

IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

**JAMES RIFFIN**

**Timonium, MD 21094**

**Plaintiff**

**V.**

**FOREST CITY RATNER COMPANIES**

**1 Metro Tech Center**

**Jay Street**

**Brooklyn, NY 11201**

**G & S INVESTORS / JERSEY CITY, L.P.**

**25<sup>th</sup> Floor**

**211 E. 43<sup>rd</sup> Street**

**New York, New York 10017**

**G & S METRO PLAZA LLC**

**25<sup>th</sup> Floor**

**211 E. 43<sup>rd</sup> Street**

**New York, New York 10017**

**GS FC Jersey City Pep I Urban Renewal LLC**

**c/o Forest City Residential Group, Inc.**

**50 Public Square, Terminal Tower Ste 1100**

**Cleveland, Ohio 44113**

**GS FC Jersey City Pep II Urban Renewal LLC**

**c/o Forest City Residential Group, Inc.**

**50 Public Square, Terminal Tower Ste 1100**

**Cleveland, Ohio 44113**

**Defendants**

*COMPLAINT FOR  
DECLARATORY ORDER*

**COMPLAINT FOR DECLARATORY ORDER,  
PRELIMINARY INJUNCTION, PERMANENT INJUNCTION**

1. Comes now your Plaintiff, James Riffin (“**Riffin**”), who herewith files this Complaint for a Declaratory Order, asking the Court to determine the property rights of Riffin in a parcel of land situated in Jersey City, Hudson County, New Jersey, commonly known as Metro Plaza (“**Metro Plaza**”), formerly known as the Harsimus Cove Rail Yard, formerly owned by the Penn Central Railway Company, and by the Consolidated Rail Corporation (“**Conrail**”), as detailed below.

2. In the event that the Court determines that Riffin does in fact have property rights in portions of the Metro Plaza Parcel, Riffin further asks the Court to enjoin the Defendants, and their employees, agents, and any person or entity acting on behalf of the Defendants, from changing the status quo of the Metro Plaza Parcel, as it existed on **January 6, 2009**. [The date Conrail filed its abandonment exemption, docketed AB 167 (Sub-No. 1189X), seeking authority to abandon its lines of railroad that traverse Metro Plaza / the former Harsimus Cove Rail Yard. See ¶¶ 15, 68, below.]

**THE CONTROVERSY**

3. When the Offer of Financial Assistance (“**OFA**”) process began in AB 167 (Sub. No. 1189X), (on **January 6, 2009**), [see 49 U.S.C. 10904, 49 CFR 1152.27 and ¶¶ 69-78 below], the rail assets associated with that abandonment proceeding, **must remain in place, undisturbed**, until the OFA process has concluded.

4. Plaintiff argues that beginning in **August, 2015**, the Defendants unlawfully began disturbing the rail assets associated with the Metro Plaza parcel, by demolishing the Pep Boys building, and by beginning to construct the first of multiple hi-rises.

5. Plaintiff further argues that the Defendants' putative title to the Metro Plaza parcel is infirm (is void *ab initio*), since the Metro Plaza parcel is encumbered by multiple lines of railroad, none of which have been abandoned, and since the Defendants, as non-rail carriers, are prohibited by 49 U.S.C. 10901(a)(4) from acquiring any legal interest in a line of railroad, or in the real estate associated with a line of railroad, without prior authority from the Surface Transportation Board.

### **BRIEF HISTORY OF THE METRO PLAZA PARCEL**

6. On **April 1, 1976**, the **Harsimus Cove Yard** ("Yard"), located in Jersey City, NJ, was conveyed to Conrail via the Final System Plan. Appx 159. Conrail operated several lines of railroad that traversed the Yard. Rail operations in the Yard ceased in 1988.

7. On **August 19, 1985**, Conrail conveyed to **National Bulk Carriers, Inc.**, the Defendants' predecessor in title, 18 acres of the Harsimus Cove Yard. See liber 3468, folio 64. Appx 191.

8. On **January 31, 1994**, National Bulk Carriers deeded the majority of the land it acquired from Conrail, to **G & S Investors / Jersey City L.P.** See liber 4690, folio 303. Appx 197.

9. Defendant G&S Investors developed the Parcel.

10. The approximate 8-acre portion of the Yard bounded by Gangemi Drive on the north (6<sup>th</sup> Street), Marin Blvd. on the west, 2<sup>nd</sup> street on the south, and the Hudson Bergen Light Rail Line on the East, **known as Metro Plaza**, had structures built on it. The structures were occupied by **Pep Boys**, in the north east corner, **Bed Bath and Beyond**, in the north west corner, by **Shop Rite**, in the south west corner, and by **BJ's Warehouse** in the south east corner. The center / remainder of the 8-acre parcel, was used as a parking lot. See Ex. 2C, Appx 13.

11. In 2005, Conrail sold an adjacent parcel, known as the Embankment (which parcel was south of, and parallel to, 6<sup>th</sup> Street), to several limited liability companies (the "**LLCs**"). Jersey

City coveted the Embankment parcel. Litigation between the LLCs and Jersey City began, and continues today.

12. In 2009, at the request of Jersey City, the Surface Transportation Board (“STB”) [the Federal agency that regulates railroads / formerly known as the Interstate Commerce Commission (“ICC”)], determined, and ordered, that **the Embankment parcel was CONVEYED to Conrail as a line of railroad**, and further determined that Conrail **had not** sought, nor received, authority to abandon the Embankment parcel. In 2013, the U.S. District Court for the District of Columbia, sitting as the **Special Court**, granted Jersey City’s motion for summary judgment, determining and ordering that the Embankment parcel **was a line of railroad**. See 09 cv 1900, 2013 WL 5423964 (D.D.C. Sept 30, 2013). The D.C. Circuit affirmed the Special Court’s summary judgment order. See D.C. Circuit Appeal No. 13-7175, Decided February 19, 2014.

13. Per **49 U.S.C. 10903**, lines of railroad may not be abandoned, nor sold, without prior authority from the STB. Per **49 U.S.C. 10901(a)(4)**, non-rail carriers may not acquire a line of railroad, without prior authority from the STB.

14. Conrail **never sought**, nor received, authority to abandon, nor to sell, **nor did** the LLCs, or National Bulk Carriers (the Defendants’ predecessor in title), seek, or obtain, authority to acquire, the lines of railroad that traversed the Embankment parcel (the LLCs’ parcel), and that traversed the Harsimus Yard (traversed the Defendants’ Metro Plaza Parcel).

15. On **January 6, 2009**, pursuant to 49 CFR 1152.50 (no rail traffic for past two years), Conrail filed an abandonment Notice of Exemption (“**NOE**”), seeking authority from the STB to abandon its Harsimus Branch. Conrail’s NOE stated that the Harsimus Branch went from Waldo Street, in Jersey City (MP 0.0), through the Harsimus Yard, (MP 0.88 is where the Harsimus Branch crosses Marin Blvd.), to MP 1.36, a point some distance **East** of Washington Street. See Ex. 5-A, Appx 23, a STB graphic depicting the approximate location of the Harsimus Branch.

16. On **March 19, 2009**, Jersey City and CNJ Rail Corporation, pursuant to 49 U.S.C. 10904



and 49 CFR 1152.27, filed their Notices of Intent to File an Offer of Financial Assistance (“OFA”), to acquire the lines of railroad being abandoned by Conrail. On **June 8, 2015**, Plaintiff Riffin filed his Notice of Intent to File an OFA. Jersey City limited its Notice to the line segment between MP 0.0 and MP 0.88. CNJ Rail Corporation and Riffin limited their Notice to the line segment between MP 0.0 and the intersection of the lines of railroad with the Hudson Bergen Light Rail right-of-way (which forms the Eastern boundary of the Metro Plaza Parcel).

17. In a STB decision Served on **November 2, 2015**, slip op. at 2, 5, 6, Appx 40, 43, 44, the STB reiterated that Jersey City, CNJ Rail Corporation and Riffin had filed their OFA notices, and that their **OFA-related rights had vested**. (Denoted by the STB ordering Conrail to provide Riffin with valuation information. See Order ¶6, Appx 44.)

18. Per Interstate Commerce Commission and STB precedent, an OFA offeror has the right to acquire whatever the rail carrier proposes to abandon. That right **includes** the right to acquire whatever the rail carrier acquired when it acquired the line of railroad. (Meaning, land adjacent to the line of railroad right-of-way.) See *In Re Boston and Maine Corporation*, 596 F. 2d 2 at 5-8 (1<sup>st</sup> Cir. 1979), Appx 59-61; *Iowa Terminal Railroad v. Interstate Commerce Commission*, 853 F. 2d 965 at 971-972 (DC Cir. 1988), Appx 70-71; *Railroad Ventures v. STB*, 299 F. 3d 523 at 544-554 (6<sup>th</sup> Cir. 2002), Appx 88-96.

19. Per STB precedent, [See *The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, AB 103 (Sub. No. 21X), Served February 22, 2008.], the removal or alteration of any assets associated with a railroad line of railroad during the OFA process, is prohibited, since such removal or alteration

“tends to undermine that process because it reduces the rail assets in place when the offeror invoked section 10904, and thus can **obstruct or impede the efforts of the offeror to provide rail service**. See *Railroad Ventures, Inc. – Aban. Exem. – Youngstown, OH & Darlington, PA*, 4 S.T.B. 583 (2000).” Bold added.

## **LINES OF RAILROAD**

20. A line of railroad has been defined as a railroad right-of-way that is used to transport through-traffic rail cars. To be a line of railroad, the right-of-way must service more than one shipper. See Riffin's Verified Statement ("VS") at 4.

21. The Harsimus Cove Yard had at least **six** lines of railroad traversing it. See Plaintiff's **Exhibits 1A - 1D**, Appx 1,3,5,7 and VS 36-40.

- A. The Harsimus Branch main line, colored-coded **BLUE** by the Plaintiff on Plaintiff's **Exhibits 1B - 1D**, Appx 3,5,7, VS 39, as it entered and traversed the Yard.
- B. The Hudson Street Industrial Track, colored-coded **BLUE** by the Plaintiff on Plaintiff's **Exhibits 1C - 1D**, Appx 5, 7, VS 39, as it entered, traversed the Yard, and connected to the Harsimus Branch.
- C. The railroad right-of-way, colored-coded **BROWN** by the Plaintiff on Plaintiff's **Exhibits 1B - 1D**, Appx 3,5,7, VS 36-37, that was used to transport rail cars to Elk Warehouse and Chicago Shippers, located on the north side of the pier at the east end of Gangemi Drive (6<sup>th</sup> Street), that juts into the Hudson River.
- D. The railroad right-of-way, colored-coded **PURPLE** by the Plaintiff on Plaintiff's **Exhibits 1B - 1D**, Appx 3,5,7, VS 37-38, that was used to transport rail cars to the south side of the pier at the east end of Gangemi Drive (6<sup>th</sup> Street), that juts into the Hudson River.
- E. The railroad right-of-way, colored-coded **RED** by the Plaintiff on Plaintiff's **Exhibits 1B - 1D**, Appx 3,5,7, VS 38, that was used to transport rail cars to the car float ferry that transported rail cars to the Brooklyn East District Terminal, in Brooklyn, NY.

F. The railroad right-of-way, colored-coded **ORANGE** by the Plaintiff on Plaintiff's **Exhibits 1B - 1D**, Appx 3,5,7, VS 39, that was used to transport rail cars to the sidings that went to the warehouses located immediately east of Marin Blvd, between 2<sup>nd</sup> street and 5<sup>th</sup> street.

22. At least two of the above lines of railroad [D & E], traversed the portion of the Metro Plaza Parcel that is enclosed within the August, 2015-erected construction fence. See Ex 1-C, 2-A, 2-B, 2-C, 2-E, 5-B, Appx 5, 9, 11, 13, 19, 25, VS 37, 38.

23. Since disturbance of a line of railroad, and the assets associated with that line of railroad, or activities that "can obstruct or impede the efforts of the offeror to provide rail service," are prohibited by Federal law (once an OFA proceeding has commenced), the Defendants' present disturbance and activities, and the Defendants' publicly announced prospective future disturbance and activities, of the Metro Plaza parcel, and the portion of the Metro Plaza Parcel enclosed within the newly-erected construction fence, is prohibited by Federal law.

24. Since Riffin has the right to file an OFA to acquire whatever assets Conrail acquired when it acquired the Harsimus Branch, limited only by Riffin's declared intention of acquiring only rail assets located between MP 0.0 (Waldo Street) and the West side of the Hudson Bergen Light Rail right-of-way, Riffin has Equitable Title to the **entirety** of the Metro Plaza Parcel, which Equitable Title, once perfected, will be superior to, whatever title the Defendants may lawfully possess in the Metro Plaza Parcel.

25. By 'superior to,' Riffin means that Riffin would have the right to **exclusive** possession of the full width and length of whatever land he takes title to, from the center of the earth to the heavens.

26. By 'whatever title the Defendants may lawfully possess in the Metro Plaza Parcel,' Riffin means that Riffin questions, and challenges, the Defendants' right to lawfully possess **any** title to the rights-of-way associated with the lines of railroad that traversed the Metro Plaza Parcel.

27. The Defendants, being non-rail carriers, are prohibited by **49 U.S.C. 10901(a)(4)**, from acquiring **any** title to any portion of the rights-of-way associated with the lines of railroad that traversed the Metro Plaza Parcel, without the authority of the STB. Since neither the Defendants, nor their predecessors in title, have ever acquired authority from the STB to acquire the lines of railroad that traverse the Metro Plaza Parcel, their possession of the lines of railroad that traverse the Metro Plaza Parcel, is unlawful, and their ‘deeds’ are void *ab initio*.

28. Lines of railroad **cannot** be abandoned (**49 U.S.C. 10903**), nor acquired by non-rail carriers [**49 U.S.C. 10901(a)(4)**], without prior STB authority.

29. **An easement**, whether temporary or permanent, **which is used as a line of railroad, cannot be abandoned or ‘terminated,’** without prior STB authority. See 49 U.S.C. 10903, *AT&SF – Abandonment Exemption – In Lyon County, KS*, ICC Docket No. AB-52 (Sub-No. 71X), decided June 11, 1991, VS 16-18, and see *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946), where the Supreme Court said:

“Sec 1(18) [now 49 U.S.C. 10903] embraces operations under trackage contracts, **as well as other types of operations.**” *Id.* at 144. Bold added.

“**Though the contract were terminated pursuant to its terms, a certificate would still be required under s 1(18).**” *Id.* at 145.

“**There would be no difference in result merely because the trackage contract expired by its terms or was terminated by operation of an escape clause. Until abandonment is authorized, operations must continue.**” *Id.* at 147. Bold added.

#### **JURISDICTION – FEDERAL QUESTION**

30. 28 U.S.C. 1331 grants U.S. District Courts jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.”

31. The property rights of the Plaintiff, derive from Federal Statutes [49 U.S.C. 10903 (abandonment of lines of railroad) and 49 U.S.C. 10904 (Offers of Financial Assistance)], and



Federal Regulations [49 CFR 1152.50 (abandonment of lines of railroad – no rail service for past two years) and 49 CFR 1152.27 (Offers of Financial Assistance)].

### **JURISDICTION – *IN REM***

32. The property rights at issue, involve a parcel of land situated in Jersey City, Hudson County, New Jersey, which Parcel lies within the geographical area over which the Court has jurisdiction.

33. The property rights at issue, have substantial value.

34. The Metro Plaza Parcel, has substantial value.

35. The Defendants may have varying degrees of Property Rights in the Metro Plaza Parcel that is the subject of this Complaint.

### **JURISDICTION – OVER THE DEFENDANTS**

36. All of the Defendants reside in the United States.

37. All of the Defendants will receive personal service of the Complaint and Summons.

38. The Defendants have / have noted their intention to, deliberately engage in substantial, systematic and continuous demolition and construction activities on, about, and concerning the Metro Plaza Parcel that is the subject of this Complaint, as more fully detailed below.

39. A Legal Notice will be published in the *Star Ledger*, a Hudson County newspaper of general circulation, after the Complaint is filed, giving Notice to all interested parties, that this Complaint was filed, and giving Notice that the Court is being asked to determine the Property Rights of Riffin, with respect to the Metro Plaza Parcel. See Plaintiff's Certificate of Service.

40. Multiple Legal Notices will be conspicuously posted on and about the Metro Plaza Parcel, after the Complaint is filed, giving Notice of this Complaint. See Plaintiff's Certificate of Service.

### VENUE

41. The Parcel of land that is the subject of this Complaint, is situated in Jersey City, Hudson County, New Jersey, which is within the geographical boundaries of this Court's jurisdiction. Therefore, the Court has Venue to hear the Complaint.

### PARTIES

42. **James Riffin** is an individual who desires to obtain, via the Offer of Financial Assistance provisions of 49 U.S.C. 10904, the lines of railroad situated in Jersey City, that Conrail proposes to abandon, which lines of railroad are the subject of a proceeding before the Surface Transportation Board ("**STB**") (the Federal agency that regulates railroads), which STB proceeding has been docketed **AB 167 (Sub. No. 1189X)**.

43. Riffin's principal office is located in New Jersey.

44. The **Defendants** may have varying degrees of property rights in the parcel of land commonly known as **Metro Plaza**, which parcel of land is bounded on the north by Gangemi Drive (6<sup>th</sup> Street), on the west by Marin Blvd., on the south by 2<sup>nd</sup> Street, and on the east by the Hudson Bergen Light Rail Line. ("**Metro Plaza**" or "**Parcel**"). The Defendants' putative property rights are summarized below.

45. The principal offices of the Defendants are located in New York, New Jersey and Ohio.

### ADDITIONAL FACTS

46. On April 1, 1976, Conrail was created by Congress.

47. On April 1, 1976, pursuant to a document entitled the **Final System Plan**, Conrail was deeded various lines of railroad, and “all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.” Appx 180, 185, 186.

48. Of the hundreds of lines of railroad that were deeded to Conrail, two in particular are the subject of this Complaint: **Line Codes 1420 and 1440**. Appx 159, 185, 186.

49. Line Codes 1420 and 1440 were conveyed to Conrail by the **Special Court**, as noted in Special Court Misc. No. 75-3(A). This conveyance was recorded in the Hudson County Register’s Office, in **liber 3286**, starting at **folio 730**, and continuing to folio 916. See Appx 159, 161-180, 185, 186.

#### **LINE CODE 1420**

50. **Line Code 1420** is a line of railroad that goes from Jersey City to Kearney, NJ, and is more particularly described in liber 3286, folio 762 as:

“Situate in the County of Hudson, State of New Jersey, and being The United New Jersey Railroad and Canal Company’s line of railroad known as the Penn Central Harsimus Branch and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County at Harsimus Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York - Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge.

The line of railroad described herein is identified as Line Code 1420 in the records of the United States Railway Association.” See Appx 185.

#### **LINE CODE 1440**

51. **Line Code 1440**, otherwise known as the **Hudson Street Industrial Track**, is a line of railroad that went from the Harsimus Cove Yard, located in Jersey City, NJ, south, in the bed of Hudson Street, to Essex street, then west, in the bed of Essex street. Appx 186.

52. Line Code 1440 is more particularly described in liber 3286, folio 769 as:

“Situate in the County of Hudson, State of New Jersey, and being the United New Jersey Railroad and Canal Company’s Branch and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County near Montgomery and Hudson Streets in Jersey City, connecting to another line of railroad known as the Harsimus Cove Yard, passes through Hudson Street, Essex Street, and Warren Street and terminates in the County 1 ½ blocks west of the intersection of Warren and Essex Streets.

The line of railroad described herein is identified as Line Code 1440 in the records of the United States Railway Association.” Appx 186.

53. While the exact location of that portion of Line Code 1420 that lies within Jersey City, was the subject of earlier litigation (see **STB FD 34818**), both the STB and the **Special Court** (the U.S. District Court for the District of Columbia), determined and ordered that a portion of Line Code 1420, as it was **CONVEYED** in the Final System Plan on April 1, 1976, went along the former Pennsylvania Railroad Harsimus Branch right-of-way, from the intersection of the Harsimus Branch with Waldo Street, denoted CP [Control Point] Waldo, **now labeled MP 0.0**, in Jersey City, parallel and adjacent to the south side of 6<sup>th</sup> Street, to the intersection of the Harsimus Branch with Henderson Street (now Marin Blvd.), **now labeled MP 0.88**, in Jersey City. See 09 cv 1900, 2013 WL 5423964 (D.D.C. Sept 30, 2013). The D.C. Circuit affirmed the Special Court’s summary judgment order. See D.C. Circuit Appeal No. 13-7175, Decided February 19, 2014

54. Plaintiff will emphasize to the Court, that the STB and the Special Court were asked to address **only** that portion of the Harsimus Branch that lies between “CP Waldo” (Waldo Street) and Marin Blvd. Consequently, **only that portion** of the Harsimus Branch that lies between “CP

Waldo” (Waldo Street) and Marin Blvd, have been found, determined, and ordered, to have been **conveyed** to Conrail **as a line of railroad**, pursuant to the Final System Plan.

55. A portion of the Harsimus Cove Yard **was conveyed** to Conrail, via the Final System Plan, as a rail yard, “being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to” Line Codes 1420 and 1440.

#### **CONRAIL’S OPERATION OF THE HARSIMUS COVE YARD**

56. Beginning on **April 1, 1976**, Conrail began operation over the Harsimus Branch.

57. Conrail used the Harsimus Branch to deliver trains to the Harsimus Cove Yard. Ex 2-B, Appx 11.

58. The cars within those trains, were routed to various tracks within the Yard. The cars then were routed to the following destinations:

A. Some of the rail cars were routed to the pier that juts into the Hudson River at the East end of Gangemi Drive (6<sup>th</sup> Street).

a. Some of the pier-bound-cars, were placed on six tracks, colored-coded **BROWN** by the Plaintiff on Plaintiff’s **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, located on the **north side of the pier**. Ex. 2-A, 2-B, Appx 9, 11, VS 36, 37. These rail cars were consigned to two shippers: **Elk Warehouse and Chicago Shippers**. Appx 46-48.

b. Some of the pier-bound-cars, were placed on two tracks, colored-coded **PURPLE** by the Plaintiff on Plaintiff’s **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, adjacent to the **south side of the pier**, VS 37, 38. The contents of these rail cars were loaded into barges. The barges then delivered the contents to shippers



located on the east side (New York side) of the Hudson River. VS 37, 38, Appx 46-48.

B. Some of the rail cars were routed to a rail car bridge ferry, on tracks colored-coded **RED** by the Plaintiff on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, which car bridge ferry carried the rail cars to the Brooklyn Eastern District Terminal, located in Brooklyn, NY, where the rail cars were routed to various shippers located on tracks that connected to the Brooklyn Eastern District Terminal. VS 38, Appx 46-48.

C. Some of the rail cars were delivered to tracks colored-coded **BLUE** by the Plaintiff on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, to be delivered to shippers located on the Hudson Street Industrial Track. VS 39. (There were at least seven different shippers who received rail cars via the Hudson Street Industrial Track.) Appx 48.

D. Some of the rail cars were routed to tracks colored-coded **ORANGE** by the Plaintiff on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, to be delivered to warehouses located on the east side of Marin Blvd, between 2<sup>nd</sup> Street and 5<sup>th</sup> Street. VS 39.

59. In the 1980's, rail traffic in the Harsimus Cove Yard diminished. Beginning in **1988**, there was no rail traffic in the Harsimus Cove Yard. Appx 48.

#### **THE EMBANKMENT**

60. In 2005, Conrail sold that portion of the Harsimus Branch that lies between the NJ Turnpike and Marin Blvd, to several LLCs. Appx 45. This portion is known as the **Embankment**. Appx 45.

61. Shortly after Conrail sold the Embankment portion of the Harsimus Branch to the LLCs, Jersey City decided that it wanted to acquire the Embankment portion of the Harsimus Branch, to be used as a park / trail / potential light rail corridor. Appx 51, 52.

62. Jersey City instituted a Declaratory Order proceeding before the STB, **docketed STB FD 34818**, Appx 45, wherein Jersey City argued that the Embankment was a ‘line of railroad,’ that Conrail had failed to seek, or to obtain, abandonment authority for the Embankment, and that the deeds to the LLCs were void / should be voided.

63. In FD 34818, the STB served a decision served on **August 9, 2007**, see Appx 45. In that decision, the STB found and determined that the Embankment portion of the Harsimus was a line of railroad, Appx 52, and that the Embankment portion was conveyed to Conrail via the Final System Plan as Line Code 1420, Appx 52, 53.

64. On appeal, the D.C. Circuit held that the STB did not have the requisite jurisdiction to determine the **nature** of what was conveyed to Conrail via the Final System Plan. That determination is exclusively within the jurisdiction of the **Special Court**. (Today, the duties of the Special Court are performed by the U.S. District Court for the District of Columbia.)

65. In 2013, the Special Court granted Jersey City’s Motion for Summary Judgment, holding that the Embankment portion of the Harsimus Branch was conveyed to Conrail via the Final System Plan as Line Code 1420. See 09 cv 1900, 2013 WL 5423964 (D.D.C. Sept 30, 2013). The D.C. Circuit affirmed the Special Court’s summary judgment order. See D.C. Circuit Appeal No. 13-7175, Decided February 19, 2014.

66. Jersey City reiterated, in the AB 167 (Sub. No. 1189X) proceeding, its argument to the STB, that the deeds to the Embankment portion of the Harsimus Branch (Line Code 1420), should be declared to be void, since Conrail did not obtain abandonment authority prior to selling the Embankment portion to the LLCs, and since the LLCs failed to obtain 49 U.S.C. 10901(a)(4) authority to acquire a line of railroad.

67. To date, the STB has not ruled on Jersey City’s request to have the Embankment deeds declared to be void.

### CONRAIL'S ABANDONMENT PROCEEDING

68. On **January 6, 2009**, pursuant to **49 CFR 1152.50**, Conrail filed a Notice of Exemption (“**NOE**”) to abandon the Harsimus Branch, **in its entirety**. The NOE was docketed **AB 167 (Sub. No. 1189X)**. Conrail described the line as lying **between “CP [Control Point] Waldo** (at Waldo street), **MP [mile post] 0.0 and MP 1.36** [a point **EAST of Washington Street**]. (1152.50 exempts a rail carrier from many abandonment criteria. 1152.50 can be used when no rail traffic has traversed over a line of railroad for the two years preceding the date the NOE is filed.) See Plaintiff’s **Exhibit 5-A**, Appx 23, a STB graphic showing the general location of the Harsimus Branch.

### THE OFA PROCESS

69. Per 49 U.S.C. 10904, whenever a railroad seeks to abandon a line of railroad, any person may file an Offer of Financial Assistance (“**OFA**”) to acquire the line of railroad, at its Net Liquidation Value.

70. On **March 19, 2009**, Jersey City and CNJ Rail Corporation filed Notices of their Intent to File an OFA.

71. Jersey City limited its OFA notice to that line segment of the Harsimus Branch that lies between MP 0.0 (Waldo Street) and MP 0.88 (West side of Marin Blvd.)

72. CNJ Rail Corporation limited its OFA notice to that line segment of the Harsimus Branch that lies between MP 0.0 (Waldo Street), and the **West side of the Hudson Bergen Light Rail line**. (The Hudson Bergen Light Rail Line traverses the Metro Plaza parcel about 300 feet **WEST of Washington Street**, and about **550 feet EAST of Marin Blvd.**)

73. On **June 8, 2015** Plaintiff Riffin filed a Notice of Intent to File an OFA, to acquire that line segment of the Harsimus Branch that lies between MP 0.0 (Waldo Street), and the **West side**

**of the Hudson Bergen Light Rail line.**

74. In a decision Served on **November 2, 2015**, Appx 39, slip op. at 5-6, Appx 43-44, the STB declared and ordered that Riffin's Notice of Intent to File an OFA was accepted.

75. The filing of a Notice of Intent to File an OFA, grants unto the OFA offeror, the right to acquire the right-of-way associated with the line of railroad that is the subject of an abandonment proceeding. See 49 U.S.C. 10904 and 49 CFR 1152.27.

76. Per Interstate Commerce Commission and STB precedent, an OFA offeror has the right to acquire whatever the rail carrier proposes to abandon. That right **includes** the right to acquire whatever the rail carrier acquired when it acquired the line of railroad. (Meaning, land adjacent to the line of railroad right-of-way.) See *In Re Boston and Maine Corporation*, 596 F. 2d 2 at 5-8 (1<sup>st</sup> Cir. 1979), Appx 59-61; *Iowa Terminal Railroad v. Interstate Commerce Commission*, 853 F. 2d 965 at 971-972 (DC Cir. 1988), Appx 70-71; *Railroad Ventures v. STB*, 299 F. 3d 523 at 544-554 (6<sup>th</sup> Cir. 2002), Appx 88-96.

77. Per STB precedent, [See *The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, AB 103 (Sub. No. 21X), Served February 22, 2008.], the removal or alteration of any assets associated with a railroad line of railroad during the OFA process, is prohibited, since such removal or alteration

“tends to undermine that process because it reduces the rail assets in place when the offeror invoked section 10904, and thus **can obstruct or impede the efforts of the offeror to provide rail service**. See *Railroad Ventures, Inc. – Aban. Exem. – Youngstown, OH & Darlington, PA*, 4 S.T.B. 583 (2000).” Bold added.

78. The OFA process began when Conrail filed its abandonment NOE on **January 6, 2009**. Appx 40. Consequently, **the status of the Harsimus Branch, as it existed on January 6, 2009, must be maintained, until the OFA process has concluded.**

## **DEVELOPMENT OF THE HARSIMUS COVE YARD**

79. The 18-acre Harsimus Cove Yard parcel was developed.

80. Approximately 8 of the 18 Harsimus Cove Yard acres, comprise what today is known as Metro Plaza.

81. G&S Investors developed the Metro Plaza Parcel.

82. A Pep Boys, a BJ's Warehouse, a Shop Rite, and a Bed Bath and Beyond, became tenants on the Metro Plaza Parcel. Exhibit 2-C, Appx 13, VS 40.

## **THE CONTROVERSY**

### **ALTERATION OF THE METRO PLAZA PARCEL**

83. G&S Investors, the owner of the Metro Plaza Parcel, decided to demolish the structures on the Metro Plaza Parcel, then erect new structures.

84. G&S Investors partnered with Forest City Rather Companies, a large real estate development company, to "redevelop" the Metro Plaza Parcel.

85. Redevelopment authority was obtained. Appx 29-33. Demolition and building permits were obtained.

86. In **August, 2015**, the Pep Boys structure was demolished. VS 40.

87. In **August, 2015**, a construction fence was erected around that portion of the Metro Plaza that included the former Pep Boys building. VS 40.



88. In **September, 2015**, construction of the first of multiple hi-rises (the first is a 35-story building), commenced. The first hi-rise is to be erected essentially on the foot print of the former Pep Boys building. See Plaintiff's **Exhibits 2-D, 2-E, 3**, Appx 15, 17, 19, VS 40.

89. Plaintiff argues that the present day demolition and construction activities: "tends to undermine [the OFA] process because it reduces the rail assets in place when the offeror invoked section 10904, and thus **can obstruct or impede the efforts of the offeror to provide rail service.**" Consequently, Defendants' demolition and construction activities are unlawful, for they are prohibited by Federal law. Bold added.

## **DEFENDANTS' TITLE HISTORY**

### **NATIONAL BULK CARRIERS' DEED**

90. On **August 19, 1985**, Conrail conveyed to **National Bulk Carriers, Inc.**, the Defendants' predecessor in title, 18 acres of the Harsimus Cove Yard. This conveyance was recorded in **Liber 3468, folio 64**, in the Hudson County Register's Office. See Appx 191.

91. Conrail **misrepresented** to National Bulk Carriers, that **all** of the Harsimus Cove Yard was **49 U.S.C. 10906** "Excepted" tracks. ["Excepted" track is subject to the jurisdiction of the STB, but is not regulated by the STB. That is to say, a railroad may sell 'excepted' track **without** first obtaining abandonment authority from the STB. Per **49 U.S.C. 10903**, a railroad **cannot convey regulated 'lines of railroad'** without first obtaining STB abandonment authority, nor may a non-carrier acquire title to a 'line of railroad' without first obtaining STB 'acquire and operate' authority. See **49 U.S.C. 10901(a)(4).**]

92. On folio 65 of liber 3468, Appx 192, Conrail reserved unto itself:

**"an easement for all railroad purposes** over, upon and across a fifty (50) foot wide area which extends along the entire northerly portion of the aforesaid described parcel of land and together with the right to repair, replace, remove, **relocate**, maintain, **operate on**

**and use the railroad tracks and related facilities** and to operate its locomotives, trains, freight and any other cars on and over the aforesaid described parcel of land and the right of access for said purposes; ... and” Bold added.

93. On folio 66 of liber 3468, Appx 193, Conrail reserved unto itself:

“RESERVING unto the said Grantor **a temporary easement** over, upon and across the aforesaid described parcel of land **for railroad purposes**; together with the right to repair, replace, remove, relocate, maintain and use the railroad tracks and related facilities to provide direct rail service to and from points on Grantor’s Railroad to reach Grantor’s present rail customers known as **Manischewitz and W. J. Morris**. Grantor shall have the right of ingress and egress over and upon any roadways located within the Premises for purposes of access to the temporary Easement Area and for the purposes aforesaid. The temporary Easement Area will automatically cease upon cessation of rail service to said customers and Grantor may then remove Grantor’s Railroad tracks and related facilities.” Bold added.

94. **An easement**, whether temporary or permanent, **which is used as a line of railroad, cannot be abandoned or ‘terminated,’** without prior STB authority. See 49 U.S.C. 10903, *AT&SF – Abandonment Exemption – In Lyon County, KS*, ICC Docket No. AB-52 (Sub-No. 71X), decided June 11, 1991, VS 16-18, and see *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946), where the Supreme Court said:

“Sec 1(18) [now 49 U.S.C. 10903] embraces operations under trackage contracts, **as well as other types of operations.**” *Id.* at 144. Bold added.

“**Though the contract were terminated pursuant to its terms, a certificate would still be required under s 1(18).**” *Id.* at 145.

“**There would be no difference in result merely because the trackage contract expired by its terms or was terminated by operation of an escape clause. Until abandonment is authorized, operations must continue.**” *Id.* at 147. Bold added.

95. On folio 67 of liber 3468, Appx 194, the conveyance was made:

“SUBJECT, however, to (1) any easements or agreements of record or of which Grantor has no knowledge affecting the land hereby conveyed; (2) 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 herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same; (3) the state of facts disclosed by survey made by Hermann K. F. Lange, Licensed Land Surveyor No. 16983 of Lange Surveying and Mapping, dated June 1984 and revised to March 13, 1985.”

96. On folio 66 of liber 3468, Appx 193, the conveyance was made 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, personal representatives, successors and assigns of Grantor and Grantee. **Grantee hereby knowingly, willingly, voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below.**” Bold added.

97. On folio 67 of liber 3468, Appx 194, the following covenant appears:

“(3) that in the event the tracks of the railroad of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, the said Grantee, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damage of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and / or said streets, avenues, roads, lanes, highways or alleys or out of the vacation and closing of any grade crossing;”

98. On folio 67 of liber 3468, Appx 194, the following covenant appears:

“(4) that should a claim adverse to the title hereby quitclaimed be asserted and / or proved, no recourse shall be had against the Grantor herein;”

**JANUARY 31, 1994 G & S INVESTORS' DEED – LIBER 4690 FOLIO 303**

99. On **January 31, 1994**, National Bulk Carriers deeded the majority of the land it acquired from Conrail (per Liber 3468, folio 64, Appx 191), to **G & S Investors / Jersey City L.P.** This conveyance was recorded in **liber 4690, folio 303** in the Hudson County Register's Office. Appx 197.

100. On folio 303 of liber 4690, Appx 197, the G&H Investors' conveyance states that the conveyance is:

**"SUBJECT to easements**, zoning requirements and other restrictions of record, and any state of facts which an accurate survey or inspection of the premises would disclose."  
Bold added.

### **SUBSEQUENT CONVEYANCES**

101. On **April 18, 2014**, the Metro Plaza parcel was subdivided into smaller parcels. (See Appx 215, 220, 225.) The subdivided parcels were identified as **Lot 3** (the site of Pep Boys), Appx 215, **Lot 47** (the site of BJ's), **Lot 50** (the site of Shop Rite), Appx 220, and **Lot 51** (the site of Bed Bath and Beyond), Appx 225, all in **Block 11603** of the Jersey City Tax Assessor's Map.

102. In deeds executed on **June 27, 2014**, **G&S Investors conveyed to itself, Lot 3** (see **liber 8980, folio 654**, Appx 215), **Lot 50** (see liber 8980, folio 670, Appx 220), and **Lot 51** (see liber 8980, folio 678, Appx 225) of Block 11603.

103. In a deed **effective on July 1, 2014**, **G&S Investors deeded to G&S Metro Plaza, LLC, Lot 47 (BJ's), Lot 50 (Shop Rite) and Lot 51 (Bed Bath and Beyond)**, of Block 11603 (see **liber 8980, folio 734**). See Appx 230.

104. In a deed executed on **December 10, 2014**, G&S Investors deeded **Lot 3** (Pep Boys), of Block 11603, to **GS FC JERSEY CITY PEP 1, LLC** and to **GS FC JERSEY CITY PEP**

**2, LLC**, both of which are Delaware LLCs. Each Grantee received a fifty percent (50%) undivided interest, as tenants in common, in Lot 3. See liber 9016, folio 96, Appx 239.

105. In a Master Deed dated **October 7, 2015**, which Master Deed was recorded in the Hudson County Office of Register, in **liber 9073, folio 1**, Appx 245, GS FC Jersey City Pep 1, LLC, and GS FC Jersey City Pep II, LLC, (the “declarants” in the Master Deed), subdivided **Lot 3** into two Condominium Units, denoted Unit 1 and Unit 2.

106. In a deed dated **November 4, 2015**, which deed is recorded in the Hudson County Office of the Register in **liber 9076, folio 245**, Appx 265, GS FC Jersey City Pep 1 LLC and GS FC Jersey City Pep II LLC, deeded their interest in **Lot 3, Unit 1** to GS FC Jersey City Pep 1 LLC.

107. In a deed dated **November 4, 2015**, which deed is recorded in the Hudson County Office of the Register in **liber 9076, folio 265**, Appx 271, GS FC Jersey City Pep 1 LLC and GS FC Jersey City Pep II LLC, deeded their interest in **Lot 3, Unit 2** to GS FC Jersey City Pep 2 LLC.

108. In a deed dated **November 4, 2015**, GS FC JERSEY CITY **PEP 1**, LLC deeded its interest in **Lot 3, Unit 1**, to GS FC **PEP 1** URBAN RENEWAL, LLC, a New Jersey LLC. See liber 9076, folio 251, Appx 268.

109. In a deed executed on **November 4, 2015**, GS FC JERSEY CITY **PEP 2**, LLC, deeded its interest in **Lot 3, Unit 2**, to GS FC **PEP 2** URBAN RENEWAL, LLC, a New Jersey LLC. See liber 9076, folio 271, Appx 274.

## **RESERVATIONS AND RESTRICTIONS IN THE SUBSEQUENT DEEDS**

### **JUNE 27, 2014 G & S INVESTORS' DEED**



110. The liber 8980, folio 654 (Lot 3), folio 670 (Lot 50), and folio 678 (Lot 51), all state the following:

“THIS conveyance is made **subject to easements and restrictions of record**, such state of facts as an accurate survey may disclose, and to applicable zoning ordinances.” Bold added. Appx 215, 220, 225.

**JULY 1, 2014 G & S METRO PLAZA DEED**

111. The liber 8980, folio 734 (Lots 47, 50 and 51) deed to G&S Metro Plaza, LLC states:

“Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property, **subject to easements and restrictions of record**, and such state of facts as an accurate survey of the property would reveal.” Bold added. Appx 230.

**DECEMBER 10, 2014 GS FC JERSEY CITY PEP I & II DEED**

112. The liber 9016, folio 96 (Lot 3) deed to GS FC Jersey City Pep I and Pep 2 deed states:

“**Being the same premises** vested in Grantor by deed **from National Bulk Carriers, Inc.**, recorded on February 1, 1994 in the Hudson County Register’s Office in Deed **Book 4690, Page 303**, as further set forth in a Subdivision Deed between Grantor and Grantor [deed says ‘grantor to grantor’] dated June 25, 2014, and recorded on **July 2, 2014** in the Hudson County Register’s Office in Deed **Book 8980, Page 654**. [See ¶102, *supra*.]

Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property, **subject to easements and restrictions of record** and such state of facts as an accurate survey of the property would reveal.” Bold added. Appx 240.

**NOVEMBER 4, 2015 GS FC JERSEY CITY PEP I & II URBAN RENEWAL DEEDS**

113. The liber 9076, folio 251 and folio 271 deeds (Lot 3, Units 1 and 2) to GS FC Jersey

City Pep I and Pep II Urban Renewal, respectively, state:

“The conveyance evidenced by this Deed is also made in accordance with the terms, limitations, conditions, covenants, restrictions, easements, agreements and other provisions set forth in that **Master Deed** and Declaration of Covenants, Easements and Restrictions for Warren and 6<sup>th</sup> Condominium, dated October [7], 2015, and recorded on October 22, 2015, in the Office of the Register of Hudson County in Deed Book 9073, at Page 1, as same may now or hereafter be lawfully amended, and all its exhibits, **including all easements, terms, conditions, reservations, rights-of-way**, air rights, covenants of record, governmental statutes, ordinances and regulations, possible added assessments for the year of sale as set or levied under N.J.S.A. 54: 4-63.1 et seq. and all facts that an accurate survey may disclose..” Bold added. Appx 269, 275.

## COUNT ONE

### DECLARATORY ORDER

114. Plaintiff incorporates by reference herein, paragraphs one to 113, as if fully stated herein.

115. Plaintiff avers that the lines of railroad noted above, see ¶21 and ¶58 above, all traverse the Metro Plaza Parcel.

116. Plaintiff avers that the line of railroad that went to the south side of the pier that juts into the Hudson River, colored-coded **PURPLE** by the Plaintiff on Plaintiff’s **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, traversed over that portion of the Metro Plaza Parcel where the Pep Boys building formerly was located.

117. Plaintiff avers that the ‘easement for all railroad purposes over, and across a fifty (50) foot wide area which extends along the entire northerly portion of the aforesaid described parcel of land,’ reserved in the **liber 3468, folio 64** deed from **Conrail to National Bulk Carriers** (Defendants’ predecessor in title), Appx 165, passes through Lots 51, 3 and 47 of Block 11603, as depicted on the Tax Assessor’s Map for Hudson County, NJ, Appx 27, all of which lots are a part of the Metro Plaza parcel.

118. Plaintiff avers that the ‘temporary easement over, upon and across the aforesaid described parcel of land **for railroad purposes ...** to provide direct rail service to and from points on Grantor’s Railroad to reach Grantor’s present rail customers known as **Manischewitz and W. J. Morris,**’ reserved in the **liber 3468 folio 64** deed from **Conrail to National Bulk Carriers** (Defendants’ predecessor in title), as set out on folio 66 of liber 3468, Appx 193, passes through Lots 51, 50, 3 and 47 of Block 11603, as depicted on the Tax Assessor’s Map for Hudson County, NJ, Appx 27, all of which lots are a part of the Metro Plaza parcel.

119. Plaintiff avers that **none** of the lines of railroad and railroad easements that traversed over the Metro Plaza parcel, were ever abandoned, and that **all** of these lines of railroad and easements, are subject to, and are a part of, the STB proceeding that is docketed AB 167 (Sub. No. 1189X).

120. Plaintiff avers that **none** of the Defendants, nor any of Defendants’ predecessor in title, received authority from either the ICC or the STB, to acquire any of the lines of railroad that traversed the Metro Plaza parcel.

121. Plaintiff avers that all of the lines of railroad that traversed the Metro Plaza Parcel, are subject to the OFA process in AB 167 (Sub. No. 1189X).

122. Plaintiff avers that all of the land contained within the Metro Plaza parcel, is subject to the OFA process in AB 167 (Sub. No. 1189X), since land adjacent to a line of railroad, which adjacent land was conveyed to the railroad to whom the line of railroad was conveyed, may be acquired via the OFA process.

123. Plaintiff further avers that alteration of the Metro Plaza parcel, and / or construction of any new structures on any part of the Metro Plaza parcel, and in particular, the alteration of, or construction of any new structures on, Lots 3, 47, 50 or 51, in Block 11603 of the Hudson County Tax Assessor’s Map, as depicted on Plaintiff’s **Exhibit 6**, Appx 27, would “obstruct or impede the efforts of the offeror to provide rail service.”

124. Plaintiff avers that it is unlawful for the Defendants to alter the condition of the Metro Plaza Parcel, as it existed on **January 6, 2009**, until the OFA process has concluded.

### **PRAYERS FOR RELIEF**

125. WHEREFORE, Plaintiff prays that the Court:

- A. Find and declare that pursuant to the **March 25, 1976**, Order of the Special Court, in Misc. No. 75-3(A), which Order is recorded in the Hudson County Office of the Register in **liber 3286 at folio 730**, Appx 161, and pursuant to a deed from **Fairfax Leary**, Grantor, trustee of the property of the United New Jersey Railroad and Canal Company, to Consolidated Rail Corporation ("**Conrail**"), Grantee, filed and recorded on **October 12, 1976**, which deed is recorded in the Hudson County Office of the Register in **liber 3286 at folio 757**, Appx 180, **Line Code 1420**, **noted in liber 3286 at folio 762**, Appx 185, and **Line Code 1440**, **noted in liber 3286 at folio 769**, Appx 186, were conveyed to Conrail.
- B. Find and declare that pursuant to the deed descriptions for Line Codes 1420 and 1440, said deed descriptions being recorded in liber 3286 at folios 762, Appx 185, and 769, Appx 186, respectively, Line Codes 1420 and 1440 included all the real estate "Situate in the County of Hudson, State of New Jersey, and being ... all the real property in the County lying in, under, above, along, continuous to, adjacent to or connecting to such line [1420 and 1440]."
- C. Find and declare that the parcel of land bounded by Henderson Street (today known as Marin Blvd.) on the West, by Second Street on the South, by the Hudson River on the East, and by 6<sup>th</sup> Street (today known as Gangemi Drive) on the North, commonly known as the Harsimus Cove Yard, as depicted in liber 3286 at folios 820, 821, 822 and 823, Appx 187, 188, 189, and 190, and as further depicted on Plaintiff's **Exhibit**

**1-B, 1-C, 1-D**, Appx 3, 5, 7, was conveyed by Fairfax Leary to Conrail.

- D. Find and declare that on United New Jersey Railroad and Canal Company's Right of Way and Track Map, labeled **V-1.01**, seven tracks are depicted crossing Henderson Street. See Exhibit 1-B, Appx 3.
- E. Find and declare that on United New Jersey Railroad and Canal Company's Right of Way and Track Map labeled **V-1.01**, **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, the **second from the northern-most track**, color-coded **brown** by the Plaintiff, served the northern-most five tracks located on the pier that juts into the Hudson River, which pier is located at the East end of 6<sup>th</sup> Street.
- F. Find and declare that the **second from the northern-most track**, color-coded **brown** by the Plaintiff, served Elk Warehouse and Chicago Shippers.
- G. Find and declare that the **second from the northern-most track**, color-coded **brown** by the Plaintiff, was used as a 'line of railroad.'
- H. Find and declare that on United New Jersey Railroad and Canal Company's Right of Way and Track Map labeled **V-1.01**, **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, the **third track** south of the northern-most track, color-coded **purple** by the Plaintiff, served the south side of the pier that juts into the Hudson River, which pier is located at the East end of 6<sup>th</sup> Street.
- I. Find and declare that the contents of rail cars placed on the **third track** south of the northern-most track, color-coded **purple** by the Plaintiff, were loaded into barges, which barges were delivered to shippers located on the East side of the Hudson River.
- J. Find and declare that the **third track** south of the northern-most track, color-coded **purple** by the Plaintiff, was used as a 'line of railroad.'



- K. Find and declare that on United New Jersey Railroad and Canal Company's Right of Way and Track Map labeled **V-1.01, Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, the **fourth track** south of the northern-most track, color-coded **red** by the Plaintiff, served three car floats which were located south of the south side of the pier that juts into the Hudson River, which pier is located at the East end of 6<sup>th</sup> Street.
- L. Find and declare that the rail cars placed on the **fourth track** south of the northern-most track, color-coded **red** by the Plaintiff, were loaded onto car floats, which car floats were delivered to the Brooklyn Eastern District Terminal, located in Brooklyn, NY.
- M. Find and declare that the **fourth track** south of the northern-most track, color-coded **red** by the Plaintiff, was used as a 'line of railroad.'
- N. Find and declare that on United New Jersey Railroad and Canal Company's Right of Way and Track Map labeled **V-1.01, Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, the **sixth track** south of the northern-most track, color-coded **blue** by the Plaintiff, passed through the Harsimus Cove Yard, and connected to the tracks that were located in Hudson Street.
- O. Find and declare that the tracks located in Hudson Street, were Line Code 1440.
- P. Find and declare that the rail cars placed on the **sixth track** south of the northern-most track, color-coded **blue** by the Plaintiff, were delivered to shippers located on Line Code 1440.
- Q. Find and declare that the **sixth track** south of the northern-most track, color-coded **blue** by the Plaintiff, was used as a 'line of railroad.'
- R. Find and declare that on United New Jersey Railroad and Canal Company's Right of

Way and Track Map labeled **V-1.01, Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7, the **seventh track** south of the northern-most track, color-coded **orange** by the Plaintiff, passed through the Harsimus Cove Yard, and connected to the tracks that serviced the warehouses located on the East side of Henderson Street, between Second and Fifth streets, and serviced the Provost Street track.

- S. Find and declare that the rail cars placed on the **seventh track** south of the northern-most track, color-coded **orange** by the Plaintiff, were delivered to shippers located on the East side of Henderson Street, between Second and Fifth streets, and were delivered to shippers served by the Provost Street track.
- T. Find and declare that the **seventh track** south of the northern-most track, color-coded **orange** by the Plaintiff, was used as a 'line of railroad.'
- U. Find and declare that Conrail conveyed to National Bulk Carriers, pursuant to a deed dated **August 19, 1985**, which deed was recorded in the Office of the Register of Hudson County, NJ, in **liber 3468, folio 64**, Appx 191, the real estate described in said liber 3468, folio 64 deed.
- V. Find and declare that the parcel that was conveyed to National Bulk Carriers in liber 3468, folio 64, Appx 191, was conveyed from National Bulk carriers to G&S Investors / Jersey City L.P., pursuant to a deed dated **January 31, 1994**, which deed was recorded in the Office of the Register of Hudson County, NJ, in **liber 4690, folio 303**, Appx 197.
- W. Find and declare that a portion of the parcel that was conveyed to G&S Investors / Jersey City L.P., in liber 4690, folio 303, Appx 197, was subdivided into Lot 3, Appx 215, Lot 47, Lot 50, Appx 220, and Lot 51, Appx 225, all lots being in Block 11603, as depicted on Plaintiff's **Exhibit 6**.

- X. Find and declare that Lot 47, Lot 50 and Lot 51, all said lots being in Block 11603, as depicted on Plaintiff's **Exhibit 6**, were conveyed from G&S Investors / Jersey City L.P. to G&S Metro Plaza LLC, pursuant to a deed effective **July 1, 2014**, and recorded in the Hudson County Office of Register in **liber 8930, folio 734**, Appx 230.
- Y. Find and declare that Lot 3, said lot being in Block 11603, as depicted on Plaintiff's **Exhibit 6**, was conveyed from G&S Investors / Jersey City L.P. to GS FC Jersey City Pep 1, LLC, and to GS FC Jersey City Pep II, LLC, as tenants in common, pursuant to a deed dated **December 10, 2014**, and recorded in the Hudson County Office of Register in **liber 9016, folio 96**, Appx 239.
- Z. Find and declare that **Lot 3** was subdivided into two Condominium Units, denoted Unit 1 and Unit 2, by GS FC Jersey City Pep 1, LLC, and GS FC Jersey City Pep II, LLC, pursuant to a Master Deed dated **October 7, 2015**, which Master Deed was recorded in the Hudson County Office of Register, in **liber 9073, folio 1**, Appx 245.
- AA. Find and declare that **Lot 3, Unit 1**, was conveyed by GS FC Jersey City **Pep 1**, LLC, and GS FC Jersey City Pep II, LLC, to GS FC Jersey City **Pep 1**, LLC, pursuant to a Deed dated **November 4, 2015**, which Deed was recorded in the Hudson County Office of Register, in **liber 9076, folio 245**, Appx 265.
- BB. Find and declare that **Lot 3, Unit 1**, was conveyed by GS FC Jersey City **Pep 1**, LLC, to GS FC Jersey City **Pep 1, Urban Renewal** LLC, pursuant to a Deed dated **November 4, 2015**, which Deed was recorded in the Hudson County Office of Register, in **liber 9076, folio 251**, Appx 268.
- CC. Find and declare that **Lot 3, Unit 2**, was conveyed by GS FC Jersey City Pep 1, LLC, and GS FC Jersey City Pep II, LLC, to GS FC Jersey City **Pep 2**, LLC, pursuant to a Deed dated **November 4, 2015**, which Deed was recorded in the Hudson County Office of Register, in **liber 9076, folio 265**, Appx 271.

- DD. Find and declare that **Lot 3, Unit 2**, was conveyed by GS FC Jersey City **Pep 2**, LLC, to GS FC Jersey City **Pep 2, Urban Renewal** LLC, pursuant to a Deed dated **November 4, 2015**, which Deed was recorded in the Hudson County Office of Register, in **liber 9076, folio 271**, Appx 274.
- EE. Find and declare that **Lot 3, Unit 1**, is a part of the parcel that was conveyed by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- FF . Find and declare that **Lot 3, Unit 2**, is a part of the parcel that was conveyed by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- GG. Find and declare that **Lot 47**, is a part of the parcel that was conveyed by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- HH. Find and declare that **Lot 50**, is a part of the parcel that was conveyed by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- II. Find and declare that **Lot 51**, is a part of the parcel that was conveyed by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- JJ. Find and declare that Conrail never received abandonment authority to abandon any of the seven tracks / lines of railroad, that crossed Henderson Street.
- KK. Find and declare that all of the seven tracks / lines of railroad, that crossed Henderson Street, are the subject of Conrail's abandonment Exemption, docketed AB

167 (Sub. No. 1189X).

LL. Find and declare that all of the seven tracks / lines of railroad, that crossed Henderson Street, which are the subject of Conrail's abandonment Exemption, docketed AB 167 (Sub. No. 1189X), are subject to the Offer of Financial Assistance provisions of 49 CFR 1152.27.

MM. Find and declare that pursuant to the decisions in: *In Re Boston and Maine Corporation*, 596 F. 2d 2 at 5-8 (1<sup>st</sup> Cir. 1979), Appx 59-61; *Iowa Terminal Railroad v. Interstate Commerce Commission*, 853 F. 2d 965 at 971-972 (DC Cir. 1988), Appx 70-71; *Railroad Ventures v. STB*, 299 F. 3d 523 at 544-554 (6<sup>th</sup> Cir. 2002), Appx 88-96. an OFA offeror has the right to acquire whatever the rail carrier proposes to abandon.

NN Find and declare that an OFA offeror has the right to acquire whatever the rail carrier acquired when it acquired the line of railroad, including land adjacent to the line of railroad right-of-way.

OO. Find and declare that the STB determined in its November 2, 2015 decision in AB 167 (Sub. No. 1189X), at slip op. 5-6, Appx 43-44, that the Plaintiff has the right to file an OFA to acquire the rights that Conrail is seeking to abandon in Conrail's AB 167 (Sub. No. 1189X) Exemption proceeding.

PP. Find and declare that pursuant to the STB's decision in *The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, AB 103 (Sub. No. 21X), Served February 22, 2008, the removal or alteration of any assets associated with a railroad line of railroad during the OFA process, is prohibited, since such removal or alteration

“tends to undermine that process because it reduces the rail assets in place when the offeror invoked section 10904, and thus can obstruct or impede the efforts of



the offeror to provide rail service. See *Railroad Ventures, Inc. – Aban. Exem. – Youngstown, OH & Darlington, PA*, 4 S.T.B. 583 (2000).”

QQ. Find and declare that the Plaintiff has the right to acquire, via the OFA process, in the proceeding docketed AB 167 (Sub. No. 1189X), the seven tracks / lines of railroad that crossed Henderson Street, traversed over the parcel deeded by Conrail to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.

RR. Find and declare that the Plaintiff has the right to acquire, via the OFA process, in the proceeding docketed AB 167 (Sub. No. 1189X), the two easements reserved by Conrail in Conrail’s deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.

SS. Find and declare that the Plaintiff has the right to acquire, via the OFA process, in the proceeding docketed AB 167 (Sub. No. 1189X), land adjacent to the seven tracks / lines of railroad that crossed Henderson Street, and that traversed over the parcel deeded by Conrail to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.

TT. Find and declare that the Plaintiff has the right to acquire, via the OFA process, in the proceeding docketed AB 167 (Sub. No. 1189X), land adjacent to the two easements reserved by Conrail in Conrail’s deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**.

## **COUNT TWO – DECLARATORY ORDER**

126. Plaintiff incorporates by reference herein, paragraphs one to 125, as if fully stated herein.

127. Plaintiff avers that the two easements reserved by Conrail in Conrail’s deed to National

Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191, may not be extinguished or terminated without abandonment authority from the STB.

128. Plaintiff avers that Conrail has not received abandonment authority to abandon the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.

129. Plaintiff avers that the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191, may be acquired via the OFA process in the AB 167 (Sub. No. 1189X) proceeding.

130. Plaintiff avers that the seven tracks / lines of railroad that crossed Henderson Street, traversed over the parcel deeded by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.

131. Plaintiff avers that the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, traverse over Lots 51, 50, 47 and 3 of Block 11603, as depicted on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7.

132. Plaintiff avers that the seven tracks / lines of railroad that crossed Henderson Street, traversed over Lots 51, 50, 47 and 3 of Block 11603, as depicted on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7.

#### **PRAYERS FOR RELIEF**

133. WHEREFORE, Plaintiff prays that the Court:

134. Hold an evidentiary hearing, **after ruling on Count One of Plaintiff's Declaratory Order**, to determine the precise location of the seven tracks / lines of railroad that crossed Henderson Street.

135. **After the evidentiary hearing requested in ¶134 *supra***, Plaintiff prays that the Court:

- A. Find and declare that the seven tracks / lines of railroad that crossed Henderson Street, traversed over the parcel deeded by Conrail to National Bulk Carriers, which conveyance is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, Appx 191.
- B. Find and declare the precise location where the seven tracks / lines of railroad that crossed Henderson Street, traversed over Lots 3, 47, 50 and 51 of Block 11603, as depicted on Plaintiff's **Exhibit 1-B, 1-C, 1-D**, Appx 3, 5, 7.
- C. Find and declare the precise location where the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, which deed is recorded in the Hudson County Office of the Register in **liber 3468, folio 64**, traverse over Lots 51, 50, 47 and 3 of Block 11603, as depicted on Plaintiff's **Exhibit 6**, Appx 27.

### **COUNT THREE – INJUNCTIVE RELIEF**

136. Plaintiff incorporates by reference herein, paragraphs one to 135, as if fully stated herein.

137. **If** the Court finds that the seven tracks / lines of railroad that crossed Henderson Street, traversed over the parcel deeded by Conrail to National Bulk Carriers; **and / or**

138. **If** the Court finds that the two easements reserved by Conrail in Conrail's deed to

National Bulk Carriers, traversed any of the Metro Plaza parcel (Lot 3, 47, 50, 51, Block 11603);  
**and**

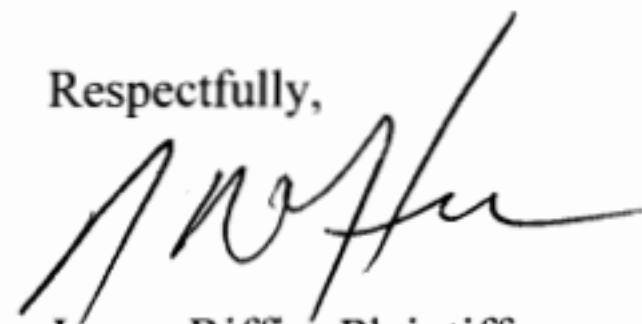
139. **If** the Court finds that the seven tracks / lines of railroad that crossed Henderson Street, and / or the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, are subject to the OFA procedures in AB 167 (Sub. No. 1189X); **and**

140. **If** the Court finds that Plaintiff has the right to file an OFA in AB 167 (Sub. No. 1189X),

141. **Then** Plaintiff prays that the Court issue an injunction (Temporary and / or permanent), enjoining the Defendants', and their agents, employees, or anyone working on behalf of the Defendants, to comply with Federal law applicable to the OFA process, to wit: Maintain the Metro Plaza parcel in the same condition that it was in on **January 9, 2009**, the date when Conrail filed its abandonment exemption in the proceeding docketed AB 167 (Sub. No. 1189X).

142. And the Plaintiff prays for such other and further relief as would be appropriate.

Respectfully,



James Riffin, Plaintiff

Timonium, MD 21094