East, Newark, New Jersey 07105 ("NJ TRANSIT"), for all of Conrail's right, title and interest in and to all that certain piece or parcel of land known as the Delco Industrial Lead (Line Code 1401), and any improvements thereon, situate in the City of New Brunswick and the Township of North Brunswick, County of Middlesex, State of New Jersey containing 25 acres +/-, as described on **Exhibit A** and shown on **Exhibit B** (the "Property"). Conrail and NJ TRANSIT may be individually referred to as "Party" and collectively as "Parties."

WHEREAS, the Property is designated as a lead track owned in fee by Conrail pursuant to a deed from the Bankruptcy Trustee of the United New Jersey Railroad and Canal Co. dated March 31, 1976, from mile post 33.1+/- to mile post 36.40+/- of Amtrak's Northeast Corridor (the "NEC") and adjacent to and connecting therewith, being designated as Parcel 1401-33-36 on Railroad Valuation Maps V-2.2/25, V-2.2/26, V-2.2/27 and V-2.2/28, as amended, located in New Brunswick and North Brunswick, NJ; and

WHEREAS, NJ TRANSIT desires to acquire Conrail's interest in the Property, with Conrail reserving a perpetual freight service easement over the Property to provide freight rail service to its existing and future customers, the use of which will be subject to a car-mile charge; and

WHEREAS, NJ TRANSIT and Conrail entered into a Trackage Rights Agreement effective October 1, 1984 (as subsequently amended, the "Trackage Rights Agreement") which establishes the operating rights, maintenance responsibilities and financial arrangements between them for continued operation of passenger and freight service over "NJ TRANSIT Rail Properties" and "Conrail Rail Properties" identified in Section 1.01 of the Trackage Rights Agreement; and

WHEREAS, NJ TRANSIT intends to construct new passenger rail facilities, tracks, storage tracks and related railroad infrastructure (such as electrification and signal systems) on the Property and within County Yard, and NJ TRANSIT, in the future, intends to: (i) construct a new storage facility in County Yard to provide resiliency to its rail operations by ensuring the safe and reliable storage of its rail equipment; (ii) relocate its existing Jersey Avenue Station platform to locations on the NEC and the Property; (iii) build an overhead pedestrian bridge from the westbound Jersey Avenue

Station across the NEC to the new eastbound Jersey Avenue Station; and (iv) construct a new passenger station at North Brunswick with a platform located between the Property and the NEC. (The aforementioned projects are collectively referred to as the "Project"); and

WHEREAS, on the date of Closing (as defined below), the Parties will amend the Trackage Rights Agreement, designating the Property as an "NFP Property" as defined in, and pursuant to, the Trackage Rights Agreement.

NOW THEREFORE, the Parties, intending to be legally bound, agree as follows:

1. PURCHASE AND SALE OF LINE

(a) The purchase price for the Property shall be _____, which shall be paid to Conrail by wired funds pursuant to the wire instructions provided by Conrail at Closing, as defined in Section 2, subject to the provisions of Section 18.

(b) The Property is fully described in **Exhibits A** and **B** attached hereto.

2. CLOSING

(a) Conveyance of title to the Property shall take place at the offices of NJ TRANSIT, 1 Penn Plaza East, Newark, New Jersey 07105, or at such other location mutually agreed upon by the Parties, on or before June 5, 2018 (the "Closing").

(b) At Closing, Conrail will deliver, and NJ TRANSIT 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 C** (the "Deed"). NJ TRANSIT shall, upon Conrail's delivery of the original, executed Deed to NJ TRANSIT hereunder, sign a copy of the face sheet of said Deed acknowledging receipt and acceptance thereof. NJ TRANSIT shall, at its sole cost and expense, and within thirty (30) days of Closing, properly record the original, executed Deed in the Records 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 NJ TRANSIT at Closing if NJ TRANSIT has not complied with the aforesaid obligation to record the Deed. NJ TRANSIT shall be obligated to pay for all recording fees, transfer taxes, and other costs related thereto and in the recovery of such fees and taxes from NJ TRANSIT.

(c) At Closing, Conrail shall provide to NJ TRANSIT (i) a list of solely freight facilities located beyond the Property's clearance point which are leased by Conrail and will be maintained by Conrail, attached hereto as **Exhibit D**, and (ii) a list of existing utility permits to be assigned to NJ Transit at Closing, attached hereto as **Exhibit D-1**.

3. TITLE

(a) Title to the Property shall be conveyed without covenants or warranties of any nature except those specifically set forth in this Agreement, and such conveyance shall be subject to: (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets on or crossing the Property; (2) streams, rivers, creeks and waterways passing under, across or through the Property; (3) the reservations, including the freight service easement, contained in the Deed; (4) any existing tenancies, encumbrances, easements, rights, trackage rights, licenses, permits, privileges, agreements, covenants, conditions, restrictions, rights of re-entry, possibilities of reverter, existing laws and ordinances and orders of regulatory agencies, and those of public record; and (5) any pipes, wires, poles, cables, culverts, drainage courses or systems or other facilities on or crossing the Property, together with the rights of any person entitled thereto to maintain, repair, renew, replace, add to, use or remove the same.

(b) At NJ TRANSIT's request, and no later than ten (10) days prior to Closing, Conrail shall provide to NJ TRANSIT's title insurance company an Affidavit of Title stating that Conrail has not encumbered the Property and 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. Conrail's indemnity "Affidavit of Title" under this Agreement shall be effective as of the date of Closing and shall be in the form of the attached **Exhibit E**. If an encumbrance that 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 thirty (30) days. If Conrail is unable or unwilling to give such title satisfactory to NJ TRANSIT within such thirty (30) day period, NJ TRANSIT will have the right to declare this Agreement null and void.

(c) Payment pursuant to this Agreement will be made at Closing upon receipt by NJ TRANSIT of properly executed instruments of conveyance and all proofs which are required to convey title in a condition required in this Agreement. Upon payment, NJ TRANSIT will be given full rights of use on and over the Property subject to the provisions of the Trackage Rights Agreement.

(d) At Closing, Conrail will deliver to NJ TRANSIT the appropriate title documents such as, among other things, a FIRPTA affidavit, Residency Certificate, IRS Form 1099-S, corporate, partnership or limited liability company authorization of sale, if appropriate, and any other documents reasonably required by NJ TRANSIT or its title company.

(e) The Parties expressly understand and agree that Conrail and NJ TRANSIT are each solely responsible for their respective attorneys' fees.

4. CLOSING APPORTIONMENT AND PAYMENTS

(a) Conrail represents that there are no rental or licensing agreements relating to the Property to which Conrail is a party other than those listed in **Exhibit D-1**.

(b) NJ TRANSIT will execute an Affidavit of Consideration or Exemption at Closing in order for this transaction to be exempt from New Jersey Real Estate Transfer Taxes.

(c) Real estate taxes, water and sewer rents and other lienable charges (if any) shall be apportioned between Conrail and NJ TRANSIT as of the date of Closing.

5. CONDITION OF PROPERTY

With the exception of environmental conditions on the Property, including, but not limited to, the condition of the soil, the presence of Hazardous Materials (as defined herein), substances, wastes or other environmentally regulated substances, or other contaminants in the soil, groundwater, surface water, air or improvements, whether known or unknown (referred to herein as "Contamination"), as set forth in Section 17 herein, NJ TRANSIT agrees to accept the Property and any improvements "AS IS" "WHERE IS", with any and all faults, and acknowledges that Conrail has not made any express or implied representations or warranties with respect to the condition or suitability of the Property. Conrail has reviewed its records and has disclosed all information in its possession regarding the condition of the Property to NJ TRANSIT and other physical characteristics of the Property. No allowances shall be made on behalf of NJ TRANSIT for any failure on NJ TRANSIT's part to adequately inspect the Property. NJ TRANSIT shall take title to the Property in its condition as of Closing, including any violations of law or ordinances, whether or not such violations are officially recorded.

6. DEFAULT

(a) Unless otherwise provided for in this Agreement, if NJ TRANSIT fails to comply with the terms and conditions herein, Conrail may, with two (2) months' written notice to NJ TRANSIT: (i) terminate this Agreement or (ii) modify this Agreement to afford NJ TRANSIT reasonable opportunity to cure in an expeditious fashion any lack of compliance.

(b) If Conrail fails to comply with the terms and conditions herein, NJ TRANSIT shall, with two (2) months' written notice to Conrail, at its option, have the right to cure or correct any such failure to comply or to have the right to terminate this Agreement.

7. 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 is received by Conrail or NJ TRANSIT, or notice of confirmed special assessment is issued to Conrail or NJ TRANSIT in connection therewith, after the date of this Agreement, NJ TRANSIT agrees to be responsible for compliance with such notice or notices, and NJ TRANSIT shall pay for the work required or the assessment levied therefor.

8. 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 successors and assigns of Conrail and NJ TRANSIT.

9. CASUALTY LOSS

Except as set forth below, no loss or casualty with respect to the Property shall, in any way, affect the terms of this Agreement. If the Property contains improvements to be conveyed under this Agreement, any material loss or damage to such improvements by fire or other casualty shall not void or impair any of the conditions of this Agreement, but NJ TRANSIT shall have the option to terminate this Agreement by notice to Conrail, whereupon this Agreement shall terminate and neither Party shall have any further obligation thereunder.

10. CONDEMNATION

If the Property, or any substantial portion thereof, or any interest therein, shall be affected by an exercise of the power of eminent domain, either Party shall have the option to either: (a) terminate this Agreement; or (b) enforce this Agreement and assign any award or agreed upon compensation to NJ TRANSIT.

11. 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 received.

12. REPRESENTATIONS

This Agreement constitutes the entire agreement between the Parties, which fully and completely expresses the Parties' intent and supersedes prior oral representations

and understandings concerning the sale of the Property by Conrail to NJ TRANSIT. NJ TRANSIT 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 NJ TRANSIT concerning the Property other than the representations made herein, including any representations or warranties as to the condition of the Property or the quality of Conrail's title to the Property. Any information provided to NJ TRANSIT was provided strictly as an accommodation to NJ TRANSIT, and no express or implied warranties or representations 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. NJ TRANSIT acknowledges that this purchase is based upon NJ TRANSIT's own knowledge and information and that NJ TRANSIT shall accept the Deed at Closing and shall be deemed to have waived any and all objections to Conrail's title to the Property.

13. 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, this Agreement shall terminate and neither Party hereto shall have any further liability hereunder.

14. [INTENTIONALLY OMITTED.]

15. TRACKAGE RIGHTS AGREEMENT

At Closing, the Parties shall execute the amendment to the Trackage Rights Agreement attached hereto as **Exhibit F**.

16. RETIRING TURNOUTS

(a) The existing turnouts Conrail owns along the Property's right of way are shown on **Exhibit G**. The turnouts Conrail shall retire prior to NJ TRANSIT's acceptance of the Deed are also shown on **Exhibit G**.

(b) Conrail shall provide NJ TRANSIT with copies of all current agreements with customers served from the Property no later than thirty (30) days before Closing.

17. ALLOCATION OF LIABILITY AND RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

(a) Except as otherwise agreed to by the Parties in any other document, and if so, only to the extent stated in such other document, the Parties shall, as between themselves, allocate liability and responsibility for Contamination and for Remediation, as hereinafter defined, pertaining to the Property in accordance with this section.

(b) "Contamination" shall mean a polluted condition of the Property arising from the presence of oil, petroleum, Hazardous Substance, hazardous material, hazardous waste or toxic substance (collectively referred to as "Hazardous Materials") which is a violation of applicable federal or state environmental laws or regulations in effect. "Hazardous Material(s)", as used in this Agreement, shall also mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)). Contamination shall not include herbicides used by either railroad and/or its contractors for weed and vegetation control on the tracks covered by the Agreement, if used in accordance with manufacturers' specifications. "Remediate" or "Remediation" shall mean any reasonable investigation and the formulating and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination or control of any contamination.

(c) No Remediation will be required pursuant to this section unless Contamination is present in amounts requiring reporting to federal or state environmental agencies and in amounts requiring cleanup or Remediation under applicable environmental laws and regulations as interpreted as of the date of Closing or, in the case of incidents occurring after Closing, as interpreted on the date of the incident. If Remediation is required on any part of the Property, the Parties agree that such cleanup will be required to meet only non-residential site cleanup standards appropriate to railroad property. Each Party's responsibility for Remediation shall not be increased based upon any future development that uses the Property, or any part thereof, for purposes other than for non-residential railroad use or that involve the excavation of the surface or subsurface of the Property or any part thereof for the construction of underground garages, basements, or subsurface occupation. The Parties agree that the cleanup levels applicable to any Remediation may be based upon a site-specific risk assessment where the use of such risk assessments is allowed by the federal or state environmental agency having jurisdiction over the property being remediated.

(d) Except as otherwise provided in the Trackage Rights Agreement, NJ TRANSIT shall be responsible for any Contamination on the Property released and discharged by NJ TRANSIT from and after Closing, and the Remediation thereof. Notwithstanding anything to the contrary in this Agreement, NJ TRANSIT shall not be responsible for the Remediation of any pre-existing conditions or conditions pertaining to the Property which were caused or created by Conrail, or other parties, including but not limited to Rohm & Haas, or its predecessors in interest, or are currently the subject of any ongoing remediation by Conrail or other parties, including but not limited to Rohm

& Haas, or its predecessors in interest under federal or state agency direction unless said remediation is directly attributable to any operations or conduct by NJ TRANSIT affecting the Property.

(e) Conrail, its successors and assigns, shall be responsible for Contamination on the Property released or discharged by Conrail during the time the Property was owned by Conrail, and the remediation thereof. Conrail has reviewed its records and has disclosed all information in its possession regarding the environmental condition of the Property to NJ TRANSIT. Conrail is not aware of any Contamination released or discharged by Conrail during the time the Property was owned by Conrail. Notwithstanding anything to the contrary in this Agreement, Conrail shall not be responsible for the Remediation of any conditions pertaining to the Property which are currently the subject of any remediation by NJ TRANSIT under federal or state agency direction.

(f) Neither Party shall be liable to the other Party for any Remediation resulting from any Contamination created prior to the acquisition of the Property by Conrail on April 1, 1976, including any ongoing, continuous or migrating Contamination commencing prior to April 1, 1976.

(g) Conrail represents that it has granted a temporary access permit to Rohm & Haas to install an environmental sampling well on the property. Conrail will provide NJ TRANSIT with copies of all temporary access permits prior to Closing. Upon NJ TRANSIT's request, Conrail will assign the temporary access permits to NJ TRANSIT. Conrail represents that none of the wells are located on the Property to sample contamination caused or created by Conrail.

(h) To the best of Conrail's knowledge, the Property is not subject to the provisions of the Industrial Site Recovery Act "ISRA", N.J.S.A. 13:K-6, *et seq.* To the best of Conrail's knowledge, the Property is classified under Standard Industrial Classification Major Group 40, which is excluded from ISRA's coverage and formerly from the Environmental Cleanup Responsibility Act's (ECRA's) coverage. NJ TRANSIT agrees that it shall not require Conrail to obtain or deliver to it, or to any person or entity, including title insurance companies, a letter of non-applicability, an exemption under ISRA, an affidavit with respect to present or future use of the Property, or any other writing pursuant to ISRA. NJ TRANSIT further agrees that it will not raise a lack of compliance with any provisions of ISRA, or any rules or regulations pursuant thereto, as an objection to title or as a precondition or requirement to closing title under this Agreement.

(i) The Parties agree that the Deed will contain a covenant whereby NJ TRANSIT shall acknowledge that the Property is being conveyed for use only for industrial or commercial purposes and that NJ TRANSIT, 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 use 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 use consists of 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 facility, or any organized long-term or short-term child care facility of any kind; (c) any hospital, health care facility, church, nursing home, or elder care facility; (d) any recreational use (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); or (e) any type of agricultural operations. NJ TRANSIT shall also covenant that it, its successors, heirs, legal representatives or assignees shall not use the groundwater underneath the Property for human consumption, irrigation, or other purpose, except that NJ TRANSIT may continue to use the groundwater underneath the Property as it currently may be used for industrial and/or railroad purposes.

(j) The Parties agree that the obligations of Conrail and its successors and assigns hereunder shall survive the delivery of the Deed and the Closing.

18. LIKE-KIND EXCHANGE

The Parties agree and acknowledge that Conrail may wish to structure the transfer of the Property described in this Agreement in a manner that will satisfy the requirements of Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), and meet the definition of a like-kind exchange ("Exchange") provided therein. To that end, NJ TRANSIT agrees to take all commercially reasonable steps and provide reasonable cooperation to accommodate the aforementioned intention of Conrail to treat the transaction described herein as an Exchange by signing a copy of the , Transferee Consent Form, attached hereto as **Exhibit H**, provided that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to either Party's obligations under this Agreement; (ii) the Exchange shall be accomplished through an assignment of this Agreement, or Conrail's rights under this Agreement, to a qualified intermediary as defined in the Code ("Qualified Intermediary"); and (iii) Conrail shall pay any additional costs that would not otherwise have been incurred by NJ TRANSIT had Conrail not attempted to structure the transfer of the Property as an Exchange. Subject to its reasonable cooperation covenant referenced above, NJ TRANSIT shall not by this Agreement or acquiescence to and participation in the Exchange (i) have its rights under this Agreement affected or diminished in any manner or (ii) be responsible for compliance with or be deemed to have warranted to Conrail that the Exchange in fact complies with Section 1031 of the Code.

19. LIMITATION OF LIABILITY

Pursuant to *N.J.S.A. 27:25-17*, any and all debts, expenses or obligations incurred by NJ TRANSIT will be payable only from funds available to NJ TRANSIT, and no liability or obligation will be incurred by NJ TRANSIT beyond the extent to which

monies are available. All potential liability of NJ TRANSIT hereunder will be further subject to the New Jersey Tort Claims Act, *N.J.S.A. 59:1-1, et seq.*, and the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1, et seq.* No covenant, representation or obligation of NJ TRANSIT will be deemed or construed to create or constitute a debt, liability, loan or pledge to the credit of the State of New Jersey.

20. BROKERS

Each Party represents to the other that no real estate broker brought about this transaction, and each Party will indemnify and hold the other harmless in the event any real estate brokerage claims are made.

21. INTENTIONALLY OMITTED

22. TERMINATION

This Agreement may be terminated by the Party designated below, if not then in default, upon written notice pursuant to this section in any of the circumstances designated below:

(a) By NJ TRANSIT if, after the effective date of this Agreement but before Closing, an event occurs or a condition within the purview of Section 3, 4, 12, 17 and 19 hereof is discovered, which materially affects the safety, utility or economic value of the Property for railroad purposes, or which may materially increase the liability of NJ TRANSIT to any governmental agency or other party, or if, upon NJ TRANSIT's due diligence review of the agreements pertaining to the Property, NJ TRANSIT discovers a material provision or obligation that would impede NJ TRANSIT's use of the Property for its intended purpose or materially increase the liabilities to be assumed by NJ TRANSIT.

(b) By NJ TRANSIT if a modification of a representation or warranty made by Conrail prior to or at Closing is not acceptable to NJ TRANSIT. NJ TRANSIT's election not to terminate this Agreement pursuant to this provision shall constitute an acceptance of any modification of a representation made by Conrail pursuant to this Agreement and shall foreclose NJ TRANSIT from asserting any rights or seeking any redress which is inconsistent with the modified representation.

(c) By Conrail if Conrail reasonably believes that Closing would result in a disruption, strike or other work stoppage on all or any part of its system or a condition imposed on the transaction by a governmental agency is not acceptable to Conrail and Conrail gives the notice required under this Agreement.

(d) Upon termination pursuant to this Section, neither Party shall have any further obligations to the other except as may have accrued under this Agreement.

23. SURFACE TRANSPORTATION BOARD

(a) NJ TRANSIT, at its own cost and expense, shall prepare and file with any federal, state or local regulatory agency or department that has jurisdiction over all or any part of the transaction contemplated by this Agreement all applications, petitions, requests, notices or other necessary filings, including a notice of exemption from approval by the Surface Transportation Board ("STB") or Department of Transportation ("DOT"), or any of its agencies. NJ TRANSIT shall also prepare and file with the STB a Motion to Dismiss the Notice of Exemption in order to obtain the STB's determination that NJ TRANSIT will not become a rail carrier subject to STB jurisdiction as a result of the transaction contemplated by this Agreement. NJ TRANSIT shall take all actions necessary and prudent to obtain any requisite approvals, waivers, other authorizations, or exemptions from the necessity of such approvals, to permit consummation of the transaction contemplated by this Agreement at the earliest practicable date. Conrail shall have the right promptly to review and approve all such documents prior to filing and, upon its approval of such documents, Conrail shall support fully, at no additional cost, expense or liability to Conrail, the efforts of NJ TRANSIT to obtain such governmental approvals or exemptions.

(b) NJ TRANSIT shall prepare and file such documents not later than fourteen (14) days after the execution of this Agreement or ten (10) days after Conrail has provided its final approval of such documents, whichever is the later date. NJ TRANSIT, at its own expense, shall oppose any petition to reopen, reconsider or stay a regulatory notice, order, authorization or decision approving, exempting or allowing this transaction or any part thereof, and, at its cost and expense, shall defend any judicial action brought by any person challenging or otherwise contesting any necessary regulatory approval or exemption or contesting the right of either Party to consummate this transaction.

24. INTENTIONALLY OMITTED

25. 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) It shall be NJ TRANSIT's responsibility to verify the zoning classification and any land use restrictions.

(d) Neither this Agreement nor any type of memorandum thereof shall be recorded with the office of the Middlesex County Clerk or with any other governmental agency, and any purported recordation or filing hereof by NJ TRANSIT shall constitute a

default on its part.

(e) 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.

(f) The terms of this Agreement shall be governed by the laws of the State of New Jersey.

(g) 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.

(h) This Agreement shall not be strictly interpreted against either Party hereto under any rule of construction.

(i) 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.

[signature page follows]

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

WITNESS

**CONSOLIDATED RAIL
CORPORATION**

By: _____

By:_____

Title:_____

WITNESS

NJ TRANSIT CORPORATION

By: _____

By:_____

Title:_____

Approved as to form:

Kaplan Kirsch and Rockwell

By:_____

EXHIBITS

A – Legal Description of the Property

B - Valuation Maps of the Property

C – Form of Quitclaim Deed

D – List of solely freight facilities located beyond the Property's clearance point which are leased by Conrail and will be maintained by Conrail

D-1 – List of Utility Permits

E – Affidavit of Title

F – 9th Amendment to the Trackage Rights Agreement

G – List of Existing and Retired Turnouts

H- Transferree Consent Form

Exhibit A – Legal Description of the Property

Exhibit B – Valuation Maps of the Property

[Attached hereto]

Exhibit C – Form of Quitclaim Deed

Exhibit D – List of Solely Freight Facilities to be Maintained by Conrail

Exhibit D-1 – List of Utility Permits

Exhibit E – Affidavit of Title

Exhibit F – 9th Amendment to the Trackage Rights Agreement

Exhibit G – List of Existing and Retired Turnouts

Exhibit H – Transferee Consent Form

Exhibit 5

Quitclaim Deed

For A Portion of

The Delco Industrial Lead, The County of Middlesex, New Jersey

[attached hereto]



QUITCLAIM DEED (NJ)

THIS DEED, made the _____ day of _____, 2018,

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at 1717 Arch Street, 13th Floor, Philadelphia, Pennsylvania, 19103, hereinafter referred to as "Grantor," and **NEW JERSEY TRANSIT CORPORATION**, an instrumentality of the State of New Jersey, with an address of 1 Penn Plaza East, Newark, New Jersey 07105, hereinafter referred to as "Grantee" (individually, a "Party," collectively, the "Parties").

WITNESSETH, that Grantor, for and in consideration of the sum of _____ lawful money of the United States of America, unto it well and truly paid by Grantee, at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, does by these presents, remise, release and forever quitclaim unto Grantee, and the heirs or successors and assigns of Grantee, all right, title and interest of Grantor in and to the property as more particularly described below.

All that property of Grantor, together with all improvements, structures, buildings, tracks and appurtenances between approximately M.P. 32.1 +/- and M.P. 36.4 +/-, being a portion of the line of track which is known as the Delco Lead Track, identified in the records of the United States Railway Association as Line Code 1401-33, and being all the property situated in the City of New Brunswick and Township of North Brunswick, County of Middlesex, State of New Jersey, described in Schedule "A" and depicted on Schedule "B" hereof, hereinafter referred to as "Premises". A map of the Premises is being filed simultaneously with the recording of this Deed in the Map Room of the Middlesex County Registrar's Office.

BEING a portion of the same property conveyed by Fairfax Leary, as Trustee of the Property of the United New Jersey Railroad and Canal Company, Debtor to Consolidated Rail Corporation on October 23, 1978, pursuant to a Deed dated March 31, 1976, and recorded on October 23, 1978, in the office of the New Jersey Secretary of State as Document No. UNJ-CRC-ATK-RP-4, and subsequently reserved by Consolidated Rail Corporation in a separate deed made between Consolidated Rail Corporation to the National Railroad Passenger Corporation conveying certain Grantor properties on October 23, 1978 pursuant to a Deed dated October 23, 1978, filed and recorded in the Office of the Secretary of State on October 23, 1978 as Document No. NJ-2D/UNJ-CRC-ATK-RP-4

EXCEPTING AND RESERVING, thereout and therefrom and unto Grantor, its successors, assigns and affiliates, a permanent, perpetual, exclusive, transferable, assignable and irrevocable retained freight service easement in the Premises to physically serve, with its own crews and locomotives, or the crews and locomotives of its owners, affiliates, transferees or assigns, present and future rail customers with access to the Premises, provide overhead freight service to other portions of Grantor's rail systems or to the rail systems of connecting freight railroads and temporary detour or emergency overhead rail operations. Grantee acknowledges Grantor's retained rights, and Grantee neither has nor will have any right to serve present and future shippers and will make no attempt to construct additional sidings to serve such shippers for its own account or to circumvent this Deed by other means, directly or indirectly. Grantor's right to operate on the Premises is subject to the Trackage Rights Agreement between the Parties dated October 1, 1984, as amended.

TAX REFERENCE:

The Premises is hereby as
Block 598, Lot 8.01, Township of
New Brunswick.
Block 30, Lots 11.01 and 1
Block 142.01, Lots 60.1, 6.05,
6.06, and 7.02
Block 143 Lot 15
Block 148, Lots 38.06 and 37
Township of North Brunswick,
Middlesex County, New Jersey

THIS INSTRUMENT PREPARED BY:

Consolidated Rail Corporation
1000 Howard Blvd.
Mount Laurel, NJ 08054

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and waterways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor. Nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) A. Allocation of Specific Obligations to Remediate.

The parties shall, as between themselves, allocate liability and responsibility for Contamination and for Remediation, as hereinafter defined, with respect to the Premises in accordance with this Section.

(i) No cleanup or Remediation will be required unless Contamination is present in amounts requiring reporting to federal or state environmental agencies and in amounts requiring cleanup or Remediation under applicable environmental laws and regulations as interpreted as of the date of this Deed or, in the case of incidents occurring after the date of this Deed, as interpreted on the date of the incident. If Remediation is required on any part of the Premises, the Parties agree that such cleanup will be required to meet only non-residential site cleanup standards appropriate to railroad property. Each Party's responsibility for Remediation shall not be increased based upon any future development that uses the Premises, or any part thereof, for purposes other than non-residential railroad use or that involve the excavation of the surface or subsurface of the Property or any part thereof for the construction of underground garages, basements, or subsurface occupation. The Parties agree that the cleanup levels applicable to any Remediation may be based upon a site-specific risk assessment where the use of such

risk assessments is allowed by the federal or state environmental agency having jurisdiction over the property being remediated.

(ii) Except as provided in the Trackage Rights Agreement between the Parties effective October 1, 1984, as amended, Grantor shall be responsible for the Remediation of Contamination, on or about the Premises, provided that such Contamination: (1) resulted from a condition caused or created by Grantor during the time the Premises was owned by Grantor; (2) is a violation of applicable environmental laws or regulations in effect and as interpreted on the date of this Deed; and (3) are the subject of any ongoing Remediation by Grantor under federal or state agency direction as of the date of this Agreement, unless said remediation is directly attributable to any operations or conduct by Grantee affecting the Premises. Notwithstanding the aforesaid, Grantor shall not be liable for any Remediation resulting from any condition pertaining to the Premises which is not currently the subject of any remediation by Grantee under federal or state agency direction. Neither Party shall be liable to the other Party for any Remediation resulting from any Contamination created prior to the acquisition of the Premises by Grantor on April 1, 1976, including any ongoing, continuous or migrating Contamination commencing prior to April 1, 1976.

(iii) If at any time after the date of this Deed any Contamination is discovered which is or may be the responsibility of Grantor to Remediate pursuant to Subsection A(ii) above, then Grantee shall immediately notify Grantor of such Contamination, and Grantor shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Contamination, and Remediate, with its own forces or contractors and at its own expense, such Contamination to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Grantor. Grantee shall grant such rights of entry or other rights to Grantor, upon reasonable terms and without compensation, as may be necessary to allow Grantor to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of a dispute concerning Grantor's responsibility for any Remediation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Grantee, unless required by valid judicial or regulatory order to take immediate action to Remediate a specific condition, shall, during the resolution of such dispute, take no actions inconsistent with Grantor's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to Remediate the Contamination with its own forces or contractors.

B. Definition of "Hazardous Substance(s)". "Hazardous Substance(s)," as used in this Deed, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4)).

C. Definition of "Remediate" and "Remediation". "Remediate" or "Remediation," as used in this Deed, shall mean, any reasonable investigation and the formulating and implementation of any remedial action, containment, cleanup, response, treatment, removal, mitigation, abatement, elimination, or control of any Contamination.

D. Definition of "Contamination". "Contamination," as used in this Deed, shall mean a polluted condition of the Property arising from the presence of oil, petroleum, Hazardous Substances, hazardous material, hazardous waste or toxic substances which is a violation of applicable federal or state environmental laws or regulations in effect. Contamination shall not include herbicides used by either railroad and/or its contractors for weed and vegetation control on the Premises if used in accordance with the manufacturers' specifications.

E. Indemnity. The Party made responsible by this Section for any Remediation shall: (1) satisfy said obligations; and (2) indemnify, defend and hold the other Party (and its directors, officers, employees and agents) harmless from and against any claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with said Remediation.

F. Release. As a material part of the consideration to Grantor for the conveyance of the Premises, Grantee hereby expressly and irrevocably releases and forever discharges, and by these presents does, for its successors and assigns, release and forever discharge Grantor (including, without limitation, its directors, officers, employees, and agents), from any and all actions, suits, controversies, damages (compensatory, punitive or consequential), judgments, claims and demands whatsoever, in law, or in equity, which Grantee, ever had, now has, or which it or its successors and assigns hereafter can, shall or may have against Grantor, arising out of or in connection with the presence of any Contamination on the Premises, including without limitation, any Hazardous Substances, except to the extent Grantor fails to comply with its obligations set forth in Subsection A(ii) above, or Grantee is entitled to recover the cost of any Remediation pursuant to Subsection A(ii). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, liabilities, judgments, settlements, costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or in connection with Grantee's prosecution of any of its legal remedies against any third party who might have concurring or joint liability for matters for which Grantee has released Grantor pursuant to this Subsection. Each Party expressly waives, to the extent it lawfully may do so, (1) the benefits of any statute that would relieve it of any obligations that it has assumed under this Section, and (2) any defense predicated on alleged misrepresentations of fact or the nondisclosure of any pertinent fact.

(4.) Grantee acknowledges that the Premises is being conveyed for assemblage. Grantee, by acceptance of this Deed, hereby covenants and agrees on behalf of itself and its successors, heirs, legal representatives and assigns, that the following restrictions, requirements, covenants and conditions shall apply to, and run with, the Premises and be binding upon the Premises and those who own, occupy, lease or otherwise use the Premises or any portions thereof, in perpetuity:

A. The Premises shall be used for railroad, industrial or commercial purposes and shall not be used, in whole or in part, for any residential purpose of any kind or nature. Residential purposes are defined broadly to include, without limitation, (i) any use of the Premises by individuals or families for purposes of personal living, dwelling, or overnight accommodations, whether such use consist of single family residences, apartments, duplexes, or other multiple residential dwellings, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind, (ii) any public or private school, day care facility, or any organized long-term or short term child care facility of any kind, (iii) any hospital, health care facility, church, nursing home, or elder care facility, (iv) any recreational purpose (including, without limitation, use as a public park, hiking or biking trail, athletic field or court, or public gathering place) and (v) any type of agricultural operations.

B. Groundwater at and beneath the Premises shall not be used for any purpose, including, but not limited to, drinking water supplies, human consumption, agricultural operations, irrigation and cooling water; provided, however, that the use of groundwater for industrial and/or railroad purposes and the installation or use of any compliance wells or any groundwater monitoring, recovery or extraction wells or similar devices used for or related to the performance of any Remediation on the Premises shall not be prohibited.

(5.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against Grantor.

TOGETHER with all tenements, hereditaments and appurtenances thereunto belonging, or in any way appertaining to, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, Grantor has caused this Indenture to be signed in its name and behalf by its Vice President-General Counsel and Corporate Secretary duly authorized thereunto, and has caused its corporate seal to be hereunto affixed and attested by its Assistant Corporate Secretary, as of the day and year first above written

CONSOLIDATED RAIL CORPORATION
By: _____

ATTEST:

STATE OF NEW JERSEY)
)
) : SS
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____ in the year Two Thousand Eighteen (2018), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared, _____ of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is defined in N.J.S.A. 46:15-5 is Sixteen Million Six Hundred and Sixty-One Thousand Dollars (\$16,661,000.00).

Notary Public or Attorney at Law – State of New Jersey

Exhibit 6

Proposed Caption Summary

**Before the
Surface Transportation Board**

Finance Docket No. 36195

**NEW JERSEY TRANSIT CORPORATION
– ACQUISITION EXEMPTION –
CONSOLIDATED RAIL CORPORATION
IN THE COUNTY OF MIDDLESEX, NEW JERSEY**

CAPTION SUMMARY

The New Jersey Transit Corporation (“NJ Transit”) has filed a Notice of Exemption to acquire from the Consolidated Rail Corporation (“Conrail”) a line of railroad known as the “Delco Industrial Lead” in Middlesex County, New Jersey, from 33.1 to M.P. 36.4 in Middlesex County, New Jersey. (the “Line”). NJ Transit will acquire the real property and railroad fixtures associated with the Line. Conrail will retain an exclusive operating easement to continue to provide freight rail service over the Line. Because NJ Transit is an instrumentality of the State of New Jersey with legal authority only to provide mass transportation services and will not acquire either rights or obligations that implicate in any way the freight common carrier operations that remain attached to the Line, and thus will not become a rail carrier providing transportation subject to the jurisdiction of the Board, NJ Transit is simultaneously filing a Motion to Dismiss this Notice of Exemption.

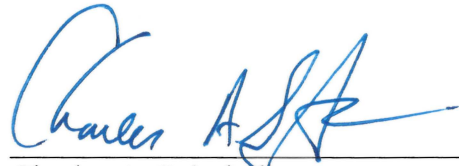
Comments must be filed with the Board and served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, DC 20036, (202) 955-5600.

The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exemption of the New Jersey Transit Corporation to be served by first class mail, properly addressed and with postage prepaid, upon the following persons:

Jonathan M. Broder
Vice President and Chief Legal Officer
Consolidated Rail Corporation
1717 Arch Street, Suite 1310
Philadelphia, PA 19103



Charles A. Spitulnik

Dated: May 21, 2018