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November 7, 2006

George W. Mayo, Jr.
Partner
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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
NOV 7 2006
Part of
Public Record

Re: STB 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.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of the following: (1) Verified Notice of Exemption of Midtown TDR Ventures LLC Pursuant to 49 C.F.R. § 1150.31, and (2) Midtown TDR Ventures LLC's Motion To Dismiss Verified Notice of Exemption. Pursuant to 49 CFR § 1002.2(f), a filing fee check in the amount of \$1,500 is enclosed. Also enclosed are three diskettes containing the text of each document.

If you have any questions or I can be of any assistance, please let me know.

Respectfully,

George W. Mayo, Jr.

GWM/kbb

Enclosures

FILED
NOV 7 - 2006
SURFACE
TRANSPORTATION BOARD

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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.

**VERIFIED NOTICE OF EXEMPTION
OF
MIDTOWN TDR VENTURES LLC
PURSUANT TO 49 C.F.R. § 1150.31**



ENTERED
Office of Proceedings

NOV 8 2006

Part of
Public Record

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ATTORNEYS FOR MIDTOWN TDR
VENTURES LLC

Dated: November 7, 2006

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.

**VERIFIED NOTICE OF EXEMPTION
OF
MIDTOWN TDR VENTURES LLC
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31 et seq., Midtown TDR Ventures LLC (“Midtown”), a noncarrier and Delaware limited liability company, hereby submits this Verified Notice of Exemption (“Notice”) to acquire 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”).

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 will not conduct any rail transportation services (freight or

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.

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.

Contemporaneously with the filing of this notice, Midtown is filing a Motion To Dismiss the Verified Notice of Exemption (the "Motion To Dismiss"). As explained in the Motion To Dismiss, the Board lacks jurisdiction over the subject transaction because Midtown will not acquire any rail common carrier obligations subject to the Board's jurisdiction through the transaction, and the transaction will have no effect on continued performance of freight rail transportation by those railroads currently providing such service over certain of the Subject Properties (in particular, the Harlem-Hudson Line).

I. Summary of Rail Aspects of Transaction

The rail lines – referred to collectively as the "Harlem-Hudson Line" – making up part of the Subject Properties run from Grand Central Terminal in New York City, proceed north and cross the Harlem River, then at Mott Junction in the Bronx they diverge 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.

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, the Harlem-Hudson Line has been leased by APU and Owasco to the Metropolitan Transportation Authority ("MTA"), which uses 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 (subject to other provisions of the lease which could affect the termination date). 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 – which is under the exclusive control of MTA during the period of the lease – until almost two hundred and seventy years in the future.²

Freight rail service over the Harlem-Hudson Line is provided pursuant to trackage rights agreements which MTA has entered into with (a) CSX Transportation, Inc. ("CSX"), as successor to the Consolidated Rail Corporation ("Conrail") (the "CSX trackage rights"), and (b) The Delaware and Hudson Railway Company, Inc. ("D&H") (the "D&H trackage rights"). Like the MTA Lease, these trackage rights agreements will remain in place following consummation of the subject transaction, and will be unaffected by that transaction.

For context, it is useful to understand the history of each of these trackage rights agreements. The CSX trackage rights can be traced back to a complicated series of transactions growing out of 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 what today are the CSX trackage rights). By way of general summary, Penn Central – which owned the Harlem-Hudson Line – leased the line to MTA in the early 1970s, reserving for itself trackage rights to provide freight, passenger and commuter service. Thereafter, pursuant to the restructuring accomplished under the Rail Act and the Final System Plan developed under that statute, on April 1, 1976 these trackage rights were conveyed to Conrail, the lease to MTA

² 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.

remained in place, and fee ownership of the Harlem-Hudson Line remained with the non-carrier parent of Penn Central, the Penn Central Corporation (which is now APU), and its subsidiaries New York & Harlem and Owasco. Id. at 1573-77. This retained fee ownership was free and clear of any transportation burdens.³

Subsequently, 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,⁴ and this agreement remains in effect today. Pursuant to this agreement, Conrail provided freight rail service over the Harlem-Hudson Line until CSX succeeded to Conrail's rights under the agreement as a consequence of the merger 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).

D&H is the other railroad providing freight rail service over a portion of the Harlem-Hudson Line. D&H is operating over the line pursuant to a trackage rights agreement with Metro-North effective June 21, 1999. This trackage rights agreement was entered into in tandem with trackage rights awarded D&H 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).

³ See Penn Central Corp. v. Consolidated Rail Corp., 611 F. Supp. 285, 292 (Sp.Ct.R.R.R.A. 1985), in which the court explained:

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

⁴ The early 1970's MTA lease was subsequently replaced by the MTA Lease referenced above.

In summary, there are two railroads currently providing freight rail service over all or part of the Harlem-Hudson Line, CSX and D&H. The trackage rights agreements under which they are performing this service, granted by MTA (and its subsidiary, Metro-North), will be unaffected by the proposed transaction. 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 this Notice.

II. Information Required under Board's Regulations

As required pursuant to 49 C.F.R. § 1150.33, the following specific information is provided with respect to the subject transaction:

(a) The full name and address of the applicant

Midtown TDR Ventures LLC
c/o Argent Ventures
551 Fifth Avenue, 34th Floor
New York, New York 10176

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence

George W. Mayo, Jr.
HOGAN & HARTSON, LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Telephone: (202)-637-5600
E-Mail: GWMayo@HHLAW.com

(c) A statement that the agreement has been reached or details about when an agreement will be reached

The parties have reached an agreement, and final documentation is in the process of being prepared. Closing of the transaction is expected to occur on or after November 14, 2006.

(d) The operator of the property

The proposed transaction will have no effect on the entities providing any form of rail service over the Subject Property. MTA, through Metro-North, will continue to provide commuter rail service pursuant to the MTA Lease (such service, of course, is not subject to STB jurisdiction). CSX and D&H will continue to provide freight rail service pursuant to the trackage rights agreements they have entered into with MTA (and Metro-North). Midtown will be the owner of the Subject Properties, and will pursue non-rail development of certain of the properties without interference with these rail transportation services.

(e) A brief summary of the proposed transaction

Name and address of transferring parties. The transferring parties are (i) American Premier Underwriters, Inc., on its own behalf and as successor by merger to The New York and Harlem Railroad Company; (ii) APU's wholly owned subsidiary, The Owasco River Railway, Inc.; and (iii) APU's parent, American Financial Group, Inc. The address for APU and its subsidiary, Owasco, is: American Premier Underwriters, Inc., 580 Walnut Street, 11th Floor, Cincinnati, Ohio 45202. The address for AFG is: American Financial Group, Inc., One East Fourth Street, Cincinnati, Ohio 45202. APU, for itself and as New York & Harlem's successor, is selling the fee interest in the Grand Central Terminal and the real estate relating to the rail lines that are the subject hereof, as well as a majority of the air rights emanating from Grand Central Terminal lot and an adjacent lot. As part of the Penn Central bankruptcy reorganization, some of APU's interest was transferred to Owasco, including the Hudson line. AFG is selling the transferable air rights that it previously acquired from APU and New York & Harlem.

Proposed time schedule for consummation of transaction. The transaction is currently scheduled to close on or after November 14, 2006.

Mile-posts of the subject property.

<u>LINE SEGMENT</u>	<u>MILEPOSTS</u>
GCT-MO Junction	0.0 to 5.2
MO Jct. – Woodlawn Jct.	5.2 to 11.8
Woodlawn Jct. – No. White Plains	11.8 to 23.5
No. White Plains – Putnam Jct.	23.5 to 55.3
Putnam Jct. – Pawling	55.3 to 64.1
Pawling – Wassaic	64.1 to 82.0
MO Jct. – Spuyten Duyvil	5.2 to 11.0
Spuyten Duyvil – Croton Harmon	11.0 to 33.4
Croton Harmon – Beacon	33.4 to 58.6
Beacon – Poughkeepsie	58.6 to 75.7

Total route miles being acquired: Approximately 156 miles.

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

A map of the rail lines being conveyed as part of the Subject Properties is attached as Exhibit A.

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

A certification that Midtown's projected freight rail operating revenues do not exceed those that would qualify it as a Class III carrier is attached as Exhibit B. Under 49 C.F.R. § 1201 (1-1), carriers having annual carrier operating revenues of \$20 million or less (with certain adjustments) are grouped as Class III carriers. Here, Midtown will not be a carrier at all. It will not conduct, or be obligated to conduct, any rail transportation operations, and it will not

realize any freight rail revenues. Under the MTA Lease (to which Midtown will succeed as lessor), it will be paid by MTA \$2,369,010 per annum until June 30, 2019; \$2,043,500 per annum until December 31, 2104, and \$2,043,500 per annum until March 30, 2274 (the lease expiration date is February 28, 2274, but the payment obligation runs to the later date). These payments compensate Midtown for MTA's control and use of the subject lines for commuter and other purposes.

Because Midtown's expected annual freight revenue will not exceed \$5 million, the notice requirements established under 49 C.F.R. § 1150.32(e) are not applicable.

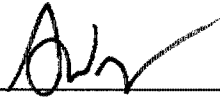
Caption summary

Pursuant to 49 C.F.R. § 1150.34, a proposed caption summary of the subject transaction is attached as Exhibit C.

Environmental Review and Historic Report

No environmental review is necessary for the proposed transaction because the railroad operations conducted on the Subject Properties over which the Board has jurisdiction (that is, the CSX and D&H freight trackage rights operations) are not affected by the transaction. See 49 C.F.R. § 1105.6(c)(2). Similarly, no Historic Report is required because further STB approval would be required to abandon any freight rail service currently being provided over the Subject Properties, and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. See 49 C.F.R. § 1105.8(b)(1).

Respectfully submitted,

By:  _____

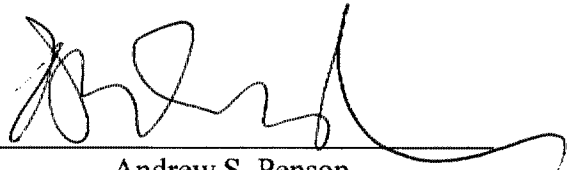
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Telephone: (202)-637-5600
E-Mail: GWMayo@HHLAW.com
RLMontague@HHLAW.com

ATTORNEYS FOR MIDTOWN TDR
VENTURES LLC

Dated: November 7, 2006

VERIFICATION

I, Andrew Penson, declare under penalty of perjury that I am the person duly designated to execute, verify and file this Notice of Exemption on behalf of Midtown TDR Ventures LLC. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief. Executed on November 4, 2006.



Andrew S. Penson

EXHIBIT A

MAP OF SUBJECT RAIL LINES

MTA Metro-North Railroad

SULLIVAN

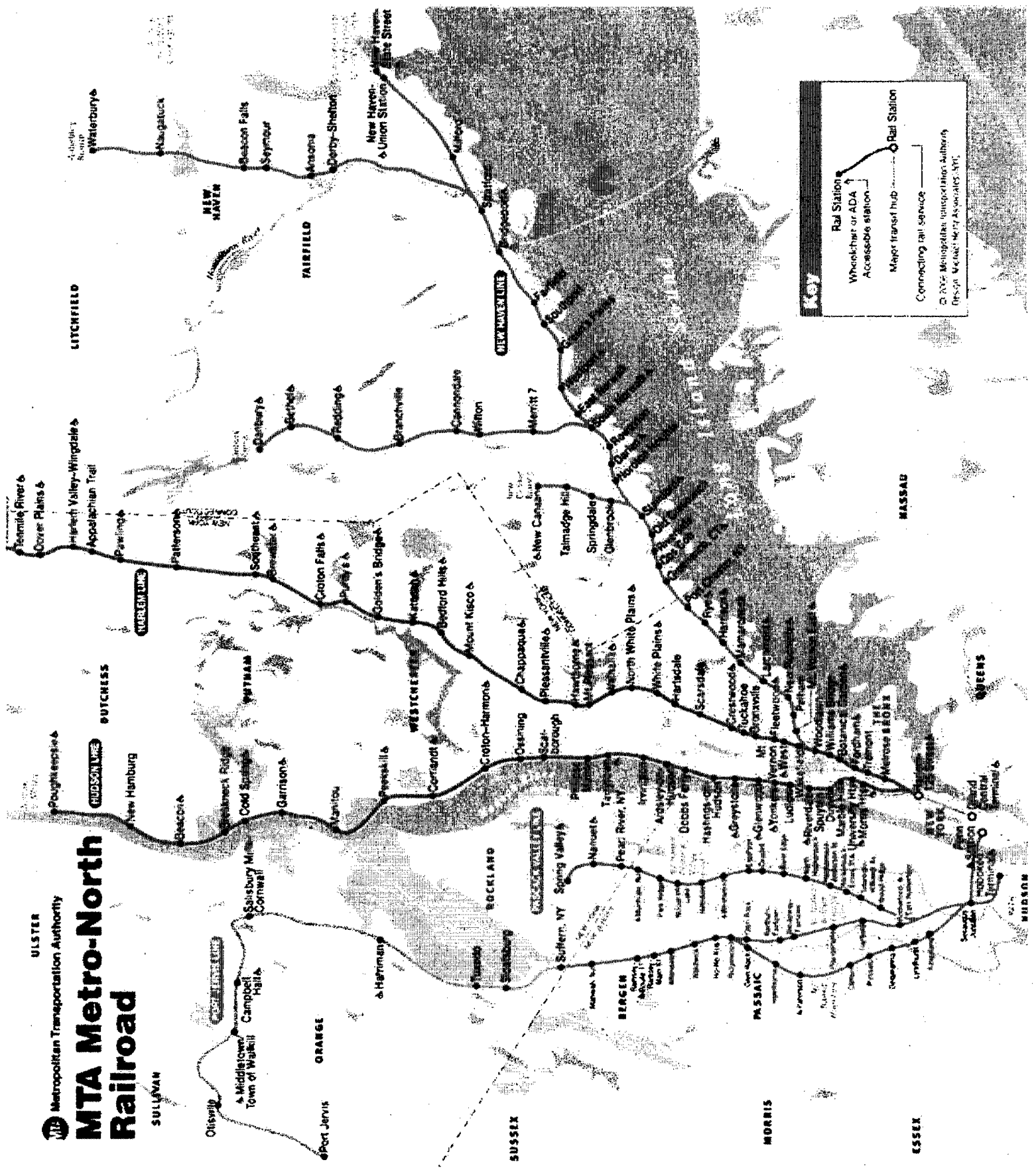
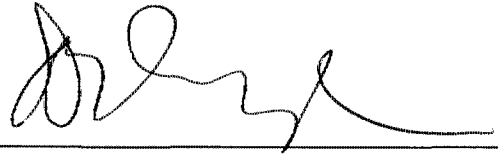


EXHIBIT B

CERTIFICATION OF APPLICANT'S PROJECTED REVENUES

CERTIFICATION

I, Andrew Penson, declare under penalty of perjury that I am knowledgeable in regard to the matters addressed in this certification, and that the projected annual revenues of Midtown TDR Ventures LLC ("Midtown") upon consummation of the proposed transaction do not exceed those that would qualify it as a Class III carrier under the provisions of 49 C.F.R. § 1201 (1-1) – that is, the projected annual revenues are not more than \$20 million. Moreover, Midtown will not provide any freight rail transportation services over the subject properties, and will not realize any freight rail operating revenues from the properties. Executed on November 1, 2006.

A handwritten signature in black ink, appearing to read 'Andrew S. Penson', is written over a horizontal line.

Andrew S. Penson

EXHIBIT C

PROPOSED CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

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 (“Midtown”) has filed a notice of exemption to acquire certain assets, including the Harlem-Hudson Line which runs between Grand Central Terminal in New York City, proceeds north and crosses the Harlem River, then at Mott Junction in the Bronx the line 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 total distance of the line is approximately 156 miles. The sellers of the subject assets, including the Harlem-Hudson Line, are collectively American Premier Underwriters, Inc., on its own behalf and as successor by merger to The New York and Harlem Railroad Company (“APU”); The Owasco River Railway, Inc.; and APU’s parent, American Financial Group, Inc.

Simultaneously with the filing of its notice of exemption, Midtown has filed a motion to dismiss the notice.

Comments must be filed with the Board and served on the applicant’s representative, George W. Mayo, Jr., Hogan & Hartson L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004-1109, Telephone: (202) 637-5600.

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