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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34953

MIDTOWN TDR VENTURES LLC
– EXEMPTION TO ACQUIRE LINE –
AMERICAN PREMIER UNDERWRITERS, INC.,
THE OWASCO RIVER RAILWAY, INC., AND
AMERICAN FINANCIAL GROUP, INC.

**MIDTOWN TDR VENTURES LLC'S
MOTION TO DISMISS
VERIFIED NOTICE OF EXEMPTION**

ENTERED
Office of Proceedings

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Public Record

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ATTORNEYS FOR MIDTOWN TDR
VENTURES LLC

Dated: November 7, 2006

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**MIDTOWN TDR VENTURES LLC’S
MOTION TO DISMISS
VERIFIED NOTICE OF EXEMPTION**

Midtown TDR Ventures LLC (“Midtown”) hereby moves for dismissal of the Verified Notice of Exemption (the “Notice”) which Midtown is concurrently filing with the Board. That Notice seeks an exemption in regard to Midtown’s acquisition of certain assets related to Grand Central Terminal in New York City and the “Harlem-Hudson Line” (which accesses the Grand Central Terminal) (collectively, the “Subject Properties”) from American Premier Underwriters, Inc. (“APU”)¹; APU’s wholly owned subsidiary, The Owasco River Railway, Inc. (“Owasco”); and APU’s parent, American Financial Group, Inc. (“AFG”) (collectively, the “Sellers”).²

¹ APU is the successor by merger to The New York & Harlem Railroad Company (“New York & Harlem”), to which some of the Subject Properties are titled.

² Factual references made in this Motion are derived from the Midtown Notice, and supported by the Verification of that Notice.

As explained below, none of the Sellers conducts any rail transportation services (freight or otherwise) over the Subject Properties and none constitutes a rail common carrier under the Interstate Commerce Act in regard to the Subject Properties. Similarly, following its acquisition of the Subject Properties, Midtown – which is currently a non-carrier – will not conduct any rail transportation services (freight or otherwise) over the properties, and it will not constitute a rail common carrier under the Interstate Commerce Act.

Midtown is acquiring the Subject Properties to develop them for non-rail use, where the properties to be developed are not currently in rail use. Midtown's particular focus is on utilization of transferable air rights emanating from the Grand Central Terminal lot and an adjacent lot for office building development. Midtown's use of the properties will not interfere with the commuter rail service and freight rail service currently being provided over certain of the properties (in particular, the Harlem-Hudson Line) by other entities.

In the foregoing circumstances, Midtown's acquisition of fee ownership of the Subject Properties is not subject to the Board's jurisdiction, and accordingly Midtown's Notice should be dismissed.

FACTUAL BACKGROUND

The only aspect of the proposed transaction which could have the potential for falling within the Board's jurisdiction is Midtown's acquisition of the Harlem-Hudson Line. Here, however, the ownership and operating history of that line, together with Midtown's proposed acquisition of only a fee ownership in the line where others bear responsibility for rail service on the line, dictate that the Board has no jurisdiction over the transaction.

From Grand Central Terminal in New York City, the Harlem-Hudson Line proceeds north and crosses the Harlem River, then at Mott Junction in the Bronx diverges in two

directions, one line running north to Poughkeepsie, New York, and the second line proceeding east to Woodlawn Junction, where it then heads north to Wassaic, New York. The relevant history of the Harlem-Hudson line is closely associated with the Penn Central Transportation Company ("Penn Central") bankruptcy and the Regional Rail Reorganization Act of 1973 (the "Rail Act"). See Consolidated Rail Corp. v. Metro-North Commuter R.R., 598 F. Supp. 1571 (Sp.Ct. R.R.R.A. 1984) (discusses in detail the history of the line and its various users and owners).

By the early 1970's, ownership of the Harlem-Hudson Line was held entirely by Penn Central. At that time, Penn Central leased the line to the New York Metropolitan Transportation Authority ("MTA") for an extended term, reserving for itself trackage rights to provide freight, passenger and commuter service. Soon thereafter, under the restructuring effected through the Rail Act's Final System Plan, on April 1, 1976 these trackage rights were conveyed to the Consolidated Rail Corporation ("Conrail"), the lease to MTA remained in place, and fee ownership of the Harlem-Hudson Line remained with the non-carrier parent of Penn Central, the Penn Central Corporation (and its subsidiaries New York & Harlem and Owasco).³ Id. at 1573-77.

As found by the Special Court for Regional Rail Reorganization, this retained fee ownership was free and clear of any transportation burdens, with no common carrier responsibilities attendant to the ownership:

But it was equally rational for Congress and the USRA, and in greater accordance with the general plan of the Rail Act which provides only for the conveyance of assets or rights used or useful in transportation, § 102(12), 45 U.S.C. § 702(14), to have provided that when Penn Central was obliged to convey the bulk of its transportation assets to Conrail and others, it should retain its nontransportation assets free and clear of any burdens with respect to transportation service. This,

³ Penn Central Corporation subsequently changed its name to APU, one of the Sellers in this transaction.

as we read § 303(b)(2) of the Rail Act and the FSP, was what Congress and the USRA intended to do.

Penn Central Corp. v. Consolidated Rail Corp., 611 F. Supp. 285, 292 (Sp.Ct.R.R.R.A. 1985) (Friendly, J.).

With fee ownership of the Harlem-Hudson Line held by the non-carrier Penn Central Corp. (now APU), and rail operating responsibilities having been assumed by other entities, rail operations over the line continued to evolve. The long-term lease to MTA was replaced with a new lease, and the Conrail trackage rights were renegotiated.

Pursuant to an "Amended and Restated Agreement of Lease between American Premier Underwriters, Inc. and The Owasco River Railway, Inc., Landlord, and Metropolitan Transportation Authority, Tenant" ("MTA Lease"), dated April 8, 1994, APU and Owasco entered into a new long-term lease of the Harlem-Hudson Line to MTA. Under that lease, MTA secured complete control of the line, and has utilized the line to provide commuter service through its subsidiary, Metro-North Commuter Railroad Company ("Metro-North"). The MTA Lease has a term which expires on February 28, 2274. The lease will remain in place following Midtown's acquisition of the Subject Properties, and hence Midtown will exercise no control over the Harlem-Hudson Line for some two hundred and seventy years in the future.⁴

As to Conrail's trackage rights, effective January 1, 1983 Conrail entered into a new trackage rights agreement with MTA, in the latter's capacity as lessor of the Harlem-Hudson Line, and this agreement remains in effect today. Pursuant to this agreement, Conrail provided freight rail service over the Harlem-Hudson Line until CSX Transportation, Inc. ("CSX") succeeded to Conrail's rights under the agreement as a consequence of the merger

⁴ Under an agreement between MTA and the National Railroad Passenger Corporation ("Amtrak"), Amtrak uses a portion of the Hudson line (between Spuyten Duyvil, NY and Poughkeepsie, NY) for the operation of rail passenger service trains. This service, and the related agreement, will be unaffected by the proposed transaction.

transaction approved by the Board in CSX Corp., et al. – Control & Operating Leases/Agreements – Conrail, Inc., et al., STB Finance Docket No. 33388, 3 S.T.B. 96 (served July 23, 1998). CSX now provides freight rail service over the line under this agreement (the “CSX trackage rights”).

In addition, The Delaware and Hudson Railway Company, Inc. (“D&H”) has become a trackage rights tenant on a portion of the Harlem-Hudson Line (the “D&H trackage rights”). Pursuant to a trackage rights agreement with Metro-North effective June 21, 1999, D&H commenced freight rail service on the line. This agreement was associated with trackage rights awarded D&H over connecting CSX/Conrail lines, as set forth in Delaware & Hudson Ry. – Trackage Rights – CSX Transportation, Inc., et al., STB Finance Docket No. 33771, 1999 WL 485899 (STB, served July 8, 1999) (addressing trackage rights awarded to D&H in connection with the CSX/Norfolk Southern acquisition of Conrail).

Like the MTA Lease, the CSX and D&H trackage rights agreements will remain in place following consummation of the subject transaction, and will be unaffected by it. Neither CSX nor D&H may abandon or discontinue service over the Harlem-Hudson Line without prior Board authority. See, e.g., Thompson v. Texas Mexican Ry., 328 U.S. 134, 147-48 (1946). No such abandonment or discontinuance is at issue in connection with the Midtown Notice.

ARGUMENT

Pursuant to the proposed transaction, Midtown would not acquire any rail common carrier obligations with respect to the Harlem-Hudson Line. Those obligations reside exclusively with CSX and D&H, the railroads currently providing freight rail service over the line. Just as their fee ownership of the Harlem-Hudson line does not affect the non-carrier status of the Sellers, Midtown’s acquisition of that fee ownership would not affect its non-carrier status.

Because the proposed transaction does not involve any conveyance of rail common carrier responsibilities, it falls outside the jurisdiction of the Board, and accordingly the Midtown Notice should be dismissed.

In State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central R.R., Finance Docket No. 31847, 8 I.C.C.2d 835 (1991) (“State of Maine”), the Board ⁵ had before it a notice of exemption and related motion to dismiss with respect to a transaction analogous in material respects to the transaction subject to the Midtown Notice. The Maine Department of Transportation (“MDOT”) proposed to acquire fee ownership in 15.66 miles of rail line owned by the Maine Central Railroad Company and operated under lease by the Springfield Terminal Railroad Company, but not to acquire any common carrier responsibilities related to the line (which would be left exclusively with the seller and the lessee). The Board dismissed the exemption notice, holding that it did not have any jurisdiction over the subject transaction.

As in State of Maine, here “no common carrier rights or obligations are being transferred,” (indeed, the Sellers do not have any such rights or obligations to sell), CSX and D&H “retain[] the common carrier obligation . . . and could not cease to offer service on the line without [STB] permission,” and “ nothing in the transfer of underlying assets in this case would disenable [CSX and D&H] from meeting [their] common carrier obligations.”⁶ Id. at 837.

⁵ References to the Board include its predecessor, the Interstate Commerce Commission.

⁶ In State of Maine, the Board made clear that it would examine the specific facts of each similar transaction later submitted to it for review, and prescribed that “a copy of the agreement between the railroad and the entity acquiring its right-of-way” should be submitted in connection with any request for a jurisdictional determination. 8 I.C.C.2d at 838.

Although this transaction does not involve a document of the type described by the Board, Midtown is appending to this Motion the following documents: (i) the Agreement of Sale and Purchase by and among APU, New York & Harlem, Owasco and AFG, as Sellers, and Midtown, as Purchaser (Exhibit A) (the “Purchase

Following the State of Maine precedent, the Board has repeatedly ruled that it does not have jurisdiction over transfers of fee ownership in rail lines where common carrier obligations are not conveyed to the buyer in conjunction with such transfer, but instead reside in another entity. See, e.g., South Orient R.R. – Acquisition and Operation Exemption – Line of the Atchison, Topeka & Santa Fe Ry., Finance Docket No. 31971, 1992 WL 210237 (ICC, served Sept. 2, 1992) (holding that the Board did not have jurisdiction over a railroad’s transfer of right-of-way and other fixed assets associated with a 381.9-mile line to a Texas state agency, where the common carrier operating responsibility with respect to the line would simultaneously be transferred to a new entity which would become a rail common carrier (the Board found it had jurisdiction over the latter aspect of the transaction)); Utah Transit Authority – Acquisition Exemption – Line of Union Pacific R.R., Finance Docket No. 32186, 1992 WL 386409 (ICC, served Dec. 31, 1992) (same); Missouri River Bridge Co. – Acquisition Exemption – Certain Assets of Chicago, Central & Pac. R.R., Finance Docket No. 32384, 1994 WL 61756 (ICC, served Mar. 3, 1994) (holding no Board jurisdiction where facts similar to State of Maine, but clarifying that “state involvement is not necessary” to permit “the ownership of the line to be divorced from the common carrier obligation”); Centex Rural Rail Transp. District – Acquisition Exemption – Certain Assets of Cen-Tex Rail Link, LTD., Finance Docket No. 32496, 1994 WL 393427 (ICC, served Aug. 1, 1994) (same).⁷

Agreement”); (ii) the MTA Lease (Exhibit B), (iii) the CSX (Conrail) trackage rights agreement (Exhibit C), and (iv) the D&H trackage rights agreement (Exhibit D).

⁷ More recent Board decisions to the same effect include State of Washington, Department of Transportation – Acquisition Exemption – Palouse River & Coulee City R.R., STB Finance Docket No. 34609, 2005 WL 1024486 (STB, served May 3, 2005); Metro Regional Transit Authority – Acquisition Exemption – Certain Assets of Akron Barberton Cluster Ry., STB Finance Docket No. 34338, 2003 WL 21615596 (STB, served July 11, 2003); State of Vermont – Acquisition Exemption – Certain Assets of Newport & Richford R.R., Northern Vermont R.R. and Canadian American R.R., STB Finance Docket No. 34294, 2003 WL 21201903 (STB, served May 22, 2003); State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 34181, 2002 WL 1767404 (STB, served Aug. 1, 2002).

In the transaction before the Board, the Sellers are not conveying any rail common carrier rights or obligations to Midtown (they, if fact, have no such rights or obligations to convey), Midtown is not acquiring any such rights or obligation, and Midtown will not be holding itself out as a freight rail common carrier. Indeed, the rail common carrier service being provided on the Harlem-Hudson Line by CSX and D&H will be entirely unaffected by the proposed transaction, and will continue to remain under the Board's jurisdiction and oversight. Taking these circumstances into account, the Board lacks jurisdiction over the transaction subject to Midtown's Notice, and that Notice should be dismissed.

CONCLUSION

For the reasons set forth above, Midtown requests that its Notice be dismissed by the Board for lack of jurisdiction.

Respectfully submitted,

By: 

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ATTORNEYS FOR MIDTOWN TDR
VENTURES LLC

Dated: November 7, 2006

EXHIBIT A

PURCHASE AGREEMENT

Execution Version

AGREEMENT OF SALE AND PURCHASE

by and among

AMERICAN PREMIER UNDERWRITERS, INC.,
THE NEW YORK AND HARLEM RAILROAD COMPANY,
THE OWASCO RIVER RAILWAY, INC.
AND
AMERICAN FINANCIAL GROUP, INC.
AS SELLERS

and

MIDTOWN TDR VENTURES LLC
AS PURCHASER

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- 10.6(k)1(i) Continuing Maintenance Agreement
- 10.6(k)4 Zenith Purchase and Sale Agreements and Assignments dated September 29, 2000 and December 28, 2000

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE ("Agreement") is entered into as of this 10th day of August, 2006 by and among AMERICAN PREMIER UNDERWRITERS, INC., a Pennsylvania corporation ("APU"), THE NEW YORK AND HARLEM RAILROAD COMPANY, a New York corporation ("New York & Harlem"), THE OWASCO RIVER RAILWAY, INC., a New York corporation ("Owasco"), and AMERICAN FINANCIAL GROUP, INC., an Ohio corporation ("AFG") and MIDTOWN TDR VENTURES LLC, a Delaware limited liability company.

Article 1. BASIC TERMS

1.1 Definitions. The following terms shall have the meanings given for purposes of this Agreement:

(a) APU/NY&H Merger: means the merger of New York & Harlem with and into APU.

(b) Argent: means Argent Ventures LLC, a New York limited liability company.

(c) Assets: has the meaning set forth in Article 2 hereof.

(d) Assignment and Assumption Agreements: means, collectively, the assignment and assumption agreements to be entered into pursuant to this Agreement, substantially in the form of Exhibits "C", "F", and "I".

(e) Assumed Agreements: means each of the contracts, agreements and understandings specifically set forth on Schedule 1.1(e) of the Disclosure Schedule and does not include any agreement, instrument or document by virtue of the fact that same are referenced in, or attached to, any of the Assumed Agreements unless same are specifically set forth on such Schedule 1.1(e).

(f) Consent Agreement: means that certain Consent Agreement dated as of May 5, 1989 among The Penn Central Corporation (as predecessor-in-interest to APU), Owasco, New York & Harlem, MTA, Metro-North Commuter Railroad Company, 450 Lexington Venture, L.P., and the United States Postal Service.

(g) Continuing Maintenance Agreement: means the Continuing Maintenance Agreement dated as of December 9, 1997 (as amended, restated, supplemented, replaced, renewed or otherwise modified), by and among APU, New York & Harlem, the New York City Landmarks Commission and the MTA.

(h) Deposit: has the meaning set forth in Article 4 hereof.

(i) Disclosure Schedules: means the schedules attached to this Agreement and made a part hereof.

(j) Environmental Release: means that certain Release and Indemnification Agreement, dated as of April 8, 1994, by and among APU, Owasco, New York & Harlem, MTA and the Metro-North Commuter Railroad Company.

(k) Escrow Agreement: means the escrow agreement dated as of even date herewith by and among Sellers, Purchaser and the Escrow Agent.

(l) 401 Year Lease: means that certain contract by and between New York & Harlem, as landlord, and APU (as successor in interest to The New York Central and Hudson River Railroad Company), as tenant, dated April 1, 1873, as amended by Supplementary Contract dated May 15, 1882, as further amended by Second Supplementary Contract dated October 5, 1898, as further amended by Third Supplementary Contract between said parties dated July 1, 1943 and as further amended by Fourth Supplementary Contract dated October 24, 1978 (as assigned by Hudson River Railroad Company to APU by Indenture dated October 24, 1978), and recorded in the land records of New York County in Reel 460, page 1535.

(m) 450 Lexington Consent Interest: means all of the rights of Terminal Owner to and under the Consent Agreement.

(n) Information: means all documents, materials, studies and other information delivered or disclosed to Purchaser by Sellers.

(o) Leased MTA Premises: means the premises leased under the MTA Lease.

(p) Lehman: means Lehman Brothers Holdings, Inc.

(q) MTA Lease: means the Amended and Restated Agreement of Lease between APU and Owasco, as landlord, and Metropolitan Transportation Authority ("MTA"), as tenant, dated as of April 8, 1994, as amended.

(r) Person: means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(s) Phillip Morris Declaration: means that certain Declaration dated February 9, 1979, made by APU (as successor-in-interest to The Penn Central Corporation) and recorded in the Office of the New York City Register, New York County at Liber 480, page 1.

(t) Post Office Ground Lease: means that certain ground lease dated as of July 22, 1987, by and between the United States Postal Service, as landlord, and 450 Lexington Venture, L.P., as tenant, with respect to the property located at 450 Lexington Avenue, New York, New York.

(u) Purchaser: means Midtown TDR Ventures LLC, an entity fifty percent (50%) owned by a wholly owned subsidiary of Argent and fifty percent (50%) owned by a wholly owned subsidiary of Lehman.

(v) Sellers: means, collectively and, to the extent provided for in Section 18.17(d) hereof, severally (1) AFG and (2) jointly and severally, APU, Owasco and New York & Harlem.

(w) Survival Period: means the period of time beginning on the Closing Date and ending one (1) year after the Closing Date except to the extent that Purchaser or Sellers, as applicable, shall have commenced a claim or proceeding seeking indemnification under Section 12.2 or 12.1, respectively, in which case the Survival Period shall end upon full satisfaction of a final, non-appealable order or determination by a court of competent jurisdiction or a settlement between the relevant parties in connection with such claim or proceeding.

(x) TDRs: means 1,221,121 square feet of floor area development rights emanating from Lot 1, and 1,285,011 square feet of floor area development rights resulting from a "merged zoning lot" (as set forth in the Stipulation (as hereinafter defined)), emanating from the Terminal Lot and Lot 54 under the Zoning Resolution of the City of New York, as amended, promulgated by the City Planning Commission constituted pursuant to Chapter 8 of the New York City Charter pursuant to Section 200 of the New York City Charter (the "Zoning Resolution") to develop a zoning lot by erecting thereon a structure with a floor area (as defined in Section 12-10 of the Zoning Resolution) determined by multiplying the area of the lot by the allowable ratio of floor area to lot size for structures in the zoning district. Such floor area development rights are expressed in square feet by floor area permitted to be developed in the structure.

(y) Terminal Lot: means the real property designated as Block 1280, Lot 1 on the Tax Map of the City of New York, as further described on Schedule 1.1(y) of the Disclosure Schedule.

(z) Terminal Owner: means, collectively, and jointly and severally, APU, New York & Harlem and Owasco.

(aa) 383 Documents: means The Declaration of Restrictive Covenant set forth in Schedule B item 5n of the Title Commitment and the Agreement for Purchase and Sale of Development Rights and Related Release of Lease of Development Rights by and between The Penn Central Corporation (now known as APU), New York & Harlem, Owasco and 383 Madison Associates, dated as of November 8, 1983, a memorandum of which was recorded on November 17, 1983 in Reel 737 page 296, as amended by unrecorded First Supplemental Agreement dated August 17, 1984, unrecorded Second Supplemental Agreement, dated as of August 26, 1987 and unrecorded Third Supplemental Agreement, dated as of July 31, 1989.

(bb) Title Company: means New York Land Services, Inc., a LandAmerica company.

(cc) Title Policy: means the ALTA owner's form title policy insuring the fee simple interests of Purchaser, together with the such endorsements as the Purchaser may request (in each case, to the extent available) to be issued pursuant to the Title Commitment.

(dd) Zenith: means Zenith Insurance Company, a California corporation.

(ee) Zenith Assignment Documents: means the (i) Assignment, dated as of September 29, 2000, by APU and Owasco, as assignor, in favor of Zenith, as assignee, and (ii) Assignment, dated as of December 28, 2000, by APU and Owasco, as assignor, in favor of Zenith, as assignee.

(ff) Zenith Documents: means the Zenith Purchase Agreements and the Zenith Assignment Documents.

(gg) Zenith Purchase Agreements: means those two separate Purchase and Sale Agreements, each dated as of September 29, 2000, by and among APU and Owasco, as sellers, and Zenith, as purchaser.

Article 2. SALE AND PURCHASE

Subject to the terms and provisions hereof, Sellers agree to sell to Purchaser, and Purchaser agrees to purchase from Sellers:

(a) the Terminal Lot, the Retained 54 Portion (as defined hereinafter) and the other real property described on Schedule 2(a)(i) of the Disclosure Schedule, though not including the parcels previously sold by the Sellers and the MTA as set forth on Schedule 2(a)(ii), together with all right, title and interest of Sellers in and to any and all strips or gores, roads, appurtenances, easements, streets and ways, rights in franchise agreements, subsurface of land, riparian rights, rights-of-way, bounding such real property, and rights of ingress and egress thereto (collectively, the "Real Property");

(b) all right, title and interest of Sellers in and to all improvements situated upon the Real Property (collectively, the "Improvements");

(c) all right, title and interest of Sellers in and to all personal property of every kind and nature now or hereafter installed, located, situated or used in, on or about, or in connection with the operation, use and enjoyment of the Real Property or the Improvements including, without limitation, all equipment, air conditioning, heating and ventilating systems, all other mechanical systems, all carpets and other floor coverings, all drapes, shades and other window coverings, all furnishings and furniture, and all maintenance and other equipment, if any, owned by Sellers and affixed or located upon the Real Property or the Improvements (collectively, the "Personal Property");

(d) all right, title and interest of Sellers in and to all of that certain intangible property owned by Sellers and used by Sellers in connection with all or any portion of the Real Property and/or the Improvements and/or the Personal Property, including, without limitation,

(i) all environmental assessments, if any, as-built plans, specifications and other similar documents and materials relating to the use, operation, maintenance, repair, construction or fabrication of all or any portion of the Real Property and/or the Improvements and/or the Personal Property; (ii) all names, trade names, designations, logos & service marks and appurtenant good will, exclusively used in connection with the operation of the Assets, if any, including, without limitation, rights in and to the trade name "Grand Central Terminal", along with any derivations thereof, used in connection with the Real Property and/or Improvements; (iii) all transferable business licenses, architectural, site, landscaping or other permits, applications, approvals, certificates of occupancy, authorizations and other entitlements affecting any portion of the Real Property; and (iv) all transferable guarantees, warranties and utility contracts (excluding, however, any utility deposits, if any, made by Sellers) relating to all or any portion of the Real Property (collectively, the "Intangible Property");

(e) all right, title and interest of Terminal Owner in and to the MTA Lease;

(f) all right, title and interest of Sellers in and to the TDRs;

(g) the 450 Lexington Consent Interest; and

(h) all of Sellers' right, title and interest in and to any and all operating and trackage rights over the Real Property (the "Trackage Rights").

The Real Property, Improvements, Personal Property, Intangible Property, the MTA Lease, the 450 Lexington Consent Interest, the Trackage Rights and the TDRs are hereinafter collectively referred to as the "Assets."

Article 3.

CONSIDERATION FOR CONVEYANCE

The purchase price for the Assets is Fifty Seven Million Five Hundred Thousand and 00/100 Dollars (\$57,500,000) (the "Base Purchase Price"), which shall be due and payable in cash or by wire transfer of immediately available federal funds at the closing of the transaction contemplated by this Agreement ("Closing"). The Base Purchase Price shall be allocated among the Assets pursuant to an allocation schedule to be agreed to by Purchaser and Sellers prior to Closing.

Article 4.

EARNEST MONEY DEPOSIT

An Initial Deposit of One Million and 00/100 Dollars (\$1,000,000.00) was paid to Keating Muething & Klekamp PLL ("Escrow Agent") on July 11, 2006 in connection with the execution of the Letter of Intent dated July 10, 2006 between Sellers and Argent ("Letter of Intent"). An additional deposit of One Million Eight Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,875,000.00) (the "Additional Deposit") shall be paid to the Escrow Agent contemporaneously with the execution of this Agreement. The Initial Deposit and the Additional Deposit are collectively referred to as the "Deposit." The Deposit shall be held by the Escrow

Agent pursuant to the terms of the Escrow Agreement, substantially in the form of the attached Exhibit "A".

In the event the Escrow Agent cannot or is unwilling to comply with the obligations pursuant to this Article, Purchaser and Sellers shall mutually select another escrow agent.

Article 5.

TITLE CONDITIONS AND ENVIRONMENTAL MATTERS

5.1 Permitted Exceptions. The Assets are sold and are to be conveyed subject only to the following (hereinafter, collectively, the "Permitted Exceptions"):

- (a) The 401 Year Lease and the MTA Lease;
 - (b) Zoning and building laws, restrictions, regulations and ordinances of the municipality in which the Real Property is located, if any, provided that none of the same interfere with or prevent the continued operation of the Assets in the same manner as presently operated;
 - (c) Those matters set forth on the Title Commitment (hereinafter defined);
- and
- (d) Those matters set forth on Schedule 5.1(d).

In addition, the TDRs shall be sold and conveyed subject to the terms of the Continuing Maintenance Agreement.

5.2 Title Commitment. Purchaser has obtained a commitment for the issuance of an Owner's Policy of Title Insurance relating to the Terminal Lot (the "Title Commitment"). A copy of the Title Commitment is set forth as Schedule 5.2.

5.3 Termination of 401 Year Lease. Sellers and Purchaser hereby acknowledge and agree that as a result of and upon the consummation of the APU/NY&H Merger, the 401 Year Lease will terminate by operation of law. In connection with the foregoing, Sellers shall, at or prior to Closing, deliver to Purchaser and the Title Company, the following documentation with respect to the APU/NY&H Merger and termination of the 401 Year Lease, (a) evidence of the APU/NY&H Merger, and (b) recordable termination document(s) and transfer tax forms, if applicable, with respect to the termination of the 401 Year lease.

5.4 Lot 54. Owasco and Purchaser hereby acknowledge and agree that: (a) with respect to the real property designated as Block 1280, Lot 54, on the Tax Map of the City of New York ("Lot 54"), a portion thereof is owned by Owasco (the "Retained 54 Portion") and a portion thereof is owned by a third party (the "Sold 54 Portion"); (b) the Retained 54 Portion is intended to be conveyed to Purchaser in accordance with this Agreement; and (c) a formal tax lot subdivision of Lot 54 (the "Lot 54 Subdivision") is required to be consummated before Owasco can convey the Retained 54 Portion to Purchaser. Accordingly, Owasco hereby covenants and agrees that Owasco shall, at Owasco's cost and expense, (i) use commercially

reasonable efforts to consummate a formal tax lot subdivision of Lot 54 on or prior to Closing, which efforts shall include, without limitation, providing the Title Company and/or the City Surveyor's Office for New York County with: (A) the master deed of Lot 54 conveying title thereto into the respective current owners; (B) a completed RP 604 form (tentative subdivision request) that has been approved by the building department; (C) a subdivision survey showing the metes and bounds of the partial tax lot(s); and (D) proof that all of Owasco's taxes are up to date with respect to the Retained 54 Portion and (ii) transfer the Retained 54 Portion to Purchaser. Notwithstanding the foregoing or anything else to the contrary provided for in this Agreement: (1) completion of the Lot 54 Subdivision prior to the Closing shall not be a condition precedent to Purchaser's obligation to close hereunder; (2) Terminal Owner hereby indemnifies, defends and holds the Purchaser Indemnitees (as defined hereinafter) harmless from and against any and all Losses (as defined herein) resulting from or arising out of Owasco's failure to consummate the Lot 54 Subdivision and to transfer the Retained 54 Portion to Purchaser; and (3) the indemnification obligations contained in this Section 5.4 shall survive the Closing indefinitely, shall not be subject to any limitation as to the Survival Period and shall not be subject to the limitation set forth in Section 12.3(i), but shall be subject to the limitation set forth in Section 12.3(ii).

5.5 Material Defects. Sellers and Purchaser hereby acknowledge and agree that under Article 42 of the MTA Lease, the landlord is required to Cure any Material Defect (as such terms are defined in the MTA Lease) and that the Cure Costs (as defined in the MTA Lease) are allocated between landlord and tenant as set forth in Section 42.03 thereof. Notwithstanding the foregoing or anything else to the contrary provided for in this Agreement (a) Sellers hereby indemnify, defend and hold the Purchaser Indemnitees harmless from and against any and all Losses resulting from or arising out of the existence (or claim thereof) of a Material Defect and/or any Cure Costs allocated to or incurred by Purchaser (or its designee), as landlord under the MTA Lease, with respect thereto and (b) the indemnification obligations contained in this Section 5.5 shall survive the Closing indefinitely, shall not be subject to any limitation as to the Survival Period and shall not be subject to the limitation set forth in Section 12.3(i), but shall be subject to the limitation set forth in Section 12.3(ii).

5.6 Environmental Release. Sellers and Purchaser hereby acknowledge and agree that Sellers are not making any representation or warranty with regard to environmental matters. Notwithstanding the foregoing or anything else to the contrary provided for in this Agreement (a) Sellers hereby indemnify, defend and hold the Purchaser Indemnitees harmless from and against any and all Losses resulting from or arising out of (i) any environmental condition, liability or matter that is attributable to the period prior to April 8, 1994 affecting all or any portion of the Real Property and/or (ii) any matter set forth in the Environmental Release and (b) the indemnification obligations contained in this Section 5.6 shall survive the Closing indefinitely, shall not be subject to any limitation as to the Survival Period and shall not be subject to the limitation set forth in Section 12.3(i), but shall be subject to the limitation set forth in Section 12.3(ii).

Article 6.

TRANSFERABLE DEVELOPMENT RIGHTS

6.1 Transfer of TDRs. At the Closing, (i) subject to the Permitted Exceptions, Terminal Owner will transfer to Purchaser a total of 785,011 square feet of floor area development rights emanating from the Terminal Lot and Lot 54, and (ii) AFG will transfer to Purchaser 500,000 square feet of the Terminal Lot's floor area development rights, by executing and delivering to Purchaser an instrument of Transfer of Development Rights substantially in the form annexed hereto as Exhibit "B".

6.2 Continuing Maintenance Agreement. In the event of any transfer of the TDRs, or any of them by Purchaser pursuant to the provisions of Section 81-63 et seq. of the Zoning Resolution (any such sale, an "81-63 Sale"), Purchaser agrees to pay over and deliver to MTA all payments required pursuant to the terms of the Continuing Maintenance Agreement.

6.3 Transfer Taxes with Respect to TDRs.

(a) Terminal Owner and AFG agree to pay any (i) New York City Real Property Transfer Tax and (ii) tax imposed by Section 1402 of the Tax Law of the State of New York (collectively, the "TDR Transfer Tax"), that may be payable in connection with their sale of the TDRs.

(b)

1. At the Closing, Terminal Owner and AFG shall complete and sign the New York State Combined Real Estate Transfer Tax Return Credit Line Mortgage Certificate ("TP-584") with respect to the transfer of the TDRs, and Purchaser shall complete and sign the TP-584 with respect to the transfer of the TDRs, and Terminal Owner, AFG and Purchaser shall then deliver each of said forms to the applicable taxing authority with the requisite payment by Terminal Owner and AFG as and for payment of the TDR Transfer Tax.

2. At the Closing, Terminal Owner, AFG and Purchaser shall, pursuant to Chapter 21, Title 11 of the New York City Administrative Code, complete and sign the New York City Real Property Transfer Tax Return ("RPT") with respect to the transfer of the TDRs. Terminal Owner, AFG and Purchaser shall then deliver each of said forms to the applicable taxing authority with the requisite payment by Terminal Owner and AFG as and for the payment of the New York City Real Property Transfer Tax (the "TDR Real Property Tax") payable in connection with the transfer of the TDRs.

Article 7.

450 LEXINGTON CONSENT INTEREST

7.1 Transfer of Consent Agreement. At the Closing, Terminal Owner will transfer to Purchaser all right, title and interest of Terminal Owner in and to the Consent Agreement and Purchaser will accept and agree to assume all of the obligations of Terminal Owner by executing and delivering an Assignment and Assumption Agreement substantially in the form annexed hereto as Exhibit "C". The Consent Revenue (as hereinafter defined) shall be apportioned between Terminal Owner and Purchaser as of the Closing Date.

Article 8.
PURCHASE OF ZENITH'S INTEREST IN MTA LEASE

8.1 Zenith's Interest in MTA Lease. As required by Section 7(f) of each of the Zenith Purchase Agreements, immediately upon execution of this Agreement, APU and Owasco shall deliver notice to Zenith of the subsequent termination of the 401 Year Lease (as a result of the APU/NY&H Merger, as further described in Section 5.3 hereof) and of the intention of APU and Owasco to transfer their interest in the MTA Lease to Purchaser. If Zenith elects to require APU and Owasco to reacquire from Zenith the rights (the "Zenith Rights") in the MTA Lease transferred to Zenith pursuant to the Zenith Assignment Documents and APU and Owasco complete such acquisition of the Zenith Rights, then (i) Sellers shall promptly notify Purchaser of such election by Zenith and at the Closing, in addition to the Base Purchase Price, Purchaser shall also pay to APU and Owasco an amount equal to the amount required to be paid (and actually paid) by APU and Owasco to Zenith to acquire the Zenith Rights under the Zenith Purchase Agreements, and (ii) at the Closing, Sellers shall deliver to Purchaser documentation reasonably satisfactory to Purchaser certifying that the Zenith Documents have been terminated, including, without limitation, (x) a notarized termination agreement executed by APU, Owasco and Zenith, and (y) a written notice to the MTA disclosing the termination of the Zenith Documents and directing the MTA that all Rental payments (as defined in the MTA Lease) shall be paid to Purchaser from and after the Closing Date. If Zenith does not require APU and Owasco to acquire the Zenith Rights, then (i) Purchaser shall acquire the rights of APU and Owasco in and to the MTA Lease subject to the rights of Zenith therein pursuant to the Zenith Documents, and (ii) at or prior to the Closing, Sellers shall deliver to Purchaser a notice letter to Zenith containing the contact information of Purchaser for the purpose of notice (including the contact information of Purchaser's counsel) under the Zenith Documents, which letter shall be in form and substance reasonably satisfactory to Purchaser

Article 9.
PROPERTY INFORMATION

9.1 Confidentiality. Sellers and Purchaser and their representatives, including any brokers or other professionals, shall keep the terms of this Agreement and all Information strictly confidential, except: (i) to the extent any of the same are already in the public domain, (ii) to the extent such disclosure is compelled by any Law or any securities reporting requirements, (iii) in connection with any conflict between Sellers, or any of them, on one hand, and Purchaser, on the other hand, and (iv) with respect to potential lenders, managers, underwriters, investors and the like and their agents, employees, consultants, managers, accountants, lawyers and other professional advisors of Sellers or Purchasers, and then on a need to know basis. In the event the Closing does not occur, for any reason, or this Agreement has been otherwise terminated pursuant to its terms, Purchaser shall deliver to Sellers all Information (as hereinafter defined) and all of Purchaser's due diligence reports, including those prepared for Purchaser by third parties. Any Information not so delivered, whether inadvertently or intentionally, will remain subject to this Section 9.1. In addition, unless mutually agreed to by Sellers and Purchaser, each of the parties hereto agrees not to make any public announcement, other than as the Sellers deem necessary pursuant to securities filing obligations and on which announcement(s) Sellers agree to confer with Purchaser prior to the

filing thereof, that this Agreement has been entered into or of the terms hereof prior to the Closing. The provisions of this Section 9.1 shall survive the Closing or earlier termination of this Agreement for a period of three (3) months.

9.2 Information. As an essential inducement to Sellers to sell the Assets to Purchaser on the favorable terms and conditions set forth in this Agreement, Purchaser acknowledges and agrees that (except as otherwise provided in this Agreement or in Sellers' Closing Documents (as hereinafter defined)): (i) all Information is being provided to Purchaser for informational purposes only and only as an accommodation to Purchaser; and (ii) except as herein otherwise provided, Sellers have not made, are not making, and will not make any representation, warranty or promise of any kind, express or implied, concerning the accuracy or completeness of all or any part of the Information.

Article 10. REPRESENTATIONS AND WARRANTIES

The representations and warranties contained in this Article 10 shall survive the Closing for the Survival Period.

10.1 Purchaser's Representations and Warranties. Purchaser hereby represents and warrants to Sellers, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Legal Existence. Purchaser is a limited liability company duly organized and existing under the laws of the State of Delaware.

(b) Authority. The execution of this Agreement and the consummation of all transactions contemplated hereunder; (i) are within the powers of Purchaser; (ii) have been duly authorized by appropriate action, and (iii) will not conflict with, result in any breach of any of the provisions of, or constitute a default (or an event which upon the giving of any required notice or lapse of time would constitute a default) under Purchaser's organizational documents or the provisions of any agreement, court or administrative order, consent decree, or other instrument to which Purchaser is a party.

(c) Enforceability. This Agreement has been duly executed and delivered by Purchaser, and is the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

(d) Litigation. There is no action, suit or proceeding pending or, to the knowledge of Purchaser (and, in the event Purchaser assigns its rights hereunder as provided for in this Agreement to any entity, also to the knowledge of such assignee), threatened against Purchaser (or such assignee), or to which Purchaser (or such assignee) is a party, in any court, before any arbitrator or before or by any governmental body which: (i) would affect the validity or enforceability of this Agreement or any other agreement or instrument to which Purchaser is a

party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement; or (ii) would prevent Purchaser (or such assignee) from completing the transactions provided for herein.

(e) No Ownership of Receiving Lot. Purchaser represents and warrants that it is not the owner of a "receiving lot" as such term is defined in Section 81-63 et seq. of the Zoning Resolution.

(f) Purchaser represents and warrants that (i) it intends to acquire the Assets without a third party loan, and (ii) if Purchaser elects to close on the Closing Date, Purchaser will have sufficient capital to fund the Purchase Price at Closing.

10.2 APU's Representations and Warranties. APU hereby represents and warrants the following to Purchaser, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Legal Existence. APU is a corporation duly organized and validly existing in good standing under the laws of the State of Pennsylvania.

(b) Authority. The execution of this Agreement and the consummation of all transactions contemplated hereunder: (i) are within the powers of APU; (ii) have been duly authorized by appropriate action; and (iii) will not conflict with, result in any breach of any of the provisions of, or constitute a default (or an event which upon the giving of any required notice or lapse of time would constitute a default) under APU's organizational documents or the provisions of any agreement, court or administrative order, consent decree, or other instrument to which APU is a party or by which APU is otherwise bound.

(c) Enforceability. This Agreement has been duly executed and delivered by APU, and is the legal, valid and binding obligation of APU, enforceable against APU in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

(d) Third Party Approval. No approval, consent, order, or authorization of or designation, registration, or declaration with, any governmental authority or other party is required in connection with the valid execution and delivery of and compliance with this Agreement by APU.

(e) Non-Foreign Person. APU is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and Internal Revenue Service Income Tax Regulations ("Regulations") thereunder, nor is APU an entity disregarded for U.S. tax purposes pursuant to Regulations §1.1445-2(b)(2)(iii).

(f) Litigation. There is no action, suit or proceeding pending or, to the knowledge of APU, threatened against APU, or to which APU is a party, in any court, before any arbitrator or before or by any governmental body which: (i) would affect the validity or

enforceability of this Agreement or any other agreement or instrument to which APU is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement; or (ii) if adversely determined against APU, could adversely affect the Assets, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

(g) Successor to The New York Central and Hudson River Railroad Company. Upon the consummation of the APU/NY&H Merger (and assuming such is ever consummated), APU shall be the sole successor-in-interest to The New York Central and Hudson River Railroad Company.

10.3 New York & Harlem's Representations and Warranties. New York & Harlem hereby represents and warrants the following to Purchaser, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Legal Existence. New York & Harlem is a corporation duly organized and validly existing in good standing under the laws of the State of New York.

(b) Authority. The execution of this Agreement and the consummation of all transactions contemplated hereunder: (i) are within the powers of New York & Harlem; (ii) have been duly authorized by appropriate action; and (iii) will not conflict with, result in any breach of any of the provisions of, or constitute a default (or an event which upon the giving of any required notice or lapse of time would constitute a default) under New York & Harlem's organizational documents or the provisions of any agreement, court or administrative order, consent decree, or other instrument to which New York & Harlem is a party or by which New York & Harlem is otherwise bound.

(c) Enforceability. This Agreement has been duly executed and delivered by New York & Harlem, and is the legal, valid and binding obligation of New York & Harlem, enforceable against New York & Harlem in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

(d) Third Party Approval. No approval, consent, order, or authorization of or designation, registration, or declaration with, any governmental authority or other party is required in connection with the valid execution and delivery of and compliance with this Agreement by New York & Harlem.

(e) Non-Foreign Person. New York & Harlem is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, nor is New York & Harlem an entity disregarded for U.S. tax purposes pursuant to Regulations §1.1445-2(b)(2)(iii).

(f) Litigation. There is no action, suit or proceeding pending or, to the knowledge of New York & Harlem, threatened against New York & Harlem, or to which New York & Harlem is a party, in any court, before any arbitrator or before or by any governmental body which: (i) would affect the validity or enforceability of this Agreement or any other

agreement or instrument to which New York & Harlem is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement; or (ii) if adversely determined against New York & Harlem, could adversely affect the Assets, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

10.4 Owasco's Representations and Warranties. Owasco hereby represents and warrants the following to Purchaser, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Legal Existence. Owasco is a corporation duly organized and validly existing in good standing under the laws of the State of New York.

(b) Authority. The execution of this Agreement and the consummation of all transactions contemplated hereunder: (i) are within the powers of Owasco; (ii) have been duly authorized by appropriate action; and (iii) will not conflict with, result in any breach of any of the provisions of, or constitute a default (or an event which upon the giving of any required notice or lapse of time would constitute a default) under Owasco's organizational documents or the provisions of any agreement, court or administrative order, consent decree, or other instrument to which Owasco is a party or by which Owasco is otherwise bound.

(c) Enforceability. This Agreement has been duly executed and delivered by Owasco, and is the legal, valid and binding obligation of Owasco, enforceable against Owasco in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

(d) Third Party Approval. No approval, consent, order, or authorization of or designation, registration, or declaration with, any governmental authority or other party is required in connection with the valid execution and delivery of and compliance with this Agreement by Owasco.

(e) Non-Foreign Person. Owasco is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and Regulations thereunder, nor is Owasco an entity disregarded for U.S. tax purposes pursuant to Regulations §1.1445-2(b)(2)(iii).

(f) Litigation. There is no action, suit or proceeding pending or, to the knowledge of Owasco, threatened against Owasco, or to which Owasco is a party, in any court, before any arbitrator or before or by any governmental body which: (i) would affect the validity or enforceability of this Agreement or any other agreement or instrument to which Owasco is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement; or (ii) if adversely determined against Owasco, could adversely affect the Assets, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

10.5 AFG's Representations and Warranties. AFG hereby represents and warrants the following to Purchaser, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Legal Existence. AFG is a corporation duly organized and validly existing in good standing under the laws of the State of Ohio.

(b) Authority. The execution of this Agreement and the consummation of all transactions contemplated hereunder: (i) are within the powers of AFG; (ii) have been duly authorized by appropriate action; and (iii) will not conflict with, result in any breach of any of the provisions of, or constitute a default (or an event which upon the giving of any required notice or lapse of time would constitute a default) under AFG's organizational documents or the provisions of any agreement, court or administrative order, consent decree, or other instrument to which AFG is a party or by which AFG is otherwise bound.

(c) Enforceability. This Agreement has been duly executed and delivered by AFG, and is the legal, valid and binding obligation of AFG, enforceable against AFG in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by equitable principles (whether or not such enforceability is considered in a proceeding at law or in equity).

(d) Third Party Approval. No approval, consent, order, or authorization of or designation, registration, or declaration with, any governmental authority or other party is required in connection with the valid execution and delivery of and compliance with this Agreement by AFG.

(e) Non-Foreign Person. AFG is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and Regulations thereunder, nor is AFG an entity disregarded for U.S. tax purposes pursuant to Regulations §1.1445-2(b)(2)(iii).

(f) Litigation. There is no action, suit or proceeding pending or, to the knowledge of AFG, threatened against AFG, or to which AFG is a party, in any court, before any arbitrator or before or by any governmental body which: (i) would affect the validity or enforceability of this Agreement or any other agreement or instrument to which AFG is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement; or (ii) if adversely determined against AFG, could adversely affect the Assets, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

10.6 Representations and Warranties Regarding the Assets. The parties indicated below, as the case may be, and in all cases severally, and not jointly and severally, make the following representations and warranties to Purchaser, which representations and warranties shall be true and correct as of the date hereof and as of the Closing:

(a) Real Property. Terminal Owner represents and warrants to Purchaser that it owns good and marketable fee simple title to the Real Property, free and clear of any lien, encumbrance or other adverse interest, subject only to Permitted Exceptions.

(b) 401 Year Lease. Terminal Owner represents and warrants that: (i) attached hereto as Schedule 10.6(b) is a true, correct and complete copy of the 401 Year Lease, and (ii) collectively they own 100% of all interests of or are successor in interest to all of the parties under the 401 Year Lease.

(c) MTA Lease. APU and Owasco represent and warrant that: (i) attached hereto as Schedule 10.6(c)(i) is a true, correct and complete copy of the MTA Lease; (ii) the MTA Lease is in full force and effect; (iii) no notices of default under the MTA Lease have been given or received by APU or Owasco within the past 12 months; (iv) to the knowledge of APU and Owasco, no event or omission has occurred which, with the passage of time or giving of notice or both, would constitute a default on the part of any of the parties to the MTA Lease; (v) to the knowledge of APU and Owasco, there are no outstanding defenses, credits or offsets against the payment of any amounts due under the MTA Lease; (vi) to the knowledge of APU and Owasco, no "Material Defect" (as such term is defined in the MTA Lease) exists; (vii) the MTA has not prepaid any rent under the MTA Lease; (viii) the Transfer Restrictions (as such term is defined in the MTA Lease) have been terminated and are no longer in force and effect; (ix) no notices of failure to pay any impositions or governmental obligations with respect to the Assets have been given or received by APU or Owasco within the past 12 months and to the knowledge of APU and Owasco, all Impositions (as such term is defined in the MTA Lease) have been paid as same have become due and payable under the MTA Lease and to the knowledge of APU and Owasco no other Impositions (as such term is defined in the MTA Lease) or governmental obligations are owing with respect to any of the Real Property; (x) no written requests by the MTA for further assurances with respect to Landlord's Air Rights (as such term is defined in the MTA Lease) have been received by APU or Owasco within the past 12 months, and to the knowledge of APU and Owasco, there are no outstanding requests by the MTA therefor; (xi) APU and Owasco have not received any notice of any transfer of Tenant's Air Rights (as such term is defined in the MTA Lease); (xii) since the execution of the MTA Lease, neither APU or Owasco have entered into any nondisturbance agreements pursuant to Section 10.9(c) of the MTA Lease; (xiii) attached hereto as Schedule 10.6(c)(xiii) are copies of all written notices (including defect notices) to or from the MTA with respect to the MTA Lease that have been delivered within the last 12 months; (xiv) they have not received written notice of any assignment by MTA of any of its interest under the MTA Lease; (xv) the Bond Mortgage (as defined in the MTA Lease) has been fully paid-off and discharged; (xvi) they have no liability under Section 19.03 of the MTA Lease; (xvii) Fixed Rents (as defined under the MTA Lease) currently due and owing under the MTA Lease have been paid through the date hereof; (xviii) except for Permitted Exceptions, no Mortgage (as defined in the MTA Lease) currently affects the premises leased under the 401 Year Lease; and (xix) attached hereto as Schedule 10.6(c)(xix) is a copy of that certain Amendment to Memorandum of Amended and Restated Agreement of Lease dated January 18, 2005 by and among APU, Owasco and MTA providing, *inter alia*, that the Term (as defined in the MTA Lease) has been extended for the Extended Term (as defined in the MTA Lease).

(d) TDRs. For purposes of this Section 10.6(d), capitalized terms not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Stipulation dated May 1, 2002 (the "Stipulation") by and among New York & Harlem, Penn Central Transportation Company, The 51st Street Realty Corporation, UGP Properties, Inc., The City of New York and The Landmarks Preservation Commission of the City of New York.

1. Terminal Owner represents and warrants that: (i) subject to Permitted Exceptions, it is the owner of 721,121 square feet of TDRs and in the event of a "merged zoning lot" (as set forth in the Stipulation) of the TDRs emanating from Lots 1 and 54, subject to the Permitted Exceptions, it would be the owner of 785,011 square feet of TDRs emanating from Lots 1 and 54; (ii) it has the right to transfer such TDRs to Purchaser subject to the terms, provisions and conditions set forth herein; (iii) the TDRs to be transferred by Terminal Owner to Purchaser are free and clear of any lien, encumbrance or other adverse interest, subject only to Permitted Exceptions; and (iv) it does not own any TDRs other than the TDRs that it is transferring pursuant to this Agreement.

2. AFG represents and warrants that: (i) subject to the Permitted Exceptions, it is the owner of 500,000 square feet of TDRs, having acquired those rights under the terms of the AFG Rights Transfer Agreement; (ii) it has the right to transfer such TDRs to Purchaser subject to the terms, provisions and conditions set forth herein; (iii) the TDRs to be transferred by AFG to Purchaser are free and clear of any lien, encumbrance or other adverse interest, subject only to Permitted Exceptions; and (iv) it does not own any TDRs other than the TDRs that it is transferring pursuant to this Agreement.

3. Sellers represent and warrant that: (i) the transfer of TDRs by Sellers pursuant to the terms and conditions of this Agreement shall not constitute an 81-63 Sale and shall not require (A) a Landmark Maintenance Payment (as defined in the Continuing Maintenance Agreement) to be made by any Person, or (B) any payment to be made under the Phillip Morris Declaration; (ii) attached hereto as Schedule 10.6(d)(3)(ii) is a true, correct and complete list of all prior sales or transfers of TDRs and all material and/or recorded documentation relating to each such sale, true, correct and complete copies of which have been delivered to Purchaser; (iii) as of December 31, 1997, APU, New York & Harlem and Owasco transferred 500,000 square feet of floor area to AFG pursuant to the terms of a Development Rights Transfer Agreement, a true, correct and complete copy of which is attached hereto as Schedule 10.6(d)(3)(iii), and such transfer of development rights by the Terminal Owner to AFG did not, and does not, constitute an 81-63 Sale; and (iv) to the knowledge of Sellers, there are no outstanding requests for further assurances under any of the agreements, instruments or documents listed on Schedule 10.6(d)(3)(ii).

(e) 450 Lexington Consent Interest. Terminal Owner represents and warrants that: (i) attached hereto as Schedule 10.6(e)(i) is a true, correct and complete copy of the Consent Agreement; (ii) the Consent Agreement is in full force and effect; (iii) to the knowledge of Terminal Owner, no event or omission has occurred which, with the passage of time or giving of notice or both, would constitute a default on the part of any party thereunder; and (iv) to the knowledge of Terminal Owner, there are no outstanding defenses, credits or offsets against the payment of any amounts due thereunder; (v) APU, New York & Harlem and Owasco, as the case

may be, are entitled to receive its portion of the payments pursuant to Section 2(a)(ii) of the Consent Agreement (the "Consent Revenue"), which payments are payable at such time as set forth under the Consent Agreement; and (vi) a true and complete list of such payments received by Terminal Owner during the last 5 years are set forth on Schedule 10.6(e)(iv) annexed hereto and made a part hereof.

(f) Condemnation; Special Assessments. Sellers represent and warrant that there is no pending or, to the knowledge of Sellers, contemplated or threatened condemnation, eminent domain or similar proceeding or special assessment on the Assets or any part thereof.

(g) Compliance With Laws. Sellers have not received any written notice from any governmental agency within the past twelve months, that the Assets are not in compliance with existing laws, rules, regulations, ordinances and orders of applicable federal, state, city and other governmental authorities in effect as of the date of this Agreement with respect to the Assets (collectively, "Laws") which has not been cured on or before Closing.

(h) No Purchase Option. Except for Permitted Exceptions, neither Terminal Owner nor AFG is a party to any contract, agreement or commitment to sell, convey, assign, transfer, provide rights of first refusal, option rights or any other similar rights, legal or equitable, direct or indirect, relating to the disposition of the Assets or any portion thereof.

(i) No Further Encumbrances. Sellers represent and warrant that except as otherwise disclosed in or pursuant to this Agreement, and subject only to the Permitted Exceptions, (i) there are no purchase contracts, options, or any other agreements of any kind, oral or written, formal or informal, choate or inchoate, recorded or unrecorded, whereby any person or entity will have acquired or will have any basis to assert any right, title, or interest in, or right to possession, use, enjoyment or proceeds of, any part or all of the Assets, and (ii) they own 100% of the Assets, free and clear of any lien, encumbrance or other adverse interest.

(j) Environmental Release. Terminal Owner has performed all of its obligations under the terms and conditions of the Environmental Release required to be performed prior to and as of the date hereof, and to Terminal Owner's knowledge, the MTA has performed all of its obligations under the terms and conditions of the Environmental Release required to be performed prior to and as of the date hereof.

(k) Other Documents.

1. Continuing Maintenance Agreement. Sellers represent and warrant that: (i) attached hereto as Schedule 10.6(k)(1)(i) is a true, correct and complete copy of the Continuing Maintenance Agreement; (ii) the Continuing Maintenance Agreement is in full force and effect; (iii) all amounts required to be paid by APU and/or New York & Harlem under the Continuing Maintenance Agreement have been paid; and (iv) as of December 31, 2004, the balance of the Landmark Account (as such term is defined in the Continuing Maintenance Agreement) was U.S. \$1,189,339.36.

2. Phillip Morris Declaration. Sellers represent and warrant that; (i) all amounts required to be paid, and all actions required to be taken, pursuant to the Phillip

Morris Declaration have been paid and taken; (ii) Sellers are in full compliance with the terms of the Phillip Morris Declaration; and (iii) as of June 30, 2006, the balance of the Phillip Morris Trust Account (as such term is defined in the Phillip Morris Declaration) was U.S. \$275,188.54.

3. 383 Documents. Sellers represent and warrant that the 383 Documents have been terminated and are no longer in force or effect.

4. Zenith Documents. Sellers represent and warrant that (i) attached hereto as Schedule 10.6(k)(4) are true, correct and complete copies of the Zenith Documents, (ii) no event or omission has occurred which, with the passage of time or giving of notice or both, would constitute a default or termination event under any of the Zenith Documents, and (iii) no Acceleration Event (as defined in the Zenith Purchase Agreements) has occurred, and no Acceleration Payment (as defined in the Zenith Purchase Agreements) is owing or due, under the Zenith Purchase Agreements.

5. Assumed Agreements, Permitted Exceptions and Other Agreements. Sellers represent and warrant that, in connection with the transactions contemplated under this Agreement, Purchaser shall (a) not assume any agreement, instrument or document other than the Assumed Agreements and (b) not take subject to any agreement, instrument or document other than the Permitted Exceptions and the Other Agreements (as such term is defined in the MTA Lease).

(i) Terminal Lot and Lot 54. Sellers represent and warrant that Terminal Owner owns fee title to the Terminal Lot and to the Retained 54 Portion, subject only to the Permitted Exceptions.

Article 11.

CONDITION OF ASSETS

11.1 Condition of Property. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT AND SELLERS' CLOSING DOCUMENTS (AS HEREINAFTER DEFINED), IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT PURCHASER SHALL ACCEPT THE CONVEYANCE OF THE ASSETS IN THEIR PRESENT CONDITION, "AS-IS, WHERE-IS," SUBJECT TO ALL PATENT AND LATENT DEFECTS, IF ANY, WITH NO REPRESENTATION OR WARRANTY BY SELLERS AS TO THEIR FITNESS, SUITABILITY, HABITABILITY, OR USABILITY, INCLUDING BUT NOT LIMITED TO, (I) THE QUALITY OR CONDITION OF THE IMPROVEMENTS AND THE REAL PROPERTY INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (II) THE MANNER OF OPERATING THE ASSETS AND THE EXPENSES RELATED THERETO, (III) THE COMPLIANCE OF THE ASSETS WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL BODY, AND (IV) THE NATURE AND EXTENT OF ANY SERVITUDES, RIGHTS-OF-WAY, LEASES, POSSESSION, LIENS, ENCUMBRANCES, LICENSES, RESERVATIONS, CONDITIONS OR OTHERWISE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT AND SELLERS' CLOSING DOCUMENTS, PURCHASER ACKNOWLEDGES THAT IT IS NOT RELYING UPON

ANY REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE ASSETS' CONDITION MADE BY SELLERS AND ACCEPTS THE ASSETS UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES MADE BY SELLERS WITH RESPECT TO THE CONDITION OR VALUE OF THE ASSETS. PURCHASER DECLARES THAT IT IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF COMMERCIAL REAL ESTATE AND THEREFORE ACKNOWLEDGES THAT IT WILL RELY SOLELY ON ITS OWN INVESTIGATION AND EXAMINATION OF THE ASSETS, WHICH IT IS QUALIFIED TO MAKE, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLERS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLERS MAKE NO REPRESENTATION AS TO ANY ENVIRONMENTAL MATTERS RELATING TO THE ASSETS INCLUDING, WITHOUT LIMITATION, SOIL CONDITIONS, PURCHASER HAVING BEEN GIVEN OPPORTUNITY PERIOD TO SATISFY ITSELF AS TO SUCH CONDITION.

11.2 Purchaser's Additional Waivers. Purchaser agrees that Sellers shall not be responsible or liable to Purchaser for any construction defects, errors, omissions, or on account of any other conditions affecting the Assets as Purchaser is purchasing the Assets AS IS, WHERE IS and WITH ALL FAULTS.

Article 12.

INDEMNIFICATION

12.1 Indemnification by Purchaser. From and after the Closing, Purchaser will indemnify, defend and hold Sellers and the Sellers' Affiliates (as hereinafter defined), and their respective directors, officers, representatives, employees, agents, successors and assigns ("Seller Indemnitees") harmless from and against any and all claims, actions, suits, demands, assessments, judgments, losses, liabilities, damages, diminutions of value, costs, royalties, payments, license fees and expenses (including without limitation interest, penalties, attorneys' fees, accounting fees and investigation costs) (collectively, "Losses") resulting from or arising out of: (a) any breach of any representation or warranty of Purchaser contained in this Agreement or in any of Purchaser's Closing Documents that occurs during the Survival Period; (b) any breach of any covenant of Purchaser contained in this Agreement or in any of Purchaser's Closing Documents; (c) the ownership, use or possession by Purchaser of any of the Assets after the Closing, though not including any Loss to the extent attributable to any fact, circumstance, condition or event that occurred prior to the Closing; or (d) the Assumed Agreements; provided that (i) Sellers properly notify Purchaser in writing of the claim that such representation or warranty has been breached, and (ii) such notice specifies in detail the nature and dollar value of the alleged breach and is accompanied by reasonable supporting documentation in the possession or control of Sellers evidencing such alleged breach.

12.2 Indemnification by Sellers. From and after the Closing, Sellers will indemnify, defend and hold Purchaser and the Purchaser Affiliates, and their respective directors, officers, representatives, employees, agents, successors and assigns ("Purchaser Indemnitees") harmless from and against any all Losses resulting from or arising out of: (a) any breach of

any representation or warranty of Sellers contained herein or in any of Sellers' Closing Documents; (b) any breach of any covenant of Sellers contained in this Agreement or in any of Sellers' Closing Documents; or (c) the ownership, use or possession by Sellers of any of the Assets prior to the Closing, though not including any Loss to the extent attributable to any fact, circumstance, condition or event that occurred after the Closing (collectively, (a), (b) and (c) in this Section 12.2 are hereinafter referred to as "Sellers' Breaches"); provided that (i) Purchaser properly notifies Sellers in writing of the claim that such representation or warranty has been breached, and (ii) such notice specifies in reasonable detail the nature and, if available, reasonably estimated dollar value of the alleged breach.

12.3 Limitations. (a) Notwithstanding anything in this Agreement to the contrary, none of the Purchaser Indemnitees shall be entitled to indemnification under subsections 12.2(a) or 12.12(b) of this Agreement (i) to the extent such Losses are attributable to Sellers' Breaches, then only to the extent the aggregate of all such Losses exceed One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000) (such amount, the "Deductible"), and (ii) to the extent such Losses are attributable to Sellers' Breaches and are in excess of the Deductible and/or to the extent such Losses are attributable to any other matter for which Purchaser Indemnitees are entitled to indemnification under Section 12.2, then only to the extent the aggregate of all such Losses is an amount equal to or less than the Base Purchase Price, and for purposes of clarification, Sellers will not have any obligation or liability to indemnify the Purchaser Indemnitees hereunder, at law or in equity, for any amount in excess of the Base Purchase Price.

(b) Except as otherwise provided in this Agreement, the existence of a Permitted Exception as set forth on Schedule 5.1(d) shall not, shall not give rise to a claim by Purchaser for indemnification from Sellers. For purposes of clarification, in the event of any ambiguity or inconsistency between the application or interpretation of the first sentence of this Section 12.3(b) and the application or interpretation of any other provision of this Agreement, the application or interpretation of such other provision shall apply and control in all respects.

12.4 Pre-Closing Remedies.

(a) Sellers' Breaches.

1. Purchaser shall have no right or remedy against Sellers arising from Sellers' Breaches unless and until the aggregate Losses therefrom equal or exceed the Deductible. Purchaser shall have the right to deliver a written notice to Sellers at least 10 days prior to Closing stating that the aggregate Losses attributable to Sellers' Breach(es) equal or exceed the Deductible, setting forth the nature of the alleged Sellers' Breach(es) and setting forth Purchaser's calculation of the Losses arising therefrom ("Purchaser's 12.4(a) Termination Notice").

2. Within 5 business days after receipt of Purchaser's 12.4(a) Termination Notice Sellers shall deliver a written notice to Purchaser and the Escrow Agent stating that either (A) Sellers' agree with Purchaser's 12.4(a) Termination Notice and directing Escrow Agent to return the Deposit to Purchaser ("Sellers' 12.4 Agreement Notice") or (B) Sellers disagree with Purchaser's 12.4(a) Termination Notice and setting forth, with particularity,

Sellers' reasons for such determination ("Sellers' 12.4 Disagreement Notice"). If Sellers fail to deliver either a Sellers' Agreement Notice or a Sellers' 12.4 Disagreement Notice within the applicable period of time, Sellers shall be absolutely and irrevocably deemed to have delivered a Sellers' 12.4 Agreement Notice to Purchaser and Escrow Agent.

3. If Sellers deliver (or shall be deemed to have delivered) a Sellers' 12.4 Agreement Notice within the applicable period of time, Purchaser may either (x) terminate this Agreement, and consistent therewith (1) Escrow Agent shall return the Deposit to Purchaser within 3 business days after receipt of such Sellers' 12.4 Agreement Notice; (2) this Agreement shall terminate except for those provisions which are expressly stated to survive termination; (3) neither party shall have any further rights or obligations under this Agreement; and (4) Sellers shall have the absolute and unconditional right to sell the Assets to any other Person; or (y) proceed to the Closing, and consistent therewith, Purchaser shall be deemed to have absolutely and unconditionally waived all of the alleged Sellers' Breaches set forth in Purchaser's 12.4(a) Termination Notice and all rights to claim any credit, offset or abatement to the Base Purchase Price based thereupon.

4. If Sellers shall deliver a Sellers' 12.4 Disagreement Notice within the applicable period of time, then within 5 business days after receipt of a Sellers' 12.4 Disagreement Notice by Purchaser (but in no event later than the Closing Date), Purchaser shall deliver a written notice to Sellers and Escrow Agent stating that Purchaser has elected to either (x) proceed with the Closing, and consistent therewith, Purchaser shall be deemed to have absolutely and unconditionally waived all of the alleged Sellers' Breaches set forth in Purchaser's 12.4(a) Termination Notice and all rights to claim any credit, offset or abatement to the Base Purchase Price based thereupon ("Purchaser's 12.4 Retraction Notice"), or (y) not proceed with the Closing ("Purchaser's 12.4(a) Second Termination Notice"). If Purchaser delivers a Purchaser's 12.4(a) Second Termination Notice, the Escrow Agent shall retain the Deposit until the final resolution of the matter between Sellers and Purchaser pursuant to the terms and conditions set forth in Section 12.4(a)(5) or an agreement between Sellers and Purchaser as to the Deposit. If Purchaser fails to deliver either a Purchaser's 12.4 Retraction Notice or a Purchaser's 12.4(a) Second Termination Notice within the applicable period of time, Purchaser shall be absolutely and irrevocably deemed to have delivered a Purchaser's 12.4(a) Second Termination Notice.

5. If Purchaser delivers (or shall be deemed to have delivered) a Purchaser's 12.4(a) Second Termination Notice, then: (x) Purchaser's sole and exclusive right and remedy shall be to bring an action against Sellers over the issue of whether or not Purchaser's Losses from the alleged Sellers' Breach(es) exceed the Deductible and for the recovery of the Deposit ("Deposit Recovery Action"); (y) Purchaser shall thereafter be deemed to have waived its right to purchase the Assets and/or to sue Sellers' for any damages and/or to file a lis pendens and/or to otherwise attempt to restrict Sellers' right to convey the Assets to a third party; and (z) Sellers' shall have the absolute and unrestricted right to sell the Assets to a third party. In the event of the filing of a Deposit Recovery Action, the non-prevailing party shall pay the reasonable attorneys' fees and expenses actually incurred by the prevailing party in connection therewith.

12.5 Procedure. In the event that any third party claim or demand shall be asserted against any indemnified party that may give rise to Losses, and if a claim for indemnification in respect thereof is to be made against the indemnifying party under this Agreement, the indemnified party shall promptly, and in any event within ten (10) calendar days after the receipt of notice of such third party claim or demand, cause written notice thereof to be given to the indemnifying party; provided, however, that failure to so notify the indemnifying party shall not relieve the indemnifying party from any obligations it may have to the indemnified party or its affiliates hereunder, except to the extent that it is prejudiced by such failure. In the event any claim or demand for indemnification is made under this Article 12, the indemnifying party shall be entitled to meaningfully participate in the defense of the underlying third party claim or demand and, upon delivery by the indemnifying party to the indemnified party of written notice, the indemnifying party may assume and control the defense thereof with counsel of its choice, and thereafter the indemnifying party shall not be liable to the indemnified party hereunder for any fees of other counsel subsequently accrued by the indemnified party in connection with the defense thereof. In the event that any claim or demand is made under this Article 12, the indemnifying party and the indemnified party shall cooperate fully with each other in connection with the defense, negotiation or settlement of the third party claim or demand underlying such claim or demand made under this Article 12. If the indemnifying party assumes the defense of an action, (a) the indemnified party shall be entitled to participate therein at its sole cost and expense, and (b) no settlement or compromise thereof may be effected by the indemnified party without the consent of the indemnifying party. If the indemnifying party does not assume the defense of an action, no compromise or settlement thereof may be effected at the expense of the indemnifying party without the consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed.

12.6 Exclusive Remedies. From and after the Closing, the Purchaser's and Sellers' respective rights to indemnification under Article 5 or this Article 12 with respect to any Losses shall be their sole and exclusive remedy for damages under or with respect to this Agreement or the transactions contemplated hereby, and they shall not be entitled to pursue, and hereby expressly waive, any and all rights that may otherwise be available either at law or in equity with respect thereto. Without limiting the generality of the foregoing, each of Purchaser and Sellers hereby waives to the fullest extent permitted by law any claim or cause of action that it or they might otherwise assert, including, without limitation, under the common law or federal or state securities, trade regulations or other laws, by reason of this Agreement or the transactions contemplated hereby, except for claims and causes of action brought pursuant to Article 5 or Article 12.

Article 13.

CLOSING CONDITIONS

13.1 Purchaser's Conditions. Purchaser's obligations hereunder are subject to the satisfaction of the following conditions precedent and the compliance by Sellers with the following covenants:

(a) Sellers' Deliveries. Sellers shall have delivered to the Escrow Agent or the Purchaser, as the case may be, on or before the date of Closing, all of the documents called for by Section 14.2 hereof.

(b) Sellers' Representations and Warranties. All of Sellers' representations and warranties made in this Agreement shall be true and correct as of the Effective Date and as of the Closing Date as if then made in all respects, and each of the Sellers shall have performed all of its covenants and other obligations under this Agreement.

(c) Issuance of Title Policy. Sellers shall have satisfied the conditions and requirements that are under Sellers' control set forth on Schedule B of the Title Commitment (the "Title Requirements").

(d) Sellers' Performance. Sellers shall have performed all of the actions and obligations required to be performed by them hereunder at or prior to the date of Closing.

13.2 Sellers' Conditions. Sellers' obligations hereunder are subject to the satisfaction of the following conditions precedent and the compliance by Purchaser with the following covenants:

(a) Purchaser's Deliveries. Purchaser shall have delivered to Sellers, on or before the date of Closing, all of the documents called for by Section 14.3 hereof.

(b) Purchaser's Representations and Warranties. All of Purchaser's representations and warranties made in this Agreement shall be true and correct as of the Effective Date and as of the Closing Date as if then made in all material respects, and Purchaser shall have performed all of its covenants and other obligations under this Agreement.

Article 14. CLOSING

14.1 Date of Closing. The Closing hereunder shall take place on or before September 30, 2006 ("Closing Date") at such place in New York City as Sellers and Purchaser may agree; provided, however, Sellers shall have the right to extend the date for the Closing for up to thirty (30) days if required, in Sellers' sole discretion, for Sellers to complete all corporate proceedings contemplated in connection with the transactions provided for herein, including the APU/NY&H Merger. At the Closing, Purchaser shall simultaneously close the transactions contemplated under this Agreement with each party comprising the Sellers.

14.2 Delivery of Items At Closing By Sellers. At the Closing, the surviving parties comprising Sellers (taking into account APU as successor by merger of New York & Harlem), as the case may be, shall deliver or cause to be delivered to Purchaser and Purchaser shall accept each of the following items ("Sellers' Closing Documents"):

(a) special warranty deeds, in the form attached hereto as Exhibit "D" and made a part hereof duly executed and acknowledged by APU and Owasco, conveying good and

indefeasible fee simple title in the Real Property and Improvements to Purchaser, subject only to the Permitted Exceptions;

(b) bills of sale in the form attached hereto as Exhibit "E" and made a part hereof duly executed and acknowledged by APU and Owasco, conveying to Purchaser the Personal Property and the Intangible Property, subject only to the Permitted Exceptions;

(c) an assignment and assumption agreement in the form attached as Exhibit "F" and made a part hereof, duly executed and acknowledged by APU and Owasco, assigning to Purchaser all of the right, title and interest of APU and Owasco in and to the MTA Lease;

(d) an assignment and assumption agreement in the form attached as Exhibit "C" and made a part hereof, duly executed and acknowledged by APU and Owasco, assigning to Purchaser all of the right, title and interest of APU and Owasco in and to the Consent Agreement;

(e) a certification in the form attached as Exhibit "G" and made a part hereof, executed by each of APU, Owasco and AFG containing the following:

(i) each Seller's U.S. Taxpayer Identification Number;

(ii) the business address of such Seller; and

(iii) a statement that such Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code ("IRC") (i.e., Sellers are not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the IRC and applicable Regulations); or an entity disregarded for U.S. tax purposes under Regulations §1.1445-2(b)(2)(iii);

(f) an Affidavit of Title in the form attached as Exhibit "H" and made a part hereof executed by APU, Owasco and AFG;

(g) an assignment and assumption agreement in the form attached as Exhibit "I" and made a part hereof, duly executed and acknowledged by Sellers, assigning to Purchaser all of Sellers' right, title and interest in and to, and obligations and liabilities under, the Assumed Agreements;

(h) a certificate duly executed and acknowledged by MTA in the form contemplated by Section 31.01 of the MTA Lease, which form is attached as Exhibit "J" and made a part hereof, which certificate shall be delivered to Purchaser at least ten (10) days prior to Closing;

(i) a letter duly executed by APU, Owasco and New York & Harlem and addressed to each of the notice parties listed in Section 14 of the Consent Agreement, notifying each such party (i) that Purchaser has acquired the 450 Lexington Consent Interest, and, therefore, Purchaser shall be a "notice party" and entitled to notice under and in accordance with

the Consent Agreement, and (ii) of Purchaser's contact information for the purpose of notice (including the contact information of Purchaser's counsel), which letter shall be in form and substance reasonably satisfactory to Purchaser;

(j) a letter duly executed by APU and Owasco and addressed to each of the notice parties listed in Section 25.01 of the MTA Lease, notifying each such party (i) that Purchaser has acquired all right, title and interest of APU and Owasco to the MTA Lease, and, therefore, Purchaser shall be the landlord thereunder, and (ii) of Purchaser's contact information for the purpose of notice (including the contact information of Purchaser's counsel), which letter shall be in form and substance reasonably satisfactory to Purchaser;

(k) estoppel certificates duly executed and acknowledged by APU, Owasco and New York & Harlem, MTA and Lexington Venture, L.P. in the form contemplated by Section 8(b) of the Consent Agreement, in the form attached hereto as Exhibit "K" and made a part hereof, which certificates shall be delivered to Purchaser at least ten (10) days prior to Closing;

(l) evidence of notice with respect to the transactions contemplated by this Agreement given to The New York City Landmarks Preservation Commission and the MTA, which notice shall be given in accordance with Section 15(c) of the Continuing Maintenance Agreement;

(m) evidence of satisfaction by Sellers of the Title Requirements;

(n) copies of any then effective insurance policies or certificates in Sellers' possession required to be carried by MTA pursuant to Article 7 of the MTA Lease;

(o) a certificate of the secretary or other executive officer of each Seller (provided, however, that in the event the APU/NY&H Merger is consummated prior to the Closing, APU shall execute a certificate on behalf of New York & Harlem as the successor in interest by merger thereto) certifying the following as of the date of the Closing: (i) a copy of the approval of the members, board of managers or board of directors, as applicable, of each Seller, certified as being correct and complete and then in full force and effect, authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder, (ii) the names and true signatures of the managers, officers or other authorized representatives of each Seller executing this Agreement on behalf of such Seller, (iii) a true and correct copy of the charter, certificate of formation, certificate of incorporation, certificate of limited partnership or other publicly filed organizational document of each Seller, certified as of a recent date by an appropriate official of the state or other jurisdiction of formation of each Seller, (iv) a true and correct copy of the by-laws, limited liability agreement, operating agreement, agreement of limited partnership or other similar instruments of each Seller; (v) a certificate of the appropriate official(s) of the state or other applicable jurisdiction of organization of each Seller certifying to the subsistence in good standing of such Seller in such state or other applicable jurisdiction, dated as of a recent date not more than 30 days prior to the date of Closing, and (vi) the representations and warranties of Sellers contained in this Agreement and in any certificate or other writing delivered by any Seller

pursuant hereto remain true and correct at and as of the Closing, as if made at and as of such time;

(p) (i) written evidence of the APU/NY&H Merger, (ii) evidence of notice from APU, Owasco and New York & Harlem to Zenith, pursuant to and in accordance with the Zenith Purchase Agreements, to the termination of the 401 Year Lease as a matter of law in connection with the APU/NY&H Merger, and (iii) recordable termination agreement(s) with respect to the 401 Year Lease;

(q) evidence of the payment of the TDR Transfer Tax and other transfer taxes in accordance with this Agreement, and completed copies of the forms and instruments required to be delivered pursuant to Section 6.3 hereof;

(r) if APU and Owasco acquire the Zenith Rights in accordance with Section 8.1 hereof, documentation reasonably satisfactory to Purchaser certifying that the Zenith Documents have been terminated, including, without limitation, (i) a notarized termination agreement executed by APU, Owasco and Zenith, and (ii) a written notice to the MTA disclosing the termination of the Zenith Documents and directing the MTA that all Rental payments (as defined in the MTA Lease) shall be paid to Purchaser from and after the Closing Date;

(s) if APU and Owasco have not acquired the Zenith Rights, a letter from APU and Owasco to Zenith, notifying Zenith (i) that Purchaser has acquired the rights of APU and Owasco in and to the MTA Lease, and (ii) of Purchaser's contact information for the purpose of notice (including the contact information of Purchaser's counsel) under the Zenith Documents, which letter shall be in form and substance reasonably satisfactory to Purchaser;

(t) true, correct and complete copies of the most recent (i) Maintenance Plan (as such term is defined in the Continuing Maintenance Agreement), and (ii) "Inspection Report" (as such term is defined in the Continuing Maintenance Agreement) available to the Sellers; and

(u) such other documents required pursuant to the terms of this Agreement or otherwise reasonably requested by Purchaser or the Title Company in order to effect the transactions contemplated hereunder, including, without limitation, the execution of closing statements and New York City and state transfer affidavits and/or forms, and any required notices to third parties.

14.3 Delivery of Items at Closing By Purchaser. At the Closing, Purchaser shall:

(a) deliver to Sellers the Base Purchase Price (less the Deposit), and if applicable, the additional amount payable pursuant to Section 8.1 hereof;

(b) deliver counterparts to each of the instruments and documents listed in subsections 14.2(c), 14.2(d) and 14.2(g);

(c) deliver a certificate of the managing director or other executive officer of Purchaser certifying the following as of the date of the Closing: (i) a copy of the approval of the members, board of managers or board of directors, as applicable, of Purchaser, certified as being

correct and complete and then in full force and effect, authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder, (ii) the name and true signature of the manager, officer or other authorized representative of Purchaser executing this Agreement on behalf of Purchaser, (iii) a true and correct copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of Purchaser, certified as of a recent date by an appropriate official of the state or other jurisdiction of formation of Purchaser, (iv) a true and correct copy of the limited liability agreement, operating agreement, agreement of limited partnership or other similar instrument of Purchaser; (v) a certificate of the appropriate official(s) of the state or other applicable jurisdiction of organization of Purchaser certifying to the subsistence in good standing of Purchaser in such state or other applicable jurisdiction, dated as of a recent date not more than 30 days prior to the date of Closing, and (vi) the representations and warranties of Purchaser contained in this Agreement and in any certificate or other writing delivered by Purchaser pursuant hereto remain true and correct at and as of the Closing, as if made at and as of such time.

(d) execute and/or deliver to Sellers (or any one or more thereof) such evidence or documents as may be required by the Sellers or any title company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of Purchaser in connection with the acquisition of the Assets; and

(e) execute and/or deliver such other documents as Sellers (or any one or more thereof) or any title company may reasonably request in order to effect the transactions contemplated hereunder, including, without limitation, the execution of closing statements.

For purposes of this Agreement, documents delivered to Sellers (or any one or more thereof) by the Purchaser pursuant to subsections 14.2(c), 14.2(d), 14.2(g) and 14.3(c) shall be referred to collectively as the "Purchaser's Closing Documents".

14.4 Purchaser's Costs. At Closing, Purchaser shall pay for the following:

(a) costs of recording all documents delivered by Sellers to Purchaser, other than Sellers' releases, satisfactions and other corrective documents, if any, or by Purchaser to Sellers at the Closing;

(b) all title insurance premiums relating to the Title Policy;

(c) the attorney's fees of Purchaser's counsel in connection with or relating to the transactions contemplated by this Agreement.

14.5 Sellers' Costs. At Closing, Sellers shall pay for the following:

(a) all deed stamps, intangible taxes and other transfer taxes imposed on the transfer of the Assets by Sellers;

(b) costs of recording Sellers' releases, satisfactions and other corrective documents, if any; and

(c) the attorney's fees of Sellers' counsel in connection with or relating to the transactions contemplated by this Agreement.

14.6 Estoppel Certificates. Sellers shall submit a request to the respective parties for the following estoppel certificates (the "Estoppels"), and to the extent any of the Estoppels obtained by Sellers contain unqualified certifications from the applicable Person that relating to information that is consistent with any of Sellers' representations and warranties contained in Section 10.6, those representations and warranties of Sellers so covered (and only to the extent of such coverage) shall not be deemed to survive Closing for the Survival Period:

(a) estoppel certificates duly executed and acknowledged by The New York City Landmarks Preservation Commission and the MTA with respect to the Continuing Maintenance Agreement, in the form attached hereto as Exhibit "L" and made a part hereof; and

(b) estoppel certificates duly executed and acknowledged by Zenith, in the form attached hereto as Exhibit "M" and made a part hereof.

Article 15.

REAL ESTATE FEES AND COMMISSIONS

15.1 Fees and Commissions. Sellers represent and warrant to Purchaser that they have dealt with no real estate salesman, broker, or finder relative to the transaction contemplated in this Agreement, and Sellers agree to satisfy and defend and hold Purchaser harmless from any and all claims and liabilities for real estate brokerage commissions and finders fees to any party claiming by, through, or under Sellers, which commissions and fees are related in any way to the transaction which is the subject of this Agreement; provided, however, that Seller has dealt with representatives of Equis Corporation ("Sellers' Consultant") as consultants in connection with the transaction and Sellers agree to pay a fee to the Sellers' Consultant as previously negotiated at Closing and to otherwise satisfy and defend and hold Purchaser harmless from any and all claims and liabilities for consultancy fees to Sellers' Consultant or any other party claiming by, through, or under Sellers, which commissions and fees are related in any way to the transaction which is the subject of this Agreement.

Purchaser represents and warrants to Sellers that it has dealt with no real estate salesman, broker, or finder relative to the transaction contemplated in this Agreement other than Sellers' Consultant and Eastdil Realty ("Purchaser's Broker"), and Purchaser agrees to pay a commission to the Purchaser's Broker as previously negotiated at Closing and to otherwise satisfy and defend and hold Sellers harmless from any and all claims and liabilities for real estate brokerage commissions and finders fees to Purchaser's Broker or any other party claiming by, through, or under Purchaser, which commissions and fees are related in any way to the transaction which is the subject of this Agreement.

The provisions of this Section 15.1 shall survive the Closing.

Article 16.
REMEDIES ON DEFAULT

16.1 Termination Of Agreement By Purchaser. If this Agreement is terminated by Purchaser in accordance with any one or more Sections hereof that entitle Purchaser to terminate this Agreement, then the Deposit shall be returned to Purchaser by the Escrow Agent as provided for herein and in the Escrow Agreement, and no party hereto shall have any further obligations to any other hereunder.

16.2 Purchaser's Default. If the Purchaser defaults in the performance of its obligations hereunder, and such default remains uncured for ten (10) business days after notice of such breach is delivered by Sellers to Purchaser, then the Deposit shall be paid to the Sellers by the Escrow Agent as liquidated damages. Such amount is agreed upon by and between Sellers and Purchaser as liquidated damages due to the difficulty and inconvenience of ascertaining and measuring actual damages and the uncertainty thereof, and no other damages, rights or remedies at law or in equity shall in any case be collectible, enforceable or available to Sellers, but Sellers shall accept the Deposit as Sellers' total damages and relief.

16.3 Sellers' Default. Notwithstanding anything to the contrary contained in this Agreement, in the event that Sellers default in the performance of their obligations under Sections 14.2, 14.5 or 17.1, and such default remains uncured for a period of ten (10) business days after notice of such default is delivered by Purchaser to Sellers, at Purchaser's election, Purchaser shall (a) be entitled to terminate this Agreement whereupon the Escrow Agent shall return the Deposit to Purchaser; or (b) be entitled to sue Sellers for damages, and equitable relief including specific performance of this Agreement.

16.4 Failure of Conditions. If neither party shall be in default hereunder and any of the conditions to Sellers' obligations under this Agreement or any of the conditions to Purchaser's obligations under this Agreement shall fail to occur, then Purchaser or Sellers, as the case may be, may, as its sole and exclusive remedy, terminate the Agreement by written notice to the other, in which event the Deposit shall be promptly returned to Purchaser and neither party shall have any further rights or obligations to any other hereunder.

Article 17.
ADDITIONAL COVENANTS

17.1 Pre-Closing Covenants. From and after the date hereof until the Closing or earlier termination of this Agreement:

(a) Sellers shall perform their obligations under and in accordance with this Agreement.

(b) Sellers shall not alienate, sell, encumber, mortgage, lien or otherwise transfer any of the Assets or any portion thereof in any way, in favor of, or to, any party whatsoever.

(c) Except as otherwise permitted herein, Sellers shall not enter into any new agreement, instrument or document affecting the Assets, or amend, renew, supplement, alter extend, modify or otherwise change the terms of any Assumed Agreement or any other agreement, instrument or document that constitutes a Permitted Exception or affects the Assets.

(d) Sellers shall keep and perform all of the obligations to be performed by them under the Assumed Agreements and any other agreement, instrument or document affecting the Assets.

(e) Sellers shall not interfere with the MTA's maintenance of the Real Property, the Improvements and the Personal Property.

(f) Sellers shall deliver to Purchaser copies of all written notices and other correspondence sent, served on or received by Seller in connection with the Assets, the Assumed Agreements or any other agreement, instrument or document that constitutes a Permitted Exception promptly after Sellers' receipt of same.

(g) Sellers shall not request or consent to any zoning changes affecting the Assets.

(h) Sellers shall not enter into any agreement, instrument or document that terminates or surrenders (or has any similar effect with respect to) any of the Assets, nor shall Seller exercise any consent, approval or election under the Assumed Agreements or any other agreement, instrument or document that constitutes a Permitted Exception, without, in each case, the prior written consent of Purchaser.

17.2 APU/NY&H Merger. Sellers shall consummate the APU/NY&H Merger prior to the Closing and shall take all such actions as may be required in support thereof, including the filing, prior to the Closing Date, of the certificate of merger with the office of the Secretary of State of the State of New York evidencing the APU/NY&H Merger. AFG agrees that its subsidiary owning shares of New York & Harlem shall vote all such shares in favor of the APU/NY&H Merger, provided the New York & Harlem board of directors has approved such merger. New York & Harlem shall take all necessary actions to attain the approval of its board of directors in favor of the APU/NY&H Merger.

17.3 Estoppels. Not more than ten (10) days prior to Closing, Sellers shall deliver to Purchaser all estoppels, notice letters, certificates and consents required to be delivered under this Agreement. No such estoppel, notice letter, certificate or consent shall contain any information or statement inconsistent with the representations and warranties of Sellers contained in this Agreement.

17.4 Further Assurances. From and after the Closing, Terminal Owner and AFG agree to execute and deliver such confirmatory and supplementary instruments, certificates, assignments, assurances or other documents and take such further action as may be reasonably required to effectuate the purposes of this Agreement and the transactions contemplated hereunder (including, without limitation, taking any such action to transfer, vest, perfect, record or otherwise evidence the sale and transfers contemplated hereunder); provided,

however, in no event shall Terminal Owner or AFG incur any liability, cost or expense except to the extent expressly provided for herein, or unless such cost or expense is reimbursed by Purchaser.

Article 18.
MISCELLANEOUS

18.1 Notices. All notices, demands, consents, or other communications of any type (collectively "Notices") given by any or all of the Sellers to Purchaser or by Purchaser to any or all of the Sellers whether required by this Agreement or in any way related to any of the transactions contracted for herein shall be void and of no effect unless given in accordance with the provisions of this Section 18.1. All Notices shall be in writing, signed by the party giving the same or by its attorneys, and shall be delivered to the person to whom the notice is directed, either in person or by United States Mail, as a registered or certified item, return receipt requested or by Federal Express or other recognized overnight delivery service, or by facsimile with acknowledgement of transmission followed by overnight delivery service, addressed to the parties hereto and other persons at their respective addresses or facsimile numbers set forth below.

Any party hereto may change the address or contact for notice specified above by giving the other party ten (10) days advance written notice of such change of address or contact. All Notices shall be deemed to have been given when received. Notices shall be deemed to be timely delivered if such notice is received by the intended recipient on or before 5:00 p.m. New York time on the date of such notice.

(a) Addresses for Notice:

Purchaser:	c/o Argent Ventures 551 Fifth Avenue, 34 th Floor New York, New York 10176 Attn: Andrew Penson, President Phone: (212) 692-5401 Fax: (212) 681-6096 E-mail: apenson@argentventures.com
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With a required copy
(which shall not
constitute notice) to:

Mitchell R. Lubart
Hogan & Hartson L.L.P.
875 Third Avenue
New York, New York 10022
Phone: (212) 918-3000
Fax: (212) 918-3100
E-mail: mrlubart@hhlaw.com

if to any of all of

the Sellers:

Joseph D. Stelzer
Vice President
American Premier Underwriters, Inc.
580 Walnut Street, 11th Floor
Cincinnati, Ohio 45202
Phone: (513) 369-5917
Fax: (513) 369-3873
E-mail: jstelzer@gaic.com

With required copies
(which shall not
constitute notice) to:

James C. Kennedy
Vice President and Deputy General Counsel
American Financial Group, Inc.
One East Fourth Street
Cincinnati, Ohio 45202
Phone: (513) 579-2538
Fax: (513) 579-0108
E-mail: jkennedy@amfin.com

Paul V. Muething, Esq.
Keating Muething & Klekamp PLL,
Suite 1400
One East Fourth Street
Cincinnati, Ohio 45202
Phone: (513) 579-6517
Fax: (513) 579-6457
E-mail: pmuething@kmlaw.com

18.2 Effective Date. This Agreement may be executed by facsimile or other electronic transmission and in multiple counterparts on the respective dates set forth below, each of which shall constitute an original, but which together shall constitute but one contract. Notwithstanding the above, this Agreement shall be of no force and effect until the full execution and delivery of the Agreement by Purchaser and Sellers (such date, the "Effective Date").

18.3 Assignment. Except as set forth below, this Agreement may not be assigned by Purchaser. Notwithstanding the foregoing, Purchaser shall have the right, power and authority to assign this Agreement and all rights hereunder to: (i) an entity in which the Purchaser or an affiliate of Purchaser or a principal of the Purchaser has more than a fifty percent (50%) ownership and control interest, (ii) a limited partnership, in which the Purchaser or an affiliate of Purchaser or a principal of the Purchaser is the managing general partner or, (iii) a limited liability company, in which the Purchaser or an affiliate of Purchaser or a principal of the Purchaser is the managing member. The Purchaser shall be and remain liable and responsible for payment and performance of all obligations hereunder or undertaken by the Purchaser to be paid or performed pursuant to any permitted assignment.

18.4 Laws. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York.

18.5 Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by Sellers and Purchaser. Sellers and Purchaser may waive any of the conditions contained herein or any of the obligations of the other hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

18.6 Authority. Each person executing this Agreement warrants and represents that he or she has full corporate authority to do so.

18.7 Times and Dates. **TIME IS OF THE ESSENCE IN THIS AGREEMENT** and all times and dates shall be in accordance with New York time.

18.8 Descriptive Headings. The descriptive headings of the several Articles, Sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

18.9 Entire Agreement. This Agreement, the Exhibits hereto and the Schedules contained in the Disclosure Schedule, constitutes the entire agreement among the parties, whether written or oral, pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith, including without limitation the Letter of Intent. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement unless the parties have complied with the terms of Section 18.5 hereof.

18.10 Construction. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and feminine, and vice versa.

18.11 Non-recordable. This Agreement, a memorandum of this Agreement, an interest in ownership of the Assets or any other document that would constitute an exception to Sellers' title shall not be recorded and the provisions hereof shall not constitute a lien on the Assets.

18.12 Third-Party Beneficiary. It is specifically understood and agreed that no person or other entity shall be a third-party beneficiary hereunder; and none of the provisions of this Agreement shall be for the benefit of or be enforceable by anyone other than Sellers and Purchaser and that only Sellers and Purchaser hereto shall have any rights hereunder.

18.13 Legal Relationship. Nothing herein shall be construed as to constitute or establish any type of joint venture, partnership, or any other type of legal relationship between the parties other than the vendor-vendee relationship established hereby between Sellers and Purchaser.

18.14 Return of Documents. Upon termination of this Agreement for any reason by Purchaser or Sellers, Purchaser shall have the obligation to return all Information to Sellers.

18.15 Effect of Holidays. In the event any date specified or computed under this Agreement for the performance of an obligation by either Sellers or Purchaser, or for the occurrence of any event provided for herein, shall be a Saturday, Sunday or "recognized holiday" (defined for purposes hereof as any holiday observed by national banks in Cincinnati, Ohio and New York, New York), then the date for such performance or occurrence shall be automatically extended to the next calendar day which is not a Saturday, Sunday or recognized holiday.

18.16 Completion of Documents. The parties hereto understand and agree that the forms of closing documents which are attached as exhibits hereto may have to be modified in order to be made appropriate for the transaction contemplated herein. It is anticipated by the parties that such modifications will consist of inserting appropriate information in the blanks contained in the forms of closing documents attached as exhibits hereto, and any requirements of the Title Company.

18.17 Non-Imputation and Limitation of Damages.

(a) Purchaser hereby acknowledges that the obligations of Sellers hereunder are those solely of the Sellers and not of its partners, members, managers, officers, directors, shareholders, subsidiaries or affiliates (collectively, the "Sellers' Affiliates"). Purchaser hereby agrees that its sole recourse for any actions, claims, liabilities, damages and demands of every nature whatsoever, whether known or unknown, arising out of any matter in connection with or under this Agreement or the transactions contemplated hereby, to the extent specifically provided for by this Agreement, shall be to Sellers' assets and the proceeds of the Purchase Price and that Purchaser shall have no right to seek such damages from, or allege a cause of action against, the Sellers' Affiliates, provided, that (i) if any of the Sellers shall have paid a dividend or distribution to a Seller Affiliate and Purchaser has a claim for Losses against any or all of the applicable Seller(s) and (ii) such Seller(s) do(es) not have sufficient liquid assets to satisfy [its] [their] obligations to Purchaser and (iii) Purchaser would otherwise have the right to trace the proceeds of such dividends or distributions to the applicable Sellers' Affiliates under applicable law (including, without limitation, fraudulent conveyance, preferential transfer and other similar laws relating to creditors rights), then the foregoing limitation shall not apply.

(b) Sellers hereby acknowledge that the obligations of Purchaser hereunder are those solely of the Purchaser and not of its partners, members, managers, officers, directors, shareholders, subsidiaries or affiliates (collectively, the "Purchaser Affiliates"). Sellers hereby agree that the Sellers' sole recourse for any actions, claims, liabilities, damages and demands of every nature whatsoever, whether known or unknown, arising out of any matter in connection with or under this Agreement or the transactions contemplated hereby, to the extent specifically provided for by this Agreement, shall be to the Deposit and that Purchaser shall have no right to seek such damages from, or allege a cause of action against, the Purchaser Affiliates.

(c) In no event shall either Sellers or Purchaser seek or be entitled or have a right to or recover, any special, indirect, consequential or punitive damages pursuant to or arising out of or related to this Agreement or the subject matter of this Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, the obligations of APU, New York & Harlem and Owasco, as Sellers, shall be joint and several. The obligations of AFG, as Seller, shall be several, but not joint; provided, that: (i) AFG shall be responsible for (and only responsible for) any and all Losses sustained by Purchaser arising from or relating to any or all of the representations and warranties and covenants of any and all of the Sellers and any and all other responsibilities, liabilities and obligations of any or all of the Sellers under this Agreement (including without limitation any and all indemnification obligations of the Sellers under Sections 5.4, 5.5 and 5.6 hereof), up to an aggregate amount of \$25,000,000, and (ii) APU, New York & Harlem and Owasco, jointly and severally, shall be responsible for (A) any and all Losses sustained by Purchaser relating to any and all of the representations and warranties and covenants of Sellers other than those made severally by AFG; (B) to the extent the Losses under subsection (A) above relate to the TDRs, the maximum liability of APU, New York & Harlem and Owasco, jointly and severally, with respect thereto (regardless of whether or when Purchaser makes or has made a claim against any other Seller with respect thereto) shall be limited to an amount equal to that portion of the Base Purchase Price allocated to the TDRs pursuant to the allocation schedule to be provided under Article III hereof prior to the Closing times a fraction, the numerator of which is 785,011 and the denominator of which is 1,285,011, and (C) all other responsibilities, liabilities and obligations of Sellers under this Agreement. For avoidance of doubt, Purchaser and Sellers hereby acknowledge and agree that this Section 18.17(d) shall in no way affect the limitations on Sellers' indemnification obligations set forth in Section 12.3.

18.18 Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.19 Survival of Representations, Warranties and Other Provisions. Except for those representations, warranties and other survival provisions specifically and expressly stated in this Agreement to sooner expire or terminate or extend for a longer period of time, all representations, warranties and survival provisions shall expire and terminate at the end of the Survival Period. This provision is intended to limit all such periods and provisions, except those specifically and expressly to the contrary, and not to extend any such periods and provisions.

18.20 Assignment and Assumption Agreements. Each Assignment and Assumption Agreement shall provide, among other things, that with respect to the agreement being assigned and assumed thereunder, subject to the terms and conditions of this Agreement, (i) assignor shall indemnify and save harmless assignee and its legal representatives, successors and assigns, from and against any and all liability arising from or as a result of

Assignor's acts or omissions prior to the Closing, and (ii) assignee shall indemnify and save harmless assignor and its legal representatives, successors and assigns, from and against any and all liability arising from or as a result of assignee's acts or omissions after the Closing.

18.21 Knowledge. As used in this Agreement, the words "to the knowledge of" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed or constructive) knowledge of Joseph D. Stelzer, Joseph A. Pedoto and James C. Kennedy without such individuals having any obligation to make any independent inquiry or investigation whatsoever. Nothing in this Agreement shall be deemed to create or impose any personal liability of any kind whatsoever on the within named individuals.

[The remainder of this page left intentionally blank. Signature page follows.]

EXECUTED as of this 10th day of August, 2006.

AMERICAN PREMIER UNDERWRITERS, INC.

By: Joseph D. Stelzer
Joseph D. Stelzer, Vice President

THE NEW YORK AND HARLEM RAILROAD
COMPANY

By: Joseph D. Stelzer
Joseph D. Stelzer, President

THE OWASCO RIVER RAILWAY, INC.

By: Joseph D. Stelzer
Joseph D. Stelzer, President

AMERICAN FINANCIAL GROUP, INC.

By: James C. Kennedy
James C. Kennedy, Vice President

MIDTOWN TDR VENTURES LLC

By: _____

EXECUTED as of this 10th day of August, 2006.

AMERICAN PREMIER UNDERWRITERS, INC.

By: _____
Joseph D. Stelzer, Vice President

THE NEW YORK AND HARLEM RAILROAD
COMPANY

By: _____
Joseph D. Stelzer, President

THE OWASCO RIVER RAILWAY, INC.

By: _____
Joseph D. Stelzer, President

AMERICAN FINANCIAL GROUP, INC.

By: _____
James C. Kennedy, Vice President

MIDTOWN TDR VENTURES LLC

By:  _____
Name: Andrew Penson
Title: Authorized Representative

SCHEDULE 1.1(v)

Legal Description for Terminal Lot

**SCHEDULE A
DESCRIPTION**

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Manhattan, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of East 42nd Street and the easterly side of former Depew Place (now closed and discontinued);

RUNNING THENCE northerly along the easterly side of former Depew Place, 340 feet 4 inches;

THENCE westerly and parallel with the northerly side of East 42nd Street, 394 feet 4 inches to a point on the easterly side of Vanderbilt Avenue, which point is distant 340 feet 4 inches northerly from the corner formed by the intersection of the northerly side of East 42nd Street and the easterly side of Vanderbilt Avenue;

THENCE southerly along the easterly side of Vanderbilt Avenue, 340 feet 4 inches to its intersection with the northerly side of 42nd Street;

THENCE easterly along the northerly side of East 42nd Street, 394 feet 4 inches to the corner, the point or place of BEGINNING.

Together with the rights and easements described as follows:

- (a) the "Retained Property", (including inter alia, pedestrian passageways to the Grand Central Terminal from Lexington Avenue and East 42nd Street) as defined in the Declaration of Easements, Property and Rights appended as Schedule III to a certain indenture, dated December 19, 1977 and recorded in Reel 439, Page 1381, relating to the Commodore Hotel, 42nd Street and Lexington Avenue, from the Trustees of Penn Central Transportation Company ("Trustees") to UDC/Commodore Redevelopment Corporation and the City of New York (Block 1280 Lot 30);
- (b) the "Retained Property", as defined in a certain indenture, dated July 27, 1978 and recorded in Reel 447, Page 1648 relating to the Biltmore Hotel, 43rd Street and Madison Avenue, from the Trustees to Clibor Realty Corp. (Block 1278, Lot 20);
- (c) the "Retained Property" as defined in a certain indenture, dated December 9, 1976, and recorded in Reel 386, Page 1055, relating to The Yale Club, 50 Vanderbilt Avenue, from the Trustees to The Yale Club of New York City (Block 1279, Lot 28);
- (d) the "Retained Property", as defined in a certain indenture, dated April 26, 1978, and recorded in Reel 436, Page 645, relating to 52 Vanderbilt Avenue, from The Trustees to Nodtuc Realty Corp. (Block 1279, Lot 45);

**SCHEDULE A
CONTINUED**

- (e) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442, Page 1353, relating to 466 Lexington Avenue, from The Trustees to Olympia & York Park Plaza Company (Block 1300, Lots 6 and 14);
- (f) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442, Page 1385, relating to 245 Park Avenue, from The Trustees to Olympia & York 245 Park Land Company (Block 1301, Lot 1);
- (g) the property excepted, excluded and reserved in a certain indenture, dated September 9, 1976, and recorded in Reel 379, Page 372, relating to 270 Park Avenue, from The Trustees and The New York and Harlem Railroad Company ("Harlem") to Union Carbide Corporation (Block 1283, Lot 21);
- (h) the "Retained Property", as defined in a certain indenture, dated July 27, 1978, and recorded in Reel 447, Page 1762, relating to The Barclay Hotel, 48th Street and Lexington Avenue from The Trustees to Barclay Operating Corp. (Block 1303, Lot 14);
- (i) the "Retained Property", as defined in a certain indenture, dated February 23, 1977, and recorded in Reel 392, Page 1145, relating to 299 Park Avenue, from The Trustees to New York State Teachers' Retirement System (Block 1303, Lot 1);
- (j) the "Retained Property", as defined in a certain indenture, dated April 22, 1977, and recorded in Reel 398, Page 493, relating to the Waldorf-Astoria Hotel, 49th Street and Park Avenue, from The Trustees to Hotel Waldorf-Astoria Corporation (Block 1304, Lot 1);
- (k) the "Retained Space", as defined in a certain indenture, dated December 14, 1978, and recorded in Reel 464, Page 351, relating to 200 Park Avenue, from The Owasco River Railway, Inc. ("Owasco"), Harlem and The Penn Central Corporation (now known as American Premier Underwriters, Inc.) ("American Premier") to Grand Central Building, Inc. (Block 1280, Lot 9010);
- (l) the "Retained Property", as defined in a certain indenture, dated December 5, 1978, and recorded in Reel 464, Page 1721, relating to 51 East 42nd Street, from The Penn Central Corporation to 51 East 42nd Street Associates (Block 1277, Lot 27);
- (m) the "Retained Property", as defined in a certain indenture, dated April 30, 1979, and recorded in Reel 479, Page 1744, relating to 280 Park Avenue (East and West Buildings), from Owasco, Harlem and The Penn Central Corporation to Bankers Trust Company (Block 1284, Lots 26 & 33);

**SCHEDULE A
CONTINUED**

- (n) the "Retained Space", (including inter alia, a pedestrian passageway to the Grand Central Terminal from Lexington Avenue) as defined in a certain indenture, dated June 26, 1979, and recorded in Reel 486, Page 125, relating to 420 Lexington Avenue, from Owasco to Landgray Associates as modified by Modification of Deed dated February 6, 1980, recorded February 13, 1980 in Reel 513 Page 1526 (Block 1280; Lot 60)
- (o) (i) the "Retained Space", as defined in a certain indenture, dated February 6, 1980, and recorded in Reel 513, Page 1532, relating to 416 Lexington Avenue, from Owasco to Greenwich Associates, and (ii) the "Air Space", as defined in said indenture (Block 1280, Lot 54);
- (p) the "Retained Property", as defined in a certain indenture, dated August 2, 1976, and recorded in Reel 375 Page 1738, relating to 350 Park Avenue from The Trustees and Harlem to Manufacturers Hanover Trust Company (Block 1287 Lot 33);
- (q) the "Retained Property", as defined in a certain indenture, dated July 27, 1978, and recorded in Reel 447 Page 1548, relating to Roosevelt Hotel, 45th Street and Madison Avenue from The Trustees and Harlem to Clibor Realty Corp. (Block 1281, Lot 21);
- (r) the "Retained Property", as defined in a certain indenture, dated December 21, 1977, and recorded in Reel 423 Page 605, relating to 250 Park Avenue from The Trustees and Harlem to Febe Associates (Block 1282, Lot 34);
- (s) the "Retained Property", as defined in a certain indenture, dated January 20, 1977, and recorded in Reel 390 Page 105, relating to 377-385 Madison Avenue from The Trustees and Harlem to The Manhattan Savings Bank (Block 1282, Lot 21);
- (t) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442 Page 1426, relating to 320 Park Avenue from The Trustees and Harlem to Olympia & York 320 Park Land Company (Block 1285, Lot 31);
- (u) the "Retained Property", as defined in a certain indenture, dated December 21, 1976, and recorded in Reel 388 Page 611, relating to 277 Park Avenue from The Trustees and Harlem to Stahl Equities Corp. (Block 1302 Lot 1);
- (v) the "Retained Property", as defined in a certain indenture, dated January 26, 1976, and recorded in Reel 361 Page 443, relating to 230 Park Avenue from The Trustees and Harlem to 230 Holding Inc. (the "Land Deed") (Block 1300 Lot 1);

**SCHEDULE A
CONTINUED**

- (w) the "Retained Property", as defined in a certain indenture, dated January 26, 1976, and recorded in Reel 361 Page 418, relating to 230 Park Avenue from The Trustees and Harlem to 230 Building Inc. (the "Building Deed") (Block 1300 Lot 1);
- (x) the "Excepted Spaces", as defined in a certain indenture, dated December 28, 1932, recorded in Liber 3850 cp 488 between The New York Central Railroad Company and the United States of America relating to the United States Post Office located at 450 Lexington Avenue, as modified by agreements recorded in Liber 3932 cp 134, Liber 3983 cp 380 and Reel 1593 Page 111???
- (y) the "Excepted Spaces" as defined in a certain indenture, dated July 26, 1946 between The New York Central Railroad Company and Hotel Chatham Associates recorded July 30, 1946 in Liber 4452 cp 134, relating to 280 Park Avenue as modified by Agreement dated July 15, 1966 between Park 49th Corp., The New York Central Railroad Company and The New York and Harlem Railroad Company recorded January 5, 1967 in Reel 139 Page 196 (Block 1284, Lot 26);
- (z) The permanent and perpetual rights and easements and set forth in indenture made by New York State Realty and Terminal Company to the New York Central Railway Company dated April 27, 1951, recorded May 15, 1951 in Liber 4730 Page 91 relating to 300 Park Avenue Block 1285 Lot 36;
- (aa) The permanent and perpetual rights and easements contained in Indenture made by Robert Walton Goelet to New York Central Railroad Company dated February 9, 1915, recorded February 11, 1915 in Liber 190 section 5 cp 40.

TOGETHER with a right of way (for railroad purposes) as set forth in Indenture between The City of New York, The New York and Harlem Railroad Company and the New York Central and Hudson River Railroad Company dated April 1, 1873, recorded June 25, 1873 in Liber 1256 cp 426, as modified by Indenture between The City of New York, The New York Harlem Railroad Company and the New York Central Railroad Company dated June 23, 1903, recorded July 3, 1903 in Liber 92 cp 166 Section 5.

**SCHEDULE A
CONTINUED**

For Information Only: TOGETHER with any and all rights and interest granted to The New York and Harlem Railroad Company, The Penn Central Corporation and/or their predecessors in interest pursuant to the following unrecorded grants or agreements:

- (1) Grant and Agreement dated June 19, 1903 between The City of New York and The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (2) Grant and Agreement dated December 4, 1903 between The City of New York and The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (3) Grant and Agreement dated April 28, 1905 between The City of New York and The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (4) Permit dated June 21, 1905 from The City of New York to The New York Central and Hudson River Railroad Company.
- (5) Agreement dated July 8, 1907 between The City of New York and The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (6) Grant and Agreement dated June 15, 1911 between The City of New York and The New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (7) Agreement dated January 25, 1912 between The City of New York and New York and Harlem Railroad Company, and its lessee, The New York Central and Hudson River Railroad Company.
- (8) Agreement dated April 11, 1924 between The City of New York and New York and Harlem Railroad Company, and its lessee, The New York Central Railroad Company.

END OF SCHEDULE A

SCHEDULE 2(a)(i)

Legal Description for balance of Real Property being conveyed

Exhibit A

(Premises)

[To be taken from Exhibits A-1 through A-4]

**Exhibit A-1
Description of Premises
below 57th Street**

ALL THOSE PARCELS of land situate in the Borough of Manhattan, City, County and State of New York, described or referred to as follows:

BEGINNING at the corner formed by the intersection of the northerly side of East 42nd Street and the easterly side of former Depew Place (now closed and discontinued);

THENCE RUNNING northerly along the said easterly side of former Depew Place, 340 feet 4 inches;

THENCE RUNNING westerly and parallel with the northerly side of East 42nd Street, 394 feet 4 inches to a point on the easterly side of Vanderbilt Avenue, which point is distant 340 feet 4 inches northerly from the corner formed by the intersection of the northerly side of East 42nd Street and the easterly side of Vanderbilt Avenue;

THENCE RUNNING southerly along the easterly side of Vanderbilt Avenue, 340 feet 4 inches to its intersection with the northerly side of East 42nd Street:

THENCE RUNNING easterly along the northerly side of East 42nd Street, 394 feet 4 inches to the corner, the point or place of **BEGINNING**.

TOGETHER WITH the rights and easements described as follows:

- (a) the "Retained Property", (including inter alia, pedestrian passageways to the Grand Central Terminal from Lexington Avenue and East 42nd Street) as defined in the Declaration of Easements, Property and Rights appended as Schedule III to a certain indenture, dated December 19, 1977 and recorded in Reel 439, page 1381, relating to the Commodore Hotel, 42nd Street and Lexington Avenue, from the Trustees of Penn Central Transportation Company ("Trustees") to UDC/Commodore Redevelopment Corporation and The City of New York (Block 1280, Lot 30);
- (b) the "Retained Property", as defined in a certain indenture, dated July 27, 1978, and recorded in Reel 447, page 1648 relating to the Biltmore Hotel, 43rd Street and Madison Avenue, from the Trustees to Clibor Realty Corp. (Block 1278, Lot 20);

- (c) the "Retained Property", as defined in a certain indenture, dated December 9, 1976, and recorded in Reel 386, page 1055, relating to the Yale Club, 50 Vanderbilt Avenue, from the Trustees to The Yale Club of New York City (Block 1279, Lot 28);
- (d) the "Retained Property", as defined in a certain indenture, dated April 26, 1978, and recorded in Reel 436, page 645, relating to 52 Vanderbilt Avenue, from the Trustees to Nodtuc Realty Corp. (Block 1279, Lot 45);
- (e) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442, page 1353, relating to 466 Lexington Avenue, from the Trustees to Olympia & York Park Plaza Company (Block 1300, Lots 6 and 14);
- (f) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442, page 1385, relating to 245 Park Avenue, from the Trustees to Olympia & York 245 Park Land Company (Block 1301, Lot 1);
- (g) the property excepted, excluded and reserved in a certain indenture, dated September 9, 1976, and recorded in Reel 379, page 372, relating to 270 Park Avenue, from the Trustees and The New York and Harlem Railroad Company ("NY&HRR") to Union Carbide Corporation (Block 1283, Lot 21);
- (h) the "Retained Property", as defined in a certain indenture, dated July 27, 1978, and recorded in Reel 447, page 1762, relating to the Barclay Hotel, 48th Street and Lexington Avenue, from the Trustees to Barclay Operating Corp. (Block 1303, Lot 14);
- (i) the "Retained Property", as defined in a certain indenture, dated February 23, 1977, and recorded in Reel 392, page 1145, relating to 299 Park Avenue, from the Trustees to New York State Teachers' Retirement System (Block 1303, Lot 1);
- (j) the "Retained Property", as defined in a certain indenture, dated April 22, 1977, and recorded in Reel 398, page 493, relating to the Waldorf-Astoria Hotel, 49th Street and Park Avenue, from the Trustees to Hotel Waldorf-Astoria Corporation (Block 1304, Lot 1);
- (k) the "Retained Space", as defined in a certain indenture, dated December 14, 1978, and recorded in Reel 464, page 351, relating to 200 Park Avenue, from The Owasco River Railway, Inc. ("Owasco"), NY&HRR and The Penn Central Corporation (now known as American Premier Underwriters, Inc.) ("American Premier") to Grand Central Building, Inc. (Block 1280, Lot 9010);

- (l) the "Retained Property", as defined in a certain indenture, dated December 5, 1978, and recorded in Reel 464, page 1721, relating to 51 East 42nd Street, from American Premier to 51 East 42nd Street Associates (Block 1277, Lot 27);
- (m) the "Retained Property", as defined in a certain indenture, dated April 30, 1979, and recorded in Reel 479, page 1744, relating to 280 Park Avenue (East and West Buildings), from Owasco, NY&HRR and American Premier to Bankers Trust Company (Block 1284, Lots 26 and 33);
- (n) the "Retained Space", (including, inter alia, a pedestrian passageway to the Grand Central Terminal from Lexington Avenue) as defined in a certain indenture, dated June 26, 1979, and recorded in Reel 486, page 125, relating to 420 Lexington Avenue, from Owasco to Landgray Associates as modified by Modification of Deed dated February 6, 1980, recorded February 13, 1980 in Reel 513 page 1526 (Block 1280, Lot 60);
- (o) (i) the "Retained Space", as defined in a certain indenture, dated February 6, 1980, and recorded in Reel 513, page 1532, relating to 416 Lexington Avenue, from Owasco to Greenwich Associates, and (ii) the "Air Space", as defined in said indenture (Block 1280, Lot 54);
- (p) the "Retained Property", as defined in a certain indenture, dated August 2, 1976, and recorded in Reel 375 page 1738, relating to 350 Park Avenue from the Trustees and NY&HRR to Manufacturers Hanover Trust Company (Block 1287 Lot 33);
- (q) the "Retained Property", as defined in a certain indenture, dated July 27, 1978, and recorded in Reel 447 page 1548, relating to Roosevelt Hotel, 45th Street and Madison Avenue from the Trustees and NY&HRR to Clibor Realty Corp. (Block 1281, Lot 21);
- (r) the "Retained Property", as defined in a certain indenture, dated December 21, 1977, and recorded in Reel 423 page 605, relating to 250 Park Avenue from the Trustees and NY&HRR to Febe Associates (Block 1282, Lot 34);
- (s) the "Retained Property", as defined in a certain indenture, dated January 20, 1977, and recorded in Reel 390 page 105, relating to 377-385 Madison Avenue from the Trustees and NY&HRR to The Manhattan Savings Bank (Block 1282, Lot 21);
- (t) the "Retained Property", as defined in a certain indenture, dated June 16, 1978, and recorded in Reel 442 page 426, relating to 320 Park Avenue from the Trustees and NY&HRR to Olympia & York 320 Park Land Company (Block 1285, Lot 31);

- 3
- (u) the "Retained Property", as defined in a certain indenture, dated December 21, 1976, and recorded in Reel 388 page 611, relating to 277 Park Avenue from the Trustees and NY&HRR to Stahl Equities Corp. (Block 1302 Lot 1);
 - (v) the "Retained Property", as defined in a certain indenture, dated January 26, 1976, and recorded in Reel 361 page 443, relating to 230 Park Avenue from the Trustees and NY&HRR to 230 Holding Inc. (the "Land Deed") (Block 1300 Lot 1);
 - (w) the "Retained Property", as defined in a certain indenture, dated January 26, 1976, and recorded in Reel 361 page 418, relating to 230 Park Avenue from the Trustees and NY&HRR to 230 Building Inc. (the "Building Deed") (Block 1300 Lot 1);
 - (x) the "Excepted Spaces", as defined in a certain indenture, dated December 28, 1932, recorded in Liber 3850 cp 488 between The New York Central Railroad Company and the United States of America relating to the United States Post Office located at 450 Lexington Avenue, as modified by agreements recorded in Liber 3932 cp 134A and Liber 3983 cp 380;
 - (y) The "Excepted Spaces" as defined in a certain indenture, dated July 26, 1946 between the New York Central Railroad Company and Hotel Chatham Associates recorded July 30, 1946 in Liber 4452 cp 134, relating to 280 Park Avenue as modified by Agreement dated July 15, 1966 between Park 49th Corp., The New York Central Railroad Company and NY&HRR recorded January 5, 1967 in Reel 139 page 196 (Block 1284, Lot 26);
 - (z) The permanent and perpetual rights and easements and set forth in Indenture made by New York State Realty and Terminal Company to the New York Central Railway Company dated April 27, 1951, recorded May 15, 1951 in Liber 4730 page 91 relating to 300 Park Avenue (Block 1285 Lot 36);
 - (aa) The permanent and perpetual rights and easements contained in Indenture made by Robert Walton Goelet to New York Central Railroad Company dated February 9, 1915, recorded February 11, 1915 in Liber 190 section 5 cp 40.

TOGETHER WITH a right of way (for railroad purposes) as set forth in Indenture between the City of New York, NY&HRR and the New York Central and Hudson River Railroad Company dated April 1, 1873, recorded June 25, 1873 in Liber 1256 cp 426, as modified by Indenture between the City of New York, NY&HRR and the New York Central Railroad Company dated June 23, 1903, recorded July 3, 1903 in Liber 92 cp 166 Section 5.

TOGETHER WITH all other rights, easements raserved by the grantor in items (a) through (aa) as are not included with the definition therein of "retained property", "retained space" or "excepted space" as applicable.

TOGETHER WITH any and all rights and interests granted to NY&HRR, American Premier and/or their predecessors in interest pursuant to the following unrecorded grants or agreements:

- (1) Grant and Agreement dated June 19, 1903 between The City of New York and NY&HRR, and its lessee, The New York Central and Hudson River Railroad Company.
- (2) Grant and Agreement dated December 4, 1903 between The City of New York and NY&HRR and its lessee, The New York Central and Hudson River Railroad Company.
- (3) Grant and Agreement dated April 28, 1905 between The City of New York and NY&HRR and its lessee, The New York Central and Hudson River Railroad Company.
- (4) Permit dated June 21, 1905 from The City of New York to The New York Central and Hudson River Railroad Company.
- (5) Agreement dated July 8, 1907 between The City of New York and NY&HRR and its lessee, The New York Central and Hudson River Railroad Company.
- (6) Grant and Agreement dated June 15, 1911 between The City of New York and NY&HRR and its lessee, The New York Central and Hudson River Railroad Company.
- (7) Agreement dated January 25, 1912 between The City of New York and NY&HRR and its lessee, The New York Central and Hudson River Railroad Company.
- (8) Agreement dated April 11, 1924 between The City of New York and NY&HRR and its lessee, The New York Central Railroad Company.

Exhibit A-2
Description of Hudson Line

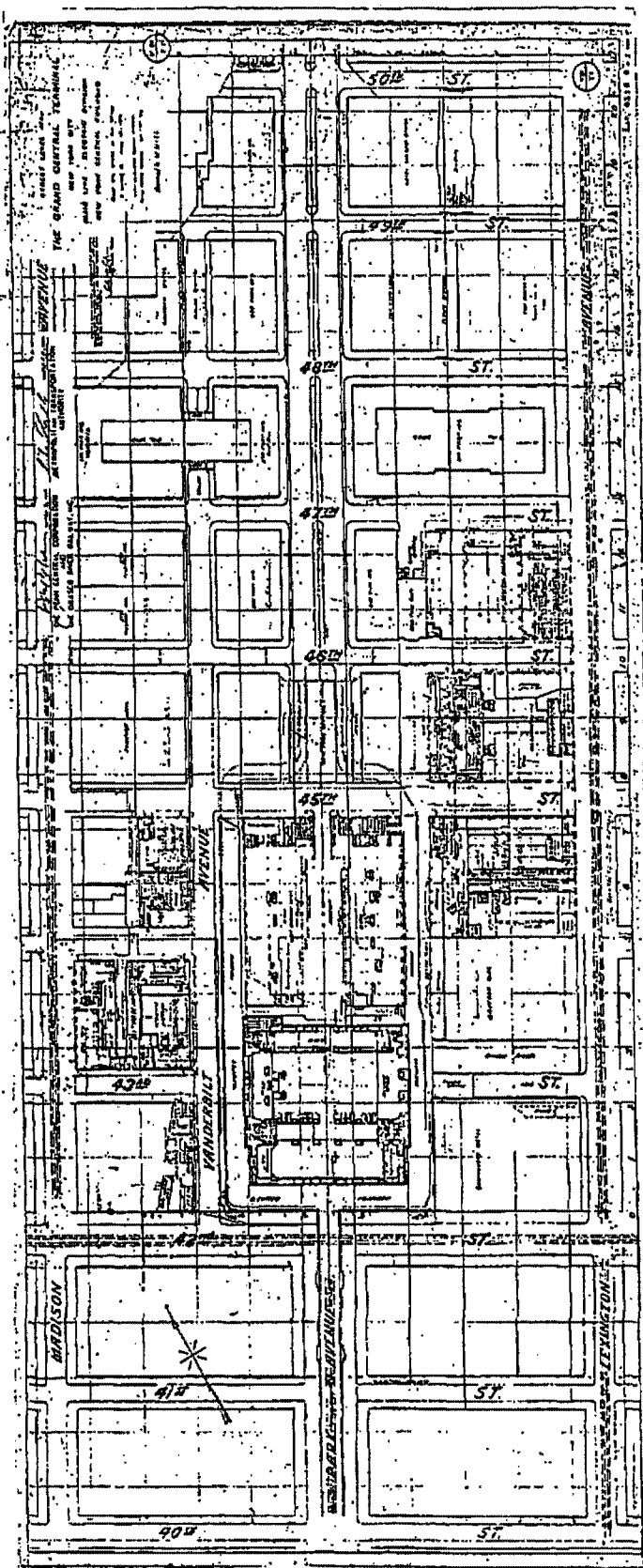
All right, title and interest of American Premier Underwriters, Inc. (formerly known as The Penn Central Corporation) and The Owasco River Railway, Inc. (collectively, "Landlord") in and to that railroad line, commonly known as the Metro-North Commuter Railroad Hudson Line, located in the counties of the Bronx, Westchester, Putnam and Dutchess, which line is depicted on the 1917 valuation maps of The New York and Harlem Railroad Company (the "Hudson Line Premises"), reduced copies of which maps are annexed hereto, including but not limited to the following:

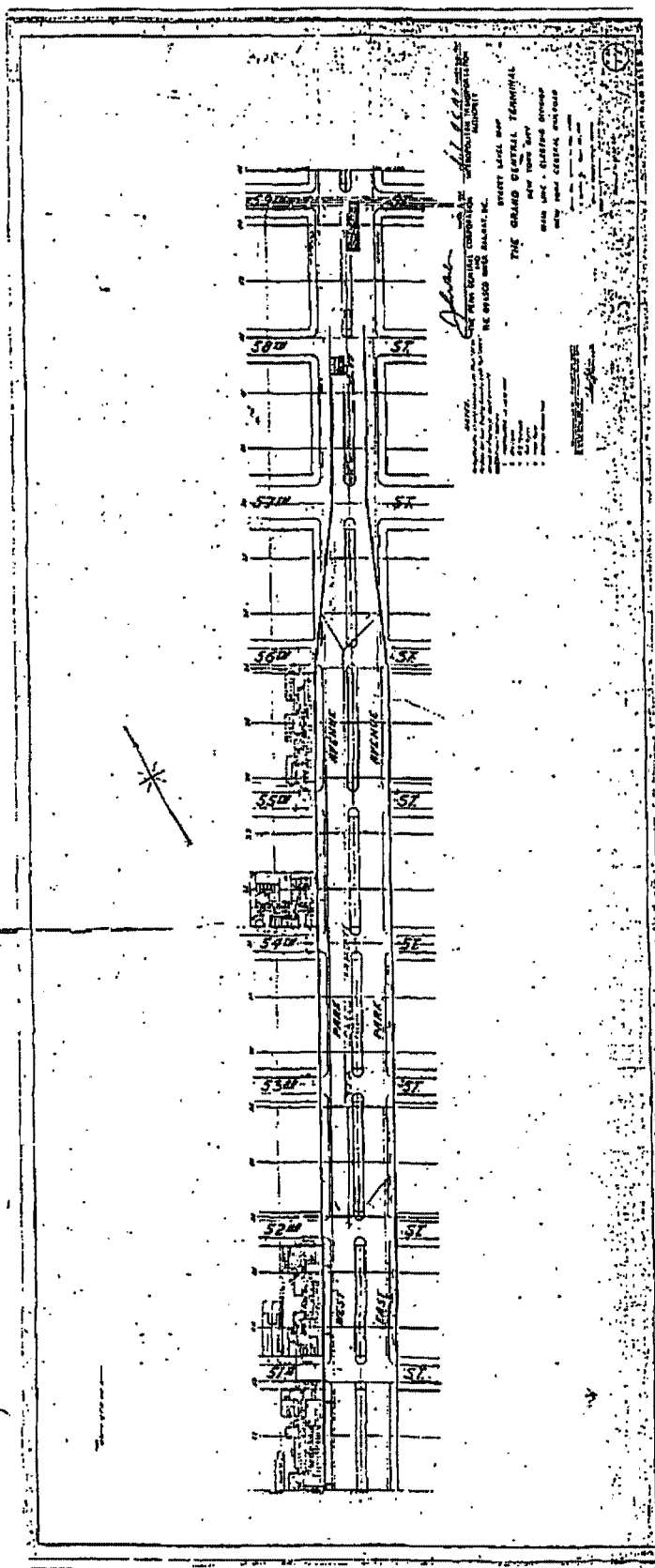
(a) (i) land lying in the bed of any street, highway, road or avenue, open or proposed, public or private, in front of or adjoining the Hudson Line Premises, to the center lines thereof; (ii) rights of way, highways, public places, easements, appendages, appurtenances, sidewalks, alleys, strips and gores of land adjoining or appurtenant to the Hudson Line Premises which are now or hereafter used in connection therewith; (iii) awards made or to be made in lieu of any of the foregoing, and all unpaid awards or other proceeds for damages to the Hudson Line Premises by reason of the change of grade of any street, highway, road or avenue; (iv) the subsurface of the Hudson Line Premises; (v) all air rights appurtenant to the Hudson Line Premises; (vi) all rights under franchise agreements; and (vii) all riparian rights in land under water and all lands under water, water courses, water rights and riparian rights in connection with the Hudson Line Premises.

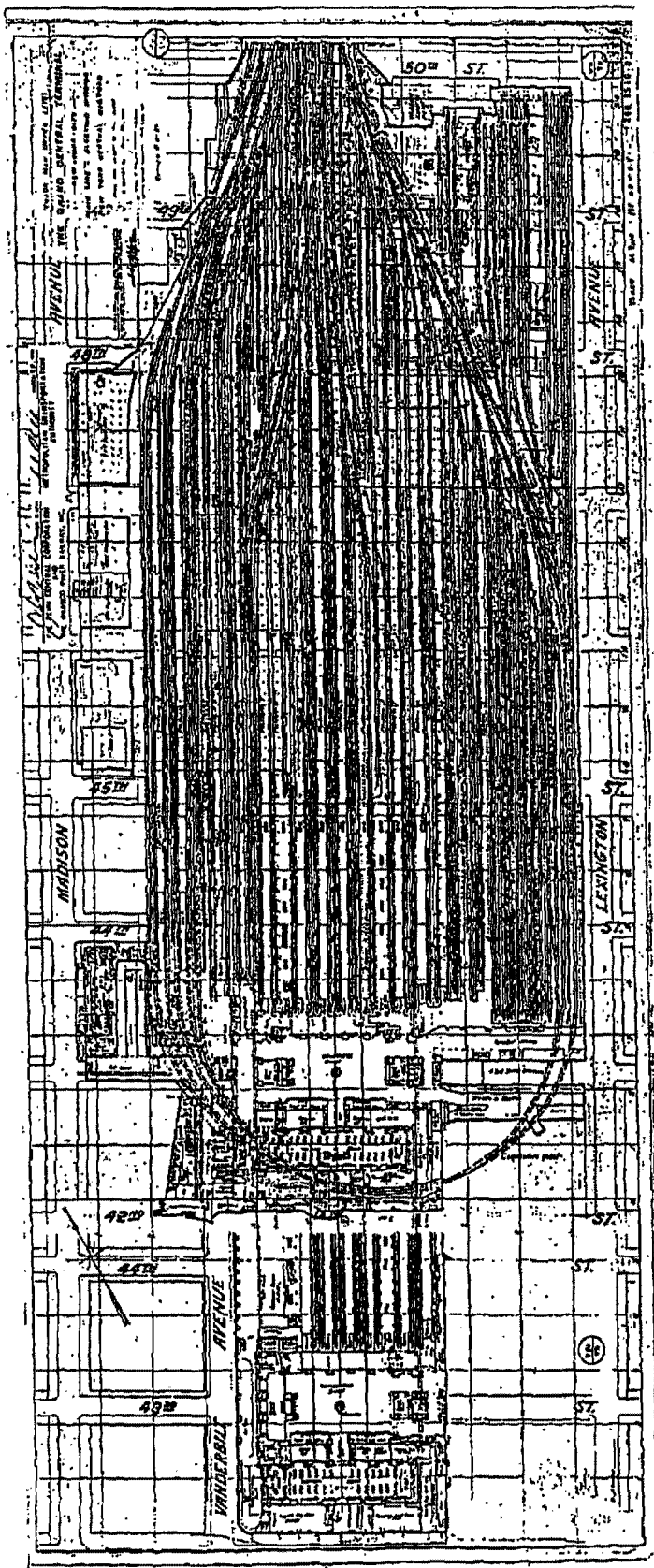
(b) all buildings, facilities, structures (including, without limitation, footings and foundations), and other improvements of every kind, nature and description whatsoever now located or hereafter erected, constructed or placed upon or within the Hudson Line Premises, all fixtures constituting a part thereof, and all alterations, changes and additions thereto including, without limitation, all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Hudson Line Premises (from and after the purchase of same) including, without limitation, all shop, engine house and repair track machinery and equipment (including machinery and equipment located in yards or terminals for the repair and servicing of trains, locomotives or cars, including "MU" cars) and all other machinery, apparatus, devices, motors, dynamos, engines, compressors, pumps, boilers and burners;

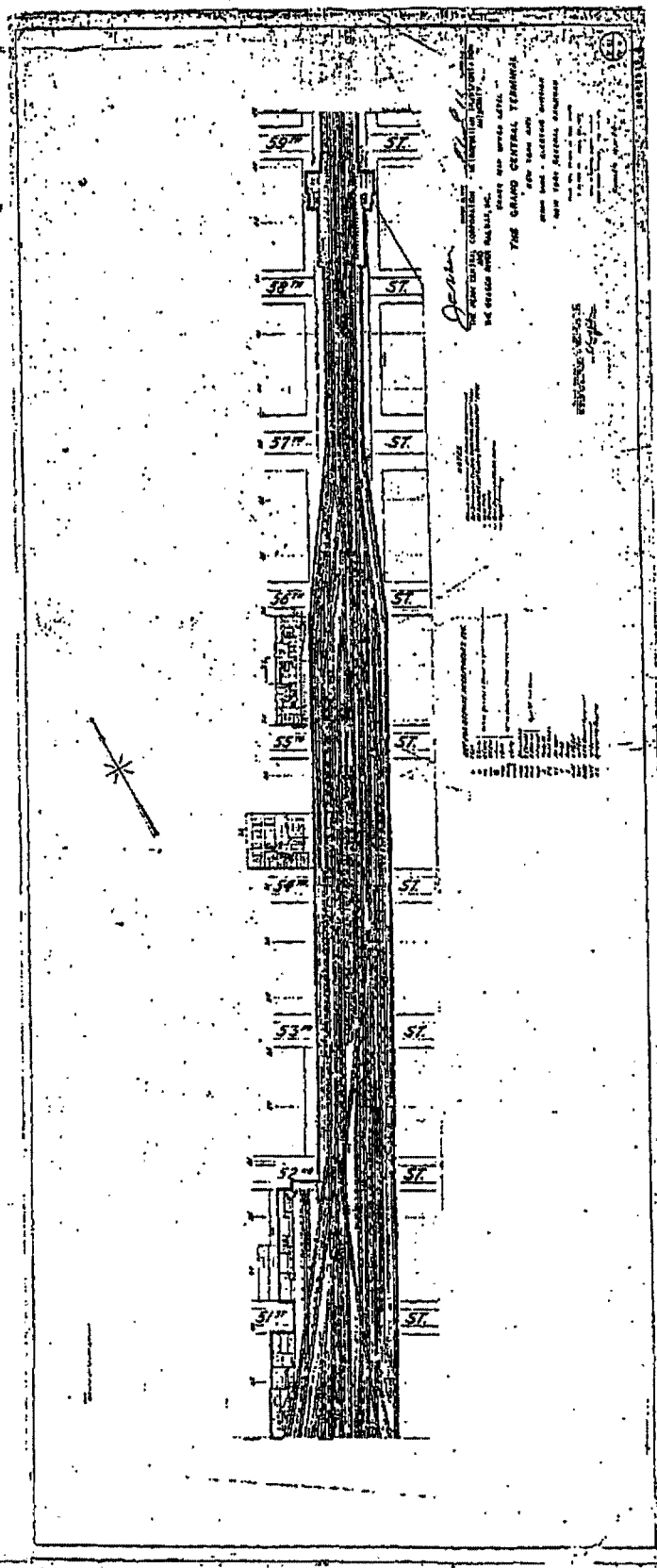
heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; all ties, rails, switches and other track material, ballast, track laying and servicing material, station houses, tool houses, fences and other right of way material, all signal system apparatus, including interlockers, sidings, turnouts, bridges, tunnels, viaducts, culverts, turntables, fences, pole lines and wires, overhead conductors, power transmission systems equipment (including power substation equipment, power and control cable and third rail systems), chutes, ducts, pipes, tanks and fittings; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory equipment; communications systems and public address equipment; fire prevention and extinguishing equipment; and all additions thereto and replacements thereof; excluding, however, any of the foregoing which are owned by utility companies providing utilities to the improvements or by any subtenants of Metropolitan Transportation Authority; and

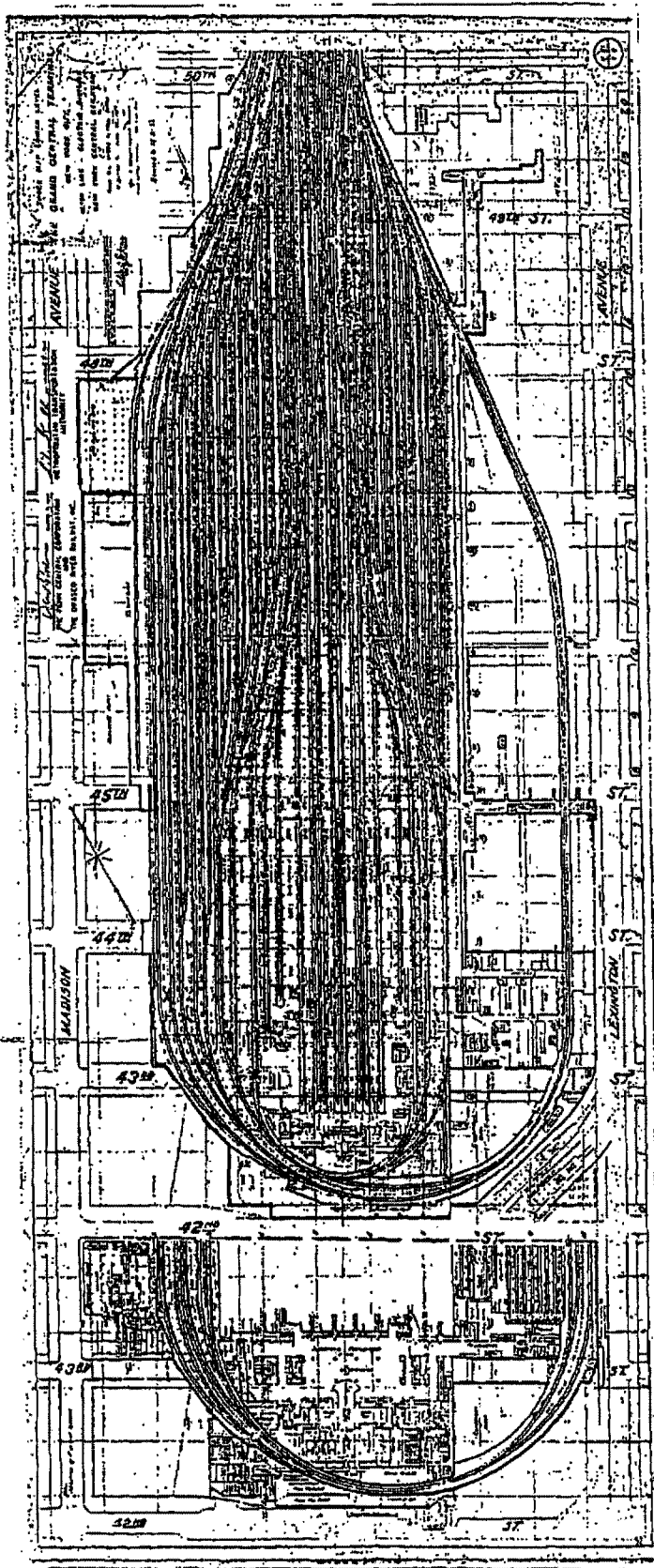
(c) any and all operating and trackage rights over the Hudson Line Premises, including, without limitation, the right of Landlord to (i) operate freight trains, cars and locomotives over the Hudson Line Premises; (ii) provide through and local freight service (including mail and express) over the Hudson Line Premises; (iii) operate long haul (through) passenger trains, cars and locomotives (including baggage, mail and express over the Hudson Line Premises; (iv) operate suburban (or commuter) railroad passenger services over the Hudson Line Premises, as they may be from time to time constituted; and (v) use any portion of the Hudson Line Premises for the operation of any and all equipment and facilities in connection with providing long haul passenger, freight and suburban services over the Hudson Line Premises.

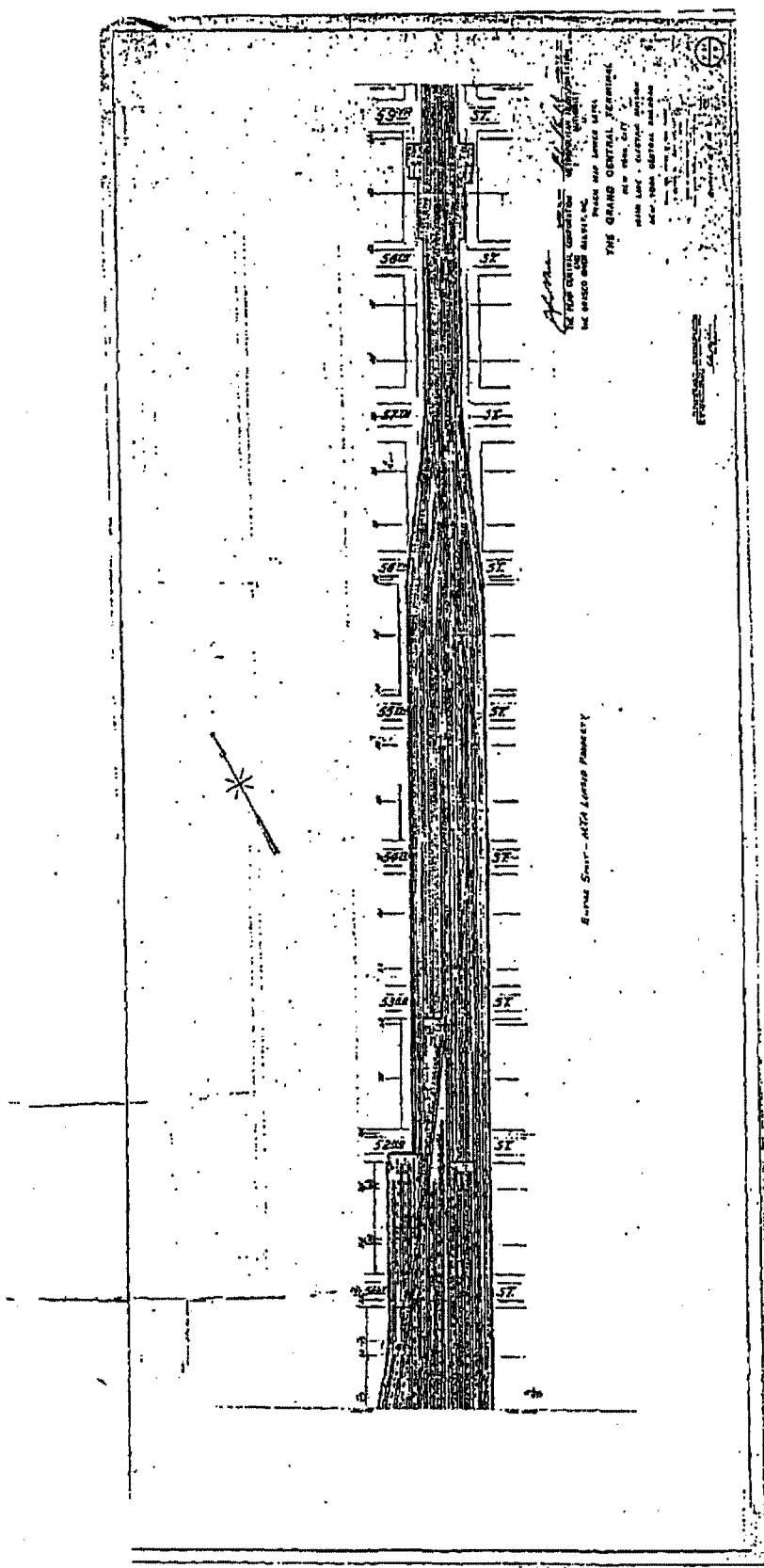


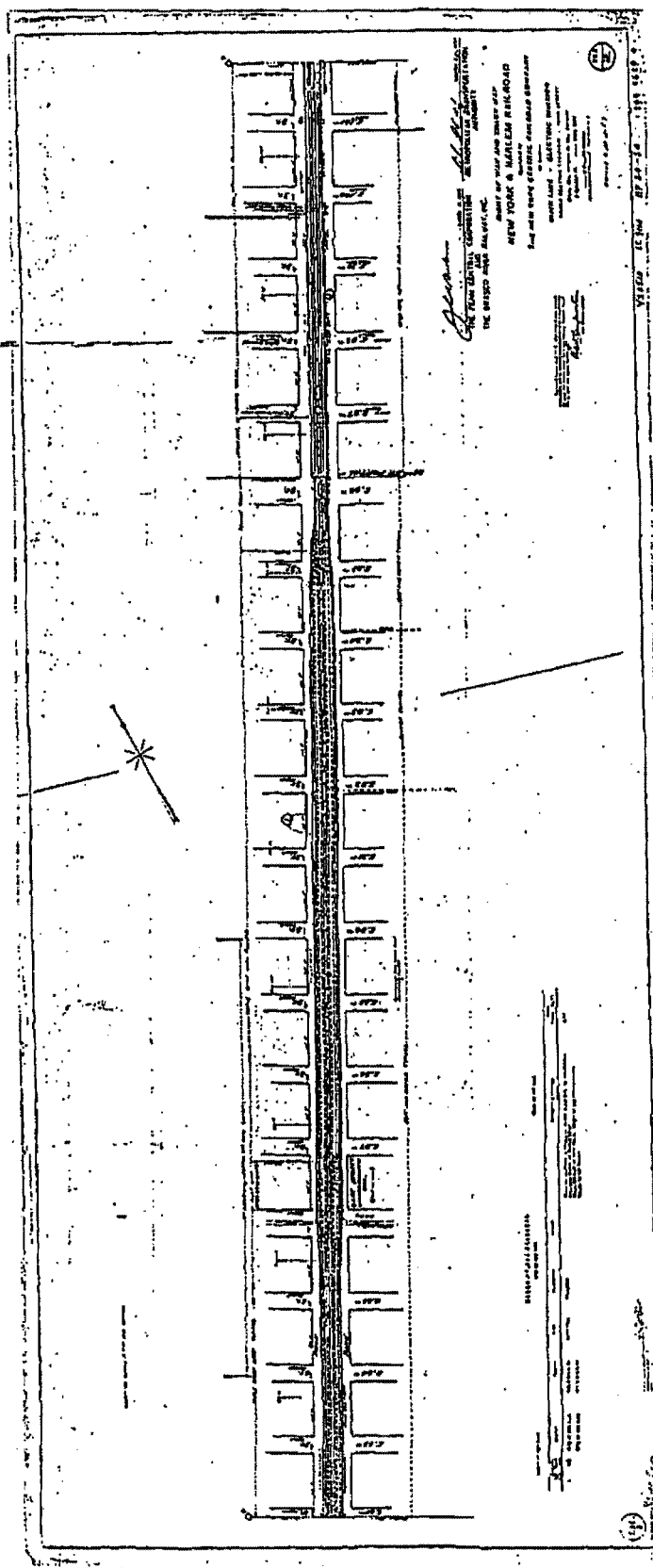


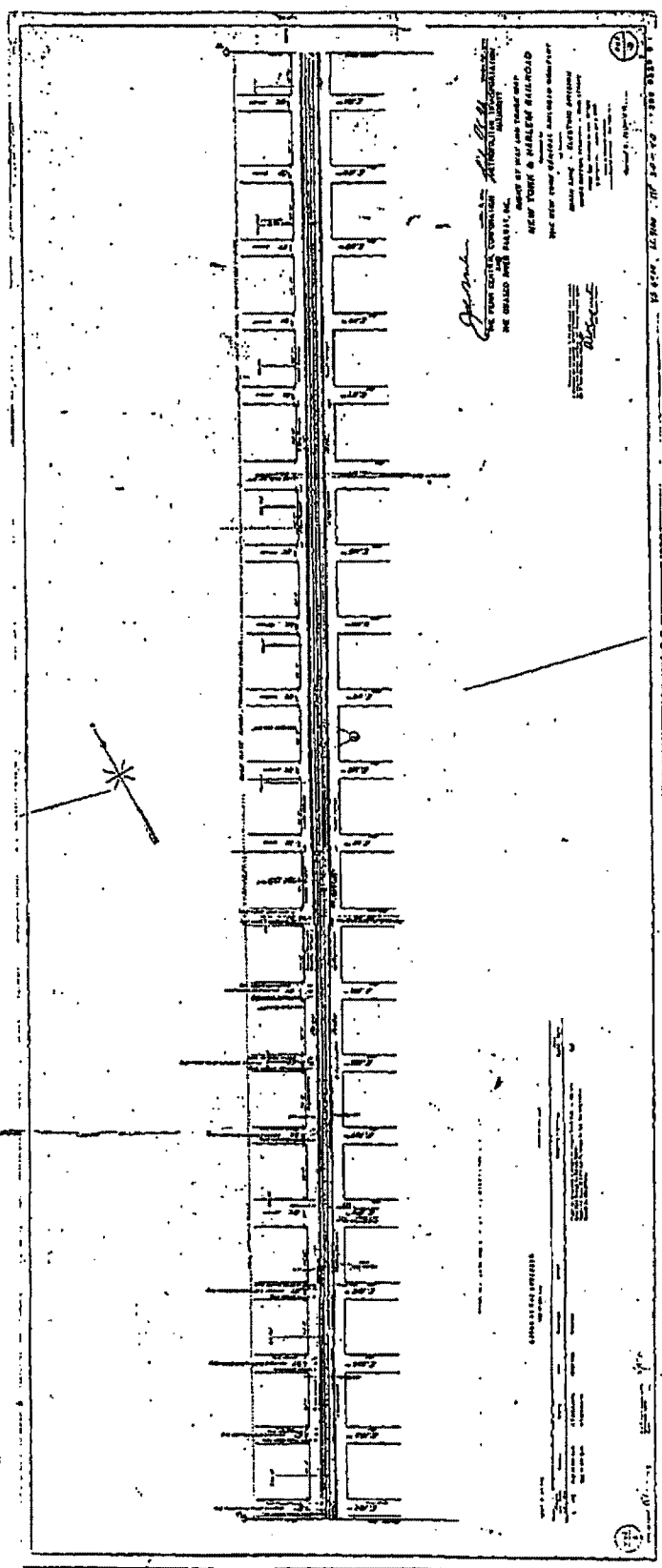


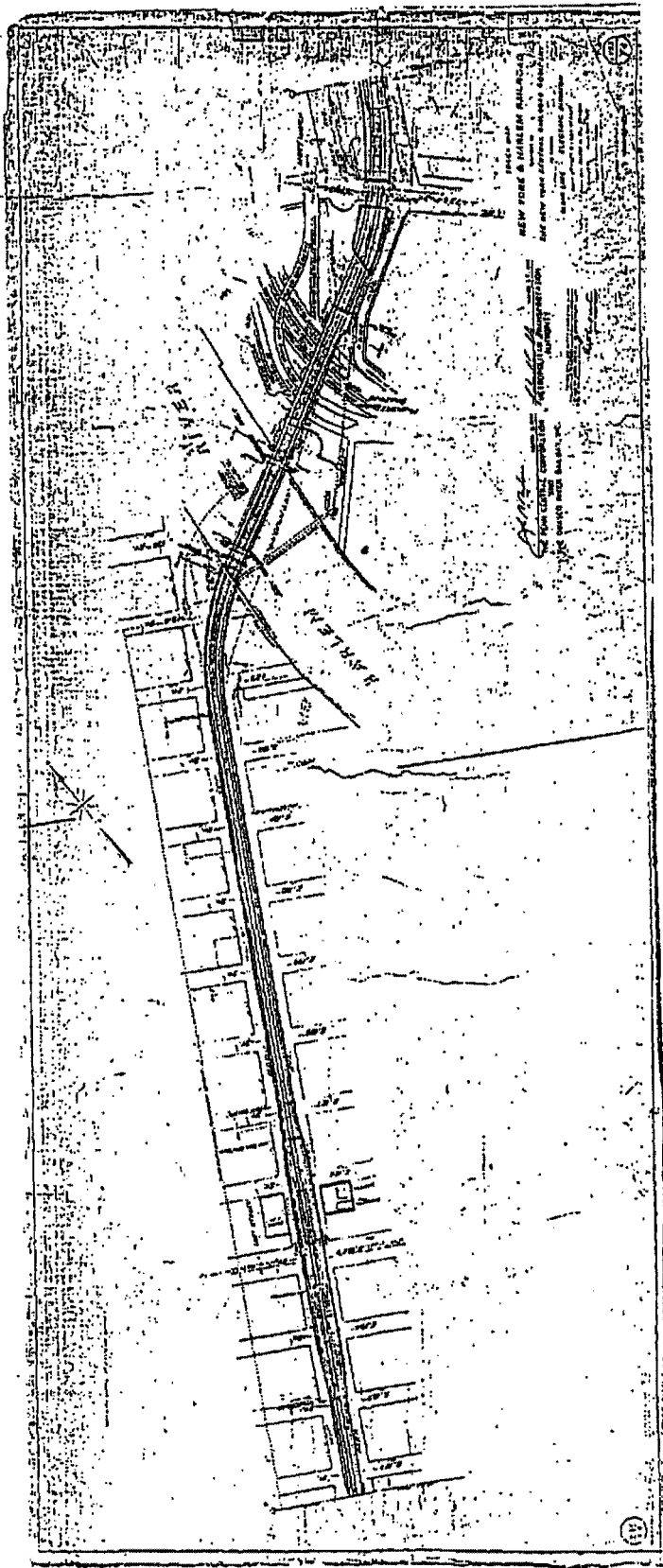


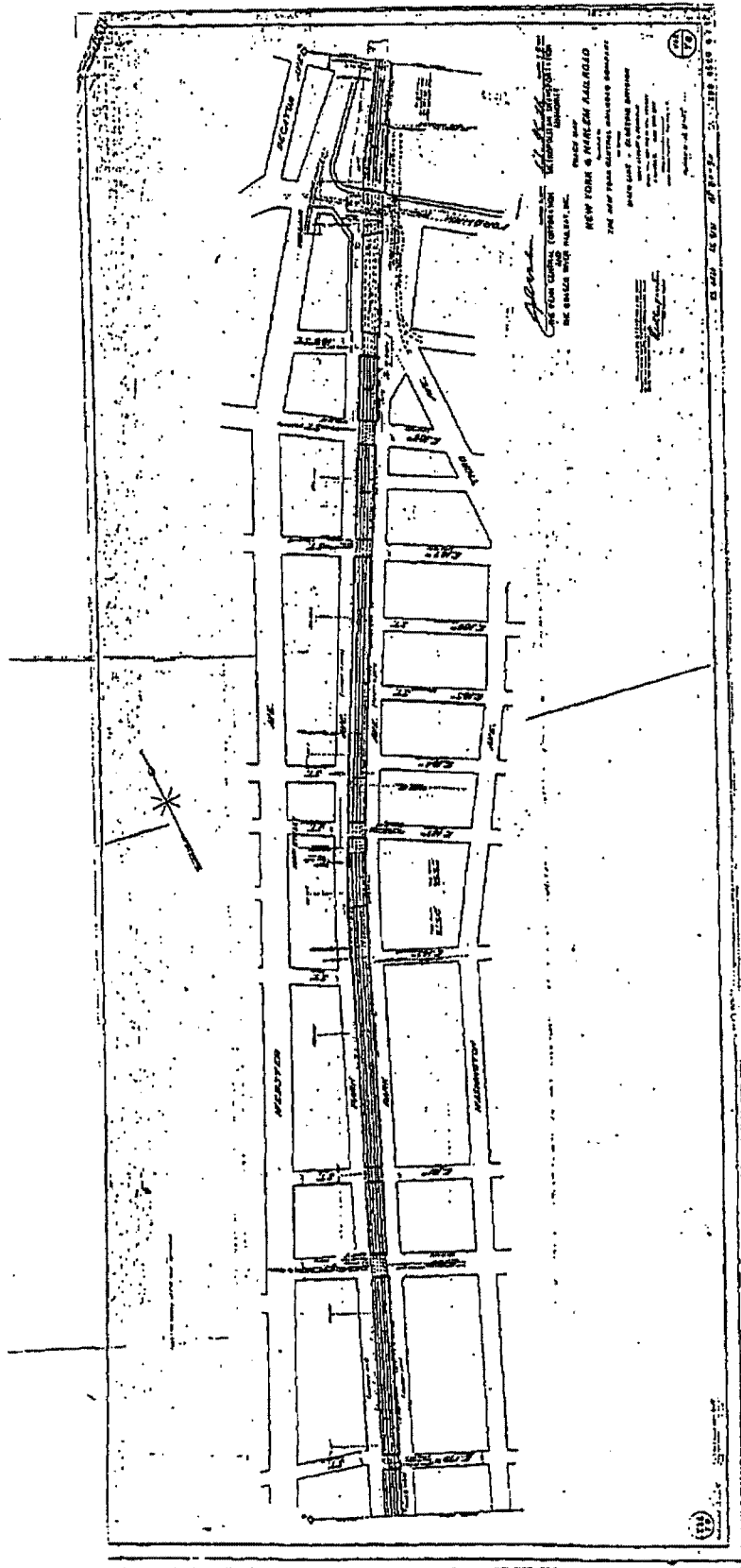




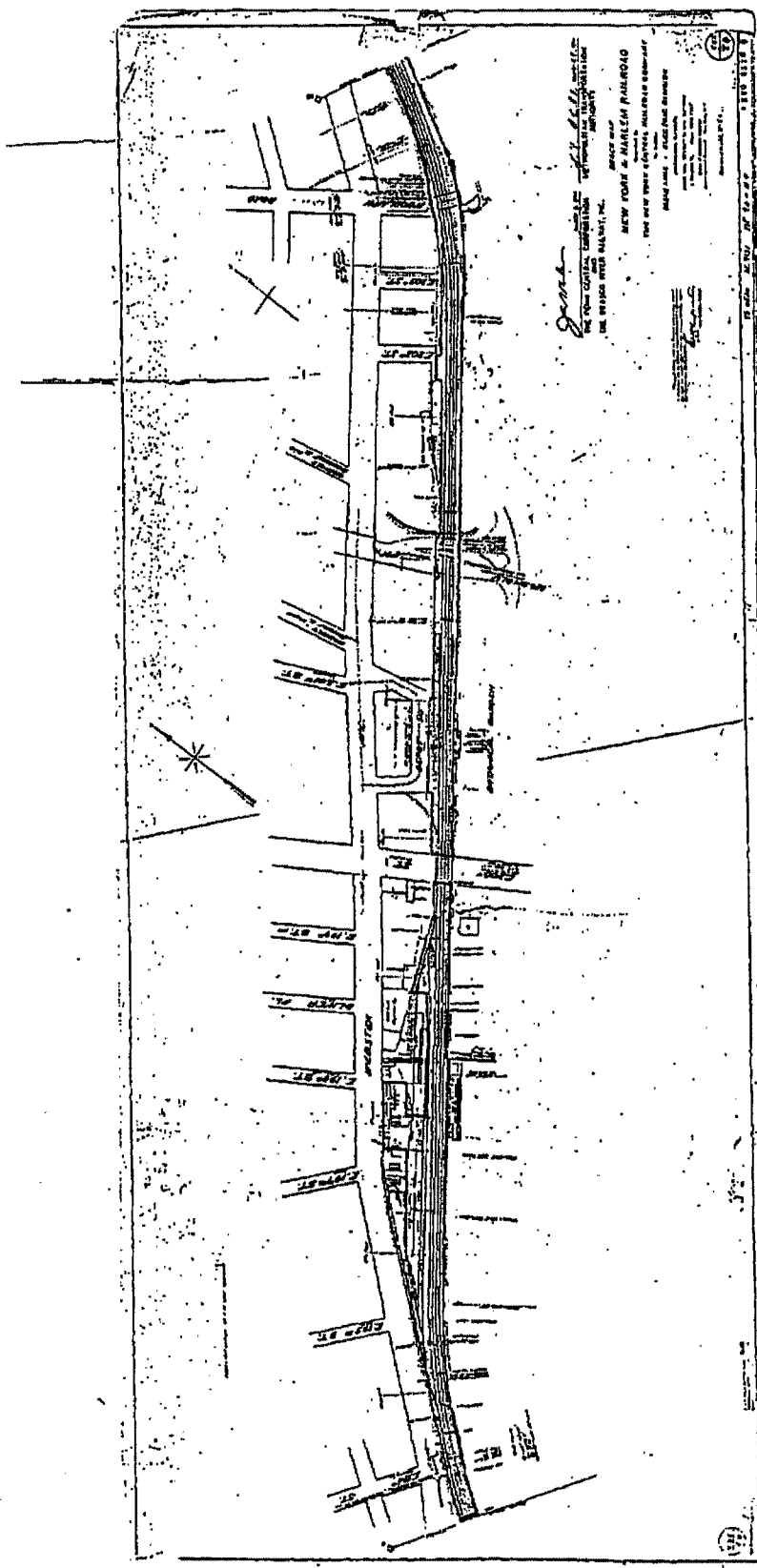


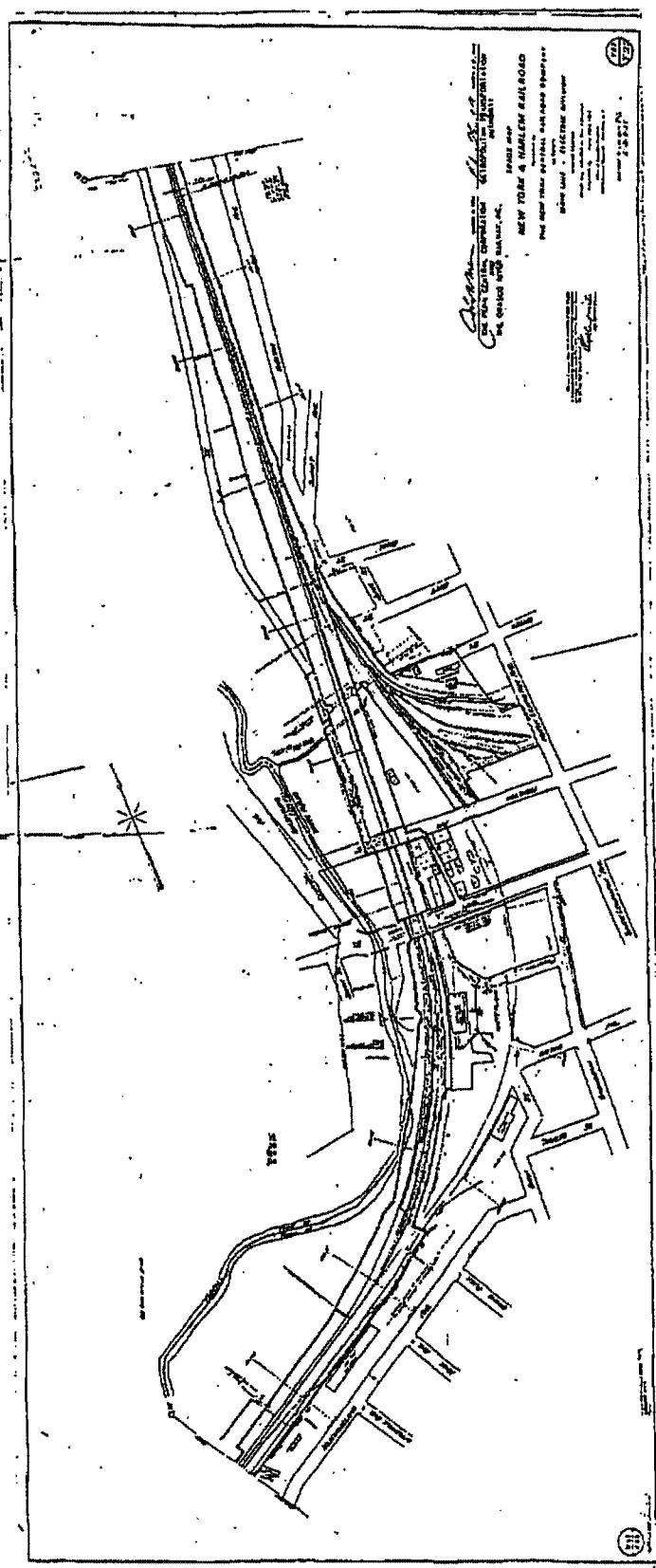


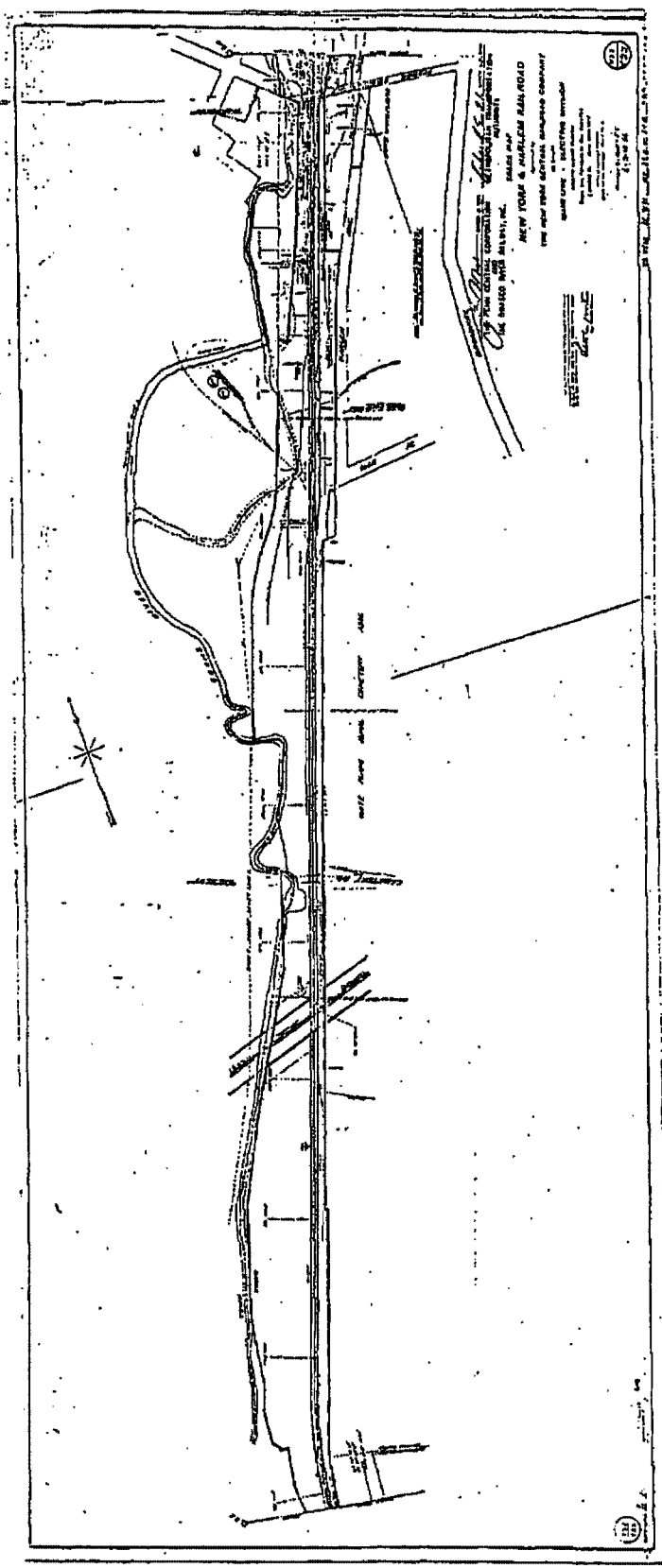


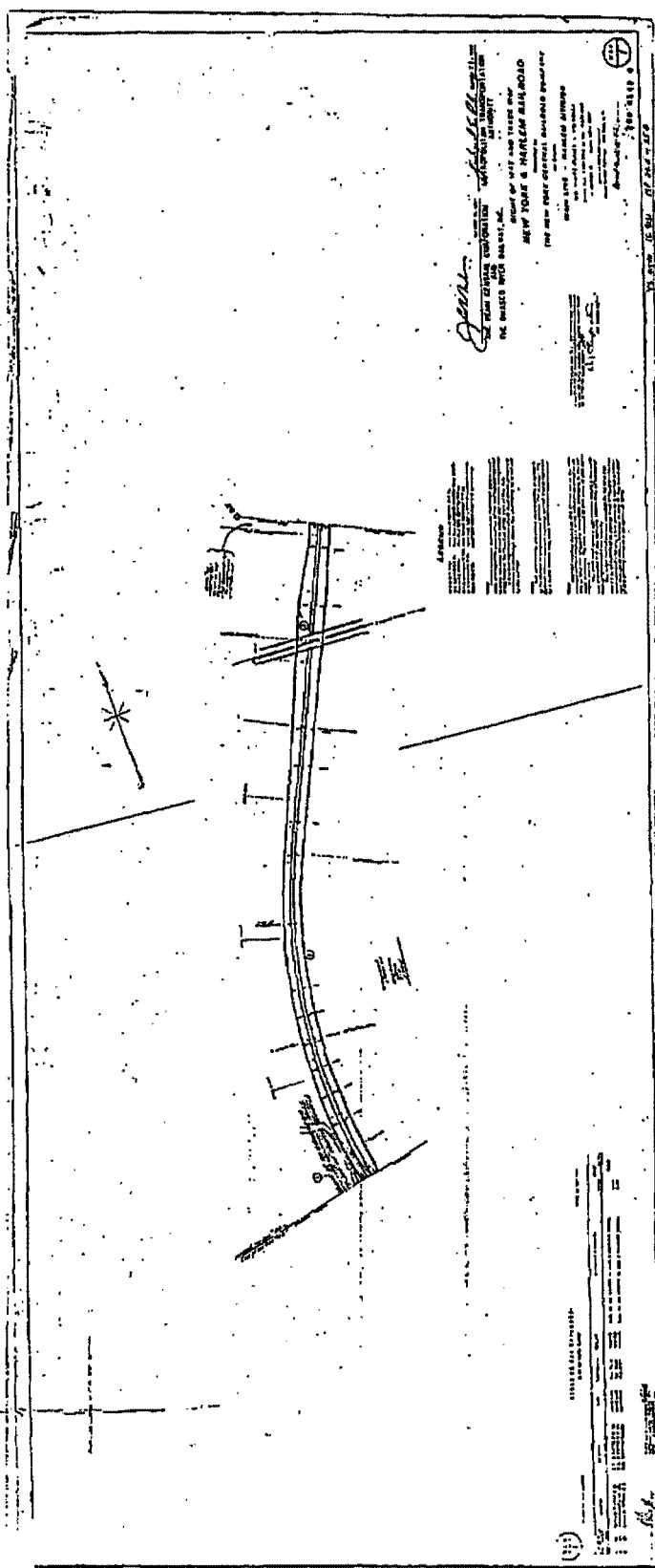


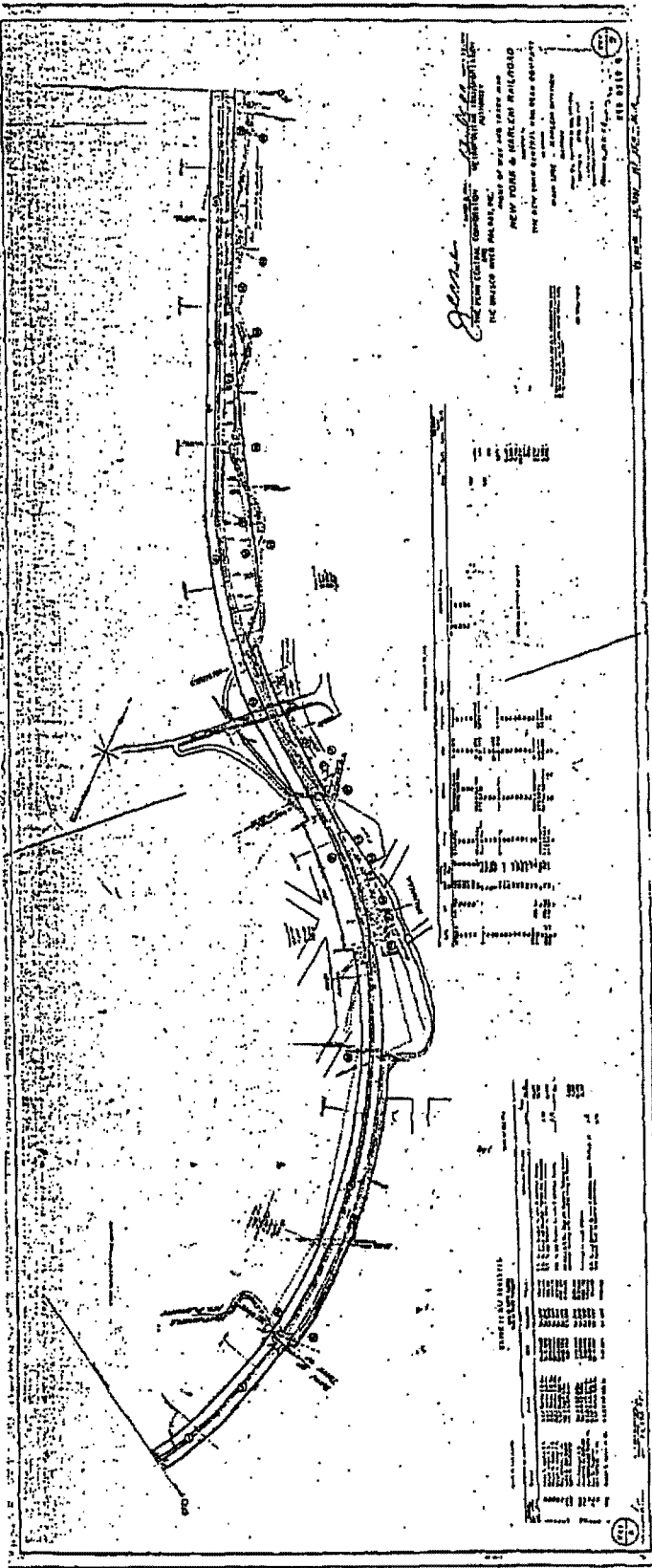
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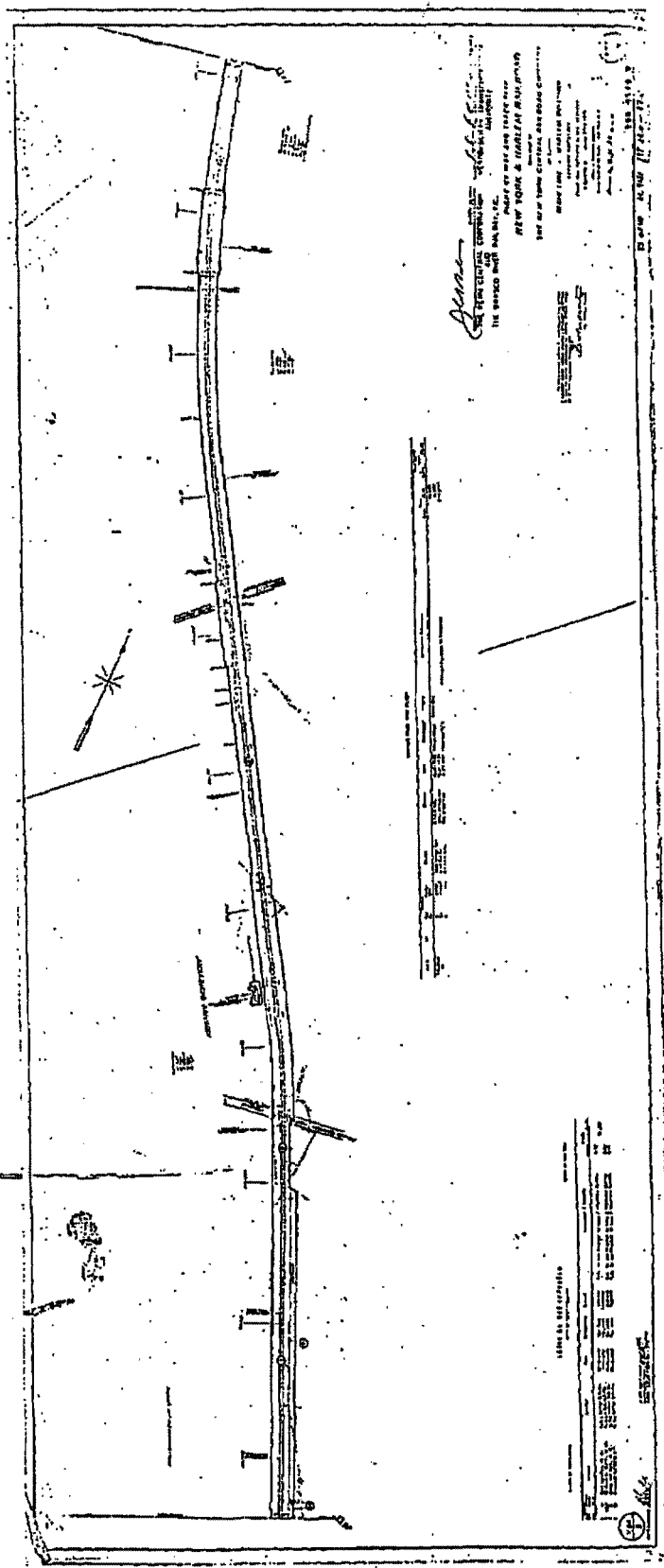


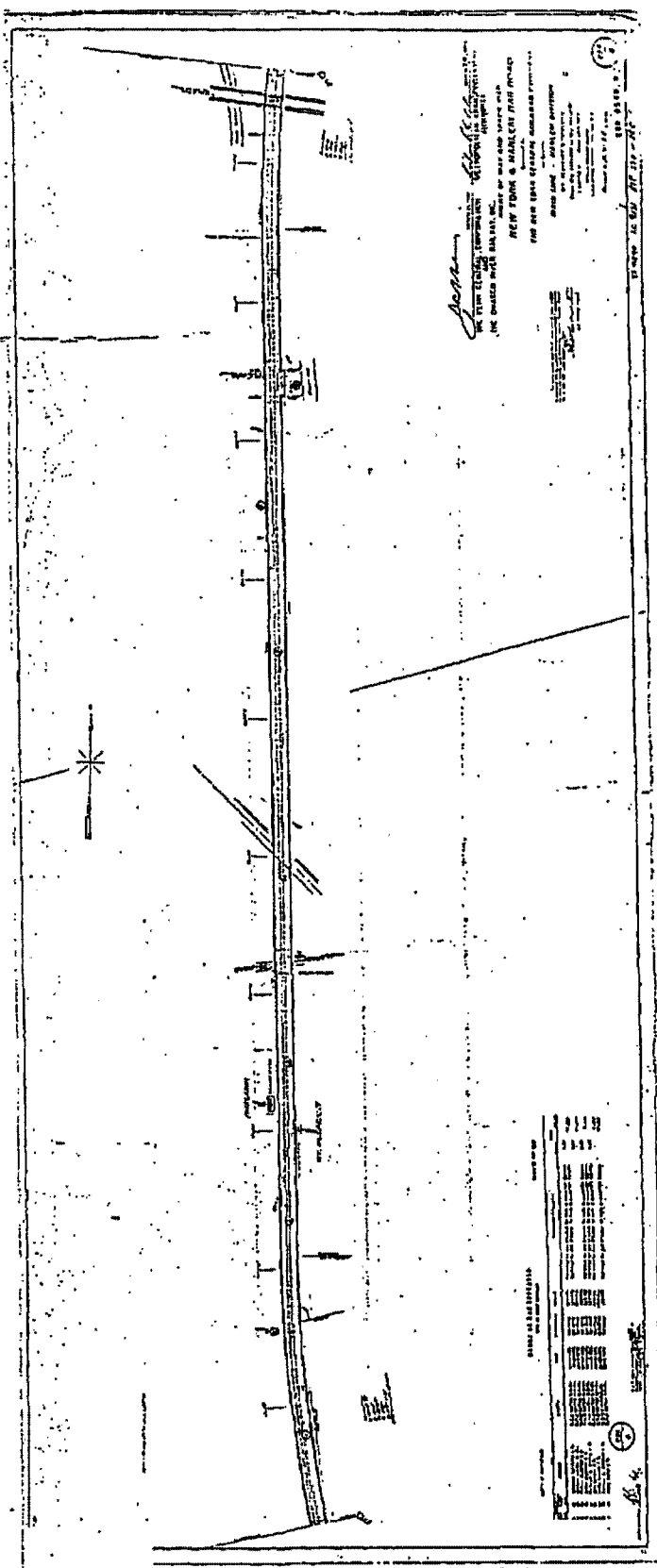


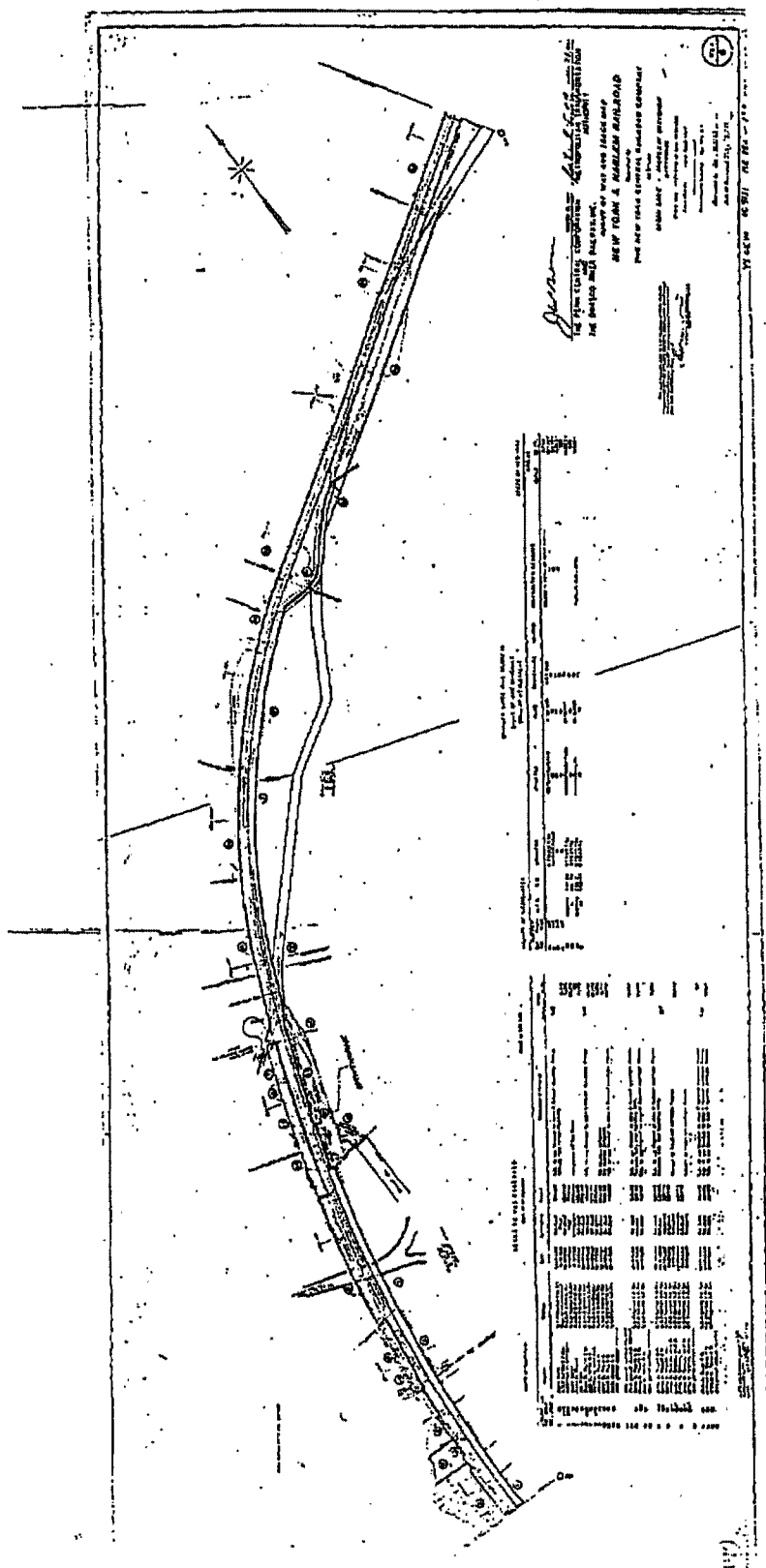


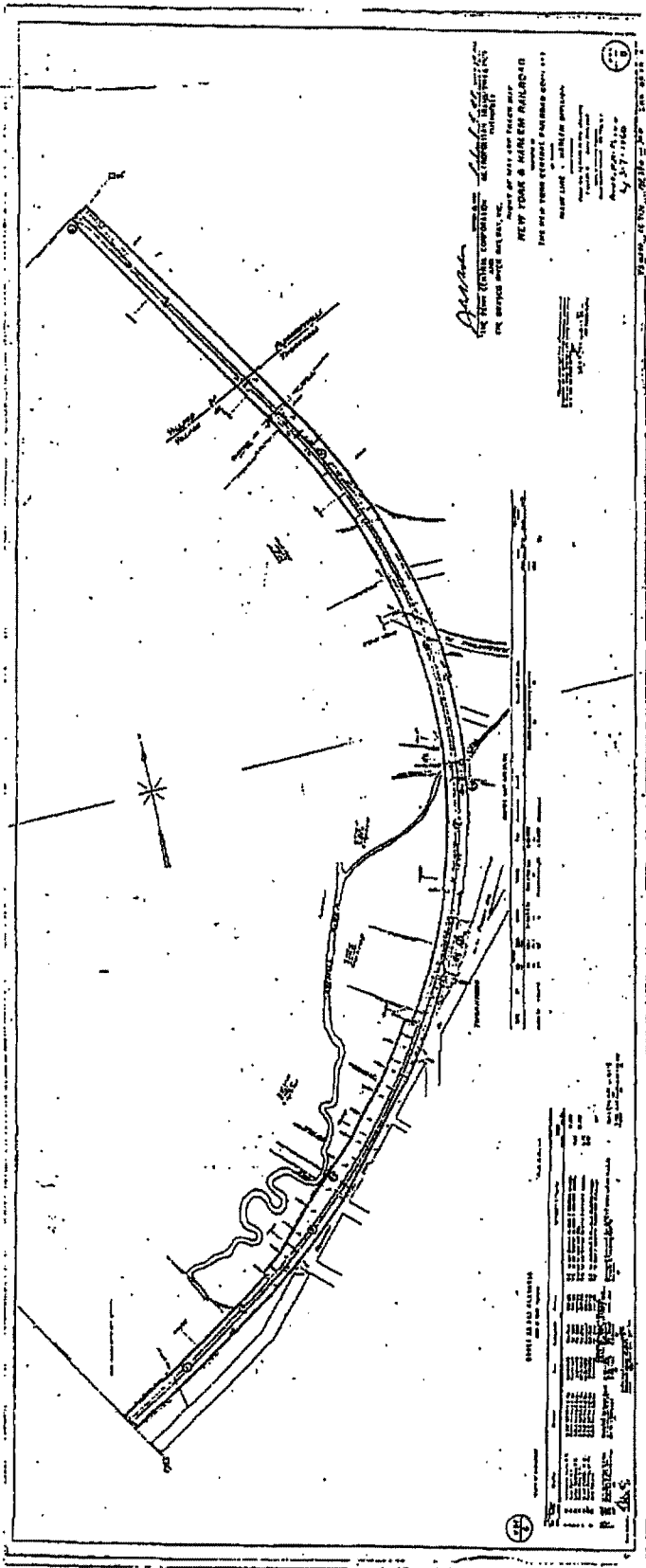


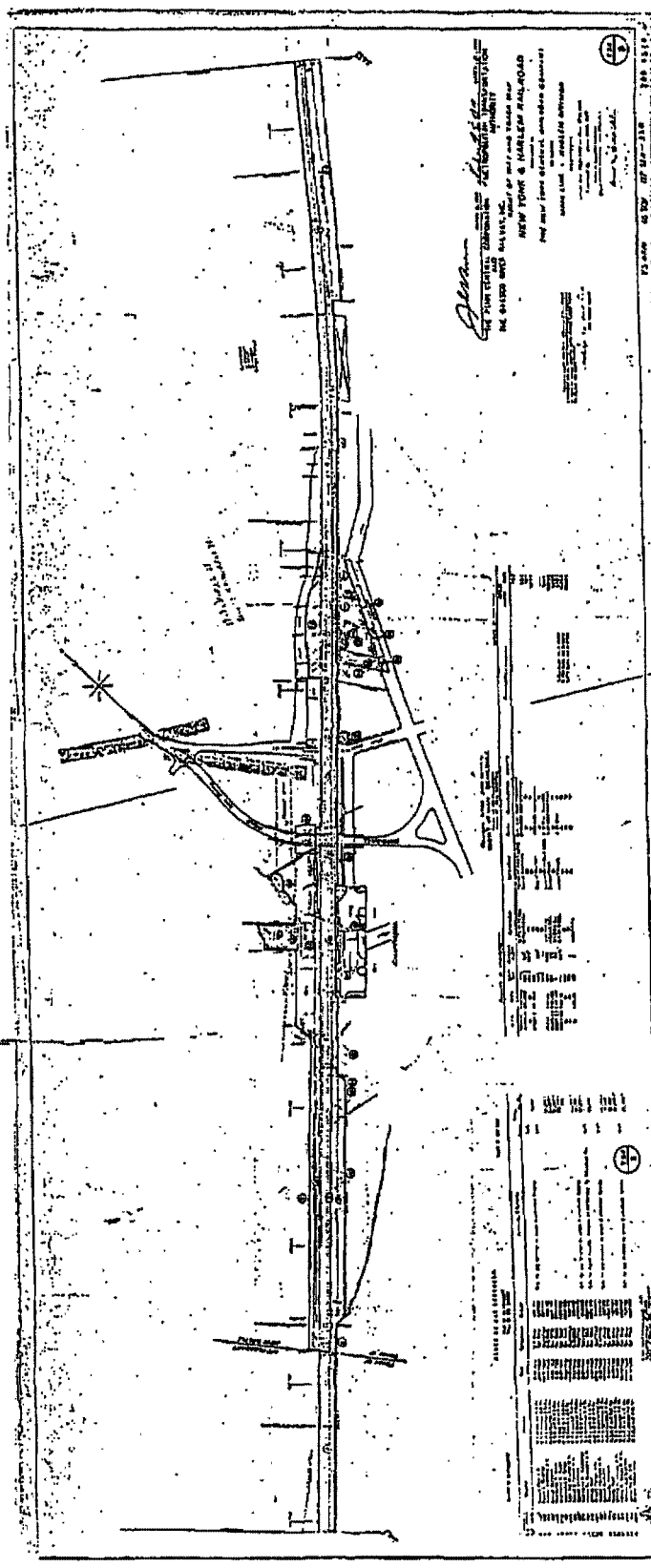


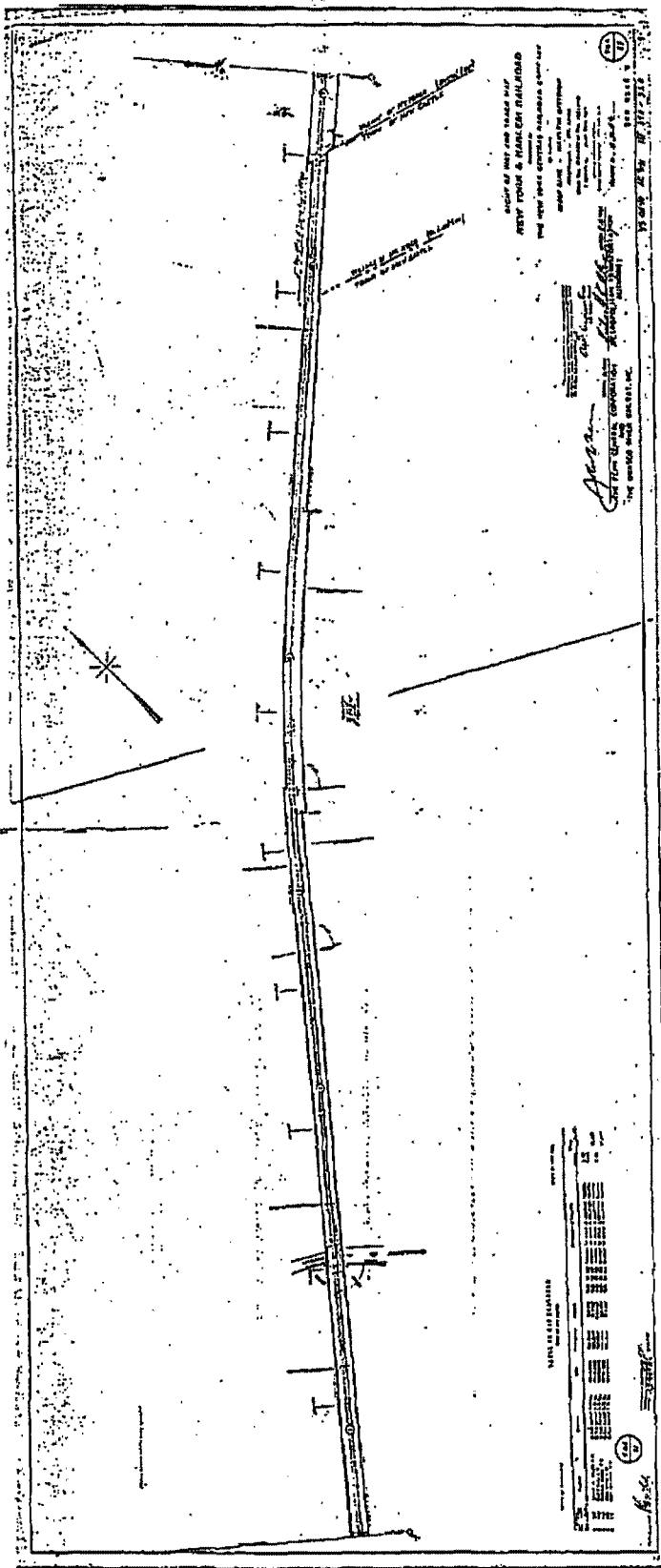












NEW YORK & HARTFORD RAILROAD

and other lines connecting the same

with the New York and New Haven Railroad

and the New York and New England Railroad

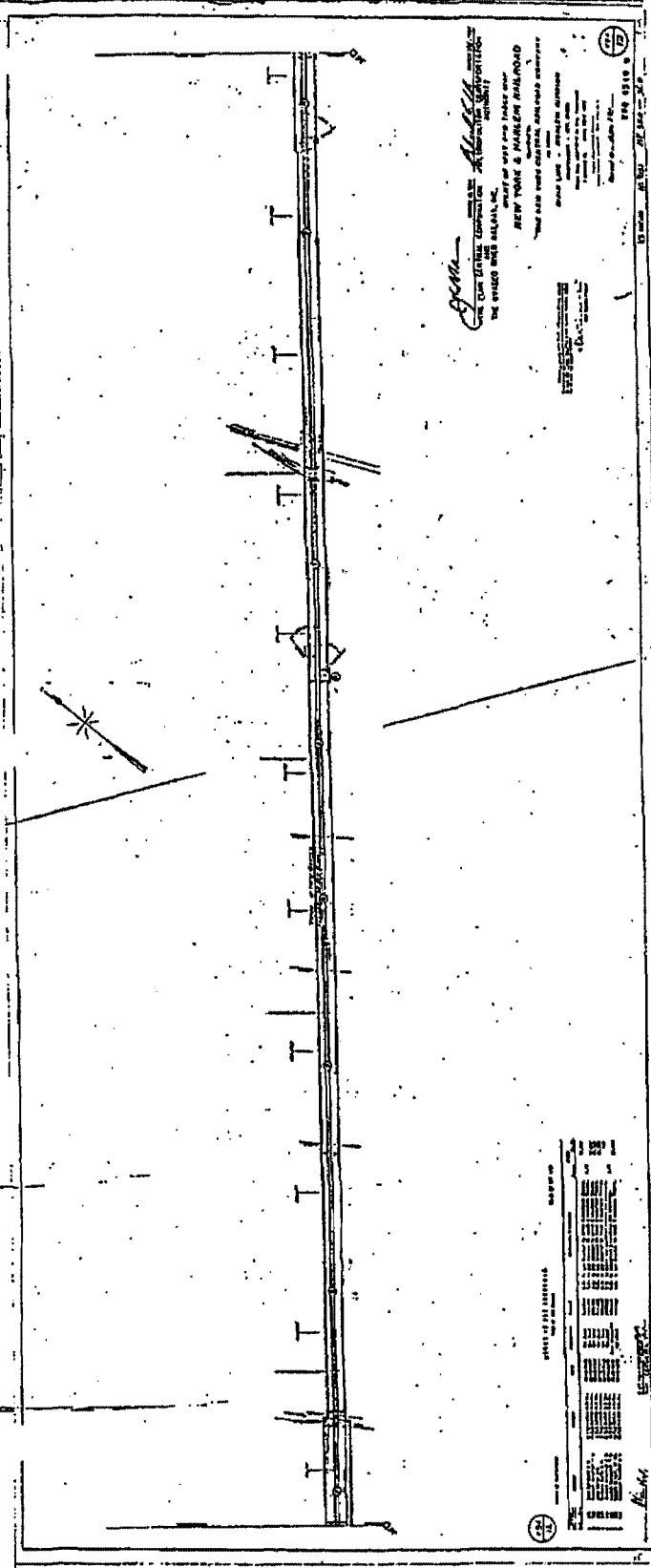
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THE NEW YORK & HARTFORD STEAMSHIP COMPANY
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NEW YORK & HARTFORD STEAMSHIP COMPANY

TABLE OF DATA

NO.	NAME	DATE	TIME	PLACE	REMARKS
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2	...	...	...	...	...
3	...	...	...	...	...
4	...	...	...	...	...
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NOVEMBER 1974

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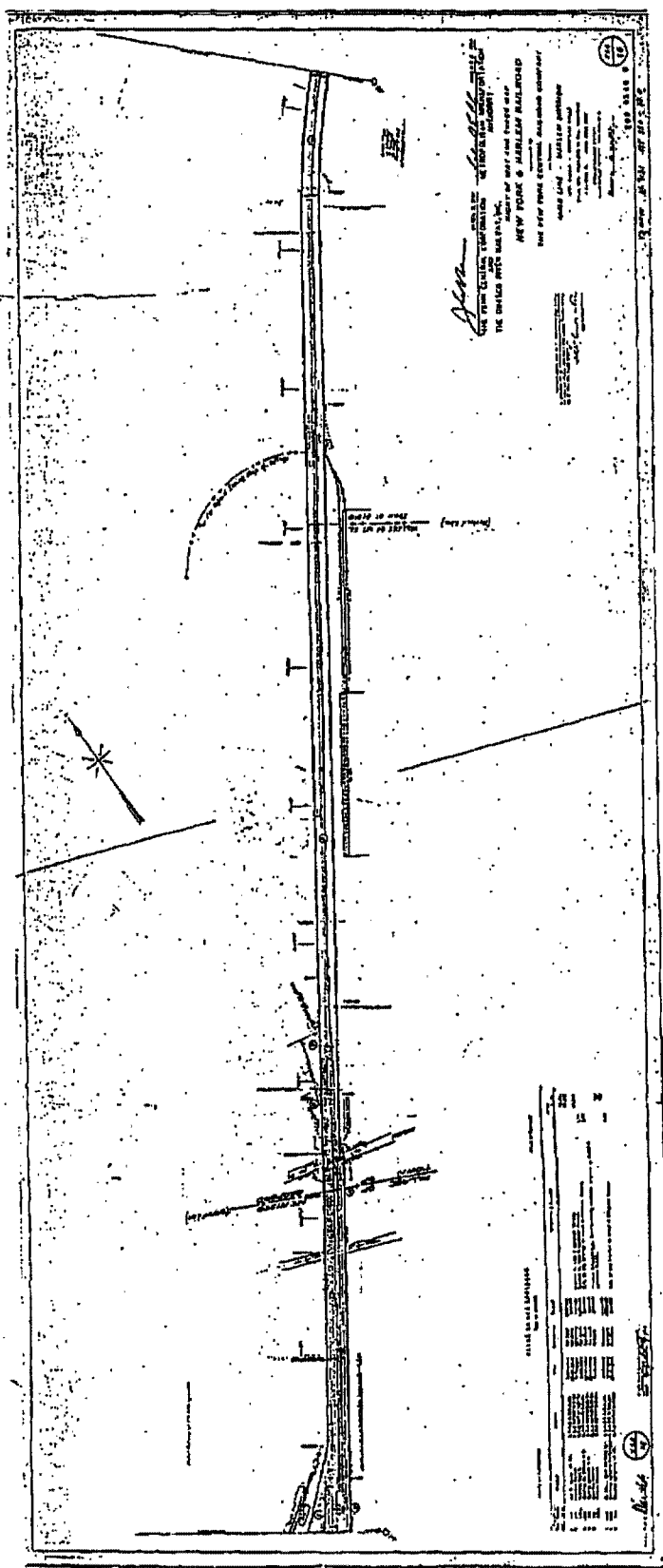
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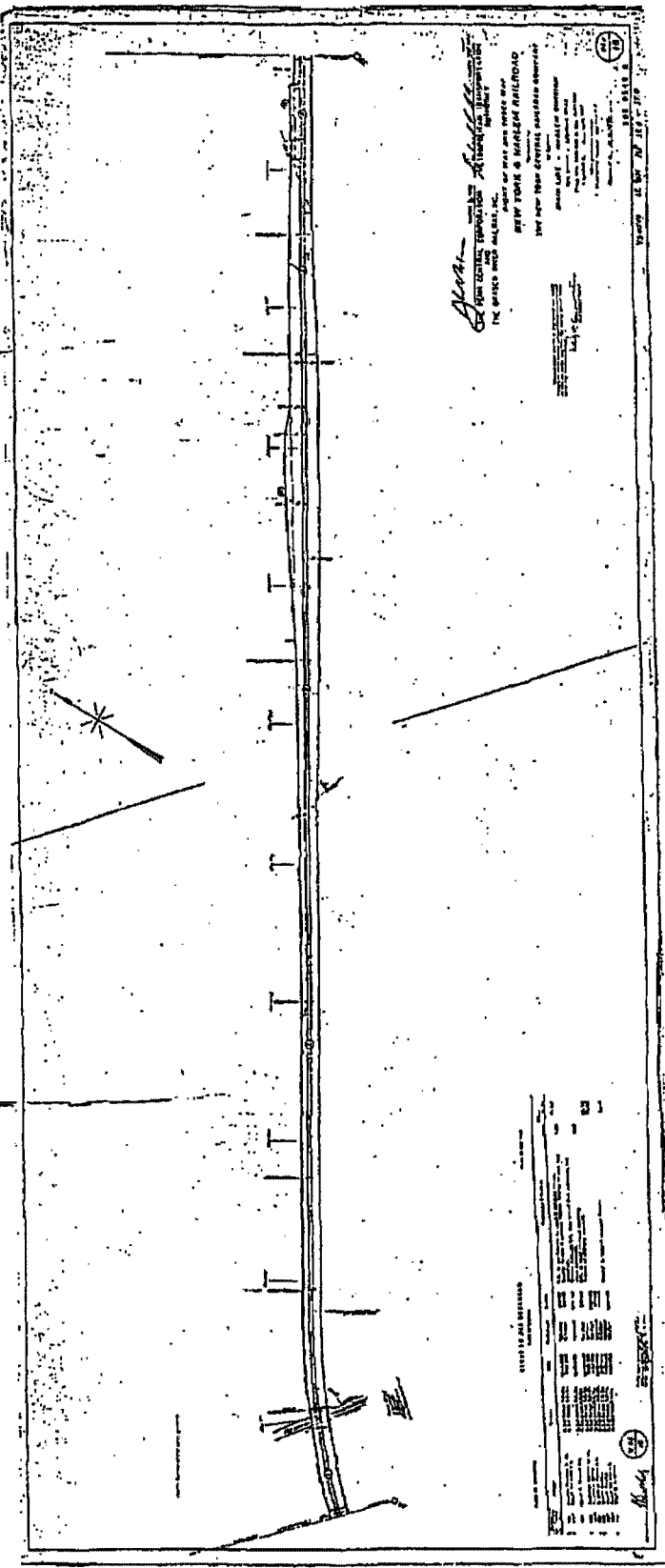
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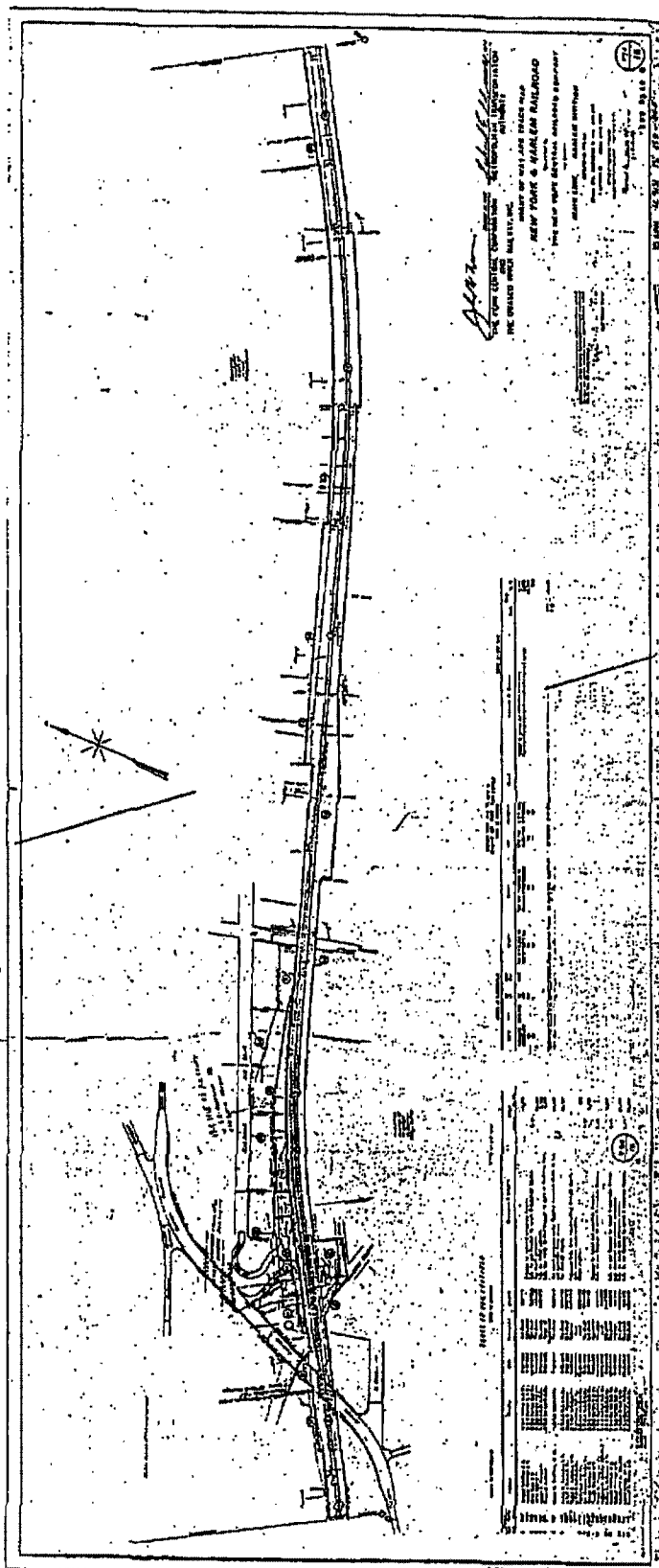


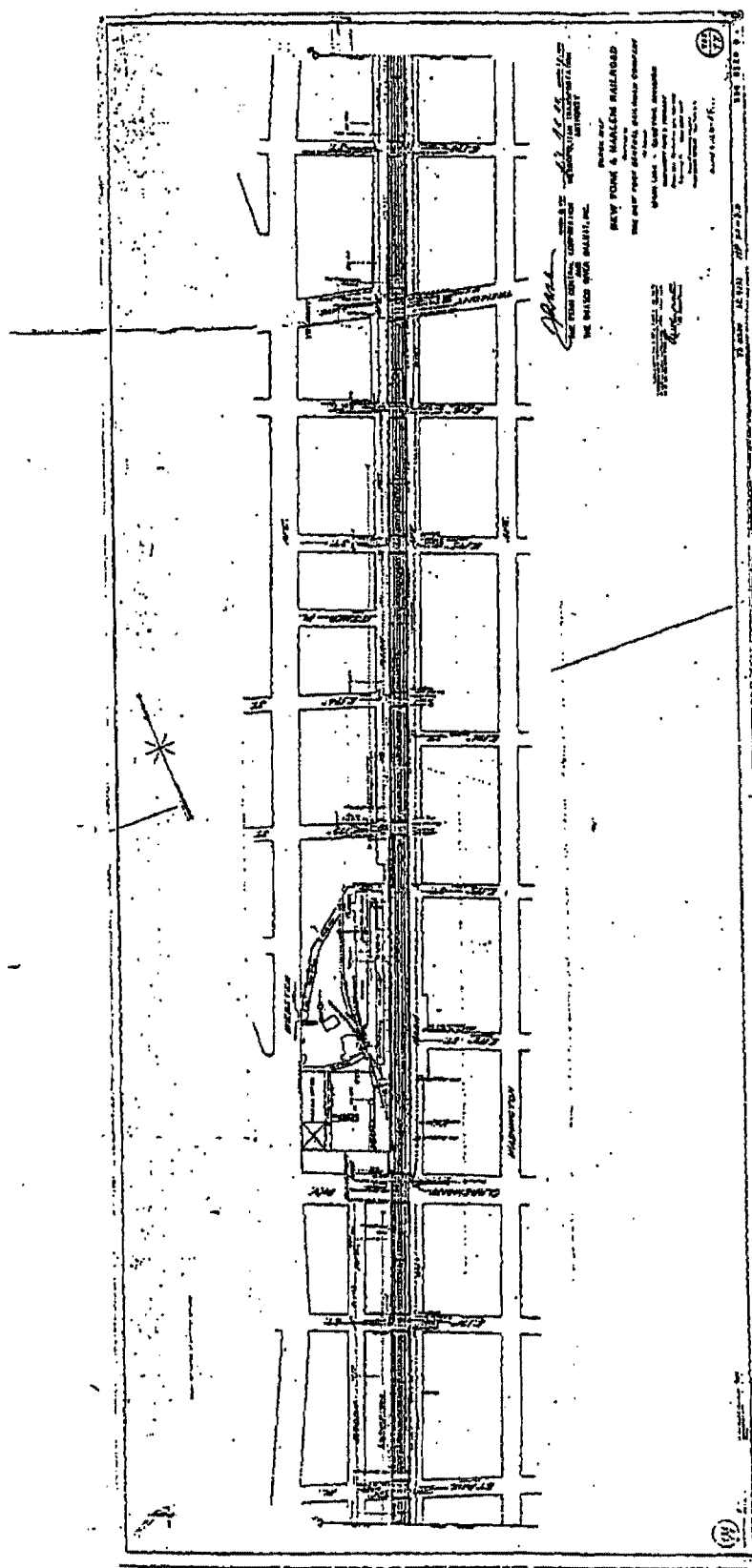
J. Van der Zande
Chief Engineer
New York & Maryland Railroad
The Office of the Chief Engineer

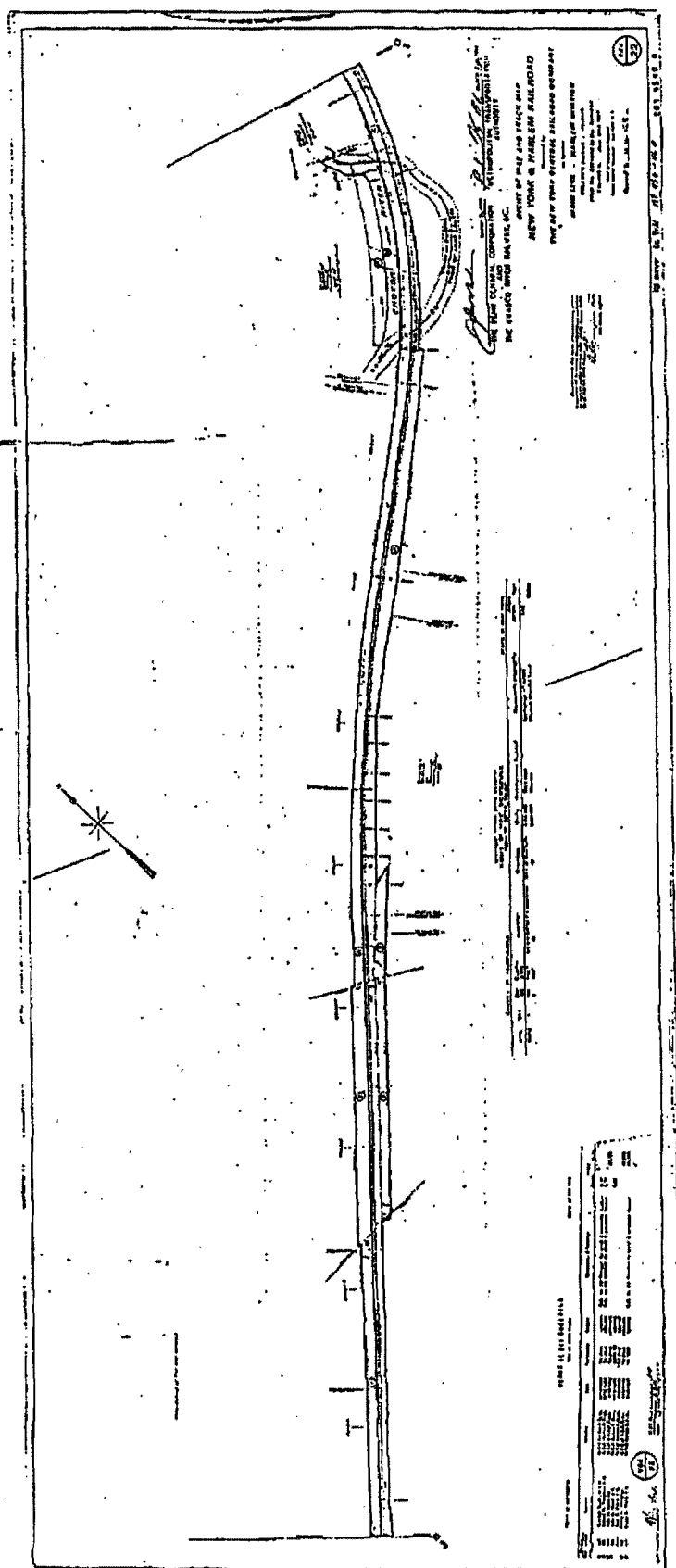
NEW YORK & MARYLAND RAILROAD
The Office of the Chief Engineer
The Office of the Chief Engineer
The Office of the Chief Engineer

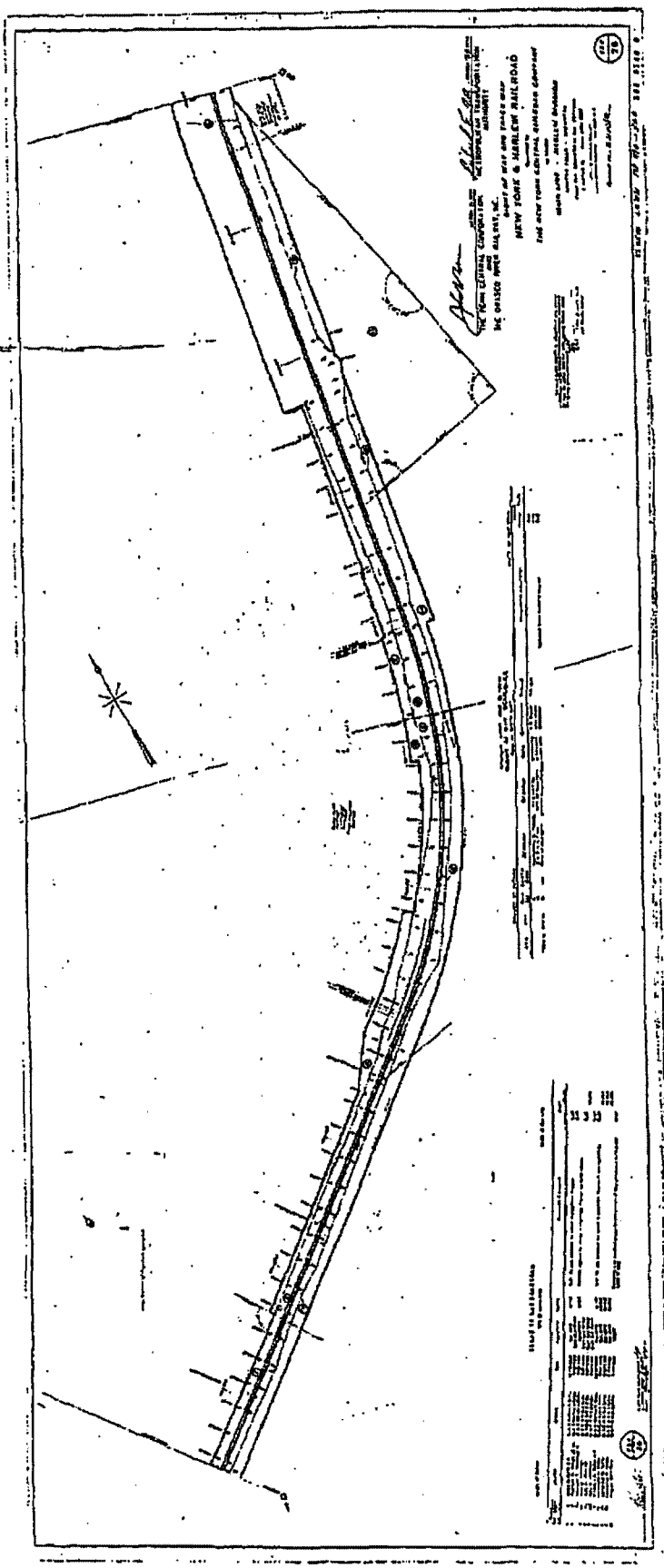
TABLE OF DISTANCES

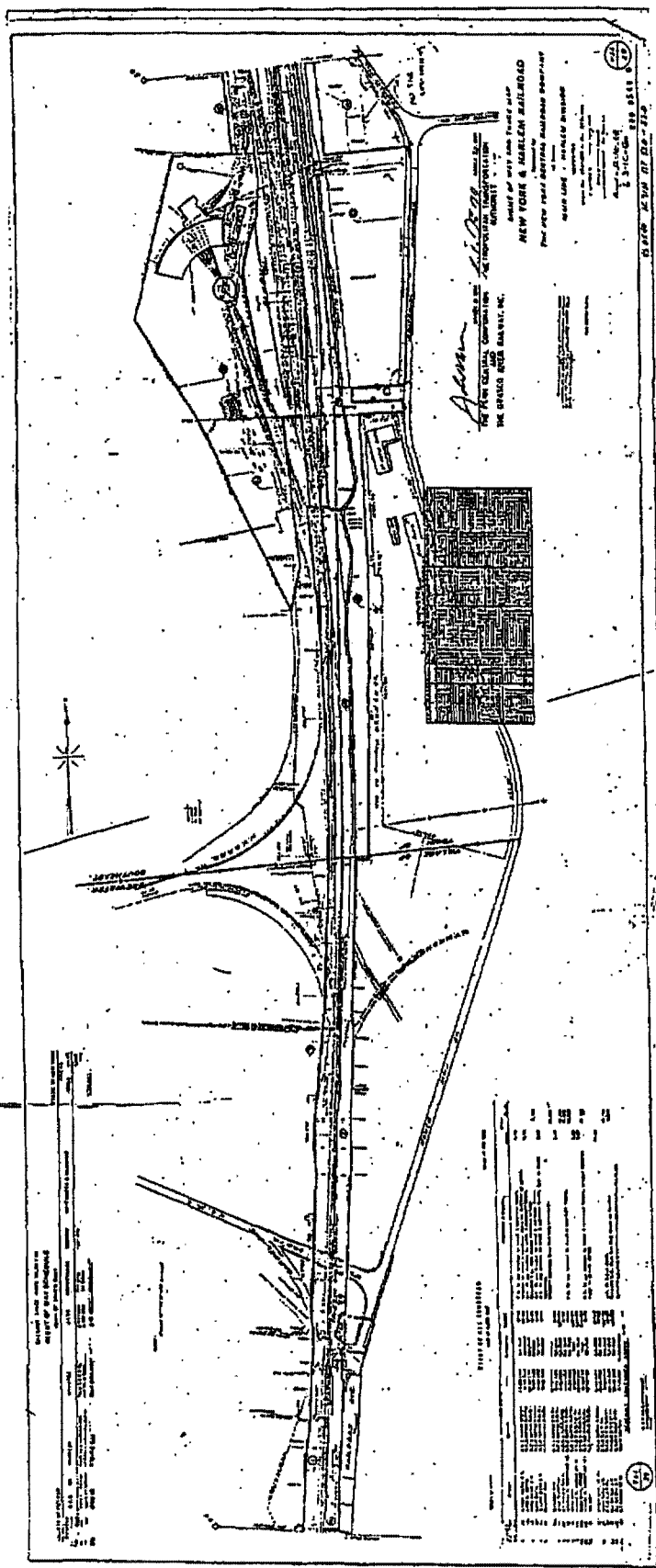
Station	Distance from New York	Distance from Baltimore
New York	0	100
Jersey City	10	90
Paterson	20	80
Elizabeth	30	70
Clark	40	60
Montclair	50	50
Passaic	60	40
Wayne	70	30
Rocky Hill	80	20
Highland	90	10
Baltimore	100	0

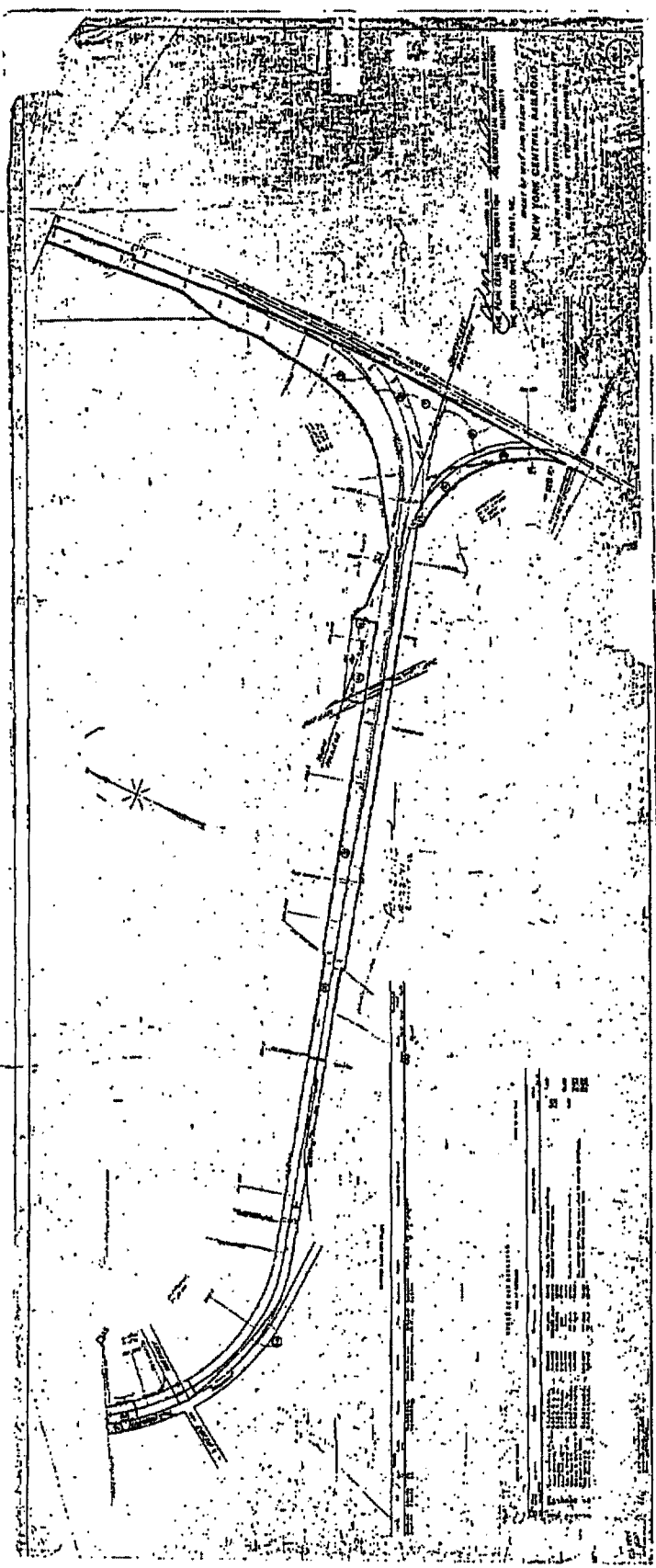


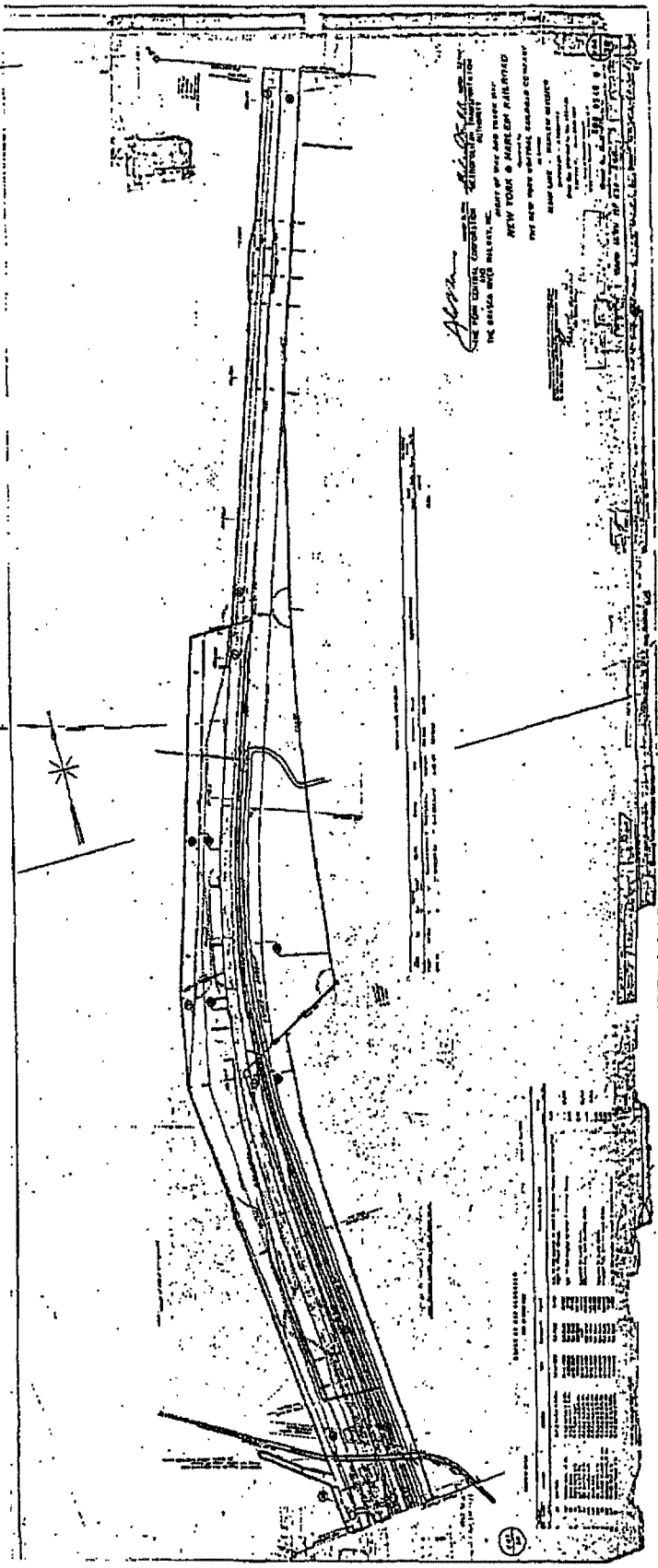












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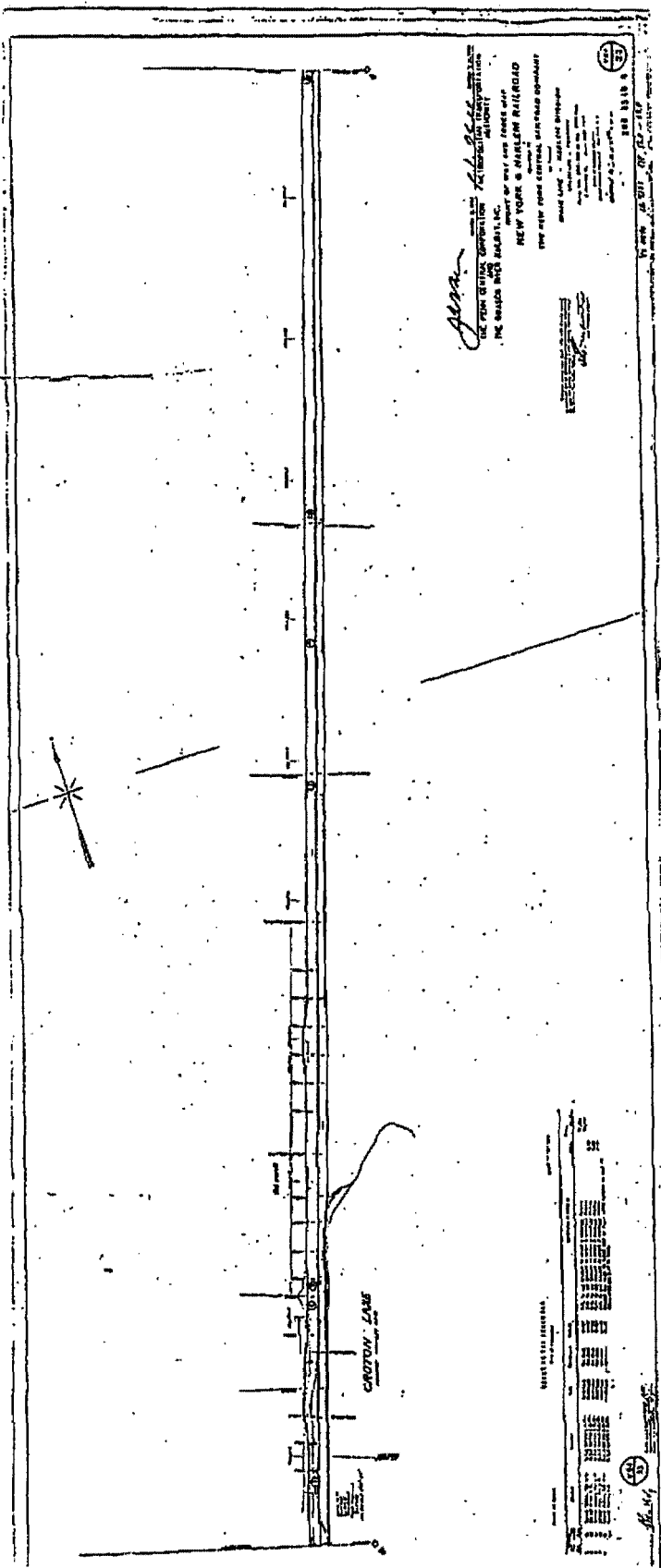
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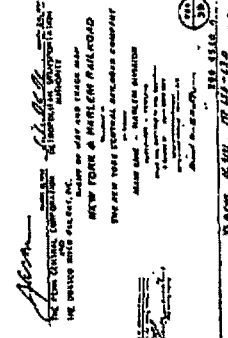
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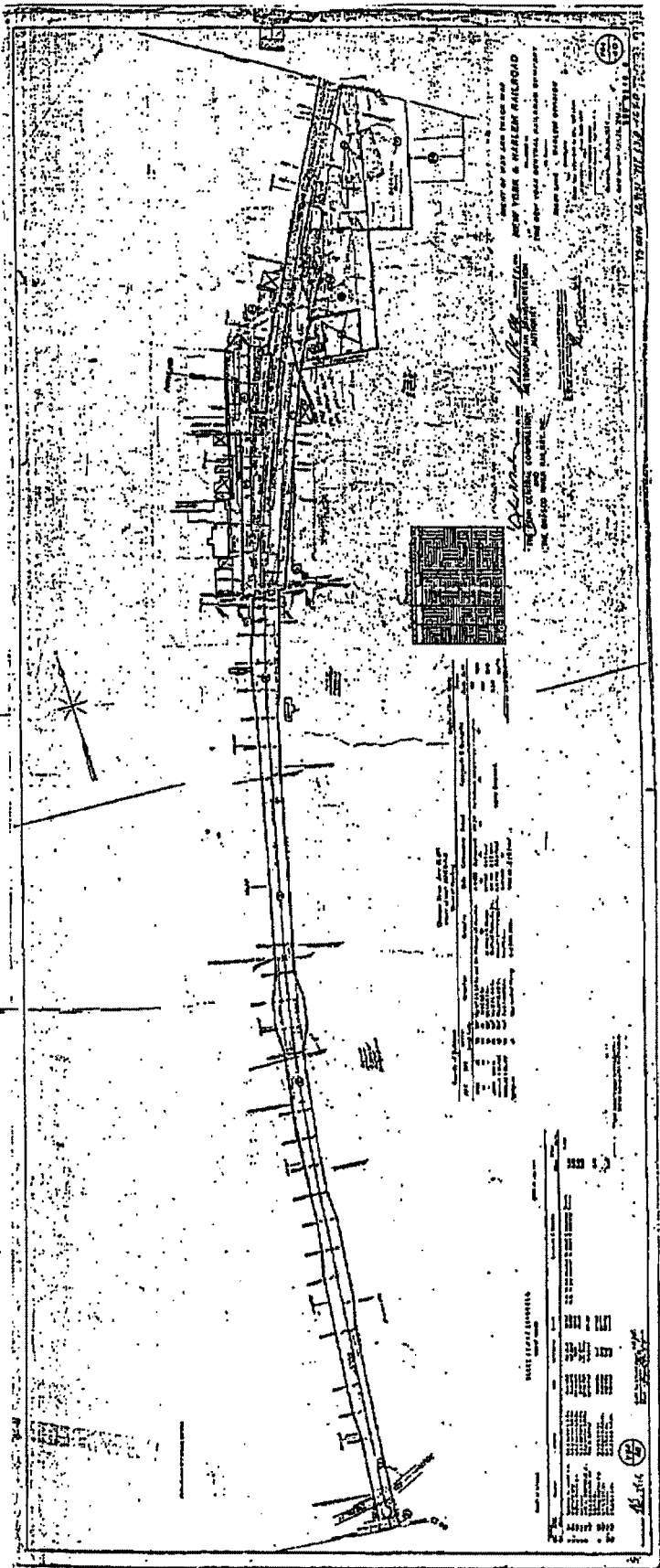
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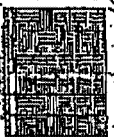
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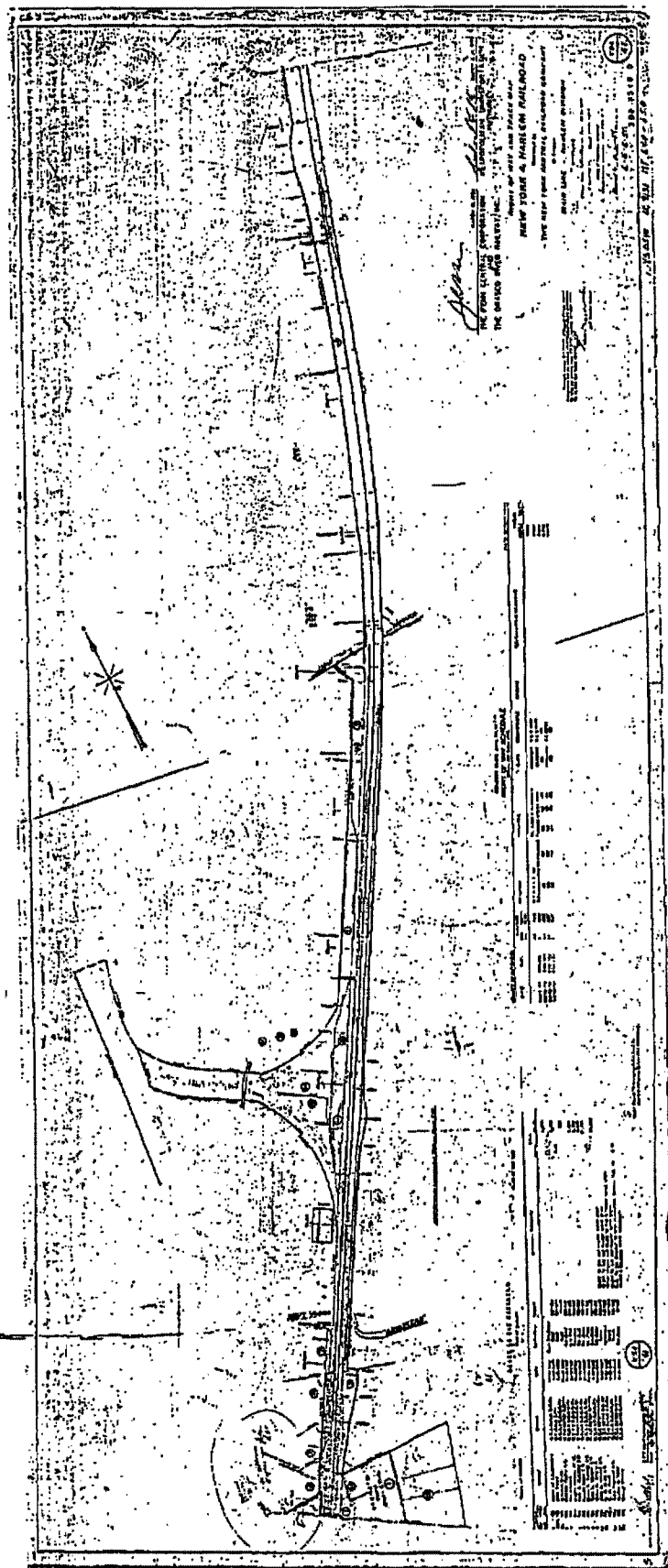


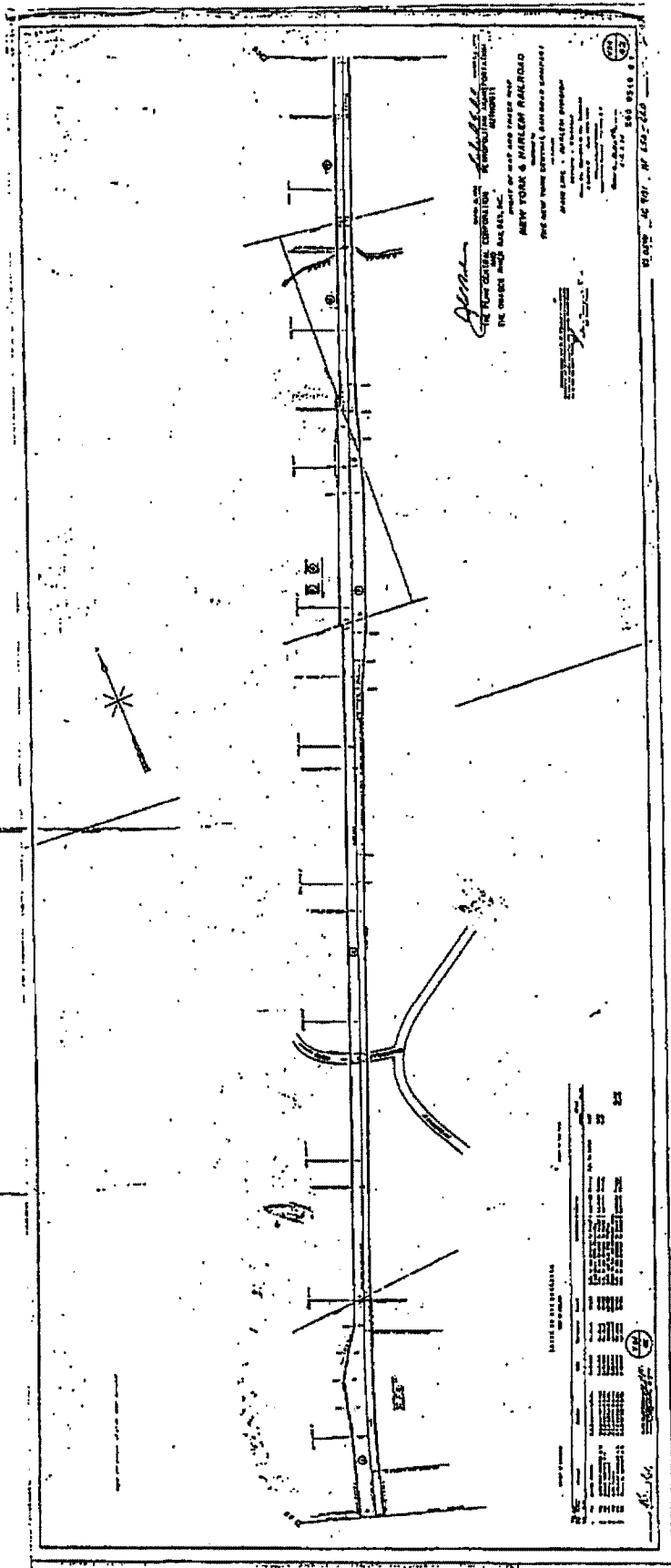
NEW YORK & HAVEN RAILROAD
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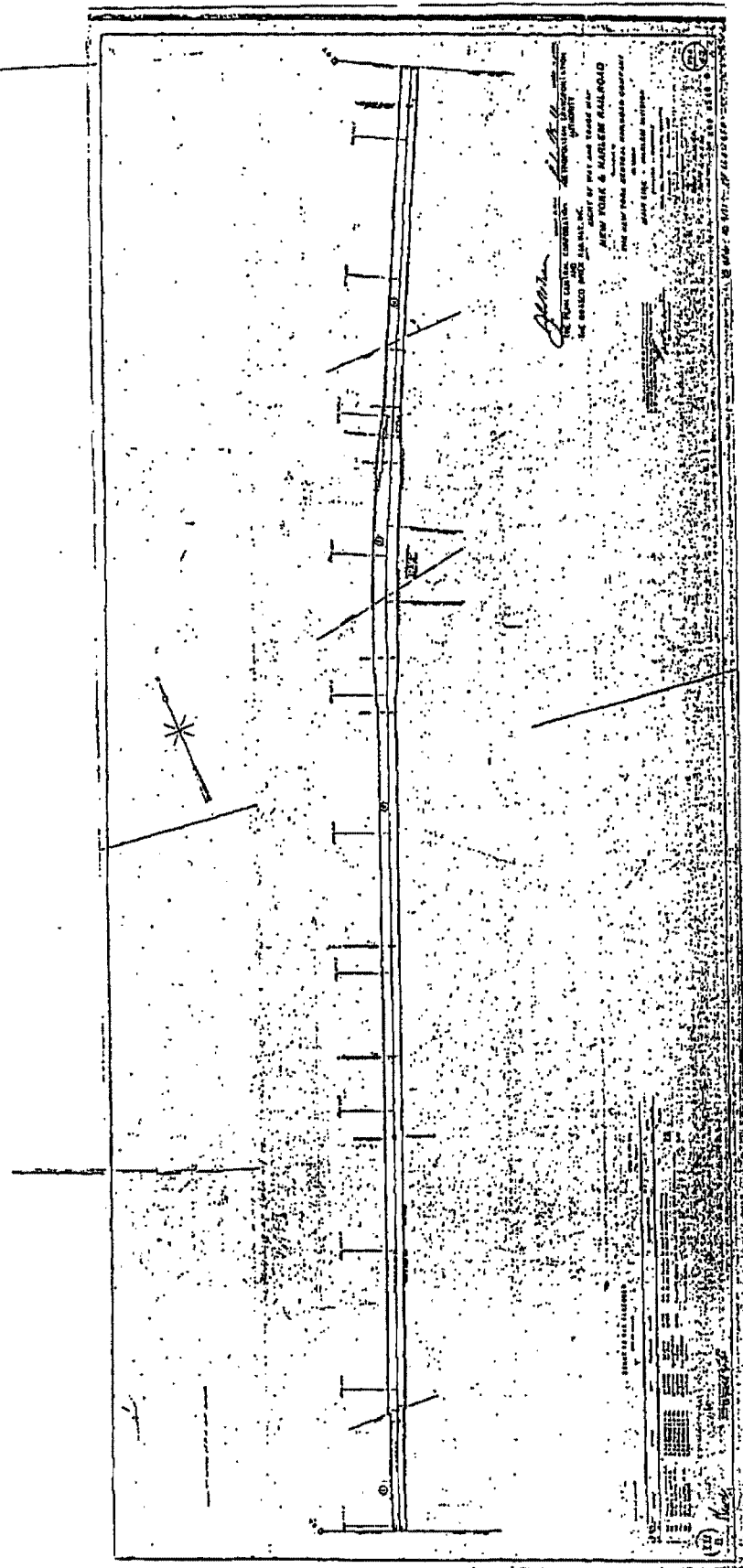


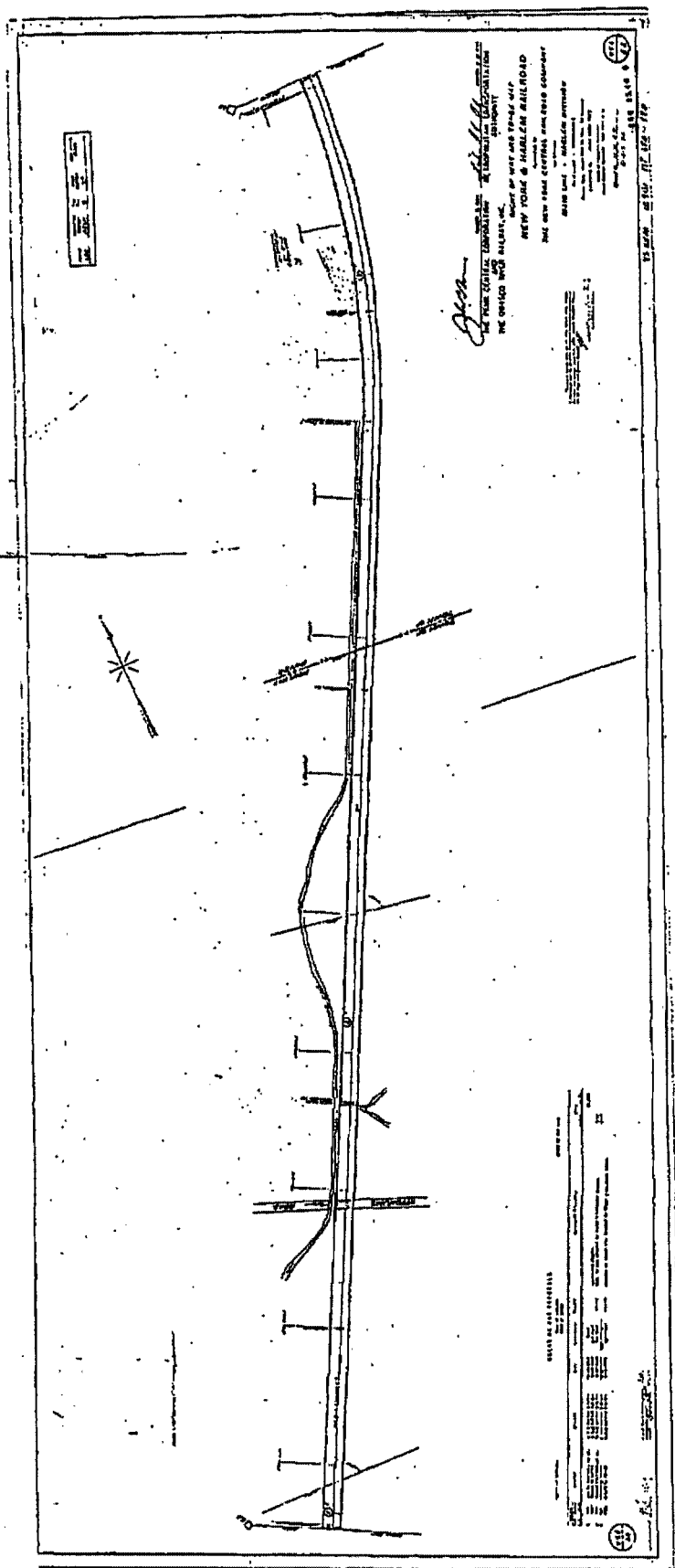
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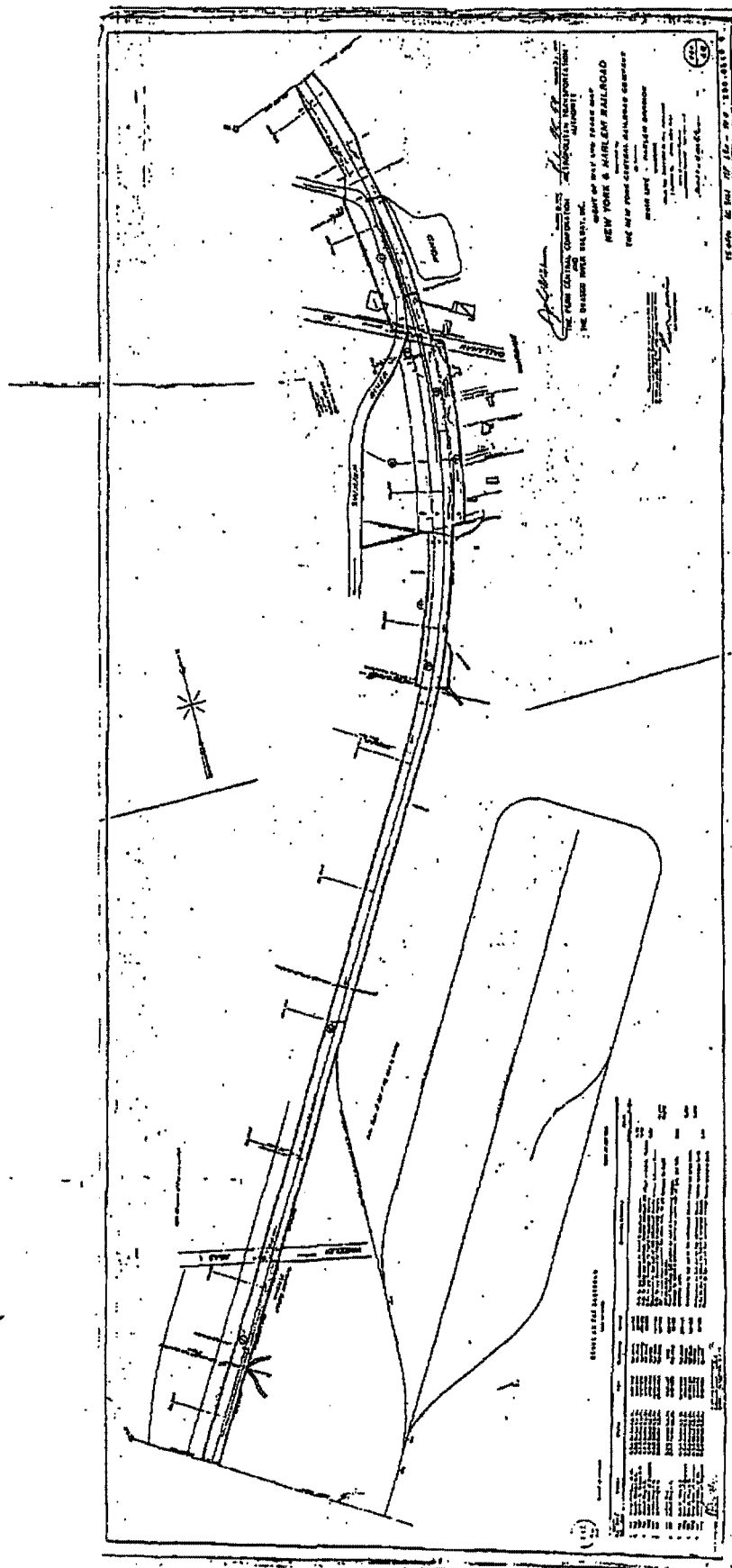
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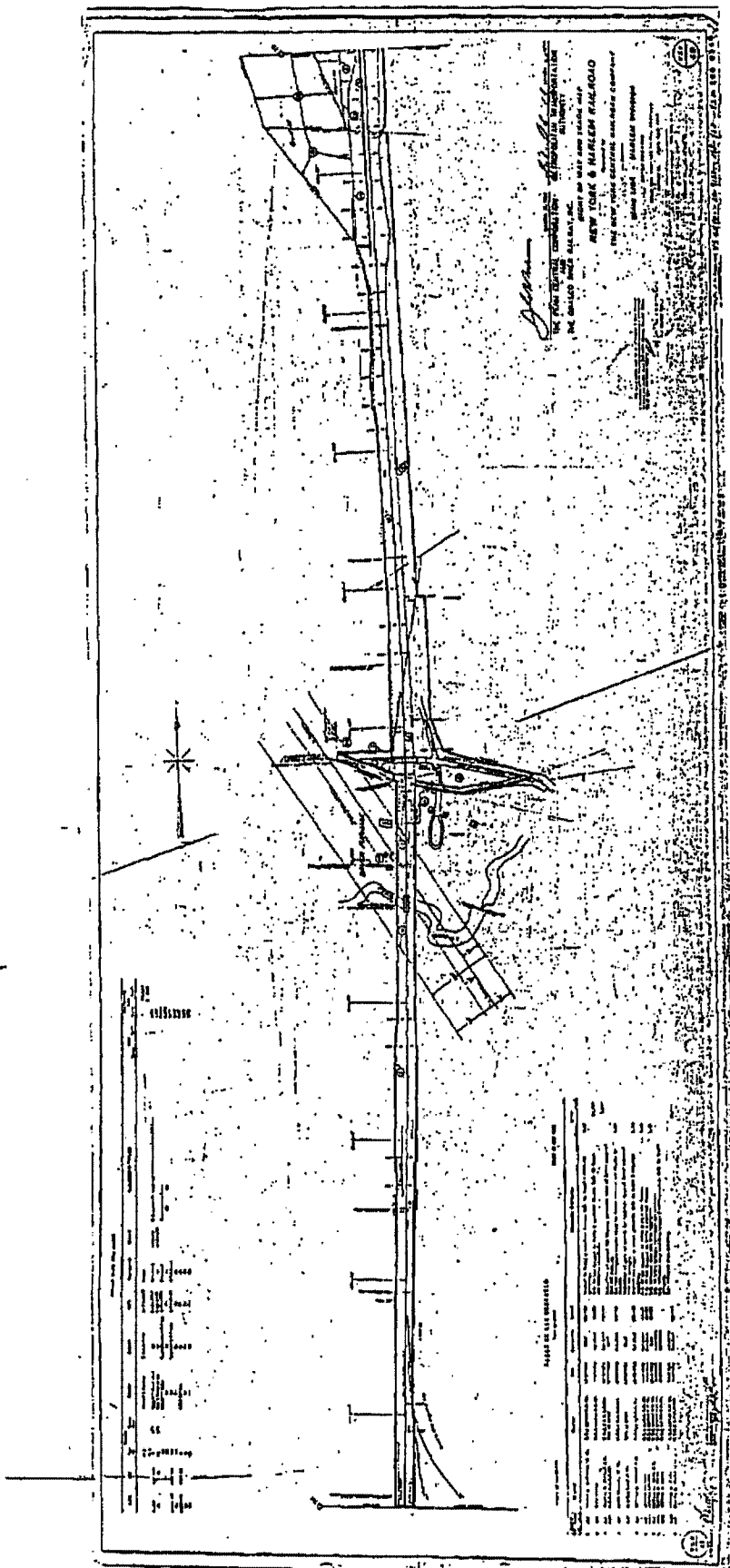


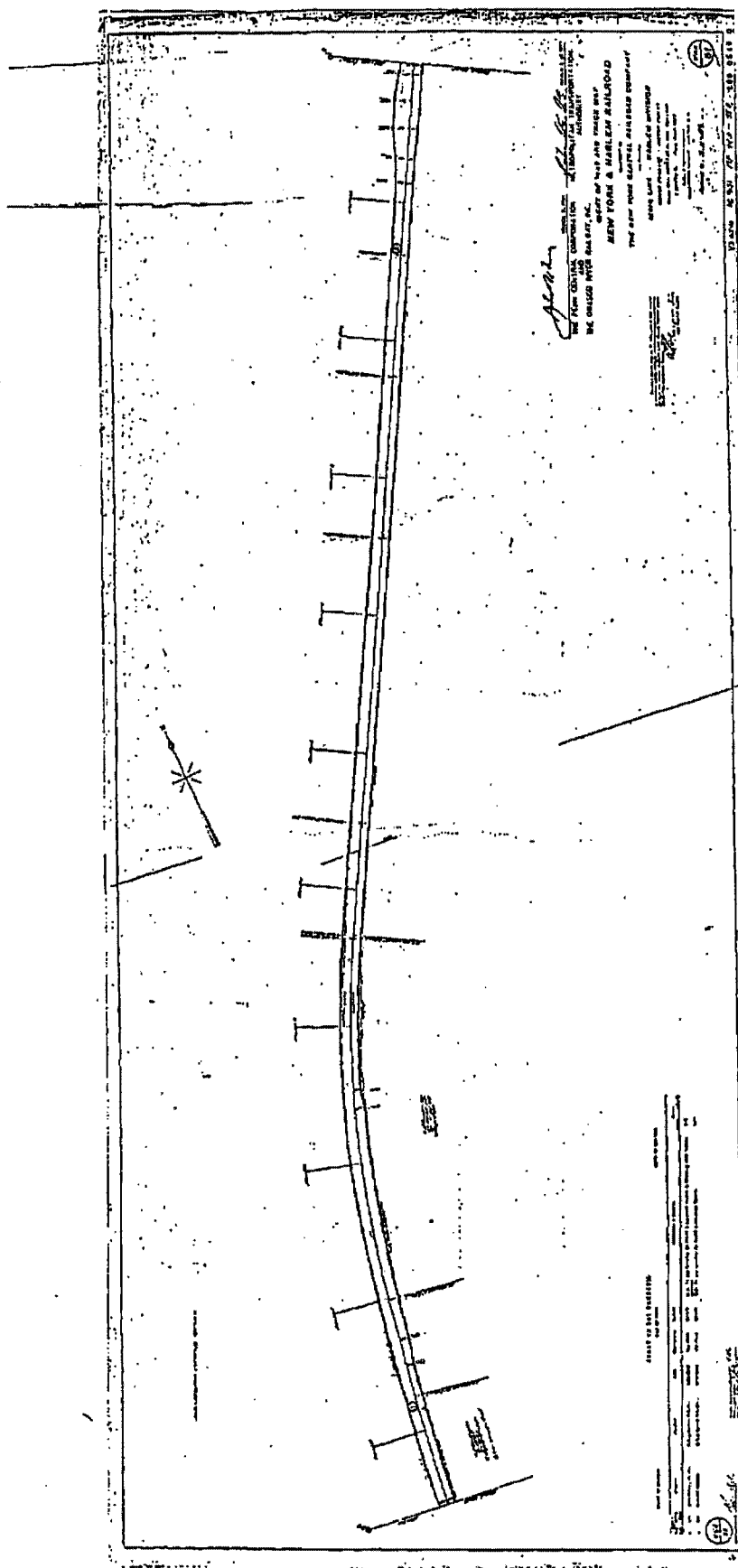












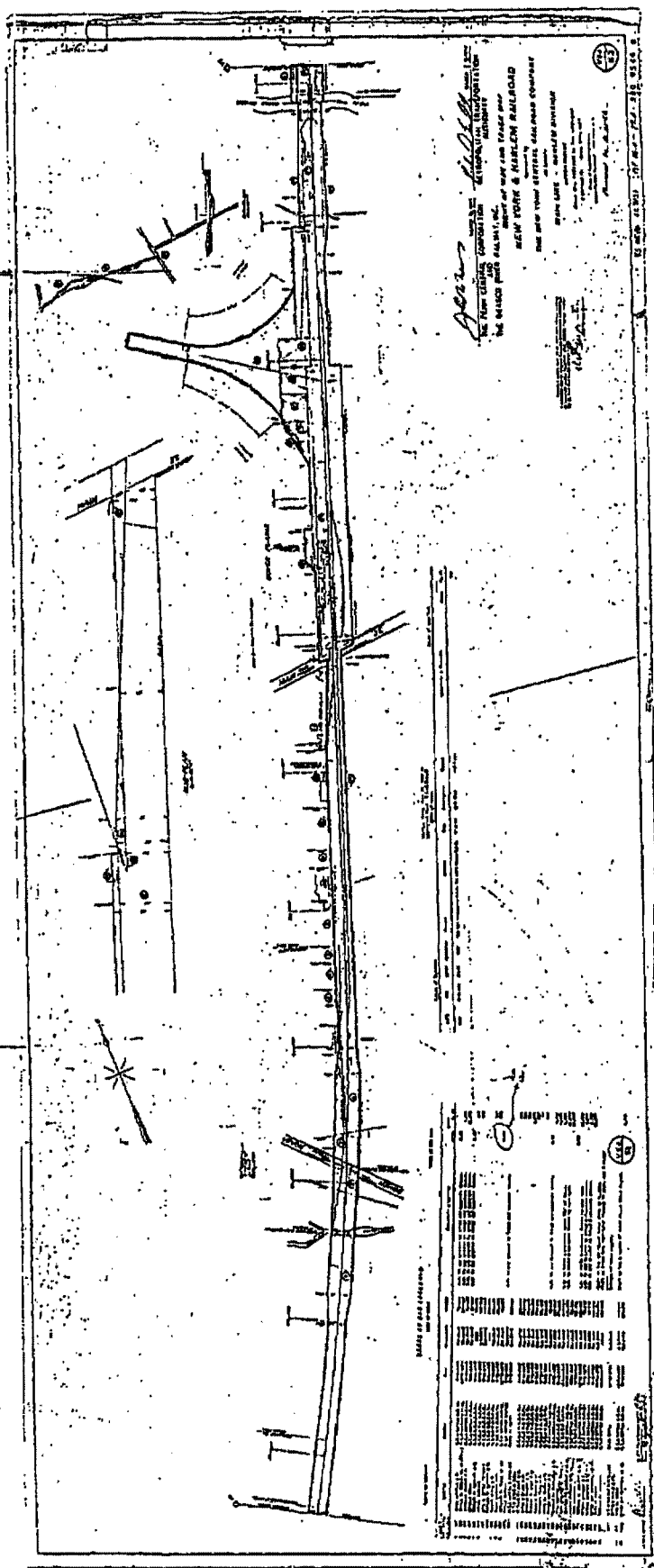


Exhibit A-3
Description of Harlem Line

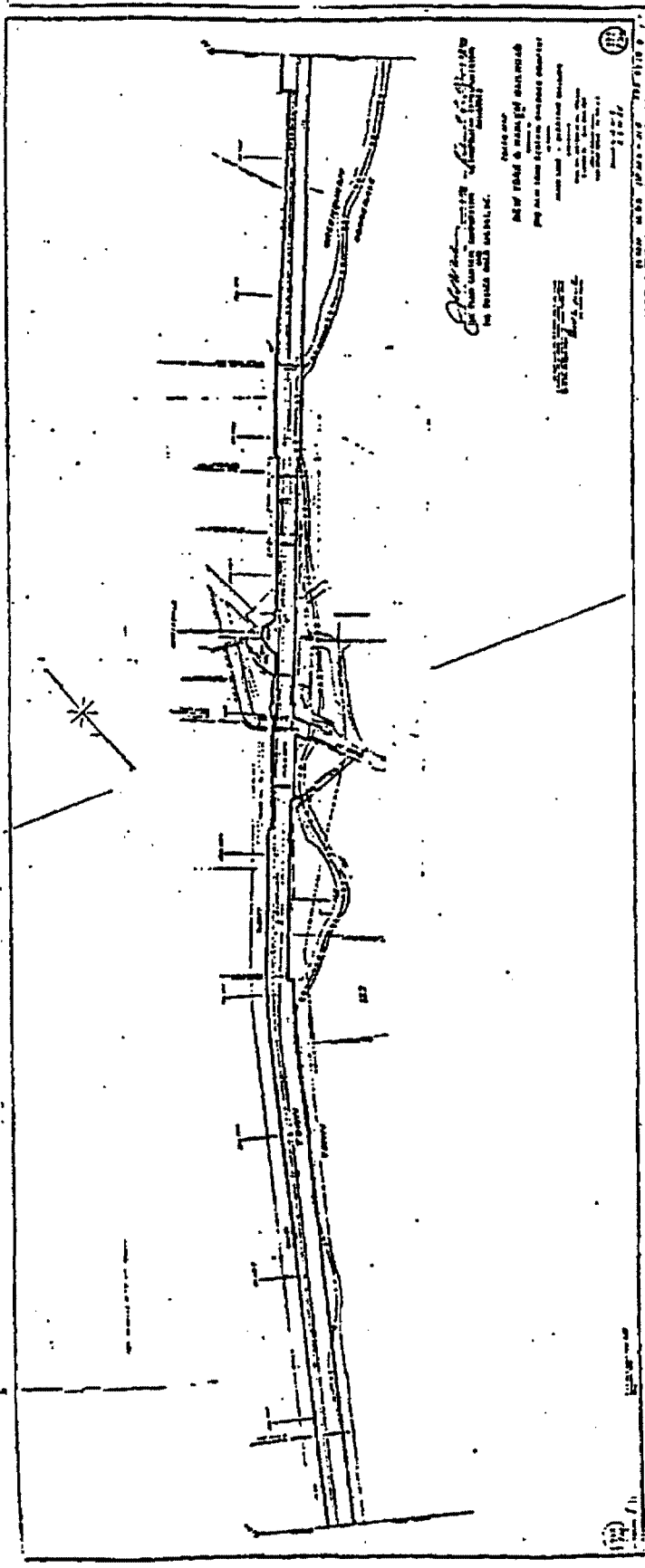
All right, title and interest of American Premier Underwriters, Inc. (formerly known as The Penn Central Corporation) and The Owasco River Railway, Inc. (collectively, "Landlord") in and to that railroad line, commonly known as the Metro-North Commuter Railroad Harlem Line, located in the counties of New York, Bronx, Westchester, Putnam and Dutchess, which line is depicted on the 1917 valuation maps of The New York and Harlem Railroad Company (the "Harlem Line Premises"), reduced copies of which maps are annexed hereto, including but not limited to the following:

(a) (i) land lying in the bed of any street, highway, road or avenue, open or proposed, public or private, in front of or adjoining the Harlem Line Premises, to the center lines thereof; (ii) rights of way, highways, public places, easements, appendages, appurtenances, sidewalks, alleys, strips and gores of land adjoining or appurtenant to the Harlem Line Premises which are now or hereafter used in connection therewith; (iii) awards made or to be made in lieu of any of the foregoing, and all unpaid awards or other proceeds for damages to the Harlem Line Premises by reason of the change of grade of any street, highway, road or avenue; (iv) the subsurface of the Harlem Line Premises; (v) all air rights appurtenant to the Harlem Line Premises, excluding, to the extent applicable, all unused development rights appurtenant to the building commonly known as Grand Central Terminal (or any replacement thereof located on a portion of the Harlem Line Premises) (the "GCT Building") or the land comprising Block 1280, Lot 1 in the City, County and State of New York upon which the GCT Building is located, other than 100,000 square feet of said development rights (to the extent same remain unused) that were granted to Metropolitan Transportation Authority ("MTA") pursuant to a certain Amended and Restated Agreement of Lease between Landlord and MTA, a memorandum of which is intended to be recorded in the land records; (vi) all rights under franchise agreements; and (vii) all riparian rights in land under water and all lands under water, water courses, water rights and riparian rights in connection with the Harlem Line Premises.

(b) the GCT Building and all other buildings, facilities, structures (including, without limitation, footings and foundations), and other

improvements of every kind, nature and description whatsoever now located or hereafter erected, constructed or placed upon or within the Harlem Line Premises, all fixtures constituting a part thereof, and all alterations, changes and additions thereto including, without limitation, all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Harlem Line Premises (from and after the purchase of same) including, without limitation, all shop, engine house and repair track machinery and equipment (including machinery and equipment located in yards or terminals for the repair and servicing of trains, locomotives or cars, including "MU" cars) and all other machinery, apparatus, devices, motors, dynamos, engines, compressors, pumps, boilers and burners; heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; all ties, rails, switches and other track material, ballast, track laying and servicing material, station houses, tool houses, fences and other right of way material, all signal system apparatus, including interlockers, sidings, turnouts, bridges, tunnels, viaducts, culverts, turntables, fences, pole lines and wires, overhead conductors, power transmission systems equipment (including power substation equipment, power and control cable and third rail systems), chutes, ducts, pipes, tanks and fittings; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory equipment; communications systems and public address equipment; fire prevention and extinguishing equipment; and all additions thereto and replacements thereof; excluding, however, any of the foregoing which are owned by utility companies providing utilities to the improvements or by any subtenants of MTA; and

(c) any and all operating and trackage rights over the Harlem Line Premises, including, without limitation, the right of Landlord to (i) operate freight trains, cars and locomotives over the Harlem Line Premises; (ii) provide through and local freight service (including mail and express) over the Harlem Line Premises; (iii) operate long haul (through) passenger trains, cars and locomotives (including baggage, mail and express over the Harlem Line Premises; (iv) operate suburban (or commuter) railroad passenger services over the Harlem Line Premises, as they may be from time to time constituted; and (v) use any portion of the Harlem Line Premises for the operation of any and all equipment and facilities in connection with providing long haul passenger, freight and suburban services over the Harlem Line Premises.



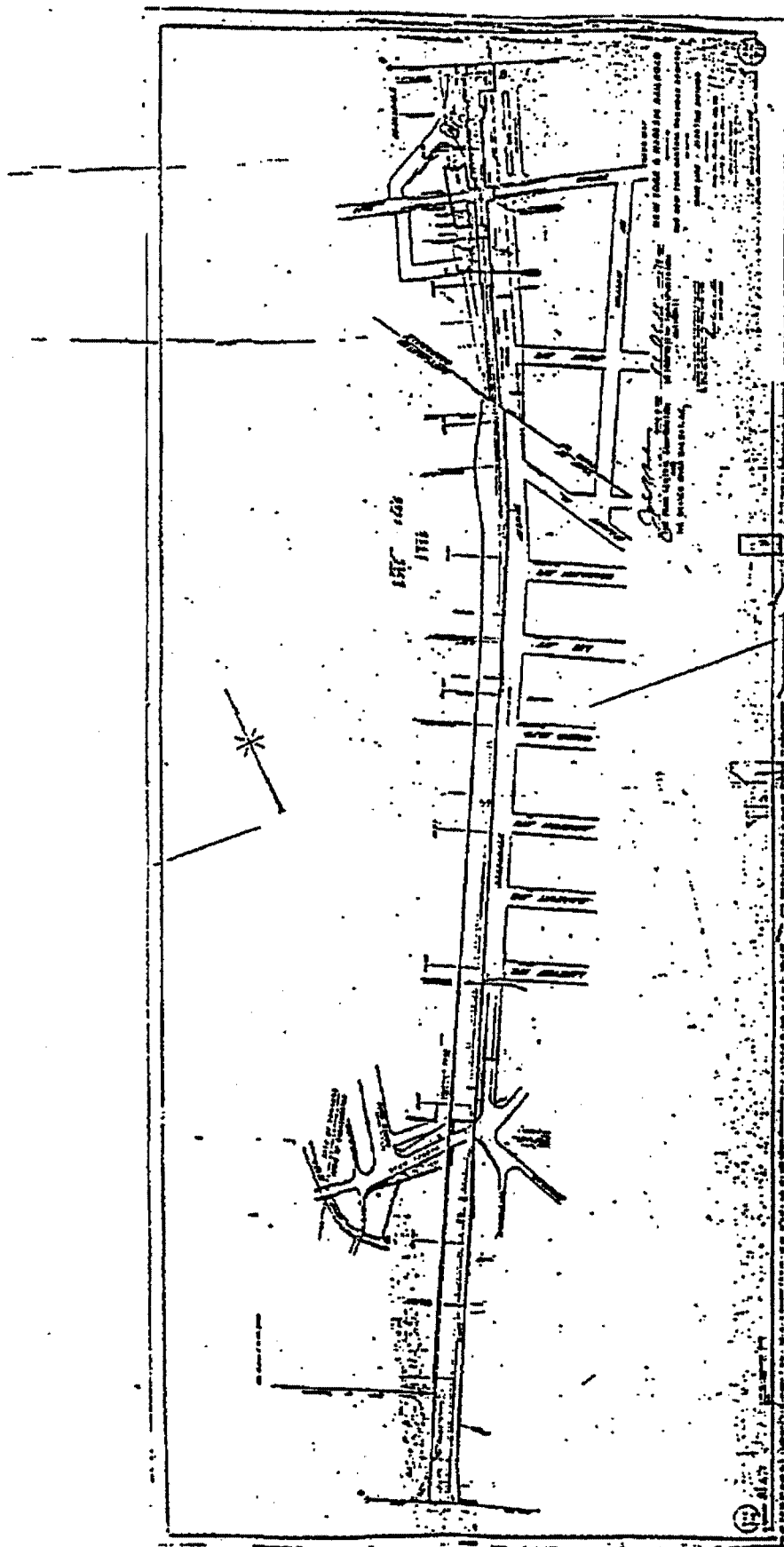
*Plan of the proposed
new road & main line
of the proposed
road & main line
of the proposed
road & main line*

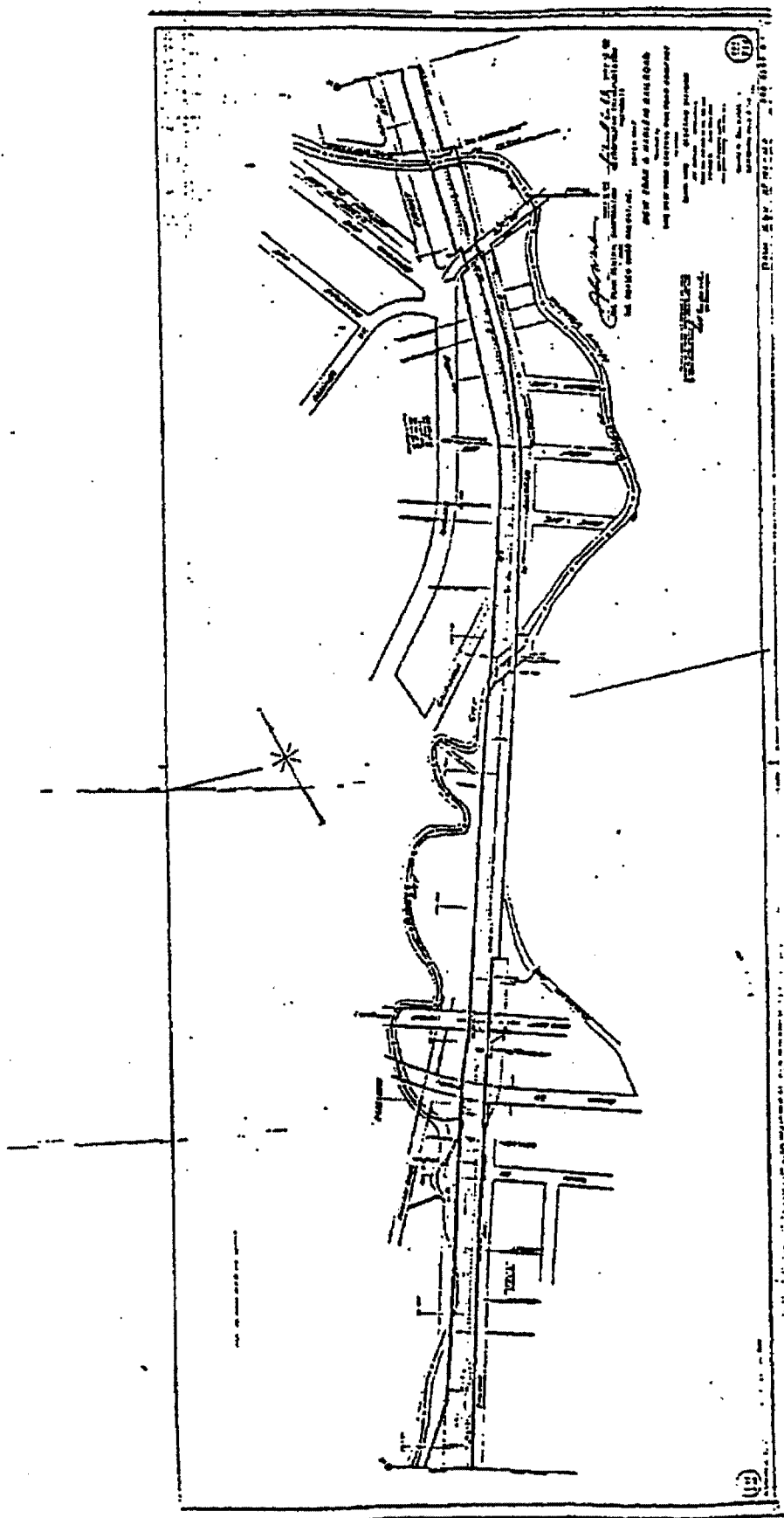
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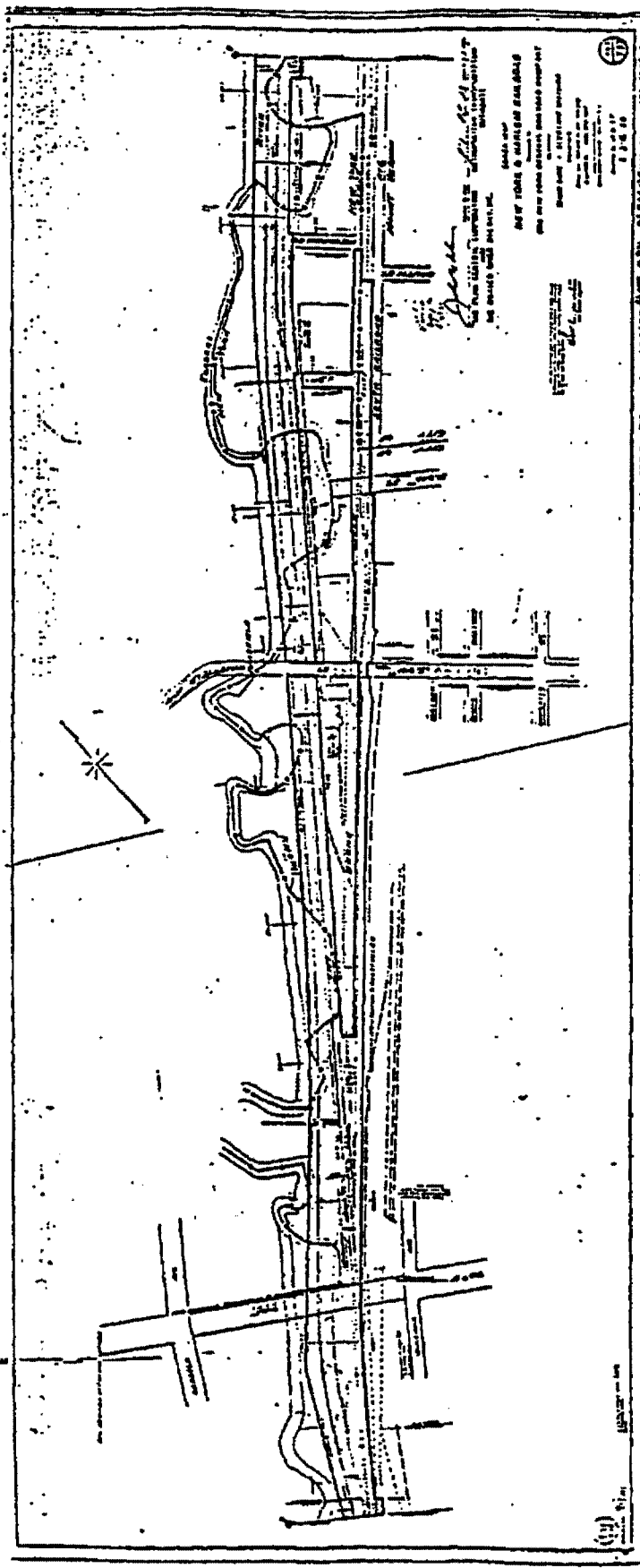
NEW ROAD & MAIN LINE
OF THE PROPOSED
ROAD & MAIN LINE
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ROAD & MAIN LINE
OF THE PROPOSED
ROAD & MAIN LINE

1711

1711







THE GENERAL
MANUFACTURING CORPORATION
NEW YORK, N. Y.

THIS DRAWING IS THE PROPERTY OF THE
MANUFACTURING CORPORATION
AND IS NOT TO BE REPRODUCED OR
TRANSMITTED IN ANY FORM OR BY ANY
MEANS, ELECTRONIC OR MECHANICAL,
INCLUDING PHOTOCOPYING, RECORDING,
OR BY ANY INFORMATION STORAGE AND
RETRIEVAL SYSTEM, WITHOUT THE
WRITTEN PERMISSION OF THE
MANUFACTURING CORPORATION.

1/2" = 1'-0"

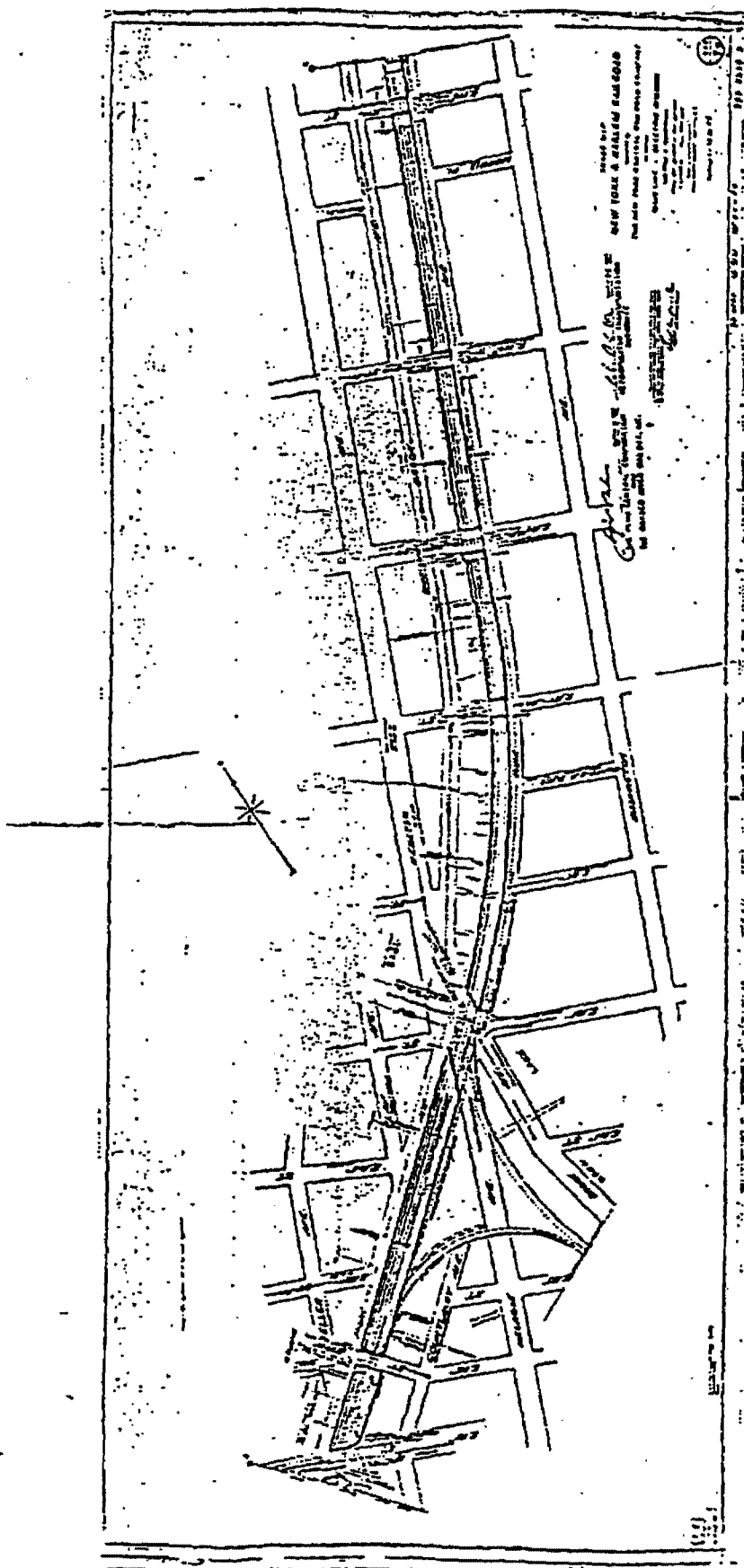


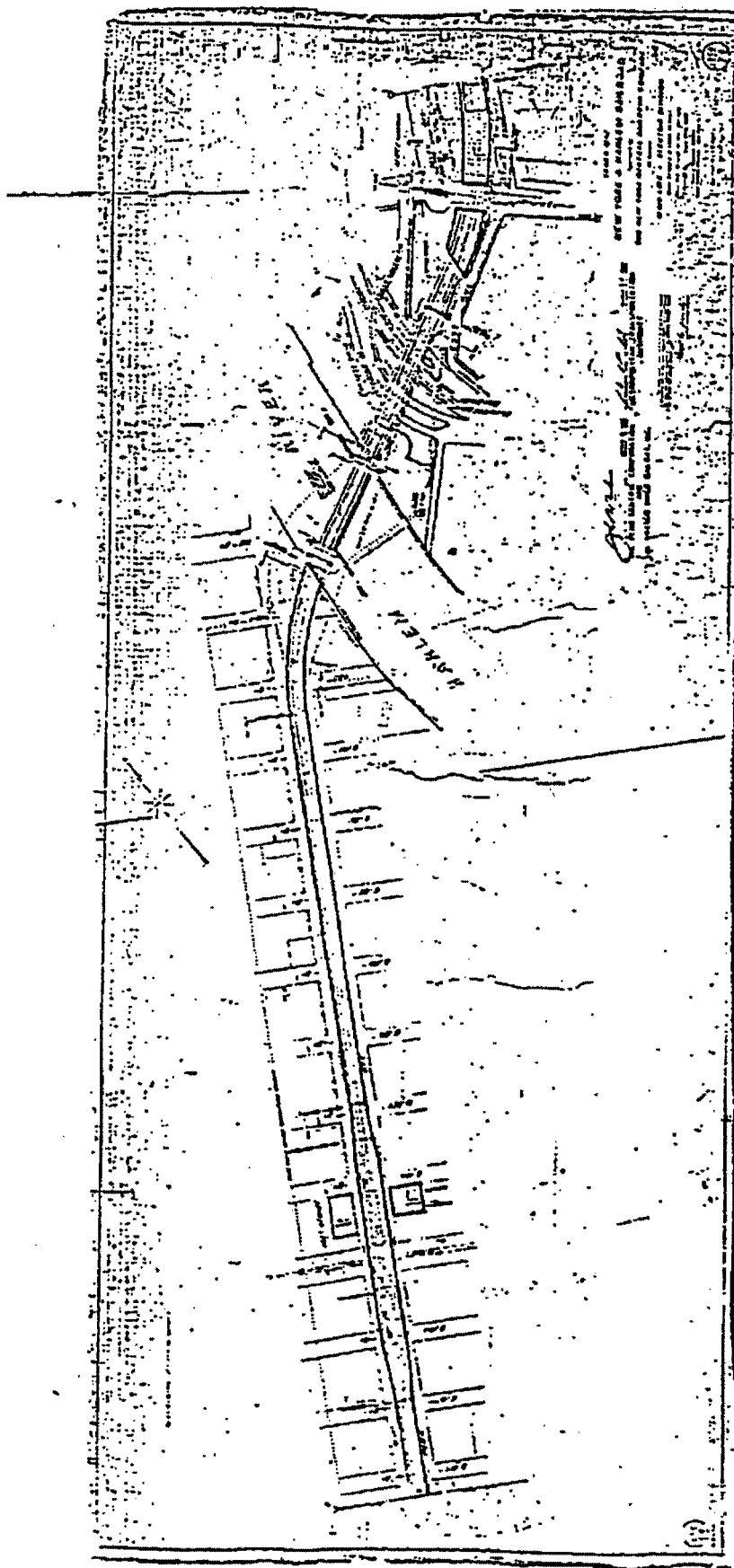
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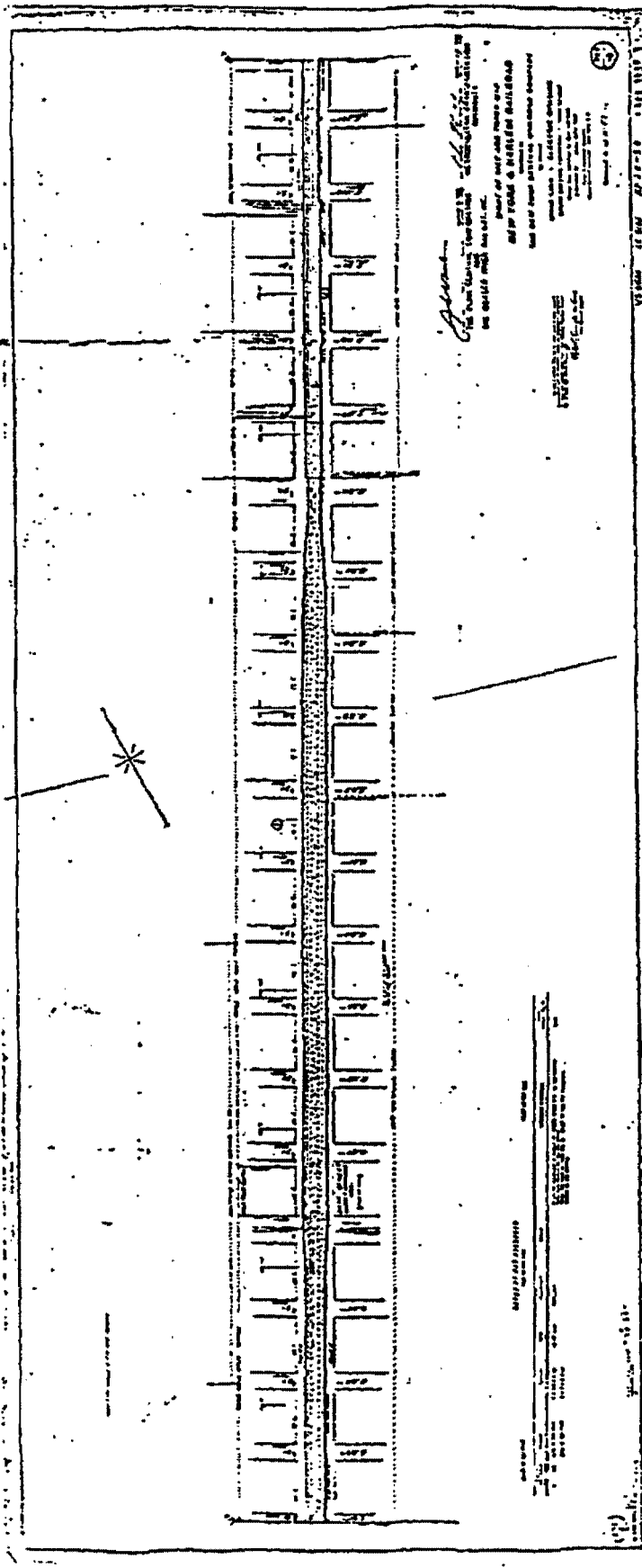
1/2" = 1'-0"

1/2" = 1'-0"



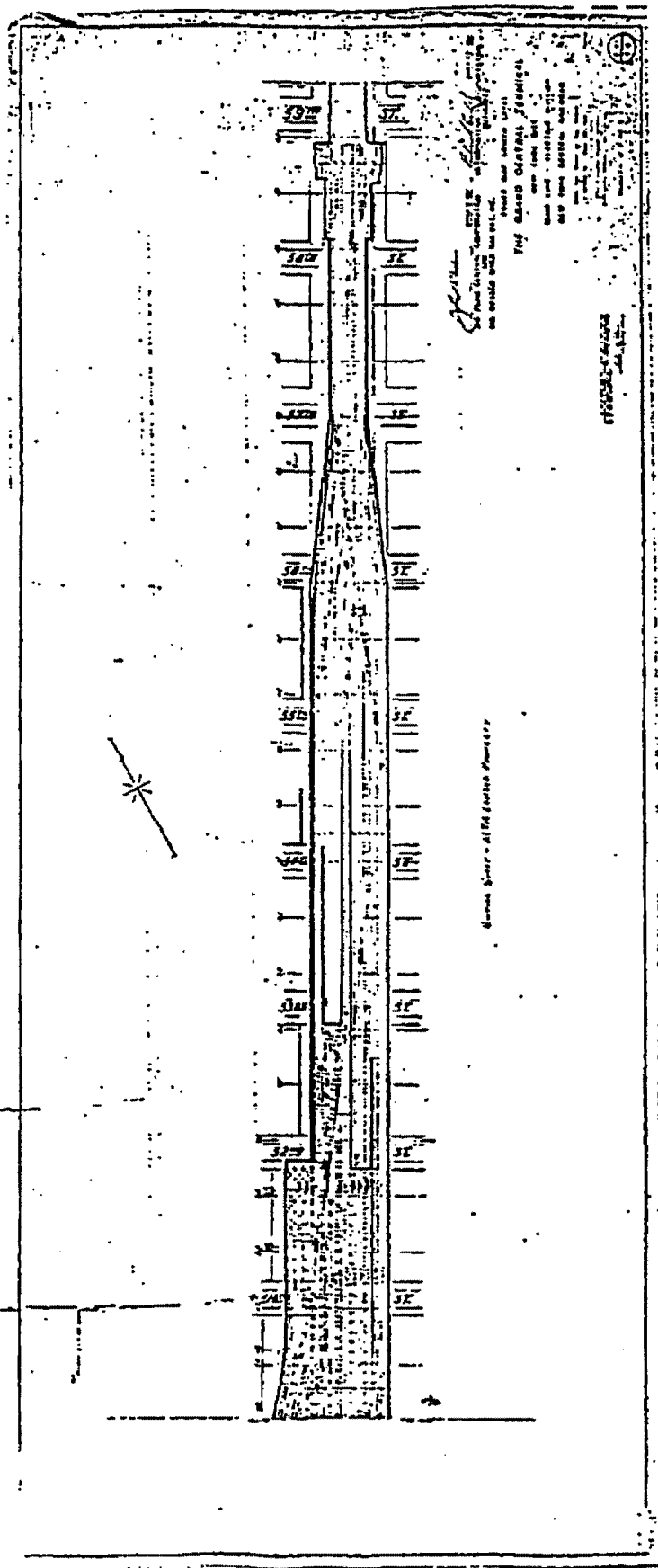


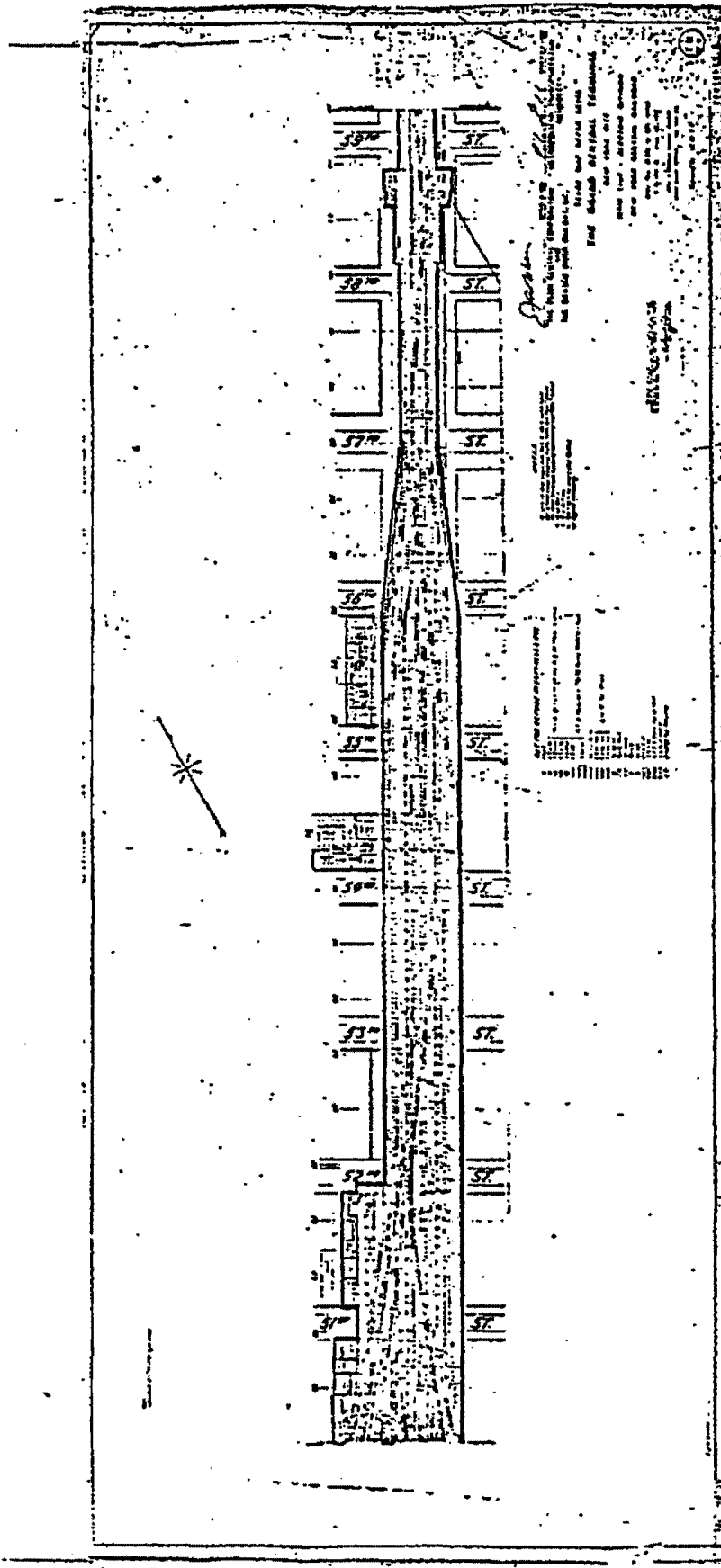


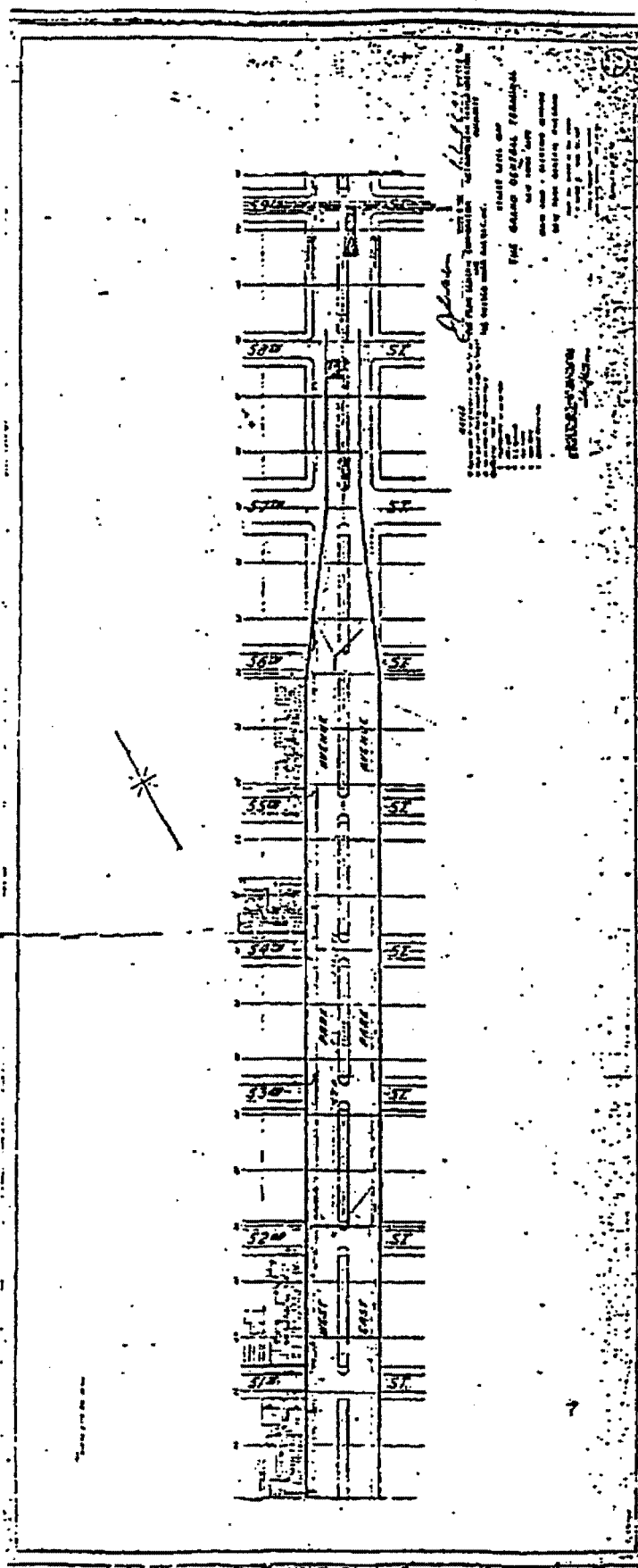


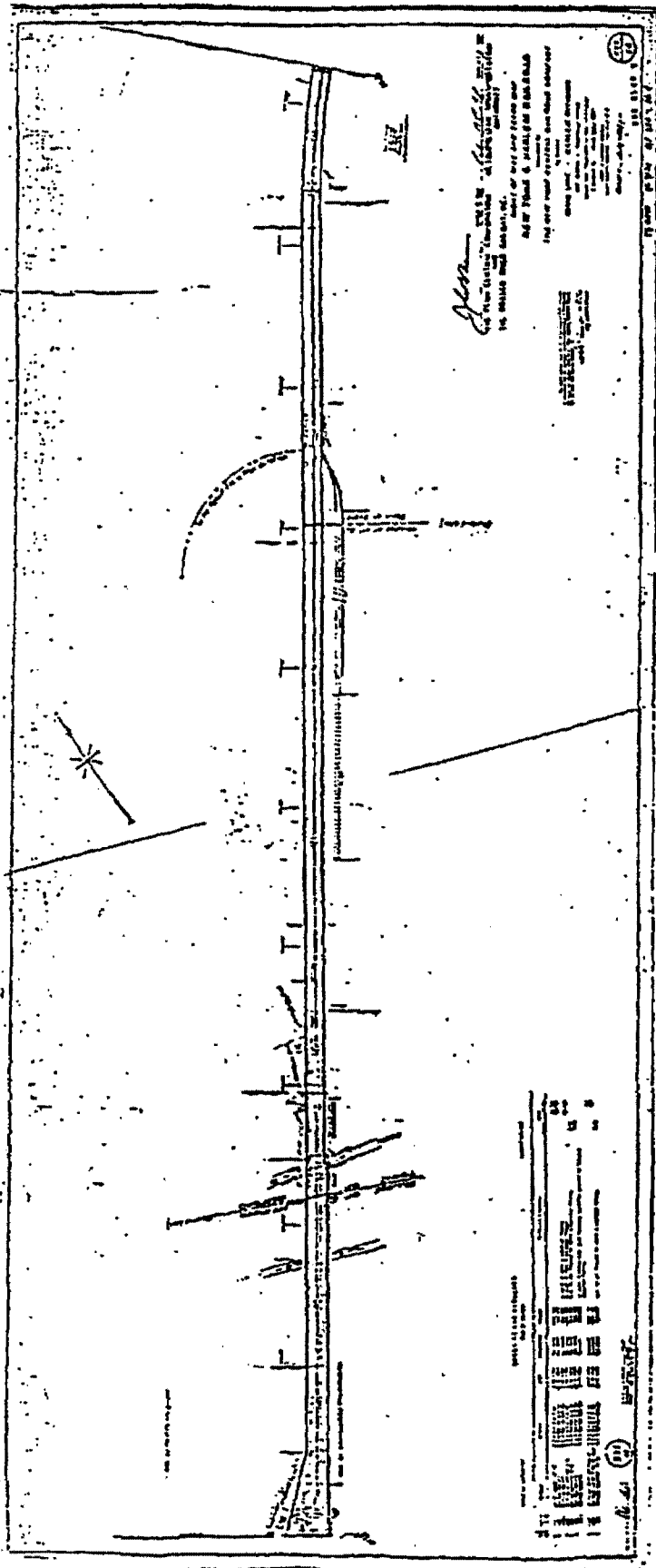
PLAN OF BUILDING
SECTION
The building is a long, narrow structure with a central corridor and rooms on either side. The rooms are numbered and labeled. The plan includes various annotations and labels, including "PLAN OF BUILDING" and "SECTION".

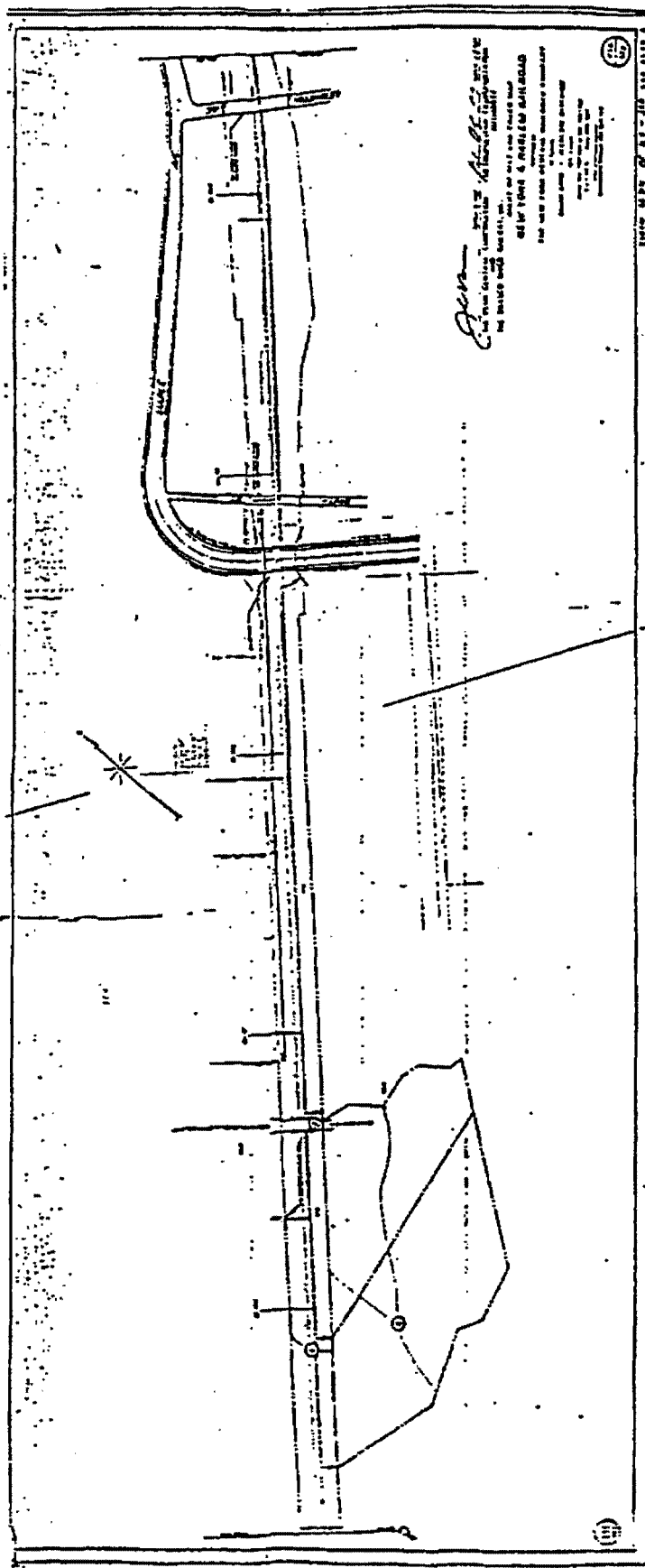
SECTION
The building is a long, narrow structure with a central corridor and rooms on either side. The rooms are numbered and labeled. The plan includes various annotations and labels, including "PLAN OF BUILDING" and "SECTION".

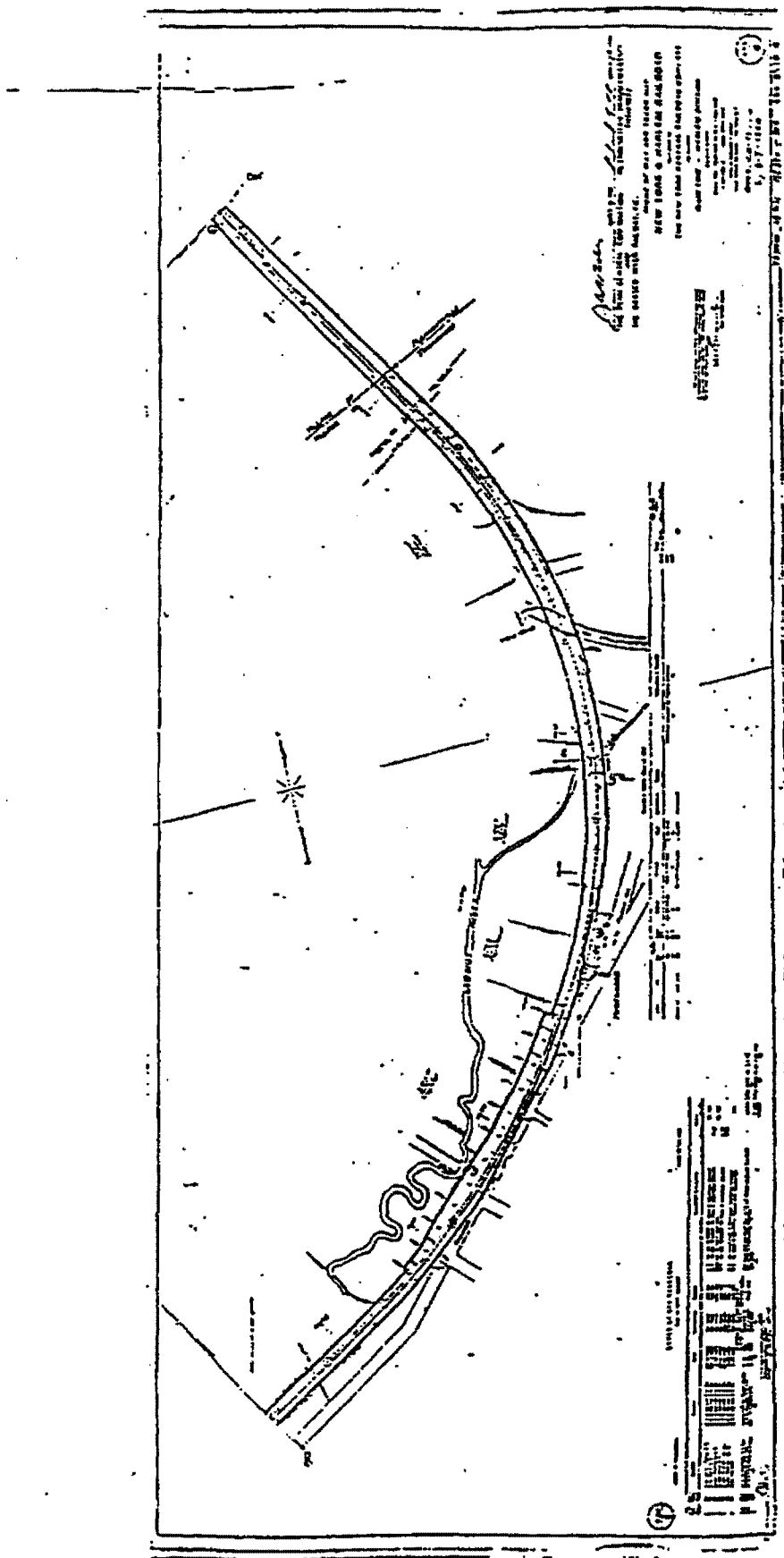


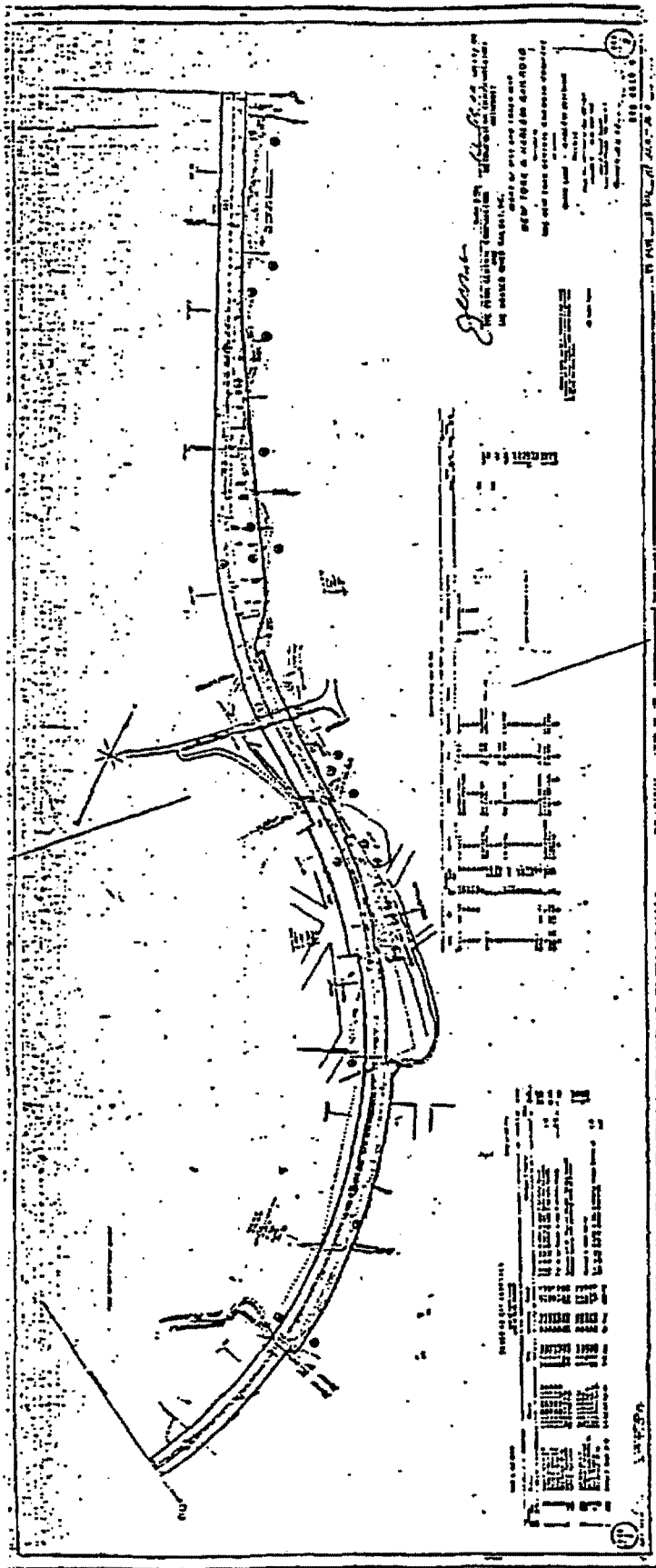


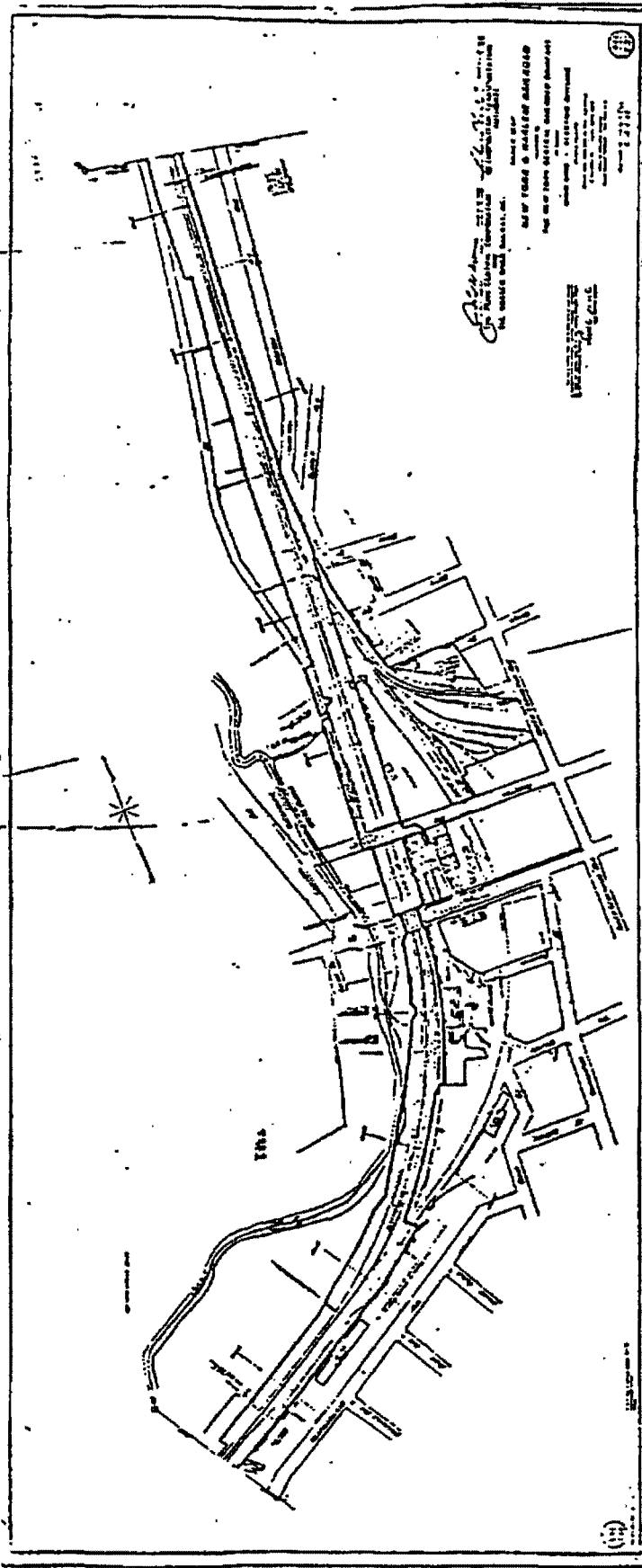












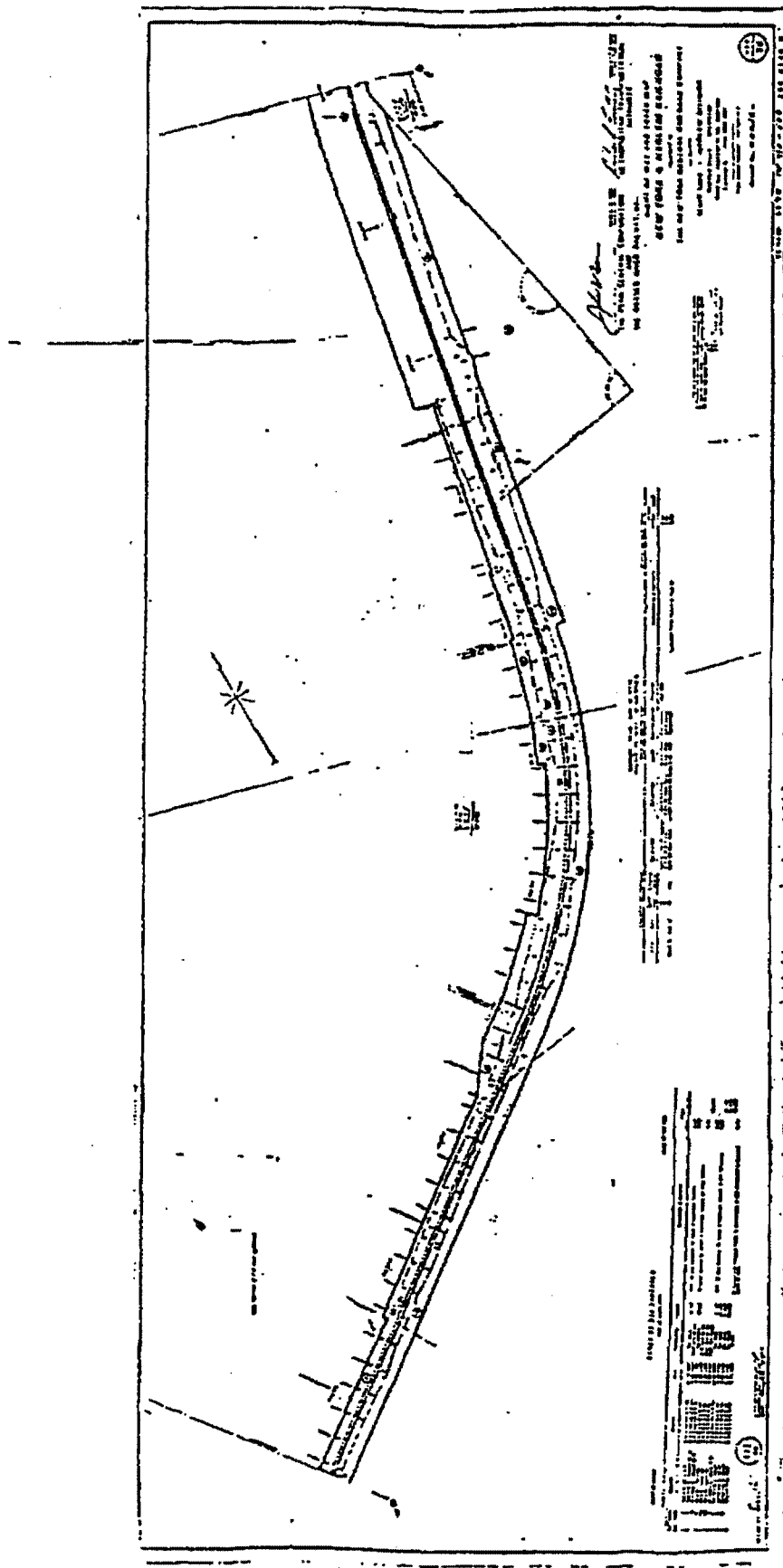
J. H. Smith
Proposed Canal
for the State of California
for the purpose of
irrigation and
navigation.

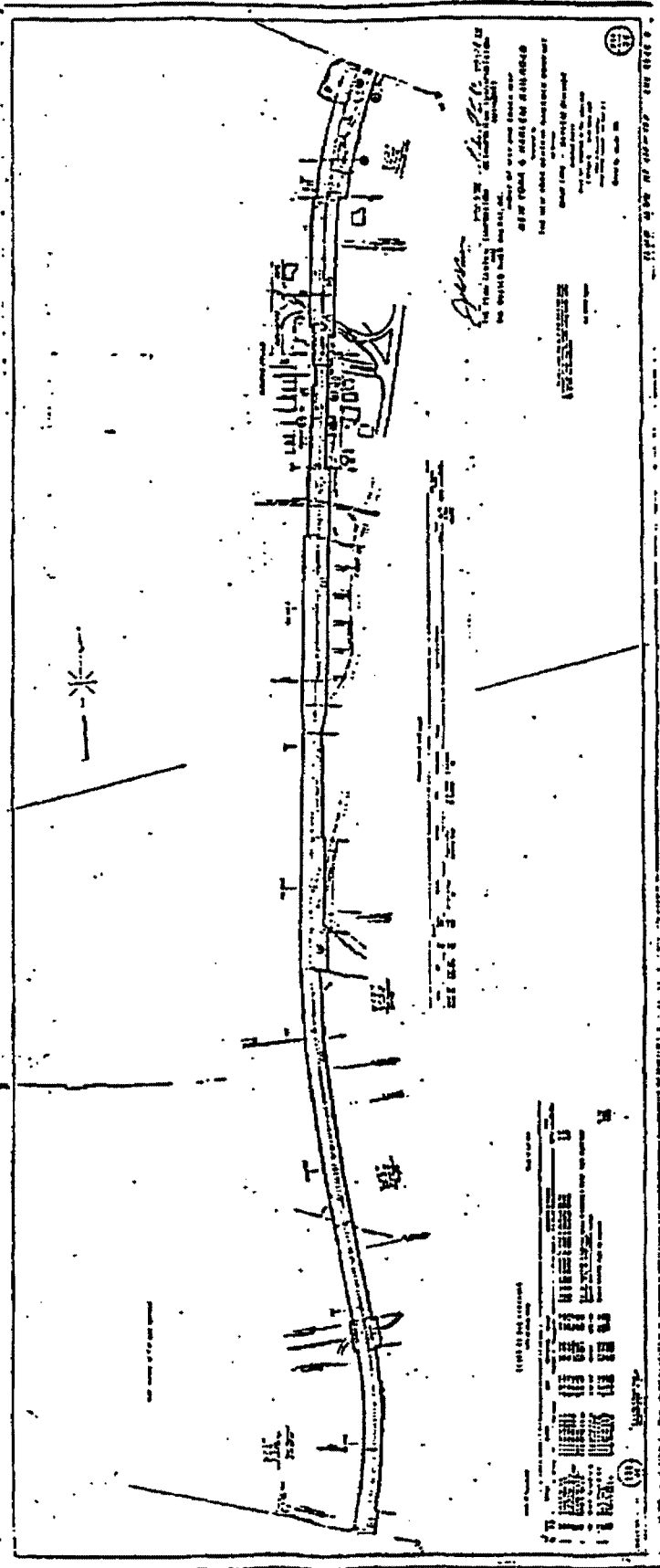
Map of 1880
for the purpose of
irrigation and
navigation.

Map of 1880
for the purpose of
irrigation and
navigation.

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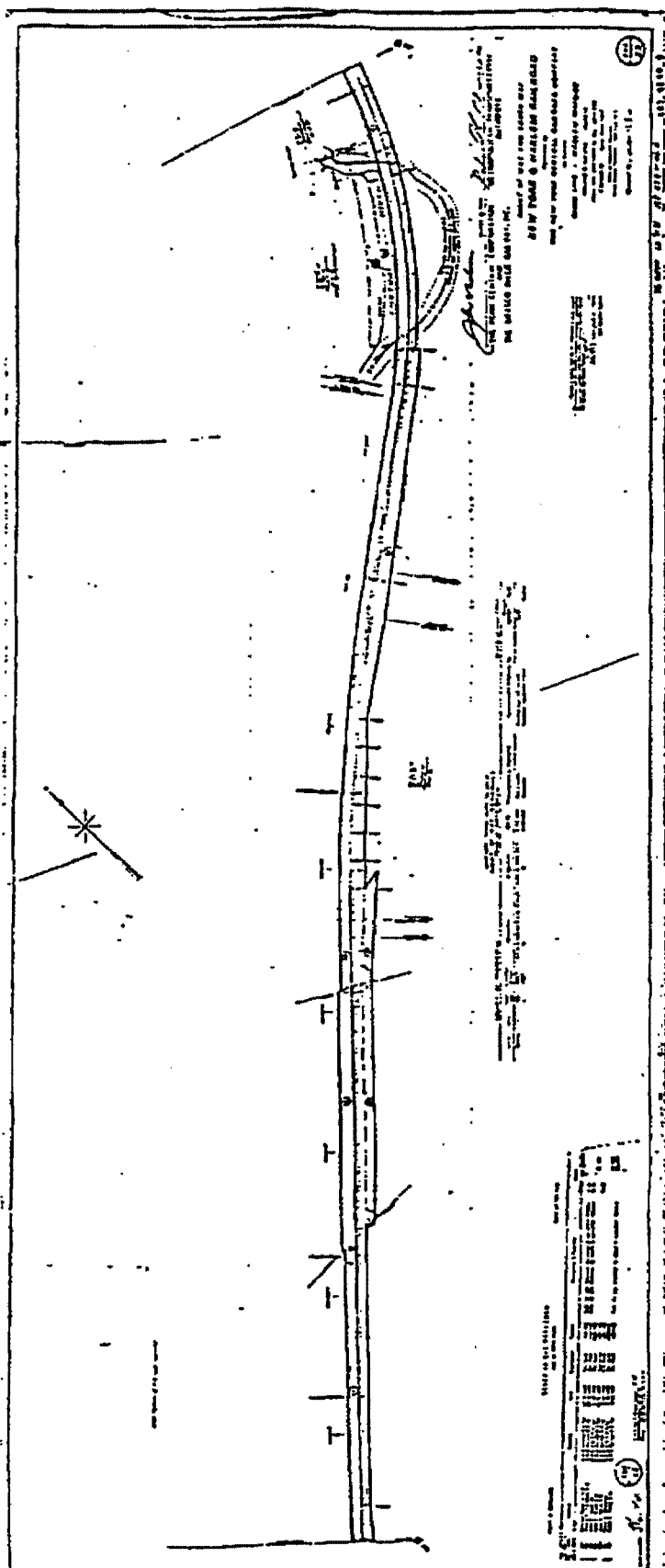
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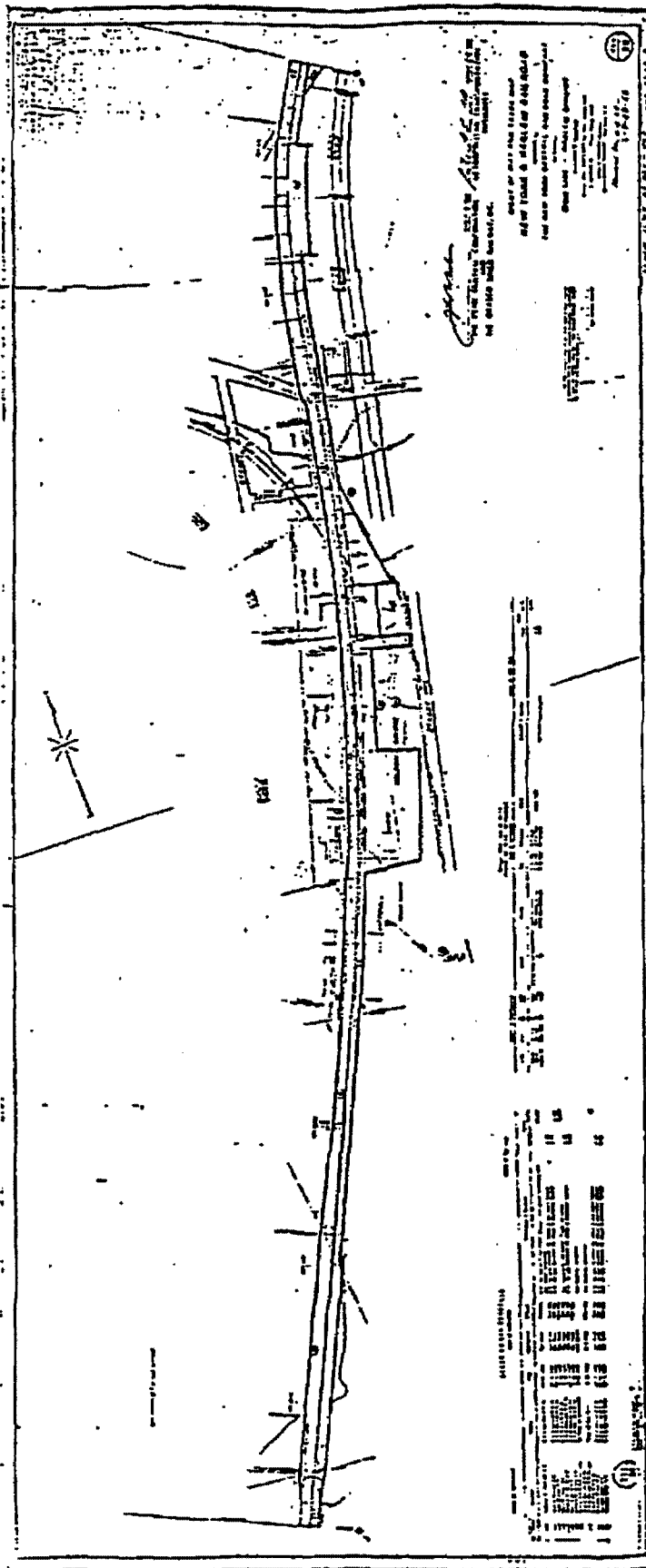


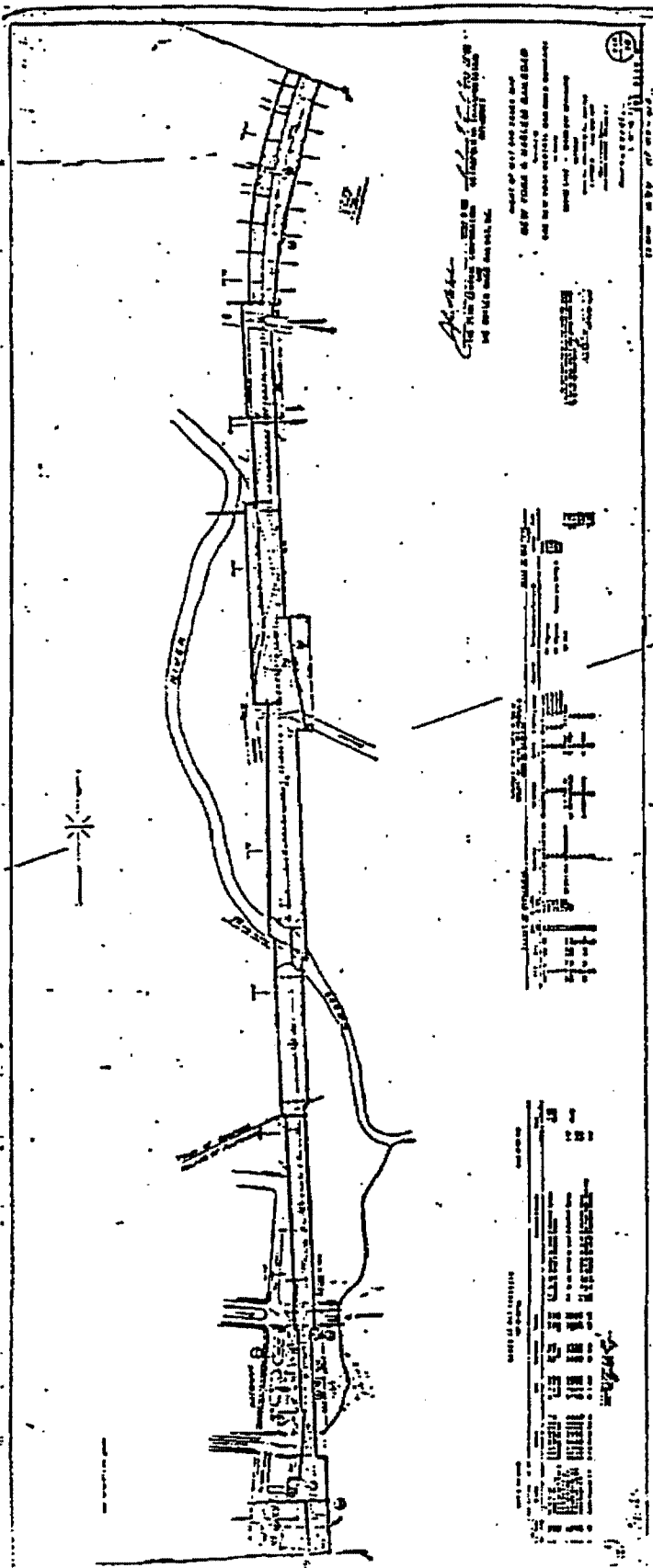


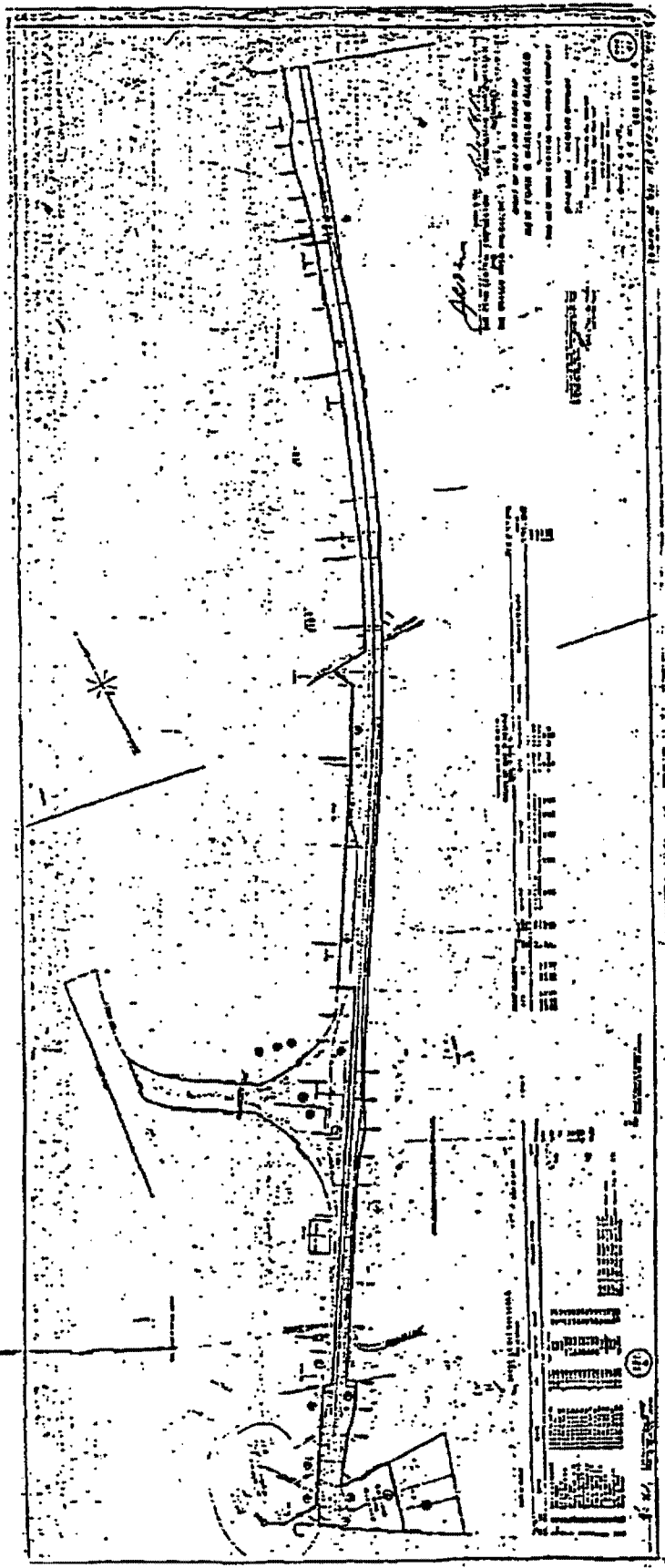
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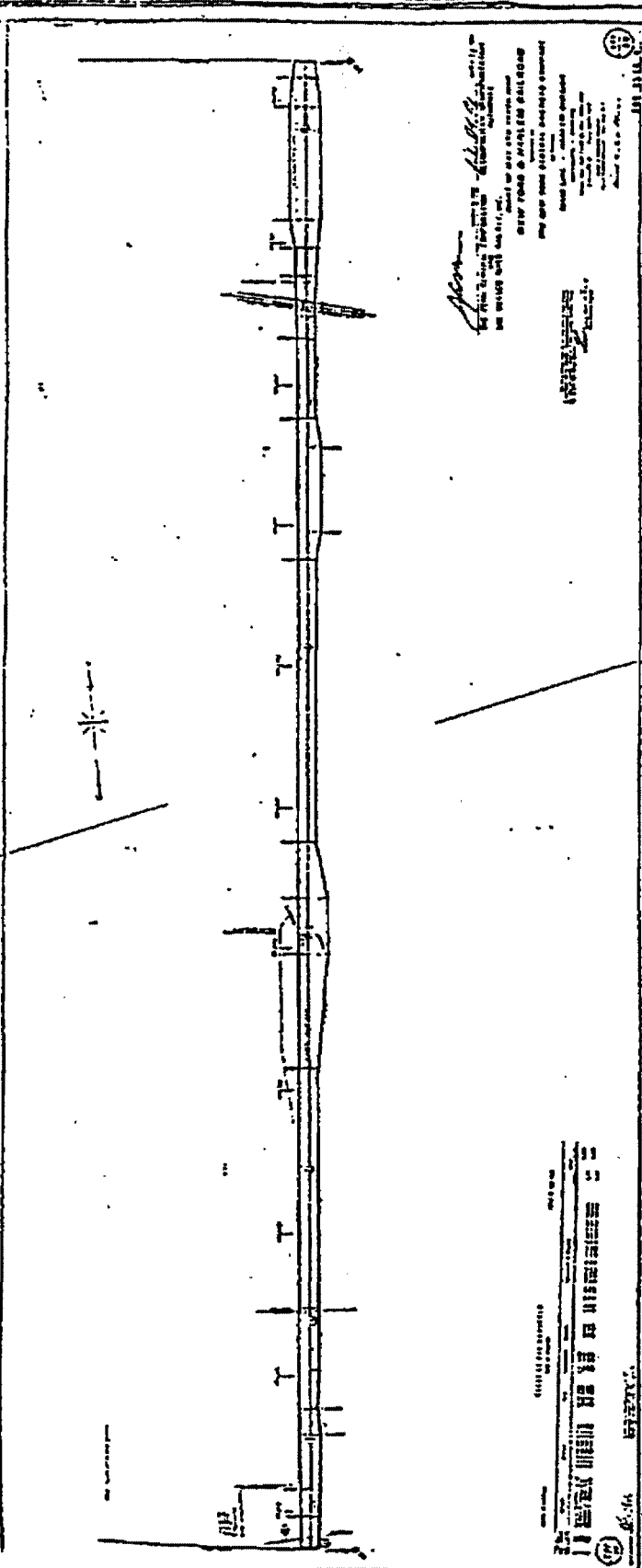
OFFICE OF THE
DIRECTOR OF THE
BUREAU OF THE
NAVY
WASHINGTON, D. C.

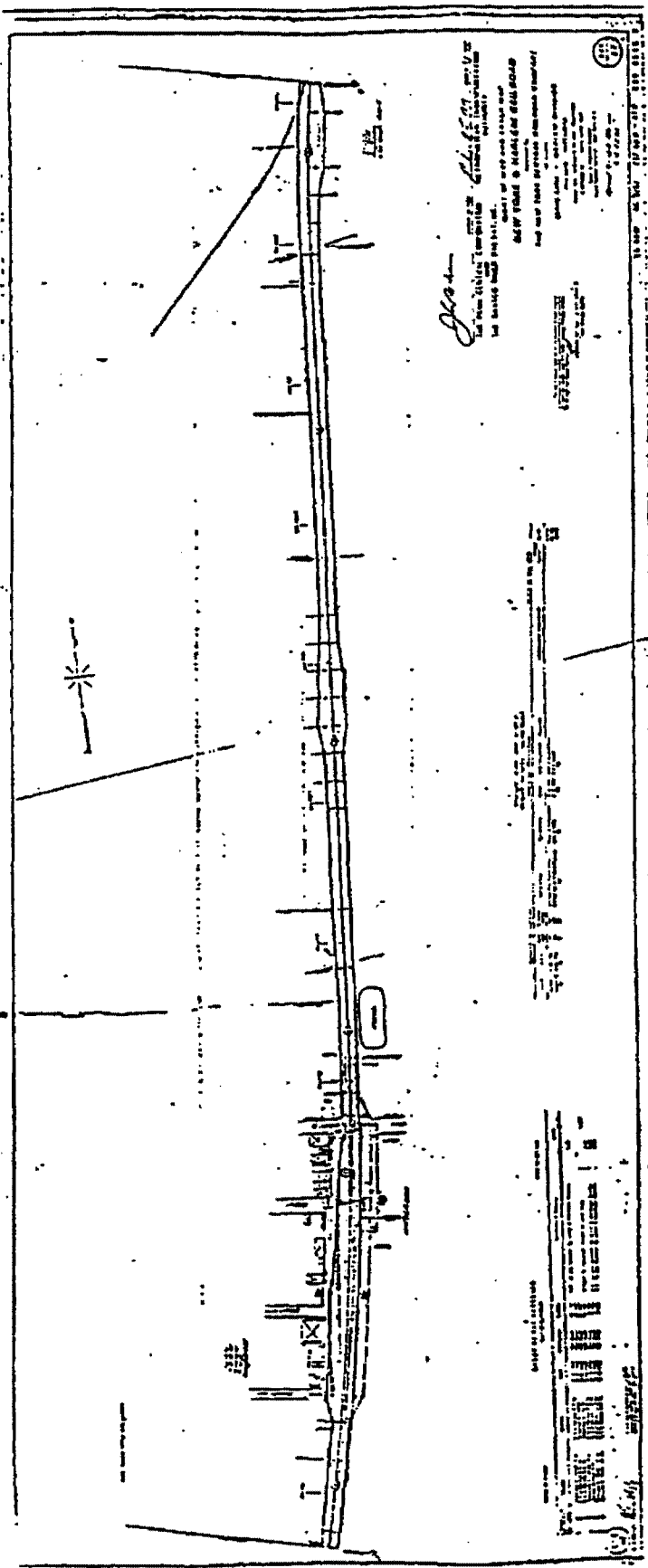
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NAVY DEPT
WASHINGTON
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NAVY DEPT
WASHINGTON

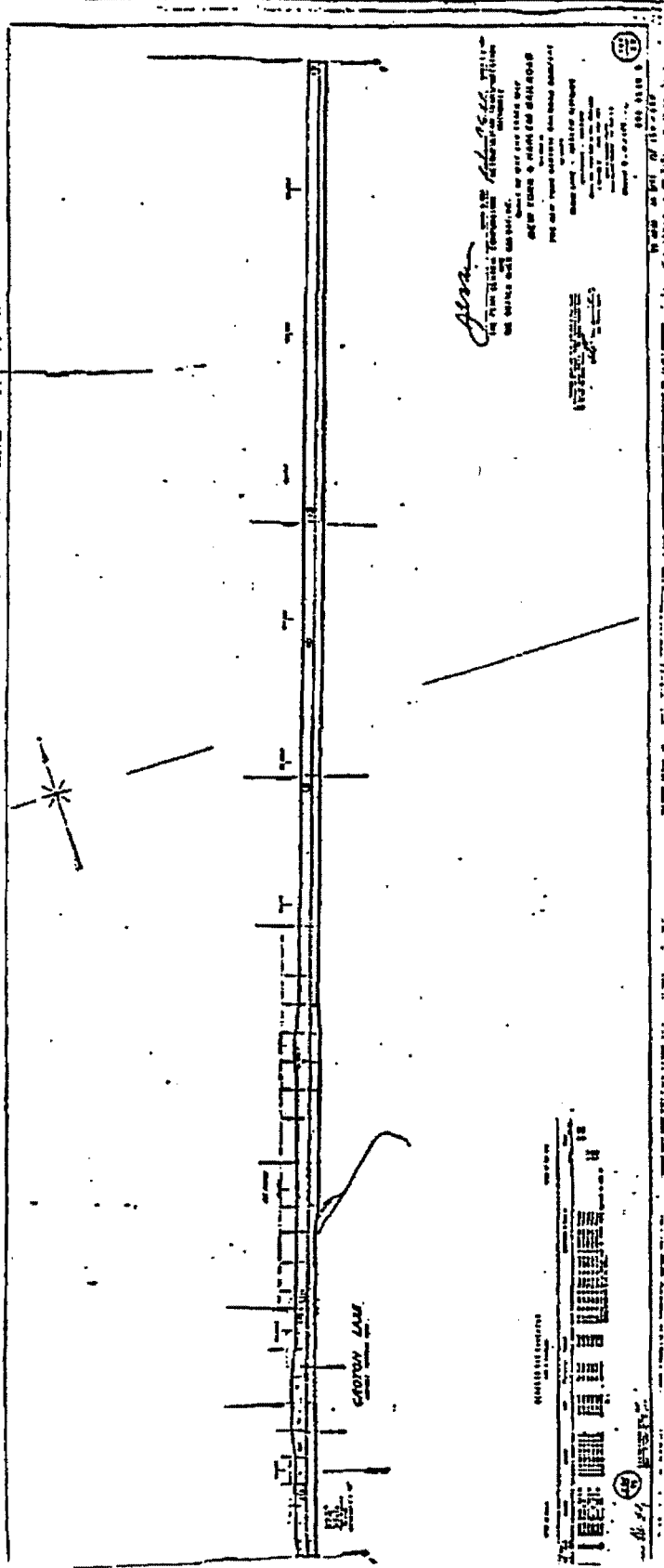
RECEIVED
JAN 10 1917
NAVY DEPT
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RECEIVED
JAN 10 1917
NAVY DEPT
WASHINGTON

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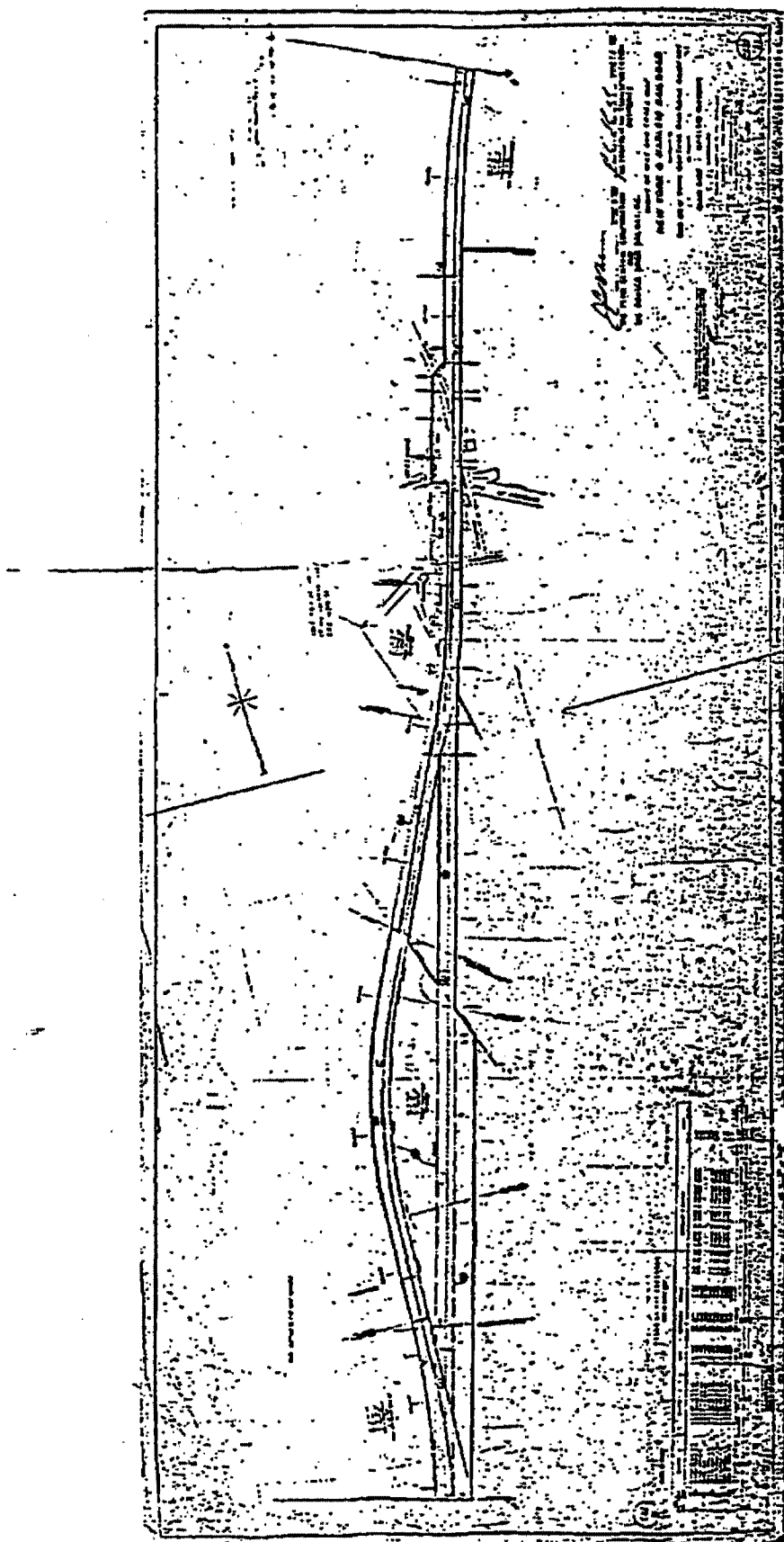


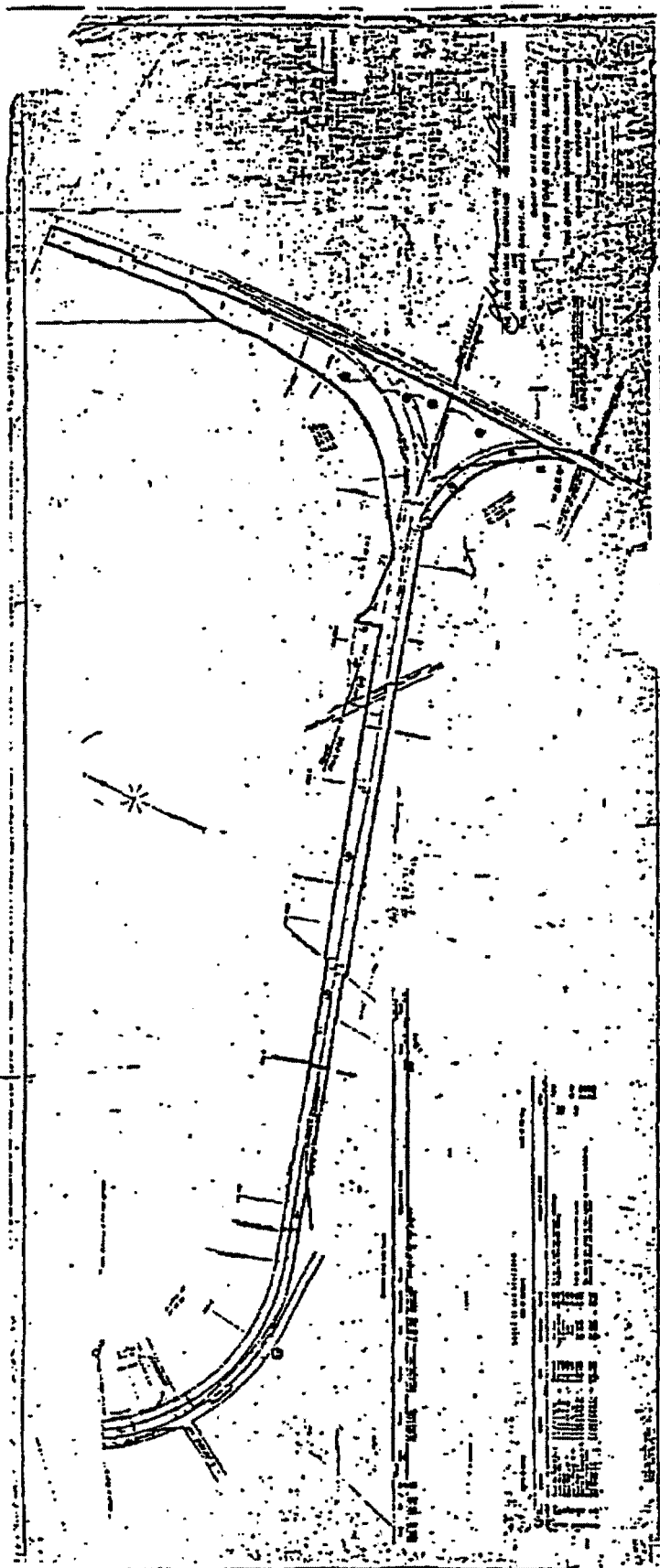


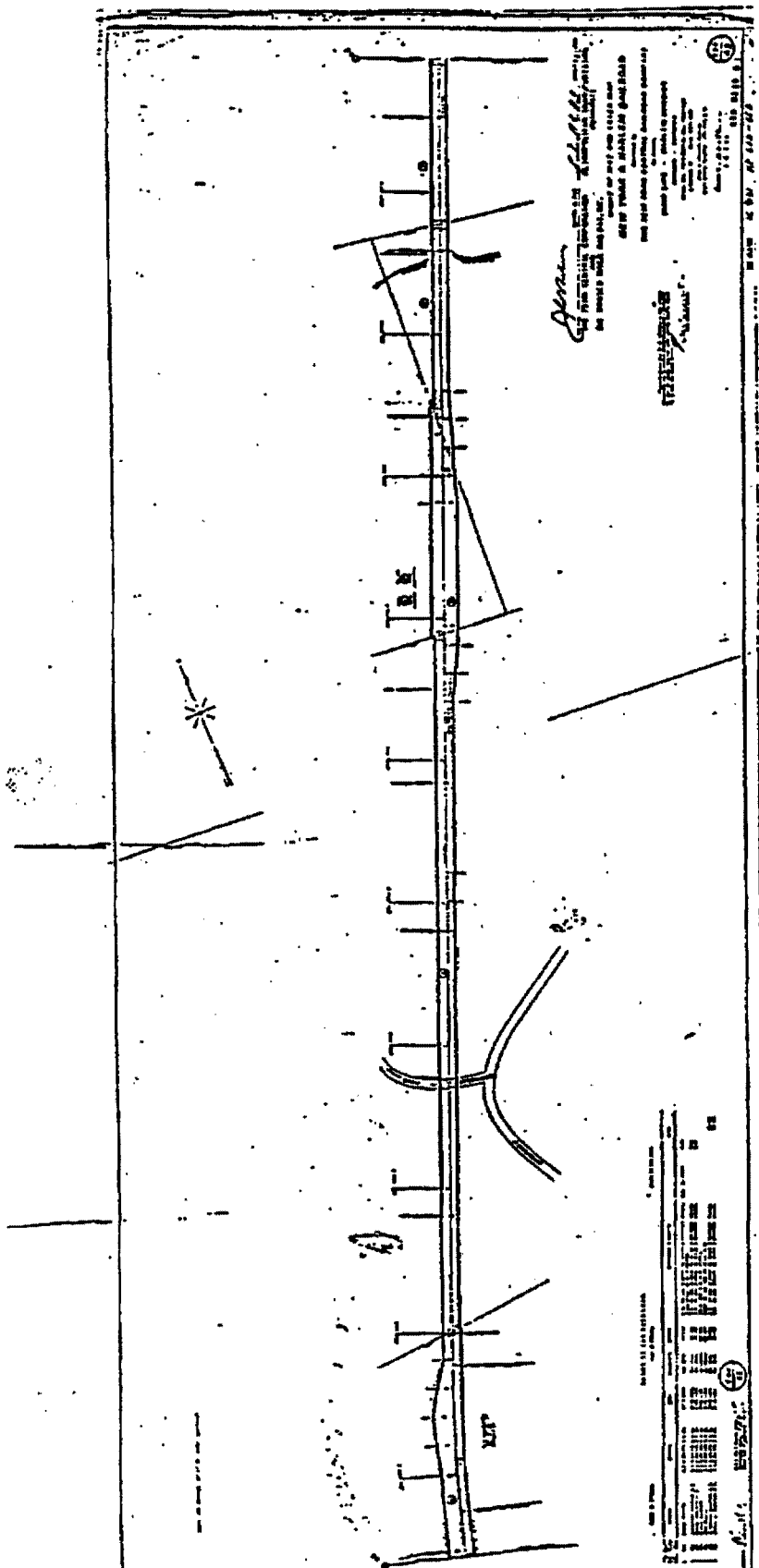


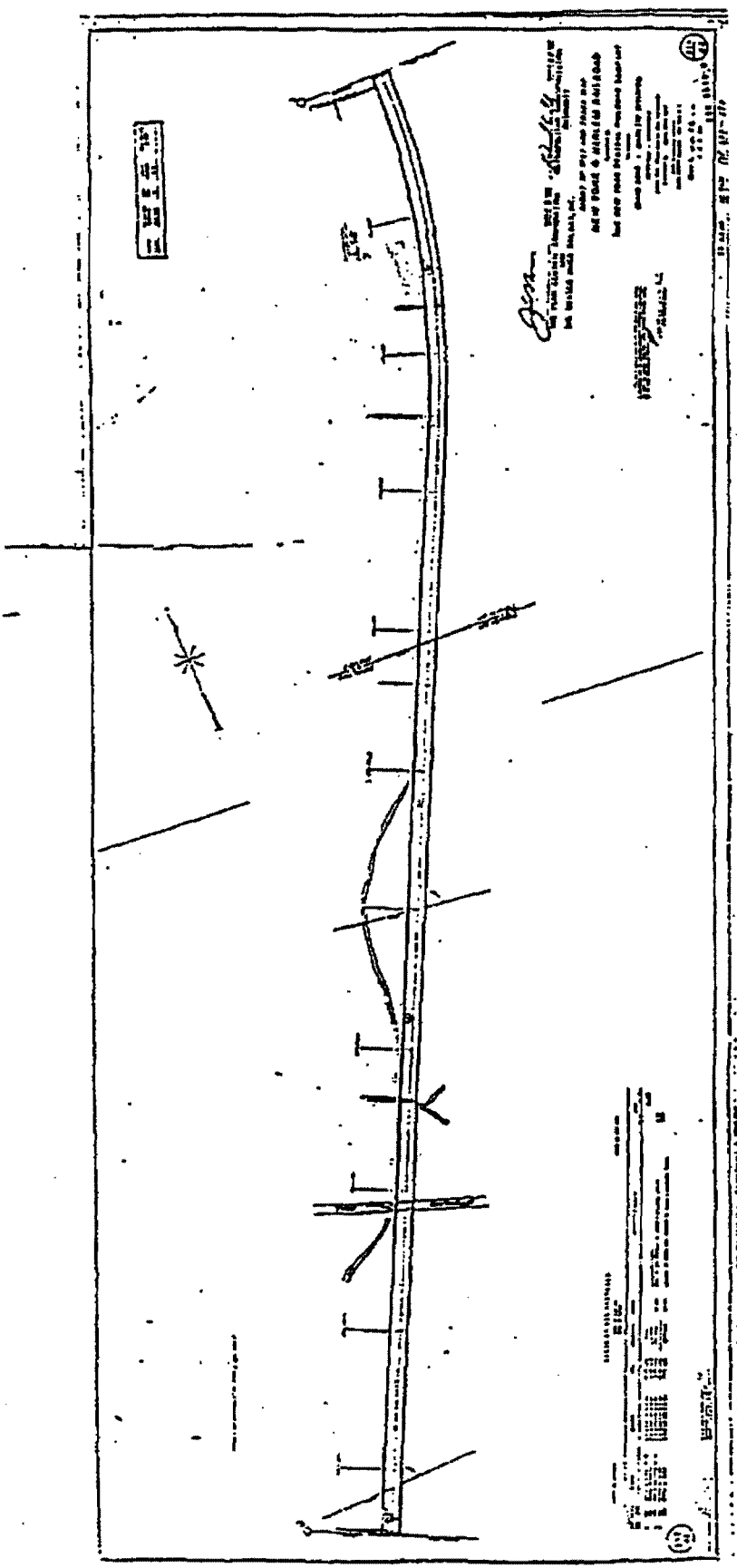
John
The following information is for the use of the
personnel of the ship only
and is not to be distributed
outside the ship's company
without the authority of the
commanding officer

SHIP'S COMPANY
1. The following information is for the use of the
personnel of the ship only
and is not to be distributed
outside the ship's company
without the authority of the
commanding officer









PLAN
SECTIONAL ELEVATION
OF THE HULL
OF THE U.S.S. "ALBATROSS"
DESIGNED BY
JAMES H. HARRIS
ARCHT.
NEW YORK

SECTIONAL ELEVATION
OF THE HULL
OF THE U.S.S. "ALBATROSS"
DESIGNED BY
JAMES H. HARRIS
ARCHT.
NEW YORK

11

SECTIONAL ELEVATION
OF THE HULL
OF THE U.S.S. "ALBATROSS"
DESIGNED BY
JAMES H. HARRIS
ARCHT.
NEW YORK

11

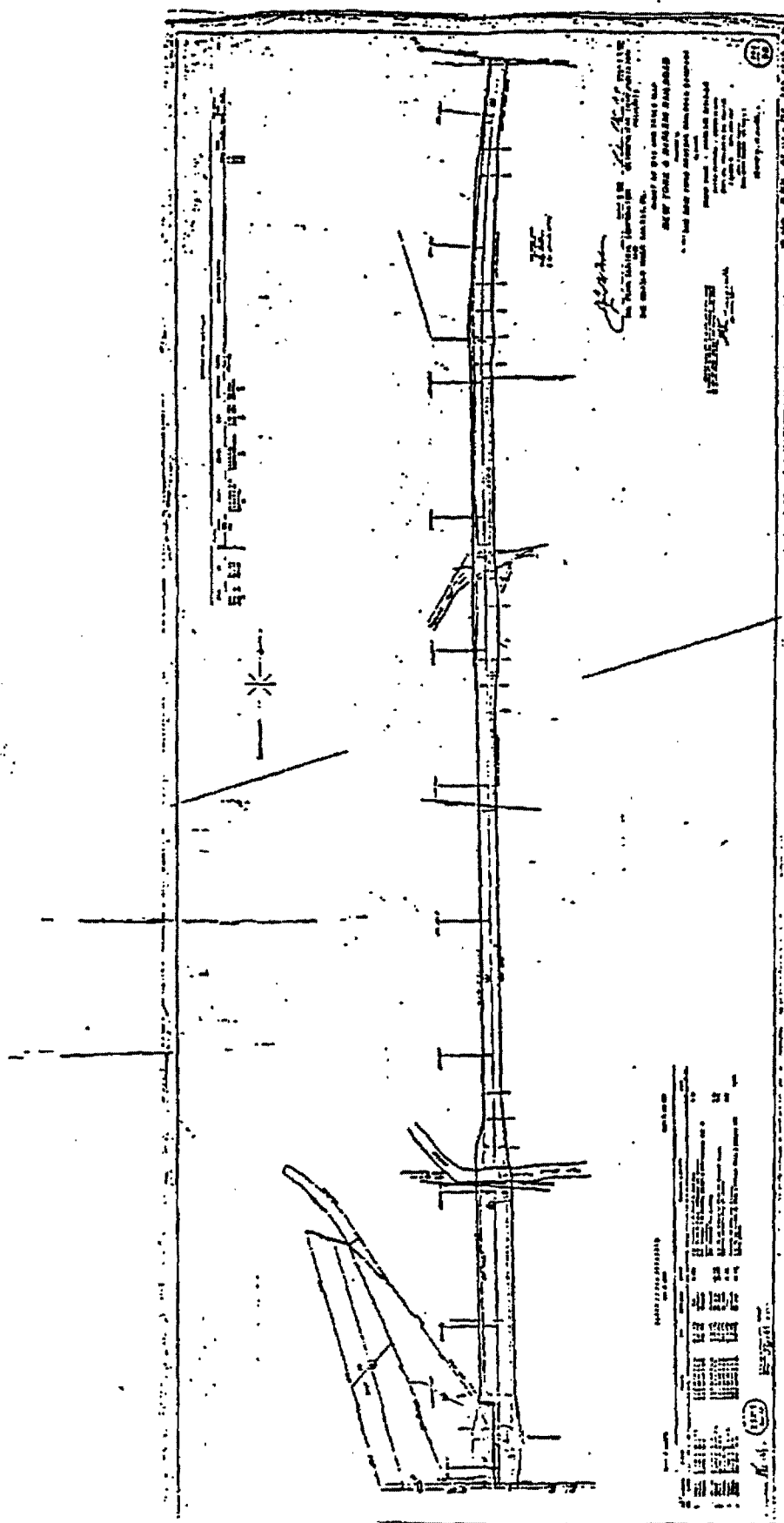


Exhibit A-4
Description of Development Parcels

I. SPUYTEN DUYVIL

ALL THAT PROPERTY located in the Borough and County of Bronx, City and State of New York, and within the leased property boundaries shown on Map V59, 6 of the 1917 valuation maps of The New York and Harlem Railroad Company, from a point directly below the west side of the Henry Hudson Bridge following the arc of the Main Line of the Hudson Line to the right along centerline for 950'.

II. NORTH WHITE PLAINS

ALL THAT PROPERTY located in the County of Westchester, State of New York, and with the leased property boundaries shown on Map V52, 23 of the 1917 valuation maps of The New York and Harlem Railroad Company, from the Cross Westchester Expressway proceeding to a point at which Gleri Street would intersect the property if Gleri Street continued across the property.

III. PLEASANTVILLE

ALL THAT PROPERTY located within the County of Westchester, State of New York, and within the leased property boundaries shown on Map V54, 7 of the 1917 valuation maps of The New York and Harlem Railroad Company, from a point at the South side of Bedford Road to a point 300' south along the tracks.

IV. TUCKAHOE

ALL THAT PROPERTY located within the County of Westchester, State of New York, and within the leased property boundaries described on Map V52, 16 of the 1917 valuation maps of The New York and Harlem Railroad Company, from milepost 16 to the southwestly side of Main Street.

V. BRONXVILLE

ALL THAT PROPERTY located within the County of Westchester, State of New York, and within the leased property boundaries shown on Map V52, 15 of the 1917 valuation maps of The New York and Harlem Railroad Company, from a point 100' south of what would be milepost 15.5 to a point 850' north along the tracks, for a total distance of 950'.

VI. 97TH & PARK

ALL THAT PROPERTY located in the Borough of Manhattan, County, City and State of New York, described or referred to as follows:

The right (the "Special Franchise"), pursuant to Chapter 702 (entitled "An Act to improve and regulate the use of the Fourth Avenue in the City of New York,") of the Ninety-Fifth Session Laws of the State of New York, passed May 14, 1872 (the "Act"), exclusively to occupy that portion above the plane that is 22' above the rail and 23' above the grade of the land constituting Park Avenue, City and County of New York, between the northerly line of 97th Street and the centerline of 99th Street, for the full width of the Special Franchise within said limits as may be permitted by the Act, said premises being the same premises described in a certain Contract of Sale dated November 20, 1986 between The New York and Harlem Railroad Company, American Premier Underwriters, Inc. (formerly known as The Penn Central Corporation) and Mark S. Schneier and Jeffrey S. Kogan, as amended.

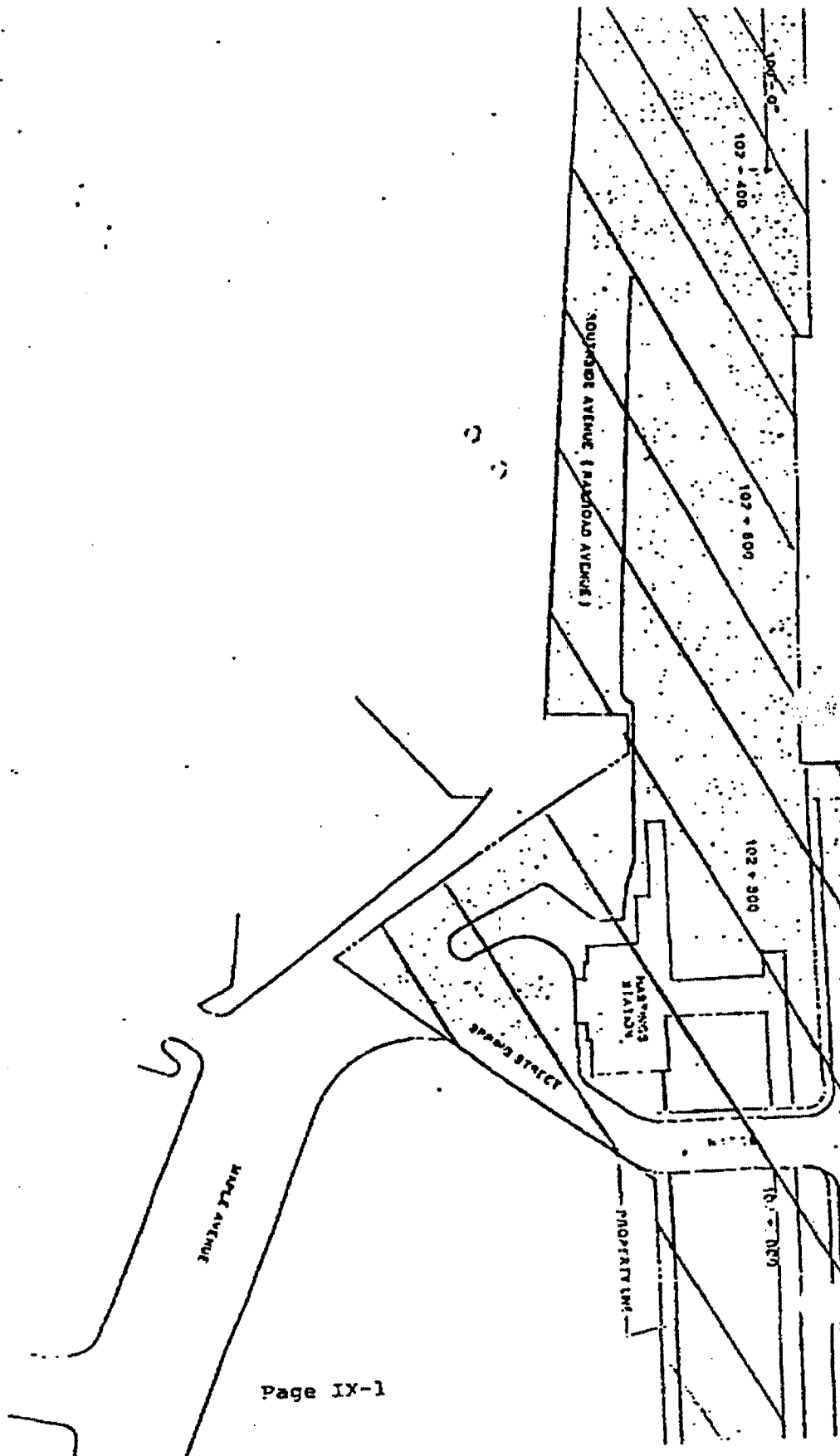
PARCEL II

BEGINNING at a point in the southerly line of Bedford Park Boulevard which bisects the centerline between the two middle tracks of the right-of-way of The New York and Harlem Railroad Company ("Harlem") and running thence easterly along the southerly line of Bedford Park Boulevard to the easterly boundary of Harlem's lands; thence running southerly along the easterly boundary of Harlem's lands to a line ("Perpendicular Line") drawn perpendicular to the centerline between the two middle tracks of said right-of-way and which intersects a point on said centerline which is 1,333.33 feet northerly, as measured along said centerline, of a point in the northerly line of Fordham Road which bisects said centerline; thence running westerly along Perpendicular Line to the westerly boundary of Harlem's lands; thence running northerly along the westerly boundary of Harlem's lands to the southerly line of Bedford Park Boulevard; thence running easterly along the southerly line of Bedford Park Boulevard to the point or place of Beginning.

IX. HASTINGS

ALL THAT LAND situate in the County of
Westchester, State of New York, shown as cross-hatched on
pages IX-1 and IX-2 of that certain map, entitled
"Hastings", which map is annexed hereto.

HASTINGS



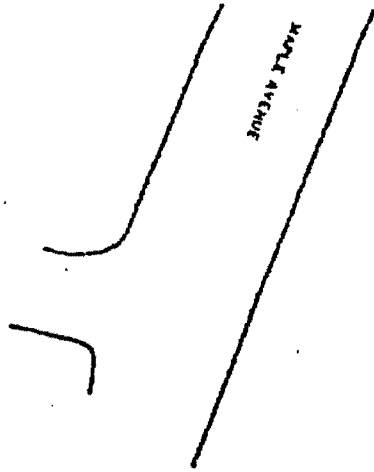
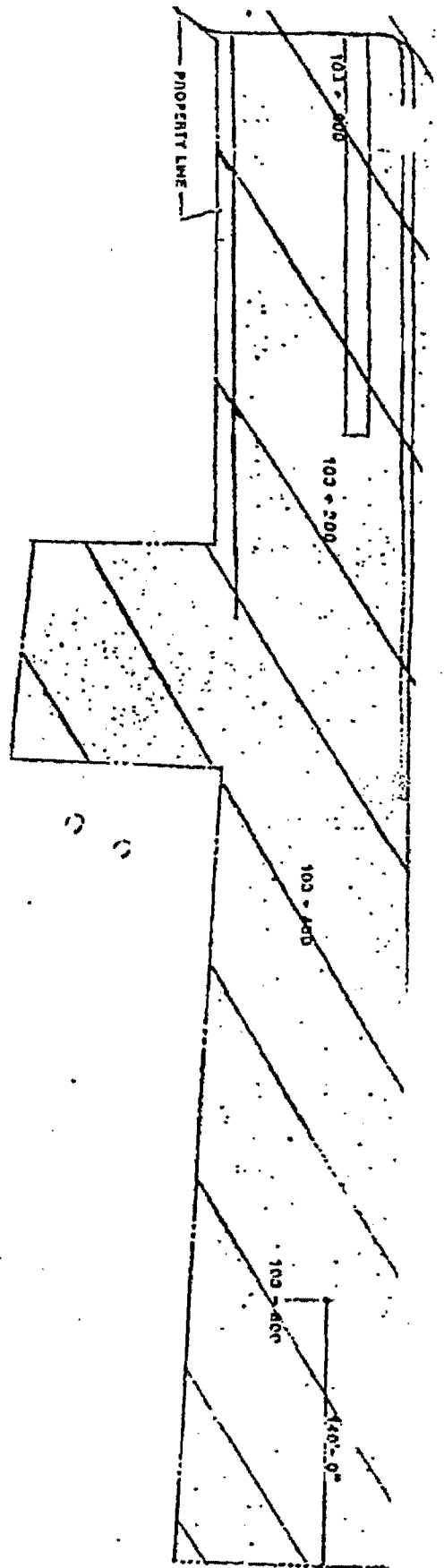


EXHIBIT B

MTA LEASE

86740063
April 6, 1994

AMENDED AND RESTATED
AGREEMENT OF LEASE
between
AMERICAN PREMIER UNDERWRITERS, INC.
and
THE OWASCO RIVER RAILWAY, INC.
Landlord
and
METROPOLITAN TRANSPORTATION AUTHORITY
Tenant

Dated: As of April 8, 1994

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46740063
April 6, 1994

EXHIBITS

Exhibit "A-1"	-	Description of Premises Below 57th Street
Exhibit "A-2"	-	Description of the Hudson Line
Exhibit "A-3"	-	Description of the Harlem Line
Exhibit "A-4"	-	Description of the Development Parcels
Exhibit "B"	-	Permitted Exceptions
Exhibit "C"	-	First Rent Period Prepayment Schedule
Exhibit "D"	-	Second Rent Period and Extended Term Rent Period Prepayment Schedule
Exhibit "E"	-	Indentures
Exhibit "F"	-	Assumed Agreements

AMENDED AND RESTATED AGREEMENT OF LEASE, made as of the 8K day of April, 1994, between American Premier Underwriters, Inc., formerly named The Penn Central Corporation, a Pennsylvania corporation having an office at One East Fourth Street, Cincinnati, Ohio 45202 ("American Premier") and The Owasco River Railway, Inc., a New York corporation having an office at One East Fourth Street, Cincinnati, Ohio 45202 ("Owasco"; American Premier and Owasco, collectively, "Landlord"), and Metropolitan Transportation Authority, a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017 ("MTA" or "Tenant").

WITNESSETH:

1. Pursuant to (i) that certain Harlem-Hudson Lease Agreement, dated as of June 1, 1972, between Tenant and George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz jointly as trustees of the property of Penn Central Transportation Company (the "PCTC Trustees"), as landlord, and (ii) that certain Lease, dated May 26, 1972, between the PCTC Trustees, as landlord, and Tenant, as tenant, as amended by agreements, dated October 6, 1972, June 2, 1975 and as of May 6, 1989, as further amended by that certain Partial Surrender Agreement, dated as of December 1, 1989, between American Premier and Tenant, and that certain Fourth Amendment to the Harlem-Hudson Lease, dated July 1, 1992, between American Premier, MTA, Scarsdale Depot Associates, L.P., a Delaware limited partnership, PCC Scarsdale Realty Corp., a New York corporation, Metro-North Commuter Railroad Company, a New York public benefit corporation ("Metro-North"), and The New York and Harlem Railroad Company, a New York corporation ("NY&HRR") (said lease and lease agreement, as so amended being collectively, the "Original Lease"), the PCTC Trustees, being Landlord's predecessor-in-interest, leased to Tenant the Premises for a term expiring May 25, 2032 with options to extend the term of the Original Lease until May 25, 2062.

2. The parties hereto desire to extend the term of and modify certain other terms of the Original Lease, and to restate the Original Lease, as so extended and modified, in its entirety.

3. It is hereby mutually covenanted and agreed by and between the parties hereto that the Original Lease is hereby extended and modified and restated in its entirety to read in full as follows:

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Amended and Restated Lease, have the following meanings:

"Affiliate," (a) when used with respect to any Person other than the MTA, shall mean a corporation, partnership, tenancy-in-common or other business entity or individual which, directly or indirectly, controls, is controlled by or is under common control with such Person or (b) when used with respect to the MTA, shall mean (i) its wholly-owned subsidiaries, including, without limitation, the Long Island Railroad Company and Metro-North, (ii) the Triborough Bridge and Tunnel Authority, (iii) the New York City Transit Authority and its wholly-owned subsidiaries and (iv) any other public benefit corporation or other entity which is under the control of the MTA or such other entities, the board of directors of which entities is comprised of members of the board of directors of the MTA. For purposes of clause (a) of the foregoing definition, "control" (including "control by" and "under common control with") shall mean ownership of not less than fifty percent (50%) of each class of the authorized and outstanding stock of a corporation and not less than fifty percent (50%) of all of the legal and equitable interests in a partnership or other business entity (determined without regard to cash flow preferences and similar items).

"American Premier" shall have the meaning provided in the heading to this Lease.

"Appurtenances" shall mean Landlord's right, title and interest in and to (a) land lying in the bed of any street, highway, road or avenue, open or proposed, public or private, in front of or adjoining the Land (hereinafter defined), to the center lines thereof; (b) rights of way, highways, public places, easements, appendages, appurtenances, sidewalks, alleys, strips and gores of land adjoining or appurtenant to the Land which are now or hereafter used in connection with the Premises (hereinafter defined); (c) awards made or to be made in lieu of any of the foregoing, and all unpaid awards or other proceeds for damages to the Land by reason of the change of grade of any street, highway, road or avenue; (d) the subsurface of the Land; (e) all air rights appurtenant to the Land, excluding Landlord's Air Rights, (f) all riparian rights in land under water and all lands under water, water courses, water rights and riparian rights in connection with the Premises, and (g) all rights under franchise agreements.

"Assumed Agreements" shall have the meaning provided in Section 42.01(a).

"Bankruptcy Event" shall have the meaning provided in Section 3.07.

"Bond Mortgages" shall mean, collectively, (i) the Three and One-Half Per Cent Gold Bond Mortgage dated June 1, 1897 from the Ground Lessor (hereinafter defined) to the Guaranty Trust Company of New York, as trustee, as amended by letter dated December 30, 1959 between New York Central Railroad Company and Ground Lessor, supplemental indenture dated July 21, 1960, supplemental indenture dated July 29, 1960 and supplemental indenture dated February 7, 1974, and (ii) 4½ Mortgage dated July 1, 1943 from the Ground Lessor to J.P. Morgan & Co. Incorporated, as trustee, as amended by supplemental indenture dated July 21, 1960, supplemental indenture dated July 29, 1960, as further amended by Supplemental Indenture dated as of November 8, 1973 among Morgan Guaranty Trust Company of New York, Peoples Trust of New Jersey and the Ground Lessor, evidencing the resignation of the trustee and the appointment and acceptance of a successor trustee, and supplemental indenture and escrow agreement dated October 24, 1978; as either or both may hereafter be amended, modified or supplemented.

"Business Days" shall mean all days which are not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvements" shall have the meaning provided in Section 13.01.

"Certificates" shall mean certificates of participation executed and delivered by the Trustee (hereinafter defined), each evidencing a proportionate interest in the Rental.

"Commencement Date" shall have the meaning provided in Section 2.01.

"Construction Agreements" shall mean agreements for construction, Restoration (hereinafter defined), Capital Improvements, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

"Credit Party" shall have the meaning provided in Section 10.15.

"Credit Party Notice" shall have the meaning provided in Section 10.15.

"Cure" shall have the meaning provided in Section 42.02(a).

"Cure Costs" shall have the meaning provided in Section 42.03(a).

"Default" shall mean any condition or event which, after notice or the expiration of any applicable grace period or both would constitute an Event of Default (hereinafter defined).

"Defect Notice" shall have the meaning provided in Section 42.02(a).

"Deficiency" shall have the meaning provided in Section 24.04(d).

"Development Agreements" shall mean the agreements listed as items I.1 through 4 in Exhibit "B".

"Development Parcels" mean the portion of the Land described in Exhibit "A-4".

"Environmental Complaint" shall have the meaning provided in Section 38.04.

"Environmental Laws" shall have the meaning provided in Section 38.02.

"Environmental Losses" shall have the meaning provided in Section 38.02.

"Environmental Release" shall mean the Environmental Release and Indemnity of even date herewith among Tenant, Metro-North, Landlord and the Ground Lessor with respect to certain potential environmental claims.

"EPA" shall mean the United States Environmental Protection Agency.

"Equipment" shall mean all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Premises (from and after the purchase of the same), including, without limitation, all shop, engine house and repair track machinery and equipment (including machinery and equipment located in yards or terminals for the repair and servicing of trains, locomotives or cars, including "MU" cars) and all other machinery, apparatus, devices, motors, dynamos, engines, compressors, pumps, boilers and burners; heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment;

all ties, rails, switches and other track material, ballast, track laying and servicing material, station houses, tool houses, fences and other right of way material, all signal system apparatus, including interlockers, sidings, turnouts, bridges, tunnels, viaducts, culverts, turntables, fences, pole lines and wires, overhead conductors, power transmission systems equipment (including power substation equipment, power and control cable and third rail systems), chutes, ducts, pipes, tanks and fittings; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory equipment; communications systems and public address equipment; fire prevention and extinguishing equipment; and all additions thereto and replacements thereof; excluding, however, any of the foregoing which are owned by utility companies providing utilities to the Improvements or by any Subtenants.

"Event of Default" shall have the meaning provided in Section 24.01.

"Expiration Date" shall mean the date of the expiration of the Term as set forth in Section 2.01.

"Extended Term" shall have the meaning provided in Section 2.02.

"Extended Term Rent Period" shall have the meaning provided in Section 3.01(a)(iii).

"Financing Sublease" shall have the meaning provided in Section 10.15.

"First Rent Period" shall have the meaning provided in Section 3.01(a)(i).

"Fixed Rents" shall have the meaning provided in Section 3.01(a).

"Governmental Authority (Authorities)" shall mean the United States of America, the State of New York, New York City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

"GCT Building" shall mean the building commonly known as Grand Central Terminal and any replacement thereof located on a portion of the Land.

"Ground Lease" shall mean at the time in question, as the same hereafter may be extended, renewed, modified or amended from

time to time, the Contract between NY&HRR, as landlord, and The New York Central and Hudson River Railroad Company, as tenant, dated April 1, 1873, as amended by Supplementary Contract between said parties dated May 15, 1882, as further amended by Second Supplementary Contract between said parties dated October 5, 1898, as further amended by Third Supplementary Contract between said parties dated July 1, 1943 and as further amended by Fourth Supplementary Contract between NY&HRR and American Premier dated October 24, 1978, and as assigned to American Premier by Indenture dated October 24, 1978 and recorded November 15, 1978 in the land records of New York County in Reel 460, page 1535.

"Ground Lessor" shall mean the lessor at the time in question under the Ground Lease.

"Hazardous Material(s)" shall have the meaning provided in Section 38.03.

"Impositions" shall have the meaning provided in Section 4.01.

"Improvements" shall mean the GCT Building and all other buildings, facilities, structures (including, without limitation, footings and foundations), Equipment and other improvements of every kind, nature and description whatsoever now located or hereafter erected, constructed or placed upon or within the Land, all fixtures constituting a part thereof, and all alterations, changes and additions thereto.

"Indentures" shall have the meaning provided in Section 12.02(b).

"Land" shall mean the land described in Exhibits "A-1" through "A-4" annexed hereto and made a part hereof.

"Landlord," on the date as of which this Lease is made, shall mean collectively, American Premier and Owasco, but thereafter, "Landlord" shall mean, collectively, only (a) the holder of the lessee's interest under the Ground Lease at the time in question and (b) the owner of the premises described in Exhibit "A-2" annexed hereto and made a part hereof.

"Landlord Indemnified Parties" shall have the meaning provided in Section 19.01.

"Landlord's Air Rights" shall mean all unused development rights appurtenant to the GCT Building and the Landmark Lot (hereinafter defined) and, to the extent of the Ground Lessor's or

Landlord's interest therein, the premises located at Block 1280, Lot 54, except for Tenant's Air Rights.

"Landlord's Certificate" shall mean that certain certificate of representations and warranties dated the date hereof from American Premier, Owasco and the Ground Lessor in favor of Tenant.

"Landlord's Reasonable Efforts" shall mean that Landlord shall make reasonable good faith efforts to timely enforce its rights under the agreement in question which are applicable to the matter in question, without, however, incurring thereby any liabilities or expenses not otherwise provided for in this Lease (unless Tenant agrees to reimburse Landlord for such costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, in which event such reimbursement shall be deemed Rental for all of the purposes of this Lease).

"Landmark Lot" shall mean the land comprising Block 1280 Lot 1 in the City, County and State of New York upon which the GCT Building is located.

"Late Charge" shall have the meaning provided in Article 6.

"Late Charge Rate" shall have the meaning provided in Article 6.

"Lease" shall mean the Original Lease, as amended and restated by this Amended and Restated Agreement of Lease, and all amendments, modifications, extensions and renewals hereof.

"Lease Rate" shall mean a rate per annum, compounded semi-annually, equal to Seven and 75/100 percent (7.75%).

"Material Defect" shall have the meaning provided in Section 42.02(b).

"Metro-North" shall have the meaning provided in the recitals to this Lease.

"Mortgage" shall mean (i) a mortgage, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Tenant's interest in this Lease and the leasehold interest created hereby, and/or (ii) Pledges.

"Mortgagee" shall mean the mortgagee, pledgee or assignee under a Mortgage.

"New York City" shall mean The City of New York, a municipal corporation of the State of New York.

"Notice" and "notice" shall have the meaning provided in Section 25.01.

"NY&HRR" shall have the meaning provided in the recitals to this Lease.

"Original Lease" shall have the meaning provided in the recitals to this Lease.

"Other Agreements" shall mean (a) the non-revenue PP&W Agreements (as defined in Exhibit "B" annexed hereto and made a part hereof), (b) those certain agreements, documents and matters listed on the "Right of Way Schedules" shown on those certain reproductions of the 1917 valuation maps for the Railroad Parcels and the Development Parcels, as supplemented by the agreements, documents and matters listed on those certain "Detail Sheets" corresponding to said schedules and maps (except for the Assumed Agreements, the OCT Title Exceptions, the Indentures, and all General Exceptions other than item number 2 in Section (IV) of Exhibit "B"), (c) those certain "Pending Updates" set forth in Schedule 2 to Exhibit "B", and (d) all covenants, easements, restrictions, declarations, deeds and other agreements which exist as of the date hereof and affect title to the Premises or any portion thereof, whether recorded or unrecorded, other than (i) the Permitted Exceptions (except for the Permitted Exception for Other Agreements), (ii) any mortgage, judgment lien or other similar lien on all or any portion of the Premises which secures indebtedness of Landlord and (iii) any agreement covering all or substantially all of the Premises or the Railroad Parcels that prohibits Landlord from leasing the Premises to Tenant pursuant to this Lease.

"Owasco" shall have the meaning provided in the heading to this Lease.

"PCTC Trustees" shall have the meaning provided in the recitals to this Lease.

"Permitted Exceptions" shall mean all matters set forth in Exhibit "B".

"Person" shall mean and include an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department, authority or agency thereof.

"Philip Morris Declaration" shall have the meaning provided in Section 5.06(a).

"Pledge" shall mean a security agreement pursuant to which all or a portion of the ownership interests in Landlord or Tenant are pledged and/or assigned to a Trustee or Mortgagee, as the case may be.

"Premises" shall mean the Land, the Improvements, the Equipment, the Appurtenances and the Trackage Rights.

"Protected Person" shall have the meaning provided in Section 40.01.

"Railroad Parcels" shall have the meaning provided in Section 42.02(b).

"Rental" shall have the meaning provided in Section 3.04.

"Requirements" shall have the meaning provided in Section 14.01.

"Reserved Rights" shall have the meaning provided in Section 42.01(a).

"Restoration" shall have the meaning provided in Section 8.01(b).

"Restore" shall have the meaning provided in Section 8.01(b).

"Safe Condition" shall mean such state of general physical repair and condition of the Premises as would be necessary to avoid a reasonably likely risk of serious physical injury to members of the general public using the Premises for the purposes which Tenant operates the Premises, or serious damage to personal property of such members of the general public. For purposes of this definition, the term "members of the general public" shall include all Persons (including, without limitation, Tenant) reasonably expected to enter upon the Premises in connection with Tenant's operation thereof, excluding employees of Tenant or its Affiliates who are then engaged in activities directly related to the operation of a railroad on the Premises and which activities involve the operation of trains, railroad cars or engines or other hazardous or dangerous equipment.

"Second Rent Period" shall have the meaning provided in Section 3.01(a)(ii).

"Secured Loan" shall mean (i) an assignment to the Trustee, for the benefit of registered owners of Certificates, of Landlord's rights under this Lease and the trust agreement established for the purpose of, among other things, securing the payment of Rental by Tenant due to the owners of Certificates from time to time, and/or (ii) a mortgage which constitutes a lien on Landlord's interest and/or estate in the Ground Lease and the Premises. The term "Secured Loan" shall also include (x) any unrecorded mortgages affecting Landlord's interest and/or estate in the Ground Lease and the Premises, and (y) Pledges.

"Shortfall" shall have the meaning provided in Section 9.08.

"Subtenant" and "Subtenants" shall have the meaning provided in Section 10.02.

"Tenant" shall mean the MTA, provided, however, that whenever this Lease and the leasehold estate hereby created shall be assigned or transferred in accordance with the terms of and in the manner specifically permitted by this Lease, then from and after the date of such assignment or transfer and until the next permitted assignment or transfer, the term "Tenant" shall mean the permitted assignee or transferee.

"Tenant Indemnified Parties" shall have the meaning provided in Section 19.03.

"Tenant's Air Rights" shall have the meaning provided in Section 5.01.

"Tenant's Property" shall have the meaning provided in Section 11.02.

"Term" shall have the meaning provided in Section 2.01.

"383 Contract" shall mean the Agreement for Purchase and Sale of Development Rights and Related Release of Lease of Development Rights (and the exhibits annexed thereto) dated as of November 8, 1983 between American Premier, NY&HRR, Owasco and 383 Madison Associates, as amended by that certain First Supplemental Agreement, dated August 17, 1984, that certain Second Supplemental Agreement for Purchase and Sale of Development Rights and Related Release of Lease and Development Rights, dated as of August 26, 1987, and that certain Third Supplemental Agreement, dated as of July 31, 1989, between the parties, as the same may hereafter be modified or amended from time to time.

"Trackage Rights" shall mean all of Landlord's right, title and interest in and to any and all operating and trackage rights over the Premises, including, without limitation, the right of Landlord to (i) operate freight trains, cars and locomotives over the Premises; (ii) provide through and local freight service (including mail and express) over the Premises; (iii) operate long haul (through) passenger trains, cars and locomotives (including baggage, mail and express) over the Premises; (iv) operate suburban (or commuter) railroad passenger services over the Premises, as they may be from time to time constituted; and (v) use any portion of the Premises for the operation of any and all equipment and facilities in connection with providing long haul passenger, freight and suburban services over the Premises.

"Transfer Restrictions" shall have the meaning provided in Section 2.02(a).

"Trustee" shall mean the assignee of Landlord's rights under this Lease, if Landlord enters into a Secured Loan pursuant to the issuance of Certificates, and/or the holder or beneficiary of a Secured Loan which is evidenced by a mortgage on all or any portion of Landlord's interest in the Premises and/or the holder or beneficiary of a Pledge.

"Unavoidable Delays" shall mean delays incurred by Tenant due to (i) strikes, lockouts, acts of God, enemy action, civil commotion or the inability to obtain labor or materials, and (ii) fire or other casualty or other causes beyond the control of Tenant (not including Tenant's insolvency or financial condition). In each instance Tenant shall use reasonable efforts to notify Landlord promptly after the incident causing the delay shall have occurred; provided that Tenant's failure to promptly notify Landlord thereof shall not affect Tenant's rights hereunder with respect to Unavoidable Delays.

ARTICLE 2

PREMISES AND TERM OF LEASE

Section 2.01. Landlord does hereby demise and lease the Premises to Tenant, and Tenant does hereby hire and take the Premises from Landlord, subject to the Ground Lease, and further subject to and together with the Permitted Exceptions.

TO HAVE AND TO HOLD unto Tenant for a term of approximately one hundred thirty-two and one-half (132½) years (the "Term") which commenced on June 1, 1972 (the "Commencement Date") and which shall expire at 11:59 p.m. on December 31, 2104 (the "Expiration Date"), or on such earlier date upon which the term of

this Lease shall expire or be cancelled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to law.

Section 2.02.

(a) Effective upon the date of expiration of the restrictions (the "Transfer Restrictions") set forth in the 383 Contract against (a) conveyances, assignments, transfers, mortgages, pledges, releases, encumbrances and hypothecations of any portions of Landlord's and the Ground Lessor's interests in any Linkage Fees (as defined in the 383 Contract) or the Landmark Lot and (b) conveyances, transfers and assignments of any interest in the Ground Lease and the Original Lease, whether the expiration of the Transfer Restrictions occurs by termination of the 383 Contract or otherwise, and provided that this Lease shall be in full force and effect at such time, the Term shall be automatically extended to February 28, 2274 (such extension being hereinafter referred to as the "Extended Term") and the Expiration Date shall then be and mean the last day of the Extended Term, without the execution of any further instrument. Notwithstanding the foregoing, promptly after the commencement of the Extended Term, Landlord and Tenant shall enter into an agreement in recordable form and otherwise reasonably satisfactory to Landlord and Tenant, confirming that the Term has been extended for the Extended Term. Unless the context shall otherwise require, Tenant's occupancy of the Premises during the Extended Term shall be upon the same terms, covenants and conditions of this Lease as shall be in effect immediately prior to such extension. Any dispute under this Section 2.02 shall be resolved by arbitration in accordance with the provisions of Article 36; provided, however, that any final determination beyond right of appeal as to the expiration of the Transfer Restrictions made by a court of competent jurisdiction in any litigation brought against Landlord by a party other than Tenant shall be binding on the parties for purposes hereof.

(b) Upon Landlord's receipt from Tenant of evidence reasonably satisfactory to Landlord that the interest of 383 Madison Associates in the property located at 383 Madison Avenue, New York, New York was assigned, transferred or conveyed in violation of the 383 Contract, or if in Landlord's reasonable judgment, Landlord shall have the right to terminate the 383 Contract and/or the Transfer Restrictions, Landlord shall use Landlord's Reasonable Efforts to terminate the 383 Contract and/or the Transfer Restrictions.

(c) Landlord shall not enter into any agreement extending the Transfer Restrictions or any modification or amendment to the 383 Contract which would adversely affect Tenant's

rights hereunder without obtaining Tenant's prior written consent thereto.

ARTICLE 3

RENT

Section 3.01.

(a) Tenant shall pay to Landlord with respect to the Premises, a fixed rent (the "Fixed Rents") in the annual aggregate amounts set forth below:

(i) \$2,369,010 during the period (the "First Rent Period") beginning on the date hereof and ending on June 30, 2019; and

(ii) \$2,043,500 during the period (the "Second Rent Period") commencing July 1, 2019 and ending on December 31, 2104.

(iii) \$2,043,500 during the period (the "Extended Term Rent Period") commencing on January 1, 2105 and ending on March 30, 2274.

(b) Simultaneously with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver to the other the Environmental Release.

(c) In consideration of Landlord restructuring the Original Lease, simultaneously herewith, Tenant has paid to Landlord an amount equal to Five Million Dollars (\$5,000,000).

(d) The Fixed Rents shall be due and payable in equal semi-annual installments in arrears, on the first day of each January and July during the Term. Notwithstanding anything to the contrary contained herein, the installment of Fixed Rents payable on July 1, 1994 shall be equal to \$535,068.24 [\$6,369.87 for each day which elapses between the date hereof and June 30, 1994].

Section 3.02. The Fixed Rents shall be absolutely net to Landlord and the Fixed Rents and all other amounts payable by Tenant to Landlord hereunder shall be without any abatement, deduction, counterclaim or offset whatsoever, so that this Lease shall yield net to Landlord under all circumstances and conditions (whether now or hereafter existing and whether or not within the contemplation of the parties), the Fixed Rents and all other amounts payable by Tenant to Landlord hereunder. Except for (i) debt service on any indebtedness of Landlord or the Ground Lessor,

(ii) the annual rent and other sums payable under the Ground Lease, (iii) costs and expenses payable by Landlord pursuant to Section 5.02, and (iv) amounts payable by Landlord pursuant to Section 19.03, Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises and the operation, management, maintenance and repair thereof, structural or otherwise, which arise or become due or payable during or after (but attributable to a period falling within) the Term, and Tenant shall indemnify Landlord against, and hold Landlord harmless from, such costs, expenses and charges, and Tenant's liability for the payment of any of such costs, expenses and charges which shall become payable after the Term as aforesaid is hereby expressly provided to survive the Term.

Section 3.03. Tenant shall pay all Impositions in accordance with Article 4 hereof.

Section 3.04. The Fixed Rents and all other amounts payable by Tenant to Landlord pursuant to this Lease, including, without limitation, the amounts payable pursuant to Article 19 hereof (collectively, "Rental"), shall constitute rent under this Lease, and shall be paid as provided in Section 3.05. In the event of Tenant's failure to pay any part of the Rental after Landlord shall have given Tenant the notice, if any, required to be given under Section 24.01 and the applicable cure period, if any, shall have expired, Landlord (in addition to all other rights and remedies) shall have all of the rights and remedies provided for in this Lease or at law or in equity in the case of nonpayment of rent, subject to the terms of this Lease, including, without limitation, Section 24.07. It is understood and agreed that, except as specifically provided in this Lease, Tenant's obligation to pay Rental hereunder shall not terminate prior to the Expiration Date, notwithstanding the exercise by Landlord of any or all of its rights under Article 24 hereof.

Section 3.05. All Rental under this Lease shall be payable when due and, except as otherwise expressly provided herein, without notice or demand and without any abatement, deduction, counterclaim or offset whatsoever, at Landlord's option, (a) by wire transfer of immediately available funds, or (b) by good checks drawn against an account at a bank which is a member of the New York Clearing House Association (or any successor body of similar function), and shall be payable (i) if paid by wire transfer, to a bank account or bank accounts designated by Landlord in accordance with wire transfer instructions provided by Landlord in a Notice to Tenant, or (ii) if paid by check, to Landlord or Landlord's designee, at the office of Landlord set forth above or at such other place in the continental United States as Landlord shall direct by Notice to Tenant.

Section 3.06. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct amount of any Rental shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy provided in this Lease or at law.

Section 3.07. If at any time during the Term any party comprising Landlord shall file a voluntary petition under Title 7 or 11 of the United States Bankruptcy Code, or such petition shall be filed against any such party and an order for relief shall be entered, or if any such party shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future federal, state or other statute or law (a "Bankruptcy Event"), and in the course of such Bankruptcy Event any such party rejects its executory obligations under this Lease, such rejection shall not affect Tenant's right to continue to occupy the Premises under the terms and conditions set forth in this Lease, including without limitation, payment of the Rental set forth herein, and in addition thereto Tenant shall have the right after the occurrence of a Bankruptcy Event, by notice given to Landlord not earlier than the twenty-third (23rd) anniversary and not later than six months following the twenty-fifth (25th) anniversary of the date hereof (or thirty (30) months following the rejection of this Lease in bankruptcy, if later), to prepay in full in cash the Fixed Rents for the balance of the Term (including the Extended Term) by paying to Landlord an amount equal to the sum of (i) except to the extent Tenant has theretofore paid or prepaid the Fixed Rents payable with respect to the First Rent Period, an amount equal to the sum of (x) the "Rental Period Prepayment Amount" set forth in Exhibit "C" annexed hereto and made a part hereof corresponding to the semi-annual rental period in which the date of prepayment occurs, and (y) any Fixed Rents due but not paid as of the date of prepayment, and (ii) an amount equal to the sum of (x) the "Rental Period Prepayment Amount" set forth in Exhibit "D" annexed hereto and made a part hereof corresponding to the semi-annual rental period in which the date of prepayment occurs and (y) any Fixed Rents due but not paid as of the date of prepayment. Upon payment of such sum, the Fixed Rents for the balance of the Term (including the Extended Term) shall be reduced to zero.

Section 3.08. Notwithstanding anything to the contrary set forth above, Tenant shall have the option, exercisable upon not less than ten (10) days' notice to Landlord at any time prior to

the later of (a) January 1, 1995 or (b) the date which is one hundred twenty (120) days after the date on which Landlord gives notice to Tenant that it intends to enter into a Secured Loan, to prepay (i) all of the remaining Fixed Rents due and payable during the First Rent Period by payment in the manner prescribed in the last sentence of this Section 3.08 of an amount equal to the sum of (1) the "Rental Period Prepayment Amount" set forth in Exhibit "C" corresponding to the semi-annual rental period in which the date of such prepayment occurs and (2) any Fixed Rents due but not paid as of the date of such prepayment or (ii) a portion thereof, thereby reducing the Fixed Rents for the remainder of the First Rent Period to an amount sufficient to amortize fully in equal semi-annual installments at the Lease Rate over the remainder of the First Rent Period the difference between the "Rental Period Prepayment Amount" set forth in Exhibit "C" corresponding to the semi-annual rental period in which the date of such partial prepayment occurs (plus any Fixed Rents due but not paid as of the date of such prepayment) and the amount prepaid. Notwithstanding the foregoing, in the event that Landlord does not enter into a Secured Loan on or before the first anniversary of the expiration of the one hundred twenty (120) day period described in clause (b) above, Tenant's option to prepay pursuant to this Section 3.08 shall not expire until one hundred twenty (120) days after the date on which Landlord gives to Tenant a new notice that it intends to enter into a Secured Loan, which new notice shall also be subject to the provisions of this sentence. Tenant shall make such prepayment prior to the applicable date set forth in clauses (a) and (b) above, by (x) wire transfer of immediately available funds (in accordance with the provisions of Section 3.05) or (y) delivery to Landlord of obligations of Tenant in an aggregate principal amount equal to the amount being prepaid (plus the amount of any Fixed Rents due but not paid as of the date of prepayment), which obligations shall (i) be exempt from Federal, New York State and New York City income taxes, (ii) mature not later than the last day of the First Rent Period, (iii) bear interest at an annual rate which is not less than the annual tax-exempt rate which Tenant would then be required to offer on obligations with comparable maturities and credit ratings and (iv) immediately upon such delivery, be readily salable, in the opinion of a nationally recognized investment banking firm that is mutually acceptable to Landlord and Tenant, by American Premier and/or Owasco, without recourse to either of them, at an aggregate net purchase price (after deduction of any marketing fees and expenses) that is not less than the aggregate principal amount of such obligations. If Tenant elects to prepay a portion of the Fixed Rents, Landlord and Tenant shall, promptly upon the request of either party, amend Exhibit "C".

ARTICLE 4

IMPOSITIONS

Section 4.01. Tenant covenants and agrees to pay, as hereinafter provided, to the Governmental Authority imposing the same, all of the following items, if and only to the extent that (x) either the Premises or Tenant is not exempt therefrom pursuant to Section 1275 of the New York Public Authorities Law or any other provision of law exempting property leased by or to Tenant from all or any portion of the Impositions and (y) such items are payable and, if unpaid, could become a lien on the Premises (collectively, "Impositions"): (a) real property taxes and assessments, (b) personal property taxes, (c) occupancy and rent taxes, (d) water, water meter and sewer rents, rates and charges, (e) excise or similar taxes, (f) levies, (g) license and permit fees, (h) vault charges, (i) sales, value added, use and similar taxes, (j) payment in lieu of each of the foregoing, whether or not expressly so designated, (k) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto, and (l) any and all other governmental levies, liens, fees, rents, assessments, taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature (including, without limitation, all of the above with respect to environmental matters, subject to the provisions of Section 38.08), and any interest or costs with respect thereto; provided and only to the extent that at any time during the Term such items listed in clauses (a) through (l) of this Section 4.01 are (i) assessed, levied, confirmed, imposed upon, or would grow or become due and payable out of or in respect of, or would be charged with respect to (x) the Premises, or (y) any document (other than this Lease) by which Tenant directly or indirectly creates or transfers an interest or estate in the Premises, or (z) the use and occupancy of the Premises by Tenant, and (ii) encumbrances or liens (except to the extent created or resulting from any indebtedness of Landlord or the Ground Lessor, including without limitation, any mortgage recording tax) on (v) the Premises, (w) any vault, passageway or space in or under the sidewalks or streets in front of or adjoining the Premises, (x) any other Appurtenances, (y) any personal property, Equipment or other facility used in the operation thereof, or (z) the Rental (or any portion thereof) payable by Tenant hereunder. Each such Imposition, or installment thereof, during the Term shall be paid before the last day the same may be paid without fine or penalty; provided, however, that if by law any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only,

provided that all such installment payments relating to periods prior to the date definitely fixed for the expiration of the Term shall be made prior to the Expiration Date.

Section 4.02. Nothing herein contained shall require Tenant to pay municipal, state or federal income, capital gains, inheritance, estate, succession, transfer, transfer gains or gift taxes of Landlord or the Ground Lessor or any corporate franchise tax imposed upon Landlord or the Ground Lessor.

Section 4.03. Except for such Impositions relating to environmental matters, any Imposition, relating to a fiscal period of the imposing Governmental Authority, a part of which period is included within the Term and a part of which is included in a period of time after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Expiration Date so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the Expiration Date bears to such fiscal period.

Section 4.04. Tenant shall have the right, to the extent permitted by law, at its own expense, to contest the amount or validity, in whole or in part, of any Imposition, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as (a) neither the Premises nor any portion thereof which is material to Tenant's operation of a railroad on the Premises, nor any material part of the rents, issues and profits of the Premises, would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost, and (b) such contest shall not subject the Ground Lessor, Landlord or the Trustee to the risk of any criminal liability.

Section 4.05. Tenant shall have the right, to the extent permitted by law, and at Tenant's sole cost and expense, to seek a reduction in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith.

ARTICLE 5

AIR RIGHTS

Section 5.01.

(a) This Lease and the Premises shall exclude Landlord's Air Rights, which shall remain the sole property of American Premier, but this Lease and the Premises shall include a total of 100,000 square feet of unused development rights appurtenant to the GCT Building and the Landmark Lot ("Tenant's Air Rights") which Tenant may (i) use to improve the GCT Building, or (ii) subject to applicable Requirements, transfer from the GCT Building or the Landmark Lot to any eligible receiving site, provided such transfer and any entry into a contract, conditional or otherwise (except as expressly provided in the next sentence), for any such transfer, occur after the later to occur of (x) the expiration of the Transfer Restrictions or (y) the closing of one or more transactions pursuant to which Landlord has sold, transferred or conveyed after the date hereof an aggregate amount of 1,000,000 square feet or more of Landlord's Air Rights. Notwithstanding the foregoing, Tenant shall have the right to enter into a contract for the sale of Tenant's Air Rights at any time after the expiration of the Transfer Restorations and after Landlord has entered into one or more contracts (excluding the 383 Contract) after the date hereof for the sale of an aggregate amount of 1,000,000 square feet or more of Landlord's Air Rights but prior to the closing of the same only if the contract to sell Tenant's Air Rights is expressly conditioned upon the closing of the transactions under the contracts entered into by Landlord after the date hereof to convey an aggregate amount of 1,000,000 square feet or more of Landlord's Air Rights. In utilizing or transferring Tenant's Air Rights, Tenant shall not take any action which would reduce the amount of Landlord's Air Rights or the amount of Landlord's Air Rights which may be transferred from the GCT Building or the Landmark Lot to other properties (except to extent that the transfer of Tenant's Air Rights to an eligible receiving site might reduce the demand for Landlord's Air Rights by the owner of such site). Tenant shall have the right to retain the proceeds of any transfer of Tenant's Air Rights made in accordance with the provisions of this Section 5.01(a).

(b) Upon any transfer of Tenant's Air Rights in accordance with Section 5.01(a), Landlord shall cooperate, and shall cause the Ground Lessor to cooperate, with Tenant in order to effectuate the transfer of Tenant's Air Rights. Such cooperation shall include, without limitation, promptly after request therefor, the execution and delivery of all documents and instruments necessary to transfer the Ground Lessor's or Landlord's rights with

respect to Tenant's Air Rights, release or waive Landlord's and the Ground Lessor's rights as a "party-in-interest", and otherwise as reasonably requested by Tenant, provided that such cooperation will be without the incurrence of any liability, cost or expense to Landlord or the Ground Lessor, and Tenant shall be solely liable and responsible for all inspection or maintenance reports required to be performed in connection with the transfer of Tenant's Air Rights (or pursuant to agreements entered into in connection with any such transfer), and all repair or maintenance requirements for the GCT Building imposed in connection with the approval of the transfer of Tenant's Air Rights by any applicable Governmental Authorities.

(c) Any declaration, agreement or other instrument entered into by Tenant in connection with the transfer of all or any portion of Tenant's Air Rights shall not impose any obligations on Landlord in excess of those set forth in Section 5.01(b), unless Tenant pays to Landlord the cost of such excess obligations. Tenant hereby indemnifies Landlord from and against any and all liability, obligation, loss, cost, damage and expense, including without limitation, reasonable attorneys' fees and charges, in connection with any declarations, agreements or other instruments in connection with the transfer of Tenant's Air Rights, to the extent the same exceed the scope of the obligations to which Landlord has agreed to be subject pursuant to Section 5.01(b).

Section 5.02.

(a) Tenant shall cooperate, and use reasonable efforts to cause its Affiliates to cooperate, with Landlord and any proposed or actual transferee(s) of Landlord's Air Rights in order to effectuate the transfer of Landlord's Air Rights from the GCT Building and the Landmark Lot. Such cooperation shall include, without limitation, promptly after request therefor, (i) the execution and delivery of all documents and instruments necessary to transfer, release or waive Tenant's rights as a "party-in-interest" or otherwise or to join in zoning lot mergers, as applicable, and otherwise as reasonably requested by Landlord or any proposed or actual transferee(s) of Landlord's Air Rights, (ii) the delivery of copies of all periodic inspection reports performed by Tenant as part of its regular maintenance procedures for the Landmark Lot and the GCT Building so that Landlord may file such reports with the appropriate Governmental Authorities and (iii) the execution and delivery of any other documents reasonably requested by Landlord in connection with Landlord's applications for special permits or other governmental authorizations, approvals or consents with respect to the transfer of Landlord's Air Rights, provided that (x) such cooperation will be without the incurrence of liability, cost or expense to Tenant, including, without

limitation, any expense for architects, engineers or other Persons (other than Tenant's in-house staff) to prepare inspection or maintenance reports required to be performed solely in connection with the transfer of Landlord's Air Rights (or pursuant to agreements entered into in connection with such transfer), or, except as otherwise provided in this Lease, expense for repair or maintenance of the GCT Building required in connection with the approval of the transfer of Landlord's Air Rights by the applicable Governmental Authorities, (y) Tenant shall not be required to testify or take affirmative public positions on behalf of Landlord's efforts to transfer Landlord's Air Rights and (z) Tenant shall not be required to make any portion of the Premises available for use by Landlord or any potential or actual transferee(s) of Landlord's Air Rights.

(b) Notwithstanding the provisions of Section 5.02(a), in the event that any Governmental Authority imposes requirements with respect to repair or maintenance of the GCT Building and/or the Landmark Lot in connection with its approval of the transfer of Landlord's Air Rights, Landlord and Tenant agree: (i) to the extent that the repair or maintenance requirements so imposed do not exceed the repair and maintenance obligations of Tenant under this Lease, Tenant shall repair or maintain the Premises in accordance with such requirements; (ii) to the extent that the performance of any repair or maintenance requirements would exceed the repair and maintenance obligations of Tenant under this Lease but such repairs or maintenance are then contemplated and budgeted for in Tenant's capital improvement or operating budget plans, Tenant shall promptly notify the appropriate Governmental Authority of Tenant's intention to perform the required repairs or maintenance in accordance with such plans of Tenant, subject to the reservation that Tenant may modify such plans to reflect good faith changes in its budget and priorities; and (iii) to the extent that the repair or maintenance requirements so imposed exceed the repair and maintenance obligations of Tenant under this Lease and such repair or maintenance requirements are not then contemplated or budgeted for by Tenant or Tenant modifies such plans to eliminate such work, Tenant shall perform such repairs or maintenance promptly after Tenant's receipt of payment from Landlord of an amount equal to the reasonably estimated cost of completing such repairs or maintenance agreed upon by Landlord and Tenant; provided that in the event that the reasonable costs and expenses incurred by Tenant in the performance of such repairs or maintenance exceed the amount paid therefor by Landlord to Tenant, Landlord shall reimburse Tenant for such excess costs and expenses upon presentation of a reasonably detailed statement therefor and, provided, further, that any overpayment made by Landlord to Tenant in connection with Tenant's performance of such repairs or maintenance shall be refunded to Landlord immediately upon the completion of such work. Landlord

hereby agrees that if Tenant uses employees of Metro North or any successor operator of commuter railroad service on the Premises to perform such repairs, then the standard and customary charges for using such employees shall be deemed reasonable. Notwithstanding the foregoing, Tenant shall be responsible for the fees and disbursements of its attorneys, architects and engineers in connection with the review and approval by Tenant of documents related to the transfer of Landlord's Air Rights, including, without limitation, the review of the imposition of repair or maintenance obligations in connection therewith.

(c) Any declaration, agreement or other instrument entered into by Landlord from and after the date hereof in connection with the transfer of all or any portion of Landlord's Air Rights that is intended to run with any portion of the Premises or to otherwise be binding upon any subsequent owner of the Premises shall be consistent with Sections 5.02(a) and (b) and shall not impose any obligations on Tenant (as successor to Landlord or otherwise) in excess of those set forth in Sections 5.02(a) and (b), unless Landlord pays to Tenant the cost of such excess obligations. Landlord hereby indemnifies Tenant from and against any and all liability, obligation, loss, cost, damage and expense, including without limitation, reasonable attorneys' fees and charges, in connection with any declarations, agreements or other instruments entered into after date hereof in connection with the transfer of Landlord's Air Rights, to the extent the same exceed the scope of the obligations to which Tenant has agreed to be subject pursuant to Sections 5.02(a) and (b). If, in Landlord's sole and absolute judgment, it will not impair or adversely affect Landlord's or the Ground Lessor's interest in the Premises or Landlord's ability to transfer Landlord's Air Rights in any way, Landlord will use reasonable efforts to request that any trust funds held in connection with such declarations be used to comply with any repair or maintenance obligations imposed thereunder to repair or maintain the GCT Building.

(d) Tenant acknowledges that Landlord's Air Rights or portions thereof are currently subject to the 383 Contract and Tenant has received a copy of the 383 Contract. Tenant shall not, and this Lease and the terms and provisions hereof shall not and shall not be deemed to, impair, interfere with or otherwise affect the performance of Landlord's or the Ground Lessor's obligations under the 383 Contract or the rights of the purchaser under the 383 Contract.

(e) Without limiting the foregoing provisions of this Section 5.02, Landlord and Tenant shall take all actions (including, without limitation, those provided for in the 383 Contract) reasonably requested by the other party hereto and/or any

proposed or actual transferees of Landlord's Air Rights or Tenant's Air Rights, as the case may be (including, without limitation, the purchaser under the 383 Contract), to effectuate any transfers thereof.

(f) Tenant acknowledges that any breach or default under this Section 5.02 shall be a material default under this Lease and since Landlord's damages may be difficult to ascertain and would not be a sufficient remedy for any such breach or default, in addition to enforcing Tenant's obligations under Section 19.01 and exercising any of Landlord's other remedies under this Lease, Landlord shall be entitled to specific performance of the provisions of this Section 5.02.

Section 5.03. Tenant shall use reasonable efforts to cause all Subtenants and Mortgagees to cooperate with Landlord to the full extent Tenant is required to cooperate pursuant to this Article 5 and shall include and cause to be included in all Subleases affecting the GCT Building or the Landmark Lot or any portion thereof entered into from and after the date hereof and Mortgages provisions pursuant to which the Subtenants and Mortgagees waive their rights as a "party-in-interest" and agree to cooperate with Landlord in order to effectuate the transfer of Landlord's Air Rights, and Landlord shall be expressly acknowledged in each such Sublease and Mortgage to be a third party beneficiary of such rights. Such cooperation shall include, without limitation, promptly after request therefor, the execution and delivery of all documents and instruments necessary or desirable to evidence or effectuate such transfer as reasonably requested by Landlord, provided that such cooperation will be without the incurrance of liability, cost or expense to the Mortgagee or Subtenant.

Section 5.04. Landlord hereby irrevocably waives all rights it may have or hereafter have to utilize Landlord's Air Rights to construct a building or other structure in the air space directly above the GCT Building, except that if either (a) both (x) the GCT Building is damaged or destroyed by fire or other casualty and as a result thereof the Landmark Lot is no longer subject to landmark laws and (y) Landlord has not sold, transferred or conveyed after the date hereof an aggregate amount of 1,000,000 square feet or more of Landlord's Air Rights pursuant to the closing of one or more transactions, or (b) the GCT Building is no longer standing for reasons other than the occurrence of a fire or other casualty, and as a result thereof the Landmark Lot is no longer subject to landmark laws, Landlord shall have the right to utilize Landlord's Air Rights to construct a building or other structure in the air space directly above the Landmark Lot. In the event that the GCT Building is so damaged, destroyed or no longer

standing, Tenant shall be entitled to construct any replacement GCT Building using square footage not to exceed the square footage of the existing GCT Building (as calculated under then existing applicable zoning regulations) plus any remaining Tenant's Air Rights, provided that the height, configuration and location of such replacement GCT Building shall, to the extent permitted by Requirements (including, without limitation, zoning regulations) then applicable, be reasonably designed to accommodate Landlord's use of all of Landlord's Air Rights above said replacement GCT Building or elsewhere on the Landmark Lot (in accordance with the applicable zoning regulations and other Requirements). In connection with any such construction on the Landmark Lot and the use of Landlord's Air Rights therewith, Landlord and Tenant each shall cooperate with the other by coordinating, to any reasonable extent, the design and construction of Tenant's replacement GCT Building and Landlord's improvements and the timetable therefor. In connection therewith, notwithstanding the provisions of clause (z) of Section 5.02(a), Landlord and Tenant each shall grant to the other, at no cost to the other party, such easements and other rights (including, without limitation, easements for access, support, utilities and ventilation shafts) as are reasonably required in connection with such other party's improvements. Notwithstanding the foregoing, Tenant shall not be required to construct or maintain any supports, bracings or other structures required by Landlord's construction unless and until Landlord shall have paid for same and provided for the ongoing maintenance thereof.

Section 5.05. Intentionally Deleted.

Section 5.06.

(a) Notwithstanding the provisions of Section 5.02, in the event that any repair or maintenance requirements are imposed pursuant to that certain Declaration dated February 9, 1979 made by American Premier and recorded in the Office of the New York City Register, New York County at Liber 480, Page 1 (the "Philip Morris Declaration"), Landlord and Tenant hereby agree that Tenant's obligations with respect to the Philip Morris Declaration shall be governed by Section 402 of the Original Lease; provided, however, except with respect to matters arising from environmental contamination of the Premises, Landlord and Tenant hereby acknowledge and agree that Section 12.01 is intended to reflect Landlord's and Tenant's interpretation of Tenant's repair and maintenance obligations under Section 402 of the Original Lease.

(b) Landlord and Tenant shall use reasonable efforts to cause the Philip Morris Declaration to be amended to provide that the Philip Morris Declaration shall not impose any obligation on

Tenant (as successor to American Premier's interest in the Premises or otherwise) in excess of those set forth in Section 5.02(b); provided, however, that in no event shall Landlord's inability to amend the Philip Morris Declaration prevent or impair the transferability or utility of Landlord's Air Rights or affect any obligations of Tenant under this Lease, including, without limitation, Tenant's obligation to cooperate with Landlord in connection with the transfer of Landlord's Air Rights pursuant to Section 5.02(a); and provided, further, that Landlord shall not be required to incur any expense or additional obligation in connection with obtaining such amendment unless Landlord is reimbursed by Tenant for such expenses or obligations.

ARTICLE 6

LATE CHARGES

If payment of any Fixed Rents or any other Rentals payable directly to Landlord shall not have been made by the tenth (10th) day after the date on which such amount was due and payable under this Lease, a late charge ("Late Charge") on the amount overdue at the annual rate (the "Late Charge Rate") of four (4) percent plus the rate that is from time to time publicly announced by Chemical Bank or its successors as its prime or base rate, and if such rate shall cease to be so announced, then the commercially recognized equivalent, or the then maximum lawful interest rate, whichever shall be less, from the date on which such amount was due until the date paid, shall at Landlord's option be payable as damages for Tenant's failure to make prompt payment, in addition to any other right or remedy of Landlord under this Lease if the payment in question is not made within the applicable grace period therefor. The Late Charges for any payment period shall be payable on the first day of the month immediately succeeding the month during which the payment was due, and in default of payment of any Late Charges, Landlord shall have (in addition to all other remedies) the same rights as provided in this Lease for nonpayment of Rental. Nothing contained in this Article 6 and no acceptance of Late Charges by Landlord shall be deemed to extend or change the time for payment of Fixed Rents or any other Rental. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay Late Charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24.

ARTICLE 7

INSURANCE

Section 7.01.

(a) Throughout the Term, Tenant at its sole cost and expense shall self-insure or provide and keep in force (through a reputable insurance company licensed to do business in the State of New York) insurance against fire or other casualty and commercial general liability insurance against liability for bodily injury and death and property damage in a commercially reasonable amount, but not less than \$15,000,000 combined single limit for liability for bodily injury, death and property damage. Such liability insurance shall include all of the Premises. Said \$15,000,000 limit shall be adjusted every five years until the fortieth (40th) anniversary of the date hereof in the same proportion that the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor, New York-Northern New Jersey-Long Island, NY-NJ-CT Area, all items (1982-84=100), or any successor index thereto appropriately adjusted, last published before the date in question shall increase from the Consumer Price Index last published before the date hereof; provided that such limit shall not exceed \$50,000,000. During the balance of the Term, said limit shall be increased to such higher amount as is reasonably agreed upon by Landlord and Tenant, taking into account the insurance and self-insurance arrangements of operators of other public transportation systems of similar size and character and having similar facilities to the Premises.

(b) If Tenant elects to self-insure against any of the risks set forth above or any portion thereof, Tenant shall establish reserves or make other financial arrangements which, in the reasonable judgment of Tenant's risk manager, are sufficient to fulfill Tenant's obligations under Article 19 and Section 8.01.

Section 7.02. Each policy of insurance obtained by Tenant with respect to the Premises and each certificate or memorandum therefor issued by the insurer shall contain (i) a provision that no act or omission of Tenant, Landlord, the Ground Lessor or the Trustee shall affect or limit the obligation of the property insurance company to pay Landlord, the Ground Lessor or the Trustee the amount of any loss sustained, other than acts intended to cause the damage insured against, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days' prior written notice to Landlord and the Trustee, and (iii) as to property insurance, a waiver of

subrogation by Tenant's property insurers of any right to recover the amount of any loss resulting from the negligence of Landlord, the Ground Lessor and their respective agents, employees or licensees. All liability insurance maintained by Tenant with respect to the Premises shall name Landlord, the Ground Lessor and the Trustee as additional insureds (in addition to any parties which Tenant determines so to name), and any property insurance so maintained shall name the Landlord, the Ground Lessor and the Trustee as loss payees as their interests may appear under a standard non-contributing mortgagee clause. By February 1 of each calendar year, Tenant shall deliver to Landlord a copy of each policy of insurance (or if unobtainable, certificate or memorandum thereof) and/or a reasonably detailed description of the self-insurance program then in effect and the reserves held or other financial arrangements made in connection therewith.

Section 7.03. Landlord acknowledges that Tenant's self-insurance program on the date hereof in the form of the description of self-insurance program delivered to Landlord, satisfies the provisions of this Article 7.

ARTICLE 8

CASUALTY

Section 8.01.

(a) If all or any portion of the GCT Building shall be destroyed or damaged in whole or in part by fire or other casualty, Tenant shall give to Landlord and the Trustee, if any, reasonably prompt notice thereof (except with respect to partial damage the reasonably estimated cost of repair of which shall be less than \$5,000,000).

(b) If any damage or destruction to the Premises or any portion thereof (including any damage or destruction caused by any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, or for which insurance was not obtained or obtainable) shall occur at any time during the Term, Tenant, at its sole cost and expense, for the benefit of Landlord, whether or not such damage or destruction shall have been insured or insurable, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, with reasonable diligence (subject to Unavoidable Delays), shall repair, alter, restore, replace and rebuild the same to a Safe Condition which complies with Requirements (to the extent required by this Lease) (collectively, "Restore," and the work with respect thereto collectively, "Restoration") and Restore the GCT Building with a square footage not to exceed the square footage of the existing GCT Building (as calculated under then existing

applicable zoning regulations) plus any remaining Tenant's Air Rights, and subject to Section 5.04, as applicable. In no event shall Landlord be obligated to Restore the Premises or any portion thereof or pay any of the costs or expenses thereof, nor shall Landlord incur any cost, expense or liability for maintenance or repair of any Restored portion of the GCT Building or for any other portion of the Premises imposed by any Governmental Authority in connection with a Restoration. In no event shall Landlord's Air Rights be diminished or materially impaired in any way by Tenant's Restoration.

(c) Notwithstanding the provisions of Section 8.01(b), if any such damage or destruction to the GCT Building occurs during the Second Rent Period or the Extended Term Rent Period and the cost thereof is reasonably estimated to be \$5,000,000 or greater, then Tenant shall within ninety (90) days after such damage or destruction elect one of the following options by Notice to Landlord and the Trustee, if any:

(i) Restoration. Tenant may elect to Restore the GCT Building in accordance with the provisions of Section 8.01(b).

(ii) Prepayment of Rental. Tenant may elect to prepay (x) the Fixed Rents for the Second Rent Period and the Extended Term Rent Period (to the extent not theretofore paid to Landlord), by payment of an amount equal to the "Rental Period Prepayment Amount" set forth in Exhibit "D" corresponding to the semi-annual rental period in which the date of such prepayment occurs, and (y) all due but unpaid Rental. In such event, Tenant shall also pay to Landlord a sum equal to all prepayment, yield maintenance and similar fees, costs and charges, if any, payable by Landlord to the Trustee as a result of the prepayment.

If Tenant shall fail to give such Notice to Landlord and the Trustee within the aforesaid ninety (90) day period, Tenant shall be deemed to have elected the option set forth in clause (i) above.

Section 8.02. This Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to, or total, substantial or partial destruction of, the Premises or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof; and Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental payable by Tenant hereunder, shall continue as though the

Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 9

CONDEMNATION

Section 9.01.

(a) If at any time during the Term the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right (whether pursuant to one or more such actions and/or agreements), this Lease and the Term shall terminate and expire on the date of such taking. In such event, the Rental payable by Tenant hereunder shall be paid to and apportioned as of the date of such taking.

(b) If a taking of the nature described in Section 9.01(a) is initiated by Tenant or any other Governmental Authority on behalf of Tenant, there shall first be paid to Landlord (i) to the extent any of Landlord's Air Rights were impaired or taken together with the Premises or portion thereof taken and not separately awarded, the value of any of Landlord's Air Rights taken or impaired in any proceeding with respect to such taking, without deduction therefrom for (x) any estate vested in the Ground Lessor by the Ground Lease or in Tenant by this Lease or (y) any terms, covenants or provisions contained herein, (ii) except to the extent Tenant has theretofore paid or prepaid the Fixed Rents payable with respect to the First Rent Period, an amount equal to the sum of (x) the "Rental Period Prepayment Amount" set forth in Exhibit "C" corresponding to the semi-annual rental period in which the date of taking occurs, and (y) any Fixed Rents due but not paid as of the date of taking, (iii) an amount equal to the sum of (x) the "Rental Period Prepayment Amount" set forth in Exhibit "D" corresponding to the semi-annual rental period in which the date of taking occurs and (y) any Fixed Rents due but not paid as of the date of taking, (iv) if such taking occurs during the First Rent Period, a sum equal to the amount by which three percent (3%) of the sums held by Landlord on the date hereof for payment to the Ground Lessor under Article Seventeenth of the Ground Lease exceeds the present value of three percent (3%) of such sums if payable on the twenty-fifth (25th) anniversary of the date hereof, discounted at the Lease Rate, as of the date of taking, (v) an amount equal to the present

value of the reversionary interest of the Ground Lessor in and to the Premises (as such Premises are constituted on the date hereof) upon the expiration of the Ground Lease, discounted at the Lease Rate, as of the date of taking, (vi) a sum equal to all prepayment, yield maintenance and similar fees, costs and charges payable by Landlord to the Trustee as a result of any termination of this Lease caused by such condemnation, and (vii) a sum equal to all reasonable expenses paid or incurred by the Ground Lessor, the Trustee and Landlord in the condemnation proceeding. The balance of the award, if any, shall be paid to Tenant.

(c) If a taking or takings of the nature described in Section 9.01(a) were not initiated by Tenant or any other Governmental Authority on behalf of Tenant, there shall be first paid to Landlord a sum equal to the amounts described in clauses (i), (ii), (iii), (v), (vi) and (vii) of Section 9.01(b) above, and the balance of such condemnation award shall be paid to Tenant.

(d) If a taking of the nature described in Section 9.01(a) occurs after the expiration of the Transfer Restrictions and provided that all amounts payable to Landlord under this Article 9 (including, without limitation, the Shortfall, if any) shall have been paid to Landlord, Landlord shall convey all of its right, title and interest in and to the balance of the Premises to Tenant without further consideration.

(e) For purposes of this Article 9, the term "substantially all of the Premises" shall mean the following:

- (1) more than 90% of the GCT Building or the Landmark Lot, as same exists on the date hereof; and
- (2) such portion of the Harlem commuter rail line or the Hudson commuter rail line, as same exists on the date hereof, if Tenant (x) would be unable to use the Premises for transportation purposes without such portion of rail line, and (y) discontinues the operation of rail lines on the Premises.

(f) Landlord and Tenant agree to execute and deliver any and all documents that may be reasonably required in order to facilitate collection by them of such awards in accordance with the provisions of this Article 9.

Section 9.02. For purposes of this Article 9, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the

Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law, or (ii) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 9.03.

(a) If less than substantially all of the Premises shall be taken as provided in this Article 9, then this Lease and the Term shall continue without abatement of the Rental or diminution of any of Tenant's obligations hereunder.

(b) If a taking of the nature described in Section 9.03(a) shall occur during the Term, Tenant, at its sole cost and expense, for the benefit of Landlord, whether or not the award(s) (or portion(s) thereof made available to Tenant pursuant to this Section 9.03(b)) shall be sufficient for the purpose, shall, to the extent necessary or applicable, proceed with reasonable diligence (subject to Unavoidable Delays) to Restore any remaining part of the Improvements not so taken. There shall first be paid to Landlord (i) to the extent any of Landlord's Air Rights were impaired or taken together with the portion of the Premises taken and not separately awarded, the value of Landlord's Air Rights taken or impaired in any proceeding with respect to such taking, without deduction therefrom for (x) any estate vested in the Ground Lessor by the Ground Lease or in Tenant by this Lease or (y) any terms, covenants or provisions contained herein, and (ii) all reasonable expenses paid or incurred by the Ground Lessor, the Trustee and Landlord in the condemnation proceeding. Tenant shall be entitled to the balance of the award for such taking. Each of the parties agrees to execute and deliver any and all documents that may be reasonably required in order to facilitate collection of the awards.

(c) Without limiting the foregoing, if a taking of the nature described in Section 9.03(a) shall occur during the First Rent Period, then on the Expiration Date or any earlier termination of this Lease, Tenant shall pay to Landlord an amount equal to three percent (3%) of the aggregate condemnation awards paid by the condemning authority to Tenant as compensation for such takings (without any interest thereon).

Section 9.04. If the temporary use of the whole or any part of the Premises shall be taken at any time during the Term for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such

right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that if the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the last day of the Term.

Section 9.05. In case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then, except as otherwise provided in Section 9.01, this Lease shall continue in full force and effect without reduction or abatement of Rental and the award shall be paid to Tenant.

Section 9.06. If at any time during the Term any proceedings are instituted or orders are made by any Governmental Authority for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises or any part thereof, or the curbs and sidewalks adjacent thereto, Tenant, at Tenant's sole cost and expense, promptly shall comply with such requirements. Any taking by a Governmental Authority for a street widening or enlargement shall be deemed a partial condemnation and be subject to the provisions of Section 9.03.

Section 9.07. Tenant shall be entitled to file a separate claim for a condemnation award in any circumstance in which Tenant shall be entitled to compensation under this Article 9, provided that, if the taking were initiated by Tenant or any other Governmental Authority on behalf of Tenant, Landlord's rights with respect to any condemnation award or proceeding shall not be impaired or adversely affected in any way. Neither Tenant nor Landlord shall settle or compromise any taking or other governmental action without the consent of the other party. Without limiting the foregoing, in the event of a taking of the nature described in this Article 9, Landlord and Tenant shall jointly petition the appropriate court or adjudicating body to allocate any resulting condemnation award(s) between Landlord and Tenant in accordance with the provisions of this Article 9.

Section 9.08. If (a) the amounts due and payable to Landlord pursuant to clauses (ii), (iii), (iv), (v), (vi) and (vii) of Section 9.01(b) exceed the amount of the aggregate award or awards paid to Landlord pursuant to Section 9.01(b), or (b) the amounts due and payable to Landlord pursuant to Section 9.01(c) for

the items described in clauses (ii), (iii), (v) and (vii) of Section 9.01(b) exceed the amount of the aggregate award or awards paid to Landlord pursuant to Section 9.01(c) (in either such case, the amount of such excess is termed the "Shortfall"), then Tenant shall pay the Shortfall to Landlord on the date of taking. Notwithstanding the foregoing, if there is a Shortfall with respect to the amounts due and payable to Landlord pursuant to Section 9.01(c) for the item described in clause (v) of Section 9.01(b), in such event only, Tenant shall only be obligated to pay the Shortfall to Landlord to the extent that the amount due and payable under clause (v) of Section 9.01(b) does not exceed the amount which would have been due and payable to Landlord assuming that such amount were determined to be \$400,000 on the twenty fifth anniversary of the date hereof.

ARTICLE 10

ASSIGNMENT, SUBLETTING AND MORTGAGES

Section 10.01. Tenant shall have the right, without the consent of Landlord, to (a) assign or otherwise transfer this Lease or the term and estate hereby granted, (b) sublet the Premises or any part thereof, or allow the same to be used or occupied by any Person, and (c) mortgage Tenant's interest in this Lease and the Premises, subject to the provisions hereof. Notwithstanding the foregoing, Tenant shall in no event make any partial assignment of this Lease or any partial or separate assignment of any of Tenant's rights or options under this Lease.

Section 10.02. If this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect Rental from the assignee. If the Premises or any part thereof are sublet or used or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, if an Event of Default has occurred and is continuing, subject to the rights granted hereunder to any Mortgagee, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected from such assignee, Subtenant or occupant to the Rental herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this Article, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance by Tenant of Tenant's obligations under this Lease. References in this Lease to use or occupancy by others (that is, anyone other than Tenant) shall not be construed as limited to subtenants and those claiming under or through subtenants but as including also licensees, concessionaires, operators and others claiming under or through Tenant; immediately or remotely, a legal right of possession or occupancy of the Premises or any portion thereof (all

such persons being referred to individually in this Lease as a "Subtenant" and collectively as "Subtenants").

Section 10.03. Any assignment or transfer of Tenant's interest in this Lease shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee shall assume (from and after the date of such assignment) the obligations of this Lease on the part of Tenant to be performed or observed, including, without limitation, Tenant's obligations under Article 5, and whereby the assignee shall agree that the provisions of this Article shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. The original named Tenant covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of any Rental by Landlord from any assignee, transferee, or any other party, the original named Tenant and each successor in interest shall remain fully and primarily liable for the payment of all Rental (including, without limitation, any amounts payable by Tenant pursuant to Article 19) throughout the Term (including the Extended Term).

Section 10.04. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

Section 10.05. Notwithstanding anything to the contrary contained in this Article, if Tenant shall at any time or times during the Term desire to assign this Lease, Tenant shall give notice thereof to Landlord, which notice shall be accompanied by a conformed or photostatic copy of the proposed assignment, the effective date of which shall be at least five (5) Business Days after the giving of such notice.

Section 10.06. Each Sublease shall expressly be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Lease, including without limitation, the matters set forth in Article 5, except such as are irrelevant or inapplicable. Notwithstanding any such subletting and/or acceptance of rent or additional rent by Landlord from any Subtenant, Tenant shall and will remain fully liable for the payment of all Rental due and to become due hereunder and for the

performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed. Tenant further agrees that notwithstanding any such subletting, no other and further subletting of the Premises or any part thereof by Tenant or any person claiming through or under Tenant shall or will be made except upon compliance with and subject to the provisions of this Article.

Section 10.07. With respect to each and every Sublease, it is further agreed that no subletting shall be for a term (including renewal or extension options) ending later than one day prior to the expiration of the then current Term of this Lease, except that a Sublease may provide for one or more options to extend the term thereof beyond the initial Term of this Lease, provided such option shall be conditioned on the effectiveness of the commencement of the Extended Term.

Section 10.08. The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any of the Subtenants shall not relieve Tenant of Tenant's obligation to cure the same.

Section 10.09.

(a) Tenant shall give Landlord notice of each Sublease promptly after the execution and delivery thereof.

(b) Landlord, for the benefit of any bona fide Subtenant which is not an Affiliate of Tenant under any Sublease which complies with the provisions of this Article, shall automatically, without the necessity for execution of any agreement in confirmation thereof or, except as provided herein, the necessity for any other action on the part of Landlord, Tenant or the Subtenant, recognize the Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to any of the provisions of Article 24 if (i) the Sublease contains provisions to the effect required by Section 5.03 hereof, (ii) each Mortgagee (unless a Mortgagee is a trustee for bondholders) shall have agreed in writing substantially to the effect that it will not join the Subtenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by the Mortgagee, nor evict the Subtenant from the portion of the Premises demised to it, except by reason of the Subtenant's default under its Sublease, nor affect any of the Subtenant's rights under its Sublease by reason of any default under its Mortgage, (iii) Tenant shall deliver to Landlord a certificate of Tenant, reasonably satisfactory to Landlord, certifying that Tenant used commercially reasonable efforts to negotiate a fair market rental for the space demised under the Sublease, taking into account the proposed use of the

space so demised and Tenant's overall marketing strategy for the Premises, and to Tenant's best knowledge, the rent payable under the Sublease, after taking into account any credits, offsets, concessions or deductions to which the Subtenant may be entitled thereunder and the costs of any improvements required to be undertaken by Tenant in connection with the preparation of the space demised under the Sublease, is substantially equal to the then fair market rental value of the space demised thereunder, taking into account the proposed use of the space so demised and Tenant's overall marketing strategy for the Premises, and (iv) Tenant shall deliver to Landlord a copy of the Sublease in question, together with a certificate of Tenant and the Subtenant that same is a true, correct and complete copy of the Sublease (which may be unexecuted but must be substituted by a fully executed Sublease promptly after execution of such Sublease); provided, however, that at the time of the termination of this Lease (x) no default exists under the Subtenant's Sublease which would then permit the landlord thereunder to terminate the Sublease or to exercise any dispossession remedy provided for therein, and (y) the Subtenant delivers to Landlord an instrument in the form provided by Landlord confirming the agreement of the Subtenant to attorn to Landlord and to recognize Landlord as the Subtenant's landlord under the Sublease, which instrument shall provide that neither Landlord nor anyone claiming by, through or under Landlord shall be:

(1) liable for any act or omission of any prior landlord under the Sublease (including, without limitation, the then landlord),

(2) subject to any offsets, claims or defenses which the Subtenant may have against any prior landlord under the Sublease (including, without limitation, the then landlord),

(3) bound by any payment of rent which the Subtenant might have made for more than one (1) month in advance to any prior landlord under the Sublease (including, without limitation, the then landlord), or any security deposited by such Subtenant which has not been transferred to Landlord,

(4) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by said Sublease,

(5) bound by any obligation to make any payment to or on behalf of the Subtenant, or

(6) bound by any previous modification of such Sublease affecting the term, rent or other material business terms thereof as to which Tenant has not given to Landlord the certificate described in clause (iii) of this Section 10.09(b).

(c) If a Subtenant entitled to such recognition, or Tenant on behalf of such Subtenant, shall so request, simultaneously with the execution of such Subtenant's Sublease, Landlord, Tenant and the Subtenant under a Sublease which complies with the provisions of Section 10.09(b) shall enter into an agreement in form and substance reasonably satisfactory to Landlord which shall provide in substance that in the event of termination, re-entry or dispossession by Landlord under this Lease, (i) Landlord shall not terminate or disturb said Subtenant's possession of the premises demised under the Sublease except in accordance with the terms of said Sublease, (ii) Landlord shall take over all of the right, title and interest of Tenant, as sublessor, under such Sublease, and (iii) such Subtenant shall attorn to Landlord pursuant to the then executory provisions of such Sublease, or enter into a direct lease on identical terms with Landlord for the balance of the unexpired term of the Sublease, provided such agreement contains the provisions set forth in clauses (x) and (y) in the proviso in Section 10.09(b).

Section 10.10.

(a) Tenant shall have the right, subject to the provisions of this Section 10.10, to subject Tenant's interest in this Lease and the leasehold interest created hereby to one or more Mortgages and to assign this Lease to any Mortgagee as security. Notwithstanding the foregoing, no Mortgage shall be a lien or encumbrance upon the estate or interest of Landlord or the Ground Lessor in and to the Premises or any part thereof and Landlord's interest in this Lease shall not be subject or subordinate to (i) any Mortgage, or (ii) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

(b) No Mortgagee shall be entitled to the benefits of Sections 10.11, 10.12, 10.13 or 10.14 unless the Mortgagee is not an Affiliate of Tenant and unless and until (i) a copy of each instrument creating and effecting such Mortgage, certified by the Mortgagee to be a true and complete copy of such instrument, and written notice containing the name and post office address of the Mortgagee, shall have been delivered to the Landlord, (ii) the

Mortgage shall contain the provisions required by Section 5.03 hereof and (iii) the Mortgage shall contain in substance the following provisions:

"(w) This mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the lease hereby mortgaged, unless the purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, in the instrument transferring to such purchaser or to such assignee the interest of tenant under the lease hereby mortgaged, shall assume and agree to perform all of the terms, covenants and conditions of the lease thereafter to be observed or performed on the part of such tenant, that no further or additional mortgage or assignment of the lease hereby mortgaged shall be made except in accordance with the provisions contained in Article 10 of the lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to the landlord under the lease immediately after the consummation of such sale.

(x) The mortgagee's rights to retain and apply any condemnation awards toward payment of the sums secured by this mortgage are subject to the provisions of Article 9 of the lease hereby mortgaged.

(y) In the event of foreclosure, the mortgagee shall not name in such foreclosure action or otherwise, and in any event shall not disturb the possession or right to possession (except following a default) of, any subtenant of the tenant under the lease hereby mortgaged, which is entitled to the protection set forth in Section 10.09(b) of such lease.

(z) This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of the landlord under the lease hereby mortgaged, as said lease may have been amended or renewed or may hereafter be amended or renewed with the consent of the mortgagee. Nevertheless, the holder of this mortgage agrees from time to time without charge, to execute, acknowledge and deliver any instruments reasonably requested by the landlord under the lease to evidence the foregoing subordination."

Section 10.11.

(a) If Tenant shall mortgage this Lease in compliance with the provisions of Section 10.10, Landlord shall give to each Mortgagee, at the address of such mortgagee set forth in the notice mentioned in Section 10.10 (as such address may thereafter be

changed by notice from Mortgagee to Landlord), and otherwise in the manner provided by Article 25, a copy of each notice of Default and notice of termination of this Lease at the same time as, and whenever, any such notice shall thereafter be given by Landlord to Tenant, and no such notice shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each Mortgagee. Each Mortgagee (i) shall thereupon have a period of twenty (20) days more in the case of a Default in the payment of Fixed Rents or other Rental and forty-five (45) days more in the case of any other Default, after such notice is given to Mortgagee, for remedying the Default, or causing the same to be remedied, or causing action to remedy a Default mentioned in Section 24.01(c) to be commenced, than the period given Tenant pursuant to Section 24.01 after such notice is given to it, and (ii) shall, within such period and otherwise as herein provided, have the right to remedy such Default, cause the same to be remedied or cause action to remedy a Default mentioned in Section 24.01(c) to be commenced. Landlord shall accept performance by a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(b) Notwithstanding the provisions of Section 10.11(a), no Default or Event of Default shall be deemed to exist if a Mortgagee, in good faith, (i) shall have commenced promptly to cure the Default or Event of Default and prosecutes the same to completion with reasonable diligence and continuity, subject to Unavoidable Delays, which for the purposes of this Section 10.11(b) shall include causes beyond the control of such Mortgagee instead of causes beyond the control of Tenant, or (ii) if either (x) possession of the Premises or any part thereof is required in order to cure the Default or Event of Default or (y) an Event of Default under Section 24.01(d) or (e) shall have occurred, shall have notified Landlord of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver, and thereafter, within forty-five (45) days of the giving of such notice commences such foreclosure proceedings, prosecutes such proceedings with reasonable diligence and continuity and, upon obtaining such possession, commences promptly to cure the Default or Event of Default and prosecutes the same to completion with reasonable diligence and continuity, provided that (1) the Mortgagee will be deemed to have cured an Event of Default under Section 24.01(d) or (e) upon the Mortgagee's obtaining possession of the Premises and (2) any other Default or Event of Default which is not susceptible of cure by the Mortgagee because such Default or Event of Default is personal in nature to Tenant, upon obtaining such possession and the payment to Landlord of all liabilities, fines, damages, penalties, claims, costs, charges and expenses including, without limitation, reasonable attorneys' fees and

disbursements, incurred by Landlord as a result of such Default or Event of Default, such Default or Event of Default shall be deemed waived by Landlord; provided further that the Mortgagee shall have delivered to Landlord, in writing, its agreement to take the action described in clause (i) or (ii) and shall have assumed the obligation to cure the Default and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the monetary obligations of Tenant under this Lease are being duly performed within any applicable grace periods. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord in writing that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced that it has discontinued them, and in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations assumed by the Mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to exercise the rights and remedies provided pursuant to Article 24 in the case of a Default or Event of Default, and upon any termination, the provisions of Section 10.12 shall apply.

(c) From and after the date upon which Landlord receives from a Mortgagee the certificate and copy of the Mortgage mentioned in Section 10.10(b), it shall not modify or amend this Lease in any material respect or cancel or terminate this Lease other than as provided herein without the prior written consent of said Mortgagee.

(d) Except as provided in Section 10.11(b), no Mortgagee or designee or nominee of such Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby.

Section 10.12.

(a) In case of termination of this Lease by reason of any Event of Default or for any other reason, Landlord, subject to the provisions of Section 10.12(e) hereof, shall give prompt notice thereof to each Mortgagee under a Mortgage made in compliance with the provisions of Section 10.10, which notice shall be given at the address of such Mortgagee set forth in the notice mentioned in Section 10.10 hereof (as such address may be modified pursuant thereto). Landlord, on written request of such Mortgagee made any time within sixty (60) days after the giving of such notice by Landlord shall execute and deliver a new lease of the Premises to the Mortgagee or its designee or nominee for the remainder of the

Term, upon all the covenants, conditions, limitations and agreements herein contained (including, without limitation, Section 5.02), provided that the Mortgagee shall (i) pay to Landlord, simultaneously with the delivery of such new lease, all unpaid Rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses including, without limitation, reasonable attorneys' fees and disbursements, transfer and transfer gains taxes and court costs, incurred by Landlord in connection with the Default by Tenant, the termination of this Lease and the preparation, execution and delivery of the new lease, and (ii) deliver to Landlord a statement, in writing, acknowledging that by entering into a new lease with the Mortgagee or its designee or nominee, Landlord shall not have or be deemed to have waived any rights or remedies with respect to Defaults existing under this Lease (except for Events of Default by Tenant under Section 24.01(d) and (e) and as provided in clause (2) of Section 10.11(b)), notwithstanding that any such Defaults existed prior to the execution of the new lease, and that the breached obligations which gave rise to the Defaults and which are susceptible of being cured by the Mortgagee are also obligations under said new lease, but such statement shall be subject to the proviso that the applicable grace periods, if any, provided under the new lease for curing such obligations shall begin to run as of the first day of the term of said new lease.

(b) Any such new lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Secured Loan or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a new lease under this Section 10.12, all Subleases which theretofore may have been assigned to Landlord shall be assigned and transferred, without recourse, representation or warranty, by Landlord to the tenant named in such new lease.

(d) Anything contained in this Section 10.12 to the contrary notwithstanding, a Mortgagee shall have no obligation to cure any Default under Section 24.01(d) or (e) of this Lease.

(e) If there is more than one Mortgage, Landlord shall recognize the Mortgagee whose Mortgage is senior in lien as the Mortgagee entitled to the rights afforded by Sections 10.11, 10.12 and 10.13.

Section 10.13. In any circumstances where arbitration is provided for under this Lease, Landlord shall give any Mortgagee who shall have given Landlord a notice as provided in Section

10.10(b) notice of any demand by Landlord for any arbitration, and Landlord shall recognize the Mortgagee entitled to the rights afforded hereunder in accordance with Section 10.12(e) as the only proper party to participate in the arbitration if Tenant fails to do so.

Section 10.14. Landlord shall, promptly upon request therefor, enter into reasonable amendments or modifications to this Lease, by instrument in recordable form, and/or execute and deliver any affidavits, certificates, documents and/or other information, if requested to do so by a Mortgagee or a proposed Mortgagee as a condition precedent to the placing, replacing, refinancing or extending of a Mortgage provided that same shall not adversely affect the rights or benefits of Landlord hereunder, impose additional obligations on Landlord (other than with respect to sending copies of notices), change the Term, decrease the Rental or change the Premises. No amendment or modification of this Lease shall be effective without the prior written consent of the Trustee if required under the terms of its Secured Loan.

Section 10.15. If Tenant enters into a sublease with a Subtenant which (a) includes all or a material portion of the Premises, including by way of example all of the retail spaces in the GCT Building together with other portions thereof, and (b) is for the purpose of financing capital improvements to such subleased premises (a "Financing Sublease"), then the subtenant under such Financing Sublease may designate itself or an MTA Affiliate, in either case having a credit rating which is equal to or better than the credit rating of the MTA at the time of entry into the Sublease (the "Credit Party") as the party entitled to the rights set forth in this Section 10.15. No Credit Party shall be entitled to any of the rights under this Section unless and until a written notice (the "Credit Party Notice") containing the name and post office address of the Credit Party shall have been delivered to Landlord together with copies of each instrument creating and effecting the Financing Sublease and the rights of the Credit Party, which copies shall be certified by Tenant as true, correct and complete. From and after Landlord's receipt of the Credit Party Notice, Landlord shall deliver to each Credit Party at the address set forth in the Credit Party Notice (as such address may thereafter be changed by notice from the Credit Party to Landlord), and otherwise in the manner provided by Article 25, a copy of each notice of Default and notice of termination of this Lease at the same time as, and whenever, any such notice shall thereafter be given by Landlord to Tenant, and no such notice shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each Credit Party entitled to Notice. Upon a Credit Party's receipt of such notice from Landlord, such Credit Party (i) shall have a period of fifteen (15) days more (time being of the essence)

in the case of a Default, after such notice is given to such Credit Party, for remedying the Default, or causing the same to be remedied and/or commenced to be remedied, than the period given Tenant pursuant to Section 24.01 after such notice is given to it, provided that the Credit Party shall have given notice to Landlord of its intention to cure the Default in question within the applicable grace period set forth in Section 24.01, and (ii) shall, within such period and otherwise as herein provided, have the right to remedy such Default or cause the same to be remedied and/or commenced to be remedied; provided that upon any Event of Default under Section 24.01(d) or (e), upon the payment to Landlord of all liabilities, fines, damages, penalties, claims, costs, charges and expenses including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord as a result of such Event of Default, such Event of Default shall be deemed waived by Landlord. Landlord shall accept performance by a Credit Party of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. The Credit Party shall have all of the rights of a Mortgagee under Sections 10.13 and 10.14 of this Lease. No more than two Financing Subleases shall exist at any time.

ARTICLE 11

LANDLORD'S AND TENANT'S PROPERTY

Section 11.01. All Improvements to be attached to the Premises and all materials and Equipment to be incorporated into the Improvements at any time during the Term shall, upon purchase of same and at all times thereafter, constitute the property of Tenant, and title to such Improvements, materials and Equipment shall continue in Tenant; provided, however, that (a) upon the termination of this Lease or expiration of the Term, title to the Improvements remaining in the Premises shall pass to Landlord, (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of Landlord's acquisition of title to such Improvements, and (c) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier in connection with the purchase or furnishing of any such Improvements or the construction or installation thereof.

Section 11.02. Notwithstanding anything to the contrary in Section 11.01, all movable Equipment and personal property, whether or not attached to or built into the Premises, which is installed in, or used in connection with, the Premises by or for the account of Tenant and can be removed without structural damage to the Improvements (collectively, "Tenant's Property") (other than damage to such movable Equipment) shall be and shall remain the property of Tenant and may be removed by Tenant at any time during

the Term; provided that if any of Tenant's Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Improvements resulting from the installation and/or removal thereof.

Section 11.03. On or before the Expiration Date, or within thirty (30) days after any earlier termination date, Tenant shall, at its expense, remove from the Premises all of Tenant's Property and Tenant shall repair any damage to the Premises or the Improvements resulting from the removal by Tenant of Tenant's Property.

Section 11.04. After the Expiration Date, or after a period of thirty (30) days following an earlier termination date, any items of Tenant's Property which shall remain in the Premises shall be deemed to have been abandoned, and in such case such items shall be retained by Landlord as its property or removed and disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense. Landlord shall have no obligation to Tenant with respect to any items of Tenant's Property remaining in the Premises after the Expiration Date or any earlier termination date.

ARTICLE 12

REPAIRS: SERVICES

Section 12.01. Tenant, at its sole cost and expense, throughout the Term, shall keep and maintain the Premises including, without limitation, the Improvements and Appurtenances, all sidewalks, vaults, sidewalk hoists and curbs in front of or adjacent to the Premises, and all water, sewer and gas connections, pipes and mains which service the Premises and which a utility company is not obligated to repair and maintain in Safe Condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the same in Safe Condition and to comply with all applicable Requirements (to the extent required by this Lease) howsoever the necessity or desirability of such repairs may occur, and whether or not necessitated by wear and tear, obsolescence or defects, latent or otherwise. When used in this Lease, the term "repairs" shall include all alterations, additions, installations, replacements, removals, renewals and Restorations.

Section 12.02.

(a) Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Improvements or the Premises (including, without limitation, electricity, gas,

steam, water, sewer, heating, ventilating and air conditioning, cleaning and security), nor shall Landlord have any duty or obligation to make any alterations, change, improvement, replacement, restoration or repair to, or to demolish, any buildings or other improvements presently or hereafter located on the Premises. Tenant assumes the full and sole responsibility for obtaining all services, utilities and facilities required at the Improvements and the Premises, and for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises, and, subject to the provisions of Section 5.02(b), shall pay all costs, expenses and charges of every kind and nature relating to any of the foregoing, and Tenant shall indemnify and hold harmless Landlord against all such costs, expenses and charges.

(b) Tenant shall furnish through existing GCT Building facilities, to the extent of their capacities, electricity, steam, compressed air and hot water service to the structures presently served by such facilities in the GCT Building area, charging for such services rates not in excess of the greater of those rates which would cover Tenant's costs of furnishing such services or those rates which would be charged by the applicable public utility company for comparable service for each such structure, provided (i) Tenant is not required to continue any such service to any parcel after its existing structure is demolished and (ii) Tenant is not required to make a substantial capital expenditure with respect to the system which furnishes any such service. However, during the Term, Tenant shall have all rights of Landlord (including, without limitation, any right of Landlord to discontinue furnishing such utilities) in, to and under those certain indentures (the "Indentures") which are listed in Exhibit "E" annexed hereto and made a part hereof.

ARTICLE 13

CHANGES AND ADDITIONS

Section 13.01.

Tenant shall have the right at any time and from time to time during the Term, at its sole cost and expense, to make such additions, enlargements, improvements and expansions to, or repairs, reconstructions and Restorations of, the Improvements (collectively, "Capital Improvements"), as Tenant shall deem necessary or desirable in connection with its use of the Premises, subject to the provisions of Article 5 and the conditions set forth in Section 8.01(b) hereof. The cost of any such Capital Improvements shall be solely the obligation of Tenant and the

Premises shall at all times be free of liens for labor and materials supplied thereto.

Section 13.02. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, Capital Improvements, shall vest in Tenant as provided in and subject to the provisions of Section 11.01.

ARTICLE 14

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES; OBLIGATIONS UNDER GROUND LEASE AND OTHER SUPERIOR AGREEMENTS

Section 14.01.

Throughout the Term, Tenant, at its sole cost and expense, shall (a) timely obtain and thereafter keep in full force and effect all permits, authorizations and approvals of Governmental Authorities required for the use, occupancy, operation, maintenance and repair of the Premises, and (b) promptly comply with any and all applicable present and future (whether or not retroactively applied) laws, rules, orders, ordinances, regulations, statutes, requirements, codes, resolutions and executive orders of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, and applicable requirements of any applicable Fire Rating Bureau (collectively, "Requirements") affecting the Premises or any sidewalk comprising a part or in front thereof and/or any vault in or under the same, or requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, without regard to the nature of the work required to be done, whether ordinary or extraordinary, foreseen or unforeseen or involving or requiring any structural changes, alterations or additions in or to the Premises, and without regard to the cost thereof, and whether or not such changes, alterations or additions are required on account of any particular use to which the Premises, or any part thereof, may be put. Notwithstanding the foregoing, Tenant shall not be required to comply with any Requirements (for purposes of this Section 14.01 or any other provision of this Lease) to the extent that the Premises or the activities or operations of Tenant thereon are exempt from same pursuant to Section 1266, subdivision 8 of the New York Public Authorities Law or any successor or other provision of law, provided that Landlord, the Ground Lessor or the Trustee, if any, is not thereby subject to criminal liability or penalty as a result of Tenant's failure to comply with such Requirements.

Section 14.02. Tenant shall have the right to contest by appropriate legal proceedings the validity of any Requirements or the application thereof, at Tenant's sole cost and expense. During such contest, compliance with any such contested Requirements may be deferred by Tenant provided that any such proceeding instituted by Tenant shall be prosecuted in good faith and with reasonable diligence to a final determination by the court or other Governmental Authority having final jurisdiction. Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if at any time the Premises, or any portion of the Premises which is material to Tenant's operation of a railroad on the Premises, or any interest of Landlord, the Ground Lessor or the Trustee, if any, shall be in imminent danger of being forfeited or lost, or if Landlord, the Ground Lessor or the Trustee, if any, shall be in danger of being subject to criminal liability or penalty by reason of noncompliance therewith. Landlord shall cooperate with Tenant in any such contest to the extent Tenant may reasonably request, provided that Landlord shall not thereby incur or be subject to any costs, expenses or liabilities. Tenant shall indemnify and hold harmless the Landlord Indemnified Parties from any costs, expenses, losses, damages or liabilities that the Landlord Indemnified Parties may sustain by reason of Tenant's failure or delay in complying with any Requirements, including, without limitation, any proceeding brought by Tenant.

Section 14.03. Tenant, at its sole cost and expense, shall perform and comply with and cause the Premises to comply with, and shall not do or permit anything which would violate any of, the terms, covenants and conditions (to the extent susceptible of performance and compliance by Tenant) which are applicable to the Premises and to Landlord as the tenant under the Ground Lease and pertain to any period of time during the Term, under (a) the first sentence of Article Seventeenth of the Ground Lease, subject to Section 33.01, (b) all Permitted Exceptions (subject to the provisions of Section 42.02) except for the Ground Lease (except as provided in clause (a) above), the 383 Contract, the Philip Morris Declaration, the Bond Mortgages and the Secured Loans and (c) any agreements affecting the Premises which are entered into or become effective after the date of this Lease to which Tenant is a party or to which Tenant consents in writing. The foregoing provisions of this Section 14.03 are not intended to limit the provisions of Article 5.

ARTICLE 15

FINANCIAL REPORTS

Except if Tenant has prepaid in full the Fixed Rents for the First Rent Period, Tenant shall be required to deliver to Landlord and the Trustee, (a) simultaneously with the delivery to Tenant's bond holders, copies of all annual financial reports prepared by or for Tenant in the ordinary course of Tenant's operations or in connection with its bond financings and (b) in connection with a Secured Loan or refinanced Secured Loan, copies of such financial reports, disclosure statements or other documents pertaining to Tenant's financial condition prepared by or for Tenant in the ordinary course of Tenant's operations or in connection with its recent bond financings, if requested by the Trustee, provided same are then customarily given in connection with the issuance of bonds, notes or other obligations of Tenant.

ARTICLE 16

DISCHARGE OF LIENS; BONDS

Tenant shall not create or cause to be created any lien, encumbrance or charge upon any assets (including, without limitation, any Rental payable hereunder) of Landlord or the Ground Lessor, or upon the estate, rights or interest in the Premises or any part thereof of Landlord or the Ground Lessor.

ARTICLE 17

NO REPRESENTATIONS BY LANDLORD

Section 17.01. Tenant acknowledges and agrees that except as otherwise expressly set forth in this Lease, the Environmental Release, Landlord's Certificate and the other instruments and documents executed and delivered on the date hereof by Landlord, Tenant and/or the Ground Lessor in connection herewith, (a) no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Premises, the status of title to the Premises, the condition or state of repair of the Premises, the zoning or other laws, regulations, rules and orders applicable thereto or the compliance of the Premises therewith, Impositions, the use that may be made of the Premises or any other matter related to the Premises, and (b) Landlord shall in no event whatsoever be liable under this Lease for any latent or patent defects in the Premises.

Section 17.02. Tenant agrees that no representations, statements or warranties, express or implied, have been made by or

on behalf of Landlord that would entitle or permit Tenant to have any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Rental or other sum payable hereunder.

ARTICLE 18

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Neither Landlord, the Ground Lessor nor the Trustee, if any, shall in any event whatsoever, unless caused by its own negligence or wrongful act (subject to the provisions of Section 19.05 and only to the extent the liability is in excess of the limits of the insurance or self-insurance coverage or is excluded from the insurance or self-insurance coverage required to be carried by Tenant hereunder (or if such actual insurance coverage is greater, then to the extent in excess of such actual insurance)), be liable for any injury, damage or loss to Tenant, or any Person claiming by, through or under Tenant, or any other Person happening on, in or about the Premises (including, without limitation, street, sidewalk and track areas) nor for any injury or damage to the Premises or to any property belonging to Tenant, or any Person claiming by, through or under Tenant, or any other Person, which may be caused by or result from (a) any fire or other casualty, (b) any action of wind, water, lightning or any other of the elements, (c) any use, misuse or abuse of the Improvements or Equipment (including, but not limited to, any of the common areas within the GCT Building, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or other acts or negligence of Tenant, any Subtenant, licensee, invitee or contractor of Tenant or any Subtenant, or any other Person happening on, in or about the Premises (including, without limitation, street, sidewalk and track areas), (d) the condition of the Premises during the Term or any defect in the Land, the Improvements, the Equipment or any other equipment, machinery, wiring, apparatus or appliances whatsoever now or hereafter situate in, at, upon or about the Premises, or any leakage, bursting or breaking up of the same (provided that the foregoing shall not be deemed to refer to the condition of or defects in title to the Premises, which shall be governed by other provisions of this Lease), (e) any failure or defect of water, heat, gas, chilled water, steam, electric light or power supply, or of any apparatus, machinery or appliance in connection therewith, (f) any gasoline, oil, steam, gas, electricity, chemicals, water, rain, snow or mud which may leak, run or flow from the river, roadways, streets, subsurface areas and facilities, sewers, mains, pipes, conduits, tracks, Equipment, or any other facilities, equipment, machinery, wiring, apparatus or appliances whatsoever, now or hereafter situate in, at, upon, about or in the vicinity of the Premises, or

(g) any other cause whatsoever; provided that the foregoing shall not be deemed to exculpate Landlord from liability for any injury, damage or loss due to Hazardous Materials existing at the Premises prior to the date hereof other than the Released Liabilities (as defined in the Environmental Release).

ARTICLE 19

INDEMNIFICATION OF LANDLORD AND TENANT

Section 19.01. Tenant shall indemnify and hold harmless Landlord, the Ground Lessor and the Trustee, their Affiliates, partners, directors, shareholders, officers, employees, agents, successors and assigns (the "Landlord Indemnified Parties") from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects', experts', consultants' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against the Landlord Indemnified Parties or any of them by any Person that is not an Affiliate of the Landlord Indemnified Party in question by reason of any of the following occurring or being alleged to have occurred during the Term, except if caused by the negligence or wrongful act of any Landlord Indemnified Party (but such exception shall apply only to the extent the liability is in excess of the limits of the insurance or self-insurance coverage or is excluded from the insurance or self-insurance coverage required to be carried by Tenant hereunder (or, if such actual insurance coverage is greater, then to the extent in excess of such actual insurance)):

(a) any work or thing done in, on or about the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof or of any sidewalk, curb or vault adjacent thereto;

(c) any act, failure to act or negligence on the part of Tenant or any Subtenant or any of its or their respective officers, agents, employees, contractors, invitees or licensees or any strict liability arising from acts or omissions by the foregoing parties;

(d) any utilities, services or facilities furnished or supplied to the Premises or any premises described in the Indentures, or the failure to furnish or supply any of the same;

(e) any accident, illness or injury (including death at any time resulting therefrom) or damage to any Person or property

occurring in, on or about the Premises or any part thereof or in, on or about any sidewalk, curb or vault adjacent thereto;

(f) any failure on the part of Tenant to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be performed or complied with, within the lesser of (i) the notice and/or grace periods provided for in Section 24.01 or (ii) thirty (30) days after notice from Landlord of such failure, and the proper exercise by Landlord of any remedy provided in this Lease or at law or in equity or otherwise with respect thereto;

(g) any lien or claim which may be alleged to have arisen against or on the Premises or any lien or claim which may be alleged to have arisen out of this Lease and created or permitted to be created by Tenant against any assets (including, without limitation, any Rental) of Landlord or the Ground Lessor under the laws of the State of New York or of any other Governmental Authority (excluding liens created by Secured Loans or acts of the Landlord Indemnified Parties) or any liability which may be asserted against Landlord or the Ground Lessor with respect thereto;

(h) any failure on the part of Tenant to keep, observe or perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(i) any contest permitted pursuant to the provisions of this Lease;

(j) any breach by Tenant of (i) any term, provision or condition of the Ground Lease which is to be observed or complied with, or not violated, by Tenant pursuant to the provisions of Section 14.03, or (ii) any provision applicable to the Premises under any other agreements affecting the Premises to which Tenant is a party or to which Tenant consents;

(k) any violation by, or violation permitted by, Tenant of any Permitted Exceptions (including, without limitation, the Indentures, Assumed Agreements and/or Other Agreements, but excluding the Ground Lease, the Philip Morris Declaration, the 383 Contract, the Bond Mortgages and the Secured Loans), whether or not Tenant has any affirmative obligations to perform under, or has assumed Landlord's obligations under, such agreements, subject to the provisions of Section 42.02;

(l) any untrue or misleading statement of a material fact relating to Tenant, the Premises or the estimated sources and uses of funds, or any omission of a material fact relating to Tenant, the Premises or the estimated sources and uses of funds provided by Tenant in writing to Landlord for use in any official statement, prospectus, placement memorandum or other offering document prepared in connection with the sale and issuance of Certificates;

(m) any liability arising under Section 240 et seq. of the Labor Law or any successor provision;

(n) any failure on the part of Tenant or anyone claiming by, through or under Tenant to comply with Requirements, including, without limitation, Environmental Laws (whether or not compliance therewith is Tenant's obligation under this Lease and whether or not Tenant or the Premises is exempt from such compliance), and any violations of Requirements but excluding any Requirements imposed in connection with any transfer of Landlord's Air Rights to the extent that such Requirements exceed Tenant's obligations under Sections 5.02 and 5.06;

(o) any failure on the part of Tenant to pay Impositions (whether or not payment thereof is Tenant's obligation under this Lease and whether or not Tenant or the Premises is exempt from such payment); and

(p) the violation by the execution, delivery and performance of this Lease of any agreement existing on the date hereof to which Tenant is a party and Landlord is not a party.

Notwithstanding anything to the contrary set forth above, in no event shall Tenant be liable for consequential damages.

Section 19.02. The obligations of Tenant under this Article 19 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 19.03. Landlord shall indemnify and hold harmless Tenant, the Mortgagee, their Affiliates, partners, directors, shareholders, officers, employees, agents, successors and assigns (the "Tenant Indemnified Parties") from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against the Tenant Indemnified

Party in question by reason of any of the following occurring or being alleged to have occurred during the Term:

(a) the negligence or wrongful act of Landlord (subject to the provisions of Section 19.05 and only to the extent the liability is in excess of the limits of the insurance or self-insurance coverage or is excluded from the insurance or self-insurance coverage required to be carried by Tenant hereunder (or, if such actual insurance coverage is greater, then to the extent in excess of such actual insurance));

(b) the violation by the execution, delivery and performance of this Lease of the Ground Lease, the 383 Contract, the Bond Mortgages or any agreement existing on the date hereof to which Landlord and/or the Ground Lessor is a party and Tenant is not a party which is not a Permitted Exception; and

(c) any obligation pursuant to any of the Development Agreements to return to the purchaser thereunder any deposits made to Landlord, except if such obligation results from a default by Tenant under such agreement.

In no event shall Landlord be liable for consequential damages.

Section 19.04.

(a) The indemnified parties shall give notice to the indemnifying party of any demand or claim that may result in an indemnified claim under this Lease promptly after the indemnified parties have knowledge of same. Notice shall be deemed to have been promptly given pursuant to this Section 19.04 if it is given within such time as is required to avoid materially prejudicing the indemnifying party's defense to the claim or demand. Failure to give prompt notice pursuant to the terms of this Section 19.04 shall not relieve the indemnifying party of any liability or obligation under this Lease, but such failure shall entitle the indemnifying party to compensation from the indemnified parties for any cost, expense or liability it incurs as a direct consequence of such late notice.

(b) The indemnifying party shall either (i) pay such claim within thirty (30) days after such notice is given or (ii) commence to compromise or defend such claim within thirty (30) days after such notice is given, at its own expense and by counsel of its own choosing, and shall notify the indemnified parties of such payment, compromise or defense. The indemnified parties shall cooperate, at the expense of the indemnifying party, in the compromise or defense of such claim; provided that the indemnifying party shall control such compromise or defense. The indemnified

parties shall have the right to be kept fully informed upon due inquiry by them of the status of any claim and to participate in the defense of a claim or demand at their sole expense, but the indemnifying party shall not waive the attorney-client privilege, or any other privilege relating to the confidentiality of any communications relating thereto. If the indemnifying party does not pay or promptly commence to compromise or defend against such claim as herein provided, or fails diligently to pursue the compromise or defense of such claim, then the indemnified parties may thereafter pay, compromise or defend against such claim with counsel of their choosing, and all expenses incurred by the indemnified parties in so doing shall be paid by the indemnifying party on demand.

(c) If the indemnifying party wishes to enter into a settlement or compromise with respect to a claim, it shall give notice to the indemnified parties of the terms of the proposed settlement or compromise. In the event that any of the indemnified parties objects to such settlement or compromise by notice given no more than five (5) business days after such person's receipt of notice of the proposed settlement or compromise, the indemnifying party shall not enter into such settlement or compromise. If pursuant to this Section 19.04(c) any of the indemnified parties objects to a settlement, other than one that would impose upon the indemnified parties (or any of them) either (x) a financial obligation for which they would not be indemnified by the indemnifying party or (y) any other material obligation (including, without limitation, such obligation as may be imposed by injunctive or other equitable relief) that would not be discharged by the performance of the indemnifying party, then the indemnifying party shall be relieved of any further liability or obligation arising out of the claim or demand that otherwise would have been settled or compromised (including the obligation to defend), and the indemnified parties shall proceed with the defense of such claim or demand.

Section 19.05. Notwithstanding anything to the contrary contained in this Lease, in no event shall any omission or failure to act with respect to the Premises, including without limitation, any failure by any Landlord Indemnified Party to enforce the provisions of Section 12.01 or any other provisions of this Lease or any failure by any Landlord Indemnified Party to give Tenant notice of any knowledge or notice of a condition or other matter, constitute or be deemed to constitute the negligence or wrongful act of Landlord or any other Landlord Indemnified Party.

Section 19.06. The provisions of this Article 19 shall survive the Expiration Date.

ARTICLE 20

RIGHT OF INSPECTION

Tenant shall permit Landlord and the Trustee, if any, and their respective agents and representatives to enter the Premises at all reasonable times, on reasonable notice, for the purpose of inspecting the Premises. In no event shall Landlord, the Trustee or any of their agents or representatives have any obligation to inspect the Premises or any part thereof or any liability with respect thereto.

ARTICLE 21

RECORDING OF MEMORANDUM

Landlord and Tenant, each upon the written request of the other or any Trustee, shall execute, acknowledge and deliver a memorandum of this Lease, and of each modification of this Lease, in proper form for recordation. Neither party shall record this Lease without the prior consent of the other party, unless the recording of this Lease shall be required by a Trustee.

ARTICLE 22

NO ABATEMENT OF RENTAL

Section 22.01. This Lease is a net lease and any present or future law to the contrary notwithstanding, shall not terminate except as provided in Articles 9 and 24; nor shall Tenant be entitled to any abatement or reduction, set-off, counterclaim, defense or deduction with respect to any Rental or other sum payable hereunder; nor shall the obligations of Tenant hereunder be affected (except in accordance with an express provision of this Lease) by reason of (i) any damage to or destruction of the Premises, (ii) any taking of the Premises or any part thereof by condemnation or otherwise, (iii) any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any Person, (iv) any default by or claim against Landlord hereunder or under any other agreement, (v) the impossibility or illegality of performance by Landlord, Tenant or both, (vi) any action of any Governmental Authority, or (vii) any other cause whatsoever, whether similar or dissimilar to the foregoing. The obligations of Tenant hereunder are and shall in all events be construed as separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated in writing pursuant to an express provision of this Lease. Tenant waives all rights to

terminate or surrender this Lease, or to abate or defer any Rental or other sums payable hereunder, or to claim that a constructive eviction has occurred with respect to the Premises or any part thereof.

Section 22.02. Without limitation of the provisions of Section 22.01, Tenant shall remain obligated under this Lease in accordance with its terms, shall remain in possession of the Premises within the meaning of Title 11 U.S.C. § 365 (as the same may be amended) and shall not take any action to terminate, surrender, rescind or avoid this Lease, or abate or defer any Rental, or claim a constructive eviction, by reason of any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or its assigns or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator or by any court, and notwithstanding any such proceeding or action, Tenant shall be entitled to remain in possession of the Premises in accordance with Section 3.07 hereof.

ARTICLE 23

PERMITTED USE

Subject to the provisions of this Lease and the Ground Lease, Tenant may use the Premises for any lawful purpose.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. The occurrence of each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any installment of Fixed Rents, or any part thereof, when the same shall become due and payable, and such failure shall continue for a period of ten (10) days after notice thereof;

(b) if Tenant shall fail to make any payment of any Rental other than Fixed Rents (including, without limitation, pursuant to Article 19) required to be paid by Tenant hereunder, when the same shall become due and payable, and such failure shall continue for a period of ten (10) days after notice from Landlord to Tenant to cure such Default;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of thirty

(30) days after written notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot either by their nature or by reason of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall continuously prosecute the same to completion with reasonable diligence);

(d) if Tenant shall file a voluntary petition under Title 9 or 11 of the United States Code or if such petition is filed against Tenant, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to the appointment of any trustee (excluding the appointment of a bond trustee or similar trustee), receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any action in furtherance of any action described in this Section 24.01(d) or Section 24.01(e) hereof; provided, however, that the foregoing shall not constitute an Event of Default during the First Rent Period as long as (x) Tenant is prohibited by law from proceeding with any such petition or related action or (y) prior to any such event, Tenant shall have prepaid all Fixed Rents due and payable during the First Rent Period in accordance with Section 3.08;

(e) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not have been vacated; provided, however, that the foregoing shall not constitute an Event of Default during the First Rent Period as long as (x) Tenant is prohibited by law

from proceeding with any such action or (y) prior to any such event, Tenant shall have prepaid all Fixed Rents due and payable during the First Rent Period in accordance with Section 3.08; and

(f) if Tenant shall default in the payment of any sums due under the Environmental Release and such default shall continue for a period of ten (10) days after notice from Landlord to Tenant to cure such default.

Section 24.02.

(a) Subject to the provisions of Section 24.02(c), if an Event of Default pursuant to Sections 24.01(a) and/or (b) and/or (f) shall occur, Tenant shall immediately pay to Landlord (i) except to the extent Tenant has theretofore paid or prepaid the Fixed Rents payable with respect to the First Rent Period, an amount equal to the "Rental Period Prepayment Amount" set forth in Exhibit "C" corresponding to the semi-annual rental period in which the Event of Default occurs, (ii) an amount equal to the "Rental Period Prepayment Amount" set forth in Exhibit "D" corresponding to the semi-annual rental period in which the Event of Default occurs, (iii) a sum equal to all prepayment, yield maintenance and similar fees, costs and charges payable by Landlord to the Trustee as a result of the Event of Default, (iv) all Fixed Rents due but not paid as of the date of the Event of Default plus all other Rental then due and payable to Landlord (including, without limitation, pursuant to Article 19), (v) all Late Charges due and payable to Landlord, and (vi) any other actual damages incurred by Landlord as a result of the Event of Default (but excluding consequential damages, provided that the inability of Landlord to close on a Secured Loan pursuant to a commitment therefor solely as a result of an Event of Default shall be deemed to be a direct, actual damage and not a consequential damage). Upon payment of all of the foregoing sums pursuant to this Section 24.02(a), the Fixed Rents for the balance of the Term shall be reduced to zero.

(b) If Tenant fails to pay to Landlord within sixty (60) days after demand therefor all of the sums payable to Landlord pursuant to Section 24.02(a), or if an Event of Default shall occur under Section 24.01(c), (d) or (e), then Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce the performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

(c) Notwithstanding the provisions of Section 24.02(a), if an Event of Default pursuant to Sections 24.01(a) and/or 24.01(b) and/or 24.01(f) shall occur and no Event of Default pursuant to Sections 24.01(a) or 24.01(b) and/or 24.01(f) shall

have previously occurred during the immediately preceding three hundred sixty five (365) day period, the provisions of Section 24.02(a) shall not become effective unless and until such Event of Default shall continue uncured for a period of sixty (60) days after the occurrence of such Event of Default.

Section 24.03.

(a) If any Event of Default described in Section 24.01(a) and/or (b) and/or (f) hereof shall occur and Tenant has failed to pay to Landlord within sixty (60) days after demand therefor all of the sums payable to Landlord pursuant to Section 24.02(a) (as such period may be extended pursuant to Section 24.02(c)), Landlord, at any time thereafter, at its option, shall give notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than five (5) days after the giving of such notice, and this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate on the date specified in such notice as if such date were the Expiration Date. Upon such termination pursuant to this Section 24.03(a), Tenant shall immediately quit and surrender the Premises, but Tenant shall remain liable for all amounts payable to Landlord pursuant to Section 24.02(a). Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Section 24.01(d) or (e) hereof, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within sixty (60) days after entry of the order for relief or as may be allowed by the court, or if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.11 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said five (5) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or said trustee shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 24.01(a) or (b) or (f) shall occur and Tenant has failed to pay to Landlord within sixty (60) days after demand therefor all of the sums

payable to Landlord pursuant to Section 24.02(a), as such period may be extended pursuant to the provisions of Section 24.02(c), or if this Lease shall be terminated as provided in Section 24.03(a), Landlord, without notice, may dispossess Tenant by summary proceedings or by any suitable action or proceeding at law.

Section 24.04. If this Lease shall be terminated as provided in Section 24.03(a) and/or Tenant shall be dispossessed as provided in Section 24.03(b),

(a) Landlord or its agents may by lawful process re-enter the Premises and remove therefrom Tenant and all Persons holding or claiming by, through or under Tenant (except those Subtenants that, pursuant to Section 10.09(b) hereof, are entitled to be recognized by Landlord as its direct tenant upon the termination of this Lease and who are entitled to remain in possession pursuant to such recognition), and all or any of its or their property, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Premises, together with all additions, alterations and improvements thereto;

(b) All of the right, title, estate and interest of Tenant in and to (i) the Improvements, (ii) all rents, issues and profits of the Premises, and (iii) all insurance policies and all insurance moneys paid or payable thereunder, shall automatically pass to, vest in and belong to Landlord, without further action on the part of either party, free of any claim thereto by Tenant;

(c) Landlord may repair and alter the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall pay to itself the reasonable cost of terminating this Lease, re-entering, repossessing, repairing and/or altering the Premises, including legal expenses and attorneys' fees and disbursements, the reasonable cost sustained in securing any new tenants, including reasonable brokerage commissions, attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, the cost and expense of operating and maintaining the Premises, and any balance remaining on account of the liability of Tenant to Landlord. Landlord shall not be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such

liability; and in no event shall Tenant be entitled to receive any excess of such annual rents over the sums payable by Tenant to Landlord hereunder;

(d) Tenant shall be liable for and shall pay to Landlord, at Landlord's option, as damages, any deficiency ("Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term plus the other sums payable pursuant to Section 24.02(a) and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 24.04(c) for any part of such period (which net amount shall be determined after deducting from the rents collected under any such reletting all of the payments made to Landlord described in Section 24.02(a) hereof); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(e) Notwithstanding anything to the contrary herein, in no event shall Tenant be entitled to be reimbursed for any Fixed Rents or other Rental which it has prepaid.

Section 24.05. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24.

Section 24.06. Nothing contained in this Article 24 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 24.

Section 24.07. If Tenant pays all amounts payable to Landlord pursuant to Section 24.02(a) within three hundred sixty five (365) days after the date of the termination of this Lease, then this Lease shall be fully reinstated as if it had never been terminated, having the same lien priority against Secured Loans and any other title matters as it had prior to such termination, except for intervening liens or other matters or changes arising after such termination in connection with bona fide transactions of

Landlord in the ordinary course of its business, and Tenant shall be restored to the use, occupancy and possession of the Premises.

Section 24.08. Except to the extent provided in Section 24.07, Tenant, for and on behalf of itself and all persons claiming through or under Tenant, hereby expressly waives (a) the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, (b) any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, (c) any and all right of re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease and (d) any and all right to immunity from suit, prosecution or enforcement of any of the terms and provisions of this Lease provided by any law, court or statute now in force or hereafter enacted or prescribed or otherwise. Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. Tenant shall not, and Tenant hereby waives any right to, interpose any counterclaim of any kind in any action or proceeding commenced by Landlord to recover possession of the Premises, unless the failure by Tenant to interpose such counterclaim in any such action or proceeding would preclude Tenant from asserting the subject matter of such counterclaim in a separate action. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 24.09. No failure by Landlord to insist upon the strict performance by Tenant of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no payment or acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver by Landlord of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 24.10. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in

addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.11. If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease, in any proceeding which is commenced by or against Tenant, under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary, in Landlord's reasonable judgment, to adequately protect Landlord's right, title and interest in and to the Premises or any part thereof and/or adequately assure the complete and continuous future performance of Tenant's obligations under this Lease.

ARTICLE 25

NOTICES

Section 25.01. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as a "Notice" or "notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) If by Tenant, (i) by mailing the same to Landlord by certified or registered mail, postage prepaid, return receipt requested, (ii) by reputable overnight courier service with receipt requested or (iii) by telecopy with the original by any manner permitted under clauses (i) and (ii), addressed to Landlord at the address set forth at the head of this Lease, Attention: Corporate Secretary (telecopy no: (513) 579-0108), with a copy thereof in a manner permitted above to (x) Messrs. Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022, Attention: Eugene A. Pinover, Esq. (telecopy no: (212) 821-8111), and/or (y) such other addressee(s) as Landlord may from time to time designate by Notice

given to Tenant by personal delivery or certified or registered mail as aforesaid.

(b) If by Landlord, (i) by mailing the same to Tenant by certified or registered mail, postage prepaid, return receipt requested, (ii) by reputable overnight courier service with receipt requested or (iii) by telecopy with the original by any manner permitted under clauses (i) and (ii), addressed to Tenant at its address at the head of this Lease, Attention: Director of Real Estate, with a copy thereof in a manner permitted above, to (v) Tenant at its address at the head of this Lease, Attention: General Counsel (telecopy no: (212) 878-7031), (w) Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019, Attention: Meredith J. Kane, Esq. (telecopy no: (212) 757-3990), (x) such other addressee(s) as Tenant may from time to time designate by Notice given to Landlord by personal delivery or certified or registered mail as aforesaid (y) any Mortgagee which has given notice to Landlord pursuant to Section 10.10(b) and (z) any Credit Party which has given notice to Landlord pursuant to Section 10.15.

Section 25.02. If Landlord shall designate a Trustee as a party to whom Notices shall be sent, such designation shall be irrevocable during the term of such Secured Loan, except that such Trustee may change its address or may be replaced by a new holder of such Secured Loan by Notice given to Landlord and Tenant.

Section 25.03. Every Notice shall be deemed to have been given to or served on Landlord or Tenant, as the case may be, (a) on the third Business Day after such Notice addressed to such party shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid, (b) on the first Business Day after such Notice addressed to such party shall have been deposited with the overnight courier service and (c) upon receipt of the telecopy; provided that a Notice shall not be deemed to have been given or served until a copy of such Notice also shall have been given to each Person entitled thereto pursuant to Section 25.01(a) or Section 25.01(b), as the case may be, as provided herein.

ARTICLE 26

BOND MORTGAGES

Section 26.01. Landlord shall indemnify and hold harmless Tenant from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Tenant in connection with the Bond

Mortgages or the enforcement of the rights of the trustees thereunder, except to the extent caused by or resulting from Tenant's failure to pay Impositions.

Section 26.02. Landlord agrees from time to time upon the reasonable request from Tenant (not to exceed one time in any calendar year), at Tenant's cost and expense, to use Landlord's Reasonable Efforts to obtain from the trustee of each Bond Mortgage a statement in writing certifying the following: the outstanding principal amount of the bond secured by the Bond Mortgage in question, the face value of the bond secured by the Bond Mortgage in question and the face value of any collateral held by the trustee to secure the Bond Mortgage, and whether or not to the best knowledge of the trustee there are any continuing defaults under the Bond Mortgage.

Section 26.03. Landlord shall not enter into any amendment or modification to either of the Bond Mortgages if the same adversely affects the rights or obligations of the mortgagor thereunder, increases the payments thereunder or reduces the value of the collateral held by the trustee under the Bond Mortgage in question below the aggregate outstanding principal balance of the bonds secured by such Bond Mortgage.

ARTICLE 27

PRIOR AGREEMENTS

Landlord, the Ground Lessor and Tenant hereby acknowledge and agree that each of (a) that certain Agreement dated July 24, 1907 by and between the Ground Lessor, The New York, New Haven and Hartford Railroad Company (predecessor-in-interest to American Premier), and The New York Central and Hudson River Railroad Company (predecessor-in-interest to American Premier), which was recorded in the New York County land records on July 31, 1957 in Liber 5010, cp. 155; (b) that certain Agreement dated March 17, 1848 by and between the Ground Lessor and The New York and New Haven Railroad Company (predecessor-in-interest to American Premier), which was recorded as an annexed exhibit to the instrument referred to in clause "i" above; and (c) that certain Harlem Hudson Service Agreement dated June 1, 1972 between Tenant and the PCTC Trustees, have been superseded by this Lease and each such agreement is no longer of any force or effect. Tenant has advised Landlord and the Ground Lessor that (i) the National Railroad Passenger Corporation Agreement dated as of April 16, 1971 between American Premier and National Railroad Passenger Corporation and (ii) the GCT Joint Facilities Agreement dated as of October 27, 1970, among American Premier, Tenant and the State of Connecticut, acting through its duly authorized agency the

Connecticut Transportation Authority of the Department of Transportation have been terminated and Landlord and the Ground Lessor hereby consent to such termination.

ARTICLE 28

SUBORDINATION TO GROUND LEASE

This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to the Ground Lease and all matters to which the Ground Lease is subject and subordinate, and all renewals, extensions, modifications, amendments, and replacements thereof to which Tenant consents in writing (provided that Tenant shall not withhold its consent thereto unless Tenant's rights or obligations hereunder are adversely affected as a result thereof).

ARTICLE 29

SECURED LOANS

Section 29.01. This Lease and all amendments, modifications and extensions hereof which do not reduce the Rental payable by Tenant, and all rights of Tenant under all of the foregoing, are and shall be superior in priority to all present and future Secured Loans.

Section 29.02. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (a) until it has given written notice of such act or omission to Landlord and to each Trustee of whose name and mailing address Tenant has been given notice, and (b) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when each such Trustee shall have become entitled under its respective Secured Loan to remedy the same or to perform or to cause to be performed Landlord's obligations hereunder (which reasonable period, if required by any such Trustee, shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy, plus thirty (30) days, and the period of time needed by such Trustee to obtain possession of the Improvements or ownership interest pledged, as the case may be, by foreclosure or otherwise), provided such Trustee shall with due diligence (i) give Tenant notice of intention to remedy such act or omission and (ii) commence and continue to remedy such act or omission to the extent it is able to do so without possession of the Improvements or such ownership interest, as the case may be.

The provisions of this Section 29.02 are not intended to and shall not be construed to limit, qualify or modify the provisions of Article 22 or any other provisions of this Lease.

Section 29.03.

If at any time a Trustee shall succeed to the rights of Landlord as lessor under this Lease, whether through foreclosure action, assignment in lieu of foreclosure or otherwise, then neither such Trustee nor anyone claiming by, through or under such Trustee, shall be:

(1) liable for any act or omission of Landlord (or its predecessors in interest);

(2) subject to any offsets or defenses which Tenant may have against Landlord (or its predecessors in interest);

(3) bound by any covenant of Landlord to undertake or complete any construction of the Premises or the Improvements or any portion thereof;

(4) except for Landlord's obligations under Section 5.02 or 5.04, bound by any obligation to make any payment to Tenant, or provide any services or perform any repairs, maintenance or restoration provided for under this Lease to be performed before the date that the Trustee becomes the landlord of Tenant, nor shall the Trustee be bound by any obligation to make any payment to Tenant with respect to construction performed by or on behalf of Tenant at the Premises;

(5) bound by any obligation to repair, replace, rebuild or restore the Premises, the Improvements or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation; or

(6) provided that Landlord or the Trustee had given Tenant prior notice of the Trustee's consent rights with respect to modifications of this Lease, bound by any modification of this Lease made without the written consent of such Trustee where such consent is required under the terms of its Secured Loan.

Section 29.04. Tenant shall, promptly upon request therefor, enter into reasonable amendments or modifications to this Lease, by instrument in recordable form, and/or execute and deliver any affidavits, certificates, documents and/or other information,

if requested to do so by the Trustee or a proposed Trustee as a condition precedent to the placing, replacing, refinancing or extending of a Secured Loan (including, without limitation, execution and delivery of an acknowledgment of or a consent to an assignment by Landlord of its interest in this Lease to a special purpose entity), provided that same shall not adversely affect the rights or benefits of Tenant hereunder, impose additional obligations on Tenant (other than with respect to sending copies of notices), change the Term, increase the Rental or change the Premises. No amendment or modification of this Lease shall be effective without the prior written consent of the Trustee if required under the terms of its Secured Loan.

ARTICLE 30

SUCCESSORS AND ASSIGNS

Except as otherwise expressly provided in this Lease, the provisions of this Lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party is named or referred to; provided, however, that (a) no violation of the provisions of Article 10 shall operate to vest any rights in any successor or assignee of Tenant and (b) the provisions of this Article 30 shall not be construed as modifying the provisions of Article 10 or the conditions of limitation contained in Article 24.

ARTICLE 31

CERTIFICATES BY LANDLORD AND TENANT

Section 31.01. Tenant shall, within twenty (20) days after each request by Landlord, but not more than twice in any calendar year, execute, acknowledge and deliver to Landlord a statement in writing:

(a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications);

(b) stating whether or not to the knowledge of Tenant there is a continuing default by Landlord in the performance or observance of any covenant, agreement or condition contained in this Lease to be performed or observed by Landlord;

(c) stating whether or not Tenant has received from Landlord a written notice of default by Tenant in the performance

or observance of any covenant, agreement or condition contained in this Lease to be performed or observed by Tenant which remains uncured;

(d) stating the Expiration Date;

(e) specifying the dates through which the Fixed Rents and Impositions have been paid;

(f) stating whether or not there is pending any action, arbitration or proceeding between Landlord and Tenant arising under this Lease, and, if so, the nature thereof;

(g) certifying that Tenant has no counterclaims, defenses or right to offset against any amounts due to Landlord under this Lease, and that Tenant is not entitled to any concessions, rebates or any reductions in Fixed Rents or other Rental under this Lease for whatever reason as of the date the statement is given;

(h) stating that the addresses for Notices are as set out in this Lease or as stated in the statement; and

(i) certifying that the statement shall be binding upon Tenant and may be relied upon by any then existing or prospective (x) Trustee, assignee or purchaser of all or a portion of Landlord's interest in this Lease, and (y) purchaser of all or a portion of the stock of Landlord.

Section 31.02. Landlord agrees from time to time upon not less than twenty (20) days' prior notice by Tenant, but not more than twice in any calendar year, to execute, acknowledge and deliver to Tenant a statement in writing certifying the following: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) the date to which Fixed Rents have been paid, (c) whether or not to the knowledge of Landlord there are any continuing Defaults or Events of Default and, if so, specifying each such Default and Event of Default of which Landlord may have knowledge, (d) the Expiration Date, (e) stating whether or not there is pending any action, arbitration or proceeding between Landlord and Tenant arising under this Lease, and, if so, the nature thereof and (f) stating that the addresses for Notices are as set out in this Lease or as stated in the statement. Such statement shall be binding upon Landlord and may be relied upon by any then existing or prospective Mortgagee, assignee, purchaser of all or a portion of Tenant's interest in this Lease or a Subtenant.

Section 31.03. Tenant agrees from time to time at Landlord's request in connection with Landlord's entering into any Secured Loan or refinancing of any Secured Loan during the Term, to provide Landlord with an opinion of Tenant's counsel which shall be addressed to the Trustee or prospective Trustee, and to Landlord, and shall provide in substance that (a) Tenant was duly formed and is validly existing and the Persons who executed this Lease on behalf of Tenant had the legal authority to execute this Lease, (b) this Lease is valid, binding and enforceable against Tenant in accordance with its terms, (c) Tenant's execution, delivery and performance of the provisions of this Lease will not violate or be in conflict with (i) any law, regulation or ordinance applicable to Tenant, or (ii) any provision of any agreement, indenture, covenant or restriction to which Tenant is bound, and (d) no litigation is continuing, pending or threatened against Tenant or the Premises which would affect the validity and/or enforceability of this Lease. Landlord shall give Tenant reasonable prior notice of its need for any such opinion. Such opinion shall state that it also may be relied on by counsel for Landlord and the Trustee or prospective Trustee, of such Secured Loan or refinanced Secured Loan.

ARTICLE 32

CONSENTS AND APPROVALS

Section 32.01.

(a) All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act, and each party hereby expressly covenants and warrants that as to all matters requiring the other party's consent or approval under the terms of this Lease, the party requiring the consent or approval shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of the other party of the requirement to secure such consent or approval.

(b) If Tenant shall request Landlord's consent and Landlord shall fail or refuse to give such consent unreasonably in an instance where Landlord is required pursuant to a provision of this Lease not to withhold its consent unreasonably, Landlord's

liability hereunder for damages, if any, shall be limited as provided in Article 40.

(c) Any matter or thing which is required under this Lease to be done "satisfactorily" or to the "satisfaction" of a party need only be done "reasonably satisfactorily" or to the "reasonable satisfaction" of that party.

ARTICLE 33

SURRENDER AT END OF TERM

Section 33.01. On the last day of the Term, or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises (a) in Safe Condition and in compliance with the first sentence of Article Seventeenth of the Ground Lease (but not any other portion of such Article), except that the track shall be required to be in good condition, but not "perfect condition" (provided, however, that Landlord shall have the right to enter the Premises during the last 365 days of the Term to restore the track to "perfect condition" within the meaning set forth in the Ground Lease and to cause the Premises to be in compliance with the Ground Lease, including, without limitation, Article Seventeenth thereof, at Landlord's cost and expense to the extent such performance exceeds the obligations of Tenant under Sections 12.01 and 14.01 and this Section 33.01), and (b) free and clear of all lettings, occupancies, liens and encumbrances other than those consented to by Landlord or subject to recognition in accordance with Section 10.09(b) hereof and Permitted Exceptions. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 33.02. On the last day of the Term or upon any earlier termination of this Lease, or upon re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord, to the extent Tenant is then in possession of the same, Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at or on the Premises, together with a duly executed assignment thereof to Landlord.

ARTICLE 34

ENTIRE AGREEMENT

This Lease, the Environmental Release, Landlord's Certificate and the other documents executed and delivered simultaneously herewith by Landlord, Tenant and the Ground Lessor contain all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relating to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth in any of the foregoing documents.

ARTICLE 35

QUIET ENJOYMENT

Landlord covenants that, if and as long as this Lease shall not have been terminated in accordance with Section 24.03(a) hereunder, Tenant and any Person claiming through or under Tenant shall and may (subject, however, to the provisions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through or under Landlord and free of any encumbrance superior to this Lease and Tenant's interest hereunder created or suffered by Landlord, except (a) the Ground Lease, (b) those encumbrances created or suffered by Tenant, and (c) the Permitted Exceptions, including, without limitation, the Assumed Agreements, the Indentures and prior to the twenty-fifth (25th) anniversary of the date hereof, the Other Agreements which are not Material Defects, and thereafter, all Other Agreements. The foregoing does not, and shall not be deemed to, create or give to any Person claiming through or under Tenant or to any other Person except Tenant any claim or right of action against Landlord. This covenant shall be construed as a covenant running with the Land, to and against successors to Landlord's interest in this Lease, and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent provided in Articles 40 and 42.

ARTICLE 36

ARBITRATION

In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice

thereof to the other party who shall, within twenty (20) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give written notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within twenty (20) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to any court of competent jurisdiction to appoint such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Article 36, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration and the fees and disbursements of the third arbitrator shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of the arbitrator it appoints and its own attorneys and the expenses of its own proof. Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. The Trustee and any Mortgagee may participate in such proceeding, provided each such party bears the fees and expenses of its counsel and proof.

ARTICLE 37

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable,

shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 38

ENVIRONMENTAL MATTERS

Section 38.01. Tenant shall at all times and in all respects comply with all Environmental Laws.

Section 38.02. In addition to Tenant's obligations under Article 19, Tenant shall indemnify and hold harmless the Landlord Indemnified Parties from and against any and all liabilities, including strict liability, injuries, charges and expenses, including without limitation, reasonable attorneys' consultants' and experts' fees and disbursements (collectively, "Environmental Losses"), paid, incurred or suffered by, or asserted against any Landlord Indemnified Party, by any Person or Governmental Authority for, with respect to, or as a result of (a) Tenant's or any of Tenant's Subtenant's, agents', assignees', employees', representatives' or contractors', failure to comply with any Environmental Laws from and after the date hereof, and (b) the use, installation, burial, storage, spillage, discharge or emission, to the extent the same occurs from and after the date hereof, of any Hazardous Material into, at or about the Premises. For the purposes hereof, the term "Environmental Laws" shall mean any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Governmental Authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or hereafter in effect, including without limitation, the Clean Water Act also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., the Clean Air Act ("CAA"), 42 U.S.C. § 7401, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, et seq., the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, et seq., the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C., § 1201, et seq., the Comprehensive Environmental Response, Liability, and Compensation Act ("CERCLA"), 42 U.S.C. § 9610, et seq., the Superfund Amendment and Reauthorization Act ("SARA"), Public Law 99-499, 100 stat. 1612, the Emergency Planning and Community Right To Know Act ("EPCRA"), 42 U.S.C. § 11001, et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., and any analogous state laws.

Section 38.03. For purposes hereof, "Hazardous Material(s)" shall mean and include (i) any hazardous, toxic, or dangerous waste, substance, or materials defined or listed as such in (or for the purpose of) any applicable Environmental Laws; (ii) any other waste, substance, or material that exhibits any of the characteristics enumerated in 40 C.F.R., 261.20-261.24, inclusive, or any successor regulations thereto, and those extremely hazardous substances currently listed under Section 302 of SARA (as defined in the Environmental Release); (iii) any asbestos or asbestos containing materials; (iv) urea formaldehyde insulation; and (y) petroleum or any fraction of petroleum.

Section 38.04. If Tenant receives any notice of any order, citation, enforcement action, or the commencement of any judicial or administrative proceeding with regard to Hazardous Materials in, on, at or about the Premises (an "Environmental Complaint") from any Person (including, without limitation, the EPA or any other Governmental Authority), then Tenant shall within ten (10) Business Days thereafter notify Landlord of said notice.

Section 38.05.

(a) Tenant shall bear the responsibility and expense to cleanup, remove, remediate, resolve or minimize the impact of, or otherwise deal with in accordance with all applicable Environmental Laws any Environmental Complaint involving matters covered by clauses (a) and (b) of Section 38.02.

(b) The Landlord Indemnified Parties shall have the right to be kept fully informed upon due inquiry by any of them of the status of any Environmental Complaint and to participate in the defense thereof at their sole expense, but Tenant shall not waive the attorney-client privilege, or any other privilege relating to the confidentiality of any communications relating thereto. If Tenant does not pay or promptly commence to compromise or defend against such Environmental Complaint asserting Environmental Losses against any of the Landlord Indemnified Parties, or fails diligently to pursue the compromise or defense of such Environmental Complaint, then the Landlord Indemnified Parties may thereafter pay, compromise or defend against such Environmental Complaint with counsel of their choosing, and all expenses incurred by the Landlord Indemnified Parties in so doing shall be paid by Tenant on demand therefor.

(c) Tenant's obligations under this Section 38.05 shall survive the expiration or earlier termination of this Lease.

Section 38.06. Tenant acknowledges that Landlord has made no representation or warranty whatsoever regarding Hazardous Materials in, on, at or about the Premises or any other environmental matter, except as expressly set forth in the Environmental Release.

Section 38.07. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to comply with any Environmental Laws to the extent the Premises or the activities or operations of Tenant thereon are exempt from same pursuant to Section 1266, subdivision 8 of the New York Public Authorities Law or any successor or other provision of law and nothing herein shall be deemed a waiver by Tenant of any exemption from local laws to which Tenant is so entitled, provided that as a result thereof Landlord is not thereby liable for compliance with such Environmental Laws.

Section 38.08. Notwithstanding anything to the contrary contained in this Lease, the provisions of this Lease shall not affect the responsibility and liability of Landlord and Tenant with respect to Hazardous Materials and other environmental matters existing in, on, at, under or about the Premises prior to the date hereof, which responsibility and liability shall be governed and determined by the terms of the Environmental Release, the Original Lease and applicable Requirements and Environmental Laws. With respect to actions, lawsuits, claims, and cross-claims arising from negligence or willful misconduct by any Person with respect to Hazardous Materials in, on, at or about the Premises prior to the date hereof, each of the parties hereto expressly retains any rights or defenses they may have with respect thereto under the Original Lease, applicable Requirements, Environmental Laws and common law, except as expressly set forth in the Environmental Release.

ARTICLE 39

MISCELLANEOUS

Section 39.01. The Table of Contents and the captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 39.02. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant.

Section 39.03. Subject to the provisions of Section 39.13 hereof, if more than one Person is named as or becomes Landlord or Tenant hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken by that party hereunder. Each Person constituting Tenant or Landlord (other than a limited partner, if any such Person is a limited partnership) shall be fully liable for all of that party's obligations hereunder, subject to Article 40. Any notice by a party to any Person named as the other party and designated in Section 25.01 (or in any notice given pursuant to that Section) as an addressee of notices shall be sufficient and shall have the same force and effect as though given to all Persons named as such other party.

Section 39.04. The terms "herein", "hereunder" and words of similar import shall be construed to refer to this Lease as a whole, and not to any particular Article or Section, unless expressly so stated.

Section 39.05. The term "and/or" when applied to two or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question.

Section 39.06. Landlord and Tenant each covenants, warrants and represents to the other that no broker was instrumental in bringing about or consummating this Lease and that it had no dealings with any broker or other Person concerning the leasing of the Premises. Landlord and Tenant shall each indemnify and hold the other harmless against and from any claims for any such brokerage commissions or fees, and all costs, expenses and liabilities in connection therewith, including, without limitation, attorneys' fees and expenses, (a) in connection with such claims if any broker or other Person claims to have had dealings with the indemnifying party and/or (b) in connection with the enforcement of a party's rights under this Section 39.06.

Section 39.07. This Lease may not be changed, modified or terminated orally, nor may any provision hereof be waived, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification or termination or waiver is sought.

Section 39.08. This Lease shall be governed by and construed in accordance with the laws of the State of New York, applicable to leases made and to be performed in said State, without the aid of any canon or rule of law requiring construction against the party drawing or causing this Lease to be drawn.

Section 39.09. Unless otherwise provided herein, all references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 39.10. This Lease shall not be construed to create a partnership or joint venture between the parties.

Section 39.11. Upon the expiration or other termination of this Lease, neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this Lease, the Environmental Release and any other documents executed and delivered by Landlord, Tenant and the Ground Lessor in connection herewith and except for such obligations which by their nature or under the circumstances can only be, or by the provisions of this Lease, may be, performed after such expiration or other termination; and, in any event, unless otherwise expressly provided in this Lease, any liability for a payment which shall have accrued to or with respect to any period ending at the time of expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

Section 39.12. The provisions of this Lease are intended to be for the sole benefit of the parties hereto and their respective successors and assigns, and none of the provisions of this Lease are intended to be, nor shall they be construed to be, for the benefit of any third party.

Section 39.13. Pursuant to a separate agreement, Owasco has designated American Premier as its agent to act on its behalf in connection with this Lease, including, without limitation, to exercise powers and perform duties hereunder as are imposed on Owasco as Landlord hereunder. Such separate agreement shall not be terminated or materially modified or amended without the consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Such designation shall include, without limitation, the rights to receive Rental payments, to give and receive Notices and to bind Landlord for all purposes hereunder.

ARTICLE 40

LIMITATION OF LIABILITY

Section 40.01. Subject to the limitations set forth in Section 42.03, Tenant shall look only to Landlord's interest in and to the Premises and as lessee under the Ground Lease for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of a breach or default under this Lease by Landlord, and no other property or

assets of Landlord, or of any direct or indirect owner of an interest in Landlord, or any officers, directors, partners, other principals or employees of Landlord (each a "Protected Person") shall be subject to levy, execution or other enforcement procedures for the satisfaction of any such judgment (or other judicial process). The interest in and to the Premises of Landlord under this Lease shall consist of the rents (including, without limitation, any Fixed Rents for the First Rent Period which have been prepaid by Tenant in accordance with the provisions of Section 3.08 and any Fixed Rents which have been prepaid for the Second Rent Period and/or the Extended Rent Period pursuant to the provisions of this Lease, but only to the extent that such prepaid Fixed Rents were on account of periods subsequent to the date of Tenant's institution of any action seeking judgment against Landlord with respect to this Lease), income, receipts, revenues, issues and profits issuing from the Premises to the benefit of Landlord, any money or securities deposited by Tenant with Landlord and any award to which Landlord may be entitled in any condemnation proceedings or by reason of a temporary taking of the Premises; provided, however, the interest in and to the Premises of Landlord under this Lease shall not be less than \$4,000,000.00 during the First Rent Period. In confirmation of the foregoing, if Tenant shall acquire a lien on any other property or assets of Landlord or of any Protected Person, by judgment or otherwise arising in connection with Landlord's obligations under this Lease, Tenant shall promptly release such lien by executing and delivering an instrument in recordable form to that effect prepared by Landlord or such Protected Person; but such instrument of release shall not release any such lien on the interest of Landlord in the Premises and as lessee under the Ground Lease.

Section 40.02. Without limiting the foregoing, in the event that American Premier or any successor to its interest hereunder ceases to hold the lessee's interest under the Ground Lease as the result of the termination of the Ground Lease or a sale or sales or transfer or transfers of its interest as lessee under the Ground Lease (other than an assignment of such interest in connection with a Secured Loan) or if Owasco ceases to be the owner of the premises described in Exhibit "A-2" as a result of a sale or sales or transfer or transfers of its interest as owner (other than an assignment of such interest in connection with a Secured Loan), then, provided that the party terminating the Ground Lease, or the purchaser or the transferee in any such sale or transfer, executes an instrument assuming the obligations of Landlord hereunder from and after the date of such termination, sale or transfer, such terminated party, or such transferring or selling party shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such termination, sale or

transfer, the remaining liability of any such party, if any, to be subject to the provisions of this Article 40.

Section 40.03. Notwithstanding anything to the contrary set forth in this Article 40, the provisions of Section 40.01 and 40.02 shall not apply to Landlord's indemnity under Section 19.03(b) or Section 26.01.

ARTICLE 41

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 41.01. If an Event of Default occurs, then Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligations on Tenant's behalf.

Section 41.02. All reasonable sums paid by Landlord and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with its performance under Section 41.01 of any of Tenant's obligations, together with interest thereon at the Late Charge Rate from the respective dates that Landlord makes each such payment until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord on demand as additional rent. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article 41 shall not be nor be deemed to be a waiver or release of breach or default of Tenant with respect thereto or of the right of Landlord, if applicable, as set forth in Article 24, to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred.

ARTICLE 42

ASSIGNMENT AND ASSUMPTION OF AGREEMENTS: MATERIAL DEFECTS

Section 42.01.

(a) Landlord hereby grants, transfers and assigns to Tenant, for the duration of the Term, all of Landlord's right, title and interest in, to and under, together with the rights to any revenues issuing therefrom, the Permitted Exceptions, including, without limitation, the Indentures, the assumed agreements (the "Assumed Agreements") which are listed in Exhibit "F" annexed hereto and made a part hereof, and any easements, covenants and agreements and other rights reserved for the benefit of the Premises under such Indentures and Assumed Agreements (the

"Reserved Rights"). Tenant shall have the exclusive power and authority to exercise the Reserved Rights during the Term. Upon request from Tenant, Landlord shall, and shall cause the Ground Lessor to, execute such further documents as may be reasonably required to (i) assist Tenant in confirming its rights and obligations under this Section 42.01 and (ii) perform such obligations under the Assumed Agreements as are solely within the power of Landlord and/or the Ground Lessor to perform (e.g., to convey title pursuant to the Development Agreements to the purchasers thereunder).

(b) Except as expressly provided to the contrary in this Lease, Tenant hereby assumes and agrees to perform during the Term, at Tenant's sole cost and expense, all obligations of Landlord under (i) the Indentures, (ii) the Assumed Agreements, (iii) all other Permitted Exceptions, [except the Ground Lease, the 383 Contract, the Philip Morris Declaration, the Bond Mortgages, the Secured Loans and the Other Agreements.] The foregoing assumption is expressly limited to the extent necessary to release Landlord from liability for the obligations assumed hereunder, and shall not be deemed to create an assumption for the benefit of any person or entity other than Landlord, the Ground Lessor and the Trustees, if any, or to create any additional liability on the part of Tenant in excess of that provided in the Permitted Exceptions, or to constitute a waiver by Tenant of any exemption from any laws or other matters from which Tenant is exempt by law.

Section 42.02.

(a) Upon Tenant's having knowledge and/or notice of a Material Defect, Tenant shall promptly deliver notice thereof (the "Defect Notice") to Landlord. If Landlord shall have knowledge or notice of a Material Defect, Landlord shall promptly deliver the Defect Notice to Tenant. Upon Landlord's receipt or delivery of the Defect Notice or other knowledge or notice of a Material Defect, Landlord shall promptly and diligently undertake to obtain a termination, cure, release or subordination of, or obtain an easement or license over for the balance of the Term, such Material Defect, or use any other legal means, in all events designed to incur the least amount of Cure Costs and the least amount of disruption to the operation of the railroad under the circumstances (including, without limitation, requesting Tenant to exercise its powers of condemnation or eminent domain or replacing, relocating or modifying that portion of the Premises directly affected by the Material Defect) (any of the foregoing, a "Cure"). The parties agree that the preferable means of obtaining a Cure, if appropriate, shall be the assertion of rights of adverse possession or prescriptive easements. Tenant hereby agrees that, upon Landlord's request therefor and if desirable under the

circumstances, Tenant shall commence a condemnation or eminent domain action to obtain a Cure. Notwithstanding the foregoing, if (i) Landlord fails to obtain a Cure for any such Material Defect within one hundred twenty (120) days after Landlord's receipt or delivery of the Defect Notice or (ii) the Material Defect is of such a nature that Tenant reasonably determines that without a Cure thereof, the occurrence of the condition described in Section 42.02(b)(iii) is imminent, Tenant may direct Landlord to discontinue its efforts to obtain a Cure and thereafter, Tenant shall use diligent efforts to obtain a Cure for such Material Defect (including, if deemed advisable by Tenant, through powers of condemnation or eminent domain or otherwise).

(b) The term "Material Defect" as used in this Lease shall mean, with respect solely to that portion of the Premises which lies north of the center line of 57th Street in the Borough of Manhattan, City of New York, including, without limitation, the Development Parcels (the "Railroad Parcels"), all of the following:

(i) an Other Agreement shall impose a valid title encumbrance on, or vest a valid title interest in, all or a portion of the Railroad Parcels in favor of any Person that is not an Affiliate of Landlord, Tenant or the Ground Lessor, which encumbrance or interest is superior to Tenant's leasehold interest therein; and

(ii) the holder of such encumbrance or interest shall have taken any overt action hostile to Tenant's possession of the Premises and/or shall have commenced an action in a court of competent jurisdiction to enforce its rights under such Other Agreement; and

(iii) the enforcement of such Other Agreement would materially impair the ability of Tenant to operate commuter rail service on the Premises substantially in the manner the same is being operated on the date hereof, which shall be deemed to have occurred only if as a result of such enforcement Tenant is required to remove, relocate, in each case, from, or materially modify, in each case, at, its location on the date hereof, any tracks, switches or track materials; any commuter railroad stations; any maintenance shops or engine houses; any signal system apparatus, including interlockers, sidings, turnouts, bridges, tunnels, viaducts, culverts or turntables; any power transmission systems equipment (including power substation equipment, power and control cables or third rail systems); any control towers or employee welfare buildings; any

elevators, escalators, stairways or hoists; or any other Improvement which is substantially similar in character and functions to the foregoing items.

Section 42.03.

(a) Subject to the limitations set forth in Section 42.03(c), the aggregate of any and all losses, costs, damages, expenses and payments, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord and/or Tenant in connection with Landlord's or Tenant's efforts to obtain Cures (collectively, "Cure Costs") shall be allocated between Landlord and Tenant as follows:

(i) Tenant shall be responsible for the first Two Hundred Fifty Thousand Dollars (\$250,000.00) of Cure Costs;

(ii) Landlord shall be responsible for the next Four Million Dollars (\$4,000,000.00) of Cure Costs; and

(iii) Landlord and Tenant shall each be responsible for fifty percent (50%) of Cure Costs exceeding Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00).

(b) Without limiting the foregoing but subject to the limitations set forth in Section 42.03(c), to the extent that the aggregate amount of Cure Costs actually incurred by either Landlord or Tenant exceeds its allocable share of such Cure Costs as set forth in Section 42.03(a), within thirty (30) days after its receipt of a request therefor specifying the Cure Costs incurred, the other party shall reimburse such overpaying party for such excess.

(c) Notwithstanding anything to the contrary contained in this Lease, (i) Landlord's aggregate liability under this Article 42 shall be limited at all times to the greater of (x) the "Fixed Amount" portion of the "Rental Period Prepayment Amount" set forth in Exhibit "C" corresponding to the semi-annual rental period next following the date Landlord receives the Defect Notice or (y) \$4,000,000.00, less the sum of all amounts previously paid by Landlord pursuant to this Article 42 and (ii) in no event shall Landlord have any liability under this Article 42 from and after the twenty-fifth (25th) anniversary of the date hereof. Without limiting the generality of the foregoing, if at any time during the Term the aggregate amount of all Cure Costs allocated to Landlord under this Article 42 shall exceed such amount, Landlord's liability under this Article 42 shall be zero and in no event shall such liability limit be increased for any reason. In no event shall Cure Costs include consequential damages of Tenant.

Section 42.04. If there shall be any dispute arising under this Article 42 with respect to (a) whether the type of Cure obtained or performed satisfied the conditions set forth in Section 42.02(a) and/or (b) the amount and reasonableness of the Cure Costs incurred in connection with obtaining a Cure, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36 hereof; provided, however, that the arbitrators appointed with respect to a dispute arising under this Article 42 shall be bound by any judgment beyond right of appeal of a court of competent jurisdiction with respect to any issue disputed in such arbitration. Notwithstanding the foregoing, (i) if the curing party delivers to the other an appraisal of the Cure from an independent real estate appraiser who is a member of the Appraisal Institute and has at least ten (10) years' current experience in appraising railroad properties, then the curing party shall have

86740063
April 6, 1994

the right to incur a Cure Cost of up to one hundred twenty percent (120%) of such appraised value without challenge by arbitration and (ii) any condemnation award determined by a court resulting from a Cure by condemnation shall not be subject to challenge by arbitration.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

AMERICAN PREMIER
UNDERWRITERS, INC.

By: Robert W. Olson
Robert Olson
Senior Vice President

THE OWASCO RIVER RAILWAY, INC.

By: Robert W. Olson
Robert Olson
President

TENANT:

METROPOLITAN TRANSPORTATION AUTHORITY

By: Peter Stangl
Peter Stangl
Chairman

CONSENT TO THE PROVISIONS OF
ARTICLE 27 OF THIS LEASE:

THE NEW YORK AND HARLEM RAILROAD COMPANY

By: Robert W. Olson
Robert Olson
President

86740063
April 6, 1994

Ohio
STATE OF ~~NEW YORK~~)
Hamilton : ss.:
COUNTY OF ~~NEW YORK~~)

On this 6th day of April, 1994, before me personally came Robert Olson, to me known, who, being by me duly sworn, did depose and say that he resides at 4320 Drake Road, Cincinnati, OH 45243; that he is the President of The New York and Harlem Railroad Company, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Sharon Koster
Notary Public

SHARON KOSTER
Notary Public, State of Ohio
My Commission Expires January 31, 1998

86740063
April 6, 1994

Ohio
STATE OF ~~NEW YORK~~)
Hamilton : ss.:
COUNTY OF ~~NEW YORK~~)

On this 10th day of April, 1994, before me personally came Robert Olson, to me known, who, being by me duly sworn, did depose and say that he resides at 4320 Drake Road, Cincinnati, OH 45243; that he is the President of The Owasco River Railway, Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Sharon Koster
Notary Public

SHARON KOSTER
Notary Public, State of Ohio
My Commission Expires January 31, 1998

06740063
April 6, 1994

Ohio
STATE OF ~~NEW YORK~~)
Hamilton : ss.:
COUNTY OF ~~NEW YORK~~

On this 6th day of April, 1994, before me personally came Robert Olson, to me known, who, being by me duly sworn, did depose and say that he resides at 4320 Drake Road, Cincinnati, OH 45243; that he is the Senior Vice President of American Premier Underwriters, Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Sharon Koster
Notary Public

SHARON KOSTER
Notary Public, State of Ohio
My Commission Expires January 31, 1998

86740063
April 6, 1994

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this 7th day of April, 1994, before me personally came Peter Stangl, to me known, who, being by me duly sworn, did depose and say that he resides at 347 Madison Avenue, New York, New York 10017; that he is the Chairman of Metropolitan Transportation Authority, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.


Notary Public

DONALD J. OLENICK
NOTARY PUBLIC, State of New York
No. 24-4989218
Qualified in Kings County
Commission Expires December 2, 1995

EXHIBIT C

CSX (CONRAIL) TRACKAGE RIGHTS AGREEMENT

WALTER E. ZULLIG, JR.
EXECUTION COPY

TRACKAGE RIGHTS AGREEMENT
BETWEEN
METRO NORTH COMMUTER RAILROAD COMPANY,
METROPOLITAN TRANSPORTATION AUTHORITY,
CONNECTICUT DEPARTMENT OF TRANSPORTATION
AND
CONSOLIDATED RAIL CORPORATION,
EFFECTIVE AS OF JANUARY 1, 1983

RECEIVED

JUL 30 1991

OFFICE OF
RAIL OPERATIONS

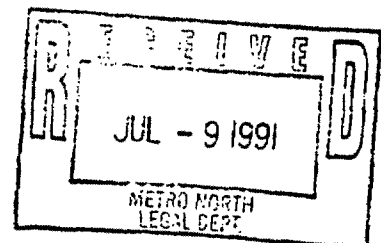


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TRACKAGE RIGHTS AGREEMENT

This Trackage Rights Agreement (Agreement), entered this 6th day of August, 1991, to become effective as of January 1, 1983, is made by and between the Metro North Commuter Railroad Company (METRO NO.), Metropolitan Transportation Authority (MTA), Connecticut Department of Transportation (CDOT), and Consolidated Rail Corporation (Conrail).

WITNESSETH

WHEREAS, the Northeast Rail Service Act of 1981 (NERSA) directed in Section 1137 that Conrail convey to commuter authorities Rail Properties used or useful in the operation of commuter service and retain appropriate trackage rights for its freight operations on those properties; and

WHEREAS, in accordance with NERSA §1136 and §1137, the parties hereto have executed Transfer Agreements, dated as of September 1, 1982 (Transfer Agreements); and

WHEREAS, Section 9.01 of the Transfer Agreements provides that the parties will enter into a trackage rights agreement; and

WHEREAS, litigation before the Special Court, established by the Regional Rail Reorganization Act of 1973, has confirmed Conrail's right to continue freight operations under the terms of the Harlem-Hudson Lease Agreement, the MTA Purchase and Lease Agreement and the CTA Lease Agreement; and

WHEREAS, in accordance with NERSA and the Transfer Agreements, it is necessary to establish appropriate rights and responsibilities between the parties for continued operation of rail commuter passenger and freight service over MTA/CDOT Rail Properties and Conrail Rail Properties;

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties contained herein, and intending to be legally bound, METRO NO., MTA, CDOT and Conrail agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions

(a) "Actual Costs" shall mean all expenses incurred by the party in connection with a transaction, including retroactive wage adjustments and the party's applicable additives and over-head rates in effect at the time the work is performed.

(b) "CDOT" shall mean the Connecticut Department of Transportation.

(c) "Car Mile" shall mean a locomotive, car, unit of self-propelled work equipment, whether or not loaded, whether or not carrying passengers or freight, moved one mile over Rail Properties.

(d) "Conrail" shall mean the Consolidated Rail Corporation, a corporation organized under the laws of the Commonwealth of Pennsylvania.

(e) "Conrail Rail Properties" shall mean the rail properties, including (except as otherwise specifically provided herein) additions and betterments thereto, enumerated and so identified in Exhibits 2 and 6 hereto.

(f) "Crossover" shall mean a track fixture which is used to switch a train from one track to an adjacent parallel track and consists of two (2) turnouts. A turnout consists of a switch and other track components.

(g) "NERSA" shall mean the Northeast Rail Service Act of 1981.

(h) "METRO NO." shall mean the Metro North Commuter Railroad Company, a public benefit corporation of the State of New York and a wholly owned subsidiary of Metropolitan Transportation Authority.

(i) "MTA/CDOT Rail Properties" shall mean the rail properties identified in Exhibits 1, 4 and 5 owned or leased by MTA, METRO NO. or CDOT, respectively, including facilities existing thereon and additions and betterments thereto. Rail Properties identified in Exhibits 4 and 5 are those properties which are presently used solely by Conrail for its freight operation. Properties identified in Exhibit 1 are those jointly used properties which have been or are presently used by Conrail for its freight operations and are presently used by METRO NO. for its passenger operations.

(j) "MTA" shall mean the Metropolitan Transportation Authority.

(k) "Non-Routine Maintenance" shall be that work generally performed and programmed on a maintenance cycle, on a project or emergency basis, including, but not limited to, partial or entire replacement of switch timbers, ties, metal materials, ballast, switch stands, signal apparatus, and derails, if any.

(l) "Owner" shall mean Conrail, when referring to Conrail Rail Properties, and shall mean METRO NO. when referring to MTA or CDOT Rail Properties.

(m) "Parties" shall mean Conrail, METRO NO., MTA and CDOT collectively.

(n) "Rail Properties" shall mean the MTA/CDOT Rail Properties or Conrail Rail Properties as set forth in the Exhibits to this Agreement.

(o) "Routine Maintenance" shall be that work performed by basic maintenance forces including, but not limited to, inspections, switch stand and rod adjustments, lubricating, welding, respiking, spot surfacing and tamping, signal department tests and inspection, snow removal and turnout surfacing.

(p) "Transfer Agreements" shall mean the Agreements between MTA and CDOT, respectively, and Conrail, dated as of September 1, 1982, setting forth terms and conditions for the transfer of commuter rail properties and operations.

(q) "User" shall mean Conrail, when referring to MTA/CDOT Rail Properties, and shall mean METRO NO. when referring to Conrail Rail Properties.

ARTICLE II
ACCESS TO RAIL PROPERTIES

Section 2.01. Access to MTA and CDOT Rail Properties

(a) MTA and CDOT hereby grant to Conrail, subject to the provisions of this Agreement, the right to enter upon and utilize the existing tracks and related operating facilities located on MTA or CDOT Rail Properties listed in Exhibits 1, 4 and 5 for the purpose of performing Conrail's freight service, including such service operated by Conrail for others. This right shall be the same as that granted to the Penn Central Corporation in (1) the Harlem-Hudson Lease Agreement, as amended, (2) the MTA Purchase and Lease Agreement, as amended, and (3) the CTA Lease Agreement, as amended, and transferred to Conrail pursuant to the Final System Plan and affirmed by the Special Court in action No. 83-14.

(b) MTA acknowledges Conrail's continuing right to use:

(1) the freight trackage rights reserved to Penn Central in the Harlem-Hudson Lease Agreement, as amended, and in the MTA Purchase and Lease Agreement, as amended; and transferred to Conrail pursuant to the Final System Plan (affirmed by Special Court Action No. 83-14) subject to the use levels set forth in Appendix III-A of said Agreements, without payment for such use;

(2) the said trackage rights in excess of the use levels set forth in Appendix III-A, for which excess freight

use Conrail shall pay METRO NO. in accordance with Article V hereof;

(c) CDOT acknowledges Conrail's continuing right to use:

(1) the freight trackage rights reserved to Penn Central in the CTA Lease Agreement and transferred to Conrail pursuant to the Final System Plan, except for the segment between Derby Jct. and Waterbury, subject to the use levels set forth in Appendix III-A of said CTA Lease Agreement, without payment for such use;

(2) the said trackage rights in excess of the use levels in said Appendix III-A, for which excess freight use Conrail shall pay METRO NO. in accordance with Article V hereof.

(d) NERSA Rail Properties

MTA and CDOT hereby affirm that, subject to the provisions of this Agreement, Conrail has retained easements (except easements presently held by other railroads) for freight operations over rail properties conveyed in fee to MTA or CDOT pursuant to the provisions of NERSA and the Transfer Agreements dated as of September 1, 1982 and as reserved in the deeds from Conrail to MTA or CDOT.

(e) MTA will lease to Conrail for the sum of \$1.00 (the receipt of which is hereby acknowledged) all of that property known as Chevy Yard, Tarrytown, New York, necessary for Conrail freight operations and service to freight customers. This property shall be designated as an Exhibit 4 Rail Property.

(f) Where practicable, Conrail, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity and other utility services required for its use. In the event it is impracticable to secure any of such services other than through facilities owned by MTA or CDOT, Conrail shall install, at its expense, if economically feasible and where permitted by law, necessary connections, supply lines and meters to measure its consumption of such services. In the event separate metering is not feasible, the utility bill shall be allocated on a fair and reasonable basis. Neither MTA nor CDOT shall be liable for any temporary suspension of any such services unless caused by either MTA or CDOT's negligence or that of their respective agents or employees. Conrail shall have the right to use facilities, connections, supply lines and meters presently serving the involved Rail Properties.

Section 2.02. Changes in Use of MTA/CDOT Rail Properties

MTA, CDOT or METRO NO. reserve the right to redesignate the category in which MTA or CDOT Rail Properties shown on Exhibits 1, 4 and 5 are listed to reflect changes in the nature of passenger services operated over such properties, provided that in the event METRO NO. or CDOT institute passenger service over Rail Properties listed in Exhibits 4 or 5, it shall redesignate such properties as jointly used, and, provided further, that in

the event Conrail's operation over any of MTA or CDOT Rail Properties shall terminate, such property shall be deleted from the Exhibits.

Section 2.03.. Access to Conrail Rail Properties

(a) Conrail hereby grants to METRO NO., subject to the provisions of this Agreement, the right to enter upon and utilize tracks and related operating facilities located on Conrail Rail Properties listed in Exhibits 2 and 6 for the purpose of performing rail commuter passenger service.

(b) Conrail hereby grants to CDOT, subject to the provisions of this Agreement, the right to enter upon and utilize the tracks and related operating facilities of the Danbury Secondary (L.C. 4246) between Derby Junction and the Connecticut-New York State Line at about Mile Post 71.2 for the purpose of performing rail commuter passenger service.

(c) In the event that METRO NO. or CDOT extends its rail passenger service pursuant to the Transfer Agreements to other Conrail properties not listed in Exhibits 2 and 6, the provisions of this Agreement shall apply and such properties shall be immediately added to Exhibit 2 or 6 as appropriate.

(d) Conrail retains its right to use, or permit another party or parties to use, Conrail Rail Properties for any rail purposes, provided that such utilization does not unreasonably interfere with METRO NO.'s or CDOT's Trackage Rights.

(e) Where practicable, METRO NO., at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity and other utility services required for its use. In the event it is impracticable to secure any of such services other than through facilities owned by Conrail, METRO NO. shall install, at its expense, if economically feasible and where permitted by law, necessary connections, supply lines and meters to measure its consumption of such services. In the event separate metering is not feasible, the utility bill shall be allocated on a fair and reasonable basis. Conrail shall not be liable for any temporary suspension of any such services unless caused by its negligence or that of its agents or employees. METRO NO. shall have the right to use facilities, connections, supply lines and meters presently serving the involved Rail Properties.

ARTICLE III

MANAGEMENT AND OPERATIONS

Section 3.01. New Haven Service Agreement

As between MTA, CDOT and METRO NO., nothing in this Agreement is intended to amend or negate any provisions of the Amended and Restated Service Agreement ("Service Agreement") dated June 21, 1985 among CDOT, MTA and METRO NO. As between MTA, CDOT and METRO NO., in the event of any inconsistency between any provision in this Agreement and the Service

) Agreement, the provision of the Service Agreement shall govern, provided, however, that nothing contained in the Service Agreement shall in any way amend, change, alter or otherwise affect Conrail's rights, duties, responsibilities and obligations set forth in this Agreement.

Section 3.02. MTA AND CDOT Rail Properties

(a) As between METRO NO. and Conrail, METRO NO. retains the right to establish the overall policies governing the management and operational control of all rail service over MTA and CDOT Rail Properties, including, but not, limited to, the dispatching and control of all trains. METRO NO.'s right shall not be exercised in a manner which would unreasonably interfere with Conrail's trackage rights.

) (b) The scheduling and movement of revenue passenger trains shall take precedence over all other train movements.

(c) Conrail's freight operating rights described in this agreement are for the purpose of permitting Conrail to exercise its trackage rights under Section 2.01 hereof and the agreements referenced therein, including the right to operate its road and local freight trains, as well as switching movements, trains, locomotives, and other on-track equipment. Conrail shall have access to all running, side, switching, yard, and interchange tracks included in MTA or CDOT Rail Properties necessary for the provision of its freight service so long as that access does not interfere with existing or planned METRO NO. or CDOT uses.

(d) Conrail shall have the right to amend and increase the level of its freight service, as provided in Sections 3.03 of the Harlem-Hudson and CTA Lease Agreements and the MTA Purchase and Lease Agreement.

(e) Conrail may perform special and emergency services, provided that such operations do not interfere with then existing METRO NO. uses.

(f) METRO NO. and CDOT reserve the right to operate special or emergency trains over the properties. Reasonable notice of such use shall be given to Conrail.

(g) METRO NO. shall not do, or cause to be done, anything that interferes with Conrail communications on MTA and CDOT Rail Properties.

Section 3.03 Clearances

METRO NO. and CDOT guarantee that Conrail shall have clearance routes satisfactory to Conrail over METRO NO. lines for movement of all types of equipment and shipments which Conrail operated and transported, in both local and through freight service, over these lines as of January 1, 1983. These clearances on MTA and CDOT Rail Properties are those set forth in Exhibit 9. METRO NO. and CDOT also guarantee that Conrail shall have access to all industries located on METRO NO. lines at the same level of utility which existed as of January 1, 1983, so as to permit Conrail to provide freight service to and from any of its customers on MTA or CDOT Rail Properties in the same manner and to the same extent as existed on January 1, 1983. METRO NO.

will promptly notify Conrail of any modifications of Exhibit 9 clearances. If any restrictions on clearances imposed by METRO NO. or resulting from its maintenance activities after the effective date of this Agreement are more restrictive than the clearances set forth in Exhibit 9, and if such restrictions require alteration of METRO NO. facilities in order to permit Conrail to move freight shipments, such alteration shall be made promptly by METRO NO. at its expense. If a freight shipment exceeds the clearances on Exhibit 9, and requires alteration of METRO NO.'s facilities, such alteration shall be at Conrail's expense. "Facilities" as used in this Section 3.02(g) includes, but is not limited to, catenary wire, electric traction facilities and high level platforms located on MTA and CDOT Rail Properties. Conrail shall have the right to periodically operate its clearance car over MTA/CDOT Rail Properties in order to check the clearance levels, which operation may be conducted at least once every six (6) months. Notwithstanding the above, the parties understand and agree that the provisions as to clearances are subject to applicable state law and regulations as they may exist from time to time.

Section 3.04. Conrail Rail Properties

(a) Conrail retains the right to establish the overall policies governing the management and operational control of all rail service over Conrail Rail Properties, including, but not limited to, the dispatching and control of all trains. Conrail's

right shall not be exercised in a manner which would unreasonably interfere with METRO NO.'s or CDOT's trackage rights.

(b) The scheduling and movement of METRO NO. or CDOT rail passenger commuter trains shall take precedence over all other rail movements except Amtrak regularly scheduled revenue intercity passenger trains.

(c) METRO NO.'s and CDOT's passenger operating rights described in this Agreement are for the purpose of permitting the operation of commuter passenger trains in revenue service as set forth herein and in non-revenue service, as well as special trains, locomotives, and other on-track equipment. METRO NO. and CDOT (the latter insofar as the Connecticut segment of the Danbury Secondary Line is concerned) shall have access to and use of all running, side, switching, yard, and interchange tracks included in Conrail Rail Properties necessary for the provision of its passenger service, provided, however, that these uses will not interfere with Conrail's existing or planned uses.

(d) Subject to the approval of Conrail, which shall not be unreasonably withheld or delayed, METRO NO. or CDOT shall have the right to amend or increase the level of its passenger service; provided, however, that the character, scheduling, or extent of the passenger service shall not unreasonably interfere with Conrail's existing or planned uses of Conrail Rail Properties.

(e) METRO NO., subject to reasonable notice to Conrail, may operate non-scheduled revenue and non-revenue trains, work

trains, self propelled work equipment, and light engine moves, provided that such operations will not interfere with existing Conrail uses and will reimburse Conrail the Car Mile rate set forth in Section 5.03(a) for such movements. METRO NO. special or excursion trains may be operated provided the operation will not interfere with Conrail uses; approval to operate such special or excursion trains must be acquired in advance, in writing. Compensation for the operation of special or excursion trains shall be negotiated on a case by case basis.

(f) METRO NO. regularly scheduled revenue trains, non-revenue trains, work trains and light engine moves may be detoured over Conrail Rail Properties not covered by the Exhibits, in emergencies where interference with Conrail uses will not result; movement and reimbursement to Conrail for such detour trains shall be governed by the rates and provisions established in the AAR Standard Form For Detour Agreement, then in effect of which a current copy is attached and incorporated herein as EXHIBIT 10.

Section 3.05. General Provisions

(a) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or the responsibility of such Party. Whenever such locomotives, cars,

or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, or equipment shall be considered those of the latter Party.

(b) User shall comply with the provisions of applicable federal, state, and local laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Rail Properties. User shall indemnify, protect, defend, and save Owner and its officers, agents, and employees harmless from all fines, penalties, and liabilities imposed upon Owner under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(c) User in its use of the Rail Properties will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Rail Properties shall at all times be subject to the orders of the transportation officers of Owner.

(d) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Rail Properties qualified for operation thereover. In the event it becomes necessary for Owner to furnish Pilots for the operation of User's trains over Owner's properties, Owner shall be reimbursed for the

Actual Costs of such employees and such employees shall be considered as employees of User for purposes of Article 6 of this Agreement.

(e) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of the User, except officers of User, User shall be notified in advance of any such investigation or hearing. Such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that apply to said employee or employees.

(f) Owner shall have the right to exclude from the Rail Properties, for the length of time specified in a disciplinary proceeding, any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Rail Properties, or, if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Rail

Properties, Owner shall have the option of allowing the User to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives or cars, or to properly move the disabled equipment off the Rail Properties, or the Owner, after notice to User, may perform the necessary functions. User shall reimburse Owner for rendering any such assistance based on the Actual Costs or the Owner's standard schedule of charges then in effect.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Rail Properties, such work shall, at the option of the Owner, after notice to User, be done by the User or the Owner. User shall reimburse Owner for the Actual Cost of rendering any such assistance.

ARTICLE IV

MAINTENANCE AND CONSTRUCTION ON RAIL PROPERTIES

Section 4.01. Responsibility for Maintenance and Construction of MTA and CDOT Rail Properties

(a) As between METRO NO. and Conrail, METRO NO. shall retain the right to establish and carry out the overall policies governing maintenance, construction, reconstruction, and alteration of all MTA and CDOT Rail Properties. METRO NO.'s rights shall not be exercised in a manner which would unreasonably interfere with Conrail's trackage rights. As between MTA, METRO-NO. and CDOT, management control of CDOT Rail

Properties shall be governed by the Amended and Restated Service Agreement.

(b) With respect to MTA or CDOT Rail Properties in Exhibit 5, METRO NO. or its designee shall have the responsibility to perform all - maintenance, construction, reconstruction, or alteration on these Rail Properties. Notwithstanding the preceding sentence, Conrail shall determine the level of and requirements for maintenance, and shall bear the actual costs therefor as long as there is no regular use of these facilities by METRO NO. or until freight service thereon is discontinued by Conrail. In the event that METRO NO. redesignates properties as a Jointly Used MTA/CDOT Rail Property under Section 2.02 hereof, the level of maintenance shall be brought to no less than Federal Railroad Administration Class 1 standards. METRO NO. shall have the right to perform the necessary work and Conrail shall pay the actual costs incurred by METRO NO. in bringing the property to the specified maintenance level, but no expense for upgrading the property above the FRA Class 1 level may be charged to Conrail.

(c) As between METRO NO. and Conrail, with respect to MTA or CDOT Rail Properties in Exhibits 1 and 5, METRO NO. or its designee shall have the responsibility to perform or to arrange for the performance of the maintenance, construction, reconstruction, and alteration on such properties.

Section 4.02. Maintenance of Freight Facilities
on MTA and CDOT Rail Properties.

(a) METRO NO. 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 turnouts to sidings located between the point of switch and the clearance point (or mutually defined point beyond the clearance point) and both turnouts of any solely freight crossover out of the main track. Such facilities are listed on Exhibit No. 3.

(i) The routine and non-routine maintenance expenses incurred by METRO NO. with respect to these facilities are not included in the car-mile reimbursement provided in Section 5.01(a) hereof. The cost of such work shall be charged to Conrail in accordance with Section 5.01(b) hereof.

(b) In the event that Conrail advises that any solely freight facility is not required for the performance of Conrail's freight service, the provisions of Section 4.04(g) shall apply. In the event an emergency situation occurs which requires the total or partial replacement of a solely freight facility, METRO NO., subject to the verbal approval of Conrail's General Manager or his representative, shall proceed with the work and shall bill Conrail in accordance with the provisions of Section 5.05(b), except to the extent said facility is covered by Section 5.01(b).

(c) METRO NO. shall perform FRA-mandated inspections, automatic grade-crossing protection inspection and repair

and emergency repairs, including those resulting from derailments on the portion of solely freight sidings located beyond the clearance point (or mutually defined point beyond the clearance point). Such facilities are listed on Exhibit 5. The cost of such work shall be charged to Conrail in accordance with Section 5.05(b) hereof.

(d) In addition to maintenance of properties and facilities, METRO-NO. and Conrail shall from time to time, upon reasonable request, perform services necessary to assist the other in carrying out its services and operations, including without limitation such services as train control, wrecking and derailments, snow plowing service and pilot services. The parties agree, however, that Conrail will not be required to perform snow removal at passenger station facilities. Requests for the above described services will be considered promptly and not unreasonably refused, subject to the prior operating and service needs of the party receiving the request. Requests shall be in writing, except that oral requests may be acted upon in unusual circumstances, subject to prompt confirmation in writing. Performance and payment for such services shall be at the Actual Cost of the party performing the service.

Section 4.03. Maintenance and Other Services

(a) Maintenance and other services provided under this Agreement shall be performed in an economic and efficient manner. Properties and facilities are to be maintained by METRO NO. at

the level of maintenance specified in the exhibits, as amended from time to time by agreement, provided that all tracks maintained by METRO NO. hereunder shall be inspected and maintained at a level sufficient to meet Federal Railroad Administration (FRA) track safety standards for Class 1 track. Cost of maintenance of properties or facilities used by Conrail at levels above FRA Class 1 standards shall be at METRO NO.'s sole cost and expense unless otherwise requested or agreed upon by Conrail. Properties or facilities are to be maintained by Conrail at the level of repair specified in the exhibits.

(b) In the event Conrail wishes any properties or facilities used by Conrail, and for which charges are billable to Conrail, to be rehabilitated or upgraded, or wishes METRO NO. to carry out special projects or new construction on Conrail's behalf, Conrail's Senior Vice President-Operations or his designee will submit a written notice to METRO NO. to that effect, including the submission of complete specifications for the upgrading or construction requested. Any such proposal shall be subject to METRO NO. engineering approval. In the event such notice is submitted and if METRO NO. agrees to do the work, METRO NO., within 45 days following receipt of the notice, will submit to Conrail a Force Account Estimate for work to be performed and a time schedule. When the estimate and work schedule are approved in writing by Conrail, such notice will constitute an order to begin work.

(c) Conrail may, at its discretion and subject to METRO NO.'s approval, which approval shall not be unreasonably withheld, furnish material for any upgrading, special projects, or new construction requested hereunder. If it appears that the cost of the work will exceed the Estimate, METRO NO. will notify Conrail of the status of the project and, if it is to proceed, the need to secure additional authority for such additional cost. METRO NO. shall not be obligated to incur costs in excess of those approved by Conrail. If METRO NO. does not undertake the work, Conrail or its contractors shall be granted reasonable access to MTA/CDOT Rail Properties to carry out the work.

(d) In the event that METRO NO. for its own purposes determines that any properties or facilities, which under this Agreement are the responsibility of Conrail and the expenses for maintenance are chargeable to Conrail, should be upgraded, renewed or require special attention, METRO NO. will notify Conrail's Senior Vice President-Operations of its desires. If Conrail agrees, METRO NO. shall prepare a description of the desired work including, where necessary, detailed plans, which will be submitted to Conrail for its concurrence. The actual cost of the upgrading, renewal or special projects shall be paid by METRO NO. and the parties shall review the impact of any changes on future maintenance expenses and, if necessary, allocate those expenses between the parties, as they may agree.

(e) The provisions set forth in subsections (b) and (c) above will be followed in a similar manner in dealing with a

notice by METRO NO. to Conrail of METRO NO.'s desire that Conrail carry out similar projects with respect to properties or facilities billable to METRO NO.

(f) Each party agrees to use its best efforts to provide services necessary to deal with emergency situations on their respective properties or facilities or with other operating emergencies. Oral notice of the need for emergency service may be acted upon, subject to written confirmation as soon as possible, but in any event within 5 days after verbal authorization. The party performing such services may submit bills to the other for such services and shall include therein the name and title of the officer who requested and authorized such services. Projects desired by one party involving special projects or new construction involving costs of \$25,000 or less may be carried out by the other upon oral notice subject to the same confirmation and billing procedures as for emergency services.

(g) Except where otherwise indicated, Conrail agrees, at METRO NO.'s expense, to maintain the track, communication and signal systems, bridge and building structures, and other solely passenger facilities identified in Exhibits 6 and 7. The cost of such work shall be charged to METRO NO. in accordance with the appropriate provisions of Article V.

Section 4.04 Installation, Connection, Maintenance, and Removal of Industrial Sidetracks.

(a) Conrail has the right to install track connections for rail lines and trackage owned, leased, controlled or operated by Conrail or its freight customers contiguous or adjacent to the MTA/CDOT Rail Properties in order to perform its freight service and to contract with those industries for the installation, construction, maintenance, and removal of industrial sidetracks which will be connected to tracks or connections on MTA/CDOT Rail Properties. The following provisions govern the construction, operation, maintenance and removal of sidetracks which have been constructed or are to be constructed for the purpose of providing rail freight service to industries served or to be served by Conrail which are connected to MTA/CDOT Rail Properties.

(b) Whenever Conrail plans to construct a new industrial sidetrack which will be connected to MTA or CDOT Rail Properties or plans to alter or modify an existing sidetrack, engineering plans and drawings showing the location and dimension of such sidetrack(s), and any construction on MTA/CDOT Rail Properties adjacent to or in support thereof, shall be submitted by Conrail to the Executive Vice President for METRO NO. in quadruplicate for review and approval. Approval of plans and specifications for sidetrack installations or modifications which are consistent with METRO NO.'s general specifications will not be unreasonably withheld or delayed. In the event of any conflict between

freight and passenger operational requirements, passenger requirements shall prevail.

(c) Nothing in this agreement is intended as a grant of rights to industries served by Conrail along the MTA/CDOT Rail Properties. The Industrial Sidetrack Agreement between Conrail and the industry shall in no way govern the terms of this agreement between METRO NO. and Conrail, but shall be limited to matters between the industry and Conrail.

(d) If METRO NO. is willing to undertake the work, all materials for installation of a new sidetrack or modification of existing sidetracks may, at METRO NO.'s discretion, be supplied by Conrail to METRO NO. at a location to be selected by agreement of the parties. Construction, installation, or modification of sidetracks shall be performed in accordance with approved plans on MTA/CDOT Rail Properties by METRO NO. forces or contractors, in return for which Conrail shall compensate METRO NO. in accordance with a force account agreement to be entered into on a case-by-case basis. If METRO NO. does not wish to undertake the work, it will authorize Conrail to do so and will give Conrail, its employees or contractors access to the worksite as necessary for completion of the work, subject to METRO NO.'s operating control, entry permit procedures and flagging requirements, the Actual Costs of which shall be borne by Conrail.

(e) Maintenance of industrial sidings beyond the clearance point may be performed by METRO NO. forces on MTA/CDOT Rail

Properties at Conrail's expense in accordance with Articles IV and V; or by Conrail or its contractors at Conrail's expense, subject to METRO NO.'s operating control, entry permit procedures and flagging requirements. Conrail shall provide to METRO NO., in writing, maintenance standards and instructions for industrial sidetracks prepared in a clear and unambiguous fashion.

(f) Construction and maintenance of that portion of the sidetrack located off MTA/CDOT Rail Properties shall be the responsibility of Conrail or the industry.

(g) Sidetracks - Cessation of Use:

(i) With respect to any industrial sidetracks or public delivery (team) tracks covered by this Agreement which have not been used for any freight shipment during the preceding 24 month period, METRO NO. shall have the option upon 90 days' written notice to propose removal of the connection and any other facilities and appurtenances connected therewith located upon the right-of-way.

(ii) Upon receipt of such notice, Conrail will promptly evaluate whether it or an industry or shippers will have need for the sidetrack or public delivery (team) track currently or in the future. If such need is reasonably anticipated, Conrail will so notify METRO NO. in writing, and the track shall be retained.

(iii) In the event of removal, Conrail shall have the right to retain all sidetrack materials which it has furnished after the effective date of this Agreement for the

construction of new sidetrack connections or the repair or modification of existing sidetracks. Such materials shall be removed by METRO NO. and delivered to a mutually agreeable location for Conrail pickup pursuant to the provisions of subparagraph (i) above at Conrail's expense. METRO NO. shall be entitled to retain all other sidetrack materials, which shall be removed at METRO NO.'s expense.

(iv) Sidetrack materials belonging to Conrail which are removed by METRO NO. pursuant to subparagraphs (i) and (iii) above shall be held for thirty days subsequent to the date that METRO NO. notifies Conrail that the removal of the said connection has been completed and materials delivered to the agreed upon location. Any materials not repossessed by Conrail within the 30-day period may be removed from MTA/CDOT's Rail Properties at Conrail's expense, or disposed of as may then be agreed upon.

Section 4.05. Construction, Reconstruction, and
Alteration of Freight Facilities on
MTA or CDOT Rail Properties

(a) Conrail, with the prior written approval of METRO NO., as to properties owned or leased by MTA or METRO NO. or of CDOT, as to properties owned or leased by CDOT, at Conrail's sole cost and expense, may construct, reconstruct, alter, or improve any freight facility such as yards, public delivery (team) tracks, but specifically excluding buildings, located on MTA or CDOT Rail Properties as

necessary for freight operations, including, but not limited to, increases in weight of rail, changes in signal or communication facilities, freight sidings, and interchange points, provided, however, that any additional expenses for the maintenance of these facilities shall be the sole responsibility of Conrail.

(b) All facilities constructed under subsection (a) for which Conrail furnished material shall remain the property of Conrail unless owned by the Penn Central Corporation and covered by the Harlem-Hudson Lease Agreement. METRO NO. may require Conrail to remove its facilities which are no longer used under the conditions set forth in Section 4.04(g), and to perform the necessary restoration work. This work shall be at Conrail's sole expense.

Section 4.06. Responsibility for Maintenance of
Conrail Rail Properties

Conrail shall have the right to establish and carry out the overall policies governing maintenance, construction, reconstruction, and alteration of all Conrail Rail Properties. Conrail's right shall not be exercised in a manner which would unreasonably interfere with METRO NO.'s or CDOT's trackage rights.

Section 4.07. Level of Maintenance of Conrail
Rail Properties

With respect to Conrail Rail Properties listed in Exhibit 2, Conrail shall determine the level of and requirements for maintenance, construction, reconstruction, or alteration, and shall bear the complete responsibility therefor, provided that the level of maintenance shall not be less than that specified in said Exhibit.

Section 4.08. Construction, Reconstruction, and
Alteration of Solely Passenger
Facilities on Conrail Rail Properties

(a) METRO NO., with the prior written approval of Conrail, at METRO NO.'s sole cost and expense, may construct, reconstruct, alter, or improve any solely passenger facility located on Conrail Rail Properties necessary for passenger operations, including, but not limited to, platforms, stations, electrification, signal or communication facility changes, and passenger sidings; provided, however, that any additional expenses for the maintenance of these facilities shall be the sole responsibility of METRO NO. Such facilities shall not interfere with Conrail's clearances, communications or any other Conrail use of its properties.

(b) All facilities constructed under subsection (a) above shall remain the property of METRO NO. At Conrail's option, it may require METRO NO., at METRO NO.'s sole cost and expense, to

remove facilities which are no longer used and perform the necessary restoration work.

ARTICLE V
COMPENSATION

Section 5.01. MTA/CDOT Rail Properties
Used Jointly With Conrail

(a) Conrail shall pay METRO NO. on a billable car-mile basis for freight service operated over the Exhibit 1 Rail Properties in excess of the use levels permitted without charge under Section 2.01 of this Agreement. The billable car-mile rates are:

	<u>RATES</u>							
<u>Car Miles</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
1st 1 Million Annually	\$.200	.216	.223	.230	.239	.248	.263	.273
Over 1 Million Annually	\$.150	.162	.168	.172	.179	.186	.197	.205

(b) Turnouts and Crossovers

1. Freight Only

(i) The parties agree to a flat rate payment for all maintenance and replacement associated with freight turnouts and crossovers maintained by METRO NO. for Conrail, which turnouts and crossovers are designated as Conrail responsibility in EXHIBIT 3. This flat rate payment shall

constitute the entire amount due for all maintenance and replacement of said turnouts and crossovers.

(ii) The flat rate, using 1983 average weighted costs, shall be \$3,578 per year per turnout for routine maintenance and \$2,301 per year per turnout for non-routine maintenance. Non-routine maintenance shall include both incremental and entire switch replacement.

(iii) In accordance with paragraphs (i) and (ii) above, Conrail shall pay METRO NO. at the rate of \$489.92 per month per turnout. This rate shall be effective as of January 1, 1983, and shall be escalated annually as provided in Section 5.04(b). Payments shall be made in two (2) increments, one on July 15 and the other on January 15 of each calendar year, covering the periods January 1 through June 30 and July 1 through December 31, respectively. At the time of each payment, Conrail will furnish METRO NO. with a statement indicating, by month, the number of turnouts for which payment is made, together with an explanation of any increase or decrease in the number of turnouts for which payment is submitted.

(iv) Conrail shall have the right to enter MTA/CDOT Rail Properties for the purpose of reviewing the level of maintenance being performed on turnouts and crossovers covered by this Section. In the event Conrail determines that its freight turnouts and crossovers are not being properly maintained, it shall promptly meet with METRO

NO. to discuss the matter. If the parties are unable to reach agreement on this matter, it shall be resolved in accordance with ARTICLE IX of this Agreement.

2. Jointly Used

The parties agree that the flat rate for all maintenance and replacement of freight turnouts and crossovers, as set forth in \$5.01(b)(1), shall apply to turnouts and crossovers used jointly by METRO NO. and Conrail for passenger and freight operations, and that said maintenance and replacement costs shall be shared equally by METRO NO. and Conrail. Conrail shall pay METRO NO. \$244.96 per month per turnout for each turnout designated as joint responsibility on Exhibit 3. This rate shall be effective as of January 1, 1983 and shall be escalated annually as provided in Section 5.04(b).

(c) Beyond Clearance Point Conrail shall pay for Routine and Non-routine Maintenance expenses incurred by METRO NO. relating to each solely freight facility located beyond the clearance point identified in Exhibit No. 5. METRO NO. shall bill Conrail in accordance with Section 5.05(c).

Section 5.02. METRO NO.- Property Owned By MTA, CDOT or METRO NO. Used Solely By Conrail and Maintained By Conrail - Exhibit 4

Conrail will assume all costs associated with maintenance of those properties identified in Exhibit 4 which are properties owned by MTA, CDOT or METRO-NO. and maintained and used solely by Conrail. Should Conrail discontinue its freight service on any of the rail lines identified in Exhibit 4, in whole or in part, the property shall be returned to MTA, CDOT or METRO NO. in at least FRA Class 1 condition.

Section 5.03. Conrail Exhibit 2 Rail Properties

(a) METRO NO. shall pay Conrail on a billable Car-Mile basis for passenger service operated over Exhibit 2 Rail Properties. The billable car mile rates are:

	<u>RATES</u>							
<u>Car Miles</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
1st 1 Million Annually	\$.200	.216	.223	.230	.239	.248	.263	.273
Over 1 Million Annually	\$.150	.162	.168	.172	.179	.186	.197	.205

(b) Turnouts and Crossovers

(i) The parties agree to a flat rate payment for all maintenance and replacement associated with passenger turnouts and crossovers maintained by Conrail for METRO NO., as listed in EXHIBIT 6. This flat rate payment shall constitute the entire amount due for all maintenance and replacement of said turnouts and crossovers.

(ii) The flat rate, using 1983 average weighted costs, shall be \$3,578 per year per turnout for routine maintenance and \$2,301 per year per turnout for non-routine maintenance. Non-routine maintenance shall include both incremental and entire switch replacement.

(iii) In accordance with paragraphs (i) and (ii) above, METRO NO. shall pay Conrail \$489.92 per month per turnout. This rate shall be effective as of January 1, 1983, and shall be escalated annually as provided in Section 5.04(b). Annual payments shall be made in two (2) increments, one on July 15 and the other on January 15 of each calendar year, covering the periods January 1 through June 30 and July 1 through December 31, respectively. At the time of each payment, METRO NO. will furnish Conrail with a statement indicating, by month, the number of turnouts for which payment is made, together with an explanation of any increase or decrease in the number of turnouts for which payment is submitted.

(iv) METRO NO. shall have the right to enter Conrail's properties for the purpose of reviewing the level of maintenance being performed on turnouts and crossovers covered by this Section. In the event METRO NO. determines that its passenger turnouts and crossovers are not being properly maintained, it shall promptly meet with Conrail to discuss the matter. If the parties are unable to reach

agreement on this matter, it shall be resolved in accordance with ARTICLE IX of this Agreement.

Section 5.04 Revision of the Billable Car-Mile and Maintenance Rates

(a) Car-Mile Rate: Beginning in July 1984, and each July 1 thereafter, the Billable Car-Mile Rates identified in Sections 5.01(a) and 5.03(a) shall be increased or decreased on a cumulative basis by the same percentage by which the cost of material, prices, wage rates and supplements combined (excluding fuel), as reflected in the Annual Indexes of Chargeout Prices and Wage Rates, East, (1977=100), Series RCR, included in the "AAR Railroad Cost Indexes", and supplements thereto, issued by the Association of American Railroads or other generally recognized index, if such AAR index ceases to be published, has increased or decreased in the preceding calendar year, using 1982 (161.8) as the base index year. Car-Mile rates calculated in accordance with this provision shall be stated to the nearest one-tenth (1/10) of a cent. The methodology for determining the amount of increase is set forth in Exhibit 8.

(b) Maintenance Rate: Beginning in January 1984, and each January 1 thereafter, the Maintenance Rate identified in Sections 5.01(b) and 5.03(b) shall be increased or decreased by the same percentage by which the cost of material, prices, wage rates and supplements combined

(excluding fuel), as reflected in the Annual Indexes of Chargeout Prices and Wage Rates, East, (1977=100), Series RCR, included in the "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads or other generally recognized index, if such AAR index ceases to be published, has increased or decreased in the preceding calendar year, using 1983 (174.5) as the base index year. Maintenance rates calculated in accordance with this provision shall be stated to the nearest dollar. The rates for the years 1984 through 1989, as well as an explanation of the methodology for determining the amount of increase, are set forth in Exhibit 8, which methodology shall be used for all subsequent increases or decreases under this provision.

Section 5.05. Billing Procedures - Monthly Charges

(a) Billable Car Mile Rate

(1) Within sixty (60) days of the close of the month, METRO NO. shall furnish to Conrail a statement showing by line segment the passenger service billable Car-Miles operated over Conrail Exhibit 2 Rail Properties. The amount to be billed to METRO NO. shall be the difference between the Conrail freight billable Car-Mile cost set forth in Section 5.01(a) and the METRO NO. passenger service billable Car-Mile cost set forth in Section 5.03(a). METRO NO. shall pay

Conrail's invoice within ninety (90) days of its receipt. In the event that the Conrail freight service billable Car-Miles exceed the METRO NO. passenger service billable Car-Miles, Conrail shall pay the amount due METRO NO. within ninety (90) days after receipt of METRO NO.'s Car Mile statement.

(ii) Within sixty (60) days of the close of the month, Conrail shall furnish METRO NO. with a statement showing by line segment the freight service Car Miles operated over the MTA/CDOT Rail Properties listed in Exhibit 1.

(b) Beyond Clearance Point - Non-routine Maintenance

(i) Subject to the provisions of Section 4.02(c), and with written approval of Conrail, METRO NO. shall perform certain maintenance, rehabilitation, construction and reconstruction of the track, communication and signal systems, bridges, buildings and other properties or facilities associated with those locations identified in Exhibit 5. Actual costs incurred with respect to each work order number set forth in Exhibit 5 shall be billable to Conrail, unless otherwise agreed to in writing. Invoices received for work performed under this provision shall be paid within ninety (90) days of receipt.

(ii) Actual Costs incurred with respect to each work order number set forth in Exhibits 6 and 7, shall be billable to METRO NO. unless otherwise agreed to in writing. Invoices received for work performed under this provision shall be paid within ninety (90) days of receipt.

(c) Beyond Clearance Point - Routine Maintenance

Routine maintenance performed by Conrail on those properties identified in Exhibits 6 and 7, and routine maintenance performed by METRO NO. on those properties identified in Exhibit 5 shall be billed to the appropriate party through use of the work order numbers. It shall not be necessary for either party to obtain written approval prior to performing routine maintenance.

(d) Beyond Clearance Point - Additions, Deletions, Abandonment of Exhibit 5, Exhibit 6, or Exhibit 7 Rail Properties.

(i) The properties or facilities and assigned work responsibilities set forth in Exhibits 5, 6, or 7 may be changed from time to time and properties or facilities may be added to or deleted from said Exhibits, subject to agreement by the parties. Any party may delete or add properties or facilities to be maintained by another party, upon written notice to and agreement by the parties.

(ii) If any party discontinues service over any of the properties or facilities owned by another party or permanently ceases to use any such properties or facilities, it shall give written notice to the other party within sixty (60) days of such cessation, advising that it no longer requires such facilities. Within thirty (30) days of receipt of such notice, such facilities shall be removed from coverage by any work order billable to Conrail or METRO NO., as the case may be, provided, however, that no party shall be relieved from expenses incurred for work performed on such facilities prior to termination of service.

Section 5.06. Late Payment

(a) Interest may be charged based on the prime interest rate of the Citibank, N.A., in effect as of the due date of the invoice in the event:

(i) Conrail fails to pay METRO NO. within ninety (90) days after Conrail's receipt of METRO NO.'s Car Mile statement for the billable Car-Mile reimbursement pursuant to Section 5.01(a);

(ii) METRO NO. fails to pay Conrail within ninety (90) days after receipt of Conrail's invoice for the billable Car-Mile reimbursement pursuant to Section 5.03;

(iii) All other amounts payable by either Party pursuant to this Agreement which have not been paid within ninety (90) days after receipt of the invoice from the billing Party, provided that if either Party's failure to make payment within the specified time limits is a direct result of the other Party's failure to supply support data and information as provided for in this Agreement, the interest charge set forth in Section 5.06 shall not be applied.

Section 5.07. Billing Addresses

Billing information, including invoices, shall be directed to:

IF CONRAIL: General Superintendent Contract
Administration
CONSOLIDATED RAIL CORPORATION
P.O. Box 8646
Philadelphia, Pennsylvania 19101-8646

IF METRO NO: METRO NORTH COMMUTER RAILROAD
Manager Accounts Payable
Grand Central Station
P.O. Box 3581
New York, New York 10163

Section 5.08. Disputed Amounts

(a) In the event that there is a dispute as to the amount to be paid, the undisputed portion of the invoice amount shall be remitted and the amounts disputed shall be resolved in accordance with the provisions of Article IX of this Agreement.

(b) For those cases decided through binding arbitration, as set forth in Article IX of this Agreement, if it is determined that there are monies due to the billing Party, there shall be an interest charge levied in accordance with Section 5.06. Interest shall be computed based on the period of time between the original due date of the payment and the date the amount due is remitted.

Section 5.09. Maintenance and Inspection of Records

(a) Each of the Parties shall keep and maintain its books, records, accounts, and supporting workpapers which relate to operations, maintenance, and costs of the Rail Properties for a period of two (2) years, except that records relating to matters in dispute shall be retained until such dispute is resolved. Such records shall be maintained in such a manner as to enable either party to verify the assimilation of charges to a particular bill or work order number and may be computer generated. Additional information as may be required to verify billing, including, but not limited to logs, derailment reports, unusual incident reports, prepared in the normal course of business shall be made available as provided in Exhibit 11 to this Agreement.

(b) During normal business hours, each of the Parties shall have the right to inspect, examine, audit, and reproduce all books, records, accounts, and supporting workpapers of the other

Party which relate to the operations, maintenance and costs of the Rail Properties in support of billings as rendered.

Section 5.10. New Haven Service Agreement

As between MTA, CDOT and METRO-NO., all compensation received from Conrail which is attributable to the New Haven Line shall be allocated in accordance with the Service Agreement.

ARTICLE VI

LIABILITY APPORTIONMENT

Section 6.01. Scope

Financial responsibility for liability for personal injury, death or property damage which may result from activities conducted hereunder shall be allocated as follows in this Article. In no case shall any party claim compensation for loss of revenue from any other party.

Section 6.02. Conrail Employees

Conrail agrees to protect, defend, indemnify and save harmless METRO NO., irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any Conrail Employee, or for loss of, damage to, or destruction of the property of any such Conrail Employee. "Conrail Employee" means a person who is an employee of Conrail or any agent or contractor of Conrail (other than METRO NO.), or

) any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. Conrail Employees who are involved in Conrail's provision of services to METRO NO. under this agreement shall be regarded as employees of Conrail, and not of METRO NO. Conrail Employees who are also METRO NO. Passengers at the time in question shall be treated as METRO NO. Passengers and not Conrail Employees, for purposes of this Agreement.

Section 6.03. METRO NO. Employees

) METRO NO. agrees to protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any METRO NO. Employee, or for loss of, damage to, or destruction of any property of any such METRO NO. Employee. "METRO NO. Employee" means a person who is an employee of METRO NO. or any agency or contractor of METRO NO. (other than Conrail), or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. METRO NO. Employees who are involved in METRO NO.'s provision of services to Conrail under this Agreement shall be regarded for purposes of this Agreement as employees of METRO NO., and not of Conrail. METRO NO. Employees who are also Conrail Passengers at the time in question shall be treated as

Conrail Passengers and not METRO NO. Employees, for purposes of this Agreement.

Section 6.04. Conrail Property

Conrail agrees to protect, defend, indemnify and save harmless METRO NO., irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to, or destruction of any Conrail Property. "Conrail Property" means any locomotive, railroad car, including contents, and any other property, real or personal, owned, leased, used by or otherwise in the custody or possession of Conrail, other than any Conrail rolling stock operating in METRO NO. trains.

Section 6.05. METRO NO. Property

(a) In the event of a collision or occurrence involving a METRO NO. train and a Conrail train, irrespective of any negligence or fault of Conrail or Conrail Employees, or METRO NO. or METRO NO. employees, or howsoever the same shall occur or be caused, METRO NO. and Conrail shall each bear 50% of the liability for all loss of, damage to or destruction of any such METRO NO. Property. "METRO NO. Property" means any locomotive, railroad car, including contents, and any other property, real or personal owned, leased, used by or otherwise in the possession of METRO NO. (including CDOT and/or MTA Rail Properties or other

real or personal property owned by CDOT or MTA) other than METRO NO. rolling stock operating in Conrail trains.

(b) In the event of a collision or occurrence involving a Conrail train but not a METRO NO. train, Conrail agrees to indemnify and save harmless METRO NO. irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, for all loss of, damage to or destruction of any such METRO NO. Property.

(c) Except as provided in Sections 6.05(a) and (b), above, METRO NO. agrees to protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any METRO NO. Property.

(d) The provisions of this Section 6.05 may be terminated by either party upon 90 days' notice.

Section 6.06. Conrail Passengers

Conrail agrees to protect, defend, indemnify and save harmless METRO NO., irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any Conrail Passenger, and for loss of, damage to, or destruction of any property of any such passenger. "Conrail Passenger" means any person other than a Conrail Employee who is on board, getting on, or alighting from a Conrail train.

Section 6.07. METRO NO. Passengers

(a) Except as noted in Section 6.14, in the event of a collision or occurrence involving a METRO NO. train or equipment and a Conrail train or equipment, irrespective of any negligence or fault of Conrail or Conrail Employees or METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, METRO NO. and Conrail shall each bear 50% of the liability for injuries to or death of any METRO NO. Passenger and for loss of, damage to or destruction of the property of any such passenger. "METRO NO. Passenger" means (1) any person other than a METRO NO. employee who is on board a METRO NO. train, except for Conrail Employees directly engaged in their employment for Conrail (not commuting to or from work), (2) any person who is not on board a METRO NO. train, but who has either purchased a ticket valid on METRO NO. trains or holds a travel voucher reflecting personal pass privileges granted by METRO NO. authorizing travel on a METRO NO. train, and (3) any person who is on, getting on or alighting from a METRO NO. train, or who is in a METRO NO. passenger station or on the platform or in the parking area for the purpose of meeting or delivering a person described in (1) or (2) of this sentence, or to purchase a METRO NO. ticket or obtain travel information.

(b) Except as provided in Section 6.07(a) above, METRO NO. agrees to protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from

any and all liability for injuries to or death of any METRO NO. passenger and for loss of, damage to, or destruction of property of any such passenger.

(c) The provisions of this Section 6.07 may be terminated by either party upon 90 days' notice.

Section 6.08. Third Parties: Conrail Trains - Grade Crossing, Trespassers and Off-Premises

Subject to the provisions of Section 6.11 of this Agreement, Conrail agrees to protect, defend, indemnify and save harmless METRO NO. irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, for loss of, damage to, or destruction of any property other than persons and property for which METRO NO. is responsible under Sections 6.03, 6.05 and 6.07 of this Agreement, if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a Conrail Train at the intersection at grade, of a street or road, whether public or private, and the tracks over which such Conrail Train is operating, (ii) arises from a collision of a vehicle or a person with a Conrail train on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a Conrail Train.

Section 6.09. Third Parties: METRO NO. Trains - Grade Crossing, Trespassers and Off-Premises

Subject to the provisions of Section 6.10 of this Agreement, METRO NO. agrees to protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall be caused, from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which Conrail is responsible under Sections 6.02, 6.04 and 6.06 of this Agreement, if such injury, death, loss, damage, or destruction either (i) arises from a collision of a vehicle or a person with a METRO NO. Train at the intersection at grade, of a street or road, whether public or private and the tracks over which such METRO NO. Train is operating, (ii) arises from a collision of a vehicle or a person with a METRO NO. train on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a METRO NO. Train.

Section 6.10. Third Parties: Conrail Residuals

Conrail agrees to protect, defend, indemnify and save harmless METRO NO., irrespective of any negligence or fault of METRO NO. or METRO NO. Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which METRO NO.

is responsible under Section 6.03, 6.05, 6.07, 6.09 and 6.11 of this Agreement, where such injury, death, loss, damage, or destruction arises out of activities conducted pursuant to Conrail operations on Conrail Rail Properties or Conrail operations conducted at freight stations and facilities owned or operated by Conrail.

Section 6.11. Third Parties: METRO NO. Residual

METRO NO. agrees to protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur, or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or any destruction of any property, other than persons and property for which Conrail is responsible under Sections 6.02, 6.04, 6.06, 6.08, and 6.10 of this Agreement, where such injury, death, loss, damage, or destruction arises from activities conducted on METRO NO., MTA or CDOT Rail Properties as defined herein or conducted at passenger stations and facilities operated by METRO NO.

Section 6.12. Wrecking Charges

Nothing in this Agreement shall preclude the allocation or direct charging, in accordance with the circumstances of the case, for wrecking service resulting from an occurrence covered by Article VII of this Agreement.

Section 6.13. Liabilities Arising from Hazardous Substances
and Electric Traction Facilities

Any other provision of this Article VI to the contrary notwithstanding:

(a) Conrail agrees to indemnify and save harmless CDOT, MTA and METRO NO.- irrespective of any negligence or fault of METRO No. or METRO NO. employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which METRO No. is responsible under Section 6.03 hereof, where such injury, death, loss, damage or destruction arises from the transportation in Conrail Trains on MTA/CDOT Rail Properties of hazardous or toxic materials as defined in applicable federal or state laws or regulations, and including petroleum, crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance by such federal or state laws or regulations, provided, however, that Conrail also shall be required to indemnify and save harmless CDOT, MTA and METRO NO. for injury or death to, or destruction of or damage to property of, METRO NO. passengers (as defined in Section 6.07) under this subsection only to the extent such injury, death, damage or destruction arises from Conrail's negligence or from malicious or criminal acts of third parties. Hazardous or toxic materials shall also include natural gas, natural gas liquids, liquified

natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Notwithstanding any provisions of this Agreement to the contrary, damage for which Conrail is responsible under the preceding paragraph shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and restoration of hazardous or toxic materials on such property to a level commensurate with the existing condition of such property immediately prior to such damage.

(b) METRO NO. agrees to indemnify and save harmless Conrail and Conrail employees, irrespective of any negligence or fault of Conrail or Conrail employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which Conrail is responsible under Sections 6.02 and 6.06, where such injury, death, loss, damage or destruction arises from the transportation in or servicing of METRO NO. Trains on Conrail property of hazardous or toxic materials as defined in applicable federal or state laws or regulations, and including petroleum, crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance by such federal or state laws or regulations. Hazardous or toxic materials shall also include natural gas, natural gas liquids,

liquified natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Notwithstanding any provision of this Agreement to the contrary, damage for which METRO NO. is responsible under the preceding sentence shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and restoration of any portion of Conrail property that is damaged by METRO NO.'s transportation or use of hazardous or toxic materials on Conrail property to a level commensurate with the existing condition of such property immediately prior to such damage.

(c) METRO NO. shall protect, defend, indemnify and save harmless Conrail, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability (other than liability for which Conrail is responsible under Section 6.02 hereof) resulting from the existence or operation of electric traction facilities, whether overhead or third rail, in the area of METRO NO. operations so long as Conrail does not use such electric traction facilities in its freight operations.

Section 6.14. Liability Insurance

For so long as Conrail has trackage rights over METRO NO., MTA or CDOT Rail Properties, Conrail shall maintain liability insurance covering the contractual indemnification and hold harmless covenants set forth in this Article VI. Such liability

insurance shall cover any and all damages, liabilities, claims and lawsuits in connection with or arising out of the operation of Conrail freight service, including, but not limited to, liability under the Federal Employer's Liability Act and the Federal Safety Appliance Acts. Deductible amounts of such insurance shall be those generally applicable to Conrail operations.

For so long as METRO NO. has trackage rights over Conrail Rail Properties, METRO NO. shall maintain liability insurance covering the contractual indemnification and hold harmless covenants set forth in this Article VI. Such liability insurance shall cover any and all damages, liabilities, claims and lawsuits in connection with or arising out of the operation of METRO NO. service, including, but not limited to, liability under the Federal Employer's Liability Act and the Federal Safety Appliance Acts and liability to METRO NO. passengers. Deductible amounts of such insurance shall be those generally applicable to METRO NO. operations.

Section 6.15. Handling of Claims and Lawsuits; Cooperation

In the event a claim is filed or lawsuit brought against Conrail or METRO NO. (including MTA and/or CDOT) asserting a liability against which one party has agreed to indemnify and save harmless the party receiving the claim or being sued, the indemnifying party shall, at its sole cost and expense, investigate and handle the claim and defend the lawsuit and save

harmless the indemnified party against all costs and expenses thereof and pay any legitimate claim, settlement or final judgments. The party receiving any claim or notice of suit shall promptly advise the indemnifying party and provide all information which from time to time may be required, provided, however, that in those instances in which the parties have agreed to share the passenger liability, it is agreed that METRO NO. will handle all claims and lawsuits involving its passengers. Each party agrees that it will furnish the other with all available information in its possession relating to lawsuits and claims made for injury, death, loss, damage or destruction of property whenever requested by the party handling the claim or lawsuit. All expenses incurred in connection with the furnishing of such information shall be borne by the requesting party.

ARTICLE VII CLEARING WRECKS

Section 7.01. Incidents on MTA or CDOT Rail Properties

(a) (1) When as a result of the operation of a Conrail train on MTA/CDOT Exhibit 5 Rail Properties rerailing, wrecking service or wreck train service is required, Conrail shall perform, or arrange to have performed, such service at Conrail's expense, including, without limitation, removal of damaged equipment.

(2) In the event that METRO NO.'s special use of these properties results in the need to clear wrecks, the provisions of Section 7.02 shall apply.

(b) With respect to incidents on MTA or CDOT Exhibit 1 Rail Properties, the following provisions shall apply:

(1) When, as a result of the operation of a Conrail Train on MTA/CDOT Exhibit 1 Rail Properties, rerailing, wrecking service or wreck train service is required, METRO NO., with the cooperation, assistance, and advice of Conrail, shall have the option of having Conrail perform such service, or perform it by itself or by its contractor at Conrail's sole cost and expense, including, but not limited to, removal of damaged equipment.

(2) When, as a result of METRO NO.'s and Conrail's joint use of Exhibit 1 Rail Properties, rerailing, wrecking service or wreck train service is required, the provisions of Section 7.01(b)(1) and (2) will apply, except that all costs, including without limitation, liability costs, will be apportioned in accordance with the provisions of Article VI.

(c) All Conrail locomotives, cars, equipment, lading (including loss thereof), and salvage from any such wreck or derailment under the management or control of METRO NO. shall remain the property of Conrail. All METRO NO. locomotives, cars, equipment, lading (including loss thereof), and salvage involved

in such wreck or derailment shall remain the property of METRO NO.

Section 7.02. Incidents on Conrail Rail Properties

(a) When as a result of the operation of a METRO NO. train on Conrail Rail Properties, rerailling, wrecking service, or wreck train service is required, Conrail promptly shall perform, or promptly arrange to have performed, such service at METRO NO.'s expense, including, without limitation, removal of damaged equipment provided that METRO NO. shall be permitted to remove its damaged equipment at its own expense.

(b) When as a result of METRO NO.'s and Conrail's joint use of Conrail Rail Properties, rerailling, wrecking service, or wreck train service is required, the provisions of Section 7.02(a) will apply, except that all costs, including, without limitation, liability costs, will be determined in accordance with the provisions of Article VI.

(c) All METRO NO. locomotives, cars, equipment, lading (including loss thereof), and salvage from any such wreck or derailment under the management or control of Conrail shall remain the property of METRO NO. All Conrail locomotives, cars, equipment, lading (including loss thereof) and salvage involved in such wreck or derailment shall remain the property of Conrail.

Section 7.03 Reports of Incidents

In the event a party performs any service in connection with an incident covered by Section 7.01 or Section 7.02 on its Rail Properties that is billable to another party, the performing party shall maintain a record of said service(s) in accordance with the documents set forth in Exhibit 11.

ARTICLE VIII

TERM, TERMINATION,
RENEGOTIATION, DEFAULT, DISCONTINUANCE

Section 8.01: Term

This Agreement shall be for an initial term of fifteen years commencing as of January 1, 1983. Thereafter, unless sooner terminated under applicable provisions of this Article VIII, this Agreement shall continue in force from year to year, subject to termination by any party on one year's notice. If such notice is given, this Agreement shall continue in force pending renegotiation. Neither a notice of termination nor termination shall affect the parties' rights and responsibilities under The Harlem-Hudson Lease Agreement, The MTA Purchase and Lease Agreement and The CTA Lease Agreement.

Section 8.02. Termination

This Agreement shall continue in full force and effect as set forth in Section 8.01 unless terminated as follows:

Either party may elect to terminate this Agreement if an Event of Default is not timely cured or satisfied following a Declaration of Default pursuant to Section 8.04(a) and (b).

Section 8.03. Renegotiation

The parties covenant that, should any of the events listed in Section 8.02 take place and any party elects to terminate this Agreement in accordance therewith, the parties shall promptly negotiate a new agreement.

Section 8.04. Default

MTA, CDOT and METRO NO., for purposes of this Section 8.04, Default, shall be deemed to constitute a single party, so that an action by any member of that collective group shall be considered an action by the party.

(a) Each of the following shall constitute an event of default (an "Event of Default") under this Agreement:

(1) The failure to pay in full any payment pursuant to Article V of the Agreement; or

(2) The failure to observe any other covenant or obligation contained in this Agreement, which failure

shall have continued for more than thirty days after the other party shall have given written notice demanding performance thereof; or

(3) Any material representation or warranty made in this Agreement shall prove untrue; or

(4) Any proceeding shall be commenced by or against either party which might result in any modification of the obligations of such party hereunder under any bankruptcy, insolvency, or similar law (unless all of the obligations of such party under this Agreement shall have been duly assumed by a trustee or successor to such party within sixty days after such proceeding shall have commenced;) or

(b) In the event an Event of Default shall have occurred and be continuing hereunder, the party not in default, upon written notice to the other party, may make a declaration of default (a "Declaration of Default") hereunder and exercise any or all of the following remedies:

(1) Terminate this Agreement by and upon sixty days' written notice to the party in default; and

(2) Pursue any other remedy at law or in equity in any court of competent jurisdiction.

(c) Failure of a party to make a Declaration of Default shall not be considered a waiver of any remedies available to it under this Agreement or otherwise. Nor shall an Event of Default be considered wiped out or satisfied by failure of a party to make a Declaration of Default with respect thereto.

Section 8.05. Discontinuance of Conrail Freight Service

(a) MTA/CDOT Rail Properties

(1) Notwithstanding the provisions of this Agreement, Conrail may seek regulatory authority to abandon its freight operations, in whole or in part, over the MTA/CDOT Rail Properties during the term of the Agreement. Conrail shall provide written notice of its intent to do so to METRO NO. if the Property is located in New York State and to CDOT and METRO-NO. if the property is located in Connecticut.

(b) Conrail Rail Properties

(1) Notwithstanding the provisions of this Agreement, Conrail may seek regulatory authority to abandon its freight operations, in whole or in part, over the Conrail Rail Properties during the term of this Agreement. Conrail shall provide notice to METRO NO. of its intent to do so.

(2) Within thirty days of METRO NO. receipt of Conrail notice of its intent to abandon freight service over Conrail Rail Properties, METRO NO. shall notify Conrail whether or not MTA or CDOT desires to assume ownership of those Conrail Rail Properties for railroad operations.

(3) MTA or CDOT shall have the right of first refusal before any disposition of these Conrail Rail Properties, subject to any preexisting rights or law.

(4) In the event MTA or CDOT should acquire the abandoned Conrail Rail Properties, METRO NO. and Conrail shall cooperate fully to secure such regulatory authority as

may be necessary for MTA's or CDOT's assumption of ownership.

(5) Until such time as Conrail abandons its operations thereover under the foregoing provisions, the terms and conditions of this Agreement shall remain in full force and effect.

(6) The provisions of this Section shall also apply in the event no regulatory authority is required to abandon service.

Section 8.06. Discontinuance of METRO NO. Commuter Service

(a) Notwithstanding the provisions of this Agreement, METRO NO. may take any necessary steps to discontinue its commuter service, in whole or in part, over Conrail Rail Properties. METRO NO. shall provide Conrail with notice of its intent to do so.

(b) Notwithstanding any provisions of this Agreement to the contrary, METRO NO. may discontinue its commuter operations over any of the MTA/CDOT Rail Properties. METRO NO. shall provide notice of its intent to do so, and the following terms and conditions shall apply:

(1) Within thirty (30) days of receipt of METRO NO.'s notice, Conrail will notify METRO NO. whether it wishes to continue freight service over all or part of the MTA/CDOT Rail Properties in question. In the event that it does so,

the property designated by Conrail shall be redesignated from Exhibit 1 to Exhibit 4 of this Agreement, and Conrail's trackage rights shall continue.

(2) Such Rail Properties shall also be redesignated as Exhibit 4 in the event that METRO NO. has operated no commuter service thereover for a period of five years.

(c) If either MTA or CDOT intends to sell or dispose of any of its Rail Properties, as defined in this Agreement, it will notify Conrail and within thirty days of receipt of its notice, Conrail shall notify either MTA or CDOT, as appropriate, whether it desires to assume ownership of those properties for railroad operation. Conrail will have the right of first refusal before any disposition of these MTA or CDOT Rail Properties subject to preexisting rights and statutes.

ARTICLE IX

DISPUTE RESOLUTION

Section 9.01. Resolution of Disputes Concerning Operations and Costs

In the event, and at such time as, any operating or cost dispute shall arise under this Agreement between Conrail and METRO NO., including any disagreement with any current Conrail, METRO NO., or federally mandated operating or safety rule, order, procedure, or standard applicable to such properties, either party shall have the right to submit such dispute or matter for binding determination by an arbitration panel.

The parties agree that before any operating or cost dispute is submitted to arbitration every effort will be made to resolve said dispute. In order to facilitate resolution of any operating or cost dispute, the parties agree to establish a committee, consisting of three members to be appointed by Conrail and three members to be appointed by METRO NO.

In the event the committee is unable to resolve any dispute or controversy within sixty (60) days of submission, it may be submitted by a party to binding arbitration in accordance with the procedures established in Sections 6.02-6.04 of the Harlem-Hudson and CTA Lease Agreements.

Section 9.02. Resolution of disputes concerning matters other than operations and costs.

In the event and at such time as a dispute arises as to any matter other than operations or costs as set forth in Section 9.01 above, any party shall have the right to submit such matter for binding determination by an arbitration panel.

The parties agree that before any such dispute is submitted to arbitration, every effort will be made to resolve said dispute. In the event a particular dispute cannot be resolved after good faith efforts on the part of the parties involved, a party may submit it to binding arbitration in accordance with the procedures established in Sections 6.02-6.04 of the Harlem-Hudson and CTA Lease Agreements.

Section 9.03. Arbitration under Amended and Restated
Service Agreement.

The parties agree that in the event of any dispute affecting only MTA, CDOT and/or METRO-NO., which does not involve Conrail, arbitration will be in accordance with Article Ten of the Amended and Restated Service Agreement among CDOT, MTA and METRO-NO. dated June 21, 1985.

ARTICLE X
GENERAL PROVISIONS

Section 10.01. Labor Rights

(a) The User agrees that its entrance upon and use of the Owner's properties is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of the User's employees or its contractors with respect to any other current or future use of the Owner's properties, including, but not limited to, maintenance, operation, rehabilitation, and improvement thereof by the Owner or Owner's contractors. Notwithstanding the provisions of Section 3.03(e), the User shall indemnify, defend, and hold harmless the Owner and the Owner's contractors against any liability arising from any claim of employment rights, or employment protection, arising from the performance of any work

for the User on the Owner's properties by the Owner or the Owner's contractors under this Agreement.

(b) Nothing contained in this Agreement shall require either party to perform any service or take any action which would violate any term or condition of any then-current labor agreement between the respective parties and any organization representing any of their respective employees or which would violate any applicable law.

Section 10.02. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto. Except as provided in the following sentence, no party hereto shall assign or transfer this Agreement or any of its rights thereunder to any person, firm or corporation without obtaining the prior written consent of the other parties to this Agreement, which consent shall not be unreasonably withheld. In the event, however, that METRO-NO. should no longer be rail service operator on the CDOT Rail Properties under the Amended and Restated Service Agreement or substitute agreement, METRO-NO.'s rights and obligations under this Agreement pertaining to such properties and the Conrail Rail Properties located in the State of Connecticut automatically shall be assigned to and assumed by CDOT or its approved service operator without any further action being necessary. CDOT shall promptly notify Conrail of any such assignment and assumption.

Section 10.03. Force Majeure

(a) METRO NO. will be excused from its obligation under this Agreement to provide, operate, and maintain MTA and CDOT Rail Properties where non-performance is occasioned by any event beyond its control.

(b) Conrail will be excused from its obligations under this Agreement to provide, operate, and maintain Conrail properties where non-performance is occasioned by any event beyond its control.

Section 10.04. Amendment

(a) No term or provision in this Agreement may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the parties to this Agreement.

(b) All approvals and consents required under this Agreement shall be in writing, signed by a person designated in writing for such purpose unless otherwise provided in this Agreement or agreed to in writing by the parties. Any oral notices permitted by this Agreement shall be promptly confirmed in writing.

Section 10.05. Notices

(a) Unless otherwise provided in this Agreement, any notices required in this Agreement shall be in writing and sent to the parties at the addresses listed below, unless either party shall inform the other party in writing of any change in that address:

Conrail: Consolidated Rail Corporation
Senior Vice President-Operations
Six Penn Center Plaza
Philadelphia, PA 19103

METRO NO.: Metro North Commuter Railroad
Attention: Vice President - Operations
347 Madison Avenue
New York, NY 10017

CDOT: Connecticut Department of Transportation
Attention: Director of Rail Operations
P.O. Drawer A
24 Wolcott Hill Road
Wethersfield, CT 06109

MTA: Metropolitan Transportation Authority
Attention: Chairman
347 Madison Avenue
New York, NY 10017

Section 10.06. Effect of Execution and Performance

The parties do not, by reason of their execution of and the performance of their obligations under this Agreement, assume any other obligations or liabilities not imposed upon them by law.

Section 10.07. No Representations and Waivers

Except as expressly provided herein, the parties make no representations or warranties and waive no rights or remedies.

Section 10.08. Non-Discrimination

(a) As between MTA, METRO NO. and Conrail, the parties do hereby agree that the provisions of Sections 1266-C(13) and (14) of the New York Public Authorities Law, as amended and supplemented, dealing with discrimination in employment on public contracts, as set forth in Exhibit 12, are hereby made a part of

this Agreement and, to the extent applicable, are binding upon them.

(b) As between CDOT on one hand and MTA, METRO NO. and Conrail on the other, MTA, METRO NO. and Conrail agree to comply with the applicable State of Connecticut and federal laws and regulations as set forth in Exhibit 13, which are hereby made part of this Agreement.

Section 10.09. Effective Date

The effective date for purposes of this Agreement shall be January 1, 1983. It supersedes the Interim Trackage Rights Agreement effective January 1, 1983 as amended. In accordance with Section 6.01 of the Interim Agreement, costs agreed upon in this Agreement as payable shall be applied retroactively to January 1, 1983.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

ATTEST:

CONSOLIDATED RAIL CORPORATION

Allan Sch'D

By J. A. Hagen

ATTEST:

APPROVED
AS TO FORM

METRO-NORTH COMMUTER RAILROAD

Kathryn R. Perry

By Donald N. Nelson

Kathryn R. Perry

Donald N. Nelson

ASSISTANT SECRETARY

President

ATTEST:

Jeanette Redmond
Assistant Secretary

ATTEST:

R P Kelly

APPROVED AS TO FORM:

Assistant Arnold K Shmeil
ASSOCIATE ATTORNEY GENERAL,
STATE OF CONNECTICUT

METROPOLITAN TRANSPORTATION
AUTHORITY

By [Signature]

CONNECTICUT DEPARTMENT OF
TRANSPORTATION

By [Signature]

Pursuant to Conn. Gen. Stat.
Sections 13b-23, 13b-34 and 13b-36.

8/6/91
Date

METRO-NORTH COMMUTER RAILROAD COMPANY

OFFICE OF THE SECRETARY

I HEREBY CERTIFY that the officers of Metro-North Commuter Railroad Company have been delegated authority, pursuant to a resolution adopted by the Board of Directors of the Company, to execute on behalf of the Company such contracts and agreements necessary or desirable for or in connection with the operation of commuter service and other transactions in connection therewith and that such delegations remain in full force and effect; and

I FURTHER CERTIFY that the duly appointed and acting officers of the corporation are as follows:

Chairman
President
Executive Vice President
Vice President - Operations
Vice President - Planning and Capital Programs
Vice President - Finance and Administration
Vice President - Marketing and Corporate Communications
Vice President - Human Resources
General Counsel and Secretary
Assistant Secretary
Treasurer

IN WITNESS WHEREOF I have hereunto set my hand and affixed the corporate seal of Metro-North Commuter Railroad Company this 7th day of December 1990.

ATTEST:

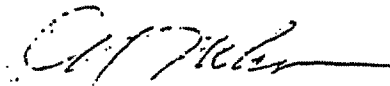

Robert Bergen
Secretary

(SEAL)

5236Z

INCUMBENCY CERTIFICATE

I, the undersigned, Robert Bergen, being the duly appointed and incumbent Secretary of Metro-North Commuter Railroad Company, ("Metro-North") do hereby certify that at all times since April 4, 1991, Donald N. Nelson has been the duly appointed and incumbent President of Metro-North and that a true and correct specimen of his signature is set forth in the space below:

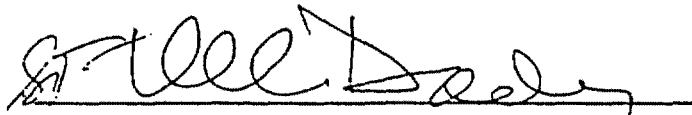


In Witness Whereof, I have hereunto set my hand and the seal of Metro-North on this 20th of May, 1991.


Robert Bergen

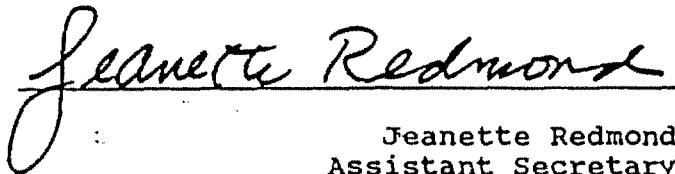
INCUMBENCY CERTIFICATE

I, the undersigned, Jeanette Redmond, being the duly appointed and incumbent Assistant Secretary of Metropolitan Transportation Authority, ("MTA") do hereby certify that at all times since April 23, 1986, Mortimer L. Downey, III has been the duly appointed and incumbent Executive Director of MTA and that a true and correct specimen of his signature is set forth in the space below:

A handwritten signature in dark ink, appearing to read "Mortimer L. Downey, III", written over a horizontal line.

Mortimer L. Downey, III
Executive Director

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of MTA on this 19th day of July, 1991.

A handwritten signature in dark ink, appearing to read "Jeanette Redmond", written over a horizontal line.

Jeanette Redmond
Assistant Secretary

METROPOLITAN TRANSPORTATION AUTHORITY

I HEREBY CERTIFY that the Executive Director of the Metropolitan Transportation Authority (the "Authority") has been delegated authority, pursuant to the By-laws of the Authority, to execute on behalf of the Authority such contracts and agreements as necessary or desirable in connection with the business and affairs of the Authority and that such delegation remains in full force and effect.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the corporate seal of Metropolitan Transportation Authority this 25th day of July, 1991.

ATTEST:


Jeanette Redmond
Assistant Secretary

INCUMBENCY CERTIFICATE

I, the undersigned, Allan Schimmel, being the duly elected Corporate Secretary of Consolidated Rail Corporation ("Conrail"), do hereby certify that, as of the date indicated below, James A. Hagen is the duly elected Chairman, President and Chief Executive Officer of Conrail and that a true and correct specimen of his signature is set forth in the space below:

J. A. Hagen

In Witness Whereof, I have hereunto set my hand on this
3rd day of July, 1991.

Allan Schimmel
Allan Schimmel

CONSOLIDATED RAIL CORPORATION

OFFICE OF THE SECRETARY

I HEREBY CERTIFY that James A. Hagen, Chairman, President and Chief Executive Officer of Consolidated Rail Corporation, has been delegated authority, pursuant to a resolution adopted by the Board of Directors of the Company, to execute on behalf of the Company such contracts and agreements necessary or desirable for or in connection with the operation of the Railroad and other transactions in connection therewith, and that such delegation remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of Consolidated Rail Corporation this 3rd day of July, 1991.

Allan Schimmel
Allan Schimmel
Corporate Secretary

(SEAL)



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

24 WOLCOTT HILL ROAD, P.O. DRAWER A
WETHERSFIELD, CONNECTICUT 06109

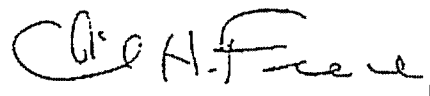


Office of the
Commissioner

An Equal Opportunity Employer

Delegation of Authority to Sign Documents
Authorized by Section 13b-20 of the
Connecticut General Statutes, As Amended

Know All Men By These Presents, That I, Emil H. Frankel,
Acting Commissioner of Transportation, as authorized by Section
13b-20 of the Connecticut General Statutes, as amended, do hereby
delegate to James F. Byrnes, Jr., Deputy Transportation
Commissioner, Department of Transportation, Bureau of Public
Transportation, the authority to sign any agreement, contract,
document or instrument which I am authorized to sign for said
Bureau.


Emil H. Frankel
Acting Commissioner

Date: 2/1/91

Time: 10:30 A.M.



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

24 WOLCOTT HILL ROAD, P.O. DRAWER A
WETHERSFIELD, CONNECTICUT 06109



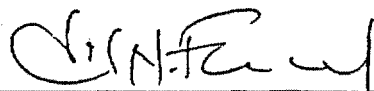
Office of the
Commissioner

An Equal Opportunity Employer

Delegation of Duties and Responsibilities
and Authority to Sign Agreements,
Contracts, Documents or Instruments

I, Emil H. Frankel, Commissioner of Transportation, under the authority of Sections 13b-17 and 13b-20 of the Connecticut General Statutes, hereby ratify, confirm and reissue all previous delegations of authority issued on February 1, 1991 and February 7, 1991 in my capacity as Acting Commissioner of Transportation.

Any and all actions taken thereunder by the designated personnel are hereby ratified and confirmed as being duly authorized by the Commissioner of Transportation.



Emil H. Frankel
Commissioner of Transportation

Date: March 1, 1991

EXHIBIT 1

MTA/CDOT RAIL PROPERTIES
USED JOINTLY WITH CONRAIL
(MAINTAINED BY METRO NO.)

<u>LINE</u>	<u>MILE POST</u>
NEW HAVEN LINE (L.C. 9108)	11.9 - 72.8 (Division Post)
NEW CANAAN BRANCH (L.C. 9118)	0.0 - 7.9 (E.O.T.)
DANBURY BRANCH (L.C. 9119)	0.0 - 24.2
WATERBURY BRANCH (L.C. 9121)	0.0 - 8.9
HUDSON LINE (L.C. 9100)	5.4 - 75.8 (Division Post)
PUTNAM INDUSTRIAL TRACK (L.C. 4223)	
HARLEM LINE (L.C. 9131)	5.4 - 77.0

All jointly used track on the above lines shall be maintained to at least Class I FRA Track Safety Standards.

EXHIBIT 2

CONRAIL RAIL PROPERTIES
USED JOINTLY WITH METRO NO.

<u>LINE</u>	<u>MILE POST</u>	<u>CLASS OF TRACK</u>
SOUTHERN TIER LINE (L.C. 6102/6103)		
Suffern - Port Jervis (Maintained by Conrail)	31.3 - 89.9	
Suffern to Newburgh Jct.		Class 3
Newburgh Jct. to 5 miles east of Howells Jct.		Class 4
5 miles east of Howells Jct. to Port Jervis		Class 3
HARLEM LINE (L.C. 9131)		
Main Track (Maintained by METRO NO.)	77.0 - 81.6	Class 1
DANBURY SECONDARY (L.C. 4246)		
Beacon - Hopewell Jct.	0.0 - 12.6	Class 1
Hopewell Jct. - Derby Jct. (Maintained by Conrail)	42.9 - 104.8	

MTA/CDOT OWNED PROPERTIES -
TURNOUTS AND CROSSOVERS
(MAINTAINED BY METRO NO.)

NEW HAVEN LINE

<u>MILEPOST</u>	<u>TK</u>	<u>DESCRIPTION</u>	<u>RESP.</u>	<u>NO./TOS</u>
12.2	4	Woodlawn - Terranova	CR	1
14.3	4	West Chester Rockland	CR	1
19.7	3	Mamaroneck Yard	CR	1
25.8	3	Portchester Team Track	CR	1
26.6	3	Arnold's Bakery	CR	1
27.2	3	Ct. Natural Gas	CR	1
35.3	4	Richardson Gypsum	CR	1
36.7	3	Rings End Lumber	CR	1
43.6	3	Westport Team TK/Pepperidge	CR	1
50.2	3	Fairfield Team Track	CR	1
52.3	3	Bigelow Tea	CR	1
52.8	4	Bullard's	CR	1
53.2	3	State St. Yard	JT.	1
53.5	4	Lead to Railroad Ave/ Wordin Ave.	CR.	1
55.5	3	D'Addario (N. Bridgeport I.T.	CR	1
56.9	4	E. Bridgeport Yd.	JT.	1
56.9	4	Lead to GE/Remington	CR	1
57.2	4	E. Bridgeport Yd.	JT.	2
60.6	4	Devon East Leg 4	JT.	1
64.0	4	Milford Crane	CR	1
64.8	3	U.S. Electric Motors	CR	1
65.0	3	Reliable Steel Drum	CR	1
65.1	4	Furniture Transport	CR	1
65.1	3	Owens, Illinois	CR	1
65.8	3	Furman Lumber	CR	1
66.0	4	Brewster Building	CR	1
66.6	3	Boise Cascade	CR	1
67.0	3	DiChello Distrib.	CR	1
67.1	3	A.P. Green	CR	1
67.9	3	Miles	CR	1
68.1	3	Richardson	CR	1
68.3	3	Star Distributor	CR	1
68.4	4	Kalfus Steel	CR	1
68.5	3	Elder Bros.	CR	1
68.7	3	Sears	CR	1
69.7	3	Armstrong	CR	1
70.4	3	West Haven Team Tr.	CR	1
70.7	4	Atlas Movers	CR	
72.8	1	Connecticut Reserve Supply	CR	1

HUDSON LINE

<u>MILEPOST</u>	<u>TK</u>	<u>DESCRIPTION</u>	<u>RESP.</u>	<u>NO./TOS</u>
5.6	5	Mo "Wye"	JT.	1
6.4	4	Highbridge Yard	CR	1
7.0	4	Highbridge Yard	CR	1
8.9	4	Intl. Salt. Butler Lumber	CR	1
10.1	1	FH, G&T Packaging	CR	1
13.8	4	TK6 Crossover	JT.	2
15.5	3	Kawasaki	CR	2
16.3	4	Crossover to Yonkers Yd.	CR	2
19.2	4	Noble Van-Hastings	JT.	1
22.3	4	Irvington Lumber	CR	1
23.9-25.0	1-3	East Middle Track	CR	3
25.0	3	OW Yard - AIP	JT.	1
25.9	4	Chevy Yard	CR	1
25.9	3	Auto Yard	CR	1
26.2	4	Chevy Yard	CR	2
26.2	3	Auto Yard	CR	1
26.3	2/2	CP-26 Xover	CR JT	2
34-26.3	2/2	CP-35 Xover to West Yd.	JT.	2
36.6	4	CP-09CA (Croton West Yd).	CR	1
40.5	4	West Chester Resco	CR	1
40.8	1	Mearl/Storage	JT.	1
41.0	2	Storage/Team Track	JT.	1
58.4	2	Danbury Sec.	JT.	1
58.7	C/S	Nabisco	JT.	1
61.0	C/S	Circle M Lumber	CR	1
63.4	1	American Lumber	CR	1
69.7	1	IBM	CR	1
72.6	1	Controlled Siding	JT.	1
73.6	2	Access to River Yard	CR	1
74.5	C/S	CNE Yard	CR	1
75.4	1	Controlled siding	JT.	1

HARLEM LINE

<u>MILEPOST</u>	<u>TK</u>	<u>DESCRIPTION</u>	<u>RESP.</u>	<u>NO./TOS</u>
5.0		Mo Wye	JT.	1
6.2	3	Port Morris I.T.	CR	1
7.3	4	Tulnoy Lumber	CR	1
12.5	3	Ampacet	CR	1
12.7	3	Sound Distributors	CR	1
13.0	3	Tomkins Lumber	CR	1
13.3	3/1	Mt. Vernon West	JT.	2
14.0	1	Mt. Vernon Yard	JT.	1
28.1	2	Hawthorne, Con Ed	CR	1
29.9.	1	Pleasantville Runaround	CR	2
36.8	2	Suburban Propane	CR	1
37.7	1	Grand Union	CR	1
43.4	2	Kings Lumber/Goldens Bridge	CR	1
55.2	S	Dykemans	JT.	1
68.8	S	Wingdale Psych. Hosp.	CR	1
72.1	S	Dover Furnace	CR	1
76.7	S	N/E Dover Plains Siding	CR	1

WATERBURY BRANCH

0.3-1.2	S	Siding	CR	1
8.7	S	South Wye - Derby	JT.	1
8.8	S	North Wye - Derby	CR	1

NEW CANAAN Branch

3.6	S	Springdale Team Track	CR	1
7.7	S	New Canaan Lumber	CR	1
7.8	S	New Canaan Crossover	CR	2

DANBURY BRANCH

<u>MILEPOST</u>	<u>TK</u>	<u>DESCRIPTION</u>	<u>RESP.</u>	<u>NO./TOs</u>
0.8	S	Dock Yard	JT.	1
1.1	S	CL&P	CR	1
1.3	S	Devine Bros./Libner	CR	1
11.8	S	Gilbert & Bennett	CR	1
12.8	S	Gilbert & Bennett	CR	1
20.0	S	Shepard's Warehouse	CR	1
20.4	S	Vanderbilt Chemical	CR	1
20.4	S	Bethel S/E	JT.	1
20.4	S	Condux	CR	1
20.5	S	Rings' End Lumber	CR	1
20.5	S	Shepard's R/A	JT.	1
20.6	S	Team Track	CR	1
22.4	S	Sperry Rail	JT.	1
23.0	S	CL&P	CR	1
23.0-23.8	S	Danbury Yard	CR	5

EXHIBIT 4

MTA/CDOT RAIL PROPERTIES
USED EXCLUSIVELY BY CONRAIL
(MAINTAINED BY CONRAIL)

<u>LINE</u>	<u>MILEPOST</u>
<u>HUDSON LINE (L.C. 9100)</u>	
1. TARRYTOWN	
Chevy Yard	25.7
<u>HARLEM LINE (L.C. 9131)</u>	
1. WAKEFIELD-AMPACET LEAD	12.5
<u>DANBURY BRANCH (L.C. 9119)</u>	
1. DANBURY	
Yard Tracks (16 thru 42 and Enginehouse 1, 2, 3)	23.7
<u>SUFFERN INDUSTRIAL TRACK</u>	0.0 - 3.33
(a/k/a Piermont Branch)	6.2 - 6.5

EXHIBIT 5

MTA/CDOT RAIL PROPERTIES USED EXCLUSIVELY BY CONRAIL (MAINTAINED BY METRO NO.)

(1 of 2)

<u>LINE/FACILITY</u>	<u>MILE POST LOCATION</u>	<u>LEVEL OF MAINTENANCE</u>
<u>HUDSON LINE</u>		
FH Yard Lead (Maintained to Property Line)	9.8	Class 1
Track 6-Riverdale-Yonkers		Class 1
East Middle-Tarrytown	24.9	Class 1
OW Yard-Tarrytown	24.8	Class 1
Peekskill [Team Track]	41.28	Class 1
Burnwell-Mearl Siding	40.6	Class 1
Beacon-Salt Track	58.5	Class 1
IBM Lead	69.7	Class 1
Poughkeepsie-River Yard [4-6 Track]	74.0	Class 1
CNE Yard	74.0	Class 1
Lead to Dutton	74.4	Class 1 ^{1/}
<u>HARLEM LINE</u>		
Mt. Vernon West-Team Track	13.9	Class 1
Pleasantville-Runaround	29.9	Class 1
Mt. Kisco-Team Track	36.8	Class 1
Goldens Bridge-Lead to King Lumber	43.4	Class 1
Milepost 77.0-81.03 [EOT]		Class 1 ^{2/}
<u>NEW HAVEN LINE</u>		
Mamaroneck Yard	19.6	Class 1
Port Chester Team Track	25.75	Class 1
Westport Yard-Lead to Pepperidge Farms Team Track	43.6	Class 1
Fairfield-Team Track	50.3	Class 1
Bridgeport-State St. Yard Lead	53.1	Class 1
Stratford-Stratford Spur	57.8 (0.0-EOT)	Class 1 ^{3/}
East Bridgeport Yard-Team Track	57.0	Class 1
West Haven-Team Track	70.37	Class 1

^{1/} METRO NO. inspects, maintains-operating rights PC to CR.

^{2/} METRO NO. inspects, maintains track.

^{3/} Line inspected and maintained by METRO NO., not CDOT property.

EXHIBIT 5

MTA/CDOT RAIL PROPERTIES
USED EXCLUSIVELY BY CONRAIL
(MAINTAINED BY METRO NO.)

(2 of 2)

<u>LINE/FACILITY</u>	<u>MILE POST LOCATION</u>	<u>LEVEL OF MAINTENANCE</u>
<u>NEW CANAAN BRANCH</u>		
Springdale-Team Track	3.75	Class 1
<u>DANBURY BRANCH</u>		
Dock Yard-Team Track	0.91	Class 1
Bethel-Upper and Lower Lead	20.0	Class 1
<u>WATERBURY BRANCH</u>		
Devon-Siding	0.10	Class 1

EXHIBIT 6

CONRAIL RAIL PROPERTIES -
USED EXCLUSIVELY BY METRO NO.

<u>SOUTHERN TIER LINE/FACILITY</u>	<u>MILE POST LOCATION</u>
Turnout to Port Jervis Passenger yard (Maintained by Conrail)	M.P. 87.3
Crossover to West End of Passenger yard (Maintained by Conrail) (2)	M.P. 87.8
Radio Base at Otisville (Maintained by METRO NO.)	M.P. 74.76

of Turnouts
1

2

EXHIBIT 7

MTA/CDOT RAIL PROPERTIES
USED EXCLUSIVELY BY METRO NO.
(MAINTAINED BY CONRAIL)

PORT JERVIS PASSENGER YARD -

Radio Base at Newburgh^{jet.} - M.P. 45.0

Radio Base at ^{port} Nervis (Local) - M.P. 87.2

**EXHIBIT 8 TO CONRAIL/MNR/MIA/CDOT TRACKAGE RIGHTS AGREEMENT EFFECTIVE 1-1-83
DEPICTING METHOD AND ACTUAL ESCALATION OF PER CAR MILE AND MAINTENANCE
IN ACCORDANCE WITH SECTION 5.04**

1. Car Mile Rates

a. Index Year	1983	1984	1985	1986	1987	1988	1989	1990
b. Year in which Escalation is Calculated	1984	1985	1986	1987	1988	1989	1990	1991
c. Base Index Year	1982	1982	1982	1982	1982	1982	1982	1982
d. Base Rate	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200

e. Escalation Formula: Index Year (a) minus Base Index Year (c) divided by Base Index Year (c) times Base Rate (d) plus Base Rate (d) equals Revised Base Rate to become effective as of July 1 in the Year in which Escalation is Calculated (b)

f. Actual Escalation Procedure

(1) Year in which Escalation is Calculated which rate will become effective as of July 1st of that year.	1984	1985	1986	1987	1988	1989	1990
(2) Index Year	1983	1984	1985	1986	1987	1988	1989
Index	174.5	181.2	185.7	193	200.4	212.7	221
(3) Base Index Year (1982)	161.8	161.8	161.8	161.8	161.8	161.8	161.8
(4) = (2) minus (3)	12.7	19.4	23.9	31.2	38.6	50.9	59.2
(5) = (4) divided by (3)	0.07849	0.11990	0.14771	0.19283	0.23857	0.31459	0.36588
(6) = Base Rate (\$.200) times (5)	\$0.016	\$0.024	\$0.030	\$0.039	\$0.048	\$0.083	\$0.073
(7) = Base Rate	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200	\$0.200
(8) Revised Base Rate -- (6) + (7)	\$0.216	\$0.224	\$0.230	\$0.239	\$0.248	\$0.283	\$0.273

2. Maintenance Rates (Flat Rate per Turnout/Crossover)

a. Index Year	1983	1984	1985	1986	1987	1988	1989	1990
b. Year in which Escalation is Calculated	-	1984	1985	1986	1987	1988	1989	1990
c. Base Index Year	1983	1984	1985	1986	1987	1988	1989	1990
d. Base Rate	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879

e. Escalation Formula: Index Year (a) minus Base Index Year (c) divided by Base Index Year (c) times Base Rate (d) plus Base Rate (d) equals Revised Base Rate to become effective as of January 1 in the Year in which Escalation is Calculated (b)

f. Actual Escalation Procedure

(1) Year in which Escalation is Calculated which rate will become effective as of January 1st of that year.	1983	1984	1985	1986	1987	1988	1989	1990
(2) Index Year	1983	1984	1985	1986	1987	1988	1989	1990
Index	174.5	181.2	185.7	193	200.4	212.7	221	221.2
(3) Base Index Year (1983)	174.5	174.5	174.5	174.5	174.5	174.5	174.5	174.5
(4) = (2) minus (3)	0	6.7	11.2	18.5	25.9	38.2	46.5	46.7
(5) = (4) divided by (3)	0.00000	0.03840	0.06418	0.10602	0.14842	0.21891	0.26548	0.26762
(6) = Base Rate (\$5879) times (5)	\$0	\$226	\$377	\$823	\$873	\$1287	\$1567	\$1573
(7) = Base Rate	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879	\$5879
(8) Revised Base Rate = (6) + (7)	\$5879	\$6105	\$6256	\$6502	\$6752	\$7166	\$7446	\$7452

Note that in escalating the Maintenance Rate the Index Year and Year in which the escalation is calculated are the same. Since the Final Index figure for a given calendar year is not available until the subsequent calendar year it will be necessary to bill the current year on an estimated basis. It is agreed that the current year estimated billing will be accomplished using the first quarter forecast of the AAR Annual Indexes. When the Final Index becomes available in the next calendar year the prior years billing will be retroactively adjusted to agree with the Final Index. Thus the 221.2 Index in the Year 1990 for Maintenance is a First Quarter 1990 figure.

NOTE: The Flat Rate Maintenance Rate is comprised of two increments:
(1) \$3578 Routine Maintenance (2) \$2301 All Other Maintenance.

EXHIBIT 9

CLEARANCES ON MTA AND CDOT RAIL PROPERTIES

A. The vertical clearances on MTA and CDOT Rail Properties shall be those clearances set forth in Metro North Commuter Railroad Timetable No. 4, effective April 7, 1991, a copy of which is attached hereto, as supplemented by the following provisions:

1. Hudson Line clearances have changed since 1983 due to the Conrail-NYSDOT funded Clearance Project to permit bi-levels to reach Tarrytown. Therefore, all cars up to 19'4" shall be accommodated between CP75 and MP 6.2, with specific track restrictions as noted in Timetable No. 4.
2. New Haven Line clearances between CP216 to CP112 on Nos. 2 and 4 Tracks have been reduced since 1983 to 15'0" open top and 15'2" closed top. The original clearances of 15'4" open top and 15'6" closed top shall be restored the next time the track is surfaced, which shall be no later than June 30, 1995;
3. New Canaan Branch clearances shall be 15'4" open top, 15'6" closed top;
4. Danbury Branch clearances shall be:
MP 0.0 to MP 12.7 - 16'2"
MP 12.7 to MP 23.6 - 17'6"
5. Waterbury Branch clearances shall be:
MP 0.0 to 8.9 - 17'9"
6. All clearances for MTA/CDOT Rail Properties listed in Exhibits 4 and 5 (maintained by Conrail or maintained by Metro-North for Conrail) shall be those applicable to the line segment where the particular properties are situated.
7. Any new construction over Rail Properties used jointly by Conrail and Metro North or exclusively by Conrail shall maintain the applicable state minimum statutory clearance requirements. Any replacement structure, including bridges, signal masts etc. shall meet the applicable state minimum vertical clearance requirements.

B. The lateral or horizontal clearances, especially with regard to high-level platforms, shall be governed by applicable State-Federal laws and Conrail's MW-4 Standards.



TIMETABLE NO. 4

IN EFFECT 2:01 A.M. SUNDAY
APRIL 7, 1991

FOR EMPLOYEES ONLY

R.J. SINIGIANI

GENERAL SUPERINTENDENT-TRANSPORTATION

1160-D Car Restrictions

Hudson Line	
B.C.T. Loop Tracks.....	M Series cars are prohibited from operating around loop tracks with passengers unless authorized by the Train Dispatcher's Office.
Grand Central Terminal.....	Freight cars in excess of 50 feet prohibited unless authorized by the Train Dispatcher's Office.
Division Post C.J.C. to CP76.....	Cars higher than 17 ft. 4 in.
CP76 to MP 6.2.....	Cars higher than 17 ft. 0 in.
MP 6.2 to 67th Street.....	Cars higher than 15 ft. 6 in.
South of 67th Street.....	Cars higher than 14 ft. 6 in.
	• Bi-level cars (TTGX Series) not higher than 19 ft. 4 in. authorized between CP75 and MP25.4 with following restrictions: CP35-CP34. Must operate No. 2 track CP34-CP33. Must operate No. 4 track South of Bridge No. 25.41. Tarrytown prohibited.
Hartford Line	
Division Post C.J.C. to Putnam Jct.	Cars higher than 17 ft. 9 in.
Putnam Jct. to No. White Plains	Cars higher than 16 ft. 10 in.
No. White Plains to CP113.....	Cars higher than 15 ft. 4 in.
CP113 to CP112.....	Cars higher than: 15 ft. 6 in. on No. 4 and No. 3 track 14 ft. 10 in. on No. 2 track 15 ft. 4 in. on No. 1 track
South of CP112.....	Cars higher than: 14 ft. 10 in. on No. 2 and No. 3 track 15 ft. 6 in. on No. 4 track to 138th Street 15 ft. 4 in. on No. 1 track to 144th Street
New Haven Line	
Division Post - N.E.C. to Haven	Open top cars 16 ft. 1 in., Close top 16 ft. 3 in.
Haven to CP 216.....	Open top cars 15 ft. 4 in., Close top 15 ft. 6 in.
CP 216 to CP112.....	Open top cars 15 ft. 0 in., Close top 15 ft. 2 in. on No. 2 and No. 4 tracks. Open top cars 15 ft. 4 in., Close top 15 ft. 6 in. on No. 1 and No. 3 track.
New Haven Line	Cars exceeding plate C unless authorized by the Train Dispatcher's Office. Plate C cars restricted from operating on No. 1 track between CP 216 and CP 223

STANDARD FORM FOR DETOUR AGREEMENT

Adopted by the Association of American Railroads (or its predecessor The American Railway Association), October 25, 1905; with amendments adopted November 10, 1910, May 17, 1911, November 19, 1913, November 17, 1920, May 15, 1924, October 2, 1947, September 3, 1957, July 1, 1967, July 1, 1978, and January 1, 1984.

NOTE—This agreement should be executed on behalf of each company party thereto by an executive officer thereof and duly attested.

This Agreement, Executed in duplicate between

....., a corporation created and existing under the laws of

..... and

..... a corporation created and existing under the laws of

Witnesseth, That,

Whereas, should the railways of either party hereto become impassable by reason of unforeseen occurrences, making detour movement desirable, each party hereto is willing whenever, in its judgment, the conditions warrant, and subject to the terms and conditions hereinafter set forth, to temporarily permit the trains of the other party, hereinafter referred to as the Foreign Company, to be run over its tracks (Home Company) as a service of accommodation and reciprocation.

Now, Therefore, It is mutually agreed by and between the parties hereto as follows:

1. Whenever the Foreign Company desires to detour its trains it shall notify the Home Company, the circumstances necessitating detour movement, between what points, the number and character of trains and such other information as may be required by the Home Company. Upon receipt of such notice the Home Company shall promptly grant or refuse the accommodation requested. The granting of the accommodation will not warrant nor imply the insurance of the Foreign Company's trains against any of the risks of transportation, nor the assumption of liability therefor, by the Home Company. In the event of refusal to grant such permission, the Foreign Company shall have no claim of any nature against the Home Company by reason of such refusal.

2. The Foreign Company, if granted such permission, shall run its trains between the points designated over the tracks of the Home Company, using, unless otherwise agreed between the parties, its own engines, engine crews and train crews fully conversant with the Standard Code of the Association of American Railroads, but always with a pilot or pilots (not more than one pilot for each Foreign engine crew or train crew, nor more than two for any one train), to be furnished by the Home Company, and subject to all the rules and regulations of the Home Company, and the orders of its train dispatcher.

In case, by mutual agreement, the Home Company shall furnish engines and engine crews to haul, help or push trains of the Foreign Company, or in case, without mutual agreement, it becomes necessary, by reason of failure of the Foreign Company's engine to handle its train at speed required by the Home Company, or for other cause (including foreign engine not being equipped with train control or cab signals) for the Home Company to furnish engines and engine crews to haul, help or push trains of the Foreign Company, it may do so, and except at its option, without releasing pilot or pilots previously assigned to the train.

3. The Foreign Company, if granted such permission, shall promptly, upon presentation of bill, pay to the Home Company for trackage, the sum of \$9.00*, per train mile, or fraction thereof (a light engine to be considered as a train), with minimum trackage charge of \$56.00, for each train detoured. The Foreign Company shall also reimburse the Home Company for any extra expenses incurred by the employment of additional operators, dispatchers, or others, or overtime paid any employee resulting directly from the detour movement.

On the request of the Foreign Company cars bad ordered out of detoured trains may be detoured under the terms of this Agreement, except that there shall be paid by the Foreign Company in full for such service \$.90 per car mile for each freight car and \$1.35 per car mile for each passenger, baggage, express or sleeping car; car mileage and per diem as to all such cars to be assumed by the Foreign Company.

The costs of labor as referred to in this Agreement include actual wages plus additives according to joint facility accounting procedures of the Home Company. Additional charges for other services rendered and supplies furnished by the Home Company shall be charged to the Foreign Company at the rates specified below.

	When engine is furnished	
	By Foreign Company Sec. 2, Par. 1	By Home Company Sec. 2, Par. 2
(a) Per locomotive unit mile, including light mileage to and from point of service**	None	\$5.75
(b) Per engine turned on turntable or wye***	\$5.50	None
(c) Per car turned on turntable***	\$5.50	\$5.50
(d) Per train turned on wye***	\$17.00	\$17.00
(e) Fuel		None
(f) Other engine supplies		None
(g) Other train supplies		
(h) Enginehouse expenses		None
(i) Engine repairs		None
(j) Pilots, including deadhead or light mileage to and from point of service, and furnished in accordance with Section 2, paragraphs 1 and 2		
(k) Crews furnished, train or engine, including deadhead or light mileage to and from point of service		
(l) Bridge, ferry, terminal, trackage or switching charges assessed by other carriers in connection with handling detoured trains	Contract or tariff rates	Contract or tariff rates

* Includes wages of car inspectors inspecting detoured trains at regular inspection points.

** Includes use of engine, fuel, and supplies but excludes crew.

*** No mileage charge to be included.

**** Costs plus additives according to the joint facility accounting procedures of the Home Company.

UNUSUAL OCCURRENCE REPORT

1. MONTH		NUMBER		2. PREPARED BY:	
3. TYPE OF OCCURRENCE				4. CLASS OF TRACK	
5. REGION 6. DIVISION 7. DATE 8. TIME 9. LINE/BRANCH/YARD 10. TYPE 11. PLACE 12. STATE 13. ROSTR 14. MILEPOST 15. TRACK NO. 16. TRACK NAME 17. HAZARDOUS MATL. 18. AUTH. SPEED 19. OBSTRUCTIONS				01 DERAILMENT 02 HEAD ON COLLISION 03 REAR END COLLISION 04 SIDE COLLISION 05 RAILING COLLISION 06 CROWN/RAIN COLLISION 07 RAIL-HIGHWAY TRUCK COLL.	
				08 RR GRADE KING COLLISION 09 OBSTRUCTION INCIDENT 10 EXPLOSION-DETONATION 11 FIRE/VIOLENT RUPTURE 12 OTHER RAIL EQUIP. INCIDENTS 13 NON-RAIL EQUIPMENT INCIDENT	
				M - MAIN Y - YARD S - SIDE	
				I - INDUSTRIAL P - PRIVATE F - FOREIGN A - OFF-TRACK	
20. TRAIN SYMBOL		21. LEAD ENG. NO.		22. ADDITIONAL UNITS (NO. 3)	
23. LOADS		24. EMPTIES		25. TONS	
26. ENGINEER		27. CONDUCTOR		28. DIRECTION	
29. ACTIVITY		30. ENGINEER		31. CONDUCTOR	
32. ENGINES-DETAILED		33. CARS-DETAILED		34. THEIR LOCATIONS IN TRAIN	
35. NAME OF RELIEF (WRECKING) FORCE		36. KIND		37. CALLED	
38. RERAILING COMPLETE		39. ADDITIONAL INFORMATION		37. ARRIVED	
40. PERSONAL INJURY INVOLVED		41. CLASS OF PERSON		42. NAME, DESCRIPTION AND DISPOSITION	
0. NONE 1. FATAL 2. MEDICAL ATTENTION 3. RESTRICTED, LOST TIME ETC.		1. EMPLOYEE ON DUTY 2. EMPLOYEE NOT ON DUTY 3. PASSENGER 4. NON-TRESPASSER 5. TRESPASSER			
43. CAUSE CODE		44. CAUSE DESCRIPTION			
45. EQUIPMENT INVOLVED - INITIAL & NUMBER		46. WORK ORDER NUMBER			
47. COMMITTEE		48. TRACK DAMAGE			
49. LADING LOSS		50. SIGNAL DAMAGE			
51. REMARKS		52. OTHER RR PROP DAMAGE			
53. PROPERTY OF OTHERS		54. EQUIPMENT DAMAGE			
55. WRECKING COST		56. TOTAL RR DAMAGE			
57. OTHER COSTS		58. TOTAL COST			
59. REMARKS		60. REMARKS			
61. REMARKS		62. REMARKS			
63. REMARKS		64. REMARKS			
65. REMARKS		66. REMARKS			
67. REMARKS		68. REMARKS			
69. REMARKS		70. REMARKS			
71. REMARKS		72. REMARKS			
73. REMARKS		74. REMARKS			
75. REMARKS		76. REMARKS			
77. REMARKS		78. REMARKS			
79. REMARKS		80. REMARKS			
81. REMARKS		82. REMARKS			
83. REMARKS		84. REMARKS			
85. REMARKS		86. REMARKS			
87. REMARKS		88. REMARKS			
89. REMARKS		90. REMARKS			
91. REMARKS		92. REMARKS			
93. REMARKS		94. REMARKS			
95. REMARKS		96. REMARKS			
97. REMARKS		98. REMARKS			
99. REMARKS		100. REMARKS			

Report of accident to rolling stock

DATE _____ 19 _____

CONRAIL 

(Information in this block to be put into the computer)

SHOP SMR _____ DIVISION _____ DATE OF ACCIDENT _____

ACCIDENT LOCATION _____ (Yard and Track Number)

CR PROPERTY YES _____ NO _____ IF 'NO' DEFECT CARD SIGNED YES _____ NO _____

INIT	NUMBER	KIND	R	DISP	L	DAMAGE COST	CD	LOAD DISP	REVERSE SIDE
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____

 RULE 95 _____ IF (YES, INDICATE _____ DERAILED _____ CORNERED _____ BOWSWIPED _____
 OTHER _____

 Codes to be used above — RB—Roller Bearing FB—Friction Bearing DEST—Destroyed HLU—Home Load Up HOW—Home On Own
 Wheels R&R—Repair And Release E—Empty L—Loaded T—Transferred FTD—Forward to Destination LL—Lost Loading

 Highway Crane, Wreck
 Truck or Wreck Train
 (Underline One)

 Damage To Rolling Stock \$ _____
 Cost of Wrecking \$ _____

 Train — _____
 Eng(e) — _____

SECTION I—Cause of Accident _____

Remarks and Particulars of Accident _____

SECTION II—Location of accident if other than CR property

Occurred on private property of outside industry _____

(Name and Address)

Occurred within joint facility territory of _____

(Location and Participating Road)

Work Order No. Assigned _____

SECTION III—Wreck Force Time

Ordered at _____ Ready to Depart _____ Departed _____ Arrived at Accident _____

Track Cleared _____ Ready to Depart _____ Departed _____ Arrived Shop _____

Distance From Shop To Accident _____ Mile(s) Derrick Cap. _____ Wreck Master _____

Asst. Wreck Master _____ Derrick Eng. _____ Car Repairman _____

Car Repairman Helper _____ Laborers _____

SECTION IV—Outside Contractor Wreck Force, Equipment and Time

Company _____ Ordered _____ Arrived Accident _____ Track Cleared _____

Type & Size Equipment _____ No. of Men _____

SECTION V—Train Crew Assistance

Old Train Crew Assist? _____ If Yes, Crew Symbol _____ Loc. No. _____ Engr. _____

Conductor _____ Assistance Time Began at _____ and Ended at _____

SECTION VI—Wreck Train Consists

(If Applicable, Show Type and Number of Cars in Train, Amount of Fuel Consumed by Derrick and Number of Meals.)

 1. Original of this report to be kept on file at shop 2. Copy to be sent to Manager—AAR Services, Phila., PA 3. Copy to be
 attached to the billing repair card for each car involved.

Signed _____ Phone No. _____ Location _____

(TITLE)

SHOW MAJOR ITEMS OF DAMAGE ON REVERSE SIDE OF THIS FORM FOR EACH CAR LISTED

[illegible]

§ 1266-c. Transit projects

[See main volume for text of 1 to 12]

13. a. All contracts for design, construction, services and materials pursuant to this title of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(i) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(ii) At the request of the New York city transit authority, the metropolitan transportation authority, and their subsidiaries (hereinafter referred to as the authority), the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

(iii) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the authority, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(iv) The contractor will include the provisions of subparagraphs (i) through (iii) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the authority.

b. The authority shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this subdivision. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The authority may take appropriate action including contractual sanctions for non-compliance to effectuate the provisions of this subdivision and shall be responsible for monitoring compliance with this title.

14. (a)(i) In the performance of projects pursuant to this title minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The authority provided for in this title shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this title shall be construed to limit the ability of the authority to assure that qualified minority and women-owned business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this paragraph shall not be construed to limit the ability of any minority or women-owned business enterprise to bid on any contract.

(ii) In the implementation of this subdivision, the authority shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this subdivision. If the authority determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the authority may waive the applicability of this subdivision to the extent of such duplication or conflict.

(iii) Nothing in this subdivision shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in programs authorized under this title be applied without regard to local circumstances to all projects or in all communities.

(b) In order to implement the requirements and objectives of this subdivision, the authority shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

(As amended L.1986, c. 929, § 29.)

ADMINISTRATIVE AND STATUTORY REQUIREMENTS

MTA, METRO NO. and Conrail ("Parties") Agree

(1) The Parties shall comply with the Regulations of the United States Department of Transportation (Title 49, Code of Federal Regulations, Part 21) issued in implementation of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, as applicable, which are hereby made a part of this Exhibit.

(2)(a) For the purpose of this section, "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of Conn. Gen. Stat. 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

For purpose of this section, "Commission" means the Commission on Human Rights and Opportunities.

(b)(1) The Parties agree and warrant that in the performance of this Agreement the Parties will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation or physical disability, including but not limited to, blindness, unless it is shown by the Parties that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or the State of Connecticut. The Parties further agree to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, martial status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown the Parties that such disability prevents performance of the work involved, (2) the Parties agree, in all solicitations or advertisements for employees placed by or on behalf of the Parties individually, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Parties agree to provide each labor union or representative of workers with which the Parties have a collective bargaining agreement or other contract or understanding and each vendor with which the Parties have a contract or understanding, a notice to be provided by the Commission advising the labor union or workers' representative of the Parties' commitments under this section, and to post copies of the notice in conspicuous places available

to employees and applicants for employment; (4) the Parties agree to comply with each provision of this section and Conn. Gen. Secs. 46a-68e and 46a-68f; (5) the Parties agree to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Parties as relate to the provisions of this section and Section 46a-56. If the contract is a public works contract, the Parties agree and warrant that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

(c) Determination of the Parties' good faith efforts shall include, but shall not be limited to, the following factors: the Parties' employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Parties shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Parties shall include the provisions of subsection (b) of this section in every subcontract or purchase order

entered into in order to fulfill any obligation of a contract with CDOT and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Parties shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Conn. Gen. Stat. Sec 46a-56, as amended by Section 5 of Public Act 89-253; provided if the Parties become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Parties may request the CDOT to enter into any such litigation or negotiation prior thereto to protect the interests of CDOT and CDOT may so enter.

(f) The notice provisions of subparagraph (b)(3) above apply only to those vendors, if any, that are intended to be used in fulfillment of obligations under this Agreement.

(3) If applicable, this Agreement is subject to the provisions of the Governor's Executive Order No. Three promulgated June 16, 1971 and, as such, this Agreement may be cancelled, terminated or suspended by the State Labor Commissioner for violation of or noncompliance with said Executive Order No. Three, or any state or federal law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this Agreement. The Parties to this Agreement, as part of the consideration hereof, agree that

the attached Executive Order No. Three is incorporated herein and made a part hereof. The Parties agree to abide by said Executive Order and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to performance in regard to nondiscrimination, until the Agreement is completed or terminated prior to completion. The Parties agree, as part consideration hereof, that this Agreement is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. Three, and the Parties will not discriminate in employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner. A copy of said Guidelines is attached and hereby made a part of this Agreement.

(4) If applicable, this Agreement is executed subject to the Governor's Executive Order No. 17, a copy of which is attached hereto and is hereby made a part of this Agreement. Governor's Executive Order No. 17 requires, inter alia, that all contractors and subcontractors shall list all employment openings with the Office of the Connecticut State Employment Service in the area where the work is to be performed or where the services are to be rendered. Failure of the Parties to conform with the requirements of the Governor's Executive Order No. 17 and any orders, rules or regulations issued pursuant thereto, shall be a basis for termination of this Agreement by CDOT.

STATE OF CONNECTICUT
BY HIS EXCELLENCY
THOMAS J. MESKILL
GOVERNOR
EXECUTIVE ORDER NO. THREE

WHEREAS, sections 4-61d (b) and 4-114a of the 1969 supplement to the general statutes require nondiscrimination clauses in state contracts and subcontracts for construction on public buildings, other public works and goods and services and

WHEREAS, section 4-61a (c) of the 1969 supplement to the general statutes requires the labor department to encourage and enforce compliance with this policy by both employers and labor unions, and to promote equal employment opportunities, and

WHEREAS, the government of this state recognizes the duty and desirability of its leadership in providing equal employment opportunity, by implementing these laws,

NOW, THEREFORE, I, THOMAS J. MESKILL, Governor of the State of Connecticut, acting by virtue of the authority vested in me under section twelve of article fourth of the constitution of the state, as supplemented by section 1-1 of the general statutes, do hereby ORDER and DIRECT, as follows, by this Executive Order:

I

The labor commissioner shall be responsible for the administration of this Order and shall adopt such regulations as he deems necessary and appropriate to achieve the purposes of this Order. Upon the promulgation of this Order, the commissioner of finance and control shall issue a directive forthwith to all state agencies, that henceforth all state contracts and subcontracts for construction on public buildings, other public works and goods and services shall contain a provision rendering such contract or subcontract subject to this Order, and that such contract or subcontract may be cancelled, terminated or suspended by the labor commissioner for violation of or noncompliance with this Order or state or federal laws concerning nondiscrimination, notwithstanding that the labor commissioner is not a party to such contract or subcontract.

II

Each contractor having a contract containing the provisions prescribed in section 4-114a of the 1969 supplement to the general statutes, shall file, and shall cause each of his subcontractors to file, compliance reports with the contracting agency or the labor commissioner, as may be directed. Such reports shall be filed within such times and shall contain such information as to employment policies and statistics of the contractor and each subcontractor, and shall be in such form as the labor commissioner may prescribe. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order or any preceding similar Order, and in that event to submit on behalf of themselves and their proposed subcontractors compliance reports prior to or as an initial part of their bid or negotiation of a contract.

III

Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor organization or employment agency as defined in section 31-122 of the general statutes, the compliance reports shall identify the said organization or agency and the contracting agency or the labor commissioner may require a compliance report to be filed with the contracting agency or the labor commissioner, as may be directed, by such organization or agency, signed by an authorized officer or agent of such organization or agency, with supporting information, to the effect that the signer's practices and policies, including but not limited to matters concerning personnel, training, apprenticeship, membership, grievance and representation, and upgrading, do not discriminate on grounds of race, color, religious creed, age, sex, or national origin, or ancestry of any individual, and that the signer will either affirmatively cooperate in the implementation of the policy and provisions of this Order, or that it consents and agrees that recruitment, employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the law.

IV

The labor commissioner may by regulation exempt certain classes of contracts, subcontracts or purchase order from the implementation of this Order, for standard commercial supplies or raw materials, for less than specified amounts of money or numbers of workers or for subcontractors below a specified tier. The labor commissioner may also provide by regulation for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the state contract, provided only that such exemption will not interfere with or impede the implementation of this Order, and provided further, that in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

V

Each contracting agency shall be primarily responsible for obtaining compliance with the regulations of the labor commissioner with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the regulations of the labor commissioner in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the regulations of the labor commissioner issued pursuant to this Order. They are directed to cooperate with the labor commissioner and to furnish the labor commissioner such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate from among the personnel of each agency, compliance officers, whose duty shall be to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

VI

The labor commissioner may investigate the employment practices and procedures of any state contractor or subcontractor and the practices and policies of any labor organization or employment agency hereinabove described, relating to employment under the state contract, as concerns nondiscrimination by such organization or agency as hereinabove described, or the labor commissioner may initiate such investigation by the appropriate contract agency, to determine whether or not the contractual provisions hereinabove specified or statutes of the state respecting them have been violated. Such investigation shall be conducted in accordance with the procedures established by the labor commissioner and the investigating agency shall report to the labor commissioner any action taken or recommended.

VII

The labor commissioner shall receive and investigate or cause to be investigated complaints by employees or prospective employees of a state contractor or subcontractor or members or applicants for membership or apprenticeship or training in a labor organization or employment agency hereinabove described, which allege discrimination contrary to the contractual provisions specified hereinabove or state statutes requiring nondiscrimination in employment opportunity. If this investigation is conducted for the labor commissioner by a contracting agency, that agency shall report to the labor commissioner what action has been taken or is recommended with regard to such complaints.

The labor commissioner shall use his best efforts, directly and through contracting agencies, other interested federal, state and local agencies, contractors and all other available instrumentalities, including the commission on human rights and opportunities, the executive committee on human rights and opportunities, and the apprenticeship council under its mandate to provide advice and counsel to the labor commissioner in providing equal employment opportunities to all apprentices and to provide training, employment and upgrading opportunities for disadvantaged workers, in accordance with Section 31-31 (d) of the 1969 supplement to the general statutes, to cause any labor organization or any employment agency whose members are engaged in work under government contracts or referring workers or providing or supervising apprenticeship or training for or in the course of work under a state contract or subcontract to cooperate in the implementation of the purposes of this Order. The labor commissioner shall in appropriate cases notify the commission on human rights and opportunities or other appropriate state or federal agencies whenever it has reason to believe that the practices of any such organization or agency violate equal employment opportunity requirements or state or federal law.

IX

The labor commissioner or any agency officer or employee in the executive branch designated by regulation of the labor commissioner may hold such hearings, public or private, as the labor commissioner may deem advisable for compliance, enforcement or educational purposes under this Order.

X

(a) The labor commissioner may hold or cause to be held hearings, prior to imposing ordering or recommending the imposition of penalties and sanctions under this Order. No order for disbarment of any contractor from further state contracts shall be made without affording the contractor an opportunity for a hearing. In accordance with such regulations as the labor commissioner may adopt, the commissioner or the appropriate contracting agency may

- (1) Publish or cause to be published the names of contractors or labor organizations or employment agencies as hereinabove described which it has concluded have complied or failed to comply with the provisions of this Order or the regulations of the labor commissioner in implementing this Order.
- (2) Recommend to the commission on human rights and opportunities that in cases in which there is substantial or material violation or threat thereof of the contractual provision or related state statutes concerned herein, appropriate proceedings be brought to enforce them, including proceedings by the commission on its own motion under chapter 563 of the general statutes and the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly or seek to prevent directly or indirectly compliance with the provisions of this Order.
- (3) Recommend that criminal proceedings be brought under chapter 939 of the general statutes.
- (4) Cancel, terminate, suspend or cause to be cancelled, terminated, or suspended in accordance with law any contract or any portion or portions thereof for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, suspended absolutely or their continuance conditioned upon a program for future compliance approved by the contracting agency.
- (5) Provide that any contracting agency shall refrain from entering into any further contracts or extensions or modifications of existing contracts with any contractor until he has satisfied the labor commissioner that he has established and will carry out personnel and employment policies compliant with this Order.
- (6) Under regulations prescribed by the labor commissioner each contracting agency shall make reasonable efforts within a reasonable period of time to secure compliance with the contract provisions of this Order by methods of conciliation, mediation or persuasion, before other proceedings shall be instituted under this Order or before a state contract shall be cancelled or terminated in whole or in part for failure of the contractor or subcontractor to comply with the contract provisions of state statute and this Order.

(b) Any contracting agency taking any action authorized by this Order, whether on its own motion or as directed by the labor commissioner or pursuant to his regulations shall promptly notify him of such action. Whenever the labor commissioner makes a determination under this Order, he shall promptly notify the appropriate contracting agency and other interested federal, state and local agencies of the action recommended. The state and local agency or agencies shall take such action and shall report the results thereof to the labor commissioner within such time as he shall specify.

XI

If the labor commissioner shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless he has satisfactorily complied with the provisions of this Order, or submits a program for compliance acceptable to the labor commissioner, or if the labor commissioner so authorizes, to the contracting agency.

XII

Whenever a contracting agency cancels or terminates a contract, or a contractor has been disbarred from further government contracts because of noncompliance with the contract provisions with regard to nondiscrimination, the labor commissioner or the contracting agency shall rescind such disbarment, upon the satisfaction of the labor commissioner that the contractor has purged himself of such noncompliance and will thenceforth carry out personnel and employment policies of nondiscrimination in compliance with the provision of this Order.

XIII

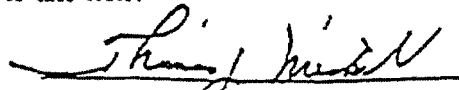
The labor commissioner may delegate to any officer, agency or employee in the executive branch any function or duty of the labor commissioner under this Order except authority to promulgate regulations of a general nature.

XIV

This Executive Order supplements the Executive Order issued on September 28, 1967. All regulations, orders, instructions, designations and other directives issued heretofore in these premises, including those issued by the heads of various departments or agencies under or pursuant to prior order or statute, shall remain in full force and effect, unless and until revoked or superseded by appropriate authority, to the extent that they are not inconsistent with this Order.

This Order shall become effective thirty days after the date of this Order.

Dated at Hartford, Connecticut, this 16th day of June, 1971.


GOVERNOR

GUIDELINES AND RULES
OF STATE LABOR COMMISSIONER
IMPLEMENTING GOVERNOR'S EXECUTIVE
ORDER NO. THREE

SEC. 1. PERSONS AND FIRMS SUBJECT TO EXECUTIVE ORDER NO. THREE AND GUIDELINES AND RULES.

a. Every contractor, or subcontractor as defined in Sec. 1 hereof, supplier of goods or services, vendor, bidder and prospective contractor or subcontractor, having ten or more employees as defined in Sec. 3 of these Guidelines, having or entering into or bidding to enter into any type of contractual relationship with the State of Connecticut or any of its agencies, boards, commissions, departments or officers, and if the consideration, cost, subject matter or value of the goods or services exceeds \$5,000.00, shall be subject to the Governor's Executive Order No. Three and these Guidelines and Rules.

b. A copy of the Governor's Executive Order No. Three and of these Guidelines and Rules shall be available to each said contractor, subcontractor, supplier, vendor, bidder and prospective contractor and subcontractor, and the said Executive Order No. Three and these Guidelines and Rules shall be incorporated by reference and made a part of the contract, purchase order, agreement or document concerned. A copy of the Executive Order and of these Guidelines and Rules shall be furnished to a contracting party or bidder on request.

c. All persons, partnerships, associations, firms, corporations and other entities having less than ten employees as defined in Sec. 3 at the time of the bid and execution of the contract and continuing through the performance of the contract are exempt from the provisions of the said Executive Order and these Guidelines and Rules. All contracts, subcontracts, purchase orders and agreements wherein the consideration is \$5,000.00 or less shall be exempt from Executive Order No. Three and from these Guidelines and Rules.

SEC. 2. SUBCONTRACTORS.

As used herein, subcontractors are persons, partnerships, associations, firms or corporations or other entities having contractual relationship with a contractor who in turn has a contract with the State of Connecticut or any of its agencies, boards, commissions or departments. Subcontractors below this tier are exempt from the Executive Order and from these Guidelines and Rules.

SEC. 3. EMPLOYEES.

As used herein, employees are persons working full or part-time irrespective of personnel classification whose wages, salaries, or earnings are subject to the Federal Insurance Contribution Act and/or to Federal Withholding Tax as a matter of law (whether in fact or not any actual withholding occurs in a given case), in an employee-employer relationship at the time of bid, contract execution, or offer or acceptance, and/or during any time thereafter; during the existence of the performance period of the contract to the conclusion thereof.

SEC. 4. REPORTS.

a. Prior to the execution of the contract or prior to acceptance of a bid, as the case may be, the contractor, subcontractor, bidder or vendor shall file a report with the State Labor Commissioner, which report shall be complete and contain all of the information therein prescribed. The report shall be on Form E.O. 3-1, a facsimile of which is attached hereto and made a part hereof, or in lieu thereof the contractor, subcontractor, bidder or vendor shall submit a detailed report containing all of the information required in Form E.O. 3-1.

b. The Labor Commissioner may require the filing of additional reports prior to final payment or prior to any renewal or extension of the contract and during the duration of the contract at such times as the Commissioner may, in his discretion, from time to time deem necessary. The Labor Commissioner may require the filing of additional information or reports, and the contractor, subcontractor, bidder or vendor shall furnish said information or reports within the times prescribed by the Labor Commissioner.

c. The Labor Commissioner may, at his discretion, also require timely statistical reports on the number of minority employees employed or to be employed in the performance of the contract, and the Labor Commissioner may define such minority groups or persons.

d. Reports filed pursuant to these Guidelines and Rules in implementation of Executive Order No. Three are not public records subject to public inspection, but may be inspected only by federal and state officials having jurisdiction and authority to investigate matters of this type. All federal and state agencies empowered by law to investigate matters relating to Executive Order No. Three shall have access to these reports for inspection or copying during regular business hours.

e. Any person who wilfully, wantonly or through negligence destroys or permits to be destroyed, alters or allows to be altered after filing, any reports submitted in compliance herewith shall be subject to penalties as prescribed by law.

SEC. 5. MANDATORY CLAUSES IN DOCUMENTS.

a. All contracts shall contain the following provisions verbatim:

This contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971 and, as such, this contract may be cancelled, terminated or suspended by the state labor commissioner for violation of or noncompliance with said Executive Order No. Three, or any state or federal law concerning nondiscrimination, notwithstanding that the labor commissioner is not a party to this contract. The parties to this contract, as part of the consideration hereof, agree that said Executive Order No. Three is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the state labor commissioner shall have continuing jurisdiction in respect to contract performance in regard to nondiscrimination, until the contract is completed or terminated prior to completion.

The (contractor), (subcontractor), (bidder), (vendor) agrees, as part consideration hereof, that this (order) (contract) is subject to the Guidelines and Rules issued by the state labor commissioner to implement Executive Order No. Three, and that he will not discriminate in his employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the state labor commissioner.

These provisions are in addition to and not in lieu of other clauses required by law.

* N.B. The above paragraphs contain requirements additional to those set forth in July 16, 1971 directive to state agencies.

b. Every purchase order or like form submitted by a vendor or bidder, as applicable, shall contain the following clause verbatim:

Vendor agrees, as part of the consideration hereof, that this order is subject to the provisions of Executive Order No. Three and the Guidelines and Rules issued by the Labor Commissioner implementing said Order as to nondiscrimination, and vendor agrees to comply therewith.

c. Where preprinted contract forms have been prescribed by federal authority and the rules of the federal agency prohibit the alteration thereof, the compliance officer of the State agency concerned shall submit to the Labor Commissioner a suggested short form or addendum acceptable to the federal agency, and in such cases, after approval by the Labor Commissioner, said clause may be substituted.

SEC. 6. COOPERATION OF STATE AGENCIES, BOARDS AND COMMISSIONS.

Every agency, board, commission and department of the State of Connecticut shall cooperate with the Labor Commissioner in the implementation of Executive Order No. Three and shall furnish such information and assistance as the Labor Commissioner may from time to time request.

SEC. 7. INVESTIGATIONS, COMPLAINTS.

The Labor Commissioner may initiate an investigation upon receipt of a complaint alleging discrimination. The Labor Commissioner may request that an investigation be conducted by the State agency which is the party to the contract in question. Investigations shall be conducted in accordance with acceptable legal standards, safeguarding the rights of all parties involved, and obtaining all of the relevant facts necessary for a complete determination of the issues. If the Labor Commissioner is not satisfied with the investigation or any part thereof he may order it to continue or to proceed further.

SEC. 8. HEARINGS.

The Labor Commissioner or officers designated by the heads of the State agencies, boards and commissions may conduct hearings on complaints filed. Hearings shall be held only after a report of the complaint has been filed with the Labor Commissioner and after a hearing on the complaint has been authorized or directed by the Labor Commissioner. Hearings shall be conducted in accordance with the accepted principles of administrative law. All parties shall be afforded the opportunity to a full, fair, impartial and complete hearing, the opportunity to examine and cross examine witnesses and to be present at all sessions of the hearing. If any party is vulnerable to a charge of a violation of the law, he shall be afforded the opportunity to procure counsel who may be present at the hearing.

SEC. 9. EQUAL EMPLOYMENT OPPORTUNITIES.

All State contracting agencies, employers, and labor units shall use their best efforts to provide equal employment opportunities to all apprentices and to provide training, employment and upgrading opportunities for disadvantaged workers in accordance with section 31-51(d) of the General Statutes.

SEC. 10. DUTIES OF CONTRACTING AGENCIES.

All State contracting agencies shall be responsible for compliance with said Executive Order and with all state and federal laws relating to equal employment opportunities. All contracting agencies conducting investigations for the Labor Commissioner pursuant to Executive Order No. Three and these Guidelines and Rules shall report to the Labor Commissioner the action taken or recommended with regard to each complaint filed. Each officer of the executive department, every commissioner, and each executive head of each State agency, board and commission in the executive branch of the State government is expected to assume the responsibility of seeing to complete compliance with the Governor's Executive Order No. Three and shall forthwith take steps to assure and guarantee that there shall be no discrimination within their departments, agencies, boards or commissions in the performance of any state contract or subcontract on the basis of race, creed, color, sex, age, national origin or national ancestry, or in any way in violation of any state or federal law relating thereto.

BY VIRTUE OF THE AUTHORITY VESTED IN ME PURSUANT TO EXECUTIVE ORDER NO. THREE EFFECTIVE JULY 16, 1971, AND THE GENERAL STATUTES OF CONNECTICUT.

Dated at Wethersfield, Connecticut this 19TH day of Nov. 1971.

Jack A. Fusari

JACK A. FUSARI
LABOR COMMISSIONER

BY HIS EXCELLENCY

THOMAS J. MESKILL

GOVERNOR

EXECUTIVE ORDER NO. SEVENTEEN

WHEREAS, Section 31-237 of the General Statutes of Connecticut as amended requires the maintaining of the established free services of the Connecticut State Employment Service to both employers and prospective employees and

WHEREAS, Section 31-3 of the General Statutes of Connecticut requires that no compensation or fee shall be charged or received directly or indirectly for the services of the Connecticut State Employment Service and

WHEREAS, large numbers of our citizens who have served in the Armed Forces of our nation are returning to civilian life in our state and seeking employment in civilian occupations and

WHEREAS, we owe a duty as well as gratitude to these returning veterans including the duty to find suitable employment for them and

WHEREAS, many of our handicapped citizens are fully capable of employment and are entitled to be placed in suitable employment and

WHEREAS, many of the citizens of our state who are unemployed are unaware of the job openings and employment opportunities which do in fact exist in our state and

WHEREAS, notwithstanding the free services of the Connecticut State Employment Service, many of our Connecticut employers do not use its free services or do not avail themselves fully of all of the services offered.

NOW, THEREFORE, I, THOMAS J. MESKILL, Governor of the State of Connecticut, acting by virtue of the authority vested in me under the fourth article of the Constitution of the State and in accordance with Section 3-1 of the General Statutes, do hereby ORDER and DIRECT, as follows, by this Executive Order:

I
The Labor Commissioner shall be responsible for the administration of this Order and shall do all acts necessary and appropriate to achieve its purpose. Upon promulgation of this Order, the Commissioner of Finance and Control shall issue a directive forthwith to all state agencies that henceforth all state contracts and subcontracts for construction on public buildings, other public works and goods and services shall contain a provision rendering such contract or subcontract subject to this Order, and that such contract or subcontract may be cancelled, terminated or suspended by the Labor Commissioner for violation of or noncompliance with this Order, notwithstanding that the Labor Commissioner is not a party to such contract or subcontract.

II
Every contractor and subcontractor having a contract with the state or any of its agencies, boards, commissions, or departments, every individual partnership, corporation, or business entity having business with the state or who or which seeks to do business with the state, and every bidder or prospective bidder who submits a bid or applies to an invitation to bid on any state contract shall list all employment openings with the office of the Connecticut State Employment Service in the area where the work is to be performed or where the services are to be rendered.

III
All state contracts shall contain a clause which shall be a condition of the contract that the contractor and any subcontractor holding a contract directly under the contractor shall list all employment openings with the Connecticut State Employment Service. The Labor Commissioner may allow exceptions to listings of employment openings which the contractor proposes to fill from within its organization from employees on the rolls of the contractor on the date of publication of the invitation to bid or the date on which the public announcement was published or promulgated advising of the program concerned.

IV
Each contracting agency of the state shall be primarily responsible for obtaining compliance with this Executive Order. Each contracting agency shall appoint or designate from among its personnel one or more persons who shall be responsible for compliance with the objectives of this Order.

V
The Labor Commissioner shall be and is hereby empowered to inspect the books, records, payroll and personnel data of each individual or business entity subject to this Executive Order and may hold hearings or conferences, formal or informal, in pursuance of the duties and responsibilities hereto delegated to the Labor Commissioner.

VI
The Labor Commissioner or any agency officer or employee in the executive branch designated by regulation of the Labor Commissioner may hold such hearings, public or private, as the Labor Commissioner may deem advisable for compliance, enforcement or educational purposes under this Order.

VII
(a) The Labor Commissioner may hold or cause to be held hearings, prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. In accordance herewith, the Commissioner or the appropriate contracting agency may suspend, cancel, terminate, or cause to be suspended, cancelled, or terminated in accordance with law any contract or any portion or portions thereof for failure of the contractor or subcontractor to comply with the listing provisions of the contract. Contracts may be cancelled, terminated, suspended absolutely or their continuance conditioned upon a program for future compliance approved by the contracting agency.

(b) Any contracting agency taking any action authorized by this Order, whether on its own motion or as directed by the Labor Commissioner, shall promptly notify him of such action. Whenever the Labor Commissioner makes a determination under this Order, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall report the results to the Labor Commissioner promptly.

VIII
If the Labor Commissioner shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless he has satisfactorily complied with the provisions of this Order.

This Order shall become effective sixty days after the date of this Order.

Dated at Hartford, Connecticut, this 15th day of February, 1973.

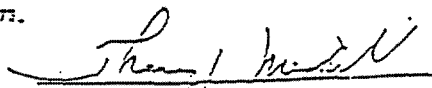

GOVERNOR

EXHIBIT D

D&H TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT
BETWEEN
METRO NORTH COMMUTER RAILROAD COMPANY
AND
THE DELAWARE AND HUDSON RAILWAY COMPANY, INC.

EFFECTIVE AS OF JUNE 21, 1999

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Wrecks, Derailments and other Billable Incidents

TRACKAGE RIGHTS AGREEMENT

This Trackage Rights Agreement (Agreement), entered this 21st day of December 1999, to become effective as of June 21, 1999, is made by and between the Metro-North Commuter Railroad Company (METRO-NORTH) and The Delaware and Hudson Railway Company, Inc. (D&H).

WITNESSETH

WHEREAS, in its Decision No. 89 in Finance Docket No. 33388, the Surface Transportation Board authorized Canadian Pacific Railway or a subsidiary to obtain trackage rights over the east-of-the-Hudson Line from Fresh Pond, Queens County, to the Albany area; and

WHEREAS, the segment of this route between CP7 near High Bridge, Bronx County, and CP75 north of Poughkeepsie, Dutchess County is maintained and operated by METRO-NORTH as a portion of its Hudson Line; and

WHEREAS, it is necessary to establish appropriate rights and responsibilities between the parties for the operation by the D&H, a subsidiary of Canadian Pacific Railway Company, of freight service over METRO-NORTH's Hudson Line Rail Properties;

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties contained herein, and intending to be legally bound, METRO-NORTH and D&H agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions

(a) "Actual Costs" shall mean all expenses incurred by the party in connection with a transaction, including retroactive wage adjustments and the party's applicable additives and overhead rates (including fringe, G&A and force account insurance elements) in effect at the time the work is performed.

(b) "Car Mile" shall mean a locomotive, car, unit of self-propelled work equipment, whether or not loaded, whether or not carrying passengers or freight, moved one mile over Rail Properties.

(c) "D&H" shall mean The Delaware & Hudson Railway Company, Inc., a corporation organized under the laws of the State of Delaware, and subsidiary of Canadian Pacific Railway Company.

(d) "Crossover" shall mean a track fixture, which is used to switch a train from one track to an adjacent parallel track and consists of two (2) turnouts. A turnout consists of a switch and other track components.

(e) "METRO-NORTH" shall mean the Metro North Commuter Railroad Company, a public benefit corporation of the State of New York and a wholly owned subsidiary of MTA.

(f) "METRO-NORTH Rail Properties" or "Rail Properties" shall mean the rail properties identified in Exhibit 1 maintained and operated by METRO-NORTH, including facilities existing thereon and additions and betterments thereto.

(g) "MTA" shall mean the Metropolitan Transportation Authority, a public benefit corporation of the State of New York.

(h) "Parties" shall mean D&H and METRO-NORTH collectively.

ARTICLE II

ACCESS TO RAIL PROPERTIES

Section 2.01. Access to METRO-NORTH Rail Properties

METRO-NORTH hereby grants to D&H, subject to the provisions of this Agreement, the right to enter upon and utilize the existing tracks and related operating facilities located on METRO-NORTH Rail Properties listed in Exhibit 1 for the purpose of performing D&H's freight service.

Section 2.02. Changes in Use of METRO-NORTH Rail Properties

METRO-NORTH reserves the right to redesignate the category in which METRO-NORTH Rail Properties shown on Exhibit 1 are listed to reflect changes in the nature of passenger services operated over such properties.

ARTICLE III

MANAGEMENT AND OPERATIONS

Section 3.01. METRO-NORTH Rail Properties

(a) As between METRO-NORTH and D&H, METRO-NORTH retains the right to establish the overall policies governing the management and operational control of all rail service over METRO-NORTH Rail Properties, including, but not, limited to, the dispatching and control of all trains.

(b) The scheduling and movement of revenue passenger trains shall take precedence over all movements of D&H freight trains and other equipment.

(c) D&H's freight operating rights described in this agreement are for the purpose of permitting D&H to exercise its trackage rights granted under Section 2.01 hereof, including the right to operate its freight trains, light engines and other on-track equipment.

Section 3.02 Clearances

METRO-NORTH shall provide clearance routes for movement of D&H freight trains and other equipment within the clearances on METRO-NORTH Rail Properties set forth in Exhibit 2. METRO-NORTH will promptly notify D&H of any modifications of Exhibit 2 clearances. If a freight shipment exceeds the clearances on Exhibit 2, and requires alteration of METRO-NORTH's facilities, such alteration shall be at D&H's expense should METRO-NORTH elect to make such modification. "Facilities" as used in this Section 3.02(g) includes, but is not limited to, catenary wire, electric traction facilities and high level platforms located on METRO-NORTH Rail Properties. D&H shall have the right to periodically operate its clearance car over METRO-NORTH Rail Properties in order to check the clearance levels, which operation may be conducted at least once every six (6) months. Notwithstanding the above, the parties understand and agree that the provisions as to clearances are subject to applicable state law and regulations as they may exist from time to time.

Section 3.03. General Provisions

(a) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars, or equipment in the possession of or operated

by one of the Parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or the responsibility of such Party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, or equipment shall be considered those of the latter Party.

(b) D&H shall comply with the provisions of applicable federal, state, and local laws, regulations, and rules respecting the operation, condition inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Rail Properties. D&H shall indemnify, protect, defend, and save METRO-NORTH and its officers, agents, and employees harmless from all fines, penalties, and liabilities imposed upon METRO-NORTH under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of D&H to comply with its obligations in this regard.

(c) D&H in its use of the Rail Properties will comply in all respects with the operating rules and regulations of METRO-NORTH from time to time in effect, and the movement of D&H's trains, locomotives, cars, and equipment over the Rail Properties shall at all times be subject to the orders of the transportation officers of METRO-NORTH.

(d) D&H shall make such arrangements with METRO-NORTH as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Rail Properties properly qualified for operation and shall reimburse METRO-NORTH for its Actual Costs incurred in connection with the qualification of such D&H employees. In the event it becomes necessary for METRO-NORTH to furnish Pilots for the operation of D&H's trains over METRO-NORTH properties, METRO-NORTH shall be reimbursed for the Actual Costs of such employees and such employees shall be considered as employees of D&H for purposes of Article 6 of this Agreement.

(e) In the event METRO-NORTH conducts an investigation or hearing concerning the violation of any operating rule or practice of METRO-NORTH by an employee or employees of D&H, except officers of D&H, D&H shall be notified in advance of any such investigation or hearing. Such investigation or hearing may be attended by any official designated by D&H and shall be conducted in accordance with the collective bargaining agreements, if any, that apply to said employee or employees.

(f) METRO-NORTH shall have the right to exclude from the Rail Properties, for the length of time specified in a disciplinary proceeding, any employee of D&H determined by METRO-

NORTH, as the result of such investigation or hearing described above, to be in violation of METRO-NORTH's rules, regulations, orders, practices or instructions issued by timetable or otherwise. D&H shall release, indemnify, defend and save harmless METRO-NORTH and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of D&H becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by METRO-NORTH on the Rail Properties, or, if in emergencies, crippled or otherwise defective cars are set out of D&H's trains on the Rail Properties, METRO-NORTH shall have the option in its sole discretion of allowing D&H to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives or cars, or to properly move the disabled equipment off the Rail Properties, or METRO-NORTH, after notice to D&H, may perform the necessary functions. D&H shall reimburse METRO-NORTH for rendering any such assistance based on the Actual Costs or METRO-NORTH's standard schedule of charges then in effect.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Rail Properties, such work shall, at the option of METRO-NORTH at its sole discretion, after notice to D&H, be done by the D&H or the METRO-NORTH. D&H shall reimburse METRO-NORTH for the Actual Cost of rendering any such assistance.

ARTICLE IV

MAINTENANCE AND CONSTRUCTION ON RAIL PROPERTIES

Section 4.01. Responsibility for Maintenance and Construction of METRO-NORTH Rail Properties

METRO-NORTH shall retain the right to establish and carry out the overall policies governing maintenance, construction, reconstruction, and alteration of all METRO-NORTH Rail Properties.

Section 4.02. Maintenance and Other Services

(a) Maintenance and other services provided under this Agreement shall be performed in an economic and efficient manner. Properties and facilities are to be maintained by METRO-NORTH at the level of maintenance desired by METRO-NORTH.

(b) In the event D&H wishes any properties or facilities used by D&H, and for which charges are billable to D&H, to be rehabilitated or upgraded, or wishes METRO-NORTH to carry out special projects or new construction on D&H's behalf, D&H's Senior Vice President-Operations or his designee will submit a written request to METRO-NORTH to that effect, including the submission of complete specifications for the upgrading or construction requested. Any such proposal shall be subject to METRO-NORTH approval and shall be constructed in accordance with METRO-NORTH standards. In the event such notice is submitted and if METRO-NORTH agrees to do the work, METRO-NORTH, within 45 days following receipt of the notice, will submit to D&H a Force Account Estimate for work to be performed and a time schedule. When such estimate and work schedule is approved in writing by D&H, such notice will constitute an order to begin performing the work within the approved time schedule. D&H shall reimburse METRO-NORTH for the incremental costs of maintaining any properties or facilities rehabilitated or upgraded pursuant to this section.

(c) If it appears that the cost of the work will exceed the Force Account Estimate, METRO-NORTH will notify D&H of the status of the project and, if it is to proceed, the need to secure additional authority for such additional cost. METRO-NORTH shall not be obligated to incur costs in excess of the approved Force Account Estimate. D&H may, at its discretion and subject to METRO-NORTH's approval, which approval shall not be unreasonably withheld, furnish material for any upgrading, special projects, or new construction requested hereunder. If METRO-NORTH does not undertake the work, D&H or its contractors shall be granted reasonable access to METRO-NORTH Rail Properties to carry out the work, provided that the conduct of such work by the D&H does not result in any labor disturbance by METRO-NORTH forces.

(d) METRO-NORTH agrees to use its best efforts to provide services necessary to deal with emergency situations on METRO-NORTH property or facilities or with other operating emergencies. Oral notice of the need for emergency service may be acted upon, subject to written confirmation as soon as possible, but in any event within 5 days after verbal authorization. METRO-NORTH may submit bills to D&H for such services and shall include therein the name and title of the officer who requested and authorized such services. Projects desired by one party involving special projects or new construction involving costs of \$25,000 or less may be carried out by the other upon oral notice subject to the same confirmation and billing procedures as for emergency services.

ARTICLE V
COMPENSATION

Section 5.01. METRO-NORTH Rail Properties

D&H shall pay METRO-NORTH on a locomotive and car-mile basis for freight service operated over the Exhibit 1 Rail Properties. Upon the effective date of this Agreement the billable rate shall be \$0.20 per locomotive and car mile for all such miles up to 900,000 during each 90 consecutive calendar day period and \$0.344 per locomotive and car mile for all such miles in excess of 900,000 each such 90-day period. These rates, as revised pursuant to Section 5.02, shall continue in effect unless modified by METRO-NORTH on not less than thirty (30) days' notice to D&H. Any such modification shall be based upon an analysis performed by METRO-NORTH of all of its relevant costs of maintaining the Exhibit 1 Rail Properties and METRO-NORTH shall furnish that analysis to D&H in connection with said modifications.

Section 5.02 Revision of the Billable Car-Mile Rates

Beginning January 1, 2000, and each January 1 thereafter, the Billable Car-Mile Rates identified in Section 5.01 shall be increased or decreased on a cumulative basis by the same percentage by which the cost of material, prices, wage rates and supplements combined (excluding fuel), as reflected in the Annual Indexes of Chargeout Prices and Wage Rates, East, (1977=100), Series RCR, included in the "AAR Railroad Cost Indexes", and supplements thereto, issued by the Association of American Railroads or other generally recognized index, if such AAR index ceases to be published, has increased or decreased in the preceding calendar year, using 1997 (268.1) as the base index year. Car-Mile rates calculated in accordance with this provision shall be stated to the nearest one-tenth (1/10) of a cent.

Section 5.03. Billing Procedures - Monthly Charges

METRO-NORTH shall bill D&H subsequent to the close of each month for the car miles operated over the METRO-NORTH Rail Properties listed in Exhibit 1 during the previous month. D&H shall pay METRO-NORTH's invoice within thirty (30) days of receipt.

Section 5.04. Late payment

Interest may be charged based on the prime interest rate of the Citibank, N.A., or any successor, in effect as of the due date of the invoice in the event D&H fails to pay METRO-NORTH within forty-five (45) days after D&H's receipt of METRO-NORTH's Car Mile statement for reimbursement pursuant to Section 5.01.

Section 5.05. Billing Addresses

Billing information, including invoices, shall be directed to:

IF D&H: General Manager
 Delaware & Hudson Railway Company, Inc.
 200 Clifton Corporate Parkway
 Clifton Park, New York 12065

IF METRO NORTH: METRO NORTH COMMUTER RAILROAD CO.
 Manager Accounts Payable
 Grand Central Station
 P.O. Box 3581
 New York, New York 10163

Section 5.06. Disputed Amounts

(a) In the event that there is a dispute as to the amount to be paid, the undisputed portion of the invoice amount shall be remitted and the amounts disputed shall be resolved in accordance with the provisions of Article IX of this Agreement.

(b) For those cases decided through binding arbitration, as set forth in Article IX of this Agreement, if it is determined that there are monies due to the billing Party, there shall be an interest charge levied in accordance with Section 5.04. Interest shall be computed based on the period of time between the original due date of the payment and the date the amount due is remitted.

Section 5.07. Maintenance and Inspection of Records

(a) Each of the Parties shall keep and maintain its books, records, accounts, and supporting workpapers which relate to operations, maintenance, and costs of the Rail Properties for a period of two (2) years, except that records relating to matters in dispute shall be retained until such dispute is resolved. Such records shall be maintained in such a manner as to enable either party to verify the assimilation of charges to a particular bill or work order number and may be computer generated. Additional

information as may be required to verify billing, including, but not limited to logs, derailment reports, unusual incident reports, prepared in the normal course of business shall be made available as provided in Exhibit 4 to this Agreement.

(b) During normal business hours, each of the Parties shall have the right to inspect, examine, audit, and reproduce all books, records, accounts, and supporting workpapers of the other Party which relate to the operations, maintenance and costs of the Rail Properties in support of billings as rendered.

ARTICLE VI

LIABILITY APPORTIONMENT

Section 6.01. Scope

Financial responsibility for liability for personal injury, death or property damage that may result from activities conducted hereunder shall be allocated as follows in this Article. In no case shall any party claim compensation for loss of revenue from any other party.

Section 6.02. D&H Employees

D&H agrees to protect, defend, indemnify and save harmless METRO-NORTH, irrespective of any negligence or fault of METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any D&H Employee, or for loss of, damage to, or destruction of the property of any such D&H Employee. "D&H Employee" means a person who is an employee of D&H or any agent or contractor of D&H (other than METRO-NORTH), or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. Any D&H Employees who are involved in D&H's provision of services to METRO-NORTH under this agreement shall be regarded as employees of D&H, and not of METRO-NORTH. D&H Employees who are also METRO-NORTH revenue passengers at the time in question shall be treated as METRO-NORTH Passengers and not D&H Employees, for purposes of this Agreement.

Section 6.03. METRO-NORTH Employees

METRO-NORTH agrees to protect, defend, indemnify and save harmless D&H, irrespective of any negligence or fault of D&H or D&H Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any METRO-

NORTH Employee, or for loss of, damage to, or destruction of any property of any such METRO-NORTH Employee. "METRO-NORTH Employee" means a person who is an employee of METRO-NORTH or any agency or contractor of METRO-NORTH (other than D&H), or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. METRO-NORTH Employees who are involved in METRO-NORTH's provision of services to D&H under this Agreement shall be regarded for purposes of this Agreement as employees of METRO-NORTH, and not of D&H.

Section 6.04. D&H Property

D&H agrees to protect, defend, indemnify and save harmless METRO-NORTH, irrespective of any negligence or fault of METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to, or destruction of any D&H Property. "D&H Property" means any locomotive, railroad car, including contents, and any other property, real or personal, owned, leased used by or otherwise in the custody or possession of D&H, other than any D&H rolling stock operating in METRO-NORTH trains.

Section 6.05. METRO-NORTH Property

(a) In the event of a collision or occurrence involving a METRO-NORTH train and a D&H train, irrespective of any negligence or fault of D&H or D&H Employees, or METRO-NORTH or METRO-NORTH employees, or howsoever the same shall occur or be caused, METRO-NORTH and D&H shall each bear 50% of the liability for all loss of, damage to or destruction of any such METRO-NORTH Property. "METRO-NORTH Property" means any locomotive, railroad car, including contents, and any other property, real or personal owned, leased, used by or otherwise in the possession of METRO-NORTH.

(b) In the event of a collision or occurrence involving a D&H train but not a METRO-NORTH train, D&H agrees to indemnify and save harmless METRO-NORTH irrespective of any negligence or fault of METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be caused, for all loss of, damage to or destruction of any METRO-NORTH Property.

(c) Except as provided in Sections 6.05(a) and (b), above, METRO-NORTH agrees to protect, defend, indemnify and save harmless D&H, irrespective of any negligence or fault of D&H or D&H Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any METRO-NORTH Property.

Section 6.06. D&H Passengers

D&H agrees to protect, defend, indemnify and save harmless METRO-NORTH, irrespective of any negligence or fault of METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any D&H Passenger, and for loss of, damage to, or destruction of any property of any such passenger. "D&H Passenger" means any person other than a D&H Employee who is on board, getting on, or alighting from a D&H freight train.

Section 6.07. METRO-NORTH Passengers

(a) In the event of a collision or occurrence involving a METRO-NORTH train or equipment and a D&H train or equipment, irrespective of any negligence or fault of D&H or D&H Employees or METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be caused, METRO-NORTH and D&H shall each bear 50% of the liability for injuries to or death of any METRO-NORTH Passenger and for loss of, damage to or destruction of the property of any such passenger. "METRO-NORTH Passenger" means (1) any person other than a METRO-NORTH employee who is on board a METRO-NORTH train, except for D&H Employees directly engaged in their employment for D&H (not commuting to or from work), (2) any person who is not on board a METRO-NORTH train, but who has either purchased a ticket valid on METRO-NORTH trains or holds a travel voucher reflecting personal pass privileges granted by METRO-NORTH authorizing travel on a METRO-NORTH train, and (3) any person who is on, getting on or alighting from a METRO-NORTH train, or who is in a METRO-NORTH passenger station or on the platform or in the parking area for the purpose of meeting or delivering a person described in (1) or (2) of this sentence, or to purchase a METRO-NORTH ticket or obtain travel information.

(b) Except as provided in Section 6.07(a) above, METRO-NORTH agrees to protect, defend, indemnify and save harmless D&H, irrespective of any negligence or fault of D&H or D&H Employees, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any METRO-NORTH passenger and for loss of, damage to, or destruction of property of any such passenger.

Section 6.08. Third Parties: D&H Trains - Grade Crossing, Trespassers and Off-Premises

Subject to the provisions of Section 6.11 of this Agreement, D&H agrees to protect, defend, indemnify and save harmless METRO-NORTH irrespective of any negligence or fault of METRO-NORTH or METRO-NORTH Employees, or howsoever the same shall occur or be

caused, from any and all liability for injury to or death of any person, for loss of, damage to, or destruction of any property other than persons and property for which METRO-NORTH is responsible under Sections 6.03, 6.05 and 6.07 of this Agreement, if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a D&H Train at the intersection at grade, of a street or road, whether public or private, and the tracks over which such D&H Train is operating, (ii) arises from a collision of a vehicle or a person with a D&H train on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a D&H Train.

Section 6.09. Third Parties: METRO-NORTH Trains - Grade Crossing, Trespassers and Off-Premises

METRO-NORTH, agrees to protect, defend, indemnify and save harmless D&H, irrespective of any negligence or fault of D&H or D&H Employees, or howsoever the same shall be caused, from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which D&H is responsible under Sections 6.02, 6.04 and 6.06 of this Agreement, if such injury, death, loss, damage, or destruction either (i) arises from a collision of a vehicle or a person with a METRO-NORTH Train at the intersection at grade, of a street or road, whether public or private and the tracks over which such METRO-NORTH Train is operating, (ii) arises from a collision of a vehicle or a person with a METRO-NORTH train on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a METRO-NORTH Train.

Section 6.10. Wrecking Charges

Nothing in this Agreement shall preclude the allocation or direct charging, in accordance with the circumstances of the case, for wrecking service resulting from an occurrence covered by Article VII of this Agreement.

Section 6.11. Liabilities Arising from Hazardous Substances

Any other provision of this Article VI to the contrary notwithstanding:

D&H agrees to indemnify and save harmless, MTA and METRO-NORTH irrespective of any negligence or fault of METRO-NORTH or

METRO-NORTH employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which METRO-NORTH is responsible under Section 6.03 hereof, where such injury, death, loss, damage or destruction arises from the transportation in D&H Trains on METRO-NORTH Rail Properties of hazardous or toxic materials as defined in applicable federal or state laws or regulations, and including petroleum, crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance by such federal or state laws or regulations. Hazardous or toxic materials shall also include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Notwithstanding any provisions of this Agreement to the contrary, damage for which D&H is responsible under the preceding paragraph shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and restoration of hazardous or toxic materials on such property to a level commensurate with the existing condition of such property immediately prior to such damage.

Section 6.12. Liability Insurance

For so long as D&H has trackage rights over METRO-NORTH Rail Properties, D&H shall maintain liability insurance covering the contractual indemnification and hold harmless covenants set forth in this Article VI. Such liability insurance shall cover any and all damages, liabilities, claims and lawsuits in connection with or arising out of the operation of D&H freight service, including, but not limited to, liability under the Federal Employer's Liability Act and the Federal Safety Appliance Acts. Deductible amounts of such insurance shall be those generally applicable to D&H operations. METRO-NORTH, MTA and American Premier Underwriters, Inc., and its subsidiaries shall be named as additional insureds under such policy(s).

Section 6.13. Handling of Claims and Lawsuits: Cooperation

In the event a claim is filed or lawsuit brought against D&H or METRO-NORTH (including MTA) asserting a liability against which one party has agreed to indemnify and save harmless the party receiving the claim or being sued, the indemnifying party shall, at its sole cost and expense, investigate and handle the claim and

defend the lawsuit and save harmless the indemnified party against all costs and expenses thereof (including reasonable attorneys' fees) and pay any legitimate claim, settlement or final judgments. The party receiving any claim or notice of suit shall promptly advise the indemnifying party and provide all information which from time to time may be required provided, however, that in those instances in which the parties have agreed to share the passenger liability, it is agreed that METRO-NORTH will handle all claims and lawsuits involving its passengers. Each party agrees that it will furnish the other with all available information in its possession relating to lawsuits and claims made for injury, death, loss, damage or destruction of property whenever requested by the party handling the claim or lawsuit. All expenses incurred in connection with the furnishing of such information shall be borne by the requesting party.

Section 6.14. Gross Negligence

Notwithstanding any provision of this Agreement to the contrary, neither party will be required to defend, indemnify or save harmless the other party or to bear any portion of liability for injury, death or property damage for any occurrence arising out of gross negligence on the part of the other party or any of its employees.

ARTICLE VII

CLEARING WRECKS

Section 7.01. Incidents on METRO-NORTH Rail Properties

(a) With respect to incidents on METRO-NORTH Rail Properties, the following provisions shall apply:

(1) When, as a result of the operation of a D&H Train on METRO-NORTH Rail Properties, rerailing, wrecking service or wreck train service is required, METRO-NORTH, with the cooperation, assistance, and advice of D&H, shall have the option of having D&H perform such service, or perform it by itself or by its contractor at D&H's sole cost and expense, including, but not limited to, removal of damaged equipment.

(2) When, as a result of METRO-NORTH's and D&H's joint use of Exhibit 1 Rail Properties, rerailing, wrecking service or wreck train service is required, the provisions of Section 7.01(b)(1) and (2) will apply, except that all costs, including without limitation, liability costs, will

be apportioned in accordance with the provisions of Article VI.

(b) All D&H locomotives, cars, equipment, lading (including loss thereof), and salvage from any such wreck or derailment under the management or control of METRO-NORTH shall remain the property of D&H. All METRO-NORTH locomotives, cars, equipment, lading (including loss thereof), and salvage involved in such wreck or derailment shall remain the property of METRO-NORTH

Section 7.02 Reports of Incidents

In the event METRO-NORTH performs any service in connection with an incident covered by Section 7.01 on its Rail Properties that is billable to D&H, METRO-NORTH shall maintain a record of said service(s) in accordance with the documents set forth in Exhibit 4.

ARTICLE VIII

TERM, TERMINATION, RENEGOTIATION, DEFAULT, DISCONTINUANCE

Section 8.01. Term

This Agreement shall be for an initial term of five (5) years commencing as of June 21, 1999. Thereafter, unless sooner terminated under applicable provisions of this Article VIII, this Agreement shall continue in force from year to year, subject to termination by any party on one year's notice. If such notice is given, this Agreement shall continue in force pending renegotiation.

Section 8.02. Termination

This Agreement shall continue in full force and effect as set forth in Section 8.01 except that a non-defaulting party may elect to terminate this Agreement if an Event of Default is not timely cured or satisfied following a Declaration of Default pursuant to Section 8.03(a) and (b).

Section 8.03. Default

(a) Each of the following shall constitute an event of default (an "Event of Default") under this Agreement:

(1) The failure to pay in full any payment pursuant to Article V of the Agreement; or

(2) The failure to observe any other covenant or obligation contained in this Agreement, which failure shall have continued for more than thirty days after the other party shall have given written notice demanding performance thereof; or

(3) Any material representation or warranty made in this Agreement shall prove untrue; or

(4) Any proceeding shall be commenced by or against either party which might result in any modification of the obligations of such party hereunder under any bankruptcy, insolvency, or similar law (unless all of the obligations of such party under this Agreement shall have been duly assumed by a trustee or successor to such party within sixty days after such proceeding shall have commenced).

(b) In the event an Event of Default shall have occurred and be continuing hereunder, the party not in default, upon written notice to the other party, may make a declaration of default (a "Declaration of Default") hereunder and exercise any or all of the following remedies:

(1) Terminate this Agreement by and upon thirty (30) days' written notice to the party in default; and

(2) Pursue any other remedy at law or in equity in any court of competent jurisdiction.

(c) Failure of a party to make a Declaration of Default shall not be considered a waiver of any remedies available to it under this Agreement or otherwise. Nor shall an Event of Default be considered wiped out or satisfied by failure of a party to make a Declaration of Default with respect thereto.

Section 8.04. Discontinuance of D&H Freight Service

Notwithstanding the provisions of this Agreement, D&H may seek regulatory authority to abandon its freight operations, in whole or in part, over the METRO-NORTH Rail Properties during the term of the Agreement. D&H shall provide written notice of its intent to do so to METRO-NORTH. D&H's rights hereunder to operate over and utilize METRO-NORTH Rail Properties shall terminate effective with any such abandonment of freight operations.

ARTICLE IX

DISPUTE RESOLUTION

Section 9.01. Resolution of Disputes

In the event, and at such time as, any dispute shall arise under this Agreement between D&H and METRO NORTH, including any disagreement with any current D&H, METRO-NORTH, or federally mandated operating or safety rule, order, procedure, or standard applicable to such properties, either party shall have the right to submit such dispute or matter for binding determination by an arbitration panel.

The parties agree that before any dispute is submitted to arbitration every effort will be made to resolve said dispute. In order to facilitate resolution of any operating or cost dispute, the parties agree to establish a committee, consisting of three members to be appointed by D&H and three members to be appointed by METRO-NORTH.

In the event the committee is unable to resolve any dispute or controversy within sixty (60) days of submission, it may be submitted by a party to binding arbitration as follows:

(i) METRO-NORTH or D&H shall notify the other of its intention to arbitrate;

(ii) Such notice shall include a detailed statement of the subject matter of the arbitration and shall designate one arbitrator;

(iii) Within fifteen (15) days after such notification, the notified party shall designate a second arbitrator and shall notify the party seeking arbitration of such designation;

(iv) Within fifteen (15) days after the designation of the second arbitrator, the two arbitrators so designated shall appoint a third arbitrator, except that if a second arbitrator has not been designated as provided in clause (iii), no arbitrator other than the one first named need be designated (in the event of the failure of the two arbitrators thus named to agree upon a third arbitrator within twenty (20) days after their appointment, then the third arbitrator may be named by the Chief Judge of the United States District Court for the Southern District of New York);

(v) The arbitrators, or under the circumstances set forth in clause (iv), the arbitrator, shall promptly hear and decide the issue or issues submitted to them giving each party reasonable notice of the time and place of hearing;

(vi) The arbitrators, or a majority of them, shall promptly make their decision and award in writing, serving a copy on both of the parties, and such decision shall be final and binding upon the parties; and

(vii) Such decision shall also provide which of the parties is, or if to be apportioned, in what proportion the parties are, to bear the expenses of the arbitration, such decision to be based upon the merits of the positions taken by the parties with respect to the matter or matters in dispute.

ARTICLE X.

GENERAL PROVISIONS

Section 10.01. Labor Rights

(a) D&H agrees that its entrance upon and use of METRO-NORTH's properties is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of D&H's employees or its contractors with respect to any other current or future use of METRO-NORTH's properties, including, but not limited to, maintenance, operation, rehabilitation, and improvement thereof by METRO-NORTH or METRO-NORTH's contractors. D&H shall indemnify, defend, and hold harmless METRO-NORTH and METRO-NORTH's contractors against any liability arising from any claim of employment rights, or employment protection, arising from the performance of any work for D&H on METRO-NORTH's properties by METRO-NORTH or the METRO-NORTH's contractors under this Agreement.

(b) Nothing contained in this Agreement shall require either party to perform any service or take any action which would violate any term or condition of any then-current labor agreement between the respective parties and any organization representing any of their respective employees or which would violate any applicable law.

Section 10.02. Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall assign or transfer this Agreement or any of its rights thereunder to any person, firm or corporation without obtaining the prior written consent of the other parties to this Agreement, which consent shall not be unreasonably withheld. The

sale or conveyance of D&H by Canadian Pacific Railway Company to an unrelated third party shall be deemed an assignment.

Section 10.03. Force Majeure

METRO-NORTH will be excused from its obligation under this Agreement to provide, operate, and maintain METRO-NORTH Rail Properties where non-performance is occasioned by any event beyond its control.

Section 10.04. Amendment

(a) No term or provision in this Agreement may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the parties to this Agreement.

(b) All approvals and consents required under this Agreement shall be in writing, signed by a person designated in writing for such purpose unless otherwise provided in this Agreement or agreed to in writing by the parties. Any oral notices permitted by this Agreement shall be promptly confirmed in writing.

Section 10.05. Notices

(a) Unless otherwise provided in this Agreement, any notices required in this Agreement shall be in writing and sent to the parties at the addresses listed below, unless either party shall inform the other party in writing of any change in that address:

D&H: Jacques J. Cote, President
The Delaware & Hudson Railway Company, Inc.
1100 de La Gauchetiere West (Suite 300)
P.O. Box 6042 - Station Centre Ville
Montreal, Quebec H3C3E4
CANADA

METRO-NORTH: Metro North Commuter Railroad
Attention: Vice President - Operations
347 Madison Avenue
New York, NY 10017, USA

Section 10.06. Effect of Execution and Performance

The parties do not, by reason of their execution of and the performance of their obligations under this Agreement, assume any other obligations or liabilities not imposed upon them by law.

Section 10.07. No Representations and Waivers

Except as expressly provided herein, the parties make no representations or warranties and waive no rights or remedies.

Section 10.08. Governing Law

This Agreement is deemed to have been entered into in the State of New York and shall be interpreted in accordance with the laws of the State of New York.

Section 10.09. Effective Date

The effective date of this Agreement shall be June 21, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

ATTEST:

THE DELAWARE & HUDSON RAILWAY
COMPANY, INC.

By _____

ATTEST:

APPROVED
AS TO FORM 

METRO-NORTH COMMUTER RAILROAD COMPANY

By _____

The obligations under this agreement of The Delaware & Hudson Railway Company, Inc., our wholly-owned subsidiary corporation, are hereby guaranteed. This guarantee shall cease in the event D&H is sold or conveyed to an unrelated third party.

ATTEST:

CANADIAN PACIFIC RAILWAY COMPANY

By _____

EXHIBIT 1

METRO-NORTH RAIL PROPERTIES

LINE

Hudson Line

BETWEEN

Milepost 6.6 [CP7] and Milepost 75.8
[Division Post]

EXHIBIT 2

CLEARANCES ON METRO-NORTH RAIL PROPERTIES

A. The vertical clearances on Metro-North Rail Properties shall be those Clearances contained in Metro-North Commuter Railroad Timetable No.1, effective April 11, 1999, and set forth below:

<u>TERRITORY</u>	<u>CAR RESTRICTIONS</u>
Div. Post to CP75	Cars higher than 17 feet 4 inches
CP 75 to CP7	Cars higher than 17 feet 0 inches

B. The lateral or horizontal clearances, especially with reference to High-level platforms, shall be governed by applicable state or federal laws/regulations and Conrail MW-4 Standards.

Exhibit 3
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UNUSUAL OCCURRENCE REPORT		1. MONTH		NUMBER		2. PREPARED BY:	
3. TYPE OF OCCURRENCE		4. CLASS OF TRACK					
5. REGION		6. DIVISION		7. DATE		8. TIME	
9. LINE BRANCH YARD		10. TYPE		11. PLACE		12. STATE	
13. ROAD		14. MILEPOST		15. TRACK NO.		16. TRACK NAME	
17. HAZARDOUS MATL.		18. AUTH. SPEED		19. OBSTRUCTIONS			
20. TRAIN SYMBOL		21. LEAD ENG. NO.		22. ADDITIONAL UNITS (NO.)		23. DIRECTION	
24. LOADS		25. EMPTIES		26. ENGINEMAN		27. CONDUCTOR	
28. ACTIVITY		29. ENGINE DERAILED		30. THEIR LOCATIONS IN TRAIN		31. NAME OF RELIEF (WRECKING) FORCE	
32. NAME OF RELIEF (WRECKING) FORCE		33. KIND		34. CALLED		35. ARRIVED	
36. RAILING COMPLETE		37. ADDITIONAL INFORMATION		38. CLASS OF PERSON		39. PASSENGER	
40. NAME, DESCRIPTION AND DISPOSITION		41. CAUSE CODE		42. DESCRIPTION		43. EQUIPMENT INVOLVED - INITIAL & NUMBER	
44. COMMITTEE		45. EQUIPMENT DAMAGE		46. TOTAL RR DAMAGE		47. TOTAL COST	
48. REMARKS		49. PROPERTY OF OTHERS		50. WRECKING COST		51. OTHER COSTS	

Daily Operation Log

Transportation Department + amtrak

via mailroom

SAMPLE



Date: May 4, 1999
Tuesday



Metro-North Railroad

METRO-NORTH COMMUTER RAILROAD

Exhibit 5

Page 3

Tuesday, May 4, 1999

SAMPLE

HARMON	POUGHKEEPSIE	N.W.P.	BREWSTER	STAMFORD	NEW HAVEN
Rain 53	Rain 50	Rain 55	Rain 53	Rain 53	Rain 50
Cldy 63	Cldy 60	Cldy 66	Cldy 64	Cldy 63	Cldy 60
Cldy 53	Cldy 47	Cldy 47	Cldy 49	Cldy 52	Cldy 48

CHIEF RAIL TRAFFIC CONTROLLER'S LOG OF UNUSUAL OCCURRENCES

TIME INCIDENTS

- 12 02:25 New Haven Line: RTC District "E" reports all circuits on all tracks at CP 233 and Stamford Station down. Conductor Burke working with the center island platform project reports cable may have been cut by the contractors. Trouble Desk, Office Technician and Communications Dept. all notified.
- 03:30 C & S Supv. Ricci reports Splicers will be needed to repair a damaged communication cable under track 3 side platform at Stamford Station. Communications Dept. en route and Splicers have been ordered.
- 05:00 All trains will operate on No. 4 track at Stamford to assist the C & S Dept. in making repairs off No. 3 track. Conductor Flags at Stamford and Riverside to instruct the Customers. Capital Projects R. Doshner to Cos Cob and TM McCarthy at Old Greenwich. C & S Supv. Ricci reports repairs projected to be complete at 0600 Hrs.. The following were notified: Mr. Walker, Mr. Kiniry, Mr. Favilla, Mr. Ferrara, Mrs. Anders, Mr. Meyers, TM Schilling and TM McCarthy.
- 06:15 All circuits are up except on track No.3 in CP 233's interlocking, able to clear all signals except for the 3W and the 4E signals at CP 233. RTC reports necessary to flag by both signals...EMTF, Operations Group were ntfd.
- 08:04 Asst Supt Meyers reports the signal dept made repairs on track No.3 and we are able to clear the 3W signal, RTC E reports trains report that the 3W signal clears in the field but does not indicate clear on his screen...Signal dept was ntfd.
- 10:20 RTC E reports he is now able to clear the 4W signal at CP 233, he also reports he is showing proper indications on all tracks at CP 233. T/M Meyers ntfd.
- 13:30 Signal supv Fazzino reports all repairs are complete and all signals, circuits and switches at CP 233 are working as intended.
- 23:00 Trouble Desk reports contractors cut 7 cables (2 in service). The 200HTZ cable (feed for the track circuits) was spliced and working as intended. The 75 pair communication cable was also spliced and working as intended.
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- 1043 06:50 New Haven Line: Engineer of train 1409 reports he noticed a problem with the rear pantograph of train 1018 while he was passing him at CP 216. RTC E instructed 1018 to stop his train, engineer reports they are stopped on track 2 in CP 216's interlocking. EMTF & Operations, Power Director, T/M DiPisa, Fleet Management, P/A console ntfd.
- 06:58 Crew of train 1018 reports the horn on the rear pantograph is