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HONORABLE VERNON A. WILLIAMS, SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001

Re: NOTICE OF INTENT TO FILE

FEEDER RAILROAD DEVELOPMENT APPLICATION.

Finance Docket No. 34606 -- Portion of the Consolidated Rail Corporation's West 30TH Street Secondary Track in New York, NY
[ie: Highline]

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is an original and ten (10) copies of **FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC, [MCRS]**

NOTICE OF INTENT TO FILE A FEEDER RAILROAD DEVELOPMENT APPLICATION.

for filing with the Board in the above referenced matter.

MCRS thanks THE BOARD in advance for your attention to this matter and look forward to working closely with THE BOARD in order to consummate a mutually beneficial acquisition of the above referenced rail line on behalf of the public convenience and necessity.

Respectfully submitted,


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

TRN/jm

cc: All Parties of Record
Attachment

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BEFORE THE
SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

FINANCE DOCKET NO. 34606

FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

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

**PORTION OF THE CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET
SECONDARY TRACK IN NEW YORK, NY "HIGHLINE"**

**FORTY PLUS FOUNDATION &
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Dated: November 16, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

FINANCE DOCKET NO. 34606

FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

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

**PORTION OF THE CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET
SECONDARY TRACK IN NEW YORK, NY "HIGHLINE"**

In light of recent dramatically changed circumstances directly affecting the **West 30th Street Secondary Track** in New York, NY [ie: "***Highline***"] -- on June 13, 2005 the **SURFACE TRANSPORTATION BOARD** issued a *Certificate of Interim Trail Use or Abandonment* for the ***Highline*** in New York, NY [Docket No. AB-167 (Sub-No. 1094)A 1[1]. THE BOARD clearly stated that "*this decision will not significantly affect either the quality of the human environment or the conservation of energy resources*". Under the TRAILS ACT, THE BOARD must "*preserve established railroad rights-of-way for future reactivation of rail service*" by prohibiting abandonment where a trail user agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. See 16 U.S.C. 1247(d); Citizens Against Rails-to-Trails v. S.T.B., 267 F.3d 1144, 1149-50 (D.C. Cir. 2001) (CART). The statute expressly provides that "*if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment . . .*" 16 U.S.C. 1247(d). Instead, the right-of-way is "*rail banked*," which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (**or any other approved rail**

service provider) may reassert control over the right-of-way to restore service on the line in the future. See Birt v. Surface Transp. Bd., 90 F.3d 580, 583 (D.C. Cir. 1996); Iowa Power—Const. Exempt.—Council Bluffs, IA, 8 I.C.C.2d 858, 866-67 (1990); 49 CFR 1152.29.

THE BOARD has now clearly and unambiguously ordered that "*interim trail use/rail banking is subject to **the future restoration of rail service**....*" comes now the FORTY PLUS FOUNDATION ¹ / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC ² ("MCRS" OR "APPLICANT") and files this *NOTICE OF INTENT* TO FILE FEEDER RAILROAD DEVELOPMENT PROGRAM ("FEEDER LINE") APPLICATION pursuant to 49 U.S.C. Section 10907 (2000) and 49 C.F.R. Part 1151 (2002), which has been designed to encourage and enable shippers and communities to acquire marginal rail lines that are likely to be abandoned or are receiving inadequate rail service.

On behalf of the public convenience and necessity, this FEEDER LINE *NOTICE OF INTENT* proceeding involves the line of railroad known as the West 30th Street Secondary Track ¹ ("***Highline***") currently owned by CONSOLIDATED RAIL CORPORATION (CONRAIL) and CSX CORPORATION and CSX TRANSPORTATION, INC. (collectively "CSX") (CSX and CONRAIL are collectively referred to as "**RAILROADS**"). WHEREAS, NEW YORK CENTRAL LINES LLC (NYCLLC) is the title-holder to the elevated railway viaduct with highway-railroad grade separations structures and street-level railway improvements known collectively as the "***Highline***" or the "*West 30th Street Secondary Track*" in New York City, NY, extending from 75-95 Gansevoort Street and running northerly (and westerly) through 547-55 West 34th Street and West 34th Street streetbed, identified as Line Coder 4225 in the records of the United States Railway Association (the "***Highline***"), connecting to the national rail system via the AMTRAK service line the upstate NEW YORK EMPIRE, at milepost 9.35 near West 37th Street between Tenth & Eleventh Avenues. built within and upon certain easements held by NYCLLC's predecessors-in-title held in accordance with (i) agreements relating to the Easements (collectively, the "1929 Agreements") and (ii) those further easement agreements relating solely to individual properties encumbered by the easements, said ***Highline*** having been conveyed to NYCLLC's immediate

predecessor-in-interest CONRAIL by deed recorded December 15, 1978 from *Robert W. Blanchette, Richard C. Bond and John H. McArthur*, as Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, as grantor, and CONRAIL, as grantee, recorded in the Office of the City Register, New York county (the "Official Records") in Reel 463, Page 1563-A (the **Highline** being identified in Reel 463, Page 1567), and thereafter conveyed (to the extent not previously abandoned and subsequently conveyed to ROCKROSE CONSTRUCTION (KELLY) CORP. by Assignment and Assumption Regarding Easements dated as of November 25, 1990, and recorded in the Official Records in Reel 1747, Page 1584) by CONRAIL to NYCLLC by deed dated as of June 1, 1999, and recorded in the Official Records on March 1, 2000, in Reel 3067 Page 1110. WHEAREAS, NYCLLC is a single-member limited liability company, of which the single member is "**CRC**"; CRC is a wholly-owned subsidiary of CONRAIL; and CONRAIL is owned in part by NORFOLK SOUTHERN CORPORATION ("NS") and in part by CSXC.

WHEAREAS, CSXT is a wholly-owned subsidiary of CSXC, and is also the Operator of the **Highline** under that certain Operating Agreement dated as of June 1, 1999, by and between NYCLLC as Owner and CSXT as Operator (the "Operating Agreement"). In consideration of its application, **MCRS** offers to grant **RAILROADS** access to the portion of the track north of milepost 9.40 to provide service to national shippers at competitive rates. APPLICANT estimates when fully operational this offering will create 100 full time jobs for our neighbors, relieve congestion and pollution in addition to expanding the effective mission of FORTY PLUS -- that will further assist over 1,000 unemployed New Yorkers annually in obtaining gainful employment -- significantly impacting our local economy.

¹ "FORTY PLUS" [40+] established in NYC in 1939, is a 501(c)(3) charitable organization and remains America's oldest and most effective not for profit out-placement employment support organization. 40+ has diligently expanded its successful NYC program into 21 major US Cities over the past 66+ years, designed to provide gainful employment opportunities and successfully lobbied both State and Federal legislative agencies to eliminate age, gender and race related discrimination. 40+ efforts have resulted in laudable recognition from numerous US Presidents, Governors, local officials and community organizations that have acknowledged 40+'s vital contributions within their respective constituencies over the past 7 decades, resulting in the successful placement of over 100,000 members -- earning 40+ the enviable distinction of placing 100% of its membership.

² The FORTY PLUS FOUNDATION has developed a for-profit company titled the "MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC" that has subsequently entered into several strategic alliances and co-ventures with partners possessing professional expertise in design, construction, management and maintenance of the **HIGHLINE** property and it's intermodal equipment as a profitable Class III Shortline Railroad.