

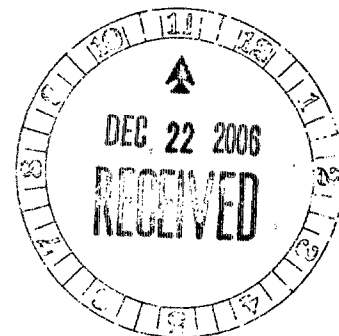


KAPLAN KIRSCH ROCKWELL

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DEC 22 2006

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Public Record



December 22, 2006

FILED

DEC 22 2006

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Maryland Transit Administration – Petition for Declaratory Order
Finance Docket No. 34975

Dear Sir:

218328

I am enclosing for filing the original and ten copies of the Verified Petition of Maryland Transit Administration (“MTA”) for Declaratory Order.

I am attaching the \$1,400.00 filing fee required for the Petition for Declaratory Order. However, MTA is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the Petition for Declaratory Order on behalf of the general public. *See* 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). MTA is a “state or local government entity” and is a non-carrier, as explained in the Petition.

With respect to the transaction described in the Petition for Declaratory Order filed today, MTA will not hold itself out as a common carrier performing freight rail service, and no common carrier rights or obligations have been transferred. MTA acquired the right-of-way, track and facilities from Consolidated Rail Corporation (“Conrail”) to accommodate MTA’s light rail service. MTA did not obtain the right or obligation to conduct freight rail service on any portion of the Line. Conrail retained and then transferred to its successor Norfolk Southern Corporation an exclusive easement for purposes of providing freight rail service on the Line.

FEES RECEIVED

DEC 22 2006

OFFICE
OF PROCEEDINGS

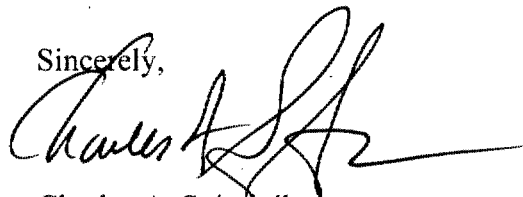
Attorneys at Law
Denver • New York • Washington, DC

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Honorable Vernon A. Williams
December 22, 2006
Page 2

Please date stamp the extra copy and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", with a long horizontal flourish extending to the right.

Charles A. Spitulnik

Enclosure

113212

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

FINANCE DOCKET NO. 34975

**VERIFIED PETITION OF THE MARYLAND TRANSIT ADMINISTRATION
FOR DECLARATORY ORDER**

Communications with respect to this document
should be addressed to:

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Washington, DC 20036]

Attorneys for the Maryland Transit Administration

Dated: December 22, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**



FINANCE DOCKET NO. 34975

**VERIFIED PETITION OF THE MARYLAND TRANSIT ADMINISTRATION
FOR DECLARATORY ORDER**

The Maryland Transit Administration, a modal administration of the Maryland Department of Transportation acting for and on behalf of the State of Maryland ("MTA"), through counsel hereby requests that the Surface Transportation Board ("Board") institute a declaratory order proceeding pursuant to 5 U.S.C. §554(e) to confirm that: (1) MTA's acquisition of a 14.22 mile length of track known as the Cockeysville Industrial Track ("CIT") was outside the Board's jurisdiction and not subject to Board approval under 49 U.S.C. § 10901 because common carrier obligations attached to the line were not transferred; and (2) MTA did not assume any common carrier rights or obligations by virtue of its acquisition of the CIT.

I. STATEMENT OF FACTS

On May 1, 1990, MTA acquired the CIT from Consolidated Rail Corporation ("Conrail"), a freight railroad, to be used as part of the Central Light Rail Line ("CLRL"), a light rail transit service between downtown Baltimore, Timonium and Glen Burnie, Maryland. The CIT is a 14.22-mile line extending from a point approximately 200 feet southeast of Howard Street in Baltimore (railroad milepost 0.0, more or less) to the end of the line east of York Road in Cockeysville, Maryland (railroad milepost 15.4, more or less).

The terms of the sale were governed by an “Agreement of Sale,” dated as of May 1, 1990, and executed by MTA and Conrail. The Agreement of Sale is attached to this Petition as Exhibit 1, and includes 8 exhibits, all of which have also been attached.¹

Conrail did not convey several parcels that it retained and continued to use for freight operations, including the “Conrail Flexi-Flo Facility” and the “Cockeysville Industrial Park Track.” Conrail retained ownership of these facilities and reserved easements over the CIT to access them. Agreement of Sale, at 1, 3 and 4. In acquiring the real property, MTA expressly did *not* assume any rights or obligations to provide freight service. Conrail reserved all such rights and obligations, and all other requirements associated with fulfilling its common carrier obligations. Agreement of Sale, at 6; Quit Claim Deed from Conrail to MTA (attached to Agreement of Sales as Exhibit C) at 2. In order to fulfill its ongoing common carrier obligations, Conrail “reserve[d] unto itself a perpetual, assignable, exclusive freight operating easement over the Property solely for the purpose of providing rail freight service to present and future customers and otherwise fulfilling its common carrier obligations.” Agreement of Sale, at 6. *See also* Quit Claim Deed (Exhibit C to Agreement of Sale), at 2.

Conrail agreed to exercise its rights under this easement (the “Operating Easement”) in accordance with an “Operating Agreement,” which was attached to the Agreement of Sale as Exhibit E. The Operating Agreement set forth the terms by which Conrail and MTA were to share use of the CIT. Recognizing Conrail’s “common carrier obligation under the Interstate

¹ The exhibits to the Agreement of Sale are as follows: Exhibit A – Plans of CIT, including Mount Vernon Yard and Conrail’s Flexi-Flo Facility; Exhibit B – Flexi-Flo Modification Agreement; Exhibit C – Quitclaim Deed; Exhibit D – General Assignment of Documents; Exhibit E – Operating Agreement; Exhibit F – Conrail’s Secretary Certificate; Exhibit G – Conrail Letter to Title Company; Exhibit H – Environmental Letter.

Commerce Act,” the Operating Agreement specifically provided that “nothing herein shall be construed as interfering with the ability of Conrail to provide common carrier service to both present and future customers to the extent this can be done without undue interference with MTA’s reasonable operating and maintenance requirement.” Operating Agreement, at 4.

The Operating Agreement, which binds the parties in perpetuity, provided for Conrail freight usage of the CLRL during specified hours (2350 to 0425 up to three days per week), and allowed Conrail to increase freight usage to between 2330 and 0500 on up to six days per week if new business were to develop that would require additional service frequency. Operating Agreement, at 5. MTA assumed general repair and maintenance obligations for the track. Operating Agreement, at 3a. However, the Operating Agreement obligated MTA to make changes or betterments to the track requested by Conrail, the cost of which work Conrail would reimburse. Operating Agreement, at 2a. MTA may also perform track changes on its own initiative, but only if such changes do not affect Conrail’s rights and abilities to meet its common carrier obligations. Operating Agreement, at 1a.

Finally, MTA assumed control over dispatch of trains. Operating Agreement, at 5a. The Operating Agreement required trains and equipment of each party to “be operated in such manner as will afford the most economical and efficient manner of movement of all traffic[.]” Operating Agreement, at 9a. However, light rail service was to be given preference at all times other than designated freight service hours. *Id.*

Norfolk Southern Railway Company (“NSR”) acquired ownership of the CIT when it acquired control of certain assets of Conrail in 1999. *CSX Corp, et al. – Control – Conrail, Inc., et al.*, 3 S.T.B. 196 (1998); *CSX Corp., et al – Control and Operating Leases/Agreements – Conrail, Inc., et al.*, STB F.D. No. 33388 (Sub-No. 94) (Service Date Nov. 7, 2003). NSR then

sought to abandon its freight operating rights on the line. *Norfolk S. Ry. Co. – Abandonment Exemption – In Baltimore Co., MD*, STB Docket No. AB-290 (Sub-No. 237X) (Petition for Exemption filed Dec. 14, 2005). This Board denied the Petition for Exemption because of issues raised in that proceeding over discrepancies in the milepost description of the line. *See* STB Docket No. AB-290 (Sub-No. 237X), *slip op.*, Decision Service Date April 3, 2006 (“*NSR Abandonment*”). In that Decision, this Board noted that a question had been raised as to “whether approval of the transfer of Conrail assets to MDOT in 1990 was necessary by the Board’s predecessor, the Interstate Commerce Commission.” *Id.* at 4.

MTA hereby submits this Petition, seeking confirmation that ICC approval of the 1990 transaction was not required. MTA did not acquire sufficient rights or obligations in the transaction to trigger the ICC’s jurisdiction over the conveyance or to cause MTA to assume a common carrier obligation.

II. ARGUMENT

A. The sale of the CIT from Conrail to MTA did not cause a transfer of the common carrier obligations attached to the line.

In acquiring the CIT, MTA did not acquire any rights and obligations that would have triggered the ICC’s jurisdiction over the transaction. As a result, no regulatory approval was required for MTA to acquire the CIT.

“The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily require Board approval under 49 U.S.C. 10901, even if the acquiring entity is a noncarrier, including a state.” *New Mexico Dep’t of Transp.—Acquisition Exemption—Certain Assets of BNSF Railway Co.*, STB Finance Docket No. 34793 (Service Date: Feb. 6, 2006), 2006 WL 308726 (hereinafter “*NMDOT*”), *citing Common Carrier Status of States, State Agencies,*

363 I.C.C. 132, 135 (1980), *aff'd sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982).

However, it is well settled that “Board authorization is not required...when the common carrier rights and obligations that attach to the lines will not be transferred.” *NMDOT*, citing *State of Maine*, 8 I.C.C.2d 835, 836-37 (1991). *See also Town of Corinth—Acquisition Exemption—Canadian P. Ry.*, STB Finance Docket No. 34803 (Service Date: March 9, 2006), 2006 WL 568298; *Central Puget Sound Regional Transit Auth.—Acquisition Exemption—BNSF Railway Co.*, STB Finance Docket No. 34647 (Service Date: Nov. 18, 2005) 2006 WL 3090144; *Metro Regional Transit Auth.—Acquisition Exemption—CSX Transp., Inc.*, STB Finance Docket No. 33838 (Service Date: Oct. 10, 2003) 2003 WL 22322034 (hereinafter “*METRO*”); *Metro-North Commuter R. Co.—Acquisition and Operation Exemption—Line of Norfolk Southern Ry. Co. and Penn. Lines LLC*, STB Finance Docket No. 34293 (Service Date: May 13, 2003), 2003 WL 21062876 (hereinafter “*Metro-North*”).

The Board has repeatedly declined jurisdiction over numerous sales of tracks similar to Conrail’s sale of the CIT to MTA. Several salient characteristics of the sale confirm that MTA did not acquire any common carrier obligations.

1. *Perpetual easement*

Conrail retained “permanent, exclusive and assignable freight operating easements” over the line. Quit Claim Deed, at 2. This easement was retained “solely for the purpose of providing freight rail service to present and future customers and otherwise fulfilling [Conrail’s] common carrier obligations.” Agreement of Sale, at 6. In other cases, the Board similarly held that common carrier obligations were not transferred when the freight railroad retained a perpetual, exclusive easement. *See, e.g., Metro-North, supra* (freight railroad retained “the exclusive, irrevocable, and perpetual right to provide or permit freight rail service on the line”).

In *Wisconsin Dep't of Transp.—Pet. for Dec. Order*, STB Finance Docket No. 34764 (Service Date: Dec. 2, 2005), 2005 WL 3257960, the Board voiced concern that because an operating agreement provided for ten-year renewable terms, permanent common carrier obligations may have been transferred. In response, the parties revised the operating agreement by extending the initial term to 2047 and by providing the freight railroad with a unilateral right to renew. See, *Wisconsin Dep't of Transp.—Pet. for Dec. Order*, STB Finance Docket No. 34764 (Service Date: Feb. 6, 2006), 2006 WL 308727. The Board held that this revision confirmed that the railroad retained common carrier obligations.

The term of the MTA-Conrail Operating Agreement “continue[s] in perpetuity.” Operating Agreement, at 8. If the Wisconsin operating agreement, which was for a long term but not perpetual, did not convey common carrier rights, then clearly the perpetual agreement in this instance does not convey common carrier obligations.

2. Specified hours for freight operations

The MTA-Conrail Operating Agreement reserved certain hours for exclusive freight use. The Board has previously held that common carrier obligations were not transferred when freight operations were limited to specific hours. See, e.g., *METRO, supra*. The Operating Agreement in this case provides that the freight operating window shall expand if new business develops along the line. Operating Agreement, at 4-5. The Board previously held that such an arrangement adequately prevents undue interference with freight operations. *Sacramento-Placerville Transp. Corridor Joint Powers Auth.—Acquisition Exemption—Certain Assets of Southern Pacific Transp. Co.*, STB Finance Docket No. 33046 (Service Date: Oct. 28, 1996), 1996 WL 616841 (hereinafter “*Sacramento-Placerville*”) (holding that “it is unlikely that freight

service will be unduly affected [in part because if] freight traffic increases on the line, the shared use agreement provides for an adjustment process in the operating windows”).

3. *Priority of Passenger Operations*

The Operating Agreement provides that “light rail service will be given preference at all times other than during freight service hours....” Operating Agreement, at 9a. However, MTA is contractually obligated to “accord to Conrail every reasonable accommodation in order for Conrail to maintain freight traffic on the Route.” Further, nothing in the Operating Agreement “shall be construed as interfering with the ability of Conrail to provide common carrier service to both present and future customers to the extent this can be done without undue interference with MTA’s reasonable operating and maintenance requirement.”

The Board has consistently held that such priority arrangements do not trigger transfer of common carrier obligations to the commuter authority. For example, in *NMDOT*, “commuter service would have priority over freight service during defined operating windows....”

Similarly, in *Los Angeles Co. Transp. Comm’n—Petition for Exemption—Acquisition from Union Pacific R. Co.*, STB Finance Docket No. 32374 (Service Date: July 23, 1996) (hereinafter “*LACTC*”), the easement agreement at issue gave “priority to LACTC’s commuter operations in the event of any conflict with freight service.” In both cases, the Board held that the commuter authority did not acquire any common carrier obligations.²

² An earlier decision had held that the common carrier obligation did transfer in a transaction that included a priority arrangement. See *Orange County Transportation Authority, et al.—Acquisition Exemption—Atchison, Topeka & Santa Fe Railway Co.*, 10 I.C.C.2d 78 (1994). However, subsequent cases have confirmed that giving priority to passenger traffic of the acquiring agency traffic does not cause transfer common carrier obligations so long as the freight railroad retains a reasonable opportunity to provide service.

4. *Maintenance of line*

Under the Operating Agreement, MTA is responsible for general maintenance of the CIT and contractually undertakes to provide “a safe and connected track structure and right-of-way.” Operating Agreement, at 6. MTA is obligated to maintain the track at a level sufficient to support safe freight operations at speeds of up to 10 miles per hour during construction and 25 miles per hour after construction. Operating Agreement, at 6-7. The Operating Agreement provides Conrail with the right to inspect MTA’s maintenance of the CIT. Operating Agreement, at 4a.

The Board has held in numerous previous decisions that similar maintenance arrangements did not cause a transfer of common carrier rights or obligations to the public agency. For example *NMDOT, supra*, the transit authority was given “responsibility for track maintenance upon acquisition of each segment of the line.” In *METRO, supra*, the commuter authority was responsible for track maintenance of the shared line and the freight railroad had a right to inspect the transit authority’s maintenance activities. *See also LACTC* (commuter authority responsible for track maintenance); *Sacramento-Placerville, supra* (same). In all of these cases, the Board held that the freight railroad retained common carrier obligations.

5. *Management of line and dispatching*

The Operating Agreement provides that MTA “shall control and dispatch Conrail freight trains on the route in compliance with the Northwestern Operating Rules Advisory Committee....” Operating Agreement, at 5a. MTA’s management of the line shall be structured “in such a manner as to minimize delays to Conrail.” Operating Agreement, at 6a. However, prior decisions of this Board and the ICC confirm that “[d]ispatching control has less importance in its own right than it has as a means of enforcing the service priorities accorded under the

operating agreement.” *LACTC, supra*. In *LACTC* and other cases, the Board has held that an operating agreement that vests control of dispatching with the public agency does not transfer any common carrier rights or obligations. *See id.* *See also NMDOT, supra* (“NMDOT would have right to take over dispatching”); *METRO, supra* (same); *Metro-North, supra* (same); *Sacramento-Placerville, supra* (same).

6. *Improvements to line*

The Operating Agreement grants MTA the right to “make such changes in, additions and betterments to, and retirements from the Route...provided, that Conrail’s rights and abilities to meet its common carrier obligations shall not be affected....” Operating Agreement, at 1a. In *Metro-North*, the Board held that a similar agreement did not disturb common carrier obligations. In that case, Metro-North was “responsible for constructing capital improvements on the line, but...must coordinate the planning and design of such improvements with [the freight railroad] to ensure that the improvements comply with clearance requirements and other applicable standards.” *Metro-North, supra*. This arrangement did not give Metro-North “sufficient rights to materially interfere with...freight operations” and thus Metro-North did not acquire any common carrier obligations by virtue of the agreement. *Id.*

7. *Abandonment of line*

Finally, the Operating Agreement does not require Conrail to pursue abandonment of the line or prevent Conrail from opposing an adverse abandonment proceeding unless the line is not used for rail service for sixty consecutive months. Operating Agreement, at 19a. In *LACTC, supra*, the Board held that an identical provision had “no effect on [the freight railroad’s] ability to meet its common carrier obligations.” *Id.* In that case, as here, the freight railroad was required to seek abandonment if it ceased use of the track for five years.

- b. **There is no alternative basis for Board jurisdiction because MTA was not a common carrier at the time of the 1990 transaction and did not hold itself out to be a common carrier.**

In addition to examining whether common carrier obligations were contractually transferred, the Board considers whether the acquirer of a line “holds itself out” to be a common carrier. *See, e.g., Dallas Area Rapid Transit—Acquisition Exemption—Certain Assets of Regional Rail Right of Way Co.*, STB Finance Docket No. 34346 (Service Date: Nov. 12, 2003), 2003 WL 22674652. As discussed above, there clearly was no contractual transfer. Nothing in the 1990 transaction documents transferred common carrier obligations to MTA. To the contrary, Conrail retained all rights and obligations to transport freight and otherwise fulfill common carrier obligations and MTA expressly disclaimed such rights or obligations. Conrail’s easement was “exclusive;” thus MTA’s ownership of the CIT excluded the right to transport freight along the line. Moreover, MTA did not hold itself out as a common carrier. Conrail’s permanent, exclusive easement was included in the recorded deed and the Operating Agreement was referenced in the deed. The respective obligations of the parties were public records. Because MTA has never held itself out as a common carrier as to this line, and because it acquired none of the attributes of common carrier status, the acquisition of the CIT did not fall within the jurisdiction of the ICC at the time of the transaction.

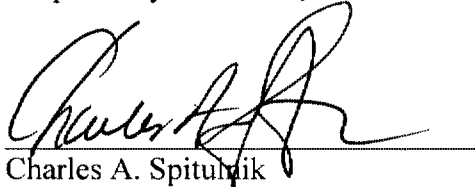
III. CONCLUSION

WHEREFORE, and in view of all the foregoing, MTA hereby respectfully requests this Board to issue a declaratory order stating:

- (1) That MTA’s purchase of the CIT was outside the ICC’s jurisdiction and did not require approval under 49 U.S.C. § 10901 because common carrier obligations attached to the line were not transferred; and

(2) MTA did not assume any common carrier rights or obligations by virtue of its acquisition of the CIT.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik

Joshua D. Fine

KAPLAN KIRSCH & ROCKWELL LLP

1050 Connecticut Ave., N.W., 10th Floor

Washington, DC 20036

(202) 955-5600

[After January 1, 2007:

1001 Connecticut Avenue, N.W.

Suite 905

Washington, DC 20036]

Attorneys for The
Maryland Transit Administration

Dated: December 22, 2006

101704v2

City of Baltimore)
) ss:
State of Maryland)

VERIFICATION

I GEORGE E. FABULA, JR., PROPERTY MGMT. SUPV. of the Maryland Transit
Administration ("MTA") hereby verify under penalty of perjury that facts stated in the foregoing
Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and
authorized to file this Petition.

Executed on this 19th day of December, 2006.

George E. Fabula, Jr.
Name: GEORGE E. FABULA, JR.
(print)
Title: PROPERTY MANAGEMENT SUPERVISOR
(print)

Subscribed and sworn to before me
this 19th day of December, 2006.

Stacey Goodman Sherrill
Notary Public

My Commission Expires:

**My Commission
Expires 2/1/2010**

1

REVISED 3/12/90

AGREEMENT OF SALE

between

MASS TRANSIT ADMINISTRATION
MARYLAND DEPARTMENT OF TRANSPORTATION

and

CONSOLIDATED RAIL CORPORATION

AGREEMENT OF SALE

THIS AGREEMENT, made as of this First day of May, 19 , between MASS TRANSIT ADMINISTRATION ("MTA"), an agency of the State of Maryland Department of Transportation, and CONSOLIDATED RAIL CORPORATION ("Conrail"), a Pennsylvania Corporation.

WHEREAS, MTA desires to acquire the Cockeysville Industrial Track (CIT) for the construction, operation and maintenance of a portion of the Central Light Rail Line, which will provide transit service between downtown Baltimore, Timonium and Glen Burnie, Maryland.

WHEREAS, MTA has offered to purchase the aforesaid 14.22, more or less, mile line from a point approximately 200 feet Southeast of Howard Street in the City of Baltimore, Maryland (railroad milepost 0.0, more or less) including a portion of the Mount Vernon Yard, to the end of the line east of York Road in Cockeysville, Baltimore County, Maryland (railroad milepost 15.4 on Valuation Map V-1/16, more or less), excepting thereout and therefrom, the "Conrail Flex-Flo Facility" containing 8.34 acres as shown on plan number RC-003-00 of Sheet 2 of 3 and RC-004-00 Sheet 3 of 3 on Exhibit A, an easement to the Flexi-Flo Facility over 1.56 acres as shown on Plans RC-002-00, Sheet 1 of 3 and RC-003-00, Sheet 2 of 3 dated May 19, 1989 and the "Cockeysville Industrial Park Track" as denoted on plan number R.M.B-4373, dated April 3, 1990 in Exhibit A, and Conrail is willing to sell it subject to terms and conditions hereinafter set forth.

WHEREAS, the parties have reached accord concerning the terms and conditions of purchase and sale of the aforesaid line and desire to reduce them to writing;

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

SECTION I

A. SALE AND TRANSFER OF SUBJECT LINE. Subject to the terms of this agreement, MTA agrees to purchase from Conrail, and Conrail agrees to sell to MTA, all the right, title and interest of Conrail in and to the real property as described in Section 1(a) of the Operating Agreement dated May 1st, 1990, and being the same real property as shown by "PS" on the plans attached to the deed in Exhibit "C", / attached hereto, and made a part hereof, together with:

1. All railbeds, tracks, frogs, ties, ballasts, connecting tracks, lead tracks and turnouts, trestles, bridges, culverts, signals, communication equipment, repair and maintenance facilities, buildings, structures, and any and all other fixtures and improvements located on the real property described herein.

2. All rights of Conrail in and to any leases, easements, licenses, agreements (excluding sidetrack agreements), servitudes and privileges (collectively referred to herein as "Documents") pertaining to the real property; provided, however, that if any such Documents affect any property owned by Conrail other than the Property as hereinafter defined, the assignment thereof shall be limited to the portion(s) applicable to the Property and, provided further, that MTA shall assume all benefits, rights and obligations of Conrail under such Documents, or the applicable portion(s) thereof, as aforesaid, which arise from and after the Closing.

In respect to all existing sidetrack agreements pertaining to the Cockeysville Industrial Track, Conrail shall retain all rights, duties and obligations therein contained except for Conrail's ownership and maintenance of its portion of each sidetrack which shall be assumed by MTA pursuant to the terms of the separate Operating Agreement described in Section IB hereof. Copies of all existing sidetrack agreements will be provided to the MTA at Closing.

After closing all new sidetrack agreements will be written on two separate, concurrent forms:

- a) An MTA agreement addressing pertinent ownership, maintenance, and liability issues; and
 - b) A Conrail agreement addressing pertinent maintenance, operating, and liability issues.
 - c) The format of the agreements shall be subject to the mutual approval of the parties hereto and shall, to the extent possible, reflect the policies and form then in general use by Conrail, this not to be construed to require MTA to advance monies to construct or maintain that portion of the sidetrack upon the CIT.
3. Any and all tools, equipment, machinery, supplies, repair and maintenance materials located on the Property as of the Closing, as hereinafter defined, which Conrail has elected not to remove prior to such date.

Specifically excluded from this sale and transfer is that property known as the "Conrail FlexFlo Facility ", as shown on Drawing Nos. RC-002-00, RC-003-00 and RC-004-00 in Exhibit "A".

It is understood that MTA intends to make certain modifications to the Conrail FlexFlo Facility , as more specifically described in the separate Agreement entitled "Agreement Governing Modifications to the Conrail FlexFlo Facility and Construction of those Modifications, between Maryland Mass Transit Administration and Consolidated Rail Corporation" appended hereto as Exhibit "B".

In respect to lands adjacent to said Facility which are to be conveyed to MTA herein, and until completion of those certain modifications aforesaid, Conrail shall reserve unto itself, its successors and assigns, a temporary easement for unimpeded vehicular ingress/egress purposes and for the utility lines leading to the FlexFlo Facility, as they are presently located.

Upon completion of the modifications the temporary easements shall be replaced by permanent, assignable, and unrestricted easements for like purposes as more specifically defined and reserved in the Quitclaim Deed, appended hereto as Exhibit "C".

Also excluded from this sale and transfer is that property known as the "Cockeysville Industrial Park Track" as denoted on Exhibit "A", plan number R.M. B-4373 being fragment sheets 1 thru 6 in Exhibit A.

All the property, rights and interests to be conveyed as aforesaid are hereinafter referred to as the "Property" and are intended to comprise all the lands and tracks as are specifically described as the CIT and in Section 1(a) of the Operating Agreement between the parties hereto to be executed simultaneously herewith.

B. EXCLUSIVE FREIGHT OPERATING EASEMENT Conrail shall reserve unto itself a perpetual, assignable, exclusive freight operating easement over the Property solely for the purpose of providing rail freight service to present and future customers and otherwise fulfilling its common carrier obligations, said easement to be subject to, governed by, and exercised solely in accordance with, the specific terms and conditions of a separate Operating Agreement, to be entered into between the parties hereto, and attached hereto as Exhibit E, to be unrecorded and incorporated by reference into the Deed of Transfer which is attached hereto as Exhibit C.

SECTION II

A. CONSIDERATION FOR TRANSFER As consideration for the Property, MTA shall pay Conrail the sum of SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$17,500,000.00), which shall be payable at Closing by certified check or electronic funds transfer.

B. TITLE

1. Possession of and title to the Property shall be delivered at Closing by quitclaim deed or deeds, in the form attached hereto as Exhibit "C", which instruments shall (a) be without covenants or warranties of any nature, (b) be subject to all existing third party tenancies, encumbrances (except as set forth in clause (b) hereof), easements, rights, licenses, privileges, agreements (including, without limitation, sidetrack agreements), covenants, conditions, restrictions, rights of re-entry, possibilities of reverter, existing laws and ordinances, or orders of regulatory agencies, and (c) not be subject to any mortgages, judgments or other liens, all of which shall be released prior to Closing or, to the extent not released, Conrail agrees to issue its standard indemnity letter to MTA's title insurance company, in the form attached hereto as Exhibit "G".

Possession of the Property shall be delivered in its present condition and, without limiting the generality of the foregoing, subject to any state of facts that an accurate survey and a prudent inspection of the Property would disclose.

SECTION III

A. CLOSING

1. Closing will be held at 11:00 a.m.

on May 1, 1972. The Closing, shall be

deemed to have taken effect at 11:59 p.m. on that date. Closing shall be held at the offices of Consolidated Rail Corporation, 15th Floor, Six Penn Center, Philadelphia, Pennsylvania, or at such other location as the parties may mutually agree to in writing.

2. At Closing, Conrail shall deliver to MTA the following:

(a) The quitclaim deed for the Property, duly executed and acknowledged; and

(b) A duly executed general assignment by Conrail to MTA, in the form attached hereto as Exhibit "D", of all leases, licenses, covenants, agreements and privileges pertaining to the Property, subject to the caveat in Section I(A)(2) and any security deposits under any such instruments.

(c) The pro-rata share of all pre-paid rents or other collections, which shall be adjusted as of the date of Closing, which, at closing, will inure to the benefit of MTA under the assigned "Documents" for the CIT. Said payment to be made within 30 days of Closing.

(d) The certificates referred to in Section VII hereafter.

3. At Closing, Conrail shall deliver to MTA or its designated representative Conrail's executed counterparts or best

available copies of all known pertinent leases, licenses, agreements, privileges, and deed records applicable to the Property.

4. Real property taxes, utility rates, rents and taxes and income from leases, licenses, agreements and privileges pertaining to the Property shall be apportioned as of the date of Closing. All real property taxes, special taxes or assessments levied, due and unpaid on the Property prior to Closing shall be paid by Conrail.

5. All recording fees, filing fees and transfer taxes required to be paid with respect to documents under this Agreement, and the cost of a survey, if one is required, shall be the sole responsibility of MTA.

SECTION IV

NOTICES Unless otherwise specified herein, all notices, requests, consents, demands, or other communications desired or required to be given by one party to the other shall have been deemed to have been given only when received via United States Mail, certified, return receipt requested, or by Express Delivery Service, directed to the recipient as follows (or at such other address as either of the parties hereto may designate by written notice to the other party hereto):

If to Conrail:

Consolidated Rail Corporation
Asset Development Department
ATTN: L.R. Town - Manager Real Estate
150 Allendale Road
King of Prussia, Pennsylvania 19406

If to MTA:

Mass Transit Administration
ATTN: Nelson E. Reichart - Manager Real Estate
300 West Lexington Street
Baltimore, Maryland 21201-3415

SECTION V

A. CONTENTS OF AGREEMENTS: PARTIES IN INTEREST

This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby and may not be amended except by written instrument executed by the parties hereto. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement. All representations, warranties, covenants, terms, conditions, stipulations, and provisions of this Agreement shall survive Closing and be binding upon and inure to the benefit of, and be enforceable by, the successors and assigns of the respective parties.

B. GOVERNING LAW

This Agreement and the rights and obligations accruing hereunder shall be construed and enforced in accordance with the laws of the State of Maryland and relevant federal law.

C. EXHIBITS

All Exhibits referred to in this Agreement are intended to be and are hereby, specifically, made part of this Agreement.

D. WAIVER

No waiver by either party of any failure of, or refusal by, the other party to comply with its obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

E. TIME; TENDER

Time shall be of the essence of this Agreement. Formal tender of deed and purchase money is hereby waived.

F. BOARD APPROVAL

This Agreement has been approved by the Maryland Board of Public Works.

SECTION VI

BROKER Each party represents that it has not dealt with any broker in connection with the transactions contemplated by this Agreement. Each party agrees to assume any obligation arising from or in connection with any action by any broker or other party with whom it may have dealt for a commission or compensation from this sale of the Property.

SECTION VII

REPRESENTATIONS AND WARRANTIES

A. Conrail will provide the Secretary's Certificate in the form attached hereto as Exhibit "F", that it has all necessary and appropriate corporate authority required to consummate the transactions contemplated by this Agreement.

B. Conrail represents that the execution, delivery and performance of this Agreement by Conrail, and the consummation by Conrail of the transactions contemplated by this Agreement and the Exhibits hereto, do not require the consent, approval or authorization of, or any notice to or filing with, the Interstate Commerce Commission. Should the Interstate Commerce Commission assert jurisdiction of any transaction contemplated herein, Conrail will, at its own cost and expense, (1) take all reasonable and necessary steps to seek a determination that the

Interstate Commerce Commission does not in fact have jurisdiction over the transaction, or (2) at Conrail's option, to seek Interstate Commerce Commission approval of the transaction. Conrail further represents that (1) all necessary legal and corporate actions have been taken to authorize and permit the execution and implementation of this Agreement by Conrail and (2) this Agreement is legally binding on and enforceable against Conrail in accordance with its terms, except as they may be limited by bankruptcy, insolvency, reorganization, or other laws of general application relating to the enforcement of creditors' rights generally.

C. Each party hereto shall execute and deliver such instruments and take such other actions as the other party may reasonably request in order to carry out the intent of this Agreement. Each party hereto shall use its best efforts to cause the transactions contemplated by this Agreement to be consummated.

D. Conrail by letter *dated May 1, 1990*
attached hereto as Exhibit H, makes only the statement of fact contained within said letter about the environmental matters affecting the property to be transferred.

E. MTA represents to Conrail as follows:

(a) MTA is an agency of the Maryland Department of Transportation, duly authorized and validly existing under the laws of the State of Maryland.

(b) All necessary governmental action of MTA required in connection with the execution and delivery of this Agreement, and the consummation of the transactions contemplated by this Agreement, has been authorized or obtained including approval by the Maryland Board of Public Works, and this Agreement constitutes the valid and binding obligation of MTA, enforceable in accordance with its terms.

(c) The performance by MTA of its obligations under this Agreement is not subject to any contingency or the occurrence of any event or condition which is not expressed in this Agreement.

SECTION VIII

ASSUMPTION OF CERTAIN OBLIGATIONS

A. Except as specified in the next sentence, MTA, after closing, shall be responsible for obligations (as that term is hereinafter defined) that fall in one or more of the six categories listed below. The foregoing shall not apply to incidents covered by Article 6 of ^{the General Conditions attached to} the Operating Agreement, the provisions of which shall take precedence over any inconsistent

provision of this Section, nor shall it apply when the assumption of such responsibility or obligations is foreclosed by the constitution, statutes and case law of Maryland, ^{including} the absence or inadequacy of appropriations by the Governor and General Assembly of Maryland and insurance (self insurance or purchased) coverage maintained by MTA.

1. All obligations arising after Closing under those portions of the licenses and other instruments assigned to MTA pursuant to Section I(A)(2) hereof, it being understood that Conrail shall be responsible for such obligations arising before Closing, plus the portions of all licenses and other instruments not assigned to MTA.

2. All obligations (whether predicated on tortious conduct or otherwise) arising out of personal injury, death or loss of, or damage to, property (whether incurred by the parties hereto or by others) occurring on or about the Property after closing, and whether or not attributable to the fault or negligence of one or both parties. Conrail will be responsible for such incidents occurring prior to Closing. The two preceding sentences shall not apply, however, to incidents caused by the sole or gross negligence or the willful, malicious, or wanton misconduct of the officers, agents, or employees of one or both parties, in respect to which incidents responsibility shall be determined under the law of Maryland.

3. Obligations, if any, not covered by (2), above, that arise (either before or after Closing) out of, or in respect to, or in connection with, the physical condition, safety, adequacy, suitability, or fitness of the Property, or any portion thereof. To the immediately preceding sentence there shall be one exception, namely, that Conrail shall be responsible (and MTA shall not be responsible) for obligations of the type described above, in respect to which two conditions apply, namely, that (i) Conrail, prior to Closing, was on written notice that it was in default, delinquent, or derelict, and (ii) the physical condition or other circumstance giving rise to the obligation would not have been visible to MTA during a prudent inspection of the Property prior to Closing. Nevertheless, Conrail's obligations (and MTA's release from such obligations) shall not exceed those that Conrail would have had immediately prior to Closing in the absence of this agreement.

4. Obligations relating to, or arising out of, MTA's (a) possession, use, or ownership of the Property after Closing, or (b) acts or omissions on the Property after Closing. As used in this subparagraph, MTA includes any lessee, grantee, designee, licensee, assignee, successor, or assign of MTA, but does not include such entities if, and to the extent that, their involvement relates solely to portions of any license or other instruments not assigned to MTA pursuant to (1) above.

5. Obligations (not otherwise specifically provided for herein) that are predicated on, or derive from, the fact that Conrail is conveying and/or that MTA is acquiring the Property as herein provided for.

6. Obligations arising from any (a) deficiency in Conrail's title to, or property rights in, the Property, or (b) property rights held by third parties in or to the Property.

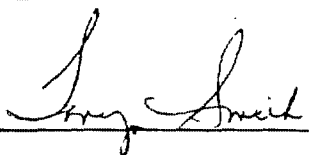
B. As used in this Section, "Obligation", in addition to its customary meaning, includes any loss, damage, cost, assessment, expense, fee, liability, risk, restriction, or penalty that either party incurs, or is required to bear, by virtue of, or pursuant to, (1) any statute, principle of common law, or municipal ordinance, (2) any regulation, order decision, judgment, decree, or directive of any court or other tribunal, or of any governmental agency, body, instrumentality, or subdivision, and (3) any deed, contract, or other legally relevant or legally operative instrument.

C. The parties agree that, in respect to any obligation imposed above, the party made responsible by this Section shall (subject to the exceptions specified in the introductory provisions of Subsection A) release, indemnify, protect, defend, and hold harmless the other party (and its directors, officers, agents, and employees) from and against said obligation.

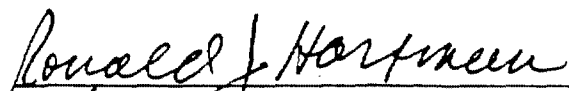
D. The foregoing shall not be construed as conferring any rights on third parties.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, on the day and year first above written.

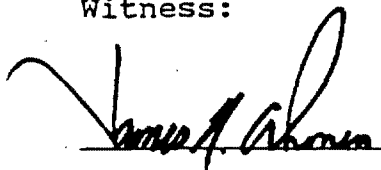
Witness:



MASS TRANSIT ADMINISTRATION

By: 
Title Administrator

Witness:



CONSOLIDATED RAIL CORPORATION

By: 
Title AVP-Asset Development

LIST OF EXHIBITS

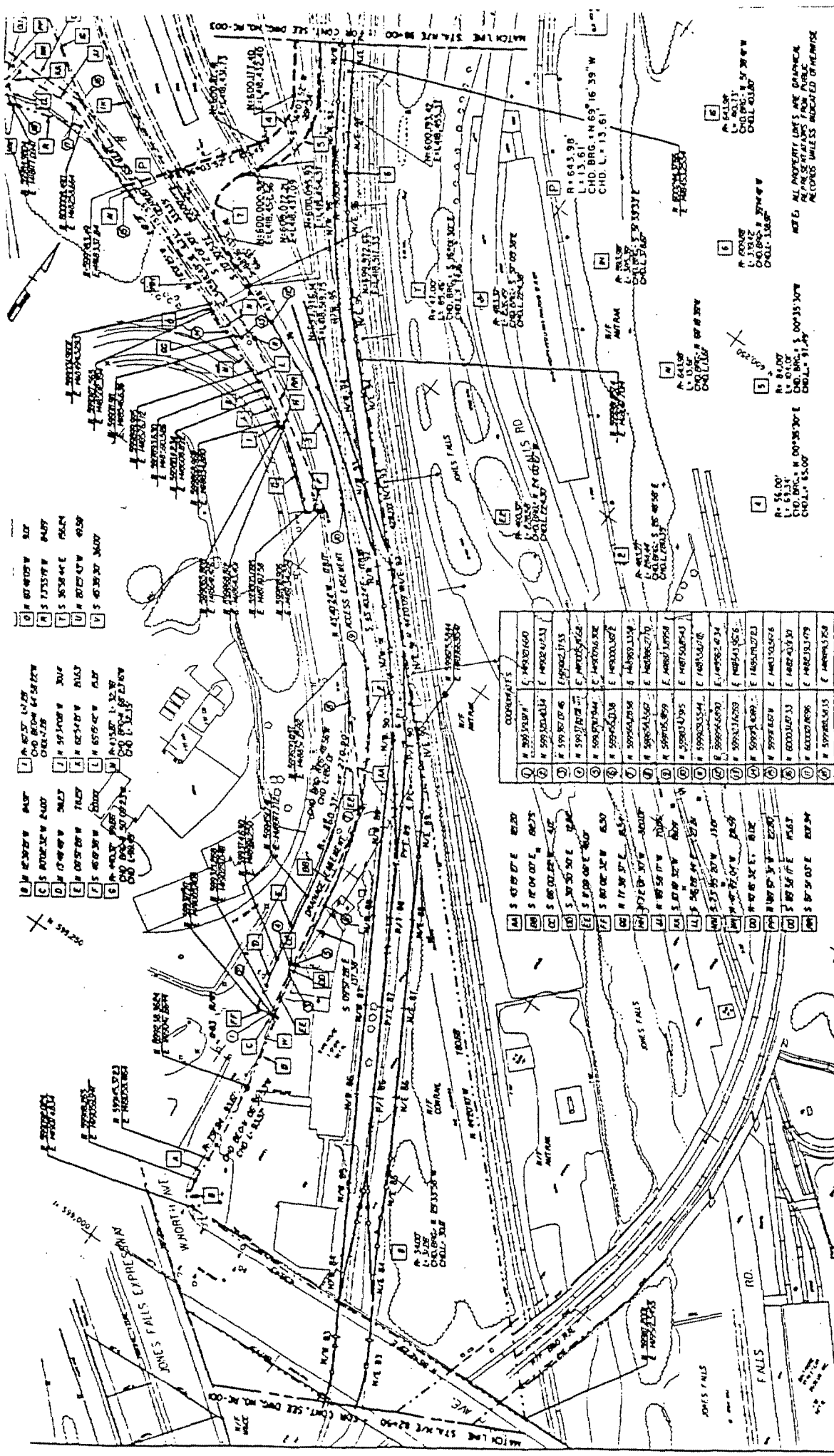
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|-----------|---|--|
| EXHIBIT A | - | PLANS OF CIT, INCLUDING
MOUNT VERNON YARD & CONRAIL'S FLEX-I-
FLO FACILITY |
| EXHIBIT B | - | FLEX-FLO MODIFICATION AGREEMENT |
| EXHIBIT C | - | QUITCLAIM DEED |
| EXHIBIT D | - | GENERAL ASSIGNMENT OF
"DOCUMENTS" |
| EXHIBIT E | - | OPERATING AGREEMENT |
| EXHIBIT F | - | CONRAIL'S SECRETARY'S CERTIFICATE |
| EXHIBIT G | - | CONRAIL LETTER TO TITLE COMPANY |
| EXHIBIT H | - | ENVIRONMENTAL LETTER |

E X H I B I T " A "

FOR THE SALE PLANS SHOWING THE COCKEYSVILLE INDUSTRIAL TRACK (CIT)
SEE ATTACHMENT "A" TO THE DEEDS IN EXHIBIT "C".

FOR THE PLANS GENERALLY INDICATING THE EXCEPTED AND RESERVED PORTION
OF THE MOUNT VERNON YARD FLEXI-FLO FACILITY AND ALSO THE ACCESS
AREA TO THE FLEXI-FLO FACILITY SEE DRAWINGS NOS. RC-002-00, RC-003-00
AND RC-004-00 BEING SHEETS 1 AND 2 DATED MAY 19, 1989 AND SHEET 3
DATED MARCH 5, 1990 ATTACHED IN THIS EXHIBIT "A".

FOR PLANS INDICATING THE EXCEPTED AND RESERVED COCKEYSVILLE INDUSTRIAL
PARK TRACK SEE PLAN NO. R.M. B-4373, SHEETS 1 thru 6, DATED APRIL 3, 1990,
ATTACHED IN THIS EXHIBIT "A".



STATE OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION MASS TRANSIT ADMINISTRATION		PARSONS, BRINCKERHOFF OLIVER & DOUGLAS, INC. WOBURN - ENGINEERS, INC. CONSULTING ENGINEERS		DATE: 05-29-81 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]		RIGHT OF WAY PLAN STA. N/E 82+50 STA. N/E 98+00 MT. VERNON YARD AREA		CL05 RC-002-00 SHEET NO. 1 OF 3
CENTRAL LIGHT RAIL LINE		DATE: 05-29-81 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]		DATE: 05-29-81 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]		DATE: 05-29-81 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]		CL05 RC-002-00 SHEET NO. 1 OF 3

Exhibit "A"

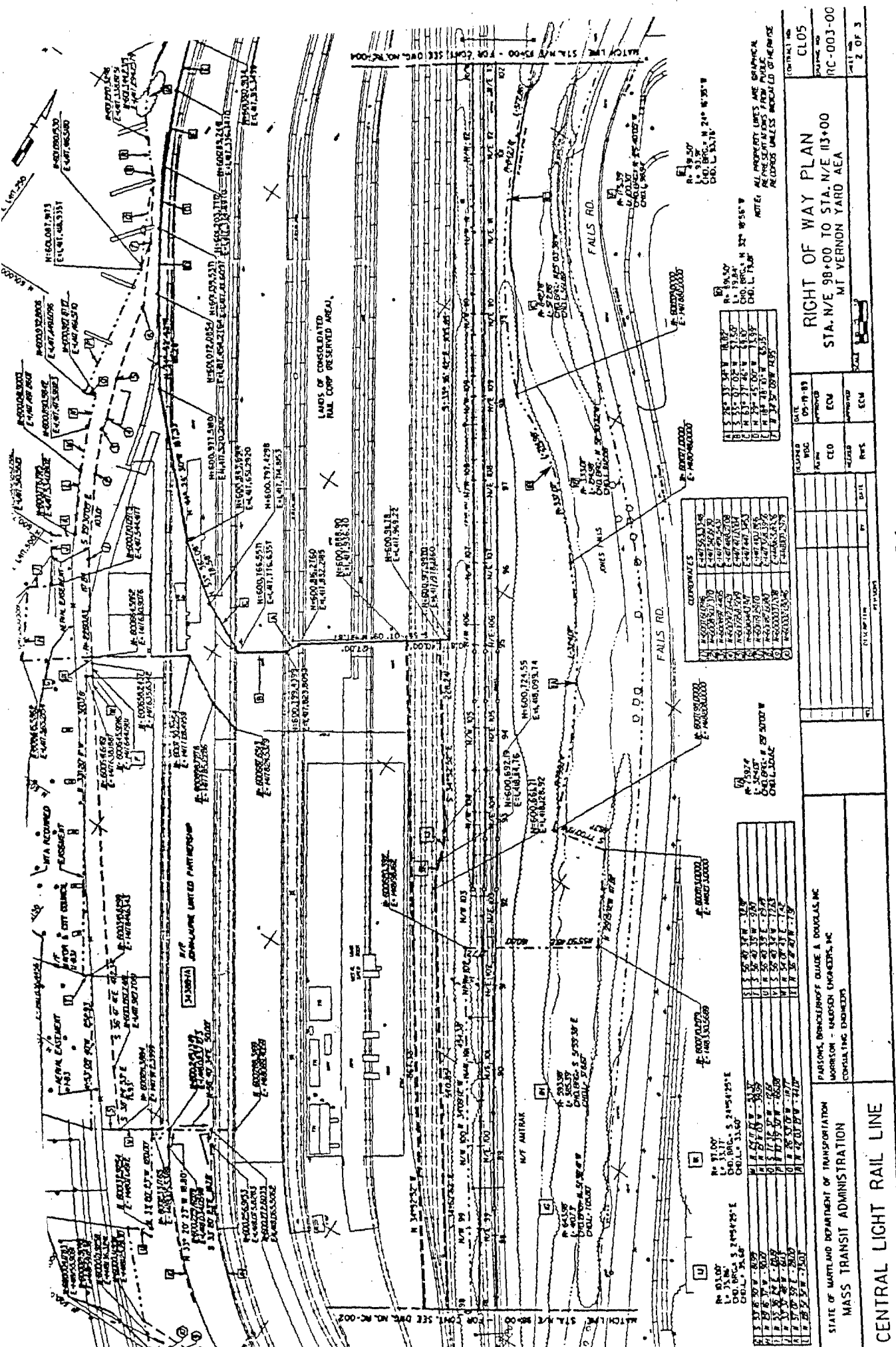
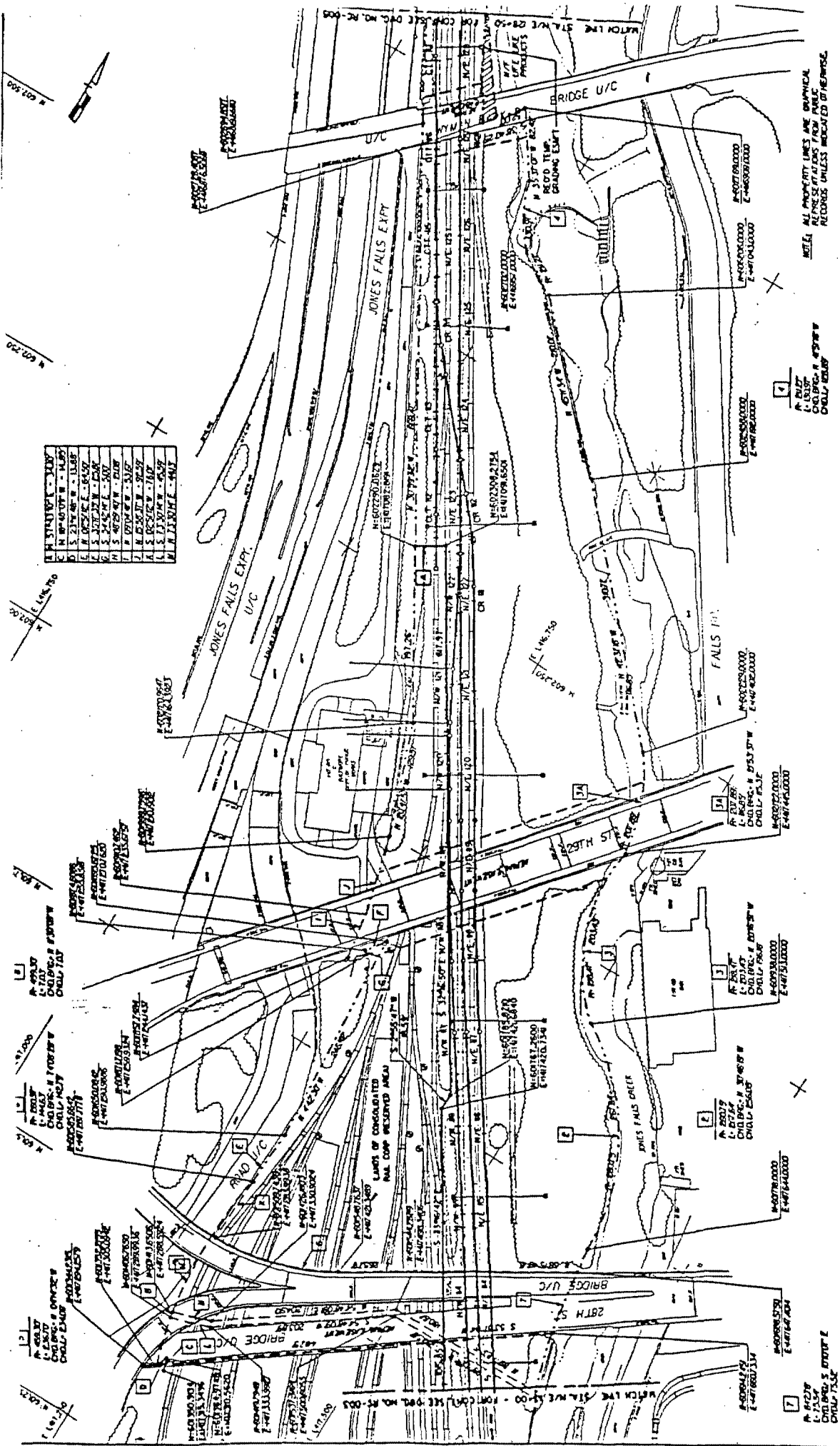


Exhibit "A"

100' 0"

STATION	BEARING	DISTANCE
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3	N 1/4 Sec 36 T 14 N R 10 W	1.00
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237	N 1/4 Sec 270 T 14 N R 10 W	1.00
238	N 1/4 Sec 271 T 14 N R 10 W	1.00
239	N 1/4 Sec 272 T 14 N R 10 W	1.00
240	N 1/4 Sec 273 T 14 N R 10 W	1.00
241	N 1/4 Sec 274 T 14 N R 10 W	1.00
242	N 1/4 Sec 275 T 14 N R 10 W	1.00
243	N 1/4 Sec 276 T 14 N R 10 W	1.00
244	N 1/4 Sec 277 T 14 N R 10 W	1.00
245	N 1/4 Sec 278 T 14 N R 10 W	1.00
246	N 1/4 Sec 279 T 14 N R 10 W	1.00
247	N 1/4 Sec 280 T 14 N R 10 W	1.00
248	N 1/4 Sec 281 T 14 N R 10 W	1.00
249	N 1/4 Sec 282 T 14 N R 10 W	1.00
250	N 1/4 Sec 283 T 14 N R 10 W	1.00
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253	N 1/4 Sec 286 T 14 N R 10 W	1.00
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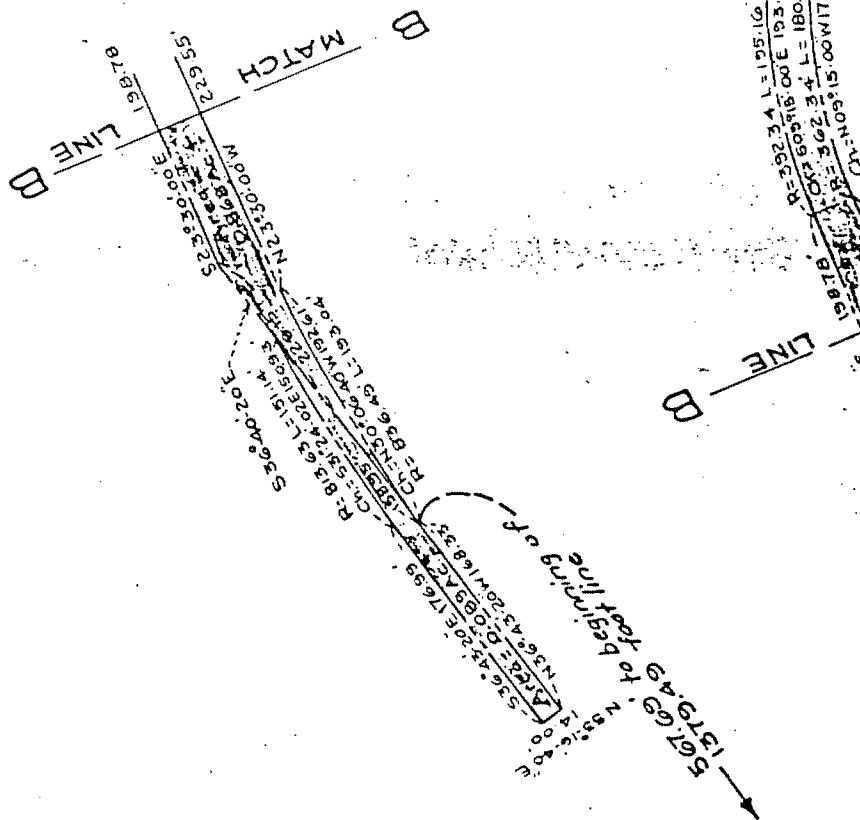
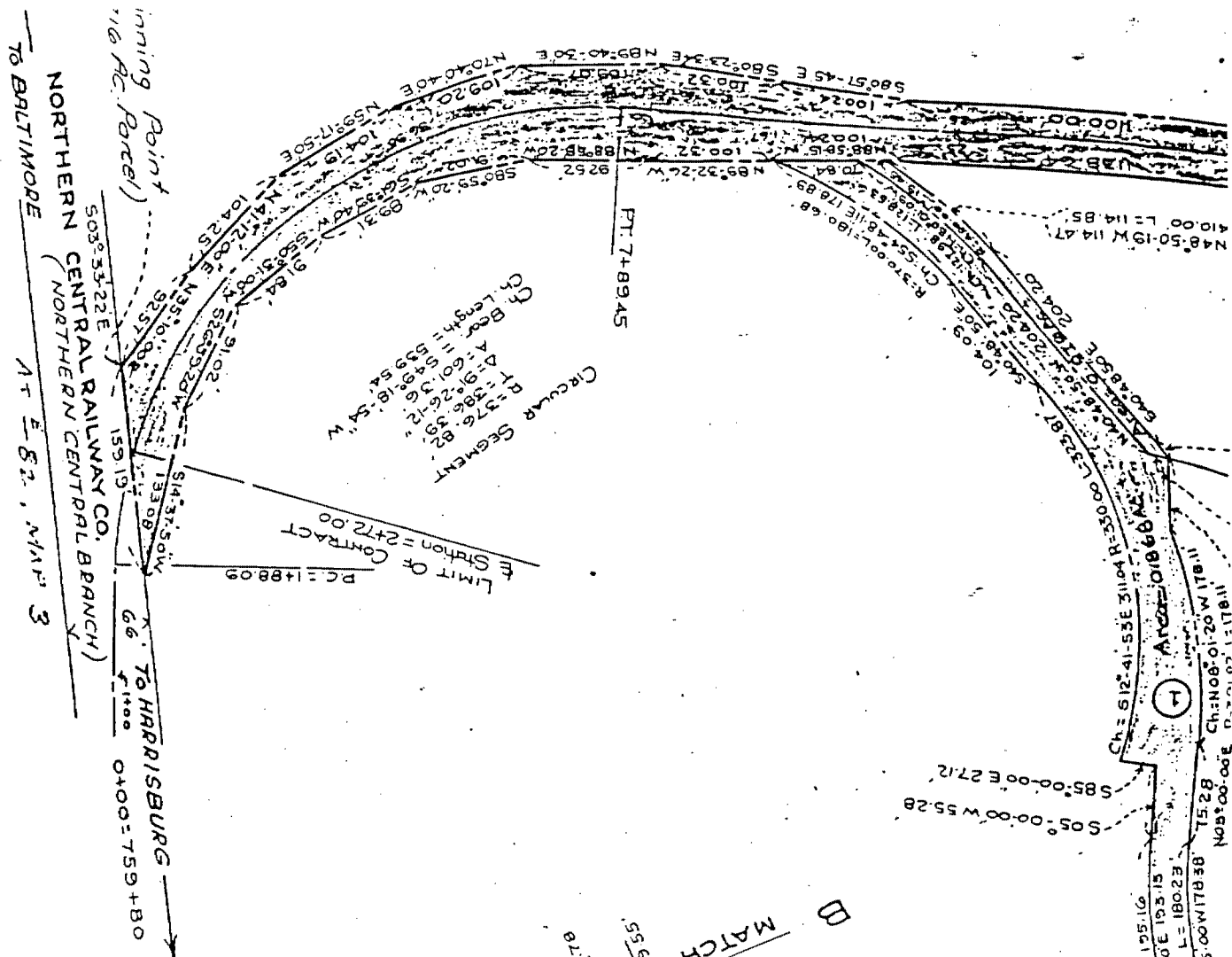


STATION	BEARING	DISTANCE
1	N 89° 40' 00" W	14.00
2	S 23° 40' 00" W	11.00
3	N 05° 40' 00" E	14.00
4	S 37° 30' 00" W	10.00
5	S 24° 40' 00" E	10.00
6	N 05° 40' 00" W	14.00
7	N 05° 40' 00" W	14.00
8	N 05° 40' 00" W	14.00
9	N 05° 40' 00" W	14.00
10	N 05° 40' 00" W	14.00
11	N 05° 40' 00" W	14.00
12	N 05° 40' 00" W	14.00
13	N 05° 40' 00" W	14.00
14	N 05° 40' 00" W	14.00
15	N 05° 40' 00" W	14.00
16	N 05° 40' 00" W	14.00
17	N 05° 40' 00" W	14.00
18	N 05° 40' 00" W	14.00
19	N 05° 40' 00" W	14.00
20	N 05° 40' 00" W	14.00

ALL PROPERTY LINES ARE GRAPHICAL REPRESENTATIONS FROM AERIAL RECORDS UNLESS INDICATED OTHERWISE.

STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION MASS TRANSIT ADMINISTRATION		PARSONS, BRINCKERHOFF QUAD & DOUGLAS, INC. MORRISON - HENDERSON ENGINEERS, INC. CONSULTING ENGINEERS		CONTRACT NO. CL05		DRAWING NO. RC-004-00	
RIGHT OF WAY PLAN STA. N/E 113+00 TO STA. N/E 128+50 MT. VERNON YARD AREA				DATE 01-05-90		SCALE 1" = 40'	
CENTRAL LIGHT RAIL LINE				SHEET NO. 3 OF 3		PROJECT NO. 100-000000	

Exhibit A

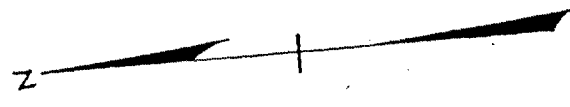
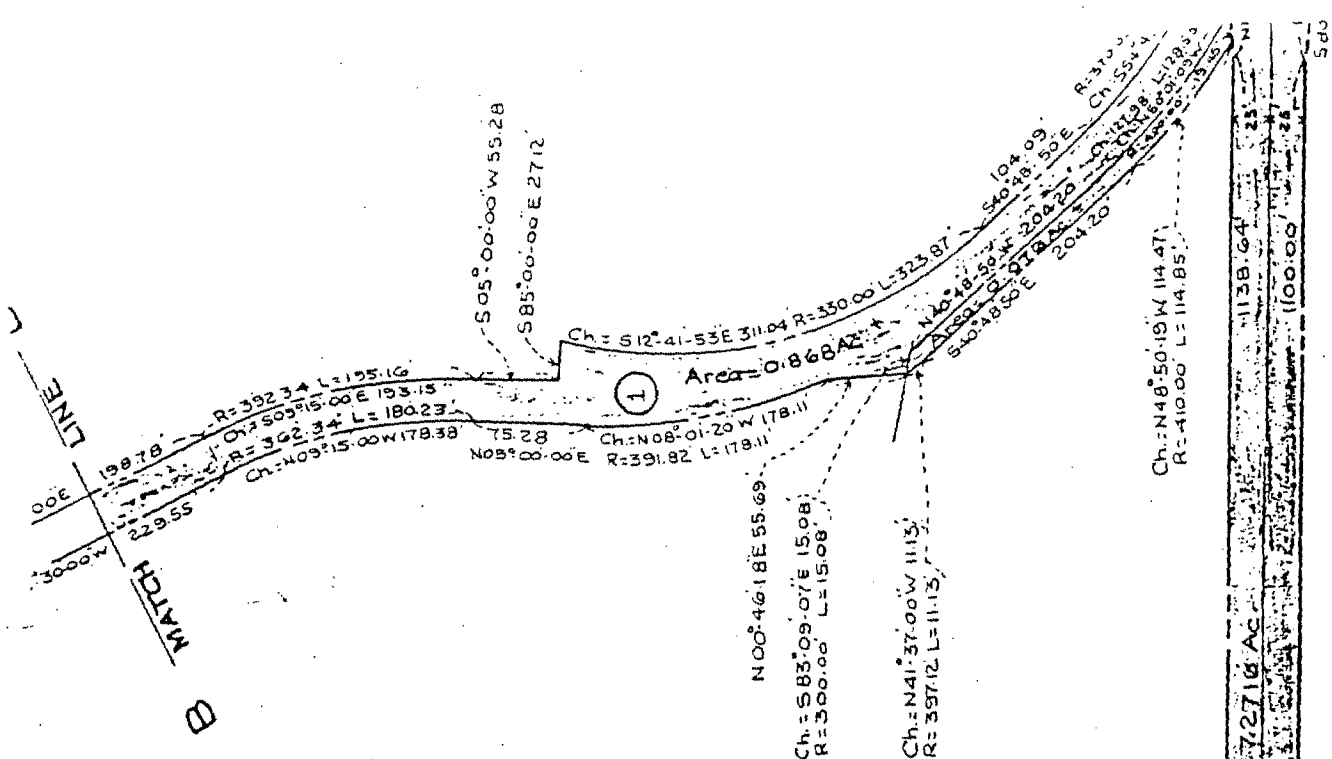


Cockeysville Industrial Track

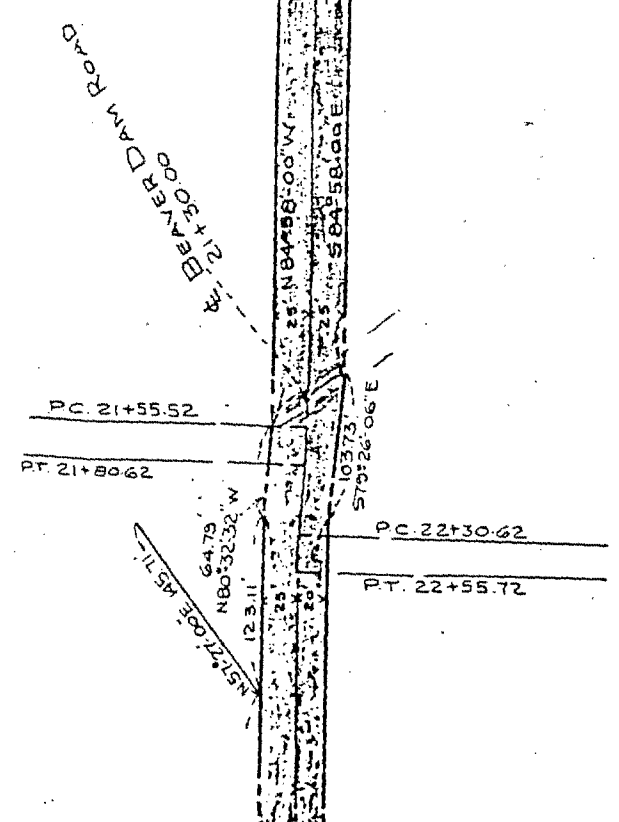
Exhibit "A"

N.T.
To
Scale

PLAN R.M. D-4373
Sheet 1 of 6 (4/13/90)



R=376.82
T=12.55
A=039°48'59"
A=2510



R=376.82
T=12.55

Exhibit "A"
PLAN R.M. B-4373

R=376.82
T=12.55'
Δ=03°48'59"
A=25.10'

P.C. 21+55.52

P.T. 21+80.62

64.75
N80°32'32"W
123.11
N57°27'00"E 457.14

103.73
S70°26'06"E

P.C. 22+30.62

P.T. 22+55.72

R=376.82
T=12.55'
Δ=03°48'59"
A=25.10'

954.43

A

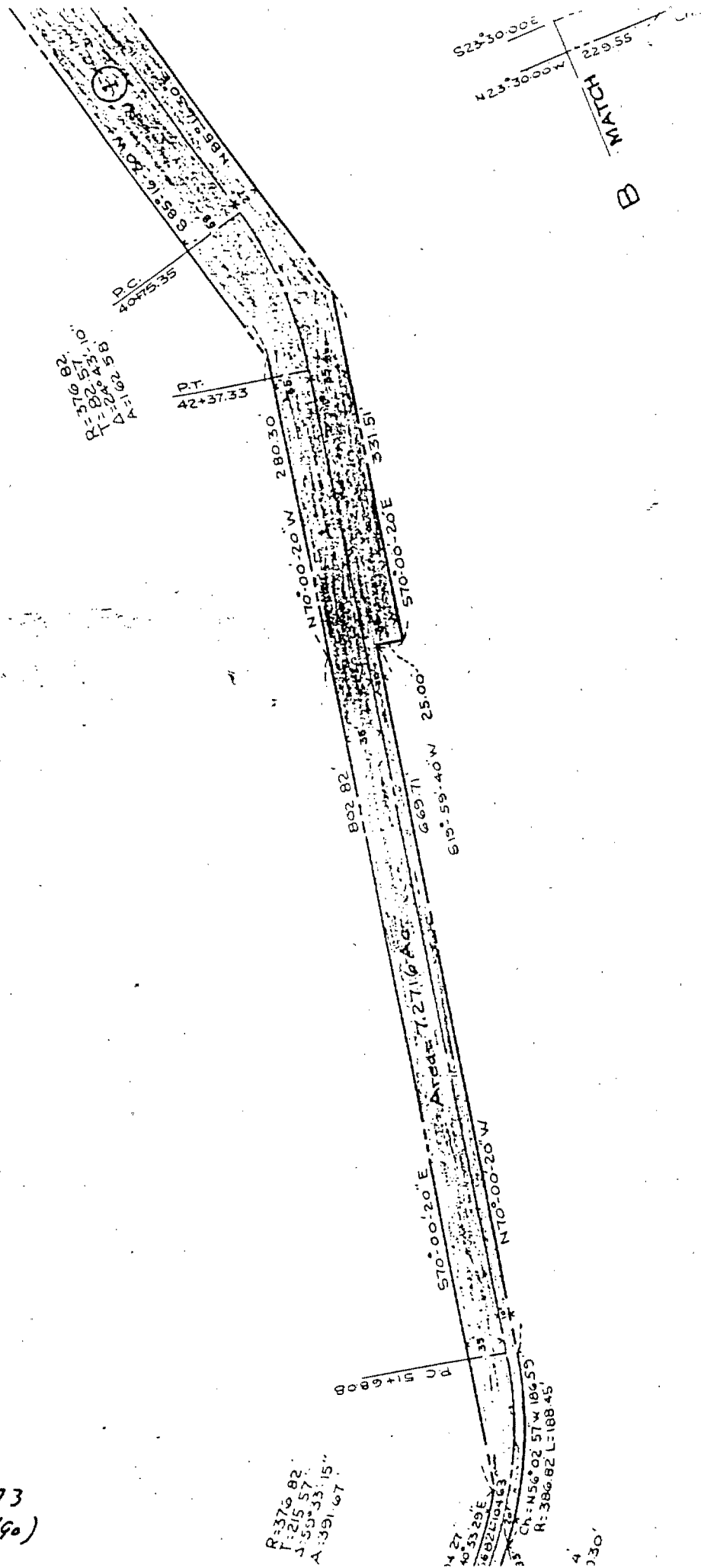
LINE

MATCH

A

Exhibit "A"
PLAN R.M. B-4373
(4/3/90)

Exhibit "A"
 PLAN R.M. B-4373
 Sheet 576 (7/3/90)



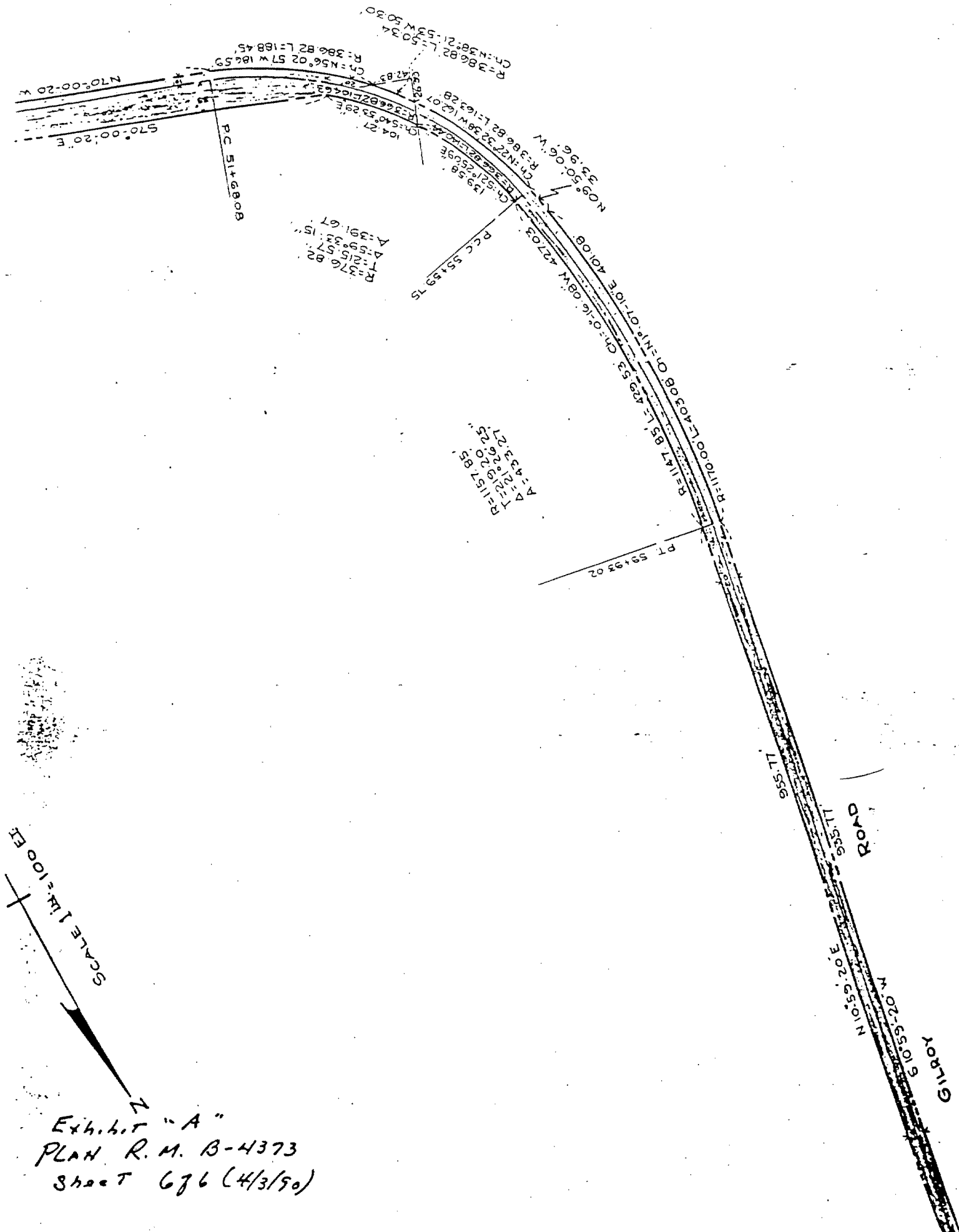


Exhibit "A"
 PLAN R. M. B-4373
 Sheet 676 (4/3/90)

March 9, 1990

EXHIBIT B
OF
AGREEMENT OF SALE

AGREEMENT GOVERNING MODIFICATIONS TO
CONRAIL'S FLEX-FLO FACILITY AND
CONSTRUCTION OF THOSE MODIFICATIONS

between

MASS TRANSIT ADMINISTRATION

AND

CONSOLIDATED RAIL CORPORATION

A G R E E M E N T

THIS AGREEMENT, Governing Modifications to the Conrail's Flex-Flo Yard and Construction of those Modifications ("Agreement") made and entered into this 4th day of May, 1970, by and between MASS TRANSIT ADMINISTRATION ("MTA"), an agency of the Maryland Department of Transportation, having an office at 300 West Lexington Street, Baltimore, Maryland 21201-3415, and CONSOLIDATED RAIL CORPORATION ("Conrail"), a corporation of the Commonwealth of Pennsylvania, having an office at 6 Penn Center Plaza, Philadelphia, Pennsylvania 19103-2959, governs the terms and conditions of the modifications and construction of those modifications by MTA to Conrail's Flex-Flo facility (facility) located off North Avenue, in the City of Baltimore, State of Maryland, pursuant to the terms of the Agreement of Sale executed this day between MTA and Conrail.

WHEREAS, pursuant to the Agreement of Sale between MTA and Conrail, MTA shall acquire from Conrail the CIT.

WHEREAS, the CIT being purchased by the MTA includes a portion of Mt. Vernon Yard, located in Baltimore City, Maryland,

at which Conrail currently operates a Flex-Flo facility for the transloading of certain bulk commodities;

WHEREAS, upon the acquisition by MTA of the CIT from Conrail, and in consideration therefore, the operations of the facilities at Conrail's Flex-Flo facility shall be modified at MTA's expense.

WHEREAS, MTA is authorized to pay costs associated with the modifications of Conrail's Flex-Flo facility at Mt. Vernon yard, and it is the intent of the parties to specify in this Agreement the extent of MTA's obligations in this regard;

NOW, THEREFORE, MTA and Conrail hereby agree as follows:

1. OBLIGATION TO FUND MODIFICATIONS AND CONSTRUCTION COSTS

1.1 MTA shall pay all costs associated with the modifications to and relocation of components, equipment, and facilities of Conrail's Flex-Flo facility , which are described in Exhibit A attached hereto. MTA further shall pay certain costs associated with the construction of buildings and fixtures specified in Exhibit A at Conrail's Flex-Flo facility, which are necessary to its operations. Except as specified in section 1.2 of this Agreement, MTA shall provide and pay only for the labor, materials, tools, equipment, light, power, transportation and

other facilities necessary for the completion of the work subject to the parameters set forth in Exhibit A (the "Work").

1.2 Conrail shall be responsible only for the Work defined in Exhibit A,B,& C as Conrail work. MTA shall reimburse Conrail for the costs associated with such work in accordance with section 1.3.

1.3 For the work performed by Conrail and reimbursable by MTA, an estimated cost ranging between \$495,000 and \$809,000 established. This is merely an estimate and it is acknowledged by both parties that the actual costs may be higher or lower than the estimated ranges. MTA shall pay Conrail the actual cost of the work described in Exhibit "A" Item 1 after verification as to the quantity and quality of the work. Conrail may submit invoices monthly for the actual cost of expenses incurred. These monthly invoices may be rendered on the estimated percentage of the work completed and are subject to MTA's approval, which approval shall not be unreasonably withheld. MTA, after verifying that the bills are reasonable and proper shall promptly begin processing for payment. All invoices must display on the front page Conrail's Federal Tax Identification number which is 23-1989084.

Upon completion of the work, Conrail and MTA shall agree to a final Statement of actual expenses. This Statement

shall be prepared by Conrail and verified by MTA. When MTA is assured that the Statement is a true and accurate accounting for the work performed the MTA shall reimburse Conrail in full for the whole amount less previous payments.

2. DESCRIPTION OF WORK

2.1 MTA shall be the contracting authority for the performance of the work necessary to modify Conrail's FlexFlo Yard, including design and construction of the modifications to the FlexFlo Yard, subject to mutual agreement by Conrail and MTA. MTA is to supervise all Work done at the FlexFlo Yard performed under MTA contracts.

2.2 Drawings and specifications shall be subject to the written approval of Conrail Chief Engineer-Design and Construction prior to commencement of work. Such review and approval shall be completed as expeditiously as possible and approval shall not be unreasonably withheld.

2.3 Prior to commencing work, MTA and Conrail shall agree upon a statement as to the details of the work to be performed at Conrail's FlexFlo Yard, a schedule for completion of the work, a description of the materials to be used in the performance of that work, and a description of those materials and labor, if any, which Conrail shall supply for the completion of the work (all of which is the "Statement of Work"). The

Statement of Work shall conform to the parameters set forth in Exhibit A. The Statement of Work shall address the stages of construction (Exhibit C) and Conrail shall complete its work within 120 days of settlement.

2.4 Upon execution of this agreement and in accordance with the schedule agreed to in the "Statement of Work" and "Exhibit C" referenced above, Conrail shall commence work in accordance with Exhibit C" for the installation of tracks pursuant to Exhibit A at the Flex+Flo Yard, and shall diligently pursue that work until it is completed.

2.5 MTA and Conrail shall undertake pursuant to Section 3.2 to establish appropriate separation of construction areas to segregate the rail freight services section of the Flex-Flo Yard from the section upon which MTA, its contractors, subcontractors and agents shall be conducting construction and other operations.

2.6 MTA and Conrail may propose changes in the Work to be performed pursuant to the Statement of Work, when in their judgment such changes may be desirable, provided that an advance agreement, in writing, between MTA and Conrail is obtained, before any change may be implemented.

2.7 MTA and Conrail shall cooperate in obtaining the required permits, orders, and licenses required to carry out the modifications of Conrail's FlexFlo facility, pursuant to this Agreement. Such cooperation shall include the preparation by MTA of drafts of the applications for necessary permits, orders and licenses; approval by Conrail of such drafts within 5 working days; and the filing by MTA of such permits, orders and licenses with the appropriate governmental body within 15 days after Conrail's approval of the drafts by Conrail. In the event that a federal, state or county regulatory body having jurisdiction over these matters denies a necessary permit, order or license application by Conrail or MTA, or in the event that a regulatory body imposes conditions upon such permit, order or license requiring substantial modifications of the Statement of Work, the parties shall attempt to modify the Statement of Work in a manner which shall satisfy the objections of the agency, while maintaining the general parameters set forth in Exhibit A.

3. PERFORMANCE OF WORK

3.1 Conrail shall, within three working days after its receipt of telephone, wire or written notice from MTA that a particular stage of construction as described in the Statement of Work has been completed, either inspect or arrange for the inspection of the Work to assure compliance with the Statement of Work and this Agreement, or notify MTA that it shall waive inspection of the Work prior to initiating operations at the

Flex-Flo Yard. When Conrail inspects or arranges for the inspection of a particular stage of construction, Conrail shall promptly signify its satisfaction with the completed stage of construction to MTA in writing, or orally which will be later confirmed in writing. If Conrail does not inspect or arrange for inspection within 3 working days of notification, Conrail waives any right to allege that the particular stage of construction is not complete and is not ready for acceptance. If Conrail or Conrail's appointed inspector believes that a stage of construction has not been completed, in accordance with the terms of the Statement of Work, Conrail shall provide promptly to MTA a statement in writing setting forth the specific condition(s) which Conrail contends deviate(s) from the Statement of Work, and "defect(s)" in the Work which Conrail contends MTA should remedy. In the event that MTA does not agree that the alleged defect(s) constitute(s) a deviation from the Statement of Work, MTA shall proceed with construction pursuant to the Statement of Work and arbitrate any such disputes in accordance with section 7.3 of this Agreement.

3.2 MTA shall not materially interfere with the normal operations of the Flex-Flo facility during the performance of the work.

3.3 MTA and Conrail shall establish a "Coordinating Committee" which shall meet weekly if necessary to

coordinate the progress of the modifications to Conrail's Flex-Flo facility with the facility's operations. The committee may include representatives from Conrail's Flex-Flo facility operations group, the Harrisburg Division, the office of Engineering, and MTA's Transit Development Division and Construction Manager.

4. MATERIALS AND LABOR

4.1 The quality and nature of the materials to be used for each phase of the Work shall be detailed in the Statement of Work. MTA shall receive and be responsible for the storage and protection of such materials until completion of the Work.

4.2 Substitution of materials other than those specified in the Statement of Work shall not be permitted, except upon prior written agreement of the parties. All requests for substitutions shall be made by either party in a format and in sufficient time to avoid delay to the completion of the Work.

5. INSURANCE AND LIABILITY

MTA

- (a) During the term of this agreement MTA shall procure and maintain (and/or require its contractors and subcontractors to procure and maintain) one or more policies of insurance,

or provide satisfactory evidence of self-insurance, in respect to personal injury, death, and loss of or damage to property arising (with or without negligence) from the acts, omissions, fault or negligence of MTA or its officers, agents, employees or contractors. The following types of insurance and minimum limits of liability shall be required:

(1) Worker Compensation

Coverage A: Statutory

Coverage B: \$5,000,000 per occurrence

(2) General Liability: \$25,000,000 per occurrence/annual aggregate

(3) Builders' Risk: \$25,000,000 per occurrence/annual aggregate

(4) In connection with work to be performed by MTA's contractors and subcontractors wholly or partly within Conrail's Flex-Flo property under this agreement, a Railroad Protective Liability Policy of Insurance in the name of CONRAIL, said policy to be written on the ISO/RIMA form of Railroad Protective Insurance (presently No. CG00351185). Limits of

Liability shall be in the amounts of \$2,000,000 per occurrence for bodily injury or death and property damage combined with an aggregate limit of \$6,000,000 for each annual policy. The policy of insurance specified in this section shall be countersigned by a resident agent of the State of Maryland in accordance with the applicable statute of the State of Maryland. The original of the policy shall be submitted to and be approved by CONRAIL before work on its property shall commence.

- (5) To provide CONRAIL adequate protection on Force Account Work, MTA shall reimburse CONRAIL for insuring its labor force in accordance with Federal Highway Administration's Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 3. The amount of such insurance coverage and the rate to be paid therefor will be included in CONRAIL's Force Account Estimate.

CONRAIL

- (b) CONRAIL's contractors will be required to carry insurance of the following kinds and in the following amounts:

(1) CONTRACTOR'S PUBLIC LIABILITY INSURANCE

The contractor shall furnish evidence that, with respect to the activities it performs, it carries regular

Contractor's Public Liability Insurance providing for a limit of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

(2) CONTRACTOR'S PROTECTIVE PUBLIC LIABILITY INSURANCE

The contractor shall furnish evidence that, with respect to the activities performed by subcontractors, it carries in its own behalf regular Contractor's

Protective Public Liability Insurance providing for a limit of not less than \$2,000,000, single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

LIABILITY

- (c) Nothing contained in, or absent from, any other provision in this agreement shall be construed as (1) limiting, modifying, or waiving the liability, if any, that would otherwise exist on the part of either party to the other, or to third persons, or (2) limiting the right of either party to assert any claim, seek judicial relief, or invoke any other normally available remedy against the other party to recover damages, compensation, contribution or other redress in connection with personal injury, death, or loss of or damage to property (whether incurred by the parties hereto or others and whether predicated on negligence or other

grounds). It is the intention of the parties that each, to the full extent permitted by the constitution, statutes and case law of Maryland (and of the United States, where applicable) shall enjoy the rights and remedies and be subject to the obligations, liabilities, rights and legal processes customarily applicable in the cases of such injury, death, loss and damage.

6. COMPLIANCE WITH LAWS

6.1 MTA and Conrail and their respective contractors and subcontractors shall comply with all federal, state, county and municipal laws, rules, regulations and ordinances which may apply to the performance of the Work. Each party shall not in any term or aspect of its employment discriminate because of race, religion, national origin, sex or political reasons or factors.

7. GENERAL TERMS AND CONDITIONS

7.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland.

7.2 Notices. All notice or other communication under this Agreement shall be in writing and shall be deemed to

have been duly given, when actually received by the other party at the following addresses:

- a) Mass Transit Administration
300 West Lexington Street
Baltimore, Maryland 21201-3415
Attention: [Assistant General Manager,
Transit Development Division]
- b) Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19103-2959
Attention: [Chief Engineer -
Design and Construction]

7.3 Disputes. This agreement shall be subject to the provisions of State Finance and Procurement Article Title 15, Subtitle 2 (Dispute Resolution) of the Annotated Code of Maryland and Comar 21.10. (Administrative and Civil Remedies). Pending resolution of a claim, Conrail shall proceed diligently with the performance of the agreement, in accordance with the procurement officer's decision.

7.4 Force Majeure. Neither MTA or Conrail shall be considered in default on any of the terms and conditions of this Agreement in the event of its inability to complete the Work because of strikes, floods, violent weather, vandalism, accidents, Acts of God, improper actions of the other party or by failure of suppliers of materials to furnish such materials in a timely fashion, taking by eminent domain, order of a court or other governmental authority, or any other event, act or failure to act which is not attributable to, or within the control of the non per-

forming party provided, however, that said party whose delay or inability to complete the work due to force majeure must take such steps as are necessary and reasonably prudent without additional cost to cure within a reasonable time its inability to perform its obligations. The time of such delay shall not be included in the time during which the Work is to be performed, and any schedule included in the Statement of Work shall be extended for a period equal to the period of such delay.

7.5 Effective Date. This agreement will become effective at settlement of the sale of the CIT pursuant to the "Agreement of Sale" and upon execution of the Operating Agreement for the CIT and the Flex+Flo leads. This agreement shall remain in effect until MTA performs its obligations and completes all stages of Work, as set forth in the Statement of Work and this Agreement.

7.6 Approval. This agreement has been approved by the Maryland Board of Public Works.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement to be duly executed by their designated
representatives.

Witness:

Louy Smith

MASS TRANSIT ADMINISTRATION

By: Ronald J. Hartman
Title Administrator

Witness:

H. H. Swann
OFFICE MANAGER

CONSOLIDATED RAIL CORPORATION

By: J. D. Connel
Title CHIEF ENGINEER
DESIGN & CONSTRUCTION

EXHIBIT A

<u>Item</u>	<u>Description</u>
1) Trackwork -	To be performed by Conrail - see Exhibit B
*	Two storage tracks at approximately 950 feet total plus installation of 2 #8 turnouts. All track and turnouts to be used, rail salvaged from site.
*	Relocate existing turnout to new location on track 3.
*	Remove existing tracks 1 & 2.
*	All subgrade, sub ballast, and ballast work to be performed by Conrail and/or their contractor.
*	Provide car stop at the end of tracks 4 & 5.
*	Grade crossings (10) skeleton with stone paving.
*	Track removal and temporary stone paving at south end of modified Flex-Flo facility.
2) Utilities -	To be performed by MTA - see Exhibit B
*	Provide and install one pre-engineered metal building approximately 60 feet by 12 feet to house the relocated steam plant and the relocated air compressor.
*	Construct new steam and air line between tracks 5 & 6.
*	Extend steam line between tracks 7 & 8.
*	Construct and install eyewash/shower between tracks 4 & 5 and 6 & 7.
*	Construct and connect sanitary, water, electric and phone service to relocated office trailer.
*	Install 70 ton, 70 foot low profile scale and install connections to relocated office trailer with intercom and electric service.

- Utilities (cont.):
 - * Construct new electric motor vehicle gate.
 - * Construct new fence as shown on Exhibit B.
 - * Provide area lighting to existing standards (2.5 fc).
- 3) Buildings -
 - To be performed by MTA - see Exhibit B
 - * Relocate one office trailer complete with utility feeds and connections.
 - * Provide and install one pre-engineered metal storage building 16 feet by 60 feet, complete with utility feeds and connections.
- 4) Paving -
 - To be performed by MTA - see Exhibit B
 - * Provide bituminous paving for traffic circulation, turnarounds, and truck storage lanes, as shown on Exhibit B.
- 5) Miscellaneous -
 - To be performed by MTA - see Exhibit B
 - * Protective fencing on 28th street bridge.
 - * Move shelving and equipment from storage boxcar to new storage building.
- 6) Trackwork -
 - To be performed by MTA
 - * Remove existing tracks 1 and 2.

0
Baltimore, MD
Mt. Vernon Flexi-Flo Yard
Cockeysville IT Sale to MTA
For Light Rail Line

COST SUMMARY

GRADING	264000
TRACKWORK	312000
ENGINEERING	89000
SALES TAX	7000
LIABILITY INSURANCE	9000
PERFORMANCE BOND	2000
ROADWAY MACHINES	55000
HIGHWAY VEHICLES	35000
ACCOUNTING & BILLING	2000
CONTINGENCIES	78000

GROSS TOTAL COST	853000
LESS SALVAGE	44000

NET TOTAL COST	809000
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NOTE:

1. THIS ESTIMATE IS BASED ON 1990 DOLLARS AND IS VALID FOR 60 DAYS ON
2. FHPM 1-4-3 ADDITIVES WERE APPLIED.

CHIEF ENGINEER, D&C
PHILADELPHIA, PA

April 3, 1990
ff28549c.b01

THIS DEED made this 1st day of May in the year One Thousand Nine Hundred and Ninety (1990),

BY AND BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Six Penn Center Plaza, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and MASS TRANSIT ADMINISTRATION, an agency of the State of Maryland, having a mailing address of 300 West Lexington Street, Baltimore, Maryland 21201-3415, hereinafter referred to as the Grantee;

WITNESSETH, that in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the said Grantor does remise, release and forever quitclaim unto the said Grantee, the successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to,

ALL THAT CERTAIN property of Grantor, together with all the improvements thereon, being a portion of Grantor's Cockeysville Branch identified as Line Code 1224 in its corporate records and also being a part or portion of the former Northern Central Railway Company's line of railroad known as Penn Central Northern Central Branch and further identified as Line Code 1224 in the Recorder's Office of the City of Baltimore, Maryland in Liber 6231, at page 098, and which property is generally indicated on Grantor's Case Plan No. 69458-A, Valuation Map Nos. V-1/7 through V-1/16, which are attached hereto and made a part hereof as Attachment "A", and generally described as follows:

SITUATE in the County of Baltimore, Maryland, and BEGINNING at the Boundry Line between the City of Baltimore, Maryland and the County of Baltimore, Maryland at the James Falls Expressway City Line Bridge which is north of Mount Washington; and thence extending from said Boundary Line and continuing in a general northerly direction and passing through Bare Hills, Hollins, Ruxton, Riderwood, Lutherville, Timonum, Pardonea, Texas and Cockeysville and continuing to the ENDING at the southerly line of Bridge No. 16 at Railroad Station No. 816+86; which is further identified in the Baltimore County Recorder's Office in Liber 6231 at page 118 and indicted on pages 116 and 117, which is south of the Ashland Section in Baltimore County, Maryland.

TOGETHER WITH, all tracks, materials, trestles, bridges, buildings and all other improvements and all the appurtenances belonging thereto.

in Liber 6231 at page 093&c., granted and conveyed unto Consolidated Rail Corporation.

EXCEPTING and RESERVING, thereout and therefrom and unto the said Grantor, permanent, exclusive and assignable freight operating easements over the premises hereinbefore described for the purpose of providing rail freight service to present and future customers and otherwise fulfilling its common carrier obligations, said easement is subject to, governed by and exercised solely in accordance with the specific term and condition of the Operating Agreement between Grantor and Grantee.

EXCEPTING and RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to the land, track, track material and their appurtenances, being the Cockeysville Industrial Park Track, situate on the westerly side of the Cockeysville Industrial Track in the vicinity of Railroad Station 759+80, and indicated on Grantor's Plan R.M.B-4373, in Cockeysville, Baltimore County, Maryland.

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

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

(1) Grantor shall not be liable or obligated to provide for or supply any type of utility service to Grantee.

(2) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on the line of railroad herein to be conveyed to the said Grantee, except as provided in the Operating Agreement between Grantor and Grantee.

TOGETHER with all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any wise appertaining, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD the premises above described and mentioned and hereby intended to be quitclaimed together

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

attested, and the signature of its Assistant Vice President-Asset Development, the day and year first above written.

Signed, sealed and delivered in the presence of:

CONSOLIDATED RAIL CORPORATION
By:

Nancy T. Basilio

John F. Betak
John F. Betak, Assistant Vice President-Asset Development

ATTEST:

Juliana F. Lark

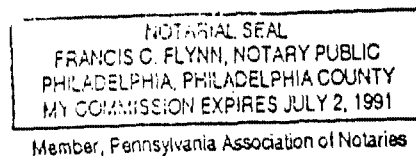
J. D. McGeehan
Assistant Secretary
J. D. McGEEHAN

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) : SS

I HEREBY CERTIFY that on this 15th day of ^{MAY} April in the year One Thousand Nine Hundred and Ninety (1990), before me, the subscriber, a Notary Public of the Commonwealth of Pennsylvania, in and for the County aforesaid, personally appeared John F. Betak, Assistant Vice President-Asset Development of CONSOLIDATED RAIL CORPORATION and duly acknowledged the foregoing Deed to be the act of the said corporation.

AS WITNESS my hand and notarial seal.

Francis C. Flynn
Notary Public



attested, and the signature of its Administrator
General Manager, the day and year first above
written.

Signed, sealed and delivered
in the presence of:

MASS TRANSIT ADMINISTRATION
By:

Nelson E. Rickard

Ronald J. Hartman
ADMINISTRATOR/GENERAL MANAGER

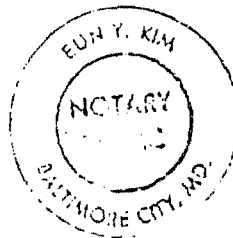
ATTEST:

STATE OF MARYLAND)
City)
~~COUNTY~~ OF Baltimore) SS

I HEREBY CERTIFY that on this 1st day of May in the year
One Thousand Nine Hundred and Ninety (1990), before me, the
subscriber, a Notary Public of the State of Maryland, in and
for the County aforesaid, personally appeared RONALD J.
HARTMAN, of
MASS TRANSIT ADMINISTRATION and duly acknowledged the
foregoing Deed to be the act of the said Administration.

AS WITNESS my hand and notarial seal.

Eun Kim
Notary Public



THIS INSTRUMENT PREPARED BY:

Francis C. Flynn
Consolidated Rail Corporation
Fifteenth Floor, Six Penn Center
Philadelphia, Pennsylvania 19103

ATTACHMENT "A"

CASE NO. 69458-A

DEED

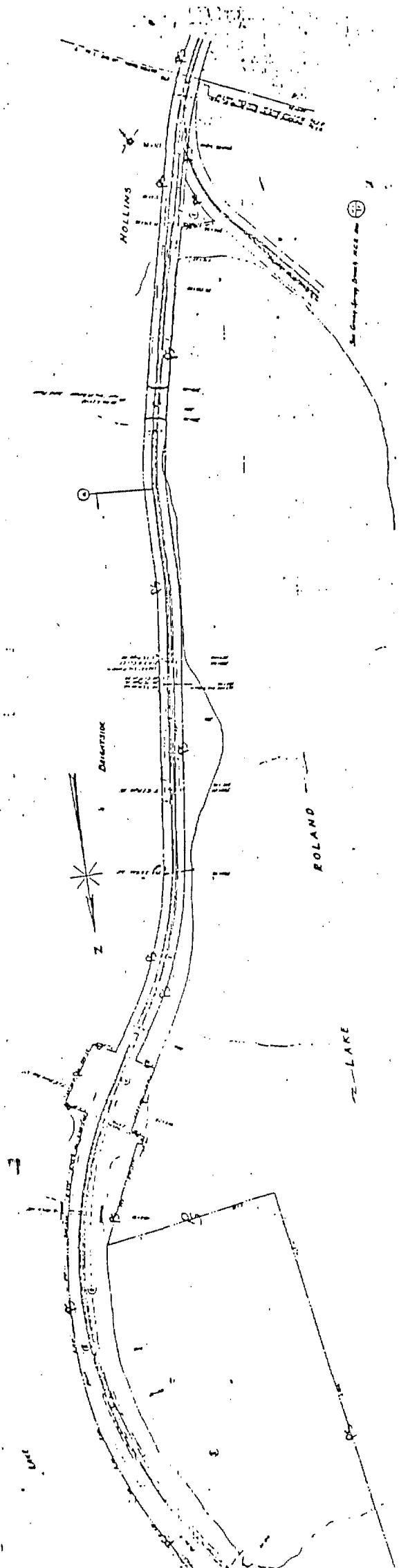
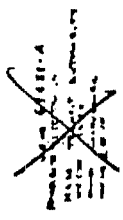
CONSOLIDATED RAIL CORPORATION

TO

MASS TRANSIT ADMINISTRATION
OF THE STATE OF MARYLAND

COUNTY OF BALTIMORE

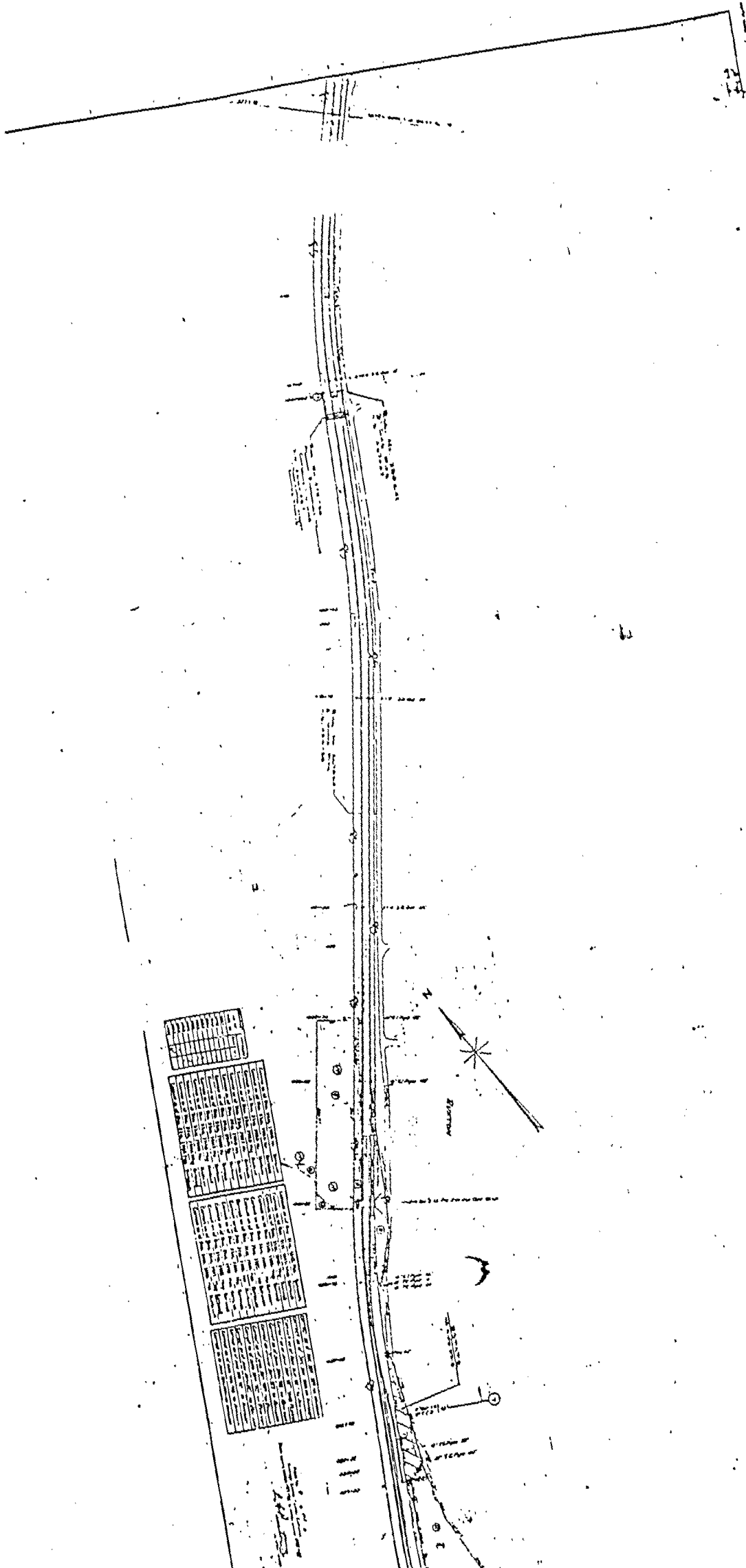
MAP ADDENDUM



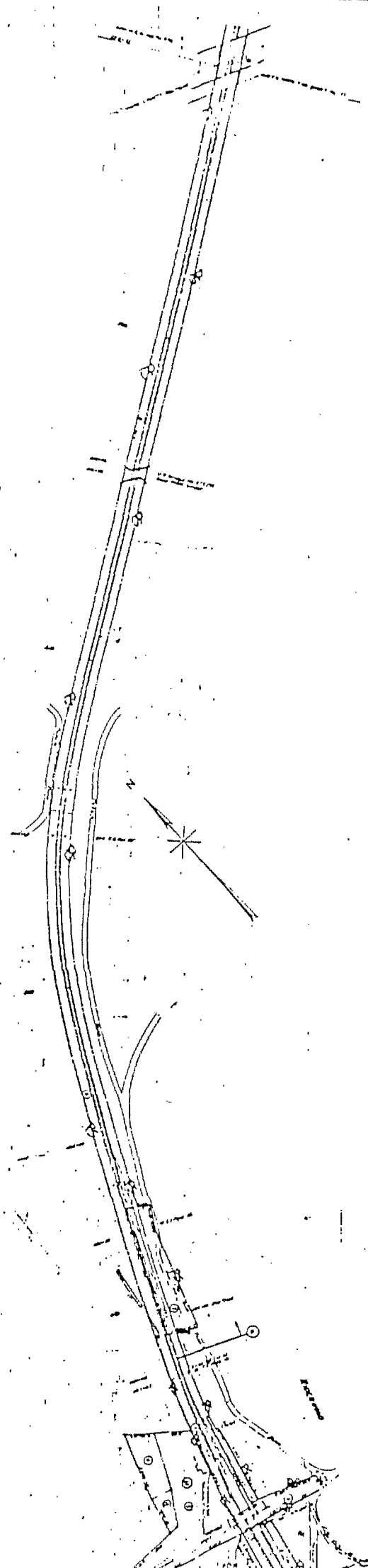
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NORTHERN CENTRAL RY. CO.
DESIGNED BY THE P. & N. CO. ENGINEERS
STATIONED FROM 10+00 TO 10+00

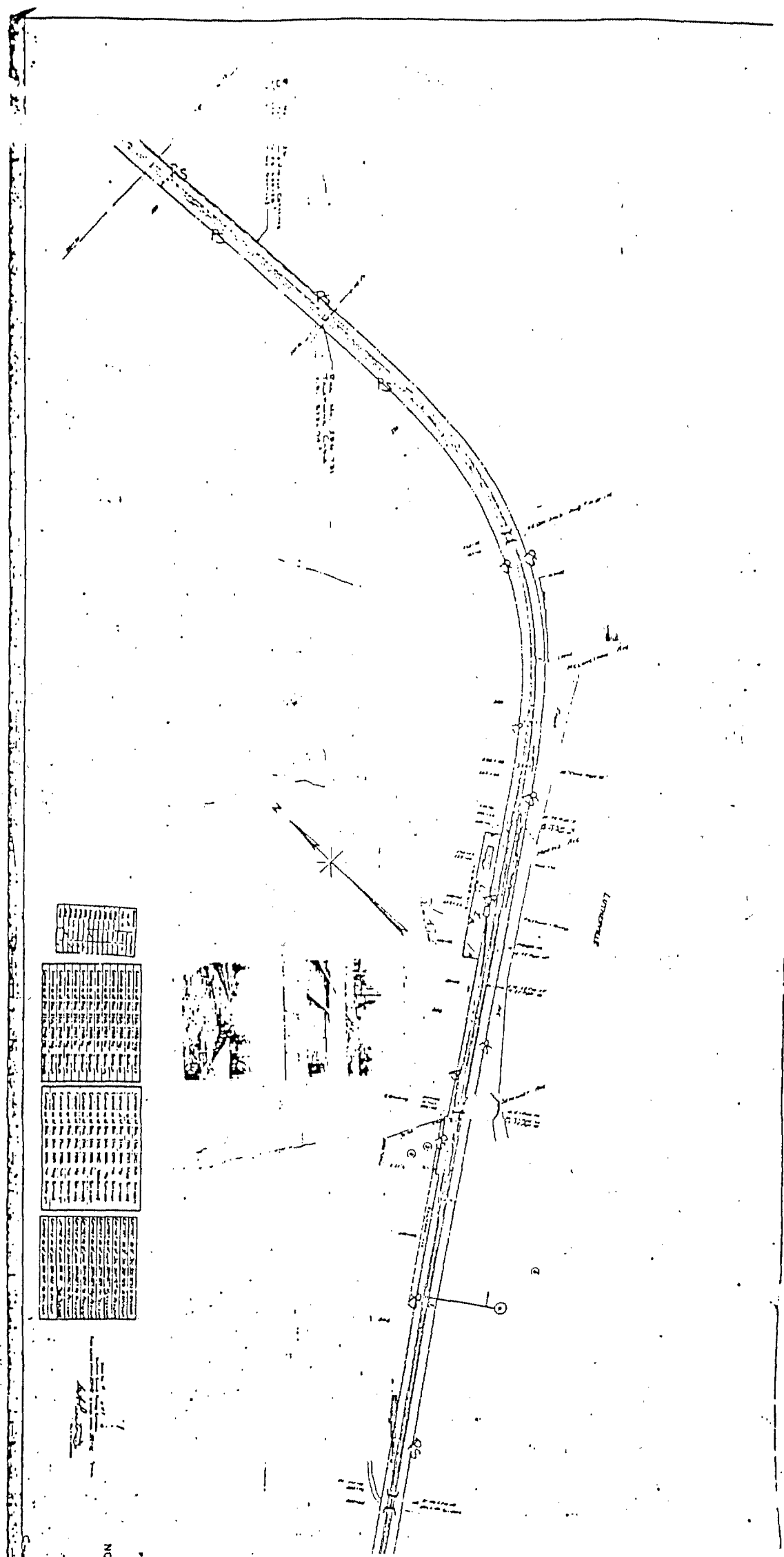
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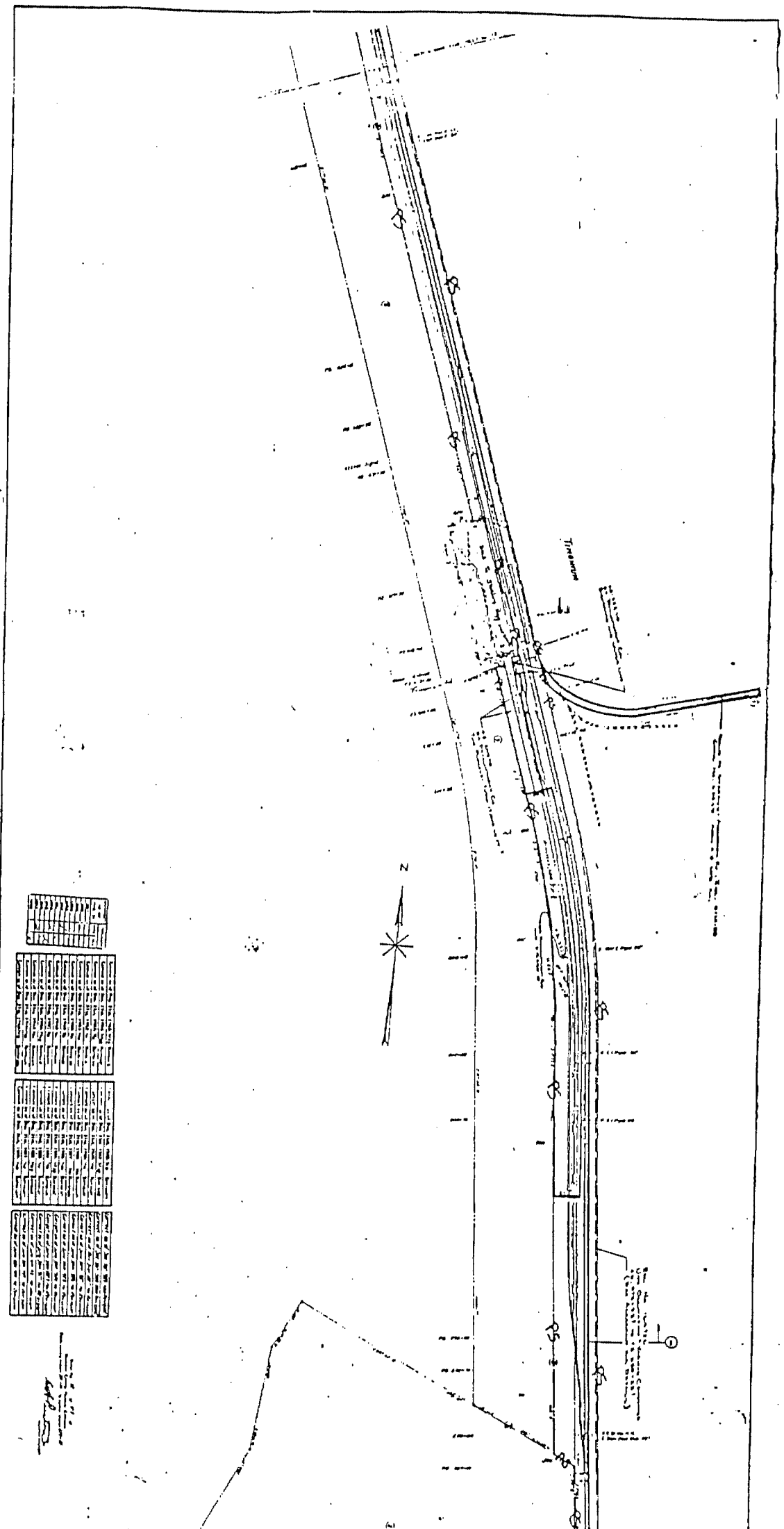
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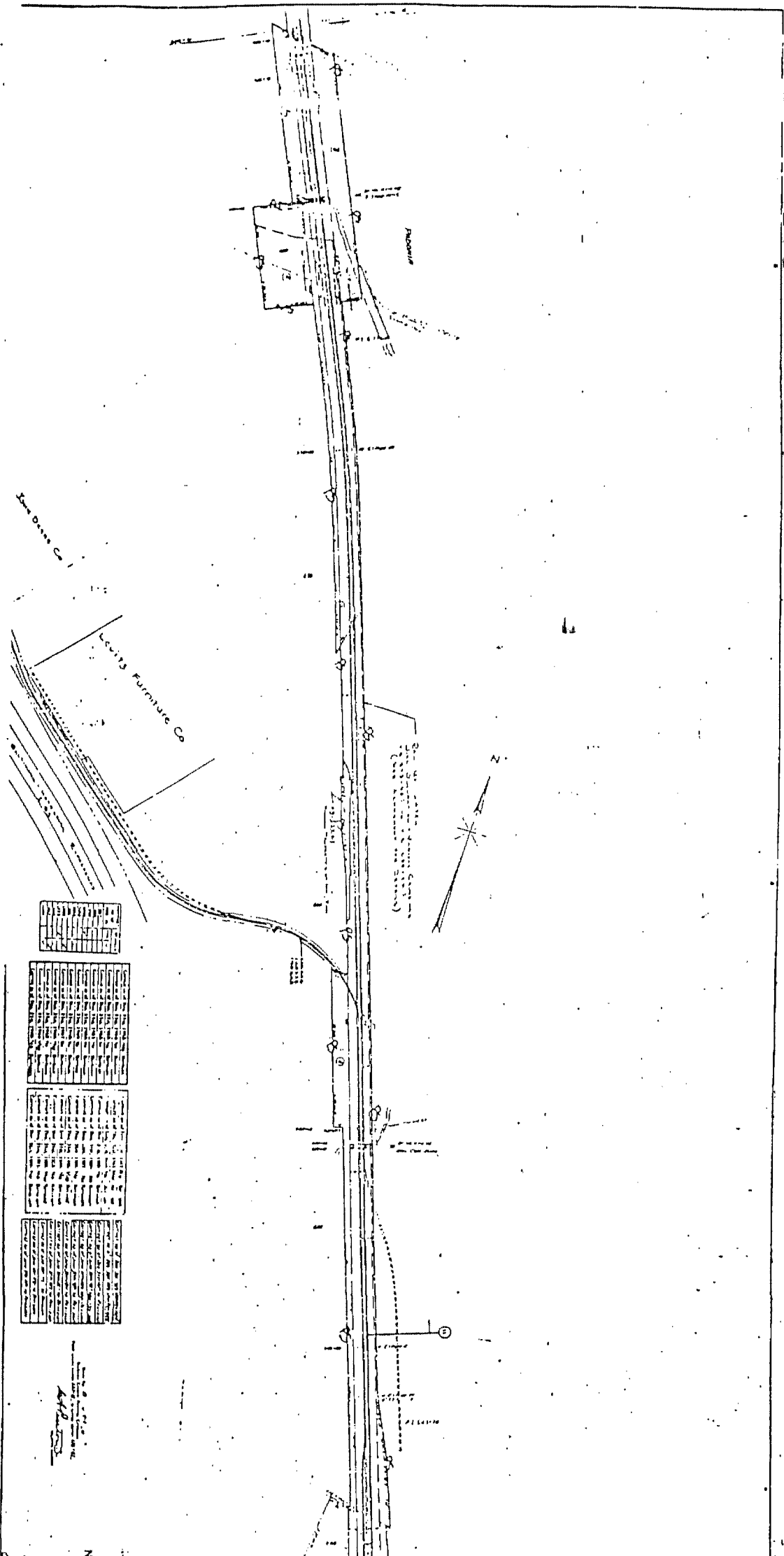


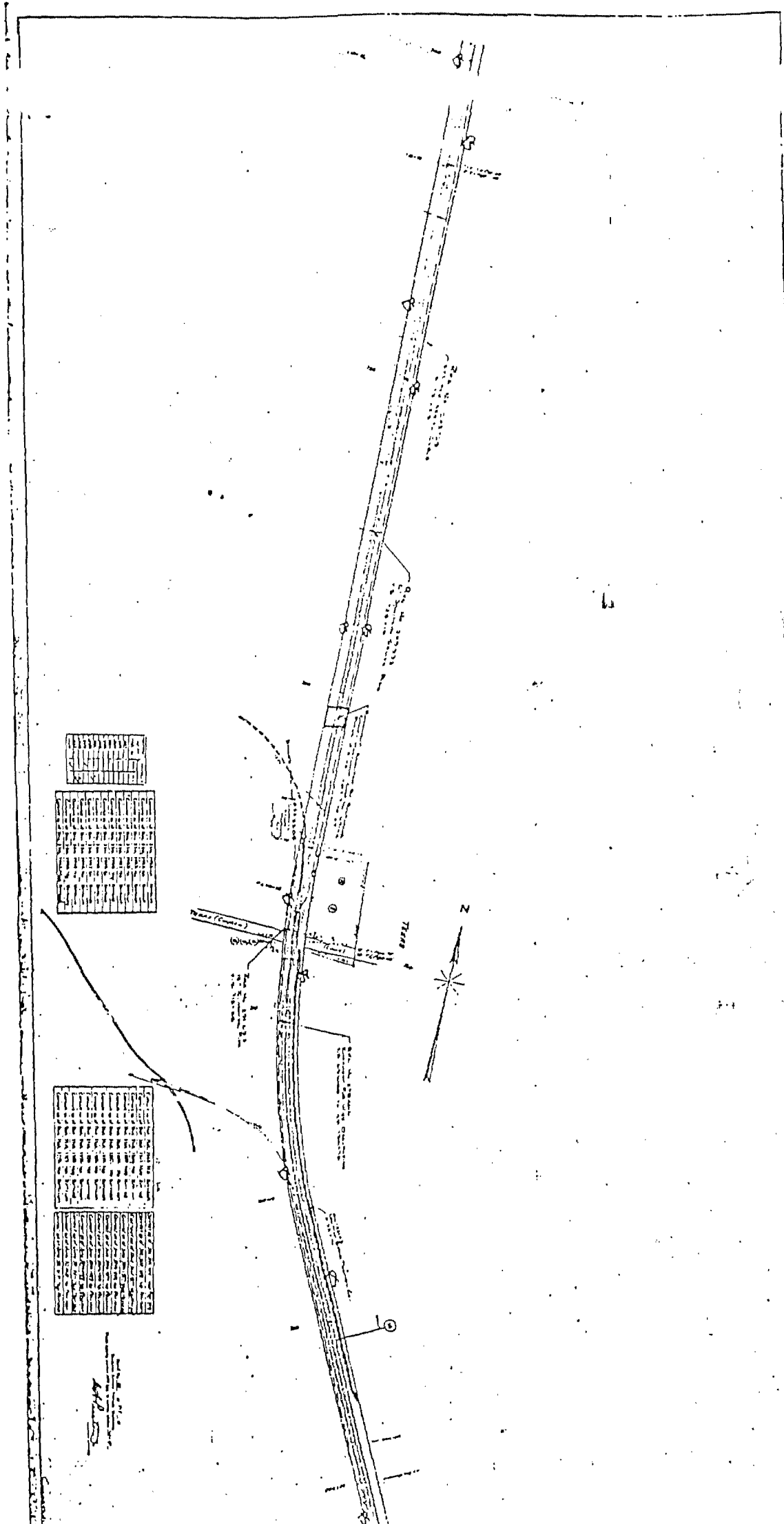
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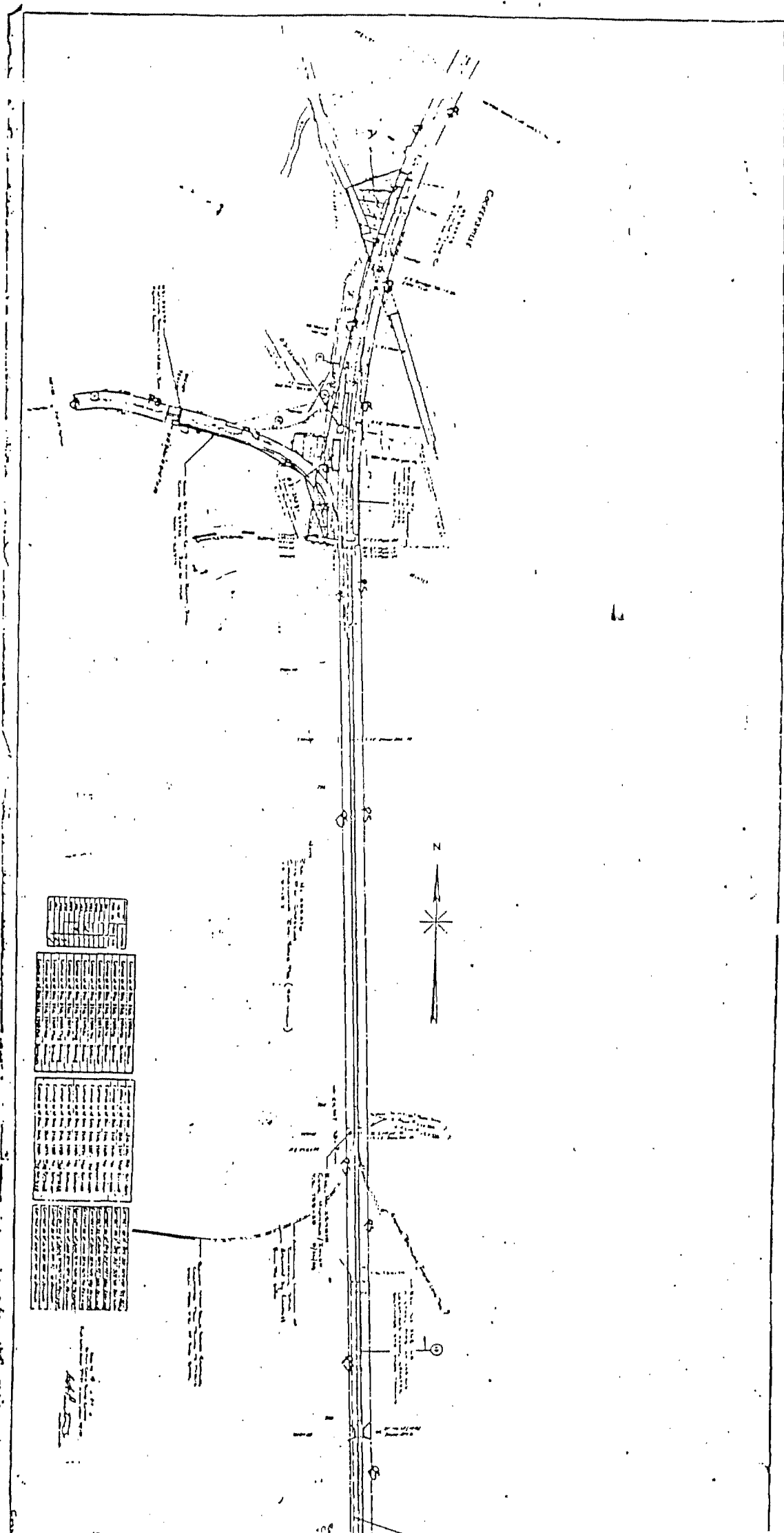


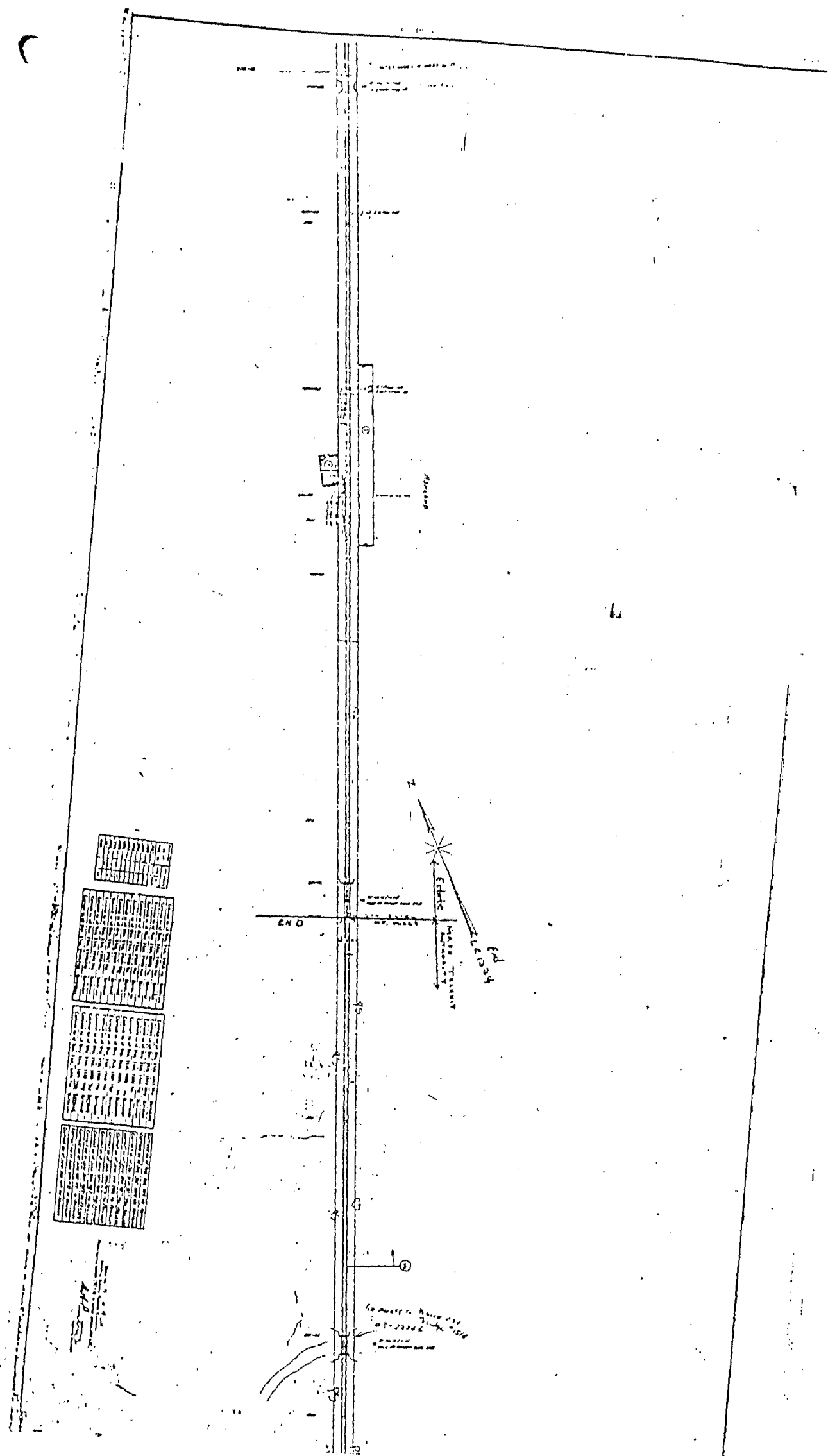












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D E E D

CONSOLIDATED RAIL CORPORATION

-to-

MASS TRANSIT ADMINISTRATION
OF THE STATE OF MARYLAND

Property situate in Baltimore
County, Maryland.

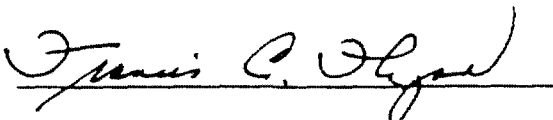
*Exhibit D*ASSIGNMENT AND ASSUMPTION

FOR VALUE received, CONSOLIDATED RAIL CORPORATION, ("Conrail"), a Corporation of the Commonwealth of Pennsylvania, having a mailing address of Six Penn Center Plaza, Philadelphia, Pennsylvania 19103, hereby assigns, transfers, and sets over unto MASS TRANSIT ADMINISTRATION, ("MTA"), an agency of the State of Maryland, having a mailing address of 300 West Lexington Street, Baltimore, Maryland 21201-3415, hereto accepting and assuming all rights of Conrail in and to any leases, easements, licenses, agreements (excluding sidetrack agreements), servitudes and privileges (collectively referred to herein as "Documents") relating to Conrail's Cockeysville Industrial Track (Line Code 1244), being a line of railroad from about 200 feet south of North Howard Street in the City of Baltimore, Maryland to a Lateral Cut Line at Railroad Station 816+86 which is north of Cockeysville in Baltimore County, Maryland and which line of railroad is generally described and identified in 2 deeds from Conrail to MTA, dated ~~April~~ ^{May} / , 1990, provided, however, that if any such Documents affect any property owned by Conrail other than the property conveyed by said deeds dated ~~April~~ ^{May} / , 1990, the assignment thereof shall be limited to the portion(s) applicable to the conveyed property.

In respect to all existing sidetrack agreements pertaining to the Cockeysville Industrial Track, Conrail shall retain all rights, duties and obligations therein contained except for Conrail's ownership and maintenance of its portion of each sidetrack which shall be assumed by MTA pursuant to the terms of the separate Operating Agreement, which is attached as Exhibit "E" of the Agreement of Sale between the parties hereto. Copies of all known existing sidetrack agreements have been provided to the MTA.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, under their seals this ^{15th} day of ~~April~~ ^{MAY}, A.D. 1990.

WITNESS:


CONSOLIDATED RAIL CORPORATION
BY:

 John F. Betak, Assistant Vice
President-Asset Development

FINAL

March 29, 1990

EXHIBIT E
OF
AGREEMENT OF SALE

OPERATING AGREEMENT

between

MASS TRANSIT ADMINISTRATION
MARYLAND DEPARTMENT OF TRANSPORTATION

AND

CONSOLIDATED RAIL CORPORATION

A G R E E M E N T

THIS AGREEMENT, entered into as of this First day of May, 1970, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail") and MASS TRANSIT ADMINISTRATION (hereinafter referred to as "MTA").

WHEREAS, Conrail owns and provides freight service to industries located alongside an existing line of railroad referred to as the Cockeysville Industrial Track (hereinafter referred to as the "CIT"); and

WHEREAS, MTA intends to provide light rail service on the CIT and to that end, MTA has purchased the CIT right-of-way and appurtenances as described in the Agreement of Sale, dated May 1, 1970; and

WHEREAS, in said Agreement of Sale Conrail reserves unto itself an exclusive freight operating easement;

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

SECTION 1. DEFINITIONS

The definitions contained in this Section 1 apply to the following terms as used in this Operating Agreement:

(a) Cockeysville Industrial Track (CIT) - All tracks and real property being purchased by MTA and described in the Agreement of Sale, dated May 1, 1990. The trackage begins at the connection with Amtrak, approximately 2200 feet north of the point of switch with the Northeast Corridor, and extends in a northerly direction to the end of the CIT approximately 73,670 feet or mile post +15.4 on valuation map V-1/16, a total of approximately 14.0 miles, including all siding and yard tracks included in the Agreement of Sale between MTA and Conrail dated May 1, 1990.

(b) Subject Trackage - The interim right-of-way and track utilized by Conrail to fulfill its common carrier requirements prior to and during reconstruction by MTA.

(c) Central Light Rail Line (CLRL) - The right-of-way and track after reconstruction which are dispatched by MTA and operated on by Conrail. The CLRL begins at the connection with Amtrak, approximately 2200 feet north of the point of switch with the Northeast Corridor, and extends in a northerly direction to Mile Post 12.4, Timonium Station; juncturing with the Subject Trackage. Upon completion of MTA's reconstruction of

the line beyond Timonium, Mile Post 12.4, the term CLRL shall expand to include all reconstructed right-of-way and track.

(d) Route - Those instances wherein the terms Subject Trackage and Central Light Rail Lines both apply.

SECTION 2. OPERATING EASEMENT

Subject to the terms and conditions herein provided, Conrail has reserved a perpetual and exclusive easement, (hereinafter referred to as the "Operating Easement") assignable subject to the provisions of Article 13 hereof, for the sole purpose of providing rail freight service to present and future customers which can be served from the CIT south of York Road at MP 14.8 +/- . Said operating easement is illustrated as it pertains to the CLRL and Route in "Exhibit I" which is titled "CLRL Track Schematic including "Freight Only" Tracks".

(a) MTA will accord to Conrail every reasonable accommodation in order for Conrail to maintain freight traffic on the Route, recognizing that Conrail has a common carrier obligation under the Interstate Commerce Act (United States Code, Title 49, Subtitle IV) to provide rail transportation on the line, subject to the jurisdiction of the Interstate Commerce Commission. Therefore, nothing herein shall be construed as interfering with the ability of Conrail to provide common carrier service to both present and future customers to the extent this

can be done without undue interference with MTA's reasonable operating and maintenance requirements. MTA will attempt to schedule its maintenance to be consistent with the freight service needs of Conrail's customers.

(b) During the construction phase, as defined in Section 4, Conrail shall have the right to use such Subject Trackage:

(i) For access to and from its Flexi-Flo Terminal between the hours of 2000 and 0600, on as many as six days (6) per week, said days to be of Conrail's choice; and

(ii) For freight service between the hours of 2000 and 0600 on as many as three days (3) per week of Conrail's choice; and

(iii) If new business develops during this period which requires additional service frequency, Conrail agrees to provide MTA fifteen (15) days written notice of such need. After such notice, Conrail shall have the right to use the Subject Trackage between the hours of 2000 and 0600 on as many as six (6) days per week of Conrail's choice; and

(iv) During the construction period it may be necessary for the MTA and or its contractors to take the Subject Trackage out of service for periods exceeding four (4) days in order to perform certain construction and reconstruction work. Conrail agrees, subject to advance notice, to make such arrangements to allow the outage; and, in the event such period

exceeds seven (7) days, MTA shall reimburse Conrail for any reasonable, documentable, incremental costs incurred by Conrail to accommodate and retain the traffic of its shippers. MTA agrees to provide Conrail fifteen (15) days notice of such need.

(c) Following the completion of construction on the CLRL, Conrail shall have:

(i) The unlimited right to use such trackage for access to and from its Flexi-Flo Terminal; and

(ii) The right to use the CLRL between the hours of 2350 and 0425 on as many as three (3) days per week of Conrail's choice; and

(iii) If new business develops during this period which requires additional service frequency, Conrail agrees to provide MTA fifteen 15 days written notice. After such notice has been provided, Conrail shall have the right to use the Route between the hours of 2330 and 0500, on as many as six (6) days per week of Conrail's choice.

SECTION 3. GENERAL CONDITIONS - FORM A

Except as otherwise may be provided below, this Agreement is subject to and shall be governed by the "General Conditions - Form A", attached hereto.

SECTION 4. CONSTRUCTION AND MAINTENANCE OF LINE & CONNECTIONS

(a) Until closing of the sale, Conrail will be responsible for all maintenance of track, grade crossings, signals, and any other equipment or facilities necessary for Conrail to provide freight service.

(b) During the construction phase, defined as that period of rehabilitation to the Subject Trackage up to the point of pre-revenue service at which time MTA shall simulate light rail revenue service through movement of the same number of non-revenue trains as is planned to be operated on a revenue schedule, MTA shall maintain track conditions allowing 10 miles per hour freight train operation. MTA will be responsible for providing a safe and connected track structure and right-of-way that will afford Conrail trains a safe right of passage over track in the process of reconstruction. Conrail will reimburse MTA for maintenance requested by Conrail on the "Freight Only" tracks including all side tracks and the tracks North of Sta. 666+90.

(c) Conrail will reimburse the MTA the sum of \$2,000.00 for annual maintenance of each "Freight Only" turnout on the CLRL as listed in Appendix II. The annual maintenance charge shall be subject to increase consistent with Conrail's switch maintenance tariff.

(d) Upon commencement of the pre revenue service defined as that point in time when MTA simulates its schedule revenue service for testing purposes, any track reconstructed by MTA shall be maintained at a level sufficient to support safe Conrail freight operations at speeds of 25 miles per hour.

(e) With respect to all existing sidetrack agreements pertaining to the Cockeysville Industrial Track, Conrail shall retain all rights, duties and obligations therein contained except for Conrail's ownership and maintenance of its portion of each sidetrack which shall be the responsibility of MTA pursuant to the terms of this Agreement.

(f) Conrail may request MTA to perform maintenance to track categorized as "Freight Only", and in such instances, shall reimburse MTA for the cost of such additional maintenance. Those segments of track which can be categorized as "Freight Only" are listed in Appendix I of this Agreement.

(g) For purposes of this Agreement, reimbursable expenses shall be defined as the total of (1) out of pocket expenses, (2) straight time labor cost, (3) and a 100% additive applied to the straight time labor cost for overhead.

(h) MTA shall maintain dimensional and load carrying capacities of the Route as published in the 1989-1990

Annual edition, Volume 199, of the "Railway Line Clearances" between Perryville, Maryland and Alexandria, Virginia.

SECTION 5. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date received by certified mail, or by such other means as the parties mutually may agree, and shall be addressed as follows:

- (a) If to MTA:
Mass Transit Administration
300 W. Lexington Street
Baltimore, Maryland 21201-3415
Attention: Assistant General Manager
Transit Development Division
- (b) If to Conrail:
c/o Senior Vice President - Operations
Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, PA 19103-2959
- (c) Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 6. TERM

(a) Except as otherwise herein provided, this Agreement shall commence on the date of the sale of the CIT and continue in perpetuity until superseded by the execution of another mutually acceptable Operating Agreement, which may amend, modify, supersede or terminate this Agreement.

(b) When both MTA and Conrail agree, this Agreement shall be open to renegotiation.

(c) Termination of this Agreement in accordance with its terms shall not affect, impair, or discharge any obligations, claims, indemnifications, benefits, or rights of Conrail or MTA which may arise or accrue (or have arisen or accrued) based upon (or in any way related to) acts, omissions, or events which took place prior to, concurrently with, or by reason of the termination of this Agreement in accordance with its terms.

(d) Each party will be excused from performance of any obligation hereunder, except obligations involving the payment of money to the other party, where such nonperformance is occasioned by any event beyond its control, which shall include, without limitation, any order, rule or regulation of any federal, state or local government body or instrumentality, work stoppage, accident, natural disaster, or civil disorder, provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy or remove such event in the shortest practical time. Either party shall resume normal services and performance of its other obligations hereunder, including completion of repairs, restoration or

replacement as soon as reasonably possible following cessation resulting from a force majeure occurrence.

(e) In the event that financial participation by MTA in service or cost obligations contained in this Operating Agreement exceeds the approved appropriations of the Governor and General Assembly of the State of Maryland, MTA shall provide written notice of same to Conrail. Effective with the depletion of such appropriations, MTA agrees to cease all rail operations, in order not to incur additional funding deficits, for that period of time MTA is unable to comply with the funding requirement of this Operating Agreement. In addition, Conrail shall be relieved, at its discretion, of any contractual obligations which would have arisen under that Section for which MTA has insufficient funds to fulfill their contractual obligations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in duplicate, as of the date first above written.

Witness:

Long Smith

MASS TRANSIT ADMINISTRATION

By: Ronald J. Hartman
Title Administrator

Witness:

John D. Connor

CONSOLIDATED RAIL CORPORATION

By: L. J. Pate
Title Gen. Supt. Contracts

GENERAL CONDITIONS-FORM A

DATED: May 1, 1970

TO OPERATING AGREEMENT DATED AS OF May 1, 1970,
BETWEEN MASS TRANSIT ADMINISTRATION ("MTA") AND CONSOLIDATED RAIL
CORPORATION ("Conrail") relating to Conrail's easement over the
Cockeysville Industrial Track (CIT), Baltimore, Maryland.

ARTICLE 1. USE OF TRACKAGE

(a) MTA shall have exclusive rights of use on and
access to the Route at all times other than those described in
Section 2 of this Agreement.

(b) MTA shall manage and control operations on
the Route subject to the rights reserved herein by Conrail.

ARTICLE 2. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) MTA, at its sole cost and expense, may make
such changes in, additions and betterments to, and retirements
from the Route as shall, in its judgement, be necessary or
desirable for the economical or safe operation thereof or as
shall be required by any law, rule, regulation, or ordinance
promulgated by any governmental body having jurisdiction;
provided, that Conrail's rights and abilities to meet its common
carrier obligations shall not be affected by any such changes in,

additions and betterments to or retirement of any of the Route. Such additions and betterments including but not limited to signal facilities, ballast, rail, and ties, shall become a part of the Route and any retirements shall be excluded from the Route.

(b) If Conrail requests MTA to make changes in or additions and betterments to the Route, including without limitation, changes in communications or signal facilities, for purposes beyond that required for MTA's operation, MTA shall make such changes in or additions and betterments to the Route and Conrail shall pay to MTA the reimbursable expense, as defined in Section 4(f) of this Agreement.

(c) Whenever an industry requests establishment of an industrial sidetrack connection, or if construction of such a connection is required by order of the Interstate Commerce Commission or the Maryland Public Service Commission, Conrail shall notify MTA. Upon receipt of the required funds from Conrail or a responsible third party, MTA will enter into a Sidetrack Agreement with the industry to be serviced and MTA shall construct or cause to be constructed a sidetrack connection to the Route. MTA will own any such connection to the property

boundaries of the CIT and outside it, to and including the derail.

(d) MTA shall submit engineering plans and estimates covering the cost of installing sidetrack(s) to Conrail for review and approval.

(e) Upon receipt of Conrail's approval of the plans, MTA shall implement construction which shall conform to those standards established in Section 4(h) of this Agreement. MTA shall install track, facilities or structures that will provide a safe environment for Conrail's employees and allow for continued rail freight service and current weight and clearance restrictions.

ARTICLE 3. MAINTENANCE OF ROUTE

(a) MTA shall maintain, repair, and renew the Route. Maintenance shall be at MTA expense except as specified by Section 4 of this Agreement.

(b) Conrail shall not retire or remove any track(s), including sidetrack(s), without first obtaining written approval of MTA. Conrail shall not move any sidetrack material from one location on the Route to another without prior written approval from MTA, except in emergency. In the event of any emergency, in which on site track material is moved without prior

consent of MTA, Conrail shall provide MTA with a written report describing the circumstances within seven (7) days of such action. Conrail shall not dispose of such track material without the prior written consent of MTA.

(c) Conrail shall have the right of access to the CIT to inspect MTA's maintenance, repair, renewal and/or construction provided that such inspection does not unreasonably delay or otherwise interfere with MTA's use of and access to the CIT.

(d) In the event that Conrail receives from the Federal Railroad Administration (hereinafter referred to as "FRA") any defect reports of deficiencies on the Route, Conrail shall immediately advise MTA orally and shall provide MTA with a copy of such reports within forty-eight (48) hours following oral notification.

(e) Within fourteen (14) days of receiving a copy of such defect report, MTA will perform said corrections and provide Conrail with date(s) of correction which Conrail will forward to the FRA within fourteen (14) days of receiving a copy of such report.

(f) Any maintenance, repair and/or renewal initiated by said FRA reports shall not be considered as

maintenance requested by Conrail, except for
"Freight Only" tracks.

ARTICLE 4. MANAGEMENT AND OPERATION

(a) MTA shall control and dispatch Conrail freight trains on the route in compliance with the Northeastern Operating Rules Advisory Committee ("NORAC") operating rules and Conrail timetable and special instructions, amended and supplemented, as necessary by regulations of the MTA. Any employees of MTA who dispatch on the Route and all employees of Conrail who operate on the Route shall be qualified on said rules and regulations, and each party shall be responsible for its costs to qualify its employees. MTA reserves the right to qualify Conrail employees on the Route. Conrail will notify MTA, as far in advance as practical of changes in NORAC operating rules, Conrail timetable and special instructions (including applicable bulletins). MTA may, upon providing Conrail 90 days written notice, issue a timetable and special instructions which shall replace Conrail's timetable and special instructions. Each party will provide the other party its regulations, supplements, and safety rules at no cost.

(b) Train crew members of both parties must have access to no fewer than two radios capable of transmitting and receiving communications with MTA's dispatcher when operating on the Route and shall monitor the frequency designated by MTA when

operating on the Route. Until MTA designates a frequency, Conrail's frequency shall apply.

(c) Each party shall comply with the applicable provisions of all federal and state laws, regulations and rules respecting the operation, condition, inspection and safety of its own trains, locomotives, freight cars, light rail cars and other equipment while such equipment is being operated over the Route. Subject to the provisions of Article 6(g) herein, either party charged with a violation of such laws, rules and regulations shall assume full responsibility for and shall indemnify, protect, defend, and save harmless the other party and its directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon the charged party by any public authority or court having jurisdiction in the premises when attributed solely to the failure of said charged party.

(d) MTA will cooperate and promptly inform Conrail as to all operating, maintenance and construction plans or any extraordinary conditions which might affect Conrail's operations in any way.

(e) MTA shall manage the operation in such a manner as to minimize delays to Conrail.

(f) Conrail shall periodically conduct operational tests and inspections on the Route in accordance with Conrail's operational test program to determine compliance of its employees with NORAC operating rules, and Conrail's timetable and special instructions. Conrail shall maintain any necessary records of such tests and inspections. Conrail shall hold such investigations as it deems necessary and provide MTA with a copy of investigation transcript and discipline assessed.

(g) The MTA may conduct an investigation at its option if a Conrail employee working on MTA property is alleged to have violated NORAC operating rule or MTA regulation, order, practice or instruction, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, MTA will schedule the investigation and notify Conrail's General Manager in the territory thereof, who will, in turn, arrange to issue proper notice to the Conrail employee(s) of the investigation. MTA's scheduling of the investigation must comply with the time limits provided in the applicable agreement of Conrail.

(h) If MTA conducts an investigation, MTA shall have the right to exclude from the Route any employee of Conrail, except officers, determined by MTA, as the result of MTA's investigation or hearing described below, to be in violation of

NORAC operating rules or MTA rules, regulations, orders, practices or instructions .

(i) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein MTA desires to bar a Conrail employee from service on MTA territory pending an investigation by MTA, immediate verbal notification will be given to the appropriate Conrail General Manager so that proper written notice can be issued to the employee.

(j) If MTA conducts an investigation, its officer will conduct the investigation, but a Conrail officer will be present to assure compliance with the Conrail labor agreement and practices with respect to investigation procedures. After the investigation is concluded, MTA will promptly furnish Conrail with two copies of the transcript and a recommendation as to the discipline to be assessed. Conrail's General Manager will arrange to assess discipline, subject to receipt of MTA's recommended discipline, within the applicable time limits. If MTA recommends dismissal, Conrail reserves the right to change the recommendation to the extent of barring the individual from operating over MTA's territory.

(k) It is understood that MTA shall reimburse Conrail for all payments that Conrail might be required to make

as a result of a challenge being made by the employee or his representative as to the discipline recommended by MTA and assessed by Conrail. Conrail agrees to notify MTA before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, MTA will be given an opportunity to review Conrail's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which Conrail may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(l) Conrail may employ contractors to perform wreck clearance or rerailing work on the Route, subject to the insurance provision of Article 11 of this Agreement and approval from MTA in advance of the contractor entering on the Route.

(m) The trains, locomotives, cars, and equipment of Conrail and MTA shall be operated in such manner as will afford the most economical and efficient manner of movement of all traffic except that light rail service will be given preference at all times other than during freight service hours designated in Section 2.

(n) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a

train or locomotive of Conrail becomes stalled or unable to proceed under its own power over the Route or, if in emergencies crippled or otherwise defective cars must be set out of Conrail's trains on the Route, MTA shall have the option to furnish motive power or take such other action as may be necessary to move the disabled equipment off the Route, and Conrail shall reimburse MTA for any reimbursable expenses, as defined in Section 4(f) of this Agreement, of rendering any such assistance.

(o) Conrail shall at its own expense make repairs to defective freight equipment or rearrange freight lading as may be necessary to move such equipment off the Route.

ARTICLE 5. CLEARING OF WRECKS

(a) When, as a result of Conrail's sole use of the Route, rerailing, wrecking service or wrecking train service is required, Conrail shall perform or arrange to have performed such services while MTA, at its option shall perform or arrange to have performed the repair and restoration of roadbed, track, signals, communications systems and all other right of way structures. The cost and expense thereof, including without limitation loss of, damage to and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be borne by Conrail. If, in the opinion of MTA, Conrail has not taken prompt action, MTA reserves the right to undertake or contract for such activities

as may be necessary, at Conrail's sole cost and expense. In that event, all locomotives, cars, and equipment and salvage so picked up and removed by MTA or its contractor which are owned by or under the management and control of or used by Conrail at the time of such wreck, shall be promptly delivered to Conrail. For purposes of this article "prompt action" is defined as having appropriate labor and equipment at the wreck site within four hours and working continuously from that time until the right of way is cleared.

(b) When, as a result of MTA sole use of the Route, rerailling, wrecking service or wrecking train service is required, MTA, with the cooperation and assistance of Conrail, shall have the option of having Conrail promptly perform such service, or a part thereof, including but not limited to, removal or restoration of roadbed, track, signals, communications systems and/or all other right of way structures, which shall be performed at MTA's sole expense and for which MTA will reimburse Conrail all reasonable and documented costs, as defined in Section 4(g) of this Agreement.

(c) When, as a result of MTA and Conrail joint use of the Route, rerailling, wrecking service or wrecking train service is required, the provisions of Article 5(a) shall apply to Conrail equipment while the provisions Article 5(b) shall apply to MTA equipment, except that all other expenses, including

but not limited to liability costs, and the repair or restoration of roadbed, track, signals, communication systems and all other right of any structures shall be borne equally by the parties.

ARTICLE 6. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to or occurring in connection with this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever (including freight), or injury to or death of any person or persons whomsoever (including passengers), or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, freight cars, or equipment of, or in the account of, Conrail being involved, without the light rail cars or equipment of, or in the account of, MTA being involved, Conrail shall assume all liability therefor, including without limitation all cost and expense referred to in Article 5 hereof, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of MTA or its officers, agents or employees, except when caused, in whole or in part, by

the gross negligence, or the willful, malicious, or wanton conduct, of MTA's officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever (including freight), or injury to or death of any person or persons whomsoever (including passengers), or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the light rail cars or equipment of, or in the account of, MTA being involved, without the trains, locomotives, freight cars, or equipment of, or in the account of, Conrail being involved, MTA shall assume all liability therefor, including without limitation all cost and expense referred to in Article 5 hereof, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Conrail or its directors, officers, agents, or employees except when caused in whole or in part, by the gross negligence, or the willful, malicious, or wanton conduct of Conrail's officers, agents, or employees.

(c) Except as otherwise provided in (d), whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water,

wildlife, and vegetation, occurs with the trains, locomotives, freight cars, light rail cars, or equipment of, or in the account of, both MTA and Conrail being involved, MTA and Conrail shall separately assume and bear all liability, cost and expense for loss of and damage to their respective trains, locomotives, freight cars (including without limitation lading), light rail cars (including without limitation passengers), and equipment and for injury to and death of their respective directors, officers, agents, employees and persons in their care and custody (including passengers). All liability, cost and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of other property (including without limitation the Route) and for any damage to or destruction of the environment whatsoever, including without limitation land, air water, wildlife, and vegetation, so occurring shall be borne equally by MTA and Conrail, including without limitation all cost and expense referred to in Article 5 hereof.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, freight cars, light rail cars, or equipment of, or in the account

of, both parties to this Agreement being so involved, without the trains, locomotives, freight cars, light rail cars, or equipment of, or in the account of, any other user being involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), freight car(s), light rail car(s), equipment, or Dispatcher(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability of the types referred to in subarticle (c), including without limitation all cost and expense referred to in Article 5 hereof.

(e) In every case of death or injury suffered by an employee of either Conrail or MTA, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) Notwithstanding the provisions of Article 13(f) of this Agreement, for the purposes of this Article 6 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Route, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Route or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(g) To the extent (and only to the extent) permitted by the constitution, statutes, and case law of Maryland, each party, when and to the extent made liable under Subarticles (a), (b), (c) and (d) above, shall release, indemnify, protect and save harmless the other party (and its officers, agents and employees) from and against all loss, damage, cost, expense, claims, actions and demands. In respect to MTA, the provisions of this subarticle (g) shall also be subject, if and to the extent required by the Constitution Statutes and case laws of Maryland, to appropriations by the Governor and General Assembly of Maryland, or to insurance as described in Article 11 herein.

(h) Neither party undertakes to assume responsibility for or indemnify the other for loss caused by or

arising from any negligent act or omission of its contractors or subcontractors.

ARTICLE 7. INVESTIGATION

(a) Except as provided in Subarticle (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against MTA or Conrail which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in

applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 6 hereof.

ARTICLE 8. PAYMENT OF BILLS

All payments called for under this Agreement shall be made by the responsible party within ninety (90) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to

matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party. All invoices must display on the front page Conrail's Federal Tax Identification number which is 23-1989084.

ARTICLE 9. REGULATORY APPROVAL

Should implementation of this Agreement require the taking of any action by Conrail and/or the Interstate Commerce Commission under 49 U.S.C. Sections 10505, 10903, 11343 or 11344, Conrail at Conrail's cost and expense will initiate and thereafter diligently prosecute such action. MTA will assist and support efforts of Conrail to meet the requirements of the aforesaid section.

ARTICLE 10. ABANDONMENT OF THE ROUTE

In the event that the Route is not used for rail freight service for sixty (60) consecutive months, Conrail, at its expense, shall promptly take all steps necessary before the Interstate Commerce Commission to file for and pursue abandonment of its easement and common carrier obligations over the entire Route and shall execute an absolute release unto MTA, without further consideration, of its freight service easement in recordable form within one hundred twenty (120) days after all of the following conditions have been met:

(a) The Interstate Commerce Commission takes necessary regulatory action to permit abandonment and discontinuance; and which Conrail covenants to promptly do.

(b) Appropriate embargo orders have been issued and implemented; and

(c) The State of Maryland waives any rights that it might have to acquire the easement for the purpose of maintaining freight service.

(d) No proceeding or request by any other party seeking continued rail freight service or other public use of the Property pursuant to (i) 16 USC 1247(d), (ii) 45 USC 1321(a)(5), (iii) 49 USC 10905, (iv) 49 USC 10906 or any statutory provision of similar import is pending.

It is understood that the release of easement by Conrail shall be subject to any obligations or conditions imposed by the Interstate Commerce Commission, or applicable law.

ARTICLE 11. INSURANCE

(a) The parties acknowledge that pursuant to the provisions of Section 7-703, Title 7, of the Transportation Article of the Annotated Code of Maryland, the MTA has certain statutory obligations to self insure or purchase insurance in a

form and amount determined by the MTA covering its transportation operations under Title 7, aforesaid. MTA represents to Conrail and Conrail relies upon the representation that such insurance determinations are necessarily discretionary and can only be made upon an annual basis, based upon the market conditions within the insurance industry and the annual budget appropriations made available by the Governor and the General Assembly of Maryland. For these reasons, MTA cannot, and does not, herewith commit itself to procuring a fixed amount of insurance.

(b) (i) Conrail shall carry insurance in an amount not less than Twenty Five Million Dollars (\$25,000,000) to protect itself from damage to property or persons caused by its negligence. Conrail will be responsible for assuring that all activities carried out by its contractors and subcontractors (of any tier) are insured by and at the cost of the contractors and subcontractors prior to the start of any work. Conrail will ensure that all such contractors and subcontractors will name MTA and Conrail as additional insured. Original counterparts of the policy shall be provided to all insured.

(ii) In respect to insurance to be maintained by Conrail in subarticle (b)(i) above, and only for so long as the Operating Easement and this Agreement are vested in Conrail, a certificate from Conrail of self insurance shall be considered to meet Conrail's insurance obligation aforesaid. For the purpose of this subarticle (b)(ii), the term "self insurance"

means maintaining sufficient corporate assets in excess of liabilities to permit satisfaction of a judgment up to \$25,000,000. The provisions of this subarticle (b)(ii) shall cease and be of no force and effect upon and in respect to any sale, assignment or transfer by Conrail of the Operating Easement and this Agreement, in which event, subject to the provisions of Article 13, evidence of a purchased policy in a form acceptable to the MTA by an insurance company authorized to do business in Maryland shall be furnished to the MTA prior to any freight operations upon the Property by the vendor, assignee or transferee, as may be the case.

(iii) In the event Conrail, at any time, fails to comply with the provisions of subarticle (b)(ii) above, Conrail agrees to suspend rail freight operations pending corrective or remedial action, subject, however, to any requirement or constraint of federal law.

ARTICLE 12. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing, signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, freight cars, light rail cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, freight cars, light rail cars or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, freight cars, light rail cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, freight cars, light rail 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, freight cars, light rail cars, and

equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad and transit industry.

(g) This Agreement shall be governed by and constructed in accordance with the laws of the State of Maryland.

(h) In the event any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid or unenforceable provisions originally were deleted; provided, however, if deletion of any invalid or unenforceable provision substantially alters or changes the rights or obligations of either party under this Agreement, the parties shall meet to reach agreement on new provisions to substitute for the invalid or unenforceable provisions.

(i) This Agreement and any dispute issuing from it shall be subject to the provisions of State Finance and Procurement Article Title 15, Subtitle 2 (Dispute Resolution) of the annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a dispute, the

parties shall proceed diligently with the performance of this Agreement in accordance with the procurement officer's decision.

(j) With respect to operation over the Route, Conrail shall comply with provisions of Title VII of the United States Civil Rights Act of 1964 (P.L. 88-352, 78 Stat. 253, 42 U.S.C. 200 E et. seq.) as they may be amended.

ARTICLE 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto, provided, however, that Conrail, insofar as it has the right and power to do so, shall provide in any deed to an assignee that said assignee, its successors and assigns shall comply with all of the terms and conditions contained in this Agreement.

APPENDIX I

LIST OF FREIGHT ONLY TRACKS

1. LEAD TRACK FROM B&P JUNCTION
2. FLEX-FLO TERMINAL - OUTSIDE
3. MAIN LINE NORTH OF VALUATION STATION 666+90
4. ALL SIDETRACKS

APPENDIX II

LIST OF CLRL "FREIGHT ONLY" TURNOUTS

1. Entry switch sta 124+50.
2. Fleischmann's Vinegar sta 236+91.
3. 84 Lumber sta 626+00.
4. SACO Supply sta 627+18.

Upon Completion of MTA'S reconstruction of the line beyond Timonium sta 666+90 additional "Freight Only" turnouts on the expanded CLRL will be included. At that time MTA will provide Conrail with a revised Appendix II.

CASE NO. 69458 and 69458-A

Exhibit F

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY THAT BY THE AUTHORITY CONFERRED BY THE BOARD OF DIRECTORS OF CONSOLIDATED RAIL CORPORATION (CONRAIL) ON MARCH 18, 1988 TO THE CHAIRMAN AND CHIEF EXECUTIVE OFFICER TO CONDUCT THE BUSINESS AND AFFAIRS OF THE CORPORATION AND TO DELEGATE SUCH AUTHORITY AS HE MAY DEEM NECESSARY, JAMES A. HAGEN AS THE CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER DID DELEGATE ON JANUARY 15, 1990 TO THE SENIOR VICE PRESIDENT-DEVELOPMENT AND TO THE ASSISTANT VICE PRESIDENT-REAL ESTATE THE AUTHORITY TO EXECUTE AND DELIVER ON BEHALF OF CONRAIL ANY AND ALL DOCUMENTS NECESSARY TO COMPLETE THE SALE OF THE CORPORATION'S PROPERTY, BEING THE COCKEYSVILLE INDUSTRIAL TRACK (LINE CODE 1224) FROM HOWARD STREET IN THE CITY OF BALTIMORE TO THE CONRAIL/PENN CENTRAL LATERAL CUT LINE NEAR COCKEYSVILLE IN BALTIMORE COUNTY, MARYLAND, FOR THE TOTAL CONSIDERATION OF \$17,500,000 TO MARYLAND MASS TRANSIT ADMINISTRATION, INC., OR THE NOMINEE THEREOF; AND SINCE THE DUTIES AND RESPONSIBILITIES OF THE ASSISTANT VICE PRESIDENT-REAL ESTATE AS THEY AFFECT THE ABOVE MATTER HAVE BEEN TRANSFERRED TO THE ASSISTANT VICE PRESIDENT-ASSET DEVELOPMENT, SUCH ASSISTANT VICE PRESIDENT-ASSET DEVELOPMENT HAS FULL AUTHORITY TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS NECESSARY FOR THE ABOVE MATTER.

CONRAIL



Exhibit G

May 1, 1990

Case No. 69458

Chicago Land Title
Insurance Company
Baltimore, Maryland

Re: Title Insurance Commitment # _____,
Conrail Case Number 69458 - Sale of the Cockeysville
Industrial Track from Mile Post 0.0 to the end of
Conrail's ownership at Cockeysville, Maryland, to the
Mass Transit Administration.

Dear Sirs:

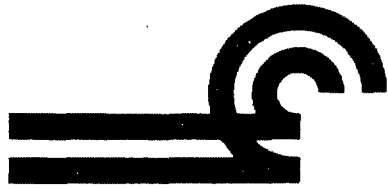
With respect to the above captioned sale, this letter shall serve to indemnify your firm against any liability stemming from unpaid liens, taxes or judgments for which Consolidated Rail Corporation is legally and properly responsible.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'L. R. Town'.

L. R. Town
Manager - Real Estate

CONRAIL



May 1, 1990

Exhibit H

Mass Transit Administration
300 West Lexington Street
Baltimore, Md. 21201-3415

Subject: Sale of the Cockeysville Industrial Track to the Mass Transit Administration, Conrail Case No. 69458.

Dear Sir:

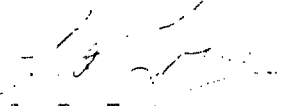
Please be advised that I have consulted with J. C. Curry of Conrail's Environmental Control Department and with R. E. Hatton, formerly Conrail's Harrisburg Division General Manager, to ascertain if either has knowledge of any environmental problems affecting the Cockeysville Industrial Track.

Based upon the negative responses to these inquiries, I am unaware, to the best of my knowledge and belief, of any tangible, material, or significant environmental contamination along this line, except as recited below:

1. Some years ago there was a spill of a hazardous substance in the Flexi-Flo Terminal, which was immediately reported and cleaned up.
2. Certain electrical components were found dumped adjacent to the Cockeysville Industrial Track at Mount Vernon Yard. In addition, there may be other electrical equipment at Mount Vernon Yard with a potential for PCB contamination. We are unaware of any serious PCB contamination, however, we have not conducted tests nor have we performed any detailed analysis in an effort to ascertain the presence of PCB's.

To the best of my knowledge and belief, I am not aware that Conrail has ever been cited for environmental problems along the Cockeysville Industrial Track, other than the possibility of minor trash or weed complaints. I am unaware of any outstanding violations as of this date.

Very truly yours,


L. R. Town
Manager - Real Estate