

ORDINANCE NO. 8990-90

AN ORDINANCE  
APPROVING AND AUTHORIZING  
THE EXECUTION OF A CONDITIONAL AGREEMENT OF SALE BETWEEN  
CONSOLIDATED RAIL CORPORATION AND THE CITY OF URBANA, ILLINOIS

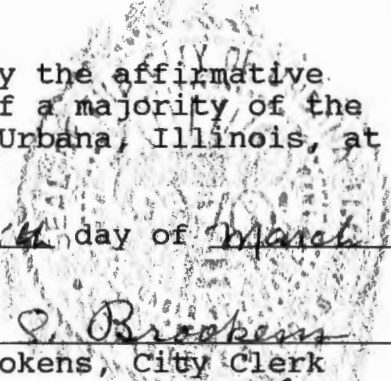
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That a Conditional Agreement of Sale by and between the City of Urbana, Illinois and Consolidated Rail Corporation, Philadelphia, Pennsylvania for parcels of real estate located between Maple and McCullough Streets in Urbana, Illinois, in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said City Council.

PASSED by the City Council this 5<sup>th</sup> day of March,  
1990.

  
Ruth S. Brookens  
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 12<sup>th</sup> day of March,  
1990.

Jeffrey T. Markland  
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN  
ORDINANCE NO. 8990-90 AND IS INCORPORATED  
THEREIN BY REFERENCE.

Ruth S. Brookens  
Ruth S. Brookens, City Clerk

March 13, 1990  
Date



## CONDITIONAL AGREEMENT OF SALE

THIS AGREEMENT, made as of this 17th day of January, 1990, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation, with its Real Estate System Office at Room 1500, 6 Penn Center Plaza, Philadelphia, Pennsylvania 19103 ("Conrail") through C. J. Wartman, its Manager-Real Estate, whose office is located at 31 E. Georgia St., Indianapolis, Indiana 46204 but subject to the authority of Conrail's senior management as hereinafter specified, and THE CITY OF URBANA, ILLINOIS, having a mailing address at 400 S. Vine St., Urbana, Illinois 61801-0219, ("Purchaser"), for all of Conrail's right, title, and interest in and to parcels of its real estate located between Maple and McCullough Streets, hereinafter called the ("Premises") containing 42,750 square feet, more or less, as shown on the plan dated November 13, 1989, attached and made a part hereof.

### PRICE

1. The purchase price for the Premises shall be \$25,000 of which ten percent (10%), or \$2,500 has this day been paid on account, the receipt acknowledged and the balance of \$22,500 shall be paid by Purchaser in cash, or by certified or title company check at the time of closing.

### POSSESSION

2. Possession of the Premises shall be delivered at closing by customary form of quitclaim deed without any covenants or warranties of title, express or implied (the "Deed"). The Deed shall contain the following covenants, and such additional covenants which may be set forth in any addendum of this Agreement:

"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, personal representatives, successors, and assigns of Grantor and Grantee. Grantee knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of Illinois now or hereafter in force with respect to the covenants set forth below."

### Vibration

(a) Grantee forever releases Grantor from all liability for any loss or damage, direct or consequential, to the land described and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or

which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal.

#### Seepage

(b) Grantee forever releases Grantor from any liability for any loss or damage, direct or consequential, which may be caused by or arise from the sliding, shifting or movement of any part of any adjoining embankment of Grantor, or by the drainage or seepage of water therefrom, upon or into the land described, or upon, under, or into anything which may be erected or placed thereon.

#### Physical Substance

(c) Grantee shall indemnify and defend Grantor against, and hold Grantor harmless from, all claims, actions, proceedings, judgments and awards, for death, injury, loss, or damage to any person or property, brought by any person, firm, corporation, or governmental entity, caused by, resulting to, arising from, or in connection with, the active or passive effects or existence of any physical substance of any nature or character, on, under, or in the land, water, air, structures, fixtures, or personal property comprising the land described, from and after the date of delivery of this deed.

#### Grade Separation

(d) In the event the tracks or land of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over such railroad in the vicinity of the land described are changed so that they shall pass overhead or underneath such tracks or land, or in the event any grade crossing is vacated and closed, Grantee forever releases Grantor from all liability for any loss or damage, direct or consequential, caused by or arising from the separation or change of grades of such railroad or such streets, avenues, roads, lanes, highways, or alleys, or from the vacating and closing of any grade crossing.

#### Adverse Claim

(e) Should a claim adverse to the title quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor.

#### SURVEY, TITLE EVIDENCE, AND APPROVALS

3. (a) Purchaser agrees to deliver to Conrail, within sixty (60) days following execution of this Agreement by Conrail, a survey and legal

description of the Premises from a licensed or registered surveyor (or such survey as may be required by law for the recording of the Deed), a reproducible tracing of such survey, and a copy of a title commitment, report, or other opinion of title, if Purchaser elects to obtain same. Purchaser agrees to perform survey in compliance with Survey Instructions on attached Exhibit "B".

(b) Purchaser shall bear the cost and expense of obtaining such survey and description, and any title information which Purchaser desires. In the event that Conrail's senior management does not approve this transaction for any reason whatsoever, Conrail shall reimburse Purchaser only for its reasonable costs, without interest, of obtaining such survey and title information, which shall thereupon become the property of Conrail.

#### IMPROVEMENTS

4. If this transaction includes buildings, structures, or other improvements owned by Conrail, Purchaser agrees to take title to same in their condition as of the date of closing, and subject to any violations of law or ordinances, whether or not such violations are officially recorded. Purchaser further understands and agrees that Conrail shall have no obligation to maintain such improvements in any condition, and Purchaser, as part of the consideration of this sale, waives the benefit of any rule, law, ordinance, or regulation requiring Conrail to do so.

#### DEFAULT

5. In the event Purchaser shall fail or refuse to complete or perform any term, covenant, condition, agreement, provision, or stipulation under this Agreement, Conrail, at its option, may declare this Agreement terminated and void, and in such event Conrail shall be released from any obligation to convey the Premises, and Conrail may retain all monies paid on account as liquidated damages and not as a penalty.

#### CLOSING

6. Closing of this transaction shall take place within 30 days after notification from Conrail that the Deed is prepared for delivery at a location mutually agreed upon in writing. In the event this transaction is not closed within 45 days of such notification for any reason whatsoever, then this Agreement at Conrail's option, shall be null and void, and Conrail shall have no further liability nor obligation.

#### APPORTIONMENTS

7. Rents, real estate taxes, special and municipal assessments, water and sewer rents, other lien charges, interest and encumbrances (if assumed, or taken subject to, by Purchaser) shall be apportioned between Conrail and Purchaser as of the date of closing.

#### FEES

8. Conrail shall not be liable for a commission to any broker, agent, or finder; real estate transfer taxes; documentary, recording, survey, or title company fees; or any other closing costs in connection with this sale. Purchaser represents that it has not been introduced to Conrail or to the Premises by or through any broker. Purchaser agrees to indemnify and defend Conrail against any claims for commission or fees. The terms of this paragraph 8 shall survive delivery of the Deed.

#### PUBLIC NOTICES

9. In the event any notice respecting the performance and the completion of work proposed and affecting the Premises, and having to do with the installation of curbing, sidewalk, paving, cartway, or street paving or other street improvements, or the installations of sewers, water lines, or lighting facilities is received by Conrail or Purchaser, or notice of confirmed special assessment is issued to Conrail or Purchaser, in connection therewith, after the date in the heading of this Agreement, Purchaser agrees to be responsible for compliance with such notice or notices and Purchaser shall pay for the work required or the assessment levied.

#### TITLE

10. (a) Purchaser understands that the conveyance of the Premises by Conrail shall be made subject to any existing tenancies, easements, rights, agreements, covenants, and restrictions; 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, together with the right to maintain, repair, renew, replace, use, and remove same; to all laws and ordinances, including but not limited to zoning or subdivision; and to any state of facts that an accurate survey or a prudent inspection of the Premises would disclose.

(b) In the event this transaction, or any part of it, requires the prior approval of any state public service or utility commission or similar agency, Purchaser hereby agrees to pay at closing all costs of Conrail in conjunction with obtaining such approval, including but not limited to, reasonable counsel fees.

#### ASSIGNMENT

11. This Agreement may not be changed or terminated orally and all changes must be in a writing signed by Conrail and Purchaser. Each and every term, covenant, condition, agreement, provision, and stipulation of this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, personal representatives, successors, and assigns of Conrail and Purchaser; provided that Purchaser shall not assign this Agreement without the prior consent of Conrail.

#### CASUALTY LOSS

12. If the Premises contain improvements to be conveyed under this Agreement, material loss or damage thereto by fire or other casualty shall not void or impair any of the conditions of this Agreement, but Purchaser

shall have the option to terminate this Agreement by notice to Conrail, whereupon Conrail shall return to Purchaser all monies paid on account of the purchase price after Purchaser has returned to Conrail all executed counterparts of this Agreement.

#### CONDEMNATION

13. If the Premises, or any substantial portion thereof, or any interest therein, shall be affected by any exercise of the power of eminent domain, Conrail shall have the option to (a) terminate this Agreement whereupon Conrail shall return to Purchaser all monies paid on account of the purchase price after Purchaser has returned all executed counterparts of this Agreement to Conrail, or (b) enforce this Agreement and assign any award or agreed upon compensation to Purchaser.

#### NOTICES

14. Whenever in this Agreement notice or consent is requested, desired, or required to be given, same shall be given in writing and sent by certified United States mail, return receipt requested, to the parties whose names and addresses are set forth in the heading of this Agreement. Notice shall be effective when deposited in the United States mail and the only admissible evidence of such notice being given shall be a paid postal receipt.

#### NO REPRESENTATION

15. All understandings and agreements heretofore between Conrail and Purchaser are merged into this Agreement which alone fully and completely expresses their intent. Purchaser represents that it has entered into this Agreement after full investigation, and not in reliance upon any statement or representation made by Conrail, its officers, agents, or employees, which is not embodied in this Agreement. Purchaser has inspected the Premises and is thoroughly acquainted with their condition.

#### VIOLATION OF LAW

16. In the event the senior management of Conrail fails to approve this transaction, or in the event the conveyance on the terms provided would be contrary to any law, regulation, or order of governmental authority, then the sum paid on account will be refunded without interest to Purchaser, and Purchaser agrees to accept same and to return all executed counterparts of this Agreement to Conrail, whereupon this Agreement shall be null and void and neither party shall have any obligation to, or any claim whatever against the other.

#### BINDING CONTRACT

17. ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, PURCHASER UNDERSTANDS AND AGREES THAT THIS AGREEMENT DOES NOT CONSTITUTE A BINDING CONTRACT OR IMPOSE ANY OBLIGATION ON CONRAIL, ITS SUCCESSORS OR ASSIGNS, OR ITS AGENTS, UNLESS AND UNTIL THIS TRANSACTION HAS RECEIVED THE APPROVAL OF CONRAIL'S SENIOR MANAGEMENT. PURCHASER SHALL HAVE NO LEGAL RIGHT TO

RELY ON, OR TO ACT IN RELIANCE, UPON THIS AGREEMENT UNLESS AND UNTIL SUCH APPROVAL HAS BEEN COMMUNICATED IN WRITING BY THE MANAGER-REAL ESTATE.

DEFINITION

18. As used in this Agreement, "senior management" of Conrail shall mean, with respect to a total consideration not exceeding \$50,000, the Assistant Vice-President--Real Estate, and with respect to a total consideration in excess of \$50,000, the Vice-President-Information Systems and Administration Services and the Chairman of the Board.

MISCELLANEOUS

19. (a) The headings in this Agreement are for convenience only and shall not be construed as having any legal or factual intent.

(b) It is understood and agreed that time shall be of the essence of this Agreement.

(c) Formal tender of purchase money and executed deed is hereby waived.

(d) This Agreement shall not be recorded or filed in any public office or place of record.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first set forth above.

THE CITY OF URBANA, ILLINOIS

CONSOLIDATED RAIL CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_  
C. J. Wartman, Mgr. Real Estate

Attest/Witness

Attest/Witness

By \_\_\_\_\_

By \_\_\_\_\_



Exh. b. 7, A, 4, 9, 4, 3

CONSOLIDATED RAIL CORPORATION  
 INDIANAPOLIS DIVISION  
 Urbana, Illinois  
 Proposed Sale to: City of Urbana  
 Area marked "A B C D - A" and "E F G H I J - E"  
 Containing approx. 42,750 Square feet +/-  
 REAL ESTATE DEPT. INDIANAPOLIS, INDIANA  
 SCALE: 1" = 200'  
 DATE: 11-13-89 L.C. 8561 M.P. 30  
 V.S. 6419

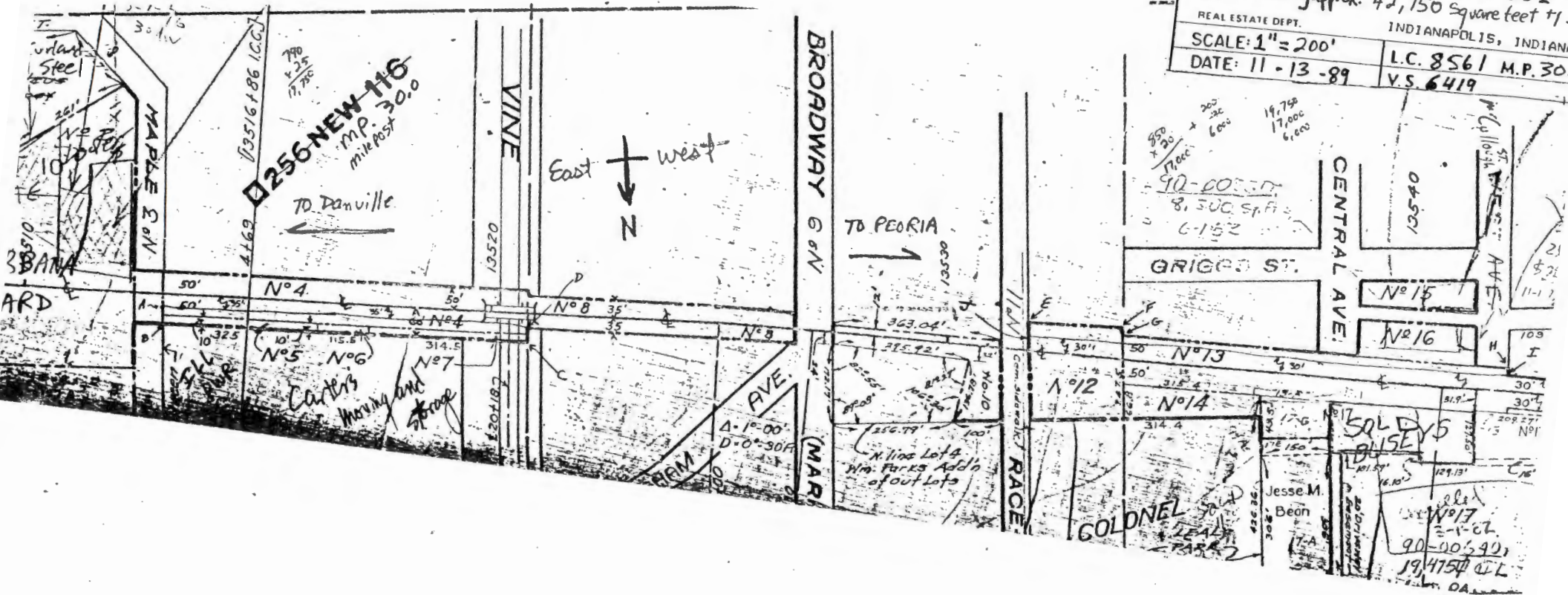


EXHIBIT "B" - SURVEY INSTRUCTIONS

CONDITIONAL AGREEMENT OF SALE DATED: JANUARY 17, 1990  
Between  
CONSOLIDATED RAIL CORPORATION and THE CITY OF URBANA, ILLINOIS

Draw Survey in the name of: Consolidated Rail Corporation

Certification shall be written exactly as follows: "This Survey certified as to correctness to the Seller and Purchaser, and the Title Insurance Company insuring their interests in the premises." This should be on the original tracing and all prints.

PLEASE OBSERVE THE FOLLOWING INSTRUCTIONS:

1. Scale

Plot survey at an appropriate scale to adequately shows the necessary detail, using scales of 1" = 40', 50', 100', 200' or other even hundred scales.

2. Sheet Size

Draw survey on sheet not to exceed 18" x 36" and may be as small as 8½" x 14". Leave blank space 3" x 5" in upper right hand corner for Railroad Company file numbers, etc.

3. Location

Show location of property being surveyed as to municipality, county and state and where applicable, show Lot Numbers, Sections, Townships, Ranges and Principal Meridian of any Government Land Survey. Any boundary lines of same which fall within or adjoin the property must be clearly drawn and identified.

4. Recorded Subdivisions

Lot lines, lot numbers, block numbers, title and recording data of all recorded subdivisions within or adjoining the property must be shown.

5. Corner Markers

Set iron pipes at all corners adjoining remaining land of seller.

6. Beginning Point

Wherever possible, establish the beginning point for the description by bearings and distance to the nearest street intersection or to a nearby known point or monument.

7. Railroad

When railroad tracks adjoin the property, show the distance from the gauge line of the near rail to the closest line of property being surveyed, as measured at right angles or radially. If the location of the railroad center line is known, show the distance therefrom to near corners of property being surveyed as measured at right angles or radially to the center line. If railroad monuments are in the vicinity, show bearing and distance ties to property. If railroad stationing is known, show same in relation to property corners.

If any property line of the premises being conveyed shall be referenced to a future or designated non-existing track or tracks, then the surveyor shall use Conrail's established base line or lines. Plan or plans showing such base line or lines shall be furnished by Conrail.

8. Streets

All streets through or adjoining the parcel are to be laid out showing right-of-way lines, center lines, names, and/or highway numbers and the legal and physical status and width thereof.

9. Structures

All railroad tracks, buildings, utility poles, signs and fences located on or near (within fifty (50) feet) of the premises, are to be shown on the survey.

10. Utilities

All sewer lines, water lines, and wire lines are to be located and identified, together with the location of manholes, catch basins and headwalls, etc.

11. Easements

All easements or right-of-way of record affecting the parcels are to be shown.

12. Encroachment

Any encroachments into the parcel of land must be shown.

13. Adjoining Ownership

Wherever possible, determine all adjoining owners and show same on plan.

14. Curve

For tangent curves, show length of curve, radius of curve.

For non-tangent curves, furnish bearing to radius point, curve length, radius length.

Also show chord bearings and chord distances.

15. Area

Show area of parcel of land being surveyed in sq. ft. and/or acres.

16. Legal Description

Prepare legal metes and bounds description covering premises surveyed, and put on 8 1/2" x 11" letterhead and affix engineer's seal, and forward same along with survey and plans listed in Section 17.

17. Finished Plan

Retain sepia copy of survey for your reference and furnish a soft brown sepia and six (6) copies of survey to:

*CONSOLIDATED RAIL CORP*

REAL ESTATE DEPT.  
31 E. GEORGIA ST., SUITE 545  
INDIANAPOLIS, IN. 46204