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851 Twelfth Street
Oakmont, PA 15139

April 16, 2009

The Honorable Anne Quinlan, Acting Secretary
395 E. Street, SW
Washington, DC 20423-0001



Re: Allegheny Valley Railroad Company – Petition for Declaratory Order
STB Finance Docket No. ~~35329~~ 35239

Dear Acting Secretary Quinlan:

Enclosed for filing please find an original and ten copies of the Petition for Declaratory Order filed on behalf of Allegheny Valley Railroad Company in the above captioned proceeding. Also enclosed is a check for the filing fee made payable to the Surface Transportation Board in the amount of \$1,400. Petitioner has requested that this matter be accorded expedited handling given the public interest associated with the issues presented by this Declaratory Order Petition.

Please acknowledging the receipt of this Petition by date stamping the enclosed copy of this letter and returning it to the undersigned in the self addressed, stamped envelope provided for that purpose. Should you have any questions in connection with this matter, please contact my office at 814-944-5302.

Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in black ink, appearing to read 'Richard R. Wilson'.

Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

RRW/bab
Enclosures

xc: Allegheny Valley Railroad Company
All Parties of Record

ENTERED
Office of Proceedings

APR 23, 2009

OFFICE OF
PROCEEDINGS

224445

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO: ~~35329~~ 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

EXPEDITED HANDLING REQUESTED

FEE RECEIVED
APR 23 2009
SURFACE
TRANSPORTATION BOARD

FILED
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TRANSPORTATION BOARD

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Office of Proceedings
APR 23 2009
Part of
Public Record

RICHARD R. WILSON, ESQ.
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Dated: April 16, 2009

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

A. INTRODUCTION

On July 20, 1983, Consolidated Rail Corporation ("Conrail") conveyed to The Buncher Company ("Buncher") a portion of its Allegheny Branch (a.k.a. the Valley Industrial Track) and identified as USRA Line Code 2229 consisting of a parcel approximately 90 feet wide and 1541.56 feet long comprising of 3.21 acres located in the "Strip District" of the City of Pittsburgh between 16th and 21st Streets. In that deed, Conrail reserved for itself and its successors and assigns,

the permanent right and easement to continue to operate over and maintain its so called Valley Industrial Track which traverses the land herein before described, together with the right of nonexclusive access to said track for the purposes aforesaid: it being expressly understood and agreed by and between the parties hereto that the Grantee will not construct any improvements over said track or within 18 feet of the center line thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the center line thereof, or construct or permit any crossings, at grade, of said track.

By deed dated October 27, 1995, Conrail conveyed to Allegheny Valley Railroad Company ("AVRR") a portion of the Allegheny Branch, now designated as the Valley Industrial Track, from 16th Street in the Strip District to New Kensington, Pennsylvania, including its permanent right and easement to continue to operate over and maintain the line between M.P. 0.3 at 16th Street and M.P. 0.6 at the center line of 21st Street (which included the easement reserved from the 1983 Buncher conveyance) for continued rail operations under acquisition and operating

authority issued by the Interstate Commerce Commission in Finance Docket No. 32783, Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation (November 7, 1995) 95 WL 681254. The ICC exemption notice described various portions of the Valley Industrial Track including “between M.P. 0.3 and M.P. 4.7.” The October 27, 1995 deed from Conrail to AVRR explicitly describes the permanent railroad easement comprising the western most section of the Valley Industrial Track as extending from M.P. 0.3 being at the northeasterly side of 16th Street to M.P. 0.6 at the center line of 21st Street in the City of Pittsburgh as indicated by “PS” on sheet 1 of 27 of Exhibit A to the Conrail deed. (Exhibits B1, B3) At the time of conveyance to AVRR, Conrail had taken the tracks from 16th Street to 21st Street out of service, assigned the track between 21st Street and 23rd Street for public delivery to the remaining active shippers, and allowed all or a portion of Tracks 6, 7 and 8 between 16th Street and 21st Street to be removed and/or covered over for temporary parking. However, Conrail never sought abandonment authority from the ICC for the three-tenths of a mile section comprising the permanent rail easement between 16th and 21st Streets which it subsequently conveyed in 1995 to AVRR for continued railroad use. Nor was abolition of the 21st Street at grade crossing ever sought from the Pennsylvania Public Utility Commission.

From AVRR’s acquisition of the Valley Industrial Track in 1995 until the present date, the 0.3 mile right of way between 16th and 21st Streets has remained unchanged. Throughout this period (1983 to 2008) the property between 16th and 21st Streets adjacent to the Valley Industrial Track has remained an undeveloped parking area with the potential for rail served industrial plants or warehousing. However, AVRR now intends to reactivate this 0.3 mile section of line for rail freight and passenger use as part of a project to provide rail passenger service between New Kensington and Pittsburgh during PennDOT’s reconstruction of State Route 28 along the west bank of the Allegheny River. Buncher has advised AVRR and various public agencies that

the 1541.56 foot by 90 foot permanent rail easement through its property has been extinguished and that AVRR no longer owns any railroad line or right of way between 16th and 21st Streets on which to reactivate rail service.

Accordingly, pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721, AVRR hereby petitions the Surface Transportation Board (“Board”) or (“STB”) to institute a Declaratory Order proceeding to terminate a controversy or remove uncertainty with respect to AVRR’s ownership of and continued right to use the permanent rail easement between 16th and 21st Streets in the Pittsburgh Strip District. The law is well settled that the road used by a rail carrier and owned by it and the transaction by which a common carrier railroad acquires and operates such a road is subject to the exclusive jurisdiction of the Surface Transportation Board and that the remedies provided under Part A of Subtitle IV of Title 49 U.S. Code with respect to regulation of rail transportation is exclusive and preempts other remedies provided under federal or state law. The law is also clear that the Board has exclusive jurisdiction to determine the scope of preemption with respect to acquisition and operating exemptions under §10901. 49 U.S.C. §10502(b).

B. BACKGROUND

The Valley Industrial Track extends along the east bank of the Allegheny River and was part of the original Allegheny Valley Railway Company before it was acquired by the Pennsylvania Railroad in 1900. The line now extends from the Strip District in downtown Pittsburgh to Arnold, Pennsylvania, just north of New Kensington. The Valley Industrial Track (formally known as the Allegheny Branch) once served numerous warehouse and industrial sidings as well as the Pittsburgh Produce Terminal where the Pennsylvania Railroad served produce wholesalers and provisioners located in the Strip District just north and west of its Pittsburgh Passenger Station. In the 1970s and 1980s, truck competition and the dispersal of food warehousing in the Pittsburgh area resulted in the removal of most of the yard tracks and

rail sidings operated by Conrail in the Pittsburgh Produce Yard. Vacant former Pittsburgh Produce Yard property such as that between 16th and 21st Streets was sold by Conrail to developers, including The Buncher Company. However, Conrail retained its ability to serve existing shippers in the Pittsburgh Produce Terminal and any new shippers which might locate in the Strip District by retaining ownership of the Valley Industrial Track to the centerline of 21st Street and retaining a permanent rail operating easement over a 90 by 1541.56 foot parcel between the center line of 21st Street and 16th Street. In 1995, Conrail sold the Allegheny Branch (a.k.a. the Valley Industrial Track) including the permanent easement between 21st Street and 16th Street to AVRR.

Attached as Exhibit A to the Verified Statement of Russell A. Peterson is a copy of the 1983 deed by which Conrail conveyed a 3.21 acre parcel of ground extending from 16th Street to 21st Street which lays adjacent to a parcel already owned by Buncher and a parcel owned by the Pittsburgh Urban Redevelopment Authority where the former Pennsylvania Railroad Fruit Auction & Sales Building, now the Pittsburgh Produce Terminal, is located. The parcel described in the July 20, 1983 deed to Buncher is depicted at Exhibits B3, E, F1, and F2 of Mr. Peterson's Verified Statement. On the second page of the Conrail deed to Buncher, Conrail reserved "a permanent right and easement to continue to operate over and maintain its so called Valley Industrial Track which transverses the land herein before described...." The reserved easement further specified that Buncher would not construct any improvement over said track or within 18 feet of the center line thereof or conduct any work or otherwise occupy a strip of land 12 feet in width on either side of said track as measured from the centerline or construct or permit any crossing at grade of that track. The Buncher-owned parcels between 16th Street and 21st Street in the Pittsburgh Strip District have remained undeveloped from 1983 to date. During

that time, the property has served commuter parking needs for downtown Pittsburgh and has occasionally been used for storage of commercial vehicles and other equipment.

Sometime before Conrail conveyed the Valley Industrial Track to AVRR in 1995, most of the railroad tracks not embedded in concrete were removed or covered over to facilitate use of the adjacent properties for parking and vehicle storage purposes since there was no immediate prospect for the location of new rail shippers to be served by the rail line between 16th and 21st Streets. Nonetheless, despite the absence of immediate prospects for new rail shippers, Conrail did not seek ICC abandonment authority for this portion of the line and executed no release of the rail easement to Buncher. Instead, in 1995, Conrail conveyed the Valley Industrial Track including the easement between 16th and 21st Streets to AVRR. From 1995 to the present time, AVRR has operated the Valley Industrial Track which currently extends to the centerline of 21st Street and serves three active produce shippers in the Pittsburgh Produce Terminal from its public delivery team track on the north side of 21st Street and another shipper from a private siding north of Railroad Street. However, like Conrail, AVRR has not released its rail easement between 16th Street and 21st Street to Buncher, nor has it sought abandonment authority for this line segment from the Surface Transportation Board, and no at grade crossing abolition application has been filed with the Pennsylvania Public Utility Commission under 66 Pa. C.S.A. §2702.

In the last several years, Buncher, the Pittsburgh Urban Redevelopment Authority, the City of Pittsburgh, AVRR and other parties have participated in plans to redevelop the Strip District area including the Buncher parcels between 16th and 21st Streets for commercial/residential and light industrial use. In addition, studies have been undertaken by the Southwest Pennsylvania Commission, the Pittsburgh Port Authority and Westmoreland and Allegheny Counties to evaluate use of the Valley Industrial Track between New Kensington and

Pittsburgh to provide commuter rail service to the communities in the Allegheny River Valley during and after the reconstruction of State Route 28, the main four lane arterial highway into downtown Pittsburgh serving the Allegheny River Valley. In connection with these studies, AVRR anticipates that passenger platforms would be constructed near the end of the line in the vicinity of 16th Street to service rail passengers commuting to and from downtown Pittsburgh. AVRR also would use the restored trackage between 16th and 21st Streets to provide additional head and tail room to facilitate its freight switching operations for shippers located beyond 21st Street.

Not unexpectedly, Buncher has taken strong exception to the plans by AVRR to reconstruct its rail line between 16th and 21st Streets because reconstruction of the rail line will preclude Buncher's ability to redevelop its property between 16th and 21st Streets as a single undivided parcel. Representatives of Buncher have informed AVRR and others that the rail easement between 16th and 21st Streets has been extinguished and that the Buncher property is no longer subject to the permanent rail easement.

C. CONCLUSION

AVRR has filed this Petition for Declaratory Order to establish that it continues to own and has the right to provide common carrier rail service over the 90 by 1541.56 foot right of way between 16th and 21st Streets in as much as this permanent rail easement has never been abandoned under the provisions of 49 U.S.C. §10903 and remains part of the National Rail Transportation Network subject to AVRR's statutory common carrier obligation to provide rail service. In addition, the prompt resolution of this dispute will greatly facilitate the planning efforts of all parties with respect to future redevelopment of the Strip District between 16th and 21st Streets and clarify the rights of the parties in connection with AVRR's ability to provide rail passenger commuter service to communities in the Allegheny Valley during the reconstruction of

State Route 28. Thus, important community redevelopment and highway construction plans hinge on the resolution of the dispute between AVRR and Buncher. Accordingly, AVRR respectfully requests that the Board give this matter priority consideration.

In order to expedite the Board's consideration of this matter, AVRR has attached the Verified Statement of Russell A. Peterson, Chief Executive Officer of AVRR. Mr. Peterson's Verified Statement and the attached exhibits provide additional factual detail concerning AVRR's interest in and ownership of the rail operating easement between 16th and 21st Streets and the redevelopment and transportation plans for the Valley Industrial Track. Also included as part of this filing is a legal argument in support of AVRR's position in this matter.

AVRR respectfully requests that the Board initiate a declaratory order proceeding and issue a Procedural Order affording Buncher and other interested parties an opportunity to respond to AVRR's Petition for Declaratory Order and affording AVRR an opportunity to submit a rebuttal statement if necessary.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 
Richard R. Wilson, Esq.
Attorney for Allegheny Valley Railroad Company

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Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSELL A. PETERSON

My name is Russell A. Peterson and I am Chief Executive Officer of the Allegheny Valley Railroad Company, ("AVRR") 519 Cedar Way, Bldg. 1, Ste. 100, Oakmont, PA 15139. I have personal knowledge regarding the acquisition by AVRR of the Valley Industrial Track from Consolidated Rail Corporation ("Conrail") in 1995 and have personally reviewed and examined the deed between Conrail and Buncher with respect to the parcel acquired by Buncher ("Buncher") from Conrail in the Pittsburgh Strip District in 1983 (Exhibit A) as well as the deed by which AVRR acquired the Valley Industrial Track from Conrail in 1995 and as corrected in 2008 (Exhibits B1, B2, and B3).

I am authorized to make a Verified Statement on behalf of AVRR. The purpose of this Verified Statement is to provide the Surface Transportation Board with pertinent facts and documents concerning a dispute which has arisen between AVRR and Buncher as to whether AVRR retains the permanent rail easement acquired from Conrail between 16th Street and 21st

Street in the Strip District¹ of the City of Pittsburgh under authority granted by the Interstate Commerce Commission pursuant to 49 U.S.C. §10901 in ICC Finance Docket No. 32783, Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation. (Exhibit C) This acquisition and operation transaction was entered into by AVRR and Consolidated Rail Corporation under an Agreement of Sale, a copy of which is attached as Exhibit D. Appended to that Agreement of Sale and subsequently filed with the Allegheny County Recorder of Deeds Office, is the deed dated October 27, 1995 conveying the Valley Industrial Track from Conrail to AVRR (Exhibit B1 and B3). The disputed easement was conveyed by Conrail to AVRR in that deed and is described in the text of the deed and is depicted by “PS” on Grantors Case Plan No. 71703, Sheet 1 of 27 dated August 22, 1995.

(Exhibit B3) The deed conveyed to AVRR

all of Conrail’s right, title and interest in and to the easement to operate over and maintain the Valley Industrial Track between railroad M.P. 0.3 more or less, at the northeasterly side of 16th Street and railroad M.P. 0.6, more or less at the center line of 21st Street all in the City of Pittsburgh being the beginning of the above described premises, as described by “PS” on sheets 1 of 27 of Exhibit C, said right and easement reserved in a July 20, 1983 deed from Grantor to Buncher and is recited as follows. . .

At this point in the October 27, 1995 deed there is an inadvertent omission of the recitation contained in the 1983 Buncher deed. This inadvertent omission was corrected by deed dated November 26, 2008 between Conrail and AVRR (Exhibit B2). This corrected deed was

¹ The Strip District began in 1814 as a plan of lots known as the “Northern Liberties of Pittsburgh.” The neighborhood’s location -- a flood plain along the banks of the Allegheny River -- made it ideally situated to become part of Pittsburgh’s growing industrial economy. By the 1820s and 30s, the neighborhood was home to iron mills, foundries, and glass factories -- as well as the immigrants who worked there. Polish, Irish, and German populations were the ethnicities with the strongest representation in this growing neighborhood. In addition to heavy industry, the Strip District’s rail lines made it well suited for the city’s wholesale produce and food industry. Independent grocery store and restaurant owners came here for domestic and imported produce, seafood, and cheese. Throughout the 1950s, the growth of grocery chain stores and the shift to truck transportation took its toll on this industry, but enterprising business owners of the Strip kept business strong by selling directly to consumers. Many of these family-owned specialty food retailers that line Penn Avenue and Smallman Street today are descendents of the Strip’s wholesale heritage.

filed of record with the Allegheny County Recorder of Deeds Office on December 16, 2008. Notwithstanding this correction, the October 27, 1995 deed from Conrail to AVRR explicitly conveys to AVRR the permanent railroad easement reserved by Conrail in its 1983 deed to Buncher. Furthermore, the easement interest between 16th and 21st Streets is clearly depicted on Sheet 1 of 27 which identifies the easement extending from M.P. 0.3 at 16th Street to M.P. 0.6 at 21st Street and corresponds with the parcel conveyed by Conrail to Buncher in 1983 as decided in the Liadis survey referenced in the 1983 Buncher Deed. (See Exhibit B3 and Exhibit E) Accordingly, an examination of both the 1983 deed from Conrail to Buncher and the 1995 deed (as corrected) from Conrail to AVRR establishes that Conrail conveyed a permanent rail easement over a 1541.56 by approximately 90 foot parcel between 16th Street and 21st Street to AVRR for continued railroad use.

Under the 1983 deed, Conrail conveyed to Buncher a parcel of property approximately 90 feet wide and 1,541.56 feet long comprising 3.21 acres on which four 1500 foot railroad tracks (Tracks No. 5, 6, 7 and 8) were located. I have prepared a schematic diagram of the track facilities in the produce district as of 1983, which illustrates the Fruit Auction & Sales Building, the Valley Industrial Track, house tracks 3 and 4, team tracks 5,6, 7 and Track 8, the Valley Industrial Track. I have also depicted AVRR's Permanent Rail Easement in relation to the Valley Industrial Track and Team tracks 5, 6 and 7. (See Exhibits F1-F2) The tracks were set in gravel with adjacent concrete pavement to facilitate the transloading of food and produce to trucks. These tracks extended across the public right of way of 21st Street and along the length of the parcel from 21st Street to 16th Street with the mainline of the Valley Industrial Track (Track No. 8) adjacent to and within the north property line of the parcel and three side tracks (Track Nos. 5, 6 and 7) adjacent to and within the south property line of the parcel which served the

Pittsburgh Produce Terminal. AVRR continues to serve the Pittsburgh Produce Terminal. (See Exhibit F3) Built by the Pennsylvania Railroad in 1926, the terminal district spanned from 13th to 24th Streets and consisted of a Fruit Auction & Sales Building (now the Pittsburgh Produce Terminal) of brick and concrete measuring 100 x 1200 ft., house tracks of 112-car capacity, team tracks of 499-car capacity and inspection tracks with 317-car capacity. Today, city planners consider the produce district to extend from 16th Street to 22nd Street.

Some time between 1983 and 1993, these tracks were removed or paved over given the absence of rail traffic and to facilitate motor vehicle parking on the vacant adjacent parcels of ground owned by Buncher and the Pittsburgh Urban Redevelopment Authority. (See Exhibit F4) At the same time, portions of these tracks which crossed 21st Street were also removed or paved over with asphalt, apparently by the City of Pittsburgh. However, at no time did Conrail or AVRR ever seek ICC or STB abandonment authorization for the tracks between 21st Street and 16th Street. Nor was an abolition application for the 21st Street at grade crossings ever filed with the Pennsylvania Public Utility Commission.

At all times to the present, AVRR, and Conrail before it, held out in published tariffs to provide common carrier rail service to the public at the Pittsburgh Produce Terminal station (See Exhibits G1 and G2). In fact, AVRR presently serves three customers in the Pittsburgh Produce Terminal from the team track located on the eastern side of 21st Street. Moreover, if AVRR were to receive a reasonable request for rail service which necessitated the use of tracks between 16th and 21st Streets for additional team track capacity, it would be required under its statutory common carrier obligation to reactivate and reconstruct its tracks from and through 21st Street to 16th Street, make whatever repairs and connections are necessary and recommence rail service on that part of the Valley Industrial Track.

Attached as Exhibit H is Page 1 of the December 1993 Conrail Customer Service ZTS map for the Pittsburgh Division depicting the Valley Industrial Track serving shipper facilities in the Pittsburgh Strip District. This map identifies Track 701 and 702 as Track Nos. 6 (Team Track) and 7 (Fruit Auction) which in 1993 ended at 21st Street. Track 5 appears to have been removed by 1993. Tracks 6 and 7 are the tracks to which reference is made in the 1983 Buncher Deed in the 4th Paragraph on Page 2. (Deed Book Vol. 6700, Page 287) which were conveyed to Buncher. In the 5th Paragraph on Page 2 of the Buncher Deed, Conrail reserved the permanent rail easement for the Valley Industrial Track which is identified on the Conrail ZTS map as Track No. 208 or Track 8 on Page 1 of Exhibit H. By dashed lines on the next page of Exhibit H, I have extended these three tracks to illustrate their approximate location between 16th and 21st Streets in 1983.

The permanent rail easement reserved by Conrail describes a “no build” zone within 18 feet of the centerline of the Valley Industrial Track (i.e. on either side of the center line) and a further “no work or occupancy” zone comprising a 12 foot strip of land on either side of the 32 foot “no build” zone which preserved a minimum, unobstructed standard 60 foot railroad right of way clearance for the Valley Industrial Track over the Buncher parcel. The balance of the 90 foot wide permanent rail easement remains subject to AVRR’s nonexclusive access rights to the Valley Industrial Track and tracks 6 and 7 for operational and maintenance purposes as confirmed by Map Sheet 1 of 27 appended to the 1995 Conrail-AVRR deed (Exhibit B3)

The 1983 deed from Conrail to Buncher contains references to both the Allegheny Branch (USRA Line Code 2229) and the Valley Industrial Track. The Allegheny Branch was the generic designation used by the Pennsylvania Railroad Company, Penn Central Corporation and Conrail to describe the main line of the former Allegheny Valley Railroad Company extending from Oil

City, PA on the east bank of the Allegheny River to a connection with the Pennsylvania Railroad Company "Low Grade" or Conemaugh Division main line at Kiski Junction across the Allegheny River from Freeport, Pennsylvania. The line then continued south along the east bank of the Allegheny River to 11th Street in the Pittsburgh Produce Yard where it connected to the Pittsburgh – Chicago mainline via the Fort Wayne Bridge over the Allegheny River. (Exhibit I) The Allegheny Valley Railroad Company constructed this line under legislative charter and the line was open for traffic in January 1856. The Pennsylvania Railroad Company obtained stock control of the Allegheny Valley Railroad in the 1890s and in 1900 the entire rail line was leased to the Pennsylvania Railroad.

In the July 1975 Final System Plan at Page 274, Volume I, the Allegheny Branch is listed as line code 2229 and consists of three segments between Pittsburgh and Arnold:

1. Pittsburgh 11th Street to Pittsburgh 57th Street M.P. 0.2-4.6;
2. Pittsburgh 57th Street to New Kensington M.P. 4.6-18.6; and
3. New Kensington to Arnold M.P. 18.6 to 19.5.

As traffic on the branch diminished in the 1970s and 1980s, it was downgraded by Conrail to a secondary track and then was redesignated as the Valley Industrial Track in the late 1980s when Conrail abandoned those portions of the line north of Arnold, PA. In February 1984, the connection to the Federal Street Bridge was abandoned by Conrail and most of the classification tracks and yard facilities in the Pittsburgh Produce Yard were removed. This excess former yard property was sold to local developers including Buncher.

By 1993, the three remaining railroad tracks (Tracks 6,7, and 8) between 16th Street and 21st Streets were removed and/or covered over to facilitate public parking but that does not negate or diminish AVRR's continuing right to use its easement for railroad purposes. The

permanent rail easement between 16th and 21st Streets (M.P. 0.3 to M.P. 0.6) is clearly identified in both the 1983 and 1995 deeds and the 1541.56 by 90 foot easement is explicitly included within the rail line which was subject to the ICC's acquisition and operation exemption order in Finance Docket 32783. The removal and/or paving over of the tracks between 16th and 21st Streets was apparently acceded to by Conrail for the benefit of Buncher or its tenants to facilitate use of Buncher parcels for public parking and to limit possible liability to which the railroad might otherwise be subject as a result of vehicles operating over the railroad tracks. However, neither Conrail nor AVRR ever conveyed or released the permanent rail easement to Buncher nor did the railroads relinquish the right to reactivate this line segment for future rail use.

Neither Conrail nor AVRR could have released this rail easement to a non-carrier without first obtaining STB abandonment authorization. As indicated in the 1995 exemption notice, the rail line acquired by AVRR from Conrail began at M.P. 0.3 at 16th Street, extended three tenths of a mile over the permanent rail easement to the center line of 21st Street, and then continued from 21st Street all the way up the east (south) bank of the Allegheny River to Arnold, PA. The three tenths of a mile segment over the permanent rail easement is the initial 1541.56 feet of AVRR's mainline track and is subject to AVRR's statutory common carrier obligation to provide rail freight service. The STB has long recognized that a railroad can remove portions of its main line track when not needed for common carrier rail service subject, of course, to the obligation of restoring that track upon the reasonable request of a shipper for common carrier rail service. This is what AVRR is being asked to consider with respect to proposals to initiate rail passenger service on the Valley Industrial Track. Moreover, if this rail passenger project moves forward and the line between 16th Street and 21st Street is reactivated, AVRR also can utilize this track for tail room, head room and team track capacity in connection with its rail freight operations on the

Valley Industrial Track within the Strip District of Pittsburgh which would help avoid blockages of the ten cross streets west of 21st Street which occur when AVRR serves its Pittsburgh Produce Terminal customers from the 21st Street team track.

Attached as Exhibit J to my Verified Statement are copies of the recent URA Notice of Receipt of Proposals for urban design plans for the Strip District. This work has been awarded to Perkins Eastman. Exhibit K is a copy of pertinent parts of the SPC Eastern Corridor Transit Study confirming the prospective use of the Valley Industrial Track for rail passenger service operations.

On September 9, 2008 at 9:30 a.m., Robert Ardolino, President and CEO of Urban Innovations, Inc., a transit oriented development consultant to AVRR, and I met with Buncher's President Tom Balestrieri to invite Buncher to partner in a public-private partnership to develop a transit oriented commercial development between 16th and 21st Streets. Mr. Balestrieri absolutely disputed the existence of AVRR's permanent rail easement over the Buncher parcel and challenged AVRR to go to court if AVRR wished to establish any such permanent easement right for railroad purposes. The clearly stated position of Mr. Balestrieri confirmed the comments of various community leaders who had earlier informed me that Buncher denied the existence of AVRR's permanent rail easement between 16th and 21st Streets.

AVRR fully recognizes that commercial and residential development in the Strip District has long been an important objective for the City of Pittsburgh and the Urban Redevelopment Authority. (Exhibit L) AVRR intends to continue providing common carrier rail service on its Valley Industrial Track to its customers in the Strip District. It is for this reason that AVRR submits its Petition for Declaratory Order to the Surface Transportation Board in order to confirm AVRR's permanent rail freight easement between 16th and 21st Streets. Plans for future

passenger and/or rail freight service along this portion of AVRR's rail line must be recognized and integrated into the plans which are currently being formulated for redevelopment of the Pittsburgh Strip District. AVRR seeks to cooperate with these redevelopment efforts in as much as AVRR's Valley Industrial Track literally bisects the Strip District from 16th Street to 33rd Street. AVRR's Valley Industrial Track is colocated with Railroad Street where there is no space for loading or unloading passengers. The only unoccupied location which is large enough for such passenger use is AVRR's rail easement between 21st and 16th Street. Plans for the Strip District must, for reasons of public safety and comprehensive economic development, take into consideration AVRR's use of the Valley Industrial Track for common carrier rail service. Accordingly, AVRR requests that the Board issue a declaratory order confirming that AVRR's 16th to 21st Street permanent rail easement has not been abandoned and, in the absence of any such abandonment, AVRR may reactivate its rail line from 16th to 21st Street without further STB authorization or objection from adjacent land owners and/or local government entities.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSEL A. PETERSON
EXHIBITS A-L

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSELL A. PETERSON

EXHIBITS A - L

- | | |
|------------|---|
| Exhibit A | Deed dated July 20, 1983 between Consolidated Rail Corporation and The Buncher Company |
| Exhibit B1 | Deed dated October 27, 1995 between Consolidated Rail Corporation and Allegheny Valley Railroad Company |
| Exhibit B2 | Corrective Deed dated November 26, 2008 between Consolidated Rail Corporation and Allegheny Railroad Company |
| Exhibit B3 | Enlargement of Permanent Rail Easement Sheet 1 of 27, Deed dated October 27, 1995 (Exhibit B1) |
| Exhibit C | ICC Exemption Notice <u>Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation</u> , Finance Docket No. 32783 (November 13, 1995) |
| Exhibit D | Agreement of Sale between Consolidated Rail Corporation and Allegheny Valley Railroad Company dated October 23, 1995 |
| Exhibit E | Plan of Property, March 22, 1983; Prepared for The Buncher Company by Liadis Engineering and Survey, Inc. |
| Exhibit F1 | Diagram of Valley Industrial Track 16 th to 21 st Streets |
| Exhibit F2 | 2008 Aerial Photograph of Strip District with Easement Area Depicted |

- Exhibit F3 July 2003 Urban Redevelopment Authority article re: The Produce Terminal and related rental information
- Exhibit F4 March 14, 1995 – Aerial photograph of easement area between 16th and 21st Streets showing the adjacent Pittsburgh Produce Terminal Building
- Exhibit G1 Allegheny Valley Railroad Tariff AVR 8100
- Exhibit G2 Official Railroad Station List, OPSL 6000AA, January 15, 2006
- Exhibit H 1993 Conrail ZTS map of Pittsburgh Produce Terminal track facilities
- Exhibit I 1957 Pennsylvania Railroad Track Chart and map for Allegheny Branch, Conemaugh Division
- Exhibit J Urban Redevelopment Authority Notice of Receipt of Proposal - February 17, 2009
- Exhibit K Southwestern Pennsylvania Commission Eastern Corridor Transit Study – December 17, 2003
- Exhibit L Newspaper articles re: Strip District Redevelopment Plans – November 2, 2008 to May 26, 2006

9-D-225 ✓

9-D-225
BLOCK & LOT NO.
CITY OF PITTSBURGH
DATE: 7/20/83
SVC

THIS INDENTURE, made the 20th day of July in the
Year of our Lord One Thousand Nine Hundred and Eighty-three
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 THE BUNCHER COMPANY, a
Corporation of the Commonwealth of Pennsylvania, whose mailing
address is 5600 Forward Avenue, Pittsburgh, Pennsylvania 15217,
hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in
consideration of the sum of SIXTY THOUSAND DOLLARS (\$60,000.00)
lawful money of the United States of America, unto it well and
truly paid by the said Grantee, at or before the sealing and
delivery of these presents, the receipt whereof is hereby
acknowledged, has remise, released and quitclaimed and by these
presents does remise, release and quitclaim unto the said
Grantee, the heirs or successors and assigns of the said
Grantee, all right, title and interest of the said Grantor of,
in and to

ALL THAT CERTAIN piece or parcel of land situate in the
Second Ward, City of Pittsburgh, County of Allegheny and
Commonwealth of Pennsylvania, being more particularly bounded
and described in accordance with a Plat of Survey prepared by
Lladis Engineering and Surveying, Inc., Drawing No. 1378-C dated
March 17, 1983, revised March 22, 1983, as follows:

BEGINNING at a point on the Easterly line of 16th Street
(varied width) at the dividing line of lands of The Buncher
Company and the Consolidated Rail Corporation (formerly
Cleveland and Pittsburgh) known as the Allegheny Branch and
identified as Line Code 2229 in the records of the United States
Railway Association, said point being North 42° 10' 20" West a
distance of 322.45 feet from the intersection of the Northerly
line of Smallman Street (60.07 feet wide) and the Easterly line
of 16th Street; thence from said point of beginning along the
line of lands of The Buncher Company the following three courses
and distances: (1) North 50° 46' 40" East a distance of 739.33
feet to a point; (2) along a curve to the left having a radius
of 2844.79 feet an arc distance of 138.20 feet to a point, said
property line having a chord bearing of North 49° 23' 10" East
and a chord distance of 138.18 feet; and (3) North 47° 59' 40"
East a distance of 663.24 feet to a point on the Westerly line
of 21st Street (60.07 feet wide); thence along the Westerly line
of 21st Street South 42° 41' 50" East a distance of 89.94 feet
to a point on the line of lands of The Urban Redevelopment
Authority of Pittsburgh; thence along said line of lands of The
Urban Redevelopment Authority the following two courses and
distances: (1) South 47° 55' 55" West a distance of 722.85 feet

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 CITY OF PITTSBURGH
DEED TRANSFER TAX 

No. 10 **STAMP** 107.25
BLOCK & LOT NO. 101225
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CITY TREAS.

to a point; and (2) South 50° 40' 55" West a distance of 818.71 feet to a point on the Easterly line of 16th Street; thence along the Easterly line of 16th Street North 42° 10' 20" West a distance of 91.59 feet to the place of beginning.

CONTAINING an area of 139,631 square feet (3.21 acres), more or less.

BEING designated as Block No. 9-D, Lot No. 225 in the Deed Registry Office of Allegheny County, Pennsylvania.

BEING a part of the premises which the Trustees of the Property of the Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173 dated March 30, 1976 and recorded in Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 591, granted and conveyed unto Consolidated Rail Corporation.

TOGETHER with all the right, title and interest of the said Grantor of, in and to 3,000 lineal feet of railroad track and appurtenances thereto, being Track No. 6 and Track No. 7, located on the above described premises.

RESERVING, however, unto the said Grantor, its successors and assigns, the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described, together with the right of nonexclusive access to said track for the purposes aforesaid; it being expressly understood and agreed by and between the parties hereto that the Grantee will not construct any improvements over said track or within eighteen (18) feet of the centerline thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the centerline thereof, or construct or permit any crossings, at grade, of said track.

SUBJECT, however, to (1) any easements or agreements of record or otherwise 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; and (3) the state of facts disclosed by survey made by Liadis Engineering and Surveying, Inc., Pittsburgh, Pennsylvania dated March 17, 1983 and revised March 22, 1983.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, SUBJECT and RESERVING as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, SUBJECT and RESERVING as aforesaid.

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(1) that the said Grantee shall not have or assert to have any claim or demand whatsoever for compensation for damages, whether said damages be direct or consequential, to the land hereinbefore described or to any buildings or improvements now or hereafter erected thereon, or to the contents thereof, which

may be caused by the operation, maintenance, repair or renewal of Grantor's railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and the said Grantee hereby expressly releases the said Grantor from liability for any such damages;

(2) 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; and

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

NOTICE - "THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

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 in all cases the heirs or successors and assigns of the respective parties.

104610 COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX
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IN WITNESS WHEREOF, the said Grantor has caused this inden-

ture to be signed in its name and behalf by its Assistant Vice President-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED
in the presence of us:

George R. Stevenson

CONSOLIDATED RAIL CORPORATION
By:

Lawrence A. Huff
Lawrence A. Huff, Assistant
Vice President-Real Estate

Attest:

Julius R. Dyment

Julius R. Dyment
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
; SS)
COUNTY OF PHILADELPHIA)

On this 20TH day of JULY, A. D. 1983, before me, the subscriber, Joseph L. Keeley, the undersigned officer, personally appeared Lawrence A. Huff, who acknowledged himself to be the Assistant Vice President-Real Estate of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such Assistant Vice President-Real Estate, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Assistant Vice President-Real Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joseph L. Keeley
Notary Public

I HEREBY CERTIFY that the correct address of the within-named Grantee is:
5600 Forward Avenue
Pittsburgh, PA 15217

Notary Public, Pa.
My Commission Expires

Margaret Urcita
on behalf of Grantee.



THIS INSTRUMENT PREPARED BY:
George R. Stevenson
Consolidated Rail Corporation
Ninth Floor, 1528 Walnut Street
Philadelphia, Pennsylvania 19102

smah

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) S.S.

RECORDED IN THE OFFICE FOR THE RECORDING OF
DEEDS, ETC. IN AND FOR THE SAID COUNTY, ON THE 25th
DAY OF JULY.....A D. 1983...IN DEED.....
BOOK VOL. ...6700...PAGE 29...WITNESS MY HAND AND
SEAL OF SAID OFFICE THE DAY AND YEAR AFORESAID.

Michael J. Kelly RECORDER



CONSOLIDATED RAIL CORPORATION
THE BUNCHER COMPANY

Land situate in Pittsburgh,
Allegheny County, Pennsylvania

MAIL TO:
John H. White, Esq.
P.O. Box 2009
Pittsburgh, PA 15230
Prep: *[Signature]*
Apvd: *[Signature]*
Chkd: *[Signature]*

J 355567

Jul 25 83 5:30
Pp: *[Signature]*
66906

DEED

6700 PGE 290

RECORDED IN DEEDS
ALLEGHENY COUNTY, PA
JUL 25 3 21 PM '83

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REFER TO PG 74



BLDG & LOG DEED REGIS

IN: THIS INDENTURE, made the 27th day of October in the year of our Lord One Thousand Nine Hundred and Ninety-five (A.D. 1995)

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and ALLEGHENY VALLEY RAILROAD COMPANY, a Corporation of the Commonwealth of Pennsylvania, having a mailing address of 2391 Whispering Brook Lane, Grove City, Ohio 43123, hereinafter referred to as the Grantee:

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor has remised, released and quitclaimed and by these presents does remise, release and 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 the following described Premises:

ALL THAT CERTAIN property of the Grantor, together with the appurtenances and improvements thereon, being those strips or parcels of land known as the Valley Cluster, and which strips or parcels of land are situate in the Counties of Allegheny and Westmoreland and the Commonwealth of Pennsylvania, generally described in Exhibit "A" and generally indicated by "PS" on Grantor's Case Plan No. 71703, sheets 1 through 27, dated August 22, 1995 and revised September 6, 1995, which are attached hereto in Exhibit "C", herein referred to as "Premises".

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to any and all minerals, materials and fossil fuels, including but not limited to all coal, gas and oil (hereafter referred to as "minerals"), located in, on, through, under and beneath the Premises/Easement Areas, and together with the rights and easements of immediate and unimpeded ingress and egress on, across and over said Premises/Easement Areas for the purpose of testing and removing said minerals; and together with the right to lay pipes in, on, and under the surface of said Premises/Easement Areas to

0095710204

Exhibit B1



effectuate such removal; and further together with the right to sell and collect any and all rents, profits and royalties from said minerals.

EXCEPTING AND RESERVING, further and unto the Grantor those rights as provided for in Exhibit "A" and Exhibit "B" and which are generally indicated in Exhibit "C" hereof.

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/Easement Areas, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, (3) Fiber Optic easement rights granted from Grantor to CRC Properties, Inc. by Indentured dated September 15, 1995; and (4) any easements or agreements of record or otherwise affecting the Premises/Easement Areas, 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/Easement Areas, 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 Premises and Easement Areas and be binding upon, and inure to the benefit of, the respective 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 Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises, Easement Areas and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever release Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2) No right or means of ingress, egress or passageway to or from the Premises and Easement Areas is hereby granted, expressly or by implication, and Grantor shall not be liable or obliged to provide or obtain for Grantee any such means of ingress, egress or passageway.

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

(4) 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, over or under the Premises and Easement Areas and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(5) Grantor shall not be liable or obligated to provide for or supply directly or indirectly, for money or otherwise, any type of utility service to Grantee, even if the Premises or Easement Areas are supplied utility service or services from or through Grantor owned or Grantor retained utility service facilities; at the time said Premises or Easement Areas are conveyed to Grantee; and that if Grantor at its sole discretion elects to provide any utility service or services for money or otherwise to said Premises or Easement Areas during the period during which Grantee is arranging at Grantee's own expense for provision of utility service or services direct from public utilities, Grantee shall have no continuing right to use such service or expectation that Grantor must continue to provide it. It is further understood that Grantee's use of any utilities that are supplied through Grantor's utilities or billed to Grantor by any public utility for Grantee's use shall be at the sole cost and expense of Grantee and if Grantee fails to relocate or arrange for a separation of utility services, Grantor may arrange for a separation of the utility services at Grantee's sole cost and expense.

(6)(a) Grantee recognizes that, in selling the Premises and Easement Areas, Grantor is enabling Grantee to interchange with one or more third parties traffic that originates or terminates or otherwise moves over the Premises or Easement Areas, and as to which Grantor, prior to this conveyance, could or did participate as a carrier for a portion of the movement that occurred or could occur on Grantor's line other than the Premises and Easement Areas. In consideration thereof, Grantee agrees that, should Grantee (at its own option or that of the shipper or consignee) interchange such traffic with a carrier other than Grantor, it will pay Grantor \$900 per loaded car of such traffic. Said amounts shall be adjusted year to year under the RCAF (unadjusted) as published by the Interstate Commerce Commission and/or its successor entity.

(b) Grantee agrees that Grantor's rights under covenant (6) hereof shall constitute a covenant which shall run with the Premises and Easement Areas and shall be binding upon its successors, assigns, and upon any party for which it may grant any operating rights over the Premises and Easement Areas.

(c) The amounts set forth herein shall be paid to Grantor out of Grantee's settlements with other carriers on the first of each month. In order to maintain the confidentiality of this process, Grantee may have the amounts paid hereunder audited. Any corrections to amounts paid as a result of the settlement process set forth herein shall be settled by Grantor within thirty (30) days of said audit.

(7)(a) While Grantor is conveying certain interests in the Premises and Easement Areas, Grantee recognizes that Grantor may in the future wish to use portions of the Premises and Easement Areas as an alternative to its present route through Pittsburgh. In such event, Grantee agrees that it will, within 30 days after notice by Grantor, quitclaim to Grantor all Grantee's right, title and interest in and to those portions of the Premises and Easement Areas requested by Grantor for use as an alternative route.

(b) The consideration for any bridge located on the Premises and Easement Areas shall be \$1.00, and the consideration for the Premises and Easement Areas shall be based on the net liquidation value of the Premises and Easement Areas to be quitclaimed to Grantor, as of the date of Grantor's request.

(c) Grantor may retain sufficient rights over the Premises and Easement Areas to continue local service on the Premises and Easement Areas and to maintain access to the interchange with Grantor.

(d) Grantee agrees that Grantor's rights under this covenant (7) shall constitute a covenant which shall run with the Premises and Easement Areas and shall be binding upon its successors, assigns and upon any party for which it may grant any operating rights over the Premises and Easement Areas.

(e) Failure of the Grantee to abide by the terms of covenants (6) and (7) hereof will constitute a breach of the Purchase and Sales Agreement between Grantor and Grantee, and will entitle Grantor to recover any and all damages resulting from such breach.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof,

EXCEPTING and RESERVING and UNDER and SUBJECT and as provided herein.

TO HAVE AND TO HOLD all and singular the said Premises, together with the appurtenances, unto the Grantee, the successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT and as provided herein.

AND the said Grantor, for the aforesaid consideration and insofar as its right and title permits, does further grant unto the said Grantee easement rights as further described in Exhibit "B" and generally indicated by "AE" and "ET" on Grantor's Case Plan 71703, sheet 26 of 27 which is attached hereto in Exhibit "C", and which herein are referred to as "Easement Areas".

THE easements herein granted are subject to any facilities which may be located on or within the Easement Areas; and the Grantor reserves for itself and its successors and assigns, the right to use said Easement Areas or any part or parts thereof for any and all other purposes which are not inconsistent with or which do not unreasonably interfere with or impair the rights herein granted.

AS further consideration for the easements herein granted, Grantee hereby covenants and agrees with the Grantor herein that:

(a) The rights hereby granted are subordinate to the paramount right of the Grantor to use and occupy all or any portion of the Easement Areas in any manner whatsoever, provided, however, that any such use or occupancy shall not interfere unreasonably with the exercise by Grantee of the right herein granted.

(b) All costs and expenses in connection with Grantee's use of the Easement Areas and the installation, maintenance, repair, renewal, rehabilitation and removal of Grantee's improvements and its facilities and appurtenances located on the Easement Areas shall be borne entirely by the Grantee.

(c) Grantee covenants and agrees that it will at all times indemnify, protect and save harmless the said Grantor from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which it may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, presence, use, maintenance, or removal of any of Grantee's improvements, its facilities and appurtenances in, on, over, above, under, across or through the Easement Areas, whether such losses or damages be suffered or sustained by the Grantor directly or by its employees, patrons, licensees and agents or be suffered or sustained by

other persons or corporations, including but not limited to the Grantee, its employees, licensees, or agents who may seek to hold the Grantor liable therefor, and whether attributable to the fault, failure or negligence of the Grantor or otherwise.

(d) If and when the Easement Areas or any part thereof shall cease to be used by the Grantee for the purpose hereinbefore mentioned, then the easements and rights hereby granted shall immediately cease and terminate as to so much of the land which shall so cease to be used for the purposes herein intended; and such easements and rights shall revert to the Grantor with the same force and effect as if these presents had never been made.

(e) Grantee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Grantor by reason of the easement and rights granted to Grantee; and Grantee further covenants and agrees to pay Grantor promptly upon bills rendered therefore the full amount of any assessments, taxes or charges of any kind whatsoever which may be levied, charged, assessed or imposed against Grantor to its property by reason of the aforesaid easements.

TO HAVE AND TO HOLD the Easement Areas herein granted, unto the Grantee, for the uses and purposes aforesaid, UNDER and SUBJECT and as provided herein.

NOTICE - "THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE IS SET FORTH IN THE MANNER PROVIDED IN SECTION 1 OF THE ACT OF SEPTEMBER 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

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 successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Valley Industrial Track and Coleman Secondary, Line Code 2229

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and the Coleman Secondary) and identified as Line Code 2229 in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 606, situate in the County of Allegheny and Commonwealth of Pennsylvania, herein referred to as "Premises" and being further described as follows:

BEGINNING at approximately Railroad Mile Post 0.6, being the centerline of 21st Street, in the City of Pittsburgh, as indicated on sheet 1 of 27 of Exhibit "C"; thence extending in a general northeasterly direction to approximately Railroad Mile Post 4.7, being the end of a portion of the Valley Industrial Track and the beginning of the Coleman Secondary (at approximately Railroad Mile Post 2.5), in the City of Pittsburgh, as indicated on sheet 5 of 27 of Exhibit "C"; thence continuing, in a general easterly direction, to approximately Railroad Mile Post 0.0, the end of the Coleman Secondary and the beginning of the second portion of the Valley Industrial Track at approximately Railroad Mile Post 2.7 (a.k.a. Mile Post 7.2, more or less), in the City of Pittsburgh, as indicated on sheet 8 of 27 of Exhibit "C"; thence continuing in a general easterly and northerly direction, passing through the Township of Penn Hills, the Borough of Verona, Oakmont, the Township of Plum, Barking and Logan's Ferry to the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, at approximately Railroad Mile Post 11.5 (a.k.a. Mile Post 17.08), as indicated on sheet 18 of 27 of Exhibit "C".

TOGETHER with Grantor's right, title and interest in and to the easement to operate over and maintain the Valley Industrial Track between Railroad Mile Post 0.3, more or less, at the northeasterly side of 16th Street and Railroad Mile Post 0.6, more or less, at the centerline of 21st Street, all in the City of Pittsburgh and being the beginning of the above described Premises, as indicated by "PS" on sheet 1 of 27 of

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 1 OF 10.

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Exhibit "C", said right and easement reserved in a July 20, 1983 deed from Grantor to The Buncher Company and is recited as follows:

"EXCEPTING AND RESERVING, thereout and therefrom an exclusive easement and right for all right, title and interest in and to the railroad track and its appurtenances located along the northwesterly side of Parcel No. 2 hereof from the easterly right of way line of 43rd Street to course North 57° 56' 10" West, as indicated on the aforesaid Plan of Survey dated April 21, 1986; together with the right and easement to use, operate, maintain, repair, replace, renew and remove the aforesaid railroad track and its appurtenances and the right to operate its locomotives, engines, trains, cars and railroad equipment over said track and the right and easement of unimpeded and immediate ingress and egress to and from the aforesaid parcel of land for the aforesaid purposes for so long as said track is used to serve McConway Torley, but not any successors or assigns of McConway Torley; when the track has been abandoned and removed by Grantor, this right and easement shall extinguish."

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, situate on the northeasterly side of 43rd Street and the southeasterly side of the Allegheny River, in the City of Pittsburgh, as indicated by cross-hatched lines on sheet 3 of 27 of Exhibit "C"; together with easements and rights for access on, over, across and through 43rd Street for ingress and egress purposes to and from this piece or parcel of land and the necessary easement rights in, on, over, across and through the Premises that are necessary for any utilities needed for this piece or parcel of land.

CONTAINING 2.75 acres, more or less.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, Beginning at the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, and as generally indicated as Mile Post 11.5 (a.k.a. Mile Post 17.08) on sheet 18 of 27 of Exhibit "C"; thence extending in a general southeasterly direction to the ENDING on the westerly right of way line of Grantor's line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track), and which line of railroad is now or about to be conveyed to the Allegheny Valley Railroad Company; all in the Borough of Plum, Allegheny County, Pennsylvania, as indicated by cross-hatched lines on sheet 18 of 27 of Exhibit "C".

CONTAINING 0.50 of an acre, more or less.

THIS EXHIBIT "A" CONTAINS 10 PAGES. OF WHICH THIS IS PAGE 2 OF 10.

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BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bondi and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 5911 at page 591&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 3 OF 10.

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CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Westmoreland County, Pennsylvania

Valley Industrial Track, Line Code 2229

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track) and identified as Line Code 2229 in the Recorder's Office of Westmoreland County, Pennsylvania in Deed Book Volume 2305 at page 144, situate in the County of Westmorciand and Commonwealth of Pennsylvania, herein referred to as Premises and being further described as follows:

EXTENDING from the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, at approximately Railroad Mile Post 11.5 (a.k.a. Mile Post 17.08), as indicated on sheet 18 of 27 of Exhibit "C", in a general northerly direction, passing through the Township of Burrell, the City of New Kensington, Parnassus and Arnold to approximately Railroad Mile Post 13.8 (a.k.a. Mile Post 19.5, more or less), at the southerly side of Ferry Street in the City of New Kensington, the place of ENDING, as indicated on sheet 20 of 27 of Exhibit "C".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-218, dated March 30, 1976 and recorded on November 13, 1978, in the Recorder's Office of Westmoreland County, Pennsylvania, in Deed Book Volume 2305 at page 133&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 4 OF 10.

0209571PG214

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Plum Creek Industrial Track, Line Code 2296

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Plum Creek Branch (a.k.a. the Plum Creek Industrial Track) and identified as Line Code 2296 in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 614, situate in the Borough of Verona, County of Allegheny and Commonwealth of Pennsylvania, herein referred to as Premises and being further described as follows:

BEGINNING at Railroad Mile Post 0.0, and extending in a general northeasterly direction to approximately Railroad Mile Post 0.25, all as indicated on sheet 11 of 27 of Exhibit "C".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn. Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS
PAGE 5 OF 10.

0809571PG215

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania
Valley Industrial Track and Brilliant Industrial Track, Line Code 2226

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Brilliant Branch (a.k.a. the Valley Industrial Track and Brilliant Industrial Track) and identified as Line Code 2226 in the Recorder's Office of Allegheny County, Pennsylvania in Dec Book Volume 6001 at page 603, situate in the County of Allegheny and Commonwealth of Pennsylvania, herein referred to as Premises and being further described as follows:

BEGINNING at approximately Railroad Mile Post 0.7, being approximately 566 feet northerly of the north end of U.G. Bridge No. 0.62, in East Liberty, in the City of Pittsburgh, as indicated on sheet 22 of 27 of Exhibit "C"; thence extending in a general northerly direction, crossing Grantor's Coleman Industrial Track, as indicated on sheet 7 of 27 of Exhibit "C", herein conveyed, the Allegheny River and passing through the Borough of Aspinwall to approximately Railroad Mile Post 3.0, in the City of Pittsburgh, the place of ENDING, as indicated on sheet 26 of 27 of Exhibit "C".

TOGETHER with Grantor's right, title and interest in and to the tracks, bridges, piers, substructure, superstructure, abutments and their appurtenances ("Track and Bridge") located on the aforesaid line of railroad.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to those two (2) certain strips, pieces or parcels of land comprising the land and air of those portions of the Brilliant Industrial Track that are generally indicated by AE's and ET's on sheet 26 of 27 Exhibit "C"; together with ingress and egress rights and easements on, over, across and through the Premises for access purposes to and from the said two (2) pieces or parcels of land; except, however, the Track and Bridge which are herein conveyed to the said Grantee.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS
PAGE 6 OF 10.

DE005/1PG216

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591 &c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 7 OF 10.

DR0957125217

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Valley Industrial Track and Brilliant Industrial Track, Line Code 2227

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Brilliant Branch-West Leg Wye (a.k.a. the Brilliant Industrial Track) and identified as Line Code 2227 in Deed Book Volume 6001 at page 604, situate in the County of Allegheny and Commonwealth of Pennsylvania, being further described as follows:

BEGINNING at Railroad Mile Post 0.0 on Grantor's Bridge No. 0.68 (70.62), over the Allegheny River, in the Borough of Aspinwall, as indicated on sheet 25 of 27 of Exhibit "C"; thence extending in a general northwesterly direction, the northeasterly line of conveyance being 25 feet southwesterly of the centerline of the near track of Grantor's Conemaugh Line, identified as Line Code 2211, to approximately Railroad Mile Post 0.5, being a point beneath the centerline of the Highland Park Bridge, in the Township of O'Hara, the place of ENDING, as indicated on sheet 27 of 27 of Exhibit "C".

TOGETHER with Grantor's right, title and interest in and to bridge, piers, substructure, superstructure, abutments and their appurtenances located on the aforesaid line of railroad.

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591 &c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 8 OF 10.

000957176218

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Valley Industrial Track, Line Code 2228

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Allegheny Branch Connection (a.k.a. the Valley Industrial Track) and identified as Line Code 2228 in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 605, situate in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being further described as follows:

BEGINNING at approximately Railroad Mile Post 1.8, being at the connection to another portion of Grantor's Valley Industrial Track, identified as Line Code 2226, herein conveyed; extending in a general easterly direction to approximately Railroad Mile Post 2.7, being at the connection to Grantor's Coleman Secondary, identified as Line Code 2229, herein conveyed, the place of ENDING, all as indicated on sheet 7 of 27 of Exhibit "C".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS
PAGE 9 OF 10.

0609571PG219

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Westmoreland County, Pennsylvania

Indian Run Industrial Track, Line Code 2288

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Indian Run Branch (a.k.a. Indian Run Industrial Track) and identified as Line Code 2288 in the Recorder's Office of Westmoreland County, Pennsylvania in Deed Book Volume 2305 at page 159, situate in the City of New Kensington, County of Westmoreland and Commonwealth of Pennsylvania, being further described as follows:

BEGINNING at Railroad Mile Post 0.0, being at the connection to Grantor's Valley Industrial Track, identified as Line Code 2229, herein conveyed; thence extending in a general westerly, then southerly direction to approximately Railroad Mile Post 0.7, being at the south side of Ninth Street, the place of **ENDING**, and also being a line in common with lands now or about to be conveyed to the City of New Kensington; all as indicated on sheet 21 of 27 of Exhibit "C".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-218, dated March 30, 1976 and recorded on November 13, 1978, in the Recorder's Office of Westmoreland County, Pennsylvania, in Deed Book Volume 2305 at page 133&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 10 OF 10.

9809571 PG 20

CASE NO. 71703

EASEMENT TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "B"

Allegheny County, Pennsylvania

Valley Industrial Track and Brilliant Industrial Track, Line Code 2226

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Brilliant Branch (a.k.a. the Valley Industrial Track and The Brilliant Industrial Track) and identified as Line Code 2226 in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 603, situate in the County of Allegheny and Commonwealth of Pennsylvania, herein referred to as Easement Areas and being further described as follows:

ALL THOSE two (2) certain strips, pieces or parcels of land comprising the land and air of those portions of the Brilliant Industrial Track that are generally indicated by AE's and ET's on sheet 26 of 27 Exhibit "C", and as follows:

(1) An aerial easement for the Grantee's bridge, substructures and superstructures and their appurtenances and also a surface easement for the substructure, piers, abutments and all their appurtenances located on or within the area designated by "AE's" on sheet 26 of 27 of Exhibit "C".

(2) A surface easement for Grantee's track and appurtenances located on the area designated by "ET's" on sheet 26 of 27 of Exhibit "C".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591 & c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "B" CONTAINS 1 PAGE, OF WHICH THIS IS PAGE 1 OF 1.

CASE NO. 71703

EXHIBIT C

DEED

and

GRANT OF EASEMENT

to

ALLEGHENY VALLEY RAILROAD COMPANY

MAP AC CENDUM

THIS EXHIBIT "C" CONTAINS 27 MAPS.

0309571PG22

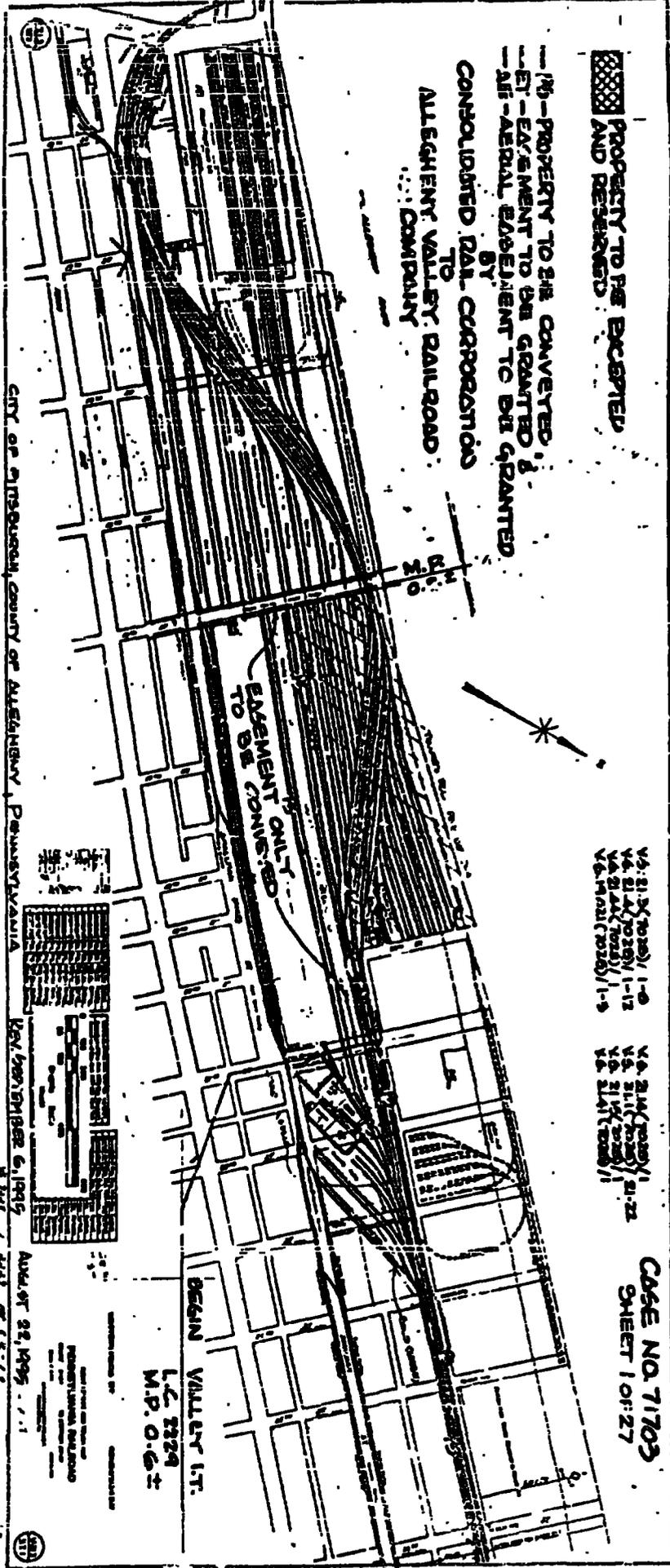
PROPERTY TO BE EXCEPTED
AND RESERVED

PROPERTY TO BE CONVERTED
EXCEPTED TO BE GRANTED
AERIAL EASEMENT TO BE GRANTED
BY
CONSOLIDATED RAIL CORPORATION
TO
ALLEGHENY VALLEY RAILROAD
COMPANY

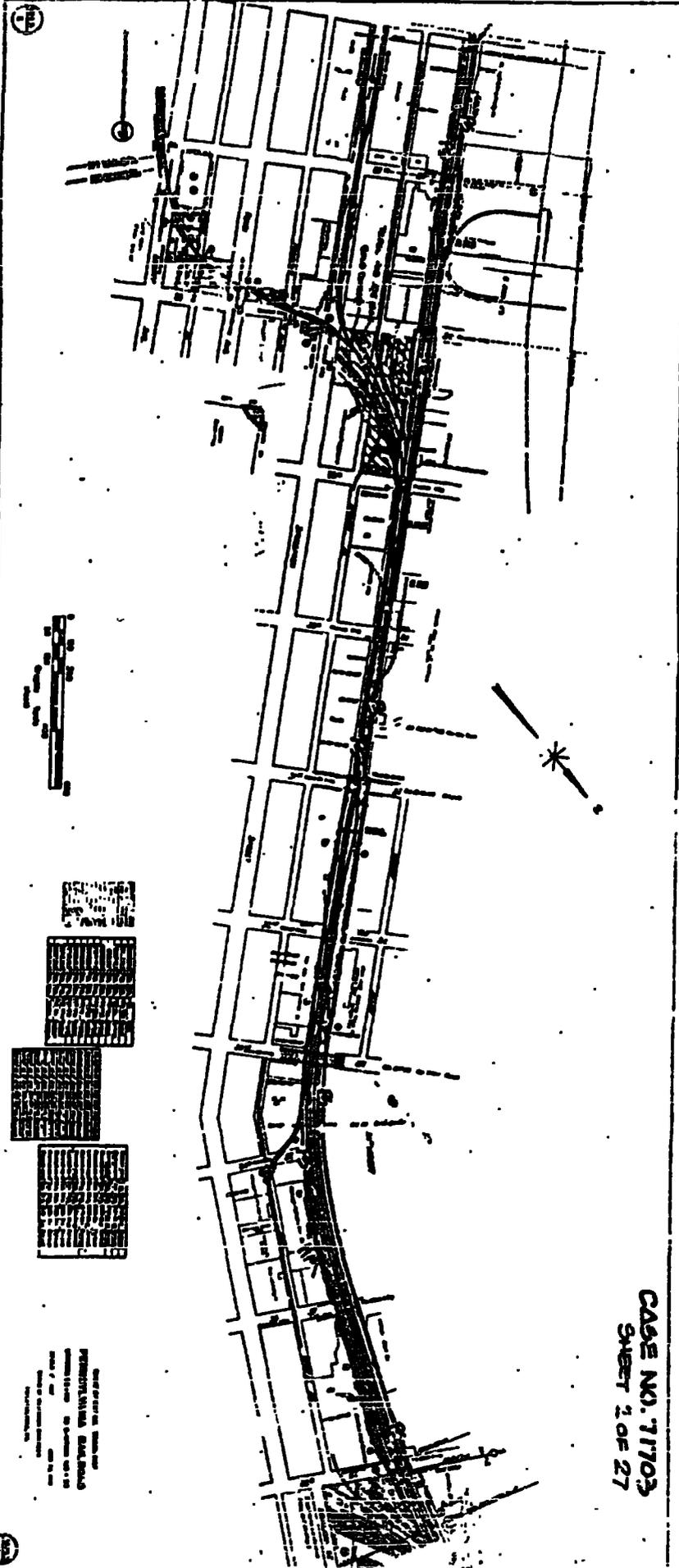
V.G. 21.1 (2020) / 1-0
V.G. 21.1 (2020) / 1-12
V.G. 21.1 (2020) / 1-9

V.G. 21.1 (2020) / 21-22
V.G. 21.1 (2020) / 21-23
V.G. 21.1 (2020) / 21-24

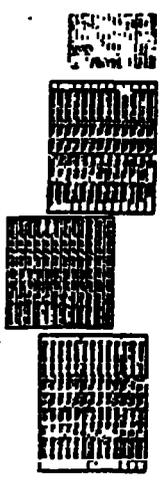
CASE NO. 71703
SHEET 1 OF 27



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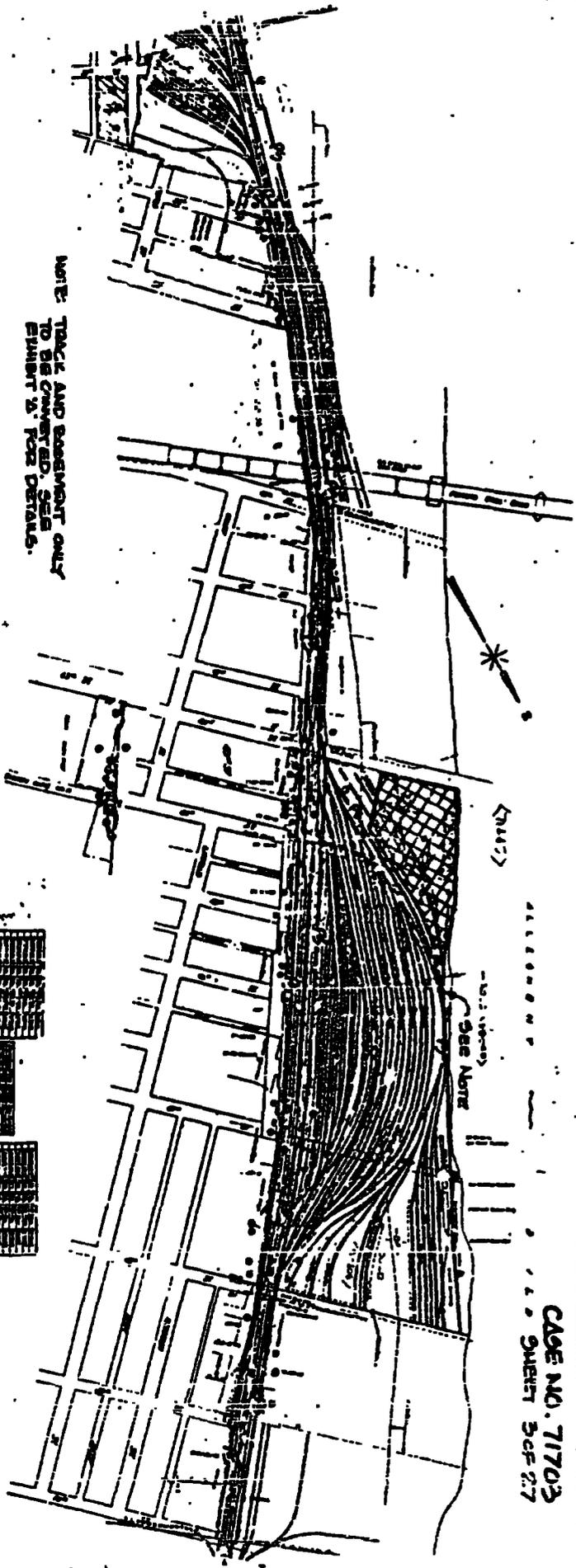
CASE NO. 71703
 SHEET 2 OF 27



PREPARED BY: [Name]
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]

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NOTE: TRACK AND ROSSMONT ONLY
 TO BE CONVERTED. SEE
 SHEET 2 FOR DETAILS.

CASE NO. 71703
 SHEET 5 OF 27

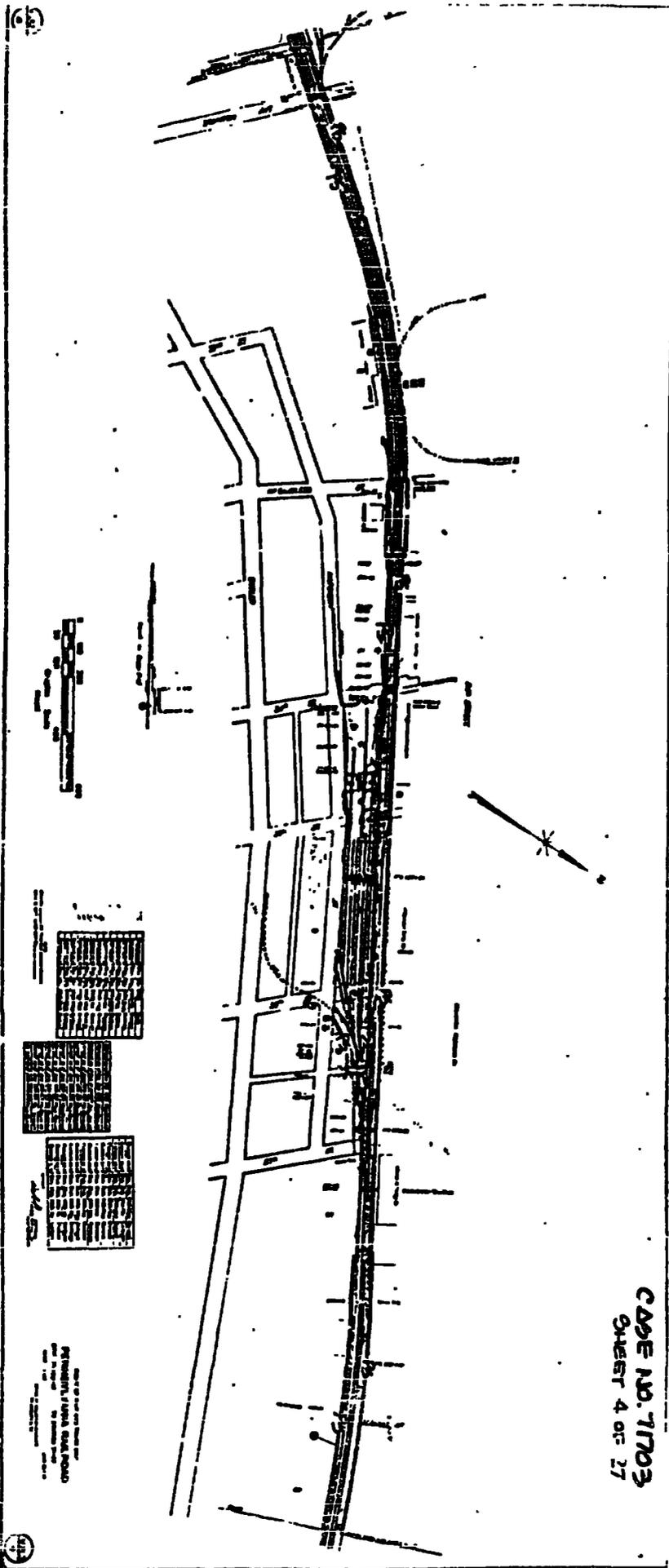
REV. 9-6-45

18 1/2" x 24" (24" x 36")

PROFESSIONAL ARCHITECT
 REGISTERED ARCHITECT
 STATE OF CALIFORNIA

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DB09571PG225



CASE NO. 71703
 QUEST 4 OF 27

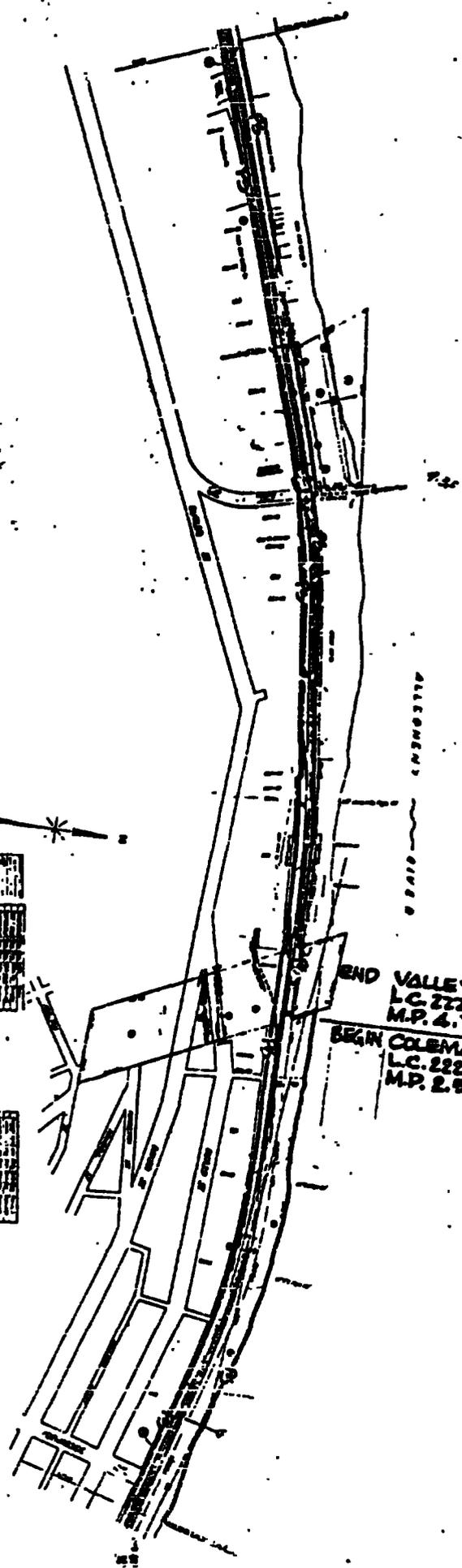


PHOTOGRAPHY, JAMES EARL RAY
 APR 27 1968
 FBI - MEMPHIS

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ALLEGHENY RIVER

END VALLEY I.T.
L.C. 2229
M.P. 4.7
BEGIN COLEMAN SEC
L.C. 2229
M.P. 2.9



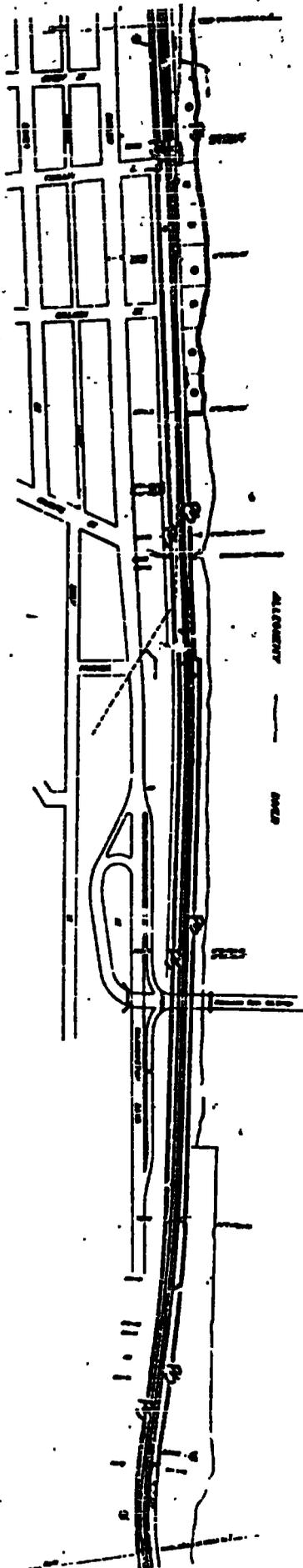
BY THE ARCHT. AND ENGRS.

PROFESSIONAL SEAL AND SIGNATURE

CASE NO. 11703
SHEET 5 OF 27

DB09571 PG227





ALIGNMENT ———

ANCHOR ———



CASE NO. 7703
SHEET 1 OF 27



Rev. 9-6-95

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APPROVED BY: [Signature]

DATE: 9-6-95

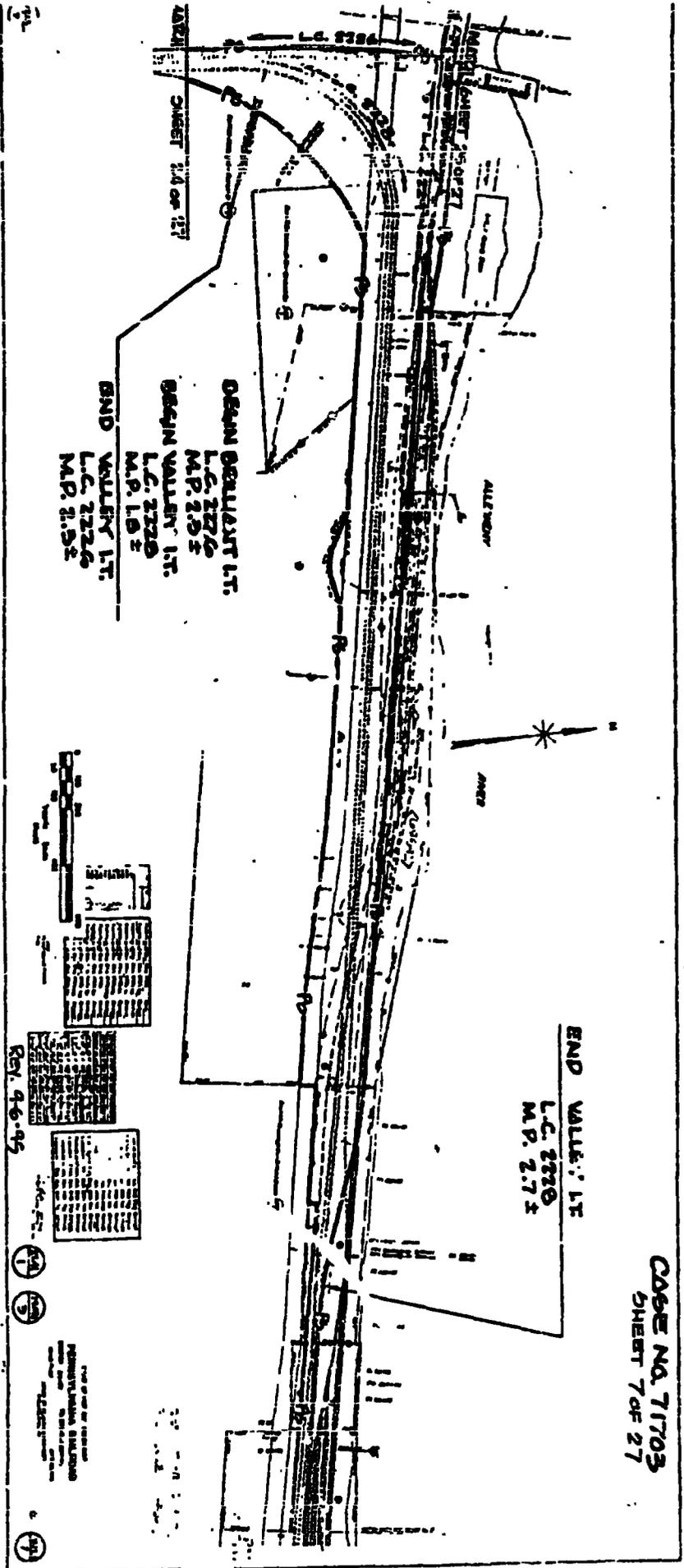
PROJECT NO. 7703

SHEET 1 OF 27

DB09571PG228



CASE NO. 71703
SHEET 7 OF 27



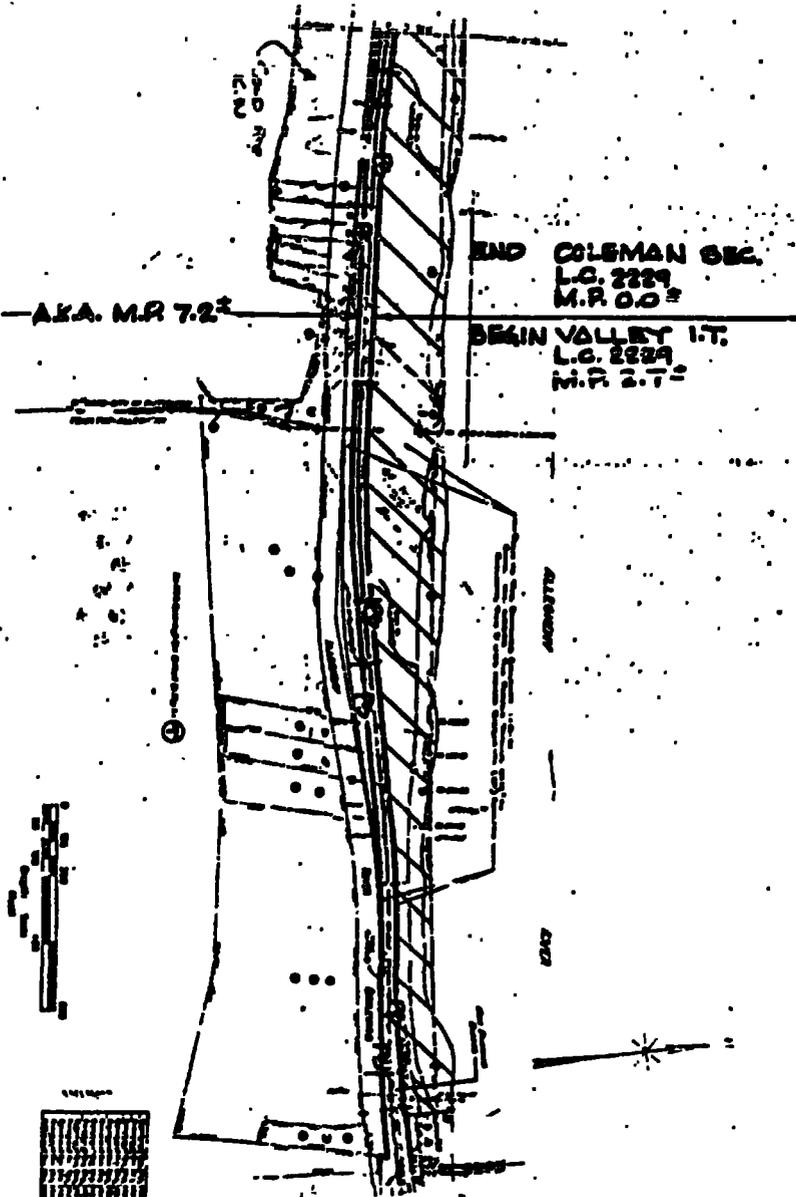
REV. 4-6-95

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DB09571PG229

AKA. M.P. 7.2⁺

END COLEMAN SEC.
L.C. 2229
M.P. 0.0⁺
BEVIN VALLEY INT.
L.C. 2229
M.P. 2.7⁺

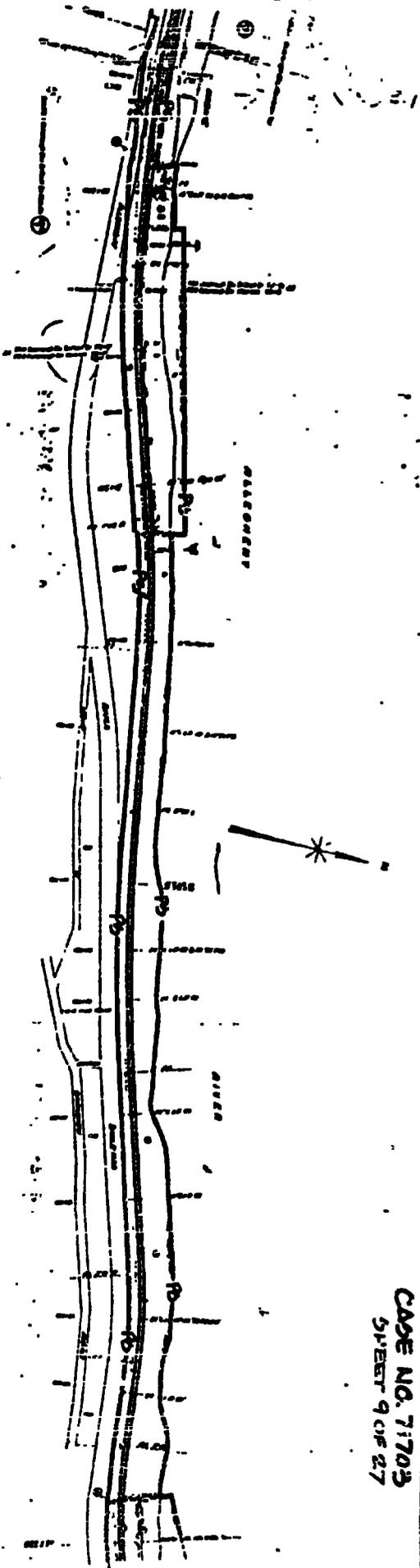


NOTED FOR THE DESIGNER:
 REVISIONS TO THIS DRAWING
 SHALL BE MADE BY THE
 DESIGNER OR HIS
 AUTHORIZED REPRESENTATIVE
 AND SHALL BE APPROVED
 BY THE ENGINEER OF RECORD
 BEFORE BEING USED FOR
 CONSTRUCTION.

CB09571 PG 230

CAGE NO. 71703
SHEET 3 OF 27





CASE NO. 71703
SHEET 9 OF 27

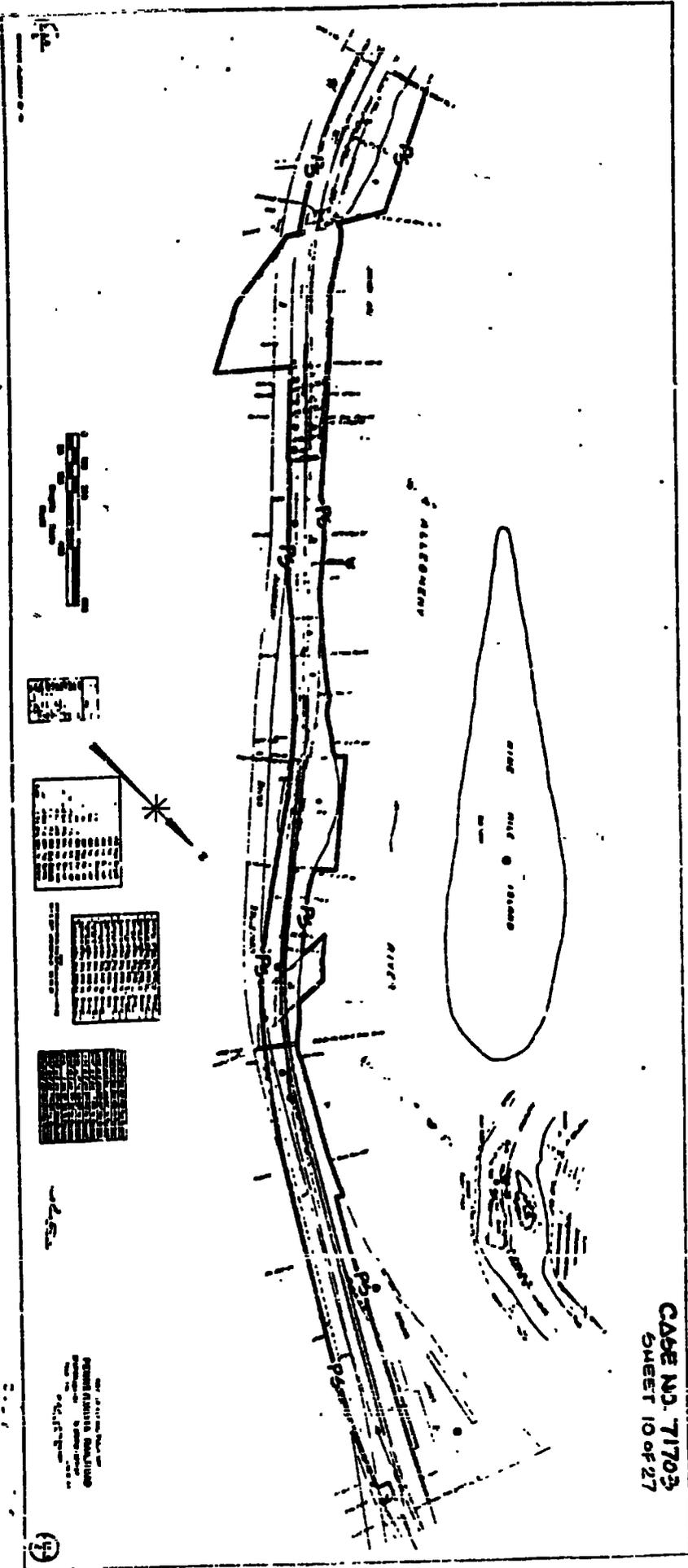


SCALE

DESIGNED BY
DRAWN BY
CHECKED BY
DATE

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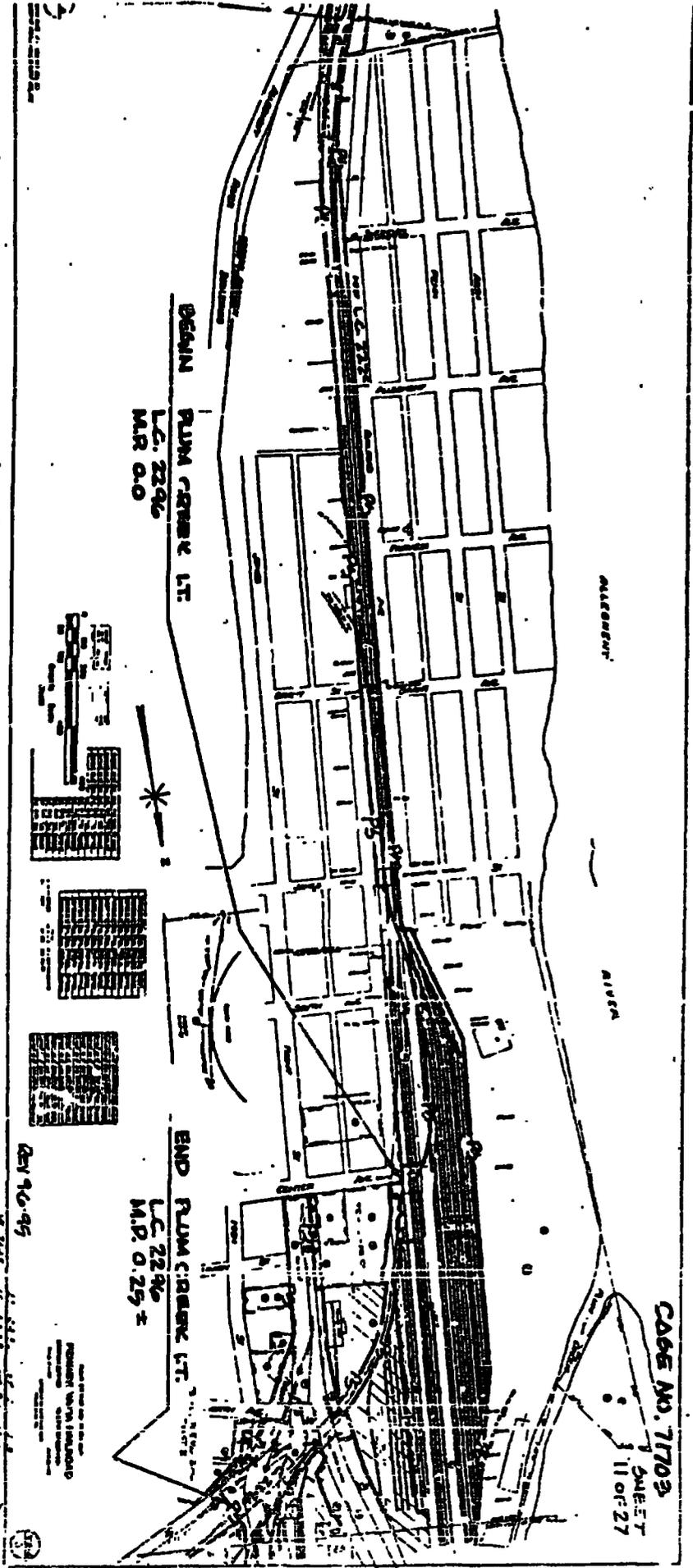
DB09571PG231



CASE NO. 71703
SHEET 10 of 27

DB09571PG232

FOR THE DISTRICT ENGINEER
GENERAL INVESTIGATION
UNIT
WASHINGTON, D.C.



ALLEGRETTI

RIVER

DEGIN RUM CARRIER LT.
L.C. 2296
M.R. 0.0

END RUM CARRIER LT.
L.C. 2296
M.R. 0.29 ±



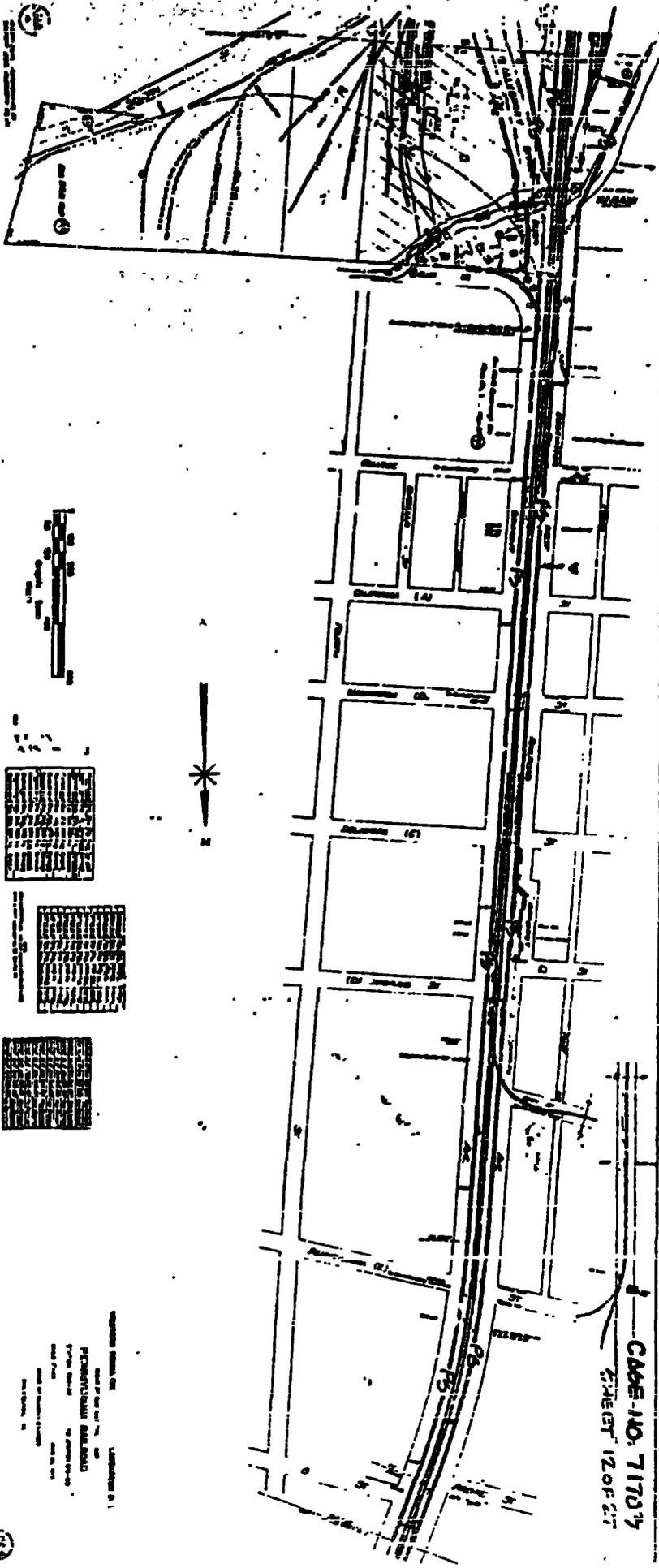
REV 96-95

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REVISIONS WITH INCREASED
SCALE

CASE NO. 71703
SHEET
11 OF 27

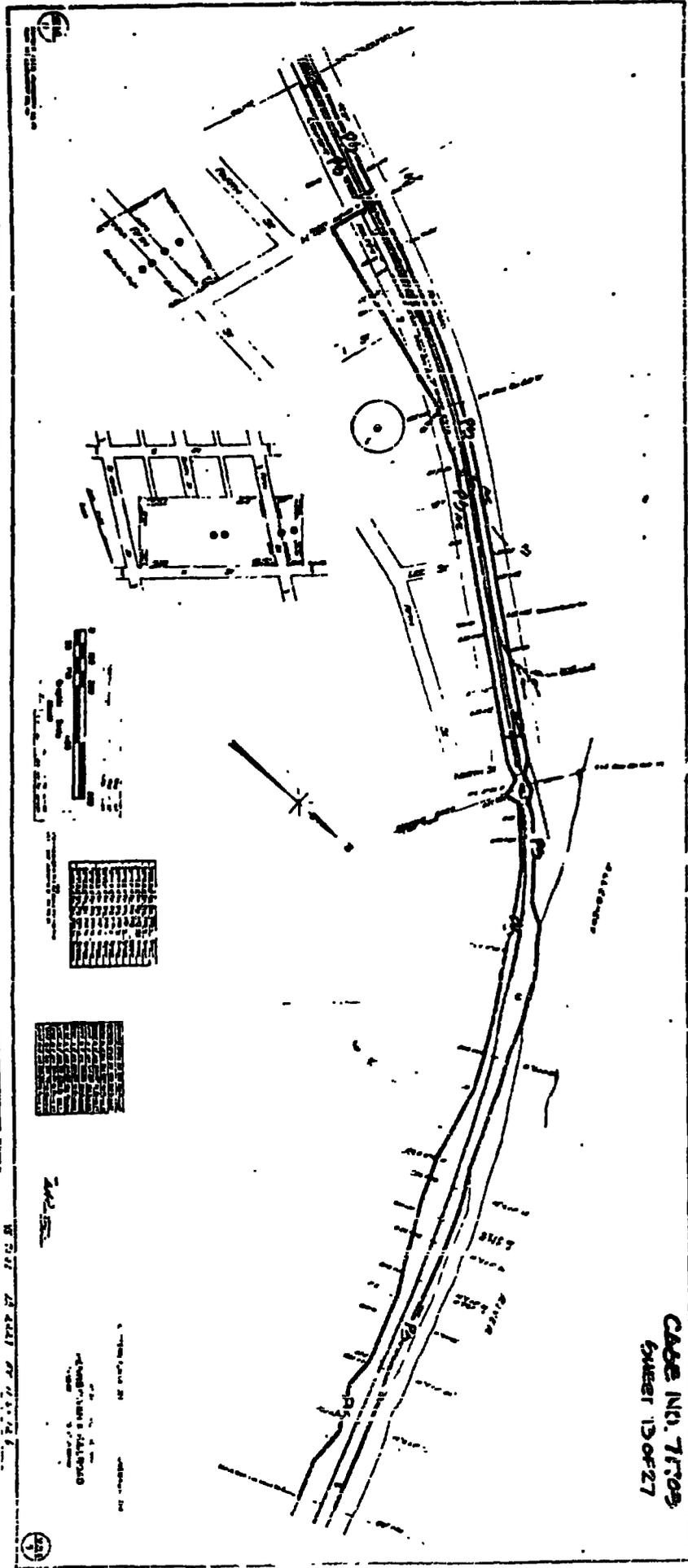
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CASE NO. 71704
SHEET 12 OF 27

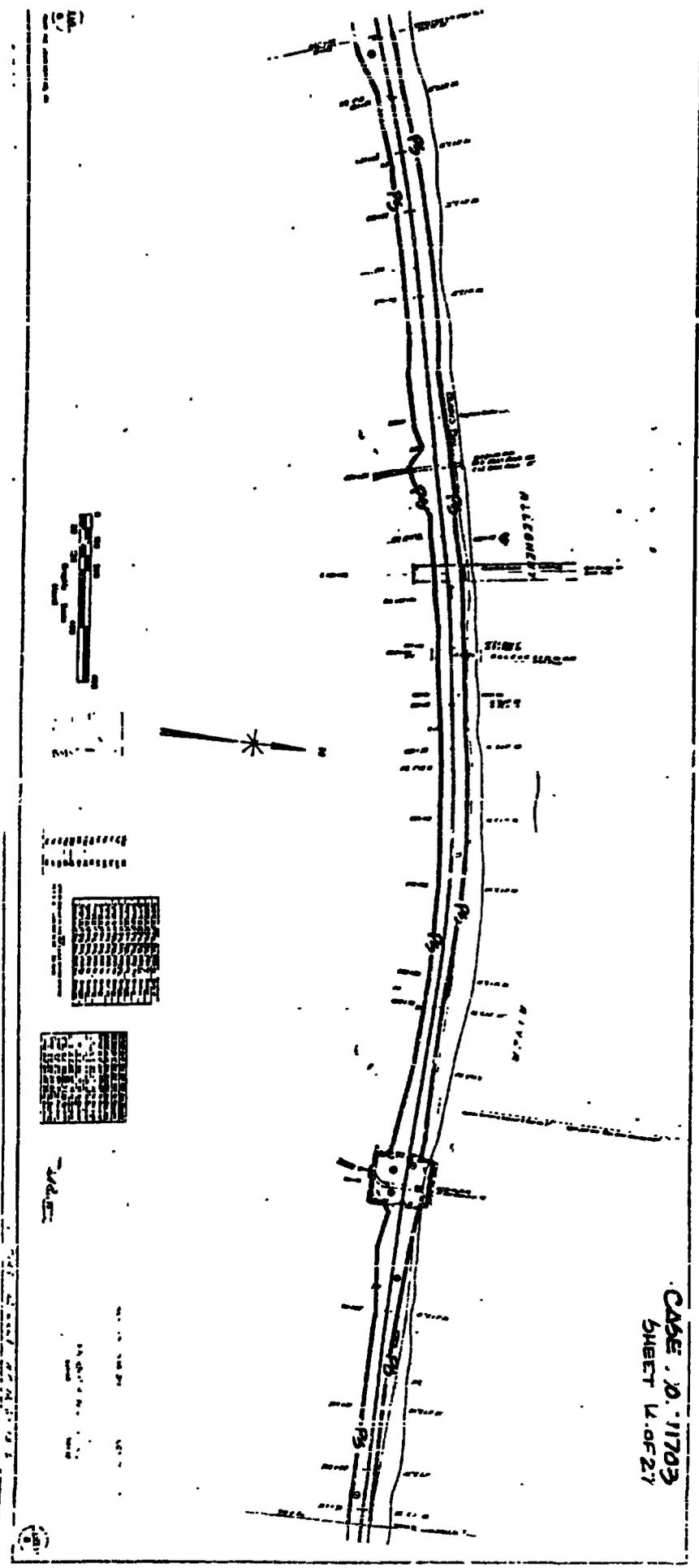
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FLOOR PLAN
DATE: 12/15/54
BY: [illegible]

BB09571PG234



CASE NO. 7109
SHEET 10 OF 27

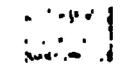
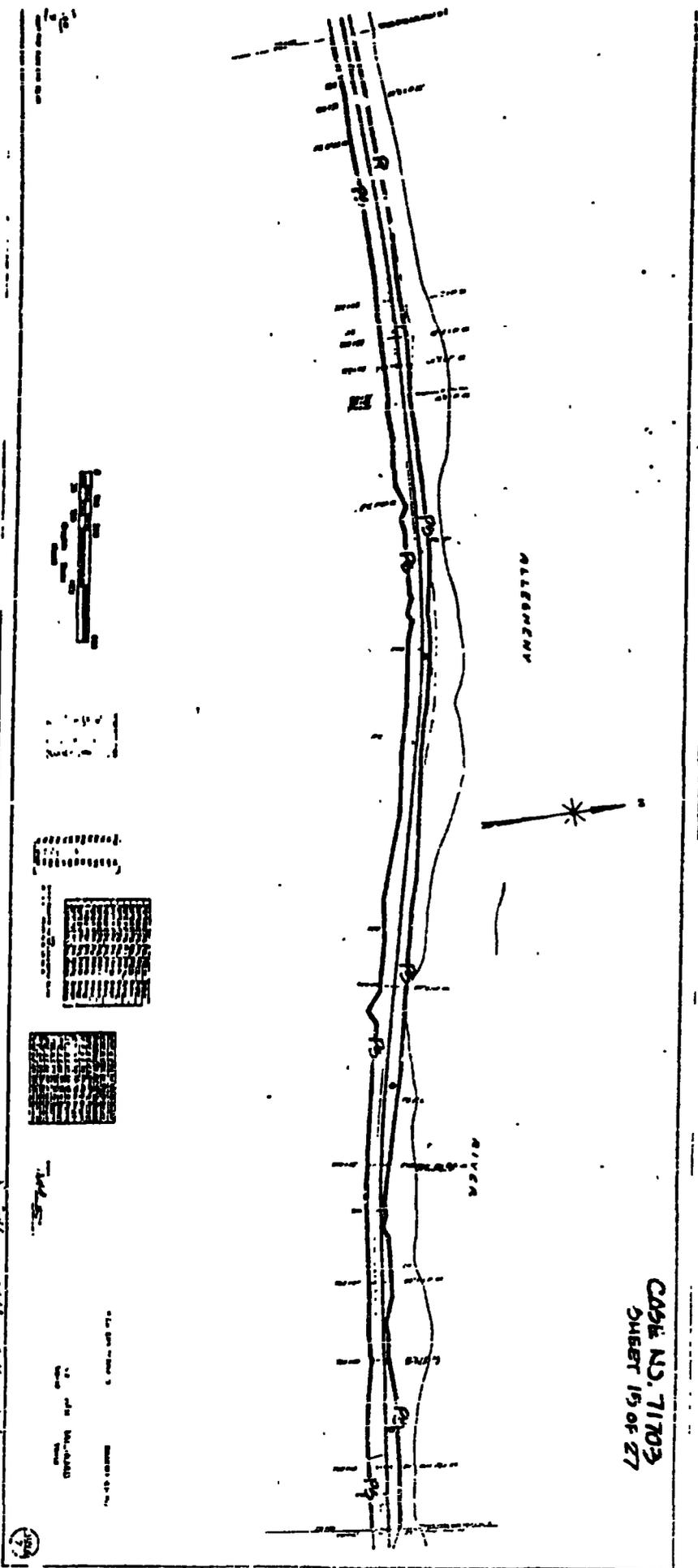
DB09571 PG235



CASE NO. 11703
SHEET 1 OF 21

DB09571PG236

CASE NO. 71703
SHEET 15 OF 27



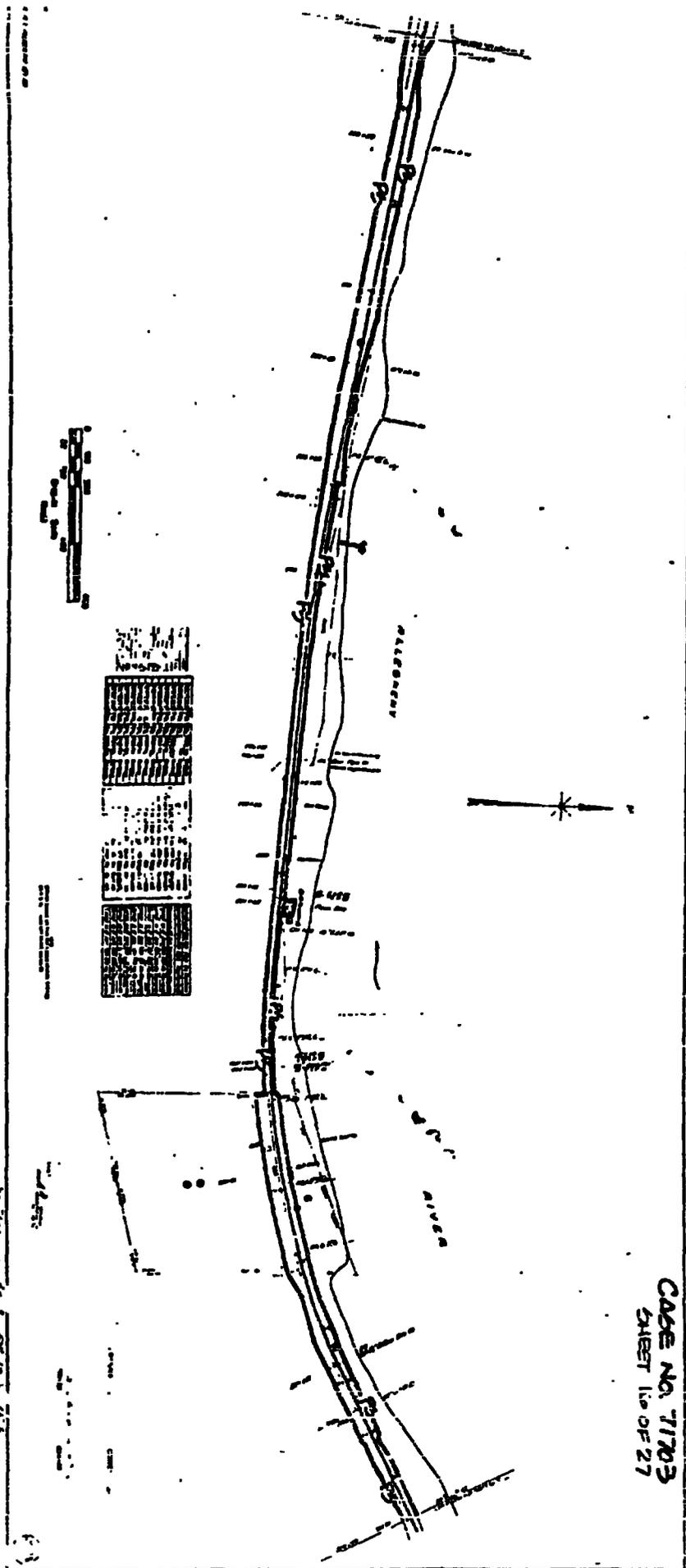
TABLE

DATE OF SURVEY
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DB09571PG237

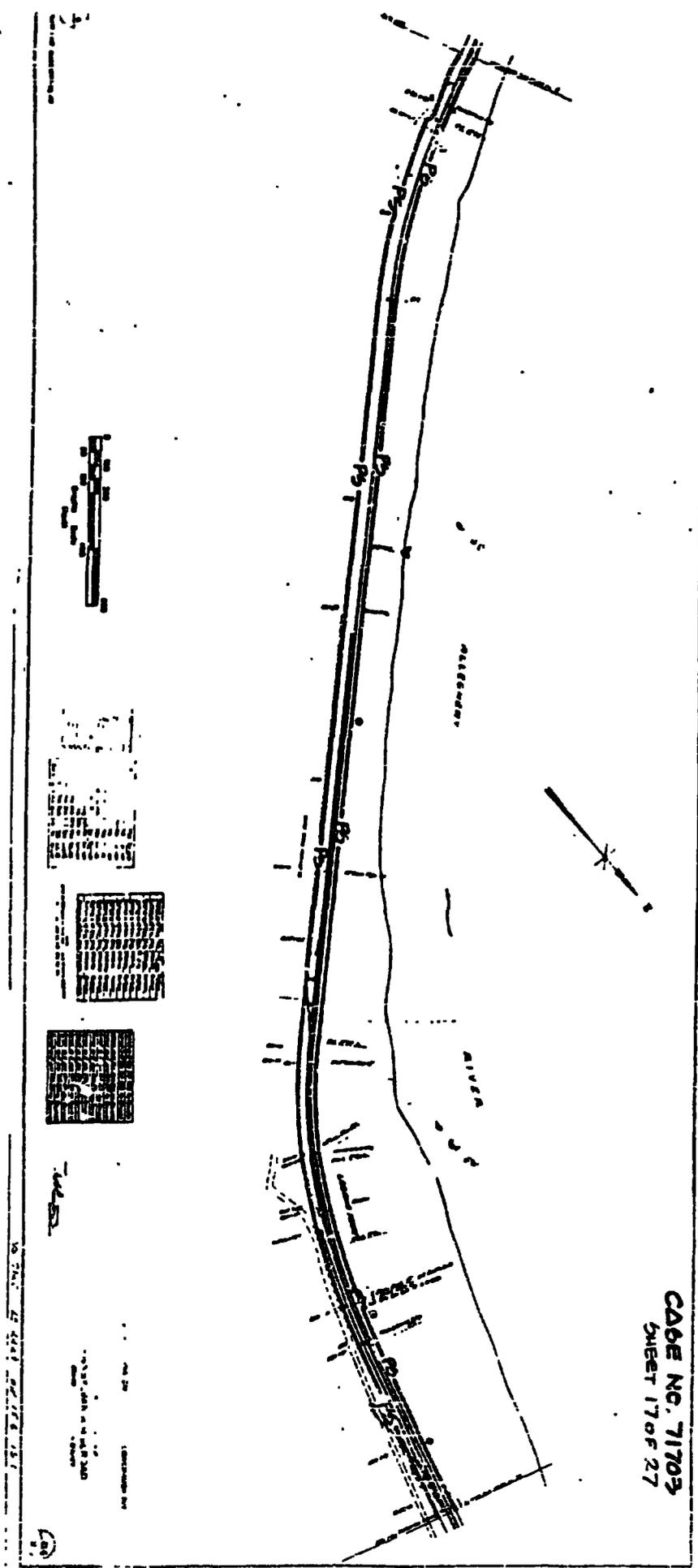


CASE NO. 71703
SHEET 10 OF 27

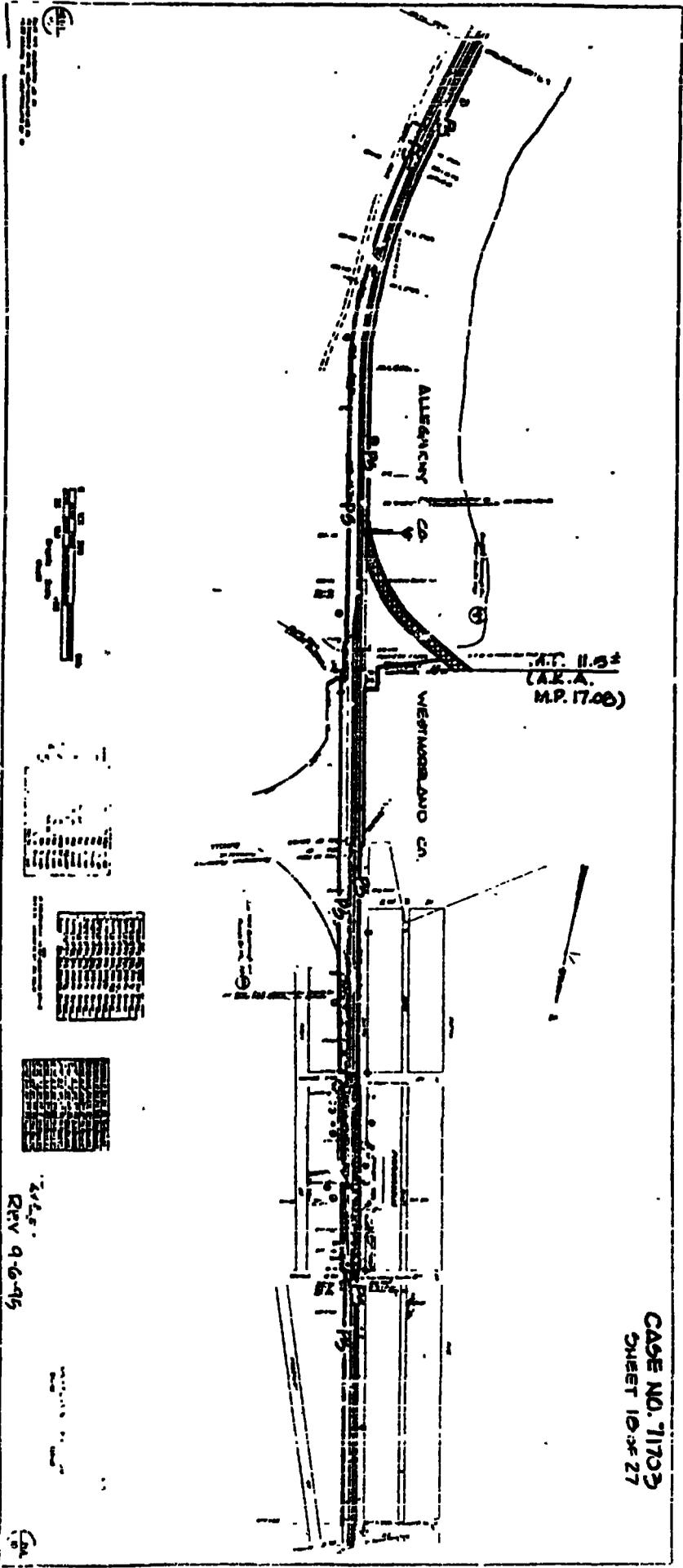


DB09571 PG238

CASE NO. 71703
SHEET 17 OF 27

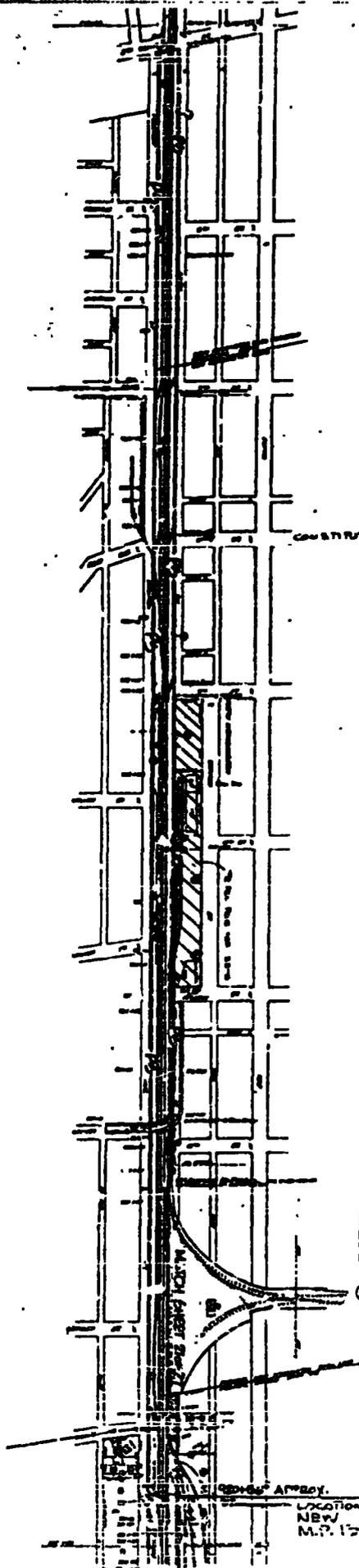


DB09571 PG 239



CASE NO. 71703
 SHEET 10 OF 27

DB09571 PG:40

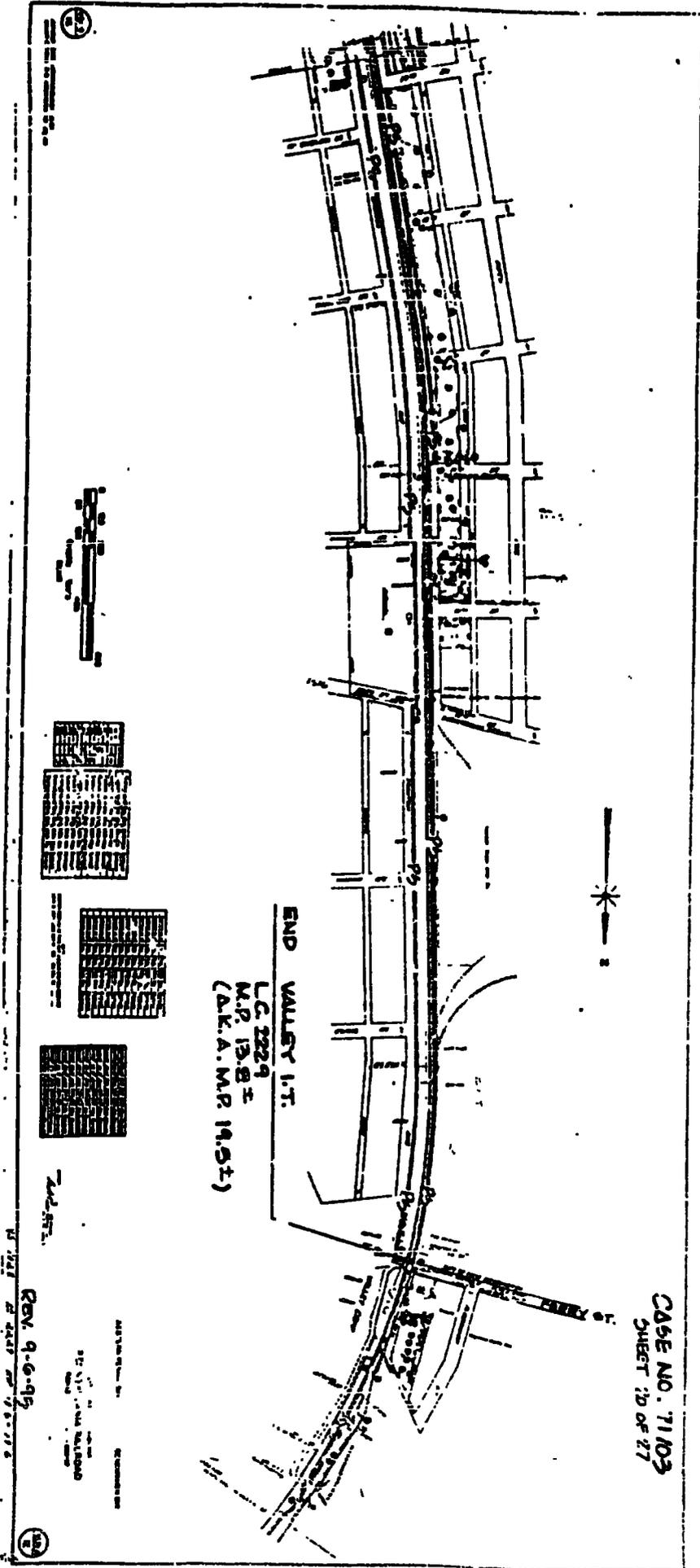


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"THESE DRAWINGS"
 "WARRANTED TO SHOW"
 "THE EXISTING CONDITIONS"
 "AND NOT TO BE USED"
 "FOR ANY OTHER PURPOSE"
 "WITHOUT THE WRITTEN"
 "CONSENT OF THE ENGINEER"
 "IN CHARGE OF THE PROJECT"

CASE NO. 71703
 SHEET 19 OF 27

DB09571PG241



CASE NO. 71103
SHEET 10 OF 27

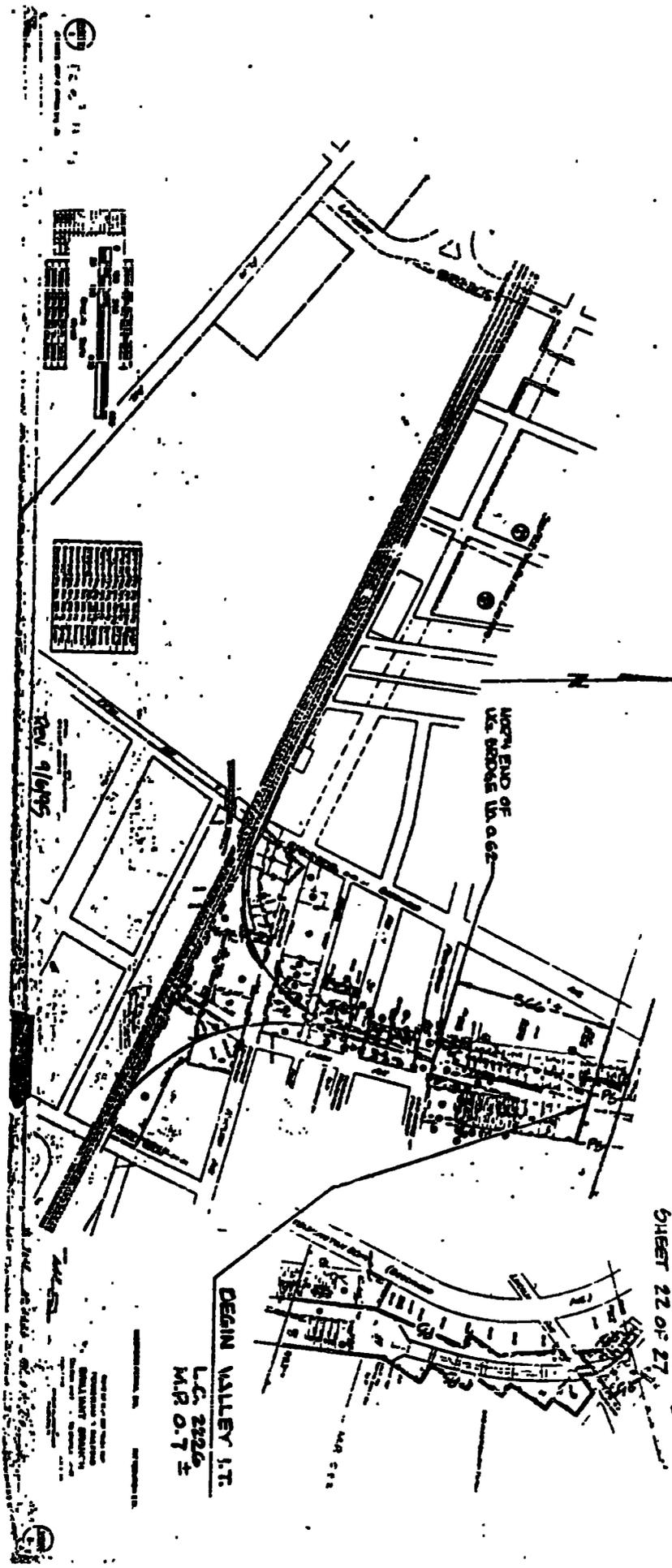
END VALLEY I.T.
LC 2229
M.P. 13.8 ±
(A.K.A. M.R. 14.5 ±)



2nd FLOOR

REV. 9-6-95
BY: [illegible]

0809571 PG242



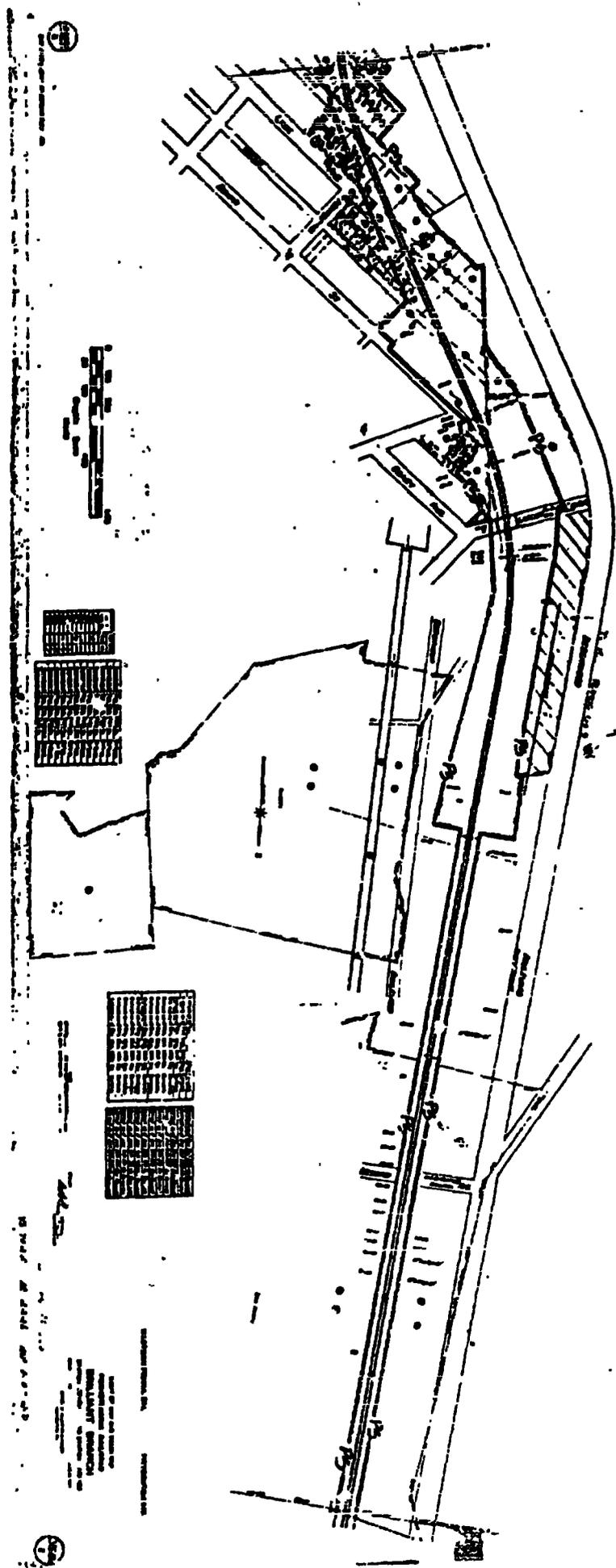
CASE NO. 71709
SHEET 22 OF 27

DEGIN VALLEY I.T.
L.C. 2526
M.R. 0.7 F

NORTH END OF
U.S. BRIDGE W. 0.62

Rev. 9/19/75

DB09571PG244



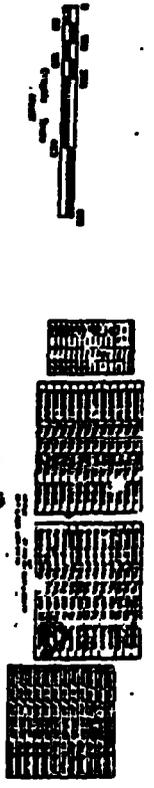
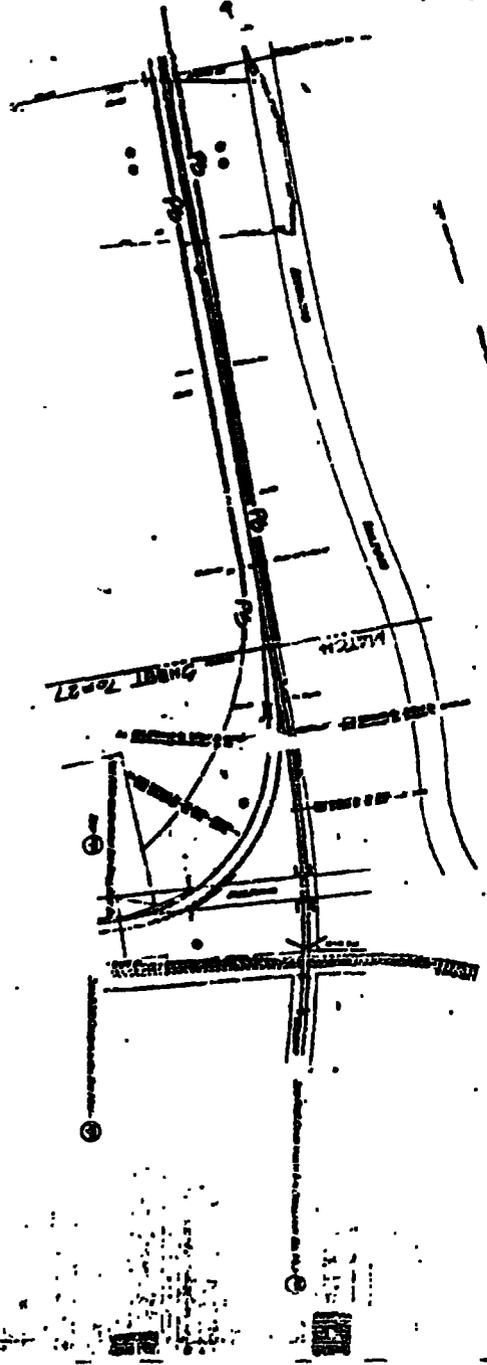
CASE NO. 71703
 SHEET 25 OF 27

DB09571PG245

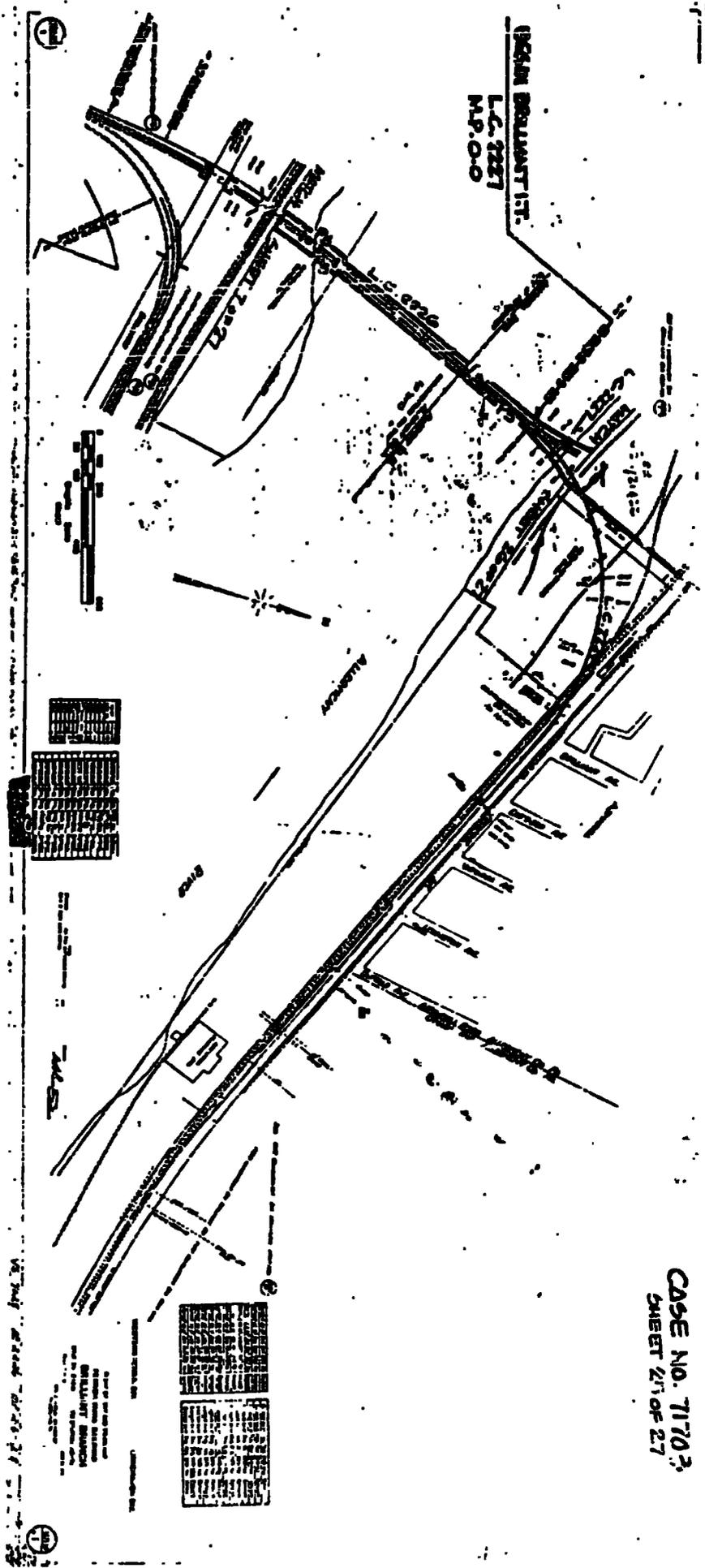
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 APPROVED BY: [illegible]



CASE NO. 71705
SHEET 24 of 27

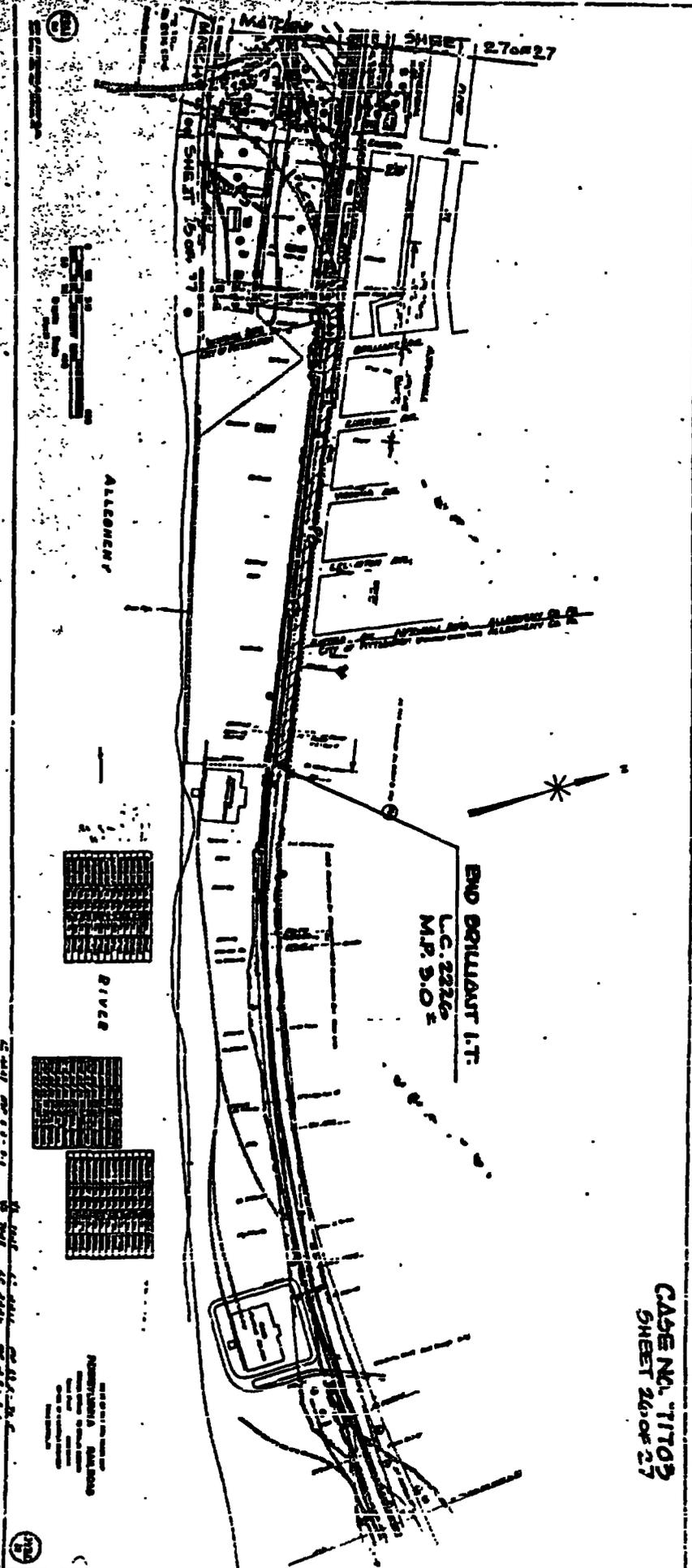


DB09571 PG246



CASE NO. 71703
 SHEET 21 OF 27

DB09571 PG247



SHEET 27 OF 27

SHEET 15 OF 17

ALIGNMENT

END BRILLIANT I.T.
L.C. 2226
M.P. 9.02

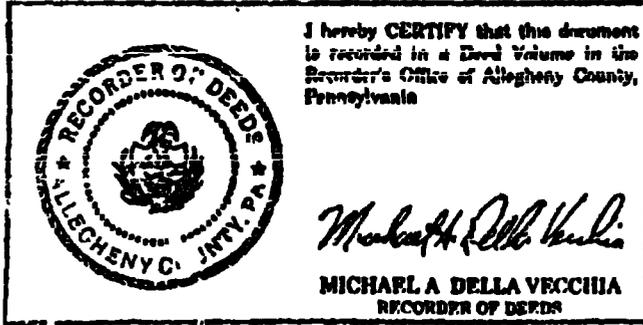
RIVER

CASE NO. 11703
SHEET 26 OF 27

0809571 P62148

(26)

(27)



Dec 31 95 136468

Casselman Rail Corporation

Grantor

AND

Allegheny Valley Railways Company

Grantee

Deed

D 106. RP 50

Mail to: *IB 4/14*

Allegheny County Recorder of Deeds

D.E. Malecki

Buchanan Ingersoll
Professional Corporation
301 Grant Street
One Oxford Centre
20th Floor
Pittsburgh, PA 15219

DEED REGISTRY
Nov 2 '95

OFFICE OF ALLEGHENY, PA

NOV 1 1995

ALLEGHENY COUNTY RECORDER OF DEEDS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
DEPT. 00003
HARRISBURG, PA 17126-0003

Inst # 13646-8
**REALTY TRANSFER TAX
STATEMENT OF VALUE**

RECORDER'S USE ONLY	
State Tax Paid	0
Book Number	9571
Page Number	204
Date Recorded	10-31-95

See Reverse for Instructions

Complete each section and file in duplicate with Recorder of Deeds when (1) a full value consideration is not set forth in the deed, (2) when the deed is without consideration, or by gift, or (3) a tax exemption is claimed. A Statement of Value is not required if the transfer is wholly exempt from tax based on: (1) family relationship or (2) public utility statement. If more space is needed, attach additional sheet(s).

A CORRESPONDENT - All inquiries may be directed to the following persons:

Name	Dennis E. Larson	City	Grove City	State	OH	Zip Code	43123	
Telephone Number							Area Code (614)	871-7290

B TRANSFER DATA

Grantor(s)/Seller(s)	Consolidated Re'l Corporation	Grantee(s)/Buyer(s)	Allegheny Valley Railroad Company
Street Address	Two Commerce Squares, 2001 Market Street	Street Address	2391 Whispering Brook Lane
City	Philadelphia, PA 19101-1419	City	Grove City, OH 43123
State	PA	State	OH

C PROPERTY LOCATION

Street Address: SEE ATTACHED LIST

County: 7 District

City, Township, Borough: Grove City, OH

D VALUATION DATA

1. Actual Cash Consideration	2. Other Consideration	3. Total Consideration
See Attached	+	=
4. County Assessed Value	5. Common Level Ratio Factor	6. Fair Market Value
X	X	=

E EXEMPTION DATA

1a. Amount of Exemption Claimed: 100%

1b. Percentage of Interest Conveyed: _____

- 2 Check Appropriate Box Below for Exemption Claimed
- Will or intestate succession
 - Transfer to Industrial Development Agency
 - Transfer to a trust. (Attach complete copy of trust agreement identifying all beneficiaries)
 - Transfer between principal and agent (Attach complete copy of agency/trust party agreement)
 - Transfers to the Commonwealth, the United States and instrumentalities by gift, dedication, condemnation or in lieu of condemnation (if condemnation or in lieu of condemnation, attach copy of resolution)
 - Transfer from mortgagor to a holder of a mortgage in default Mortgage Bank Number _____ Page Number _____
 - Corrective or confirmatory deed (Attach complete copy of the prior deed being corrected or confirmed)
 - Statutory corporate consolidation, merger or division. (Attach copy of articles)
 - Other (Please explain exemption claimed, if other than listed above)
Nontaxable transfer to company furnishing a public utility service pursuant to 61 Pa. Admin. Code Section 91.193(b)(28)

Under penalties of law, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party: *Dennis E. Larson* Date: 10-31-95

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH APPLICABLE DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.

0909571 PG251

Allegheny County
Valerie McDonald Roberts
Department of Real Estate
Pittsburgh, PA 15219



60 2008 00035555

Instrument Number: 2008-35555

Recorded On: December 16, 2008 As-Deed

Parties: CONSOLIDATED RAIL CORP

To ALLEGHENY VALLEY RAILROAD CO

of Pages: 9

Comment: CORRECTIVE RIGHT OF WAY

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

Deed 53.00

Pages > 4 4

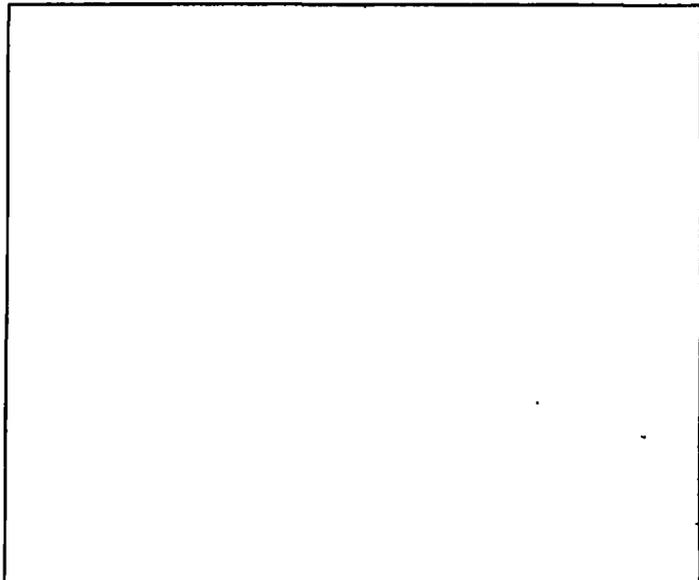
Names > 4 0

Total: 53.00

Realty Transfer Stamp

Department of Real Estate Stamp

Affidavit Attached-Yes	Stamp Num-T352881	
PITTSBURGH		EXEMPT
Ward-9-LAWRENCEVILLE		
Bk/Lot-NONE	Value	0 00
Commonwealth of Pennsylvania		0.00
Munic-Pittsburgh City of		0.00
School District-Pittsburgh		0.00
Munic-Penalty		0.00
Munic-Interest		0.00
School-Penalty		0.00
School-Interest		0.00



I hereby certify that the within and foregoing was recorded in the Department of Real Estate in Allegheny County, PA

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

File Information:

Record and Return To:

Document Number: 2008-35555
Receipt Number: 1251589
Recorded Date/Time: December 16, 2008 04:20:09P
Book-Vol/Pg: BK-DE VL-13813 PG-549
User / Station: C Carson - Cash Super 06

RICHARD R WILSON ATTORNEY AT LAW
310 GRANT STREET STE 2310
PITTSBURGH PA 15219-2383



Exhibit B2

Valerie McDonald Roberts, Manager
Dan Onorato, Chief Executive

DEED

(Corrective)

THIS DEED, made the 26th day of November in the year of our Lord Two Thousand Eight (A.D.) (2008)

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at 1717 Arch Street, Philadelphia, Pennsylvania, 19103,

Grantor,

and

ALLEGHENY VALLEY RAILROAD COMPANY, a Corporation of the Commonwealth of Pennsylvania, having a mailing address of Building 1, Suite 100, 519 Cedar Way, Oakmont, Pennsylvania, 15139,

Grantee.

WHEREAS, by Deed dated October 27, 1995 and recorded in the Allegheny County Office of Recorder of Deeds at Deed Book Volume 9571, beginning at page 204, the Grantor conveyed to Grantee certain common carrier railroad property located in Allegheny and Westmoreland Counties and certain rights related thereto;

WHEREAS, said deed contains an error in the recital pertaining to a certain portion of the property conveyed therein, namely the recital appearing on the page 2 of 10 of Exhibit "A", which page is recorded at the aforesaid Deed Book Volume 9571, page 211;

WHEREAS, the error results from the failure to include two paragraphs before the first full paragraph on said Page 2 of 10, the failure to include certain deed recording information, and some minor typographical omissions; and

WHEREAS, the Grantor and Grantee wish to correct the error by setting forth in this corrective deed containing Page 1 of 10 and a restatement of Pages 2 and 3 of 10 of Exhibit "A".

NOW, THEREFORE, this Deed is made on the date first written above, and by the Grantor to the Grantee,

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does hereby correct the aforementioned deed so that Pages 1 of 10, 2 of 10, and 3 of 10 of Exhibit "A", which pages are recorded at the aforesaid Deed Book Volume 9571, at page 211, 212 and 213, state as follows, with the inserted paragraphs and corrected language being shown in larger font, bold and italics:

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Valley Industrial Track and Coleman Secondary, Line Code 2229

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and Coleman Secondary) and identified as Line Code 2229 in the Recorder's Office of the Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 606, situate in the County of Allegheny and Commonwealth of Pennsylvania, herein referred to as "Premises" and being further described as follows:

9th Ward

BEGINNING at approximately Railroad Mile 0.6, being the centerline of 21st Street, in the City of Pittsburgh, as indicated on sheet 1 of 27 of Exhibit "C"; thence extending in a general northeasterly direction to approximately Railroad Mile Post 4.7, being the end of a portion of the Valley Industrial Track and the beginning of the Coleman Secondary (at approximately Railroad Mile Post 2.5), in the City of Pittsburgh, as indicated on sheet 5 of 27 of Exhibit "C"; thence continuing, in a general easterly direction, to approximately Railroad Mile Post 0.0, the end of the Coleman Secondary and the beginning of the second portion of the Valley Industrial Track at approximately Railroad Mile Post 2.7 (a.k.a. Mile Post 7.2; more or less), in the City of Pittsburgh, as indicated on sheet 8 of 27 of Exhibit "C"; thence continuing in a general easterly and northerly direction, passing through the Township of Penn Hills, the Borough of Verona, Oakmont, the Township of Plum, Barking and Logan's Ferry to the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, at approximately Railroad Mile Post 11.5 (a.k.a. Mile Post 17.08), as indicated on sheet 18 of 27 on Exhibit "C".

TOGETHER with Grantor's right, title and interest in and to the easement to operate over and maintain the Valley Industrial Track between Railroad Mile Post 0.3, more or less, at the northeasterly side of 16th Street and Railroad Mile Post 0.6, more or less, at the centerline of 21st Street, all in the City of Pittsburgh and being the beginning of the above described Premises, as indicated by "PS" on sheet 1 of 27 of

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 1 OF 10.

Exhibit "C", said right and easement reserved in a July 20, 1983 deed from Grantor to The Buncher Company *as recorded in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6700, page 285, which reservation is recited at page 287 as follows:*

"RESERVING, however, unto the said Grantor, its successors and assigns, the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described, together with the right of nonexclusive access to said track for the purposes aforesaid; it being expressly understood and agreed by and between the parties hereto that the Grantee will not construct any improvements over said track or within eighteen (18) feet of the centerline thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the centerline thereof, or construct or permit any crossings, at grade, of said track."

TOGETHER, with Grantor's right, title and interest in and to an exclusive easement reserved in a March 20, 1987 deed from Grantor to The Buncher Company recorded in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 7517, page 520, which reservation is recited at pages 523 and 524 as follows:

"EXCEPTING AND RESERVING, thereout and therefrom an exclusive easement and right for all right, title and interest in and to the railroad track and its appurtenances located along the northwesterly side of Parcel No.2 hereof from the easterly right of way line of 43rd Street to course North 57° 56' 10" West, as indicated on the aforesaid Plan of Survey dated April 21, 1986; together with the right and easement to use, operate, maintain, repair, replace, renew and remove the aforesaid railroad track and its appurtenances and the right to operate its locomotives, engines, trains, cars and railroad equipment over said track and the right and easement of unimpeded and immediate ingress and egress to and from the aforesaid parcel of land for the aforesaid purposes for so long as said track is used to serve McConway Torley, but not any

successors or assigns of McConway Torley; when the track has been abandoned and removed by Grantor, this right and easement shall extinguish.”

THIS EXHIBIT “A” CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 2 OF 10.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, situate on the northeasterly side of 43rd Street and the southeasterly side of the Allegheny River, in the City of Pittsburgh, as indicated by cross-hatched lines on sheet 3 of 27 of Exhibit "C"; together with easements and rights for access on, over, across and through 43rd Street for ingress and egress purposes to and from this piece or parcel of land and the necessary easements rights in, on, over, across and through the Premises that are necessary for any utilities needed for this piece or parcel of land.

CONTAINING 2.75 acres, more or less.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, Beginning at the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, and as generally indicated as Mile Post 11.5 (a.k.a. Mile Post 17.08) on sheet 18 of 27 of Exhibit "C"; thence extending in a general southeasterly direction to the ENDING on the westerly right of way line of Grantor's line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track), and which line of railroad is now or about to be conveyed to the Allegheny Valley Railroad Company; all in the Borough of Plum, Allegheny County, Pennsylvania, as indicated by cross-hatched lines on sheet 18 of 27 of Exhibit "C".

CONTAINING 0.50 of an acre, more or less.

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 6001 at page 591&c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 3 OF 10.

I HEREBY CERTIFY that the correct address of the within-named Grantee is 519 Cedar Way Oakmont, PA 15139.


Richard R. Wilson, Attorney for Grantee

This Deed consists of a transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest, and therefore is exempt from Pennsylvania Realty Transfer Tax pursuant to 72 P.S. 8102-C.3(4), 61 Pa. Code §§ 91.193(b)(4) and §§ 91.151.

Upon recording, please return Deed to: Richard R. Wilson, Attorney at Law
Richard R. Wilson, PC
310 Grant Street, Ste. 2310
Pittsburgh, PA 15219-2383

/65383

584850v1/1101846



REALTY TRANSFER TAX STATEMENT OF VALUE

See Reverse for Instructions

RECORDER'S USE ONLY

State Tax Paid
Book Number
Page Number
Date Recorded

Complete each section and file in duplicate with Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) the deed is without consideration or by gift, or (3) a tax exemption is claimed. A Statement of Value is not required if the transfer is wholly exempt from tax based on family relationship or public utility easement. If more space is needed, attach additional sheets.

A. CORRESPONDENT - All inquiries may be directed to the following person:

Name: Richard R. Wilson, Esq. Telephone Number: (412) 471-1800

Street Address: 310 Grant Street, Suite 2310 City: Pittsburgh State: PA ZIP Code: 15219

B. TRANSFER DATA

Date of Acceptance of Document

Grantor(s)/Lessor(s): Consolidated Rail Corporation Grantee(s)/Lessee(s): Allegheny Valley Railroad Company

Street Address: 1717 Arch Street Street Address: 519 Cedar Way, Bldg. 1, Suite 100

City: Philadelphia State: PA ZIP Code: 19107 City: Oakmont, State: PA ZIP Code: 15139

C. REAL ESTATE LOCATION

Street Address: 23rd Street to 16th Street City, Township, Borough: Pittsburgh 9th Ward

County: Allegheny School District: Pittsburgh Tax Parcel Number: Exempt - Railroad Right of Way

D. VALUATION DATA

1. Actual Cash Consideration <u>-0-</u>	2. Other Consideration <u>+ 0</u>	3. Total Consideration <u>= 0</u>
4. County Assessed Value <u>0</u>	5. Common Level Ratio Factor <u>X</u>	6. Fair Market Value <u>=</u>

E. EXEMPTION DATA

1a. Amount of Exemption Claimed <u>0</u>	1b. Percentage of Grantor's Interest in Real Estate <u>100%</u>	1c. Percentage of Grantor's Interest Conveyed <u>100%</u>
---	--	--

2. Check Appropriate Box Below for Exemption Claimed

- Will or intestate succession. _____ (Name of Decedent) _____ (Estate File Number)
- Transfer to Industrial Development Agency.
- Transfer to a trust. (Attach complete copy of trust agreement identifying all beneficiaries.)
- Transfer between principal and agent/straw party. (Attach complete copy of agency/straw party agreement.)
- Transfers to the Commonwealth, the United States and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (If condemnation or in lieu of condemnation, attach copy of resolution.)
- Transfer from mortgagor to a holder of a mortgage in default. (Attach copy of Mortgage and note/Assignment.)
- Corrective or confirmatory deed. (Attach complete copy of the deed to be corrected or confirmed.)
- Statutory corporate consolidation, merger or division. (Attach copy of articles.)
- Other (Please explain exemption claimed, if other than listed above.) _____

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party: Richard R. Wilson Date: 12/15/08

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.

Westlaw.

1995 WL 681254 (I.C.C.)

Page 1

H

1995 WL 681254 (I.C.C.)

SURFACE TRANSPORTATION BOARD (S.T.B.)

ALLEGHENY

VALLEY

**RAILROAD COMPANY-ACQUISITION AND OPERATION EXEMPTION-CERTAIN LINES OF
CONSOLIDATED
RAIL CORPORATION**

Decided: November 7, 1995

*1 Service Date: November 17, 1995

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32783

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Allegheny Valley Railroad Company (AVR), a noncarrier, has filed a notice of exemption to acquire and operate approximately 22.65 miles of rail line owned by Consolidated Rail Corporation (Conrail), between Pittsburgh and Arnold, in Allegheny and Westmoreland Counties, PA, as follows: (1) Valley Industrial Track-(a) between milepost 0.3 and milepost 4.7, (b) between milepost 2.7 and milepost 13.8, (c) between milepost 1.8 and milepost 2.7, and (d) between milepost 0.7 and milepost 2.3; (2) Coleman Secondary Track-between milepost 0.0 and milepost 2.5; (3) Indian Run Industrial Track-between milepost 0.0 and milepost 0.7; (4) Brilliant Industrial Track-(a) between milepost 2.3 and milepost 3.0, and (b) between milepost 0.0 and milepost 0.5; and (5) Plum Creek Industrial Track-between milepost 0.0 and milepost 0.25.^{1(FN1)} Consummation of the proposed transaction was scheduled to take place on October 26, 1995.

This transaction is related to a simultaneously filed notice of exemption in Finance Docket No. 32784, Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson-Continuance in Control Exemption- Allegheny Valley Railroad Company, in which AVR's shareholders seek to continue in control of AVR, a class III shortline railroad, and other, non-contiguous class III shortline railroads when AVR becomes a carrier.

Any comments must be filed with the Commission and served on: Dennis E. Larson, P.O. Box 28096, Columbus, OH 43228.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Vernon A. Williams

1995 WL 681254 (I.C.C.)

Page 2

Secretary

FN1. AVR will operate these lines along the south shore of the Allegheny River, crossing the river on Conrail's former Brilliant Branch and terminating when it joins Conrail's track on the north shore of the Allegheny River. Interchange between Conrail and AVR will take place in Conrail's Island Avenue Yard by way of operating rights granted to AVR between the south end of the Brilliant Branch (Conrail's "CP Home") and Island Avenue Yard.

1995 WL 681254 (I.C.C.)
END OF DOCUMENT

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**PURCHASE AND
SALE AGREEMENT**

THIS AGREEMENT, entered into as of this 23rd day of October, 1995, by and between ALLEGHENY VALLEY RAILROAD COMPANY, a Pennsylvania corporation ("Purchaser"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Conrail").

WHEREAS, Conrail owns and operates a rail line located in Westmoreland and Allegheny Counties, Commonwealth of Pennsylvania, known as the Valley Cluster ("the Line"), and more fully described herein; and

WHEREAS, Purchaser has offered to purchase Conrail's interest in the Line, and Conrail is willing to sell its interest in the Line, subject to the terms and conditions contained herein; and

WHEREAS, Purchaser intends to operate the Line as a common carrier by railroad, and will assume all common carrier obligations as to the property constituting the said Line; and

WHEREAS, the parties have reached agreement concerning the terms and conditions of purchase and sale of the Line.

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

**SECTION I
PURCHASE AND SALE OF LINE**

A. **Agreement and Description.** Subject to the terms of this Agreement, Purchaser agrees to purchase from Conrail, and Conrail agrees to sell to Purchaser, all the right, title, and interest of Conrail in and to (i) the real estate which constitutes its Line, referred to as the Valley Cluster between Pittsburgh and Arnold PA, containing a total of 22.65 route miles of railroad line, as more particularly described in the form of deed

attached hereto as Appendix A, together with all buildings, improvements, fixtures and appurtenances thereunto belonging (except as specifically reserved herein or in said Deed); (ii) all articles of personal property attached to or located on the said real estate as of the date of Closing, including but not limited to rail and other track materials, ties, wires, pipes, conduits, electrical or mechanical signal devices, and all other appurtenant devices which constitute personal property under the laws of the Commonwealth of Pennsylvania, as more particularly described in the form of Bill of Sale attached hereto as Appendix B (except as specifically reserved or excepted herein or in said Bill of Sale); and (iii) all interests of Conrail in and to any leases, easements, licenses, permits, agreements, sidetrack agreements, and privileges pertaining to the said real estate, as more particularly described in the form of Assignment and Assumption, attached hereto as Appendix C.

B. Definition of "Premises" and "Property". Except where the usage and context hereof requires otherwise, the real estate which constitutes the line is hereinafter referred to as the "Premises," and all the real and personal property (including the "Premises"), appurtenances, rights and interests to be conveyed or assigned as aforesaid are hereinafter referred to as the "Property."

C. Consideration. As consideration for the Property, Purchaser shall pay to Conrail or its nominee the sum of \$425,000 ("Purchase Price") and comply with all of the terms of this agreement.

1. The amount of \$100,000 shall be paid on the date of execution of this Agreement by Purchaser, and shall constitute a non-refundable deposit to be retained by Conrail regardless of whether a Closing is held, unless failure to close is a result of a breach by Conrail of the terms of this agreement.

2. The balance of the Purchase Price (\$325,000) shall be paid in full at Closing (as hereinafter defined).

3. The payments specified in Paragraphs 1 and 2 hereof shall be made by wire transfer of immediately available funds to an Escrow Holder to be designated by Conrail, as hereinafter provided in Section I.E hereof.

D. Allocation of Consideration. The consideration payable pursuant to Subsection C of this Section shall be allocated among the assets to be acquired as set forth in the Allocation Schedule attached hereto as Appendix D. The Allocation Schedule shall be binding on Conrail and Purchaser as to the allocation of the consideration for all purposes, including federal tax purposes. Neither party shall allocate the consideration in a manner different from the allocation contained in the Allocation Schedule in any tax return or other document.

E. Like-Kind Exchange.

1. Conrail has elected to structure and complete this transaction to effect a disposition of "relinquished property" in connection with a multiple party deferred like-kind exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. §1.1031(k)-1(g). Purchaser hereby consents to the acquisition prior to Closing of an interest in the Property by a "qualified intermediary" to be selected and designated by Conrail, and the assignment by Conrail to such "qualified intermediary" of Conrail's right to receive the Purchase Price payable by Purchaser hereunder. The terms "qualified intermediary" and "relinquished property" as used herein shall have the meanings ascribed to them in Treasury Regulations under said Section 1031.

2. Conrail shall bear all expenses associated with the structuring of this transaction as part of a multiple party deferred like-kind exchange, including all fees

of the qualified intermediary or any escrow agent, and shall protect, reimburse, indemnify and hold harmless Purchaser from and against any and all additional costs and expenses, including attorneys fees, and any liabilities which Purchaser may incur as a result of the structuring of this transaction by Conrail as part of a multiple party deferred like-kind exchange pursuant to said Section 1031. Conrail's representations and warranties and the allocation of liabilities hereunder shall not be affected by the said structure of this transaction, and Purchaser shall not assume any liability or responsibility for any tax or other consequences to Conrail arising out of the structuring of this transaction as a multiple party deferred like-kind exchange or any exchange effected by Conrail in completing this transaction. Subject to the provisions provided above, Purchaser shall cooperate with Conrail with respect to this tax-deferred exchange, and shall, upon request of Conrail, execute such additional documents as may be required to effect said tax-deferred exchange.

F. Title.

1. Title to the Premises, including buildings, improvements and appurtenances shall be delivered at Closing by Quitclaim Deed in the form attached hereto as Appendix A. Title to all personal property shall be conveyed by Bill of Sale in the form attached hereto as Appendix B. Conrail's interests in any leases, easements, licenses, permits, agreements, sidetrack agreements and privileges shall be delivered to and accepted by Purchaser at Closing by Assignment and Assumption in the form attached hereto as Appendix C.

2. Title to the Property shall be conveyed without covenants or warranties of any nature except those specifically set forth in this Agreement, and conveyance shall be subject to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets on or crossing the Premises, (2) streams, rivers, creeks and

waterways passing under, across or through the Premises, (3) the reservation of mineral rights and any and all other reservations contained in the deed attached as Appendix A and in the Bill of Sale attached hereto as Appendix B, (4) any and all existing tenancies, encumbrances, easements, rights, trackage rights, licenses, permits, privileges, agreements, sidetrack agreements, third party claims, covenants, conditions, restrictions, rights of re-entry, possibilities of reverter, existing laws and ordinances, and orders of regulatory agencies, and (5) any pipes, wires, poles, cables, culverts, drainage courses or systems, or other facilities on or crossing the Premises, together with the rights of any person entitled thereto to maintain, repair, renew, replace, use or remove the same. Said conveyance shall not, however, be subject to mortgage, tax or other liens for the payment of money. Conrail shall make its best efforts to obtain the release of any such liens prior to Closing at its own cost and expense. If Conrail is unable to obtain the release of any such liens prior to Closing, it will indemnify Purchaser for any cost or expense incurred by Purchaser as a result of any such liens.

G. Possession. Possession of the Property shall be delivered "as is" on the date of Closing, subject to the provisions of Subsection F above, and to any state of facts that an accurate survey or a prudent inspection of the Premises would disclose, except as otherwise expressly provided herein.

SECTION II GOVERNMENTAL APPROVALS

A. Preparation and Filing.

1. Purchaser, at its own cost and expense, shall prepare and file with any federal, state or local regulatory agency or department that has jurisdiction over all or any part of the transaction contemplated by this Agreement, all applications, petitions, requests, notices or other necessary filings, including appropriate filings or exemptions under 49 U.S.C. 10901, and Purchaser shall do and take all actions necessary and prudent

to obtain the requisite approvals, other authorizations, or exemptions from the necessity of such approvals to permit consummation of the transaction contemplated by this Agreement at the earliest practicable date. Conrail shall have the right to review and approve all such documents prior to filing and, upon its approval of such documents, Conrail shall support fully the efforts of Purchaser to obtain such governmental approvals or exemptions.

2. Purchaser shall prepare and file such documents not later than 10 days after the execution of this agreement or 2 days after Conrail has provided its final approval of such documents, whichever is the latter date. Purchaser at its own expense shall oppose any petition to reopen, reconsider or stay a regulatory order or authorization approving or exempting this transaction or any part thereof, and to defend any judicial action brought by any person challenging or otherwise contesting any necessary regulatory approval or contesting the right of either party to consummate this transaction.

B. Responsibility for Labor Protection.

1. The parties hereto have entered into this agreement on the premise that no labor protective conditions will be imposed by the Interstate Commerce Commission ("ICC"). In the event the ICC should impose labor protective conditions, Purchaser, subject to its rights pursuant to Section III.A.(d) hereof to declare such conditions unacceptable and to refuse to close this purchase, shall be responsible for the costs of, and shall reimburse Conrail for, any labor protection expense, consisting of payments required to be made to employees of Conrail or Purchaser pursuant to any labor protective conditions imposed by the ICC in connection with its exemption or approval of the sale and conveyance of the Property.

2. Purchaser shall provide to Conrail employees who are affected by this transaction, and who seek employment with Purchaser within the time periods

specified in Paragraph 3 of this Subsection, the first opportunity for employment for each non-management position created by Purchaser during the period beginning with the date first set forth above and ending two years after Closing, and for each vacancy in any such position which occurs during such time period, provided the employee is qualified for the position as determined by Purchaser. The terms of employment, including but not limited to rates of pay, benefits and employee responsibilities, shall be as determined by Purchaser.

3. Promptly after execution of this Agreement, Conrail will post a notice to its employees advising that employment positions with Purchaser may be available, and advising its employees that they must apply to Purchaser for employment before the Closing date to be considered for Purchaser's initial staffing, and within two months after Closing to be considered for subsequent employment opportunities pursuant to this agreement. Purchaser will supply to Conrail the names of all Conrail employees who seek employment with Purchaser, the names of all Conrail employees who are offered employment with Purchaser, and the names, date of employment and rate of pay of all Conrail employees who are employed by Purchaser.

C. Hart-Scott-Rodino Antitrust Improvements Act of 1976. If it is determined that the transaction contemplated by this Agreement is subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (15 USC §18a), Conrail and Purchaser will comply with the provisions of said Act and the regulations promulgated thereunder to the extent required. The parties hereto shall cooperate in determining if the said Act applies and in making any necessary filings thereunder. Purchaser shall be responsible for any filing fees required.

SECTION III
CLOSING

A. **Conditions Precedent.** The obligations of the parties to effect Closing are subject to the following conditions precedent:

(a) Purchaser shall have performed and complied with all terms and conditions required by this Agreement to be performed by Purchaser prior to Closing.

(b) Conrail shall have performed and complied with all terms and conditions required by this Agreement to be performed by Conrail prior to Closing.

(c) Purchaser shall have obtained the requisite ICC exemption or approval of this transaction and, as of the date of Closing, such exemption or approval shall be in effect and not subject to a stay, restraining order or injunction with respect to approval of this transaction.

(d) The ICC exemption or approval of the transaction is not subject to any condition, including the imposition of labor protection expense, that either Purchaser or Conrail reasonably determines to be unacceptable. Any conditions imposed shall be presumed to be acceptable unless the affected party gives notice to the other within five business days of the service date of the ICC exemption or approval decision or order that the condition is unacceptable, and the reason therefor.

(e) Any other governmental or regulatory approvals, authorizations or exemptions necessary under state, federal or local law or regulation for consummation of the transaction have been obtained.

(f) The representations of Conrail set forth in Section VI hereof shall be true at Closing, or, if modified in writing by Conrail prior to or at Closing, such modifications are acceptable to Purchaser. If any such modification is not acceptable to

Purchaser, then Purchaser may terminate this Agreement under the terms of Section VIII.C.2. hereof.

(g) Purchaser is reasonably satisfied that the Quitclaim Deed and Bill of Sale to be delivered by Conrail will convey a sufficient interest in the Property to allow Purchaser to conduct common carrier rail freight operations thereon. The Quitclaim Deed and Bill of Sale will be presumed to be satisfactory unless Purchaser has advised Conrail of specific defects in the title not less than 15 business days before the Closing date.

B. Date and Place. Closing will be held at the Office of Conrail's Asset Development Department, 2001 Market Street, Two Commerce Square, Philadelphia, Pennsylvania, on October 27, 1995 ("Closing"), provided all the conditions precedent to closing set forth above have been waived or met. Unless otherwise specifically provided herein for a particular purpose, Closing shall be deemed to occur on the date of Closing at 11:59 p.m.

C. Delivery of Documents.

1. At Closing, Conrail shall deliver to Purchaser the following documents:

(a) The aforesaid Quitclaim Deed in the form of Appendix A, duly executed and acknowledged to enable Purchaser to file such quitclaim deed for recordation in the jurisdictions in which the real property is located.

(b) A duly executed Bill of Sale in the form of Appendix B.

(c) An Assignment and Assumption in the form attached hereto as Appendix C, duly executed by Conrail and Purchaser, whereby Conrail assigns to Purchaser and Purchaser assumes from Conrail, all leases, easements, licenses, permits, agreements, sidetrack agreements and privileges pertaining to the real property and to be

assigned to Purchaser. If any such documents pertain partly to the Premises and partly to other property now or formerly owned by Conrail, the Assignment and Assumption will assign to Purchaser only the portion thereof which relates to the Premises.

(d) An opinion of counsel in the form attached hereto as Appendix E.

2. (a) At Closing, or within 90 days thereafter, Conrail shall make available to Purchaser or its designated representative, and surrender possession of, the following: (i) Track charts and valuation maps pertaining to the Property; (ii) Conrail's executed counterparts of any and all known pertinent leases, easements, licenses, permits, agreements, sidetrack agreements, privileges, and deed records which relate solely to the Property, and copies of any such documents which relate in part to the Property and in part to other property now or formerly owned by Conrail; (iii) a schedule of all known security deposits relating to the Property and held by Conrail as of the date of Closing; and (iv) Conrail's separate check in the aggregate amount of any and all known security deposits pursuant to the aforesaid agreements relating to the Property. Purchaser shall execute a receipt for all security deposits paid over hereunder, and shall execute an agreement releasing Conrail, and holding Conrail free and harmless from, any liability for any misapplication of such security deposits made after Closing.

(b) If, at any time subsequent to Closing, any security deposit or lease, easement, license, permit, agreement, sidetrack agreement or other document pertaining to the Property and not previously delivered to Purchaser hereunder shall be found to exist, Conrail will promptly deliver said security deposit or document to Purchaser, upon the execution by Purchaser of a receipt and release as provided in Paragraph (a) hereof. Purchaser will, upon request of Conrail or upon discovery thereof, return to Conrail any security deposit or lease, easement, license, permit, agreement,

sidetrack agreement or other document, which does not pertain to the Property but which may have been delivered or paid to Purchaser in error.

3. At Closing, Purchaser shall deliver to Conrail the following:

(a) Evidence of a completed wire transfer of immediately available funds to the account designated by Conrail, in the amount of the purchase price due at Closing.

(b) An opinion of counsel in the form attached hereto as Appendix E.

4. As soon as practicable after Closing, Purchaser shall record the quitclaim deed delivered by Conrail in each jurisdiction in which any part of the Premises is located.

D. Apportionments.

1. Real estate transfer taxes and sales or use taxes, if any, imposed by law shall be borne and paid by Purchaser. Real property taxes, utility charges, rents, income from leases, easements, licenses, permits, agreements, and privileges, if any, and any other revenues and expenses pertaining to the Property, shall be apportioned between the parties as of the date of Closing, regardless of the date assessed, paid or payable. Any special taxes or assessments levied, due and unpaid on the Property prior to Closing shall be paid by Conrail. In respect to any payments made by or to either party, whether before or after Closing, appropriate remittances shall be made promptly to assure that such items are apportioned as of the date of Closing. Either party shall have the right, for a period of one year after Closing, to audit (at its own expense) the books and records of the other party which pertain to expenses and revenues to be apportioned hereunder.

2. If Conrail at Closing is in possession of funds received from a third party and intended to cover the cost of work to be performed or materials to be acquired pertaining to the Property pursuant to a contract or agreement to be assigned at Closing,

Conrail shall pay to Purchaser any portion of said funds as are attributable to work that has not been completed or materials that have not been acquired on the date of Closing, and Purchaser shall assume the unfulfilled obligations of Conrail pursuant to such contract or agreement.

3. At Closing Purchaser shall sign, and deliver to Conrail for mailing, a notification letter in the form attached hereto as Appendix G, requesting all persons as identified in said letter providing electric, gas, water, telephone or other utility services to the Property or any part thereof, to transfer such services and billing therefor to Purchaser, effective at Closing, and to issue a final bill to Conrail for such utility service. Purchaser shall refund to Conrail any payments previously made by Conrail for utility services furnished or to be furnished after Closing.

4. All recording costs and filing fees 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 Purchaser.

5. Each party hereto shall be entitled to avail itself of any exemption from the payment of any taxes or fees which it may enjoy.

SECTION IV
RAIL SERVICE

A. **Interim Operations.** From the date of execution of this Agreement until Closing or until termination of this Agreement pursuant to its terms, Conrail shall not alter or modify the Property except in the ordinary course of business, and shall conduct its operations on the Property in the ordinary course of business, consistent with its past practice, except and to the extent required by unforeseen emergencies. Conrail shall have no obligation to repair or restore any part of the Property in the event of an unforeseen casualty or other damage, but if, in the event of such casualty or other loss, Conrail does not elect to repair or restore the Property to its previous condition, Purchaser may elect to terminate this agreement pursuant to Section VIII.C.1 hereof, or to accept the Property in its condition at Closing without abatement of the purchase price and without recourse against Conrail for the condition of the Property.

B. **Transition of Operations.** Unless otherwise agreed in writing, the orderly transition of rail freight operations on the Property and the apportionment of transportation revenues and expenses shall be governed by the terms of Appendix H attached hereto.

C. **Information Exchange.** After Closing, the parties shall provide for the exchange of billing, transportation, accounting and traffic information via electronic data exchange in accordance with the schedule and procedures set forth in Appendix J attached hereto.

D. **Interchange.** The interchange of freight and equipment between Conrail and Purchaser after Closing shall be governed by and shall take place at the points specified in an interchange agreement in the form of Appendix K attached hereto.

E. Freight Rates and Allowances. Rates and allowances for freight traffic originating, terminating or moving over the Property after Closing and interchanged with Conrail shall be governed by the terms set forth in Appendix L and attached hereto.

F. Car Supply. The rights and responsibilities of the parties for car supply, car hire reclaim and car mileage allowances as between Conrail and Purchaser after Closing shall be governed by a separate car supply agreement in the form attached hereto as Appendix M. Subject to the said separate agreement, Conrail may at its election supply any or all empty cars for traffic originating on the Property which will be interchanged to Conrail for outbound line-haul movement.

G. Additional Consideration

1. Purchaser recognizes that, in selling the Property, Conrail is enabling Purchaser to interchange with one or more third parties traffic that originates or terminates or otherwise moves over the Property, and as to which Conrail, prior to this sale, could or did participate as a carrier for a portion of the movement that occurred or could occur on Conrail lines other than the Property. In consideration thereof, Purchaser agrees that, should Purchaser (at its own option or that of the shipper or consignee) interchange such traffic with a carrier other than Conrail, it will pay Conrail \$900 per loaded car of such traffic. Said amounts shall be adjusted year to year under the RCAF (unadjusted) as published by the Interstate Commerce Commission and/or its successor entity.

2. Purchaser agrees that Conrail's rights under this Section shall constitute a covenant which shall run with the land and be binding upon its successors, assigns, and upon any party for which it may grant any operating rights over the Property. This covenant shall be made a part of the deed herewith.

3. The amounts set forth herein shall be paid to Conrail out of Purchaser's settlements with other carriers on the first of each month. In order to maintain the confidentiality of this process, Purchaser may have the amounts paid hereunder audited. Any corrections to amounts paid as a result of the settlement process set forth herein shall be settled by Conrail within thirty (30) days of said audit.

H. Allegheny River Bridge.

1. While Conrail is selling its interest in portions of the Valley Secondary Track and the Brilliant Branch ("the Branch"), including the Brilliant Bridge over the Allegheny River ("the Bridge") between its Pittsburgh Line and its Conemaugh Line (defined as the Valley Industrial Track, LC 40-2226, between MP 0.7 and MP 2.3; the Brilliant Industrial Track, LC 40-2226, between MP 2.3 and MP 3.0; and the Brilliant Industrial Track, LC 40-2227, between MP 0.0 and MP 0.5), Purchaser recognizes that Conrail may in the future wish to use the Branch and the Bridge as an alternative to its present route through Pittsburgh. In such event, Purchaser agrees that it will, within 30 days after notice by Conrail, quitclaim to Conrail (or its designee) all Purchaser's right, title and interest in the portions of the Branch and the Bridge requested by Conrail for use as an alternative route.

2. The consideration for the Bridge shall be \$1 and the consideration for the Branch shall be the net liquidation value of the Branch at the time of the conveyance.

3. In the event of a conveyance to Conrail, Appendix K will be revised to reflect any changes in Purchaser's access rights; however, all other terms of Appendix K will remain essentially unchanged.

4. Purchaser agrees that Conrail's rights under this Section shall constitute a covenant which shall run with the land and be binding upon its successors, assigns, and

upon any party for which it may grant any operating rights over the Property. This covenant shall be made a part of the deed herewith.

5. Failure of the Purchaser to abide by the terms of Sections G and H hereof will constitute a breach of this Agreement, and will entitle Conrail to recover any and all damages resulting from such breach.

SECTION V INSPECTIONS

A. Inspection of the Property. Conrail will permit Purchaser and its employees or agents, upon prior notice and upon execution by Purchaser of a standard release, indemnity and confidentiality agreement satisfactory to Conrail, and upon execution of a standard release by all such employees and agents, to enter upon the Premises, at reasonable times to be specified by Conrail, for the purpose of conducting a visual inspection or survey of the Premises. Purchaser may examine, inspect, or test the Premises consistent with the completion of a site visit conducted as part of a Phase I Environmental Site Assessment in accordance with the standard practices adopted by the American Society for Testing and Materials. Portable instruments for non-invasive on-site chemical testing may be utilized but no boring or sampling for off-site testing or other invasive testing shall be allowed without the specific prior permission of Conrail in writing. Any such inspection or survey activities by Purchaser on the Premises shall not interfere with the normal operations of Conrail thereon without the prior approval of Conrail. Conrail shall be furnished with a copy of any report of the inspection or survey, and Purchaser shall not disclose the results of the inspection or survey to any third party without the prior consent of Conrail in writing, unless required to do so by law.

B. Hi-Rail Inspection. Upon request of Purchaser, Conrail shall arrange for a hi-rail inspection of the Premises at a mutually agreeable time and date. The requisite vehicles (unless otherwise agreed) and drivers shall be provided by, and be under the

control of, Conrail. Provision shall be made for up to two vehicles to participate in the inspection without charge to Purchaser. For any additional vehicles or subsequent hi-rail inspections, Conrail shall be entitled to reimbursement of its actual costs.

C. Inspection of Documents. At any time after the effective date of this Agreement and prior to Closing, Conrail will allow Purchaser, at Purchaser's own cost and expense, to segregate, inspect and photocopy, during normal business hours and at a location designated by Conrail, all leases, licenses and other agreements described in Section III.C.2. hereof, and existing track charts and valuation maps of the Property.

SECTION VI REPRESENTATIONS OF CONRAIL

Conrail hereby represents to Purchaser that the following shall be true as of the day of Closing, except as modified in writing by Conrail on or prior to the date of Closing. Conrail makes no other representations, express or implied.

1. No affiliate of Conrail has any interest in the Property, except to the extent provided in a deed or other instrument of public record.
2. The execution of this Agreement and the consummation of the transaction contemplated by this Agreement will not result in any breach of, or constitute a default under, any mortgage or deed of trust given by Conrail and applicable to the Property.
3. Conrail presently conducts or holds itself out to conduct rail freight common carrier operations on the Premises.
4. To the best knowledge of Conrail after reasonable investigation, there is no civil, criminal or administrative proceeding, arbitration or action pending before any court, administrative agency, or arbitration panel, against or affecting the Property, or Conrail's right to conduct rail freight transportation operations on the

Premises, the result of which, in the opinion of Conrail counsel, is likely to be an adverse decision which would materially and adversely affect Purchaser's ability to conduct common carrier rail freight transportation operations on the Premises after Closing.

5. To the best knowledge of Conrail after reasonable investigation, there are no formal proceedings pending against Conrail before any administrative agency or court, based upon an allegation that a condition on the Premises constitutes a violation of any environmental statute or regulation and the outcome of which, if adverse to Conrail, would be an order or judgment enforcing such statute or regulation.

6. Purchaser will not be required under any freight transportation contract to which Purchaser becomes assignee as a result of its purchase of the Property, to (a) provide services in excess of services required for common carrier rail service, (b) furnish rail equipment to shippers in excess of common carrier obligations to furnish equipment, or (c) pay allowances to shippers other than as provided by tariff.

SECTION VII ALLOCATION OF LIABILITY

A. Definition of "Obligations". As used in this section, the term "Obligations" shall be broadly construed, and shall include, without limitation, and whether accrued before or after Closing, legal obligations, responsibilities, and liabilities to any person, firm, corporation or governmental body, and the legal responsibility to assume losses, damages, costs, expenses (including costs and expenses of remedial or corrective action, containment, clean-up or repair), assessments, fees, fines, penalties or awards that arise out of, by virtue of, or pursuant to

(i) any federal or state statute, principle of common law, or municipal ordinance,

(ii) any rule, regulation, order, decision, judgment, decree, mandate or directive of any court or other tribunal, or of

any governmental agency, body, instrumentality, or political subdivision, or

(iii) any deed, contract, or other legal instrument.

B. Allocation of Specific Obligations. Except as otherwise agreed by the parties in any other document and to the extent stated in such other document, the parties shall, as between themselves, allocate obligations pertaining to the Property in accordance with this Section, without regard to considerations of fault or negligence.

1. Licenses and Agreements. Purchaser shall be responsible for all Obligations arising after Closing or allocable to the period after Closing under the licenses and other instruments assigned to Purchaser at Closing by the Assignment and Assumption referred to in Section III.C.1.c hereof. Conrail shall be responsible for any such Obligations arising before or allocable to the period before Closing.

2. Personal Injury and Property Damage. Purchaser shall be responsible for all Obligations arising out of personal injury to or the death of persons, or loss of or damage to, property (including the employees and property of the parties hereto) occurring on or about the Property after Closing. Conrail shall be responsible for all such Obligations occurring on or about the Property on or prior to Closing, except that any such Obligations that arise from any activity on the Property by Purchaser or its agents, employees, or contractors shall be the responsibility of Purchaser.

3. Toxic or Hazardous Substances.

(a) Toxic or Hazardous Substances, as used in this Subsection, shall mean any material or substance that is defined or classified as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601(14)) or Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act (42 U.S.C.

§§6903, 6921); a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)); a "hazardous air pollutant" under Section 112 of the Clean Air Act (42 U.S.C. §7412); or a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. §5102(2)).

(b) Purchaser shall be responsible for Obligations which arise from the existence or presence of Toxic or Hazardous Substances in, on or about the Premises (hereinafter "Toxic Contamination") after Closing, except as provided in Subsection (c) below.

(c) Conrail shall be responsible for Obligations arising from such Toxic Contamination, provided such Toxic Contamination resulted from a condition created by Conrail during the time the Premises were owned and occupied by Conrail, and provided further that such Toxic Contamination is a violation of a common law duty or exceeds allowable limits or is otherwise in violation of applicable environmental laws or regulations in effect and as interpreted on the effective date of this Agreement. Conrail shall not be liable for any Obligation resulting from any condition created prior to the acquisition of ownership of the Premises by Conrail, even if such Obligation arises from ongoing, continuous, or migrating contamination that occurred during the ownership and control of the Premises by Conrail. Conrail's liability for any Obligation for which it is otherwise responsible hereunder shall be no greater than that resulting from the condition of the Premises at Closing. Purchaser shall be responsible for any Obligation arising from Toxic Contamination resulting from a condition created by Purchaser's possession of, or operations on, the Premises, or any ongoing, continuing, migrating or subsequent release or contamination, or any increase in remediation or containment costs or liability, created by or resulting from events occurring after Closing, including the passage of time.

(d) If at any time after Closing any Toxic Contamination is discovered which is or may be the responsibility of Conrail pursuant to Subsection (c) above, Conrail shall be notified of such Toxic Contamination and shall have the opportunity and right to investigate, determine its responsibility therefor, determine in connection with appropriate governmental or regulatory bodies the appropriate response or remedy for such Toxic Contamination, and remedy, with its own forces or contractors and at its own expense, such Toxic Contamination to the satisfaction of appropriate regulatory bodies or to the additional extent deemed appropriate by Conrail. Purchaser shall grant such rights of entry or other rights to Conrail, upon reasonable terms and without compensation, as may be necessary to allow Conrail to perform the inspections, remediation or other actions necessary to comply with this Subsection. In the event of dispute concerning Conrail's responsibility for any Obligation hereunder, the parties shall cooperate to resolve such dispute as quickly as possible, and Purchaser, unless required by valid judicial or regulatory order to take immediate action to remedy a specific condition, shall during the resolution of such dispute take no actions inconsistent with Conrail's right to seek a determination from the appropriate regulatory or judicial body of the remedy required by law and to remedy the Toxic Contamination with its own forces or contractors. Conrail shall not be liable to Purchaser for any damages, costs or expenses incurred as a result of such Obligation, except that if Purchaser is required by valid judicial or administrative order as provided above to take immediate action to remedy any Obligation which is later determined to be the responsibility of Conrail hereunder, Purchaser shall be able to recover its actual and reasonable costs from Conrail.

4. Other Physical Condition of the Property. Except as provided in Subsection 3 above, Purchaser shall be responsible for

(a) all Obligations that arise out of, in respect to, or in connection with, the physical condition, safety, utility, adequacy, marketability, value, suitability or fitness of the Property, or any portion thereof, or any defects therein, including without limitation, Obligations relating to (i) public or private street, bridge, underpass or other crossings, (ii) the removal or remediation of contaminating materials or substances (other than Toxic or Hazardous Substances as defined in Subsection 3(a) hereof), (iii) the demolition of structures or abatement of nuisances, (iv) the flow or obstruction of surface or subsurface waters, (v) the stability of the soil on, above, over, or adjacent to the property, (vi) support for, or by, adjacent property or the collapse of soil or other materials or buildings onto adjacent property, and (vii) the construction, repair, rehabilitation, alteration, maintenance, or use of the Property;

(b) Obligations imposed by the regulations or orders of any regulatory or licensing agency, or by agencies or governmental bodies responsible for preserving the public health or safety, the environment, natural resources, wildlife, historic sites, vegetation, public parks or forests, or wetlands, and

(c) Obligations imposed by building or construction regulations or codes, or licensing, subdivision or zoning ordinances, regulations or codes, including Obligations relating to licensing, permits, notices, and fees.

5. Title. Purchaser shall be responsible for all Obligations arising from any deficiency in Conrail's title to, or property rights in, the Premises, or any rights held or claimed by third parties in or to the Premises, except that, if Conrail has knowingly withheld or concealed any document affecting its title or property rights in the Premises, Conrail shall be responsible for any deficiency created by such document.

C. Indemnity. The party made responsible by this Section for any Obligations shall, (1) except and to the extent otherwise provided in Subsection B.3(d) hereof, satisfy or remedy said Obligations, and (2) release, indemnify, protect, defend,

and hold harmless the other party (and its directors, officers, agents, and employees) from and against said Obligations. Each party expressly waives, to the extent it lawfully may do so, (i) the benefits of any statute that would relieve it of any Obligations that it has assumed under this Section, and (ii) any defense predicated on alleged misrepresentations of fact (other than those contained in Section VI hereof) or the nondisclosure of any pertinent fact.

SECTION VIII
MISCELLANEOUS PROVISIONS

A. **Best Efforts.** Both before and after Closing, 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 transaction contemplated by this Agreement to be consummated and, without limiting the generality of the foregoing, to obtain all consents and authorizations of governmental agencies and third parties and to make all filings with and give all notices to governmental agencies and third parties which may be necessary or reasonably required in order to effect the transaction contemplated by this Agreement.

B. **Notices.** All notices, requests, consents, demands, or other communications desired or required to be given or submitted by one party to the other pursuant hereto shall be sent by United States express, certified or registered mail, or by a private courier service providing proof of delivery, addressed as set forth below (or to such other address as either of the parties hereto may designate by written notice to the other party). A return receipt shall be conclusive evidence of the fact, date, and time of receipt.

If to Conrail:

Consolidated Rail Corporation
2001 Market Street - 19B
Two Commerce Square
Philadelphia, PA 19101-1419

Attention: Director - Asset Management

If to Purchaser:

Allegheny Valley Railroad Company
2391 Whispering Brook Lane
Grove City, OH 43123

Attention: President

C. **Termination.** This Agreement may be terminated by the party designated below, if not then in default, upon written notice pursuant to Subsection B hereof, in any of the circumstances designated below:

1. By either party, if, after the date of this Agreement as first above stated but before Closing, an event occurs or a condition within the purview of Section VII.B.3 or Section VII.B.4 hereof is discovered, which materially affects the safety, utility or economic value of the Property for railroad purposes, or which may materially increase the liability of either party to any governmental agency or other party, provided that, if Purchaser is the party seeking termination hereof, such event or condition is not a direct result of Purchaser's negligence or Purchaser's operations or activities on the Property, and provided further that Conrail has been given an opportunity to remedy the results of such event or condition promptly after discovery thereof, and fails or declines to do so within a reasonable time.

2. By the Purchaser only, if a modification of a representation made by Conrail prior to or at Closing, pursuant to Section III.A.(f) or Section VI hereof, is not acceptable to Purchaser. Purchaser's election not to terminate this Agreement pursuant to

this provision shall constitute an acceptance of any modifications of a representation made by Conrail pursuant to this Agreement, and shall foreclose Purchaser from asserting any rights or seeking any redress which is inconsistent with the modified representation.

3. By Conrail only, (a) if Closing does not take place on or before ^{October 27,} ~~September 29,~~ 1995 or (b) if Conrail reasonably believes that Closing would result in a disruption, strike or other work stoppage on or over all or any part of its system.

D. Entire Agreement; Amendment. 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. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

E. Survival of Terms. All representations (as modified pursuant to the provisions hereof), 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 Parties, and their successors and assigns.

F. Assignment.

1. Conrail may, prior to Closing, assign or transfer all or any portion of its rights and interests pursuant to this Agreement, and its equitable interests in and to the Property, to a Qualified Intermediary as defined in Section I.E.1 hereof, provided that no such assignment or transfer shall prevent performance by Conrail of its obligations hereunder, including the obligations to close as provided in Section III.C.1 hereof, or affect Conrail's representations and warranties herein or the allocation of liability hereunder, or the rights and interests to be acquired by Purchaser at Closing. Such Qualified Intermediary may, after Closing, reassign all or any part of such rights and interests back to Conrail.

2. Except as otherwise provided herein, neither Conrail nor Purchaser may assign, pledge, encumber, or transfer this Agreement, or any interest herein, without the prior written consent of the other party hereto.

G. Beneficiaries. Except as specifically otherwise provided herein, this Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended to or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto, any rights pursuant to any provision or term hereof, and all provisions and terms of this Agreement are and shall be for the sole and exclusive benefit of the parties to this Agreement.

H. Governing Law. This Agreement and the rights and obligations accruing hereunder shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania and relevant federal law.

I. Appendices. All appendices referred to in this Agreement are intended to be, and are hereby, specifically made a part of this Agreement.

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

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

L. Broker. Purchaser and Conrail each represent to the other that it has not dealt with any broker in connection with the transaction contemplated by this Agreement. Each party hereto shall assume and indemnify the other from any obligation arising from or in connection with any action by any broker or other party alleging that such broker or other party is entitled to a commission or other compensation, on the basis that it has dealt with such party for the sale or purchase of the Property.

M. Default. If either party hereto shall fail or refuse to close as required by this Agreement, shall fail or refuse in good faith to satisfy the conditions set forth in Section III.A hereof, or shall otherwise be in default hereunder, then the other party, if not in default, may at its option terminate this Agreement by written notice as provided herein, and shall have such additional rights, and may exercise such additional remedies, as are afforded by law.

N. Confidentiality. The terms and conditions of this Agreement are confidential, and neither party hereto without the prior consent of the other shall reveal any provisions hereof to any third party (except an employee, attorney or consultant entitled to know the provisions hereof in the ordinary course of the business of the party), except to the extent required by law or regulation or a valid judicial or administrative order, or except to the extent necessary to comply with the provisions of Section II.A hereof.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

ALLEGHENY VALLEY RAILROAD COMPANY

Witness

James A. Larson

By: *Norman E. Fusan*

Title: *VP Administration & Law*

CONSOLIDATED RAIL CORPORATION

Witness

James C. Flynn

By: *M Virginia Ebert*

Title: *AVP - REAL ESTATE*

Purchase and Sale Agreement

**Consolidated Rail Corporation
and
Allegheny Valley Railroad Company**

LIST OF APPENDICES

- A Form of Quitclaim Deed**
- B Form of Bill of Sale**
- C Form of Assignment and Assumption**
- D Purchase Price Allocation Schedule**
- E Form of Conrail Opinion of Counsel**
- F Form of Purchaser's Opinion of Counsel**
- G Form of Utility Transfer Letter**
- H Freight Operations**
- J Electronic Data Exchange**
- K Form of Interchange Agreement**
- L Form of Rate Appendix**
- M Form of Car Hire Agreement**

RICHARD R. WILSON, P.C.

Attorney at Law

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Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

851 Twelfth Street
Oakmont, PA 15139

MEMORANDUM

TO: Leonard Wagner

FROM: Richard R. Wilson, Esq.

DATE: April 7, 2009

RE: Evangelista v. Pittsburgh & Ohio Central Railroad Co., et al.;
PaPUC Docket No. C-2008-2032256

Enclosed for your information is a copy of the Hearing Notice for the above captioned proceeding which is scheduled for May 7, 2009 at 10:00 a.m. in the PaPUC Hearing Room Office at 300 Liberty Avenue, Pittsburgh, PA before Administrative Law Judge Mark A. Hoyer. Also enclosed is a Prehearing Order setting forth procedural matters in connection with this hearing. You will note that Judge Hoyer makes it quite clear that Ms. Evangelista bears the burden of proof in establishing that Respondents have violated the Pennsylvania Public Utility Code or a regulation or an order of the Commission. As you recall, Ms. Evangelista contends that the placement of the crossing gates and the electric utility box are unsafe and therefore need to be moved. In order to prove her case, Ms. Evangelista will have to present credible engineering and safety experts who would testify that the placement of the crossing gates and/or the electric utility box violates the Public Utility Code or a regulation or the order of the Commission. Since the Commission has already approved the construction and location of this crossing in the Otricelli proceeding, Ms. Evangelista bears a very heavy burden of proof.

You will note that the Administrative Law Judge has authorized the parties to engage in informal and formal discovery. To that end, I am writing to Ms. Evangelista and her lawyer and requesting that they provide us with a list of all documents and witnesses which they intend to produce at the hearing, a brief description of the qualifications of the witness if any, and a brief description of the testimony which those witnesses will present at the hearing. That way, we will not be surprised at the time of hearing and we will be able to anticipate the general thrust of whatever testimony the Complainant intends to present. If Ms. Evangelista does not respond to our discovery and tries to present evidence at the hearing, that evidence would be objectionable and we will request that the Administrative Law Judge rule that since she did not respond to discovery, she is precluded from presenting that evidence at the hearing.

16th STREET (VARIED WIDTH)

16th STREET

N 42° 10' 20" W

N 42° 10' 20" W 230.86'

(DEED = N 40° 54' 40" W
230.86')

91.59'

N 50° 46' 40" E

N 50° 40' 55" E

(DEED = N 51° 56' 30" E 804.00')

(DEED = N 52° 00' 00" E 804.00')

N 50° 45' 00" E 804.00'

N/F THE BUNCHER COMPANY

20TH STREET 40.05'

$\Delta = 02^{\circ} 47'$
CHORD = N $49^{\circ} 23' 10''$ E

739.33 138.18' N $47^{\circ} 59' 40''$ E
R = 2844.79'

A = 138.20'

AREA = 139,631 SQ. FT. \pm

3.21 ACRES \pm

818.71' N $47^{\circ} 55' 55''$ E

(DEED = N $49^{\circ} 11' 00''$ E)

N/F THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH

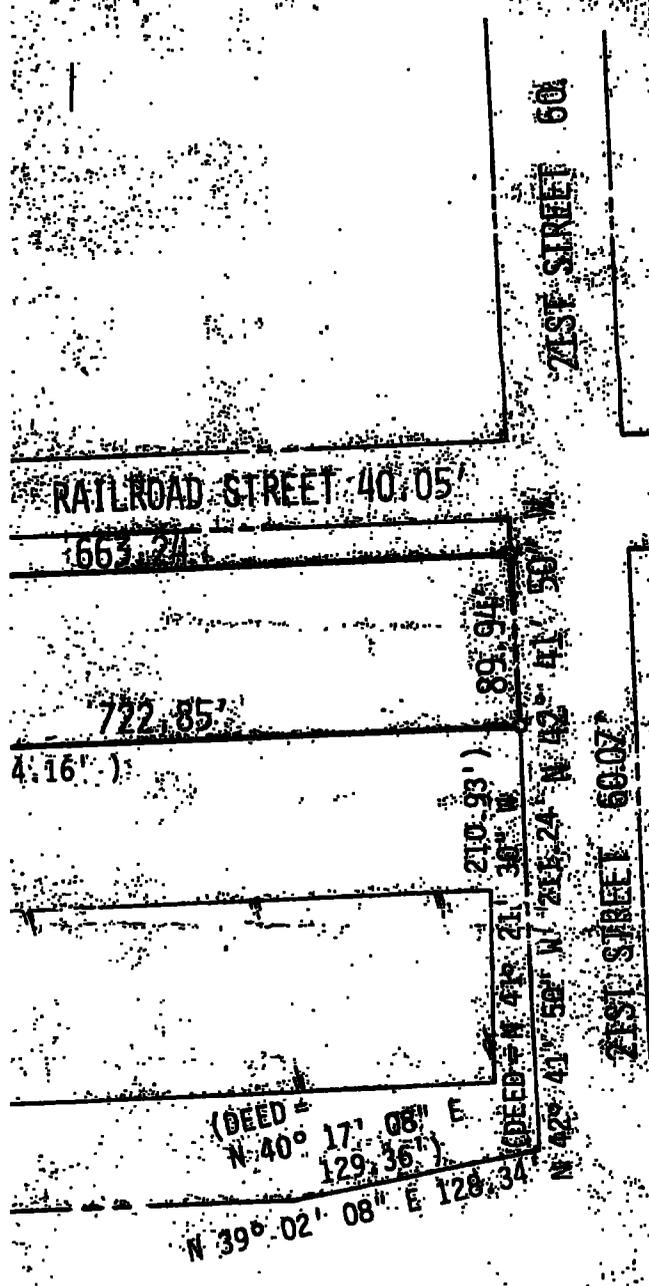
1 STORY BRICK WAREHOUSE & OFFICE BUILDING

DEED - N $49^{\circ} 10' 45''$ E 612.69'
N $47^{\circ} 55' 45''$ E 612.69'

SMALLMAN STREET 60.07'

NOTE: ALL DIMENSIONS SHOWN HEREON ARE CALCULATED USING THE SURVEY PREPARED FOR PENN CENTRAL TRANSPORTATION CO., IN APRIL, 1976 BY THE ENGINEERING AND SURVEY PREPARED BY FRANK LOUIS KLINE FOR THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH DATED JANUARY, 1931. NO FIELD VERIFICATION WAS DONE.

ALL BEARINGS ON THIS PLAN REFLECT THE TAIT SURVEY AND ARE ON CITY OF PITTSBURGH DATA.



71ST STREET 60'

RAILROAD STREET 40.05'

663.24'

722.85'

4.16')

89.94'

210.93')
 36' W
 211.24' N 42° 41' 58\"/>

71ST STREET 60.02'

(DEED =
 N 40° 17' 08\"/>

Exhibit E

PLAN OF PROPERTY
 SITUATE IN
 2ND WARD, CITY OF PITTSBURGH, ALLEGHENY CO., PA.
 PREPARED FOR
 THE BUNCHER COMPANY

File: C:\Program Files\Cadsoft\ESTB\CADW

Date: 04-02-2009 Time: 08:26:01 Scale: 1:1 = 2,000 Feet Page 1

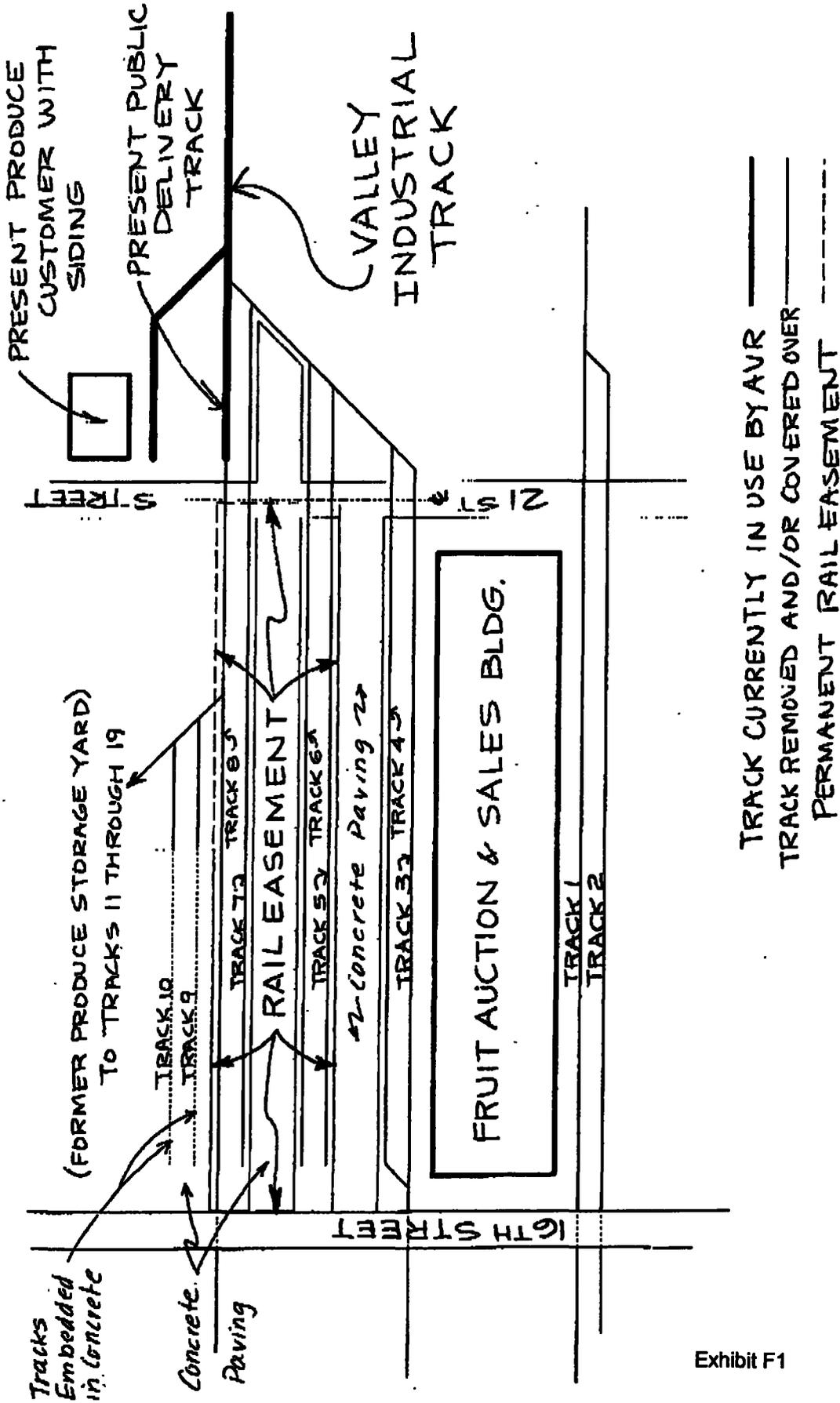


Exhibit F1

A DIAGRAM OF VALLEY INDUSTRIAL TRACK 16TH TO 22ND STREET

URA INSIDE & OUT



THE PRODUCE TERMINAL - AN EARLY URA PROJECT

Strip District - Think of the Strip District and the image of excellent produce comes to mind. Many consumers travel to the Strip District to get the best in fresh fruits and vegetables. At the heart of it all is the Pittsburgh Produce Terminal, the long building on Smallman and 20th Streets that has been supplying the region with fresh produce since 1929.

The Pennsylvania Railroad Fruit Auction and Sales Building as the sign above 2100 Smallman Street still reads has been the hub of the wholesale produce business in Pittsburgh for decades. There was excitement when the building was being constructed in 1928, the Greater Pittsburgh Newspaper reported, "The produce building is 1,200 feet long by 100 feet wide,

as modern as engineering science can devise. It will house two fruit auctions and provide temporary storage and display space for 196 cars of produce. The produce storage yards and team tracks adjacent to the building, extending from Thirteenth Street to Twenty-Third Street, will be of 582 cars capacity." (Taken from The Carnegie Library of Pittsburgh's Strip District Narrative.)

The Pennsylvania Railroad kept the Produce Terminal active for many years as the main produce distribution center. But with time came changes, and trucks replaced railroad cars as the means of transportation. As the economy changed and grocery store chains grew larger, many small independent stores went out of business, weakening the pro-

duce terminal business considerably.

By 1980 the building was in great need of repair. To help keep businesses where they had been for years, the URA purchased the 11.76 acres of land for \$1.1 million and refurbished the building. After two rehabilitations totaling \$5.25 million, the Produce Terminal is still a distribution center providing Pittsburgh with quality produce. Today there are 12 produce businesses in the facility including the USDA Inspection & Market News produce inspection office.

Also calling home to the Produce Terminal is the Society for Contemporary Crafts, a mortgage company, engineering office, wholesalers and an executive search firm. Jenny Kohnfelder, Editor, wrote this article.

URA
Receives
2003
Preservation
Awards

During National Historic Preservation Week, the Pittsburgh Historic Review Commission presented awards to those involved in outstanding preservation projects throughout the city during the previous year. On May 9th at a ceremony in the City Council Chambers the URA's Streetface Program received awards for the following projects:



4521 Butler Street

Authority Tidbits:

Director of Housing Departs for Position with State

Dennis Davin, the URA's Director of Housing for the past seven years, has accepted a new job with the state as the Regional Director of the Governor's Action Team for Southwestern Pennsylvania. Dennis has worked at the URA in the Housing Department since 1987, first as a Development Officer and the following year he became a Program Manager. In 1994 Dennis was again promoted to Manager of Development Programs, and in 1996 he became the Director of Housing. Dennis will begin his new position on July 1, 2003.



Thank you Dennis for your hard work and the outstanding contributions you have made to the URA and the City of Pittsburgh.

New Housing Director Promoted

Tom Cummings, Manager of Development Programs for the URA's Housing Department, has been promoted to Director of the Housing Department. Tom has worked in the Housing Department since 1990, first as a Development Office and then as a Project Manager until he became Manager of Development Programs in 1996. Tom's experience and dedication will serve the URA well.

BDC Welcomes New Employee

Russell Jenkins joins the URA's Business Development Center as a Business Recruitment Specialist. In his new position, Mr. Jenkins will recruit and facilitate new businesses for Pittsburgh's neighborhood business districts Throughout his 20 plus year career, Russell has been actively involved in commercial real estate management and development.

Groundbreaking on Finance St.



Mayor Tom Murphy, Dollar Bank VP Mona Generatte, URA's Jessica Smith and Mulugetta Birru

On May 5th a groundbreaking celebration was held for seven new single-family homes on Finance Street in Homewood. The Pittsburgh Housing Development Corporation and the Black Contractors Association began construction on the first homes ever built in a Keystone Opportunity Zone (KOZ). This means there will be a 100% abatement of state and local (city, county & school) real estate and wage taxes until the year 2010.



3507 Butler St.



1705 E. Carson St



4023 Butler St.



5625 Baum Blvd
Baum Boulevard
Dodge



A Strategic Partner for Managi
Business Real

Real Estate Services

Medical Consulting & Management

Listings

Testimonials

Property Listings

Property Information

PITTSBURGH PRODUCE TERMINAL
2100 Smallman Street
Pittsburgh PA, 15222

Property Status

ACTIVE

Building Information

Building Contact: James A. Malanos @ (412) 227-1400 x 26

Building Type: Industrial

Class.

RBA: 150,297 SF

Typical Floor: 150,297 SF

Stories: 1

Building Status: Existing

Year Built: 1900

Percent Leased: 66.8%

Owner Occupied. No

Tenancy: Multiple Tenant

Land Area: 8 20 AC

Zoning: Individual

Parking: Free Surface Spaces

Lease Information

Space Available: 49,914 SF

Smallest Space: 320 SF

Max Contig: 44,522 SF

Rent/SF/Yr: \$3.50 - \$10.00



Features

Ceiling Height: 25'0". Cross Docks: Yes. Loading Docks: Yes. Utilities: Gas - Natural, Heating, Sewer - City, Water - City. Construction Material: Masonry. Sprinkler: Yes. Levelators: 19 ext. This building has 258 cross docks.

Notes

Covered loading docks with dock levelers at rear of Terminal. Garage doors on Smallman Street. Convenient location for Downtown distribution and transfer to smaller delivery vehicles.

MAPQUEST.

START POINT:

Address or Intersection:

City:

State: ZIP Code:

[Send To Printer](#)

[Back To TerraServer](#)

[Change to 11x17 Print Size](#)

[Show Grid Lines](#)

[Change to Landscape](#)

USGS Pittsburgh, Pennsylvania, United States 14 Mar 1995



0 100M

0 100yd

Image courtesy of the U.S. Geological Survey

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Exhibit F4

ALLEGHENY VALLEY RAILROAD COMPANY TARIFF AVR 8100

ORIGINAL PAGE 7

1. GENERAL RULES, REGULATIONS AND GOVERNING PROVISIONS

ITEM 1000. APPLICATION OF TARIFF

This Tariff publication is filed with the Surface Transportation Board and is applicable on Interstate Traffic and Intrastate Traffic in the State of Pennsylvania.

ITEM 1010. GOVERNING CLASSIFICATION

The term "Uniform Freight Classification" when used herein means:

Freight Tariff Uniform Freight Classification (UFC) 6000 - series.

ITEM 1020. STATION LISTS AND CONDITIONS

This tariff is governed by OPSP 6000 - series to the extent shown below:

1. For additions, changes in name or location, or abandonments of stations, for prepay requirements, restrictions as to receipt or delivery of freight, and changes in station facilities.
2. When a station is abandoned as of a date specified in the above named tariff, all rules and charges applicable thereto, as published in this tariff, are inapplicable on and after that date.

For explanation of abbreviations and reference marks see last page of tariff.

ISSUED: DECEMBER 17, 2003

EFFECTIVE: DECEMBER 22, 2003

ISSUED BY:
ALLEGHENY VALLEY RAILROAD COMPANY
519 CEDAR WAY, BUILDING 1, SUITE 100, OAKMONT, PA 15139

2. SWITCHING LIMITS

ITEM 2020. PITTSBURGH, PA

1. Pittsburgh, PA industrial switching limits include the following stations:

Glenwood, PA
Glenwood TBS, PA
Hazelwood, PA
Pittsburgh 34th St, PA
Pittsburgh 43rd St, PA
Pittsburgh Jct, PA
Pittsburgh Produce Terminal, PA

ITEM 2030. VERONA, PA

1. Verona, PA industrial switching limits include the following stations:

Oakmont, PA

For explanation of abbreviations and reference marks see last page of tariff.

ISSUED: DECEMBER 17, 2003

EFFECTIVE: DECEMBER 22, 2003

ISSUED BY:
ALLEGHENY VALLEY RAILROAD COMPANY
519 CEDAR WAY, BUILDING 1, SUITE 100, OAKMONT, PA 15139

OFFICIAL RAILROAD STATION LIST™

ISSUED
JANUARY 1, 2006

EFFECTIVE
JANUARY 15, 2006

OPSL™ 6000-AA
(Cancels OPSL 6000-Z)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

Anthony J. Will
Issuing Officer

7001 Weston Parkway
Suite 200

Cary, NC 27513

(800) 544-7245

FAX: (919) 651-5410

E-mail: OPSL@railinc.com



Exhibit G2

PENNSYLVANIA

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 260	RR	OPSL	FSAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE ZIP
Philadelphia, PA (19-41)	[Philadelphia]	PHILA	NS	61050	75355	207800	Philadelphia, PA		19104
Phillipsburg, PA (41)	[Centre]		NS	68225	73225	211470	Clearfield, PA		16866
Phillipsburg, PA (1-3700)	[Centre]		RJCP	1845	1845	211417	Clearfield, PA		16866
Philmont, PA (1-22-41-3000-3489)	[Montgomery]		CSXT	40685	18070	207712	Trenton, NJ		19006
Phoenixville, PA (41)	[Chester]		NS	63750	72286	208630	Phoenixville, PA		19460
Pickering, PA (41)	[Chester]		NS	63830	72295	208635	Phoenixville, PA		19481
Pierca, PA (1-3100)	[Allegheny]		WE	10201	10201	216743	Pittsburgh, PA		15236
Pine Forge, PA	[Berks]		NS	77709	67264	204847	Phoenixville, PA		19460
Pine Forge, PA (1-22-3700)	[Berks]		PRL	210	210	204847			19548
Pine Furnace, PA (1-3100)	[Armstrong]		BPRR	520	206	215792	Punxsutawney, PA		16259
Pine Mine, PA	[Clarion]		NS	65450	72669	213827	Pittsburgh, PA		16214
Pinkerton, PA (3000)	[Somerset]		CSXT	37170	70934	217375	Garrett, PA		15551
Punola, PA (1-3000-3489)	[Franklin]		CSXT	55315	76133	209776	Shippensburg, PA		17257
Piscalm, PA	[Allegheny]	PITCA	NS	64495	72390	218317	Pittsburgh, PA		15140
Pitt Jct Trf 33 St, PA (1-3495-3700)	[Allegheny]		AVR	3140	3140	218546		Pittsburgh, PA	15230
Pitt Jct Trf 33 St, PA (1-3801)	[Allegheny]		BPRR	25500	25500	218546		Pittsburgh, PA	15230
Pittsburgh (avr), PA	[Allegheny]	PITTS	NS	70604	67346	218500	Pittsburgh, PA		15230
Pittsburgh 23rd St South Side, PA (1-22-3000-3489)	[Allegheny]		CSXT	65400	77068	218567	Pittsburgh, PA		15203
Pittsburgh 34th St, PA (1-3495-3700)	[Allegheny]		AVR	3220	3220	218525		Pittsburgh, PA	15230
Pittsburgh 34th St, PA (1-3801)	[Allegheny]		BPRR	25430	25430	218525		Pittsburgh, PA	15230
Pittsburgh 34th St, PA (15-3000)	[Allegheny]		CSXT	38667	71055	218525	Pittsburgh, PA	Pittsburgh, PA	15230
Pittsburgh 34th St, PA	[Allegheny]		NS	75702	67654	218525	Pittsburgh, PA	Pittsburgh, PA	15230
Pittsburgh 43rd St, PA (1-3495-3700)	[Allegheny]		AVR	3230	3230	218526		Pittsburgh, PA	15230
Pittsburgh 43rd St, PA (1-3801)	[Allegheny]		BPRR	25420	25420	218526		Pittsburgh, PA	15230
Pittsburgh 43rd St, PA (15-3000)	[Allegheny]		CSXT	38669	71057	218526	Pittsburgh, PA	Pittsburgh, PA	15230
Pittsburgh 43rd St, PA	[Allegheny]		NS	75704	67651	218526	Pittsburgh, PA	Pittsburgh, PA	15230
Pittsburgh Allegheny, PA (1-3000-3489)	[Allegheny]	ALPGH	CSXT	38670	71351	218550	Pittsburgh, PA		15212
Pittsburgh Island Ave, PA (26)	[Allegheny]	PILAV	AVR	3200	3200	218516		Pittsburgh, PA	15230
Pittsburgh Island Ave, PA (26)	[Allegheny]	PILAV	BPRR	25450	25450	218516		Pittsburgh, PA	15230
Pittsburgh Jct Trf 33rd St Sta, PA (1-3000-3489)	[Allegheny]		CSXT	38645	71051	218546	Pittsburgh, PA		15230
Pittsburgh Millvale, PA	[Allegheny]	MILLV	NS	64890	72441	218174	Josephine, PA	Pittsburgh, PA	15209
Pittsburgh Produce Term, PA (1-3495-3700)	[Allegheny]		AVR	3210	3210	218523		Pittsburgh, PA	15228
Pittsburgh Produce Term, PA (1-3801)	[Allegheny]		BPRR	25440	25440	218523		Pittsburgh, PA	15228
Pittsburgh Produce Term, PA	[Allegheny]		NS	75700	67650	218523	Pittsburgh, PA	Pittsburgh, PA	15228
Pittsburgh Tv, PA (19)	[Allegheny]	PITTV	NS	64545	72399	218349	Pittsburgh, PA		15230
Pittsburgh West End, PA (1-22-3000-3489)	[Allegheny]	PIWEN	CSXT	85395	77061	218560	Pittsburgh, PA	Pittsburgh, PA	15230
Pittsburgh West End, PA (1-3100)	[Allegheny]	PIWEN	WE	61003	61003	218560	Pittsburgh, PA		15136
Pittsburgh, PA (3188)	[Allegheny]		AMTK	41065	41065	218500			15230
Pittsburgh, PA (1-3495-3700)	[Allegheny]	PITTS	AVR	3150	3150	218500			15230
Pittsburgh, PA (1-3801)	[Allegheny]	PITTS	BPRR	64555	25531	218500	Pittsburgh, PA		15230
Pittsburgh, PA (1-3000-3489)	[Allegheny]	PITTS	CSXT	38665	71053	218500	Pittsburgh, PA		15230
Pittsburgh, PA (19-41)	[Allegheny]	PITTS	NS	64555	72401	218500	Pittsburgh, PA		15230
Pittsfield, PA (1-108-330-3100)	[Warren]		BPRR	60540	60540	213240	Warren, PA		16365
Pittston (dl), PA (3700)	[Luzerne]		NS	75821	67156	202410	Scranton, PA		18640
Pittston (ls), PA (3700)	[Luzerne]	PTSTN	NS	77366	67223	202410	Scranton, PA		18640
Pittston (rbmn), PA (41-3700)	[Luzerne]	PTSTN	NS	78484	67684	202410	Scranton, PA		18640
Pittston Jct, PA (3700)	[Luzerne]		NS	77354	67211	202407	Scranton, PA		18640
Pittston, PA	[Luzerne]		CPRS	6059	3750	202410	Scranton, PA		18640
Pittston, PA (1-3017)	[Luzerne]	PTSTN	DL	10000	10000	202410	Scranton, PA		18644
Pittston, PA (1-600-3700)	[Luzerne]		LS	40000	40000	202407			18640
Pittston, PA (1-600-3700)	[Luzerne]	PTSTN	LS	60015	60015	202410			18640
Pittston, PA (1-3700)	[Luzerne]	PTSTN	RBMN	74274	74274	202410	Scranton, PA		18640
Plains, PA (600)	[Luzerne]		CPRS	6035	3759	202520			18640
Plata, PA	[Erie]		CN	59556	58556	214297	Erie, PA		16417
Pleasant Gap, PA (1-62-259-3700)	[Centre]		NBER	60	60	211553			16823
Pleasant Gap, PA	[Centre]		NS	77568	67719	211553	Bellefonte, PA		18823
Plymouth Meeting, PA (41)	[Montgomery]		NS	64140	72340	207680	Phoenixville, PA		19462
Pocono Summit, PA (1-22-3017)	[Monroe]		DL	20402	20402	202226			18346
Pocono Summit, PA (3700)	[Monroe]		NS	75843	67170	202226	Scranton, PA		18346
Pocono, PA (1-3017)	[Monroe]		DL	20424	20424	202221	East Stroudsburg, PA		18344
Pocapson, PA (1-22-3158-3159)	[Chester]		EPRY	235	235	208724			19366
Point Breeze, PA (1-3000-3489)	[Philadelphia]		CSXT	30200	70011	207843	Philadelphia, PA	Philadelphia, PA	19145
Pomeroy, PA (41)	[Chester]		NS	63925	72305	208741	Coatesville, PA		19367
Port Allegany, PA (41)	[McKean]		NS	67765	72534	210340	Olean, NY		16743
Port Bowkley, PA	[Luzerne]		LS	60066	60066	202522			18640
Port Bowkley, PA (1-600-3700)	[Luzerne]		LS	60270	60270	202522			18704
Port Bowkley, PA (3700)	[Luzerne]		NS	77367	67224	202522	Scranton, PA		18640
Port Carbon, PA	[Schuylkill]		NS	78355	67741	204623	Schuylkill Haven, PA		17972
Port Carbon, PA	[Schuylkill]		RBMN	27272	27272	204623			17965
Port Clinton, PA	[Schuylkill]		NS	78400	67614	204677	Schuylkill Haven, PA		18549
Port Clinton, PA (1-3700)	[Schuylkill]		RBMN	2600	2600	204677			19549
Port Kennedy, PA	[Montgomery]		NS	63740	72615	207574	Phoenixville, PA		19406



**CONRAIL
CUSTOMER SERVICE
ZTS MAPS**

**PITTSBURGH DIVISION
VOLUME 1**

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AS ZONE 70

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DEC 1993**

03

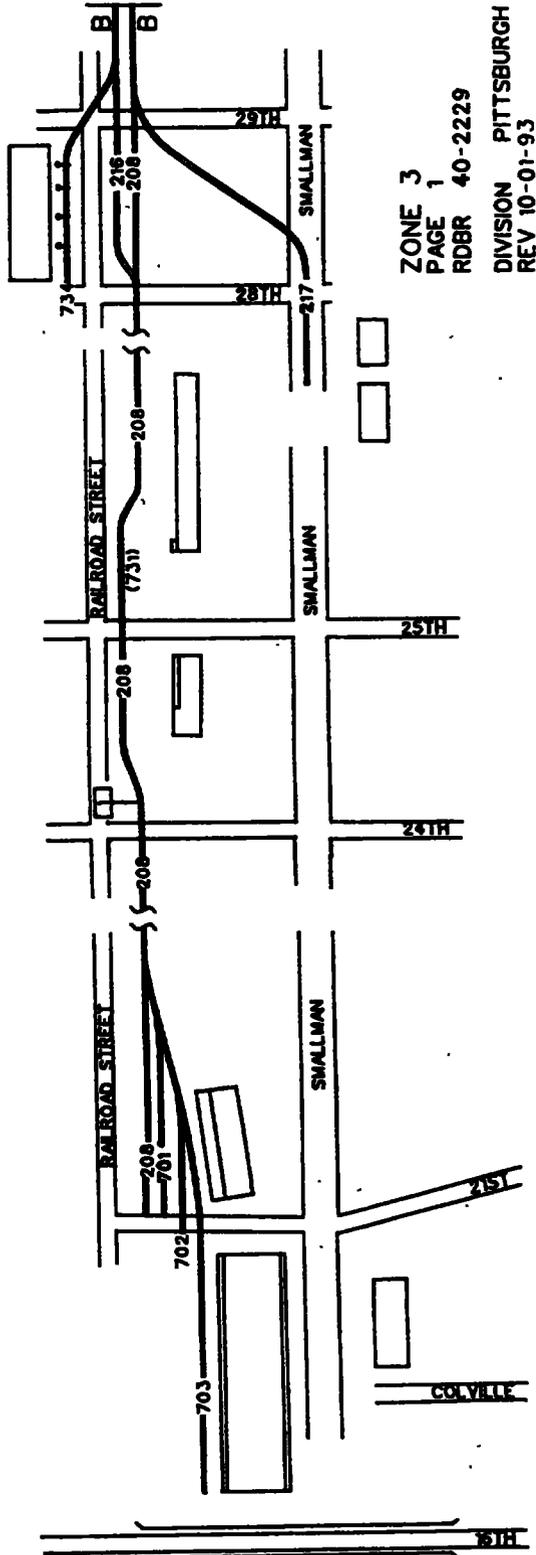
Rev 10/15/93

PAGE 1

- 03 208 00 00 Valley - Ind. Tk.#8
- 03 216 00 00 Ind. Lead - Tk.
- 03 217 00 00 Smallman St. Lead Tk.
- 03 701 99 99 House - Tk.#7 - (Fruit Auction)
- 03 702 97 97 House - Tk.#6 - (Team Track)
- 03 703 99 99 House - Tk.#3 - (Fruit Auction)
- 03 731 01 01 J.S. McCormick (Leased 50') Tk.
- 03 734 01 01 Georgia Pacific Corp. Tk.

PITTSBURGH PA

TO VERONA
SEE ZONE 3
PAGE 2



ZONE 3
PAGE 1
RDBR 40-2229
DIVISION PITTSBURGH
REV 10-01-93

03

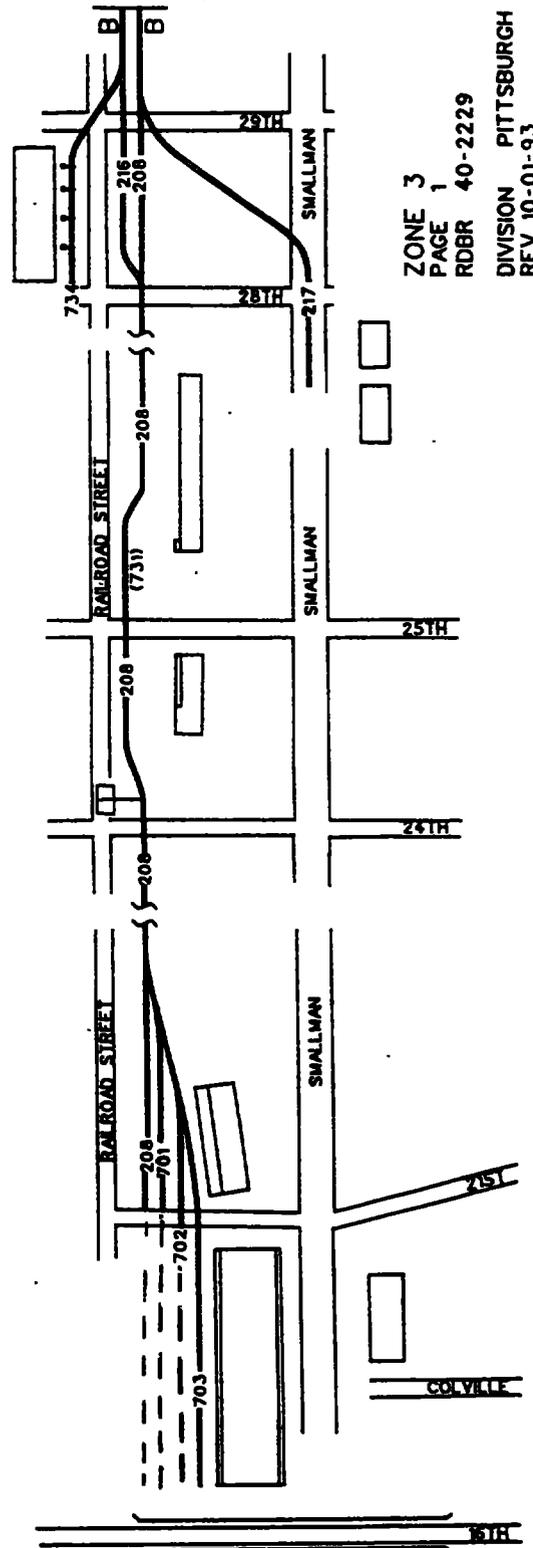
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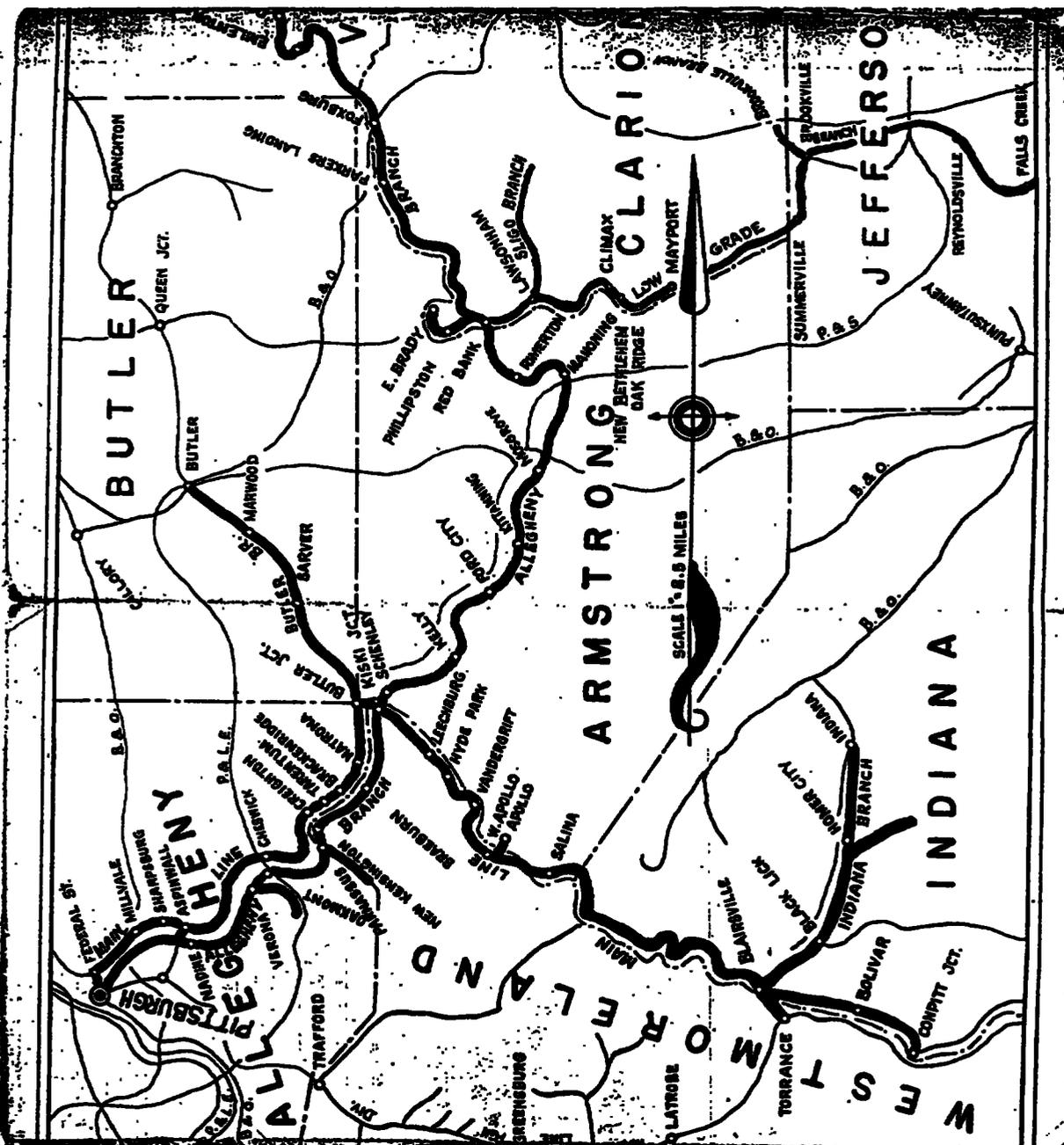
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- 03 216 00 00 Ind. Lead - Tk.
- 03 217 00 00 Smallman St. Lead Tk.
- 03 701 99 99 House - Tk.#7 - (Fruit Auction)
- 03 702 97 97 House - Tk.#6 - (Team Track)
- 03 703 99 99 House - Tk.#3 - (Fruit Auction)
- 03 731 01 01 J.S. McCormick (Leased 50') Tk.
- 03 734 01 01 Georgia Pacific Corp. Tk.

PITTSBURGH PA

TO VERONA →
 SEE ZONE 3
 PAGE 2



ZONE 3
 PAGE 1
 RDBR 40-2229
 DIVISION PITTSBURGH
 REV 10-01-93



No. 9849

TRACK CHART

PENNSYLVANIA RAILROAD
CENTRAL REGION

CONEMAUGH DIVISION ALLEGHENY BRANCH AND BRANCHES

SCALE 1 INCH = 1 MILE

OFFICE OF CHIEF ENGR. M.W.

PITTSBURGH, PA.

CORRECT TO

Allegheny Riverfront Vision

The URA, in partnership with the Department of City Planning and Riverlife Task Force, solicited proposals from multi-disciplinary consultant teams to create an urban design vision and market-based implementation plan for the southeast bank of the Allegheny River stretching from the David L. Lawrence Convention Center to Highland Park and a small under-developed section of the northwest bank of the Allegheny River.

Proposals were due on December 5, 2008, and the team received 24 responses.

Consultant Selection Process

Short List Notification: February 17, 2009

Interviews: February 26, 2009

We hope to have a final decision by February 27, 2009.

Proposals were submitted by the following firms:

- Beyer Blinder Belle Architects and Planners, LLP
- Burt Hill and Rothschild Doyno Collaborative
- Chan Krieger Sieniewicz
- Cooper Carry, Center for Connective Architecture
- Cooper, Robertson and Partners
- Design Workshop
- EDAW, Inc.
- EDSA
- Ehrenkrantz Eckstut & Kuhn Architects and Michael Baker, Jr.
- Environmental Planning and Design, LLC
- field operations
- JJR and Atelier Dreiseitl
- LandDesign, Inc.
- Mackin Engineering Company
- moss architects
- PB Placemaking
- Perkins Eastman
- Pffaffman and Associates
- Remington, Vernick, and Beach Engineers
- Rhodeside & Harwell
- Roland Berger Strategy Consultants
- Strada
- TKA Architects
- Urban Design Associates

Exhibit J

EASTERN CORRIDOR TRANSIT STUDY

Final Report

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For



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1 EXECUTIVE SUMMARY

1.1 INTRODUCTION

Port Authority of Allegheny County (PAAC) and the Southwestern Pennsylvania Commission (SPC), along with the Westmoreland County Transit Authority (WCTA), jointly undertook a transportation planning project, known as the Eastern Corridor Transit Study (ECTS), to identify public transportation needs and community concerns in a study area bounded by the Golden Triangle in downtown Pittsburgh on the west, the eastern suburbs and Westmoreland County on the east, the Allegheny River on the north and the Monongahela River on the south. The ECTS study area is illustrated in **Exhibit 1-1**.

The ECTS study area encompasses some of the most diverse land uses in Southwestern Pennsylvania including inner city, urban and rural areas. The study area includes thriving activity centers such as downtown Pittsburgh, the university campuses and medical complexes in Oakland, the Pittsburgh Technology Center, the business and commercial district in Monroeville, and rapidly growing areas along Routes 22 and 30 in Westmoreland County. However, the area also includes once thriving communities such as the Turtle Creek Valley, Braddock, Rankin, McKeesport, Jeannette, and to a lesser extent the City of Greensburg that have lost population and employment, but are looking toward renewed economic growth in the future.

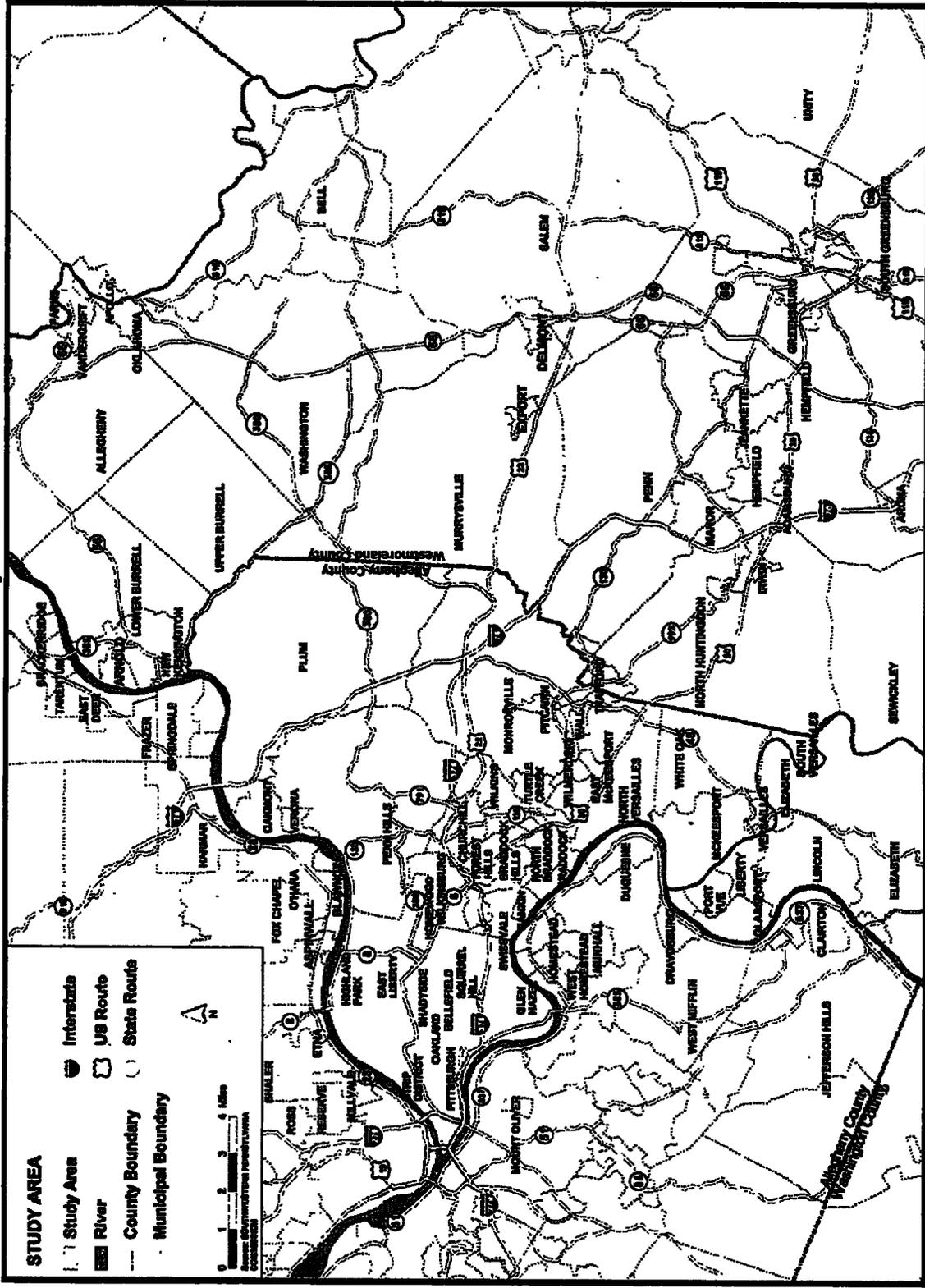
The study is intended to provide information for local decision-makers to understand how new public transportation facilities or improvements to existing facilities would satisfy transportation and community needs in the study area.

Prior to ECTS, the region had undertaken several recent transportation planning and investment efforts for the region both as a whole and with specific initiatives to the west, south and north of the region including:

- Airport Multi-Modal Major Investment Study
- Strategic Regional Transit Visioning Study (20/20 Vision)
- Pennsylvania High Speed Maglev Project
- Mon-Fayette Expressway Draft Environmental Impact Study
- Spine Line Corridor Study
- North Shore Connector Light Rail
- East Busway Extension to Swissvale

Although the East Busway extension provided a recent investment in the east, no future major improvements are proposed in SPC's Long Range Plan for the Eastern Corridor over the next 20 years. As a result, regional stakeholders including PAAC, SPC, WCTA, City of Pittsburgh, Allegheny County and Westmoreland County initiated a transportation planning effort, the Eastern Corridor Transit Study, to identify the sectors of the study area where the next set of public transportation improvements could address the transportation and community needs in the study area.

Exhibit 1-1: Study Area

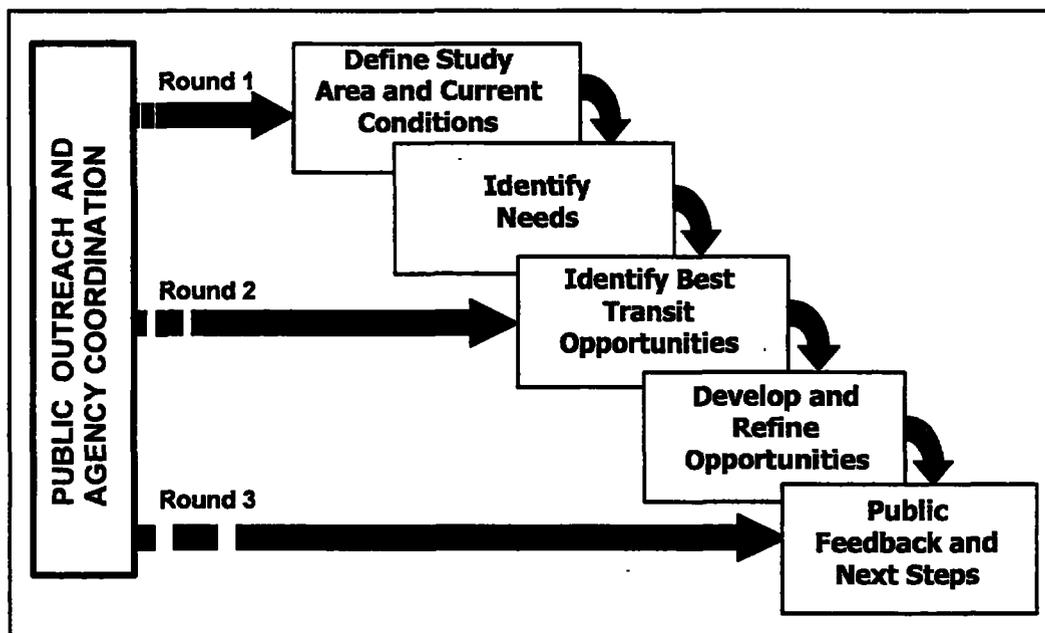


1.2 STUDY PURPOSE AND PROCESS

The purpose of ECTS was to identify the needs in the study area in concert with an extensive public outreach campaign that would ultimately identify transit opportunities, build on existing resources, support economic development, and provide a reasonable probability for moving forward to the next phases of project development. The overall objective of ECTS was not to recommend any one specific public transportation investment or corridor, but rather to provide pertinent information, conclusions and next steps to enable local and regional stakeholders and decision-makers to draw conclusions to identify the best opportunities for improved public transportation investments over the next 20 years.

ECTS followed a step-by-step approach to identifying needs and public transit opportunities to lay the foundation for subsequent analysis that could include a detailed Alternatives Analysis (AA) and Draft Environmental Impact Statement (DEIS) Analysis. The study first set out to establish the context of the study area and its boundaries, followed by identification of existing conditions and needs, development and definition of specific transit opportunities, and an implementation strategy for moving forward. Throughout this process, the study sought constant input and guidance from the general public and regional stakeholders through public outreach activities that included open house meetings, corridor working groups, targeted outreach to interested parties, and tailored coordination with elected officials representing the study area. Feedback from the public outreach effort was the primary source for the development of transportation and community needs and related goals and objectives that guided the study from beginning to end. The study process is illustrated in **Exhibit 1-2**.

Exhibit 1-2: Study Process



1.7 SHORT LIST ALTERNATIVES

Short List alternatives were analyzed in detail to identify potential alignments, capital costs, operating and maintenance costs and potential ridership levels.

The build alternatives studied are as follows:

ALLEGHENY VALLEY CORRIDOR

AV-CR: Commuter rail service between downtown Pittsburgh and Arnold, Westmoreland County utilizing the existing AVR right-of-way. Service would be provided via an at-grade alignment with diesel locomotives pulling coach and cab cars. A bus shuttle would transport riders from 16th Street to downtown Pittsburgh. Ridership is estimated at 6,700 daily boardings in 2025 with an incremental annual operating and maintenance cost of approximately \$8.8 million and capital cost of approximately \$258 million for a fully built out, high quality commuter rail service. The study also identified two lower cost options that incorporated reductions in service levels and capital investments resulting in a Starter System and Minimal Investment System with estimated capital costs of approximately \$131 million and \$64 million respectively.

Advantages include use of existing AVR railroad right-of-way, minimal residential impacts, high quality-limited stop commuter service and the potential to reduce peak period congestion in the corridor. Disadvantages include the presence of many grade crossings in the Strip District and Lawrenceville areas, large elevation differences between track level and residential areas, indirect access to downtown Pittsburgh and limited availability of land for park & ride lots.

AV-LRT: Light rail line between downtown Pittsburgh and Arnold, Westmoreland County, utilizing existing AVR right-of-way and providing a high quality direct connection to downtown Pittsburgh since it would connect with the North Shore Connector's underground extension of the "T" at the Convention Center. Ridership is estimated at 18,200 daily riders in 2025 with an annual incremental operating and maintenance cost of approximately \$16.3 million and capital cost of approximately \$804 million.

Advantages include the use of AVR railroad right-of-way, the potential for redevelopment in the Allegheny Valley (a current goal of communities in the corridor), transit travel time savings between Arnold and downtown Pittsburgh, the potential to reduce congestion on existing roadways, and frequent and high quality transit service all day in the corridor. Disadvantages include large elevation differences between track level and residential areas, numerous grade crossings in the Strip District and Lawrenceville and limited availability of land for park & ride lots.

EAST BUSWAY CORRIDOR

EB-LRT (Monroeville & Murrysville) - Consists of a light rail line from downtown Pittsburgh to Monroeville with a spur to Oakland. The service would begin at the existing Steel Plaza Station and follow the North Shore Connector's underground extension of the "T" to the Convention Center Station where it would emerge into the Strip District and then join the East Busway near 26th Street converting the busway to light rail out to Swissvale. An extension would be constructed from Swissvale to Monroeville Mall via NS and Union Railroad right-of-way. Ridership is estimated at 42,900 daily riders in 2025 with an annual incremental operating and maintenance cost of approximately \$25.0 million and capital cost of approximately \$1.3 billion.

6.4.2 ALLEGHENY VALLEY CORRIDOR – COMMUTER RAIL (AV-CR)

General Description

This alternative consists of commuter rail service between downtown Pittsburgh and Arnold, Westmoreland County. The alignment would be located in the existing AVR right-of-way, which parallels the southern shore of the Allegheny River. Service would be provided at-grade between the Strip District and Arnold, traversing Lawrenceville, Verona, Oakmont, New Kensington and Arnold, as shown in **Exhibit 6-2**.

Technology

Diesel locomotives capable of push-pull operation would be utilized to propel coach and cab cars to transport passengers. Push-pull capability simplifies operation and reduces the time required to prepare a train to reverse its travel direction. The engineer can operate the train from either the locomotive, if it is in the front of the train, or from a small cab at the other end of the train, with controls that are linked to the locomotive in the rear of the train. The proposed commuter rail service could operate only as far west as 16th Street; a rubber-tired shuttle would provide access to downtown Pittsburgh in a 24-minute loop from 16th Street to Stanwix Street, near Gateway Center. Diesel locomotive push-pull rolling stock was proposed due to its compliance with FRA vehicle strength standards to allow flexibility and simultaneous operation with freight trains.

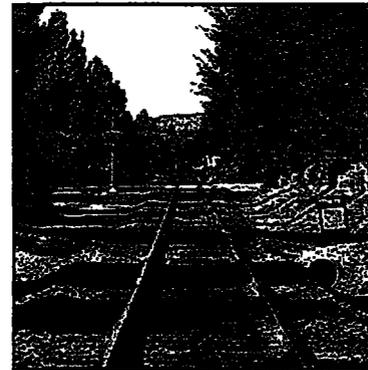
Service and Travel Time Characteristics

Commuter rail service would operate every 30 minutes in the peak periods and every 90 minutes during the off-peak periods. Total end-to-end travel time would be approximately 34 minutes. Operation of the bus shuttle, from 16th Street to Downtown, would be timed to meet incoming trains in the morning and outbound trains in the evening. Travel between the 16th Street Station and other destinations within the Golden Triangle could require up to 5 minutes in transfer time plus approximately 5 minutes additional in travel time on the bus shuttle. Other modifications would be made to fixed-route bus services, as listed in **Exhibit 6-3**, to increase transfer opportunities and eliminate duplications of service.

The travel time for this alternative is 10-15 minutes less than the currently operating Route 78A bus between Arnold and downtown Pittsburgh, a 15-23% reduction in transit travel time.

ATTRIBUTES AT-A-GLANCE

Commuter rail with service from Downtown Pittsburgh (16th Street/Strip District) to Arnold in Westmoreland County.



AVR ROW in Oakmont

General Description:

Mode:

Commuter Rail – Diesel Locomotive & Coaches

Length:

18.3 miles

Stations Served:

*16th Street
40th Street (Park + Ride)
62nd Street (P+R)
Washington Blvd. (P+R)
Sandy Creek (P+R)
Verona (P+R)
Oakmont
New Kensington (P+R)
Arnold*

Service Characteristics:

Travel Time:

34 minutes (Downtown – Arnold)

Peak / Off-Peak Headway:

30 minutes / 90 minutes

Projected Daily Riders:

6,700

New Transit Riders:

2,600

Cost Estimates (2002 Dollars):

O&M Costs:

\$8.8 million / year

Capital Costs:

\$258 million

Ridership

The SPC travel demand model projected 6,700 daily boardings in the year 2025 for this alternative.

Exhibit 6-3: Changes to Existing Bus Service (AV-CR)

Route	Change
AVN	Replace with Commuter Rail Service
5A/C	Reroute to stop at New Kensington Commuter Rail Station
78A	Truncate at Oakmont Commuter Rail Station - Remove service between Oakmont and downtown Pittsburgh
500	Add Service to 62nd Street Commuter Rail Station

* The above service changes were assumed as part of the ECTS analysis for this alternative. A more detailed assessment of service changes will be undertaken for this corridor should it be considered in future studies.

O&M Costs

As illustrated in **Exhibit 6-4**, O&M costs for AV-CR were based on three variables including annual vehicle hours, annual vehicle miles, and daily peak vehicles. Quantities were estimated based on a 34-minute run time, 18.3-mile length between Arnold and Downtown, daily service period from 5:00 am to 12:00 am for 254 weekdays and 111 weekend days and holidays. Train lengths were based on the estimated ridership during the peak of the peak period, which required five coach cars during peak periods and two coach cars during off-peak periods. These quantities were then multiplied by their appropriate unit costs to arrive at incremental annual O&M costs for each service level as provided under "Change in Annual Cost" in **Exhibit 6-4**. Approximately \$10.9 million would be required for operation and maintenance of the commuter rail service with a savings of about \$2.1 million from reductions in bus service (after the addition of the Downtown bus shuttle) that would otherwise be duplicative. The result is an overall system-wide increase in O&M costs of approximately \$8.8 million annually for AV-CR.

Exhibit 6-4: Net O&M Costs (AV-CR)

	Commuter Rail			Existing Bus		
	Annual Vehicle Hours	Annual Vehicle Miles	Daily Peak Vehicles	Annual Vehicle Hours	Annual Vehicle Miles	Daily Peak Vehicles
Change in Annual Quantities	34,356	837,361	15 coach cars	-25,337	-332,839	-11
Unit Costs	\$131.73	\$2.25	\$300,307.70	\$39.70	\$1.53	\$49,507.16
Change in Annual Cost	\$4.5 m	\$1.9 m	\$4.5 m	-\$1.0 m	-\$0.51 m	-\$0.55 m
Total Change in Annual Cost	\$10.9 m			-\$2.1 m		
Grand Total	\$8.8 million					

Capital Costs

The capital costs for this alternative are shown in **Exhibit 6-5** and include a complete upgrade of the existing track, new passing sidings, a train control and communication system, full grade crossing protection, nine new stations, park & ride facilities, a fleet of 4 diesel locomotives (3 plus 1 spare) and 18 coach/cab cars (15 plus 3 spares) with a maintenance facility, contingency and soft costs, as discussed in Section 6.2. These costs would support a modern commuter rail system similar to other recently implemented systems across the country with a full 30-year service life, as required for potential FTA New Starts projects. Given this level of investment and anticipated level of service, these costs assume the purchase of the AVR right-of-way and thereby ensuring the preservation of the

investment and reliability of the commuter operation without impediments caused by freight operations. A general allowance was included for acquisition of the railroad right-of-way and property needs for stations and facilities.

Exhibit 6-5: Capital Costs (AV-CR)

Category	Cost
Guideway	\$ 5.1 m
Trackwork	\$ 20.0 m
Facilities	\$ 11.0 m
Systems	\$ 19.4 m
Stations	\$ 22.3 m
Special Conditions and Mobilization	\$ 10.4 m
Contingency	\$ 26.5 m
Vehicles	\$ 41.0 m
Soft Costs	\$ 50.7 m
Right-of-Way	\$ 51.5 m
TOTAL COST	\$ 258.0 m
ANNUALIZED COST	\$ 20.6 m

The hard capital costs of this alternative inclusive of guideway, trackwork, facilities, systems, stations, contingency, and special conditions and mobilization are estimated at \$115 million. The procurement of vehicles (new) would add an additional \$41 million with property costs for stations, parking, and railroad right-of-way totaling \$51 million. Soft costs in the form of all remaining engineering, design, management, construction oversight, and insurance is estimated at \$51 million for a total capital cost of \$258 million. Annualized costs are estimated at \$20.6 million.

Advantages and Disadvantages of AV-CR

The following provides a general discussion of this alternative's advantages and disadvantages based on needs and technical/operational/institutional issues:

Advantages

- Utilizes existing railroad right-of-way
- Residential impacts would be minimal
- Minimal noise impacts due to limited off-peak service and elevation differences
- Provides high quality transit option with a limited-stop commuter service
- Potential to reduce peak period congestion in the corridor
- Serves two counties with a high quality fixed guideway transit investment

Disadvantages

- Many grade crossings in the Strip District and Lawrenceville, resulting in potential for pedestrian/automobile conflicts requiring closure or control
- Large elevation differences between track level and residential areas would make walk-up access difficult in some areas
- Does not provide direct access to downtown Pittsburgh, requiring riders to transfer via a shuttle bus
- Commuter rail is a labor intensive and more costly mode due to industry labor requirements (e.g. engineers and conductors)
- New maintenance and yard facilities would be required
- Land available for park & ride lots is limited in this corridor

Alternative Options

In an effort to test the potential for implementing an interim, lower cost commuter rail service in the Allegheny Valley Corridor, the following options were developed:

Option 1 – Starter System: This option assumes a lower service level with trains operating every 60 minutes during the peak instead of every 30 minutes. This would reduce rolling stock requirements and eliminate one of the two passing sidings. This option also assumes that right-of-way would not be purchased, and instead, a track usage fee would be applied to the operating costs. Furthermore, a full vehicle maintenance facility and yard would be replaced with a minimal facility and yard with certain heavy maintenance functions outsourced to another railroad maintenance facility in the region. Finally, the station investments would be significantly reduced to "barebones" platforms and shelters with reductions in park & ride provisions. The resulting system would have the following attributes:

- Service: 60-minute peak and 90-minute off-peak
- Capital Cost: \$131 million (49% less than AV-CR)
- O&M Costs: \$5.3 million annually (14% less than AV-CR)
- Daily Boardings: 1,900 (72% less than AV-CR)

Option 2 – Minimal Investment: This option would have drastically reduced service with only two trains inbound in the morning, and two returning outbound trains in the afternoon. Capital investment reductions would be similar to Option 1 with additional cutbacks including minimal trackbed upgrades, no passing tracks, no signal system, fewer park & ride spaces and used rolling stock. In addition this option assumes a 50% reduction in soft costs and contingency costs which provide a significantly reduced capacity for project management, engineering, design and unforeseen construction impacts and costs that are difficult to assess at this level of planning. The attributes of this option are as follows:

- Service: two trains in am peak direction and pm peak direction
- Capital Cost: \$64 million (75 % less than AV-CR)
- O&M Costs: \$2.6 million annually (70% less than AV-CR)
- Daily Boardings: 800 (88% less than AV-CR)

This option could be considered as a mitigation measure for construction on Route 28 and implemented for a limited period of time. However, this option would not be recommended as a major investment and would not be eligible for federal New Start program funds based on its limited capital asset life expectancy.

It should be noted that for both options above, some foregone investments will likely reemerge in the form of upgrades and improvements that will be required after a short period of operation.

6.4.3 ALLEGHENY VALLEY CORRIDOR – LIGHT RAIL TRANSIT (AV – LRT)

General Description

This alternative proposes a light rail line between downtown Pittsburgh and Arnold, Westmoreland County, primarily along the existing AVR right-of-way. In Downtown, the service would begin at the existing underground Steel Plaza Station and follow the North Shore Connector Project's extension of the "T" to the underground Convention Center station. From that point, the alignment would curve northeast into the Strip District, emerge near 14th Street and remain at-grade in the AVR right-of-way to Arnold, the same general alignment as AV-CR (see Exhibit 6-6).

Technology

Service would be provided with light rail vehicles that are electrically propelled from an overhead catenary power supply, similar to the existing PAAC "T" operation in the South Hills and Downtown. The vehicles would have the ability to operate individually and as trains with multiple vehicles coupled together and controlled by a single operator.

Service and Travel Time Characteristics

Peak service would be provided every 10 minutes, with off-peak service every 20 minutes. The total end-to-end travel time would be 37 minutes. Changes would be made to PAAC bus routes, as listed in Exhibit 6-7, to eliminate duplicative service.

Travel time between Arnold and downtown Pittsburgh would be 23 minutes faster on the light rail line than on the existing 78A bus route between Arnold and downtown Pittsburgh, a 38% reduction in transit travel time.

Ridership

The SPC travel demand model projected approximately 18,200 daily boardings by the year 2025.

ATTRIBUTES AT-A-GLANCE

Light Rail Transit with service from downtown Pittsburgh (Steel Plaza Station) to Arnold in Westmoreland County.



AVR ROW in Oakmont

General Description:

Mode:

Light Rail Transit – At-grade beyond CBD

Length:

19.0 miles

Stations Served:

- Steel Plaza* 62nd Street (P+R)
- Convention Center** Washington Blvd. (P+R)
- 14th Street Sandy Creek (P+R)
- 21st Street Verona (P+R)
- 31st Street Oakmont
- 40th Street (P+R) New Kensington (P+R)
- 51st Street Arnold

* - existing station, ** - North Shore Connector Project

Service Characteristics:

Travel Time:

37 minutes (Downtown – Arnold)

Peak / Off-Peak Headway:

10 minutes / 20 minutes

Projected Daily Riders:

18,200

New Transit Riders:

9,000

Cost Estimates (2002 Dollars):

O&M Costs:

\$16.3 million / year

Capital Costs:

\$804 million

Exhibit 6-6: Allegheny Valley Corridor - Light Rail Transit (AV-LRT)

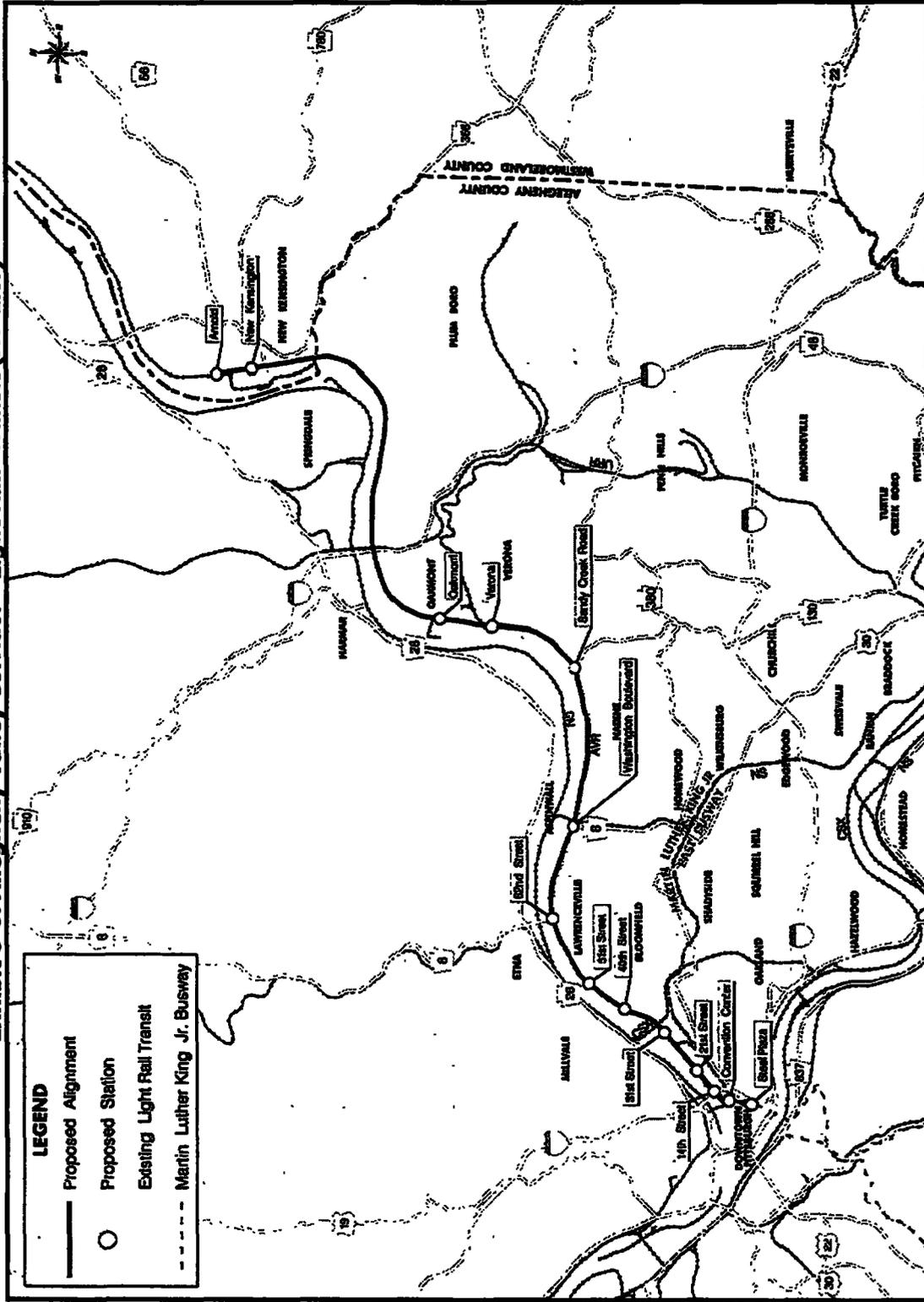


Exhibit 6-7: Changes to Existing Bus Service (AV-LRT)

Route	Change
AVN	Replace with Light Rail Service
5A/C	Reroute to stop at New Kensington Light Rail Station
500	Add Service to 62nd Street Light Rail Station
77A, 78A	Truncate at the Oakmont Rail Station for Transfer to Light Rail Service

* The above service changes were assumed as part of the ECTS analysis for this alternative. A more detailed assessment of service changes will be undertaken for this corridor should it be considered in future studies.

O&M Costs

As illustrated in **Exhibit 6-8**, O&M costs for AV-LRT were based on three variables discussed in Section 6.3 including annual train hours, annual vehicle miles, and daily peak vehicles. Quantities were estimated based on a 35-minute run time, 19-mile route length between Arnold and Downtown, daily service period from 5:00 am to 12:00 am for 254 weekdays and 111 weekend days and holidays. For additional capacity in the peak, service was also estimated for a short-turn operation between the Convention Center and 62nd Street to relieve peak loadings, a 4.4-mile trip with an 11-minute run time. Train lengths were based on the estimated ridership during the peak of the peak period, which required two cars during peak periods and one car during off-peak periods between Arnold and Downtown, and two cars on the peak period short-turn service. Quantities were multiplied by their appropriate unit costs to arrive at incremental annual O&M costs for each service level as provided under "Change in Annual Cost" in Exhibit 6-8. Approximately \$18.5 million would be required for operation and maintenance of the light rail service with a savings of about \$2.2 million from reductions in bus service that would otherwise be duplicative or unnecessary. The result is an overall system-wide increase in O&M costs of approximately \$16.3 million annually for AV-LRT.

Exhibit 6-8: Net O&M Costs (AV-LRT)

	Rail			Port Authority Bus		
	Annual Train Hours	Annual Vehicle Miles	Daily Peak Vehicles	Annual Vehicle Hours	Annual Vehicle Miles	Daily Peak Vehicles
Change in Annual Quantities	42,285	1,502,434	26	-27,329	-332,839	-12
Unit Costs	\$69.53	\$6.09	\$246,059.83	\$39.70	\$1.53	\$49,507.16
Change in Annual Cost	\$2.9 m	\$9.2 m	\$6.4 m	-\$1.1 m	-\$0.51 m	-\$0.59 m
Total Change in Annual Cost	\$18.5 m			-\$2.2 m		
Grand Total	\$16.3 million					

Capital Costs

Capital cost estimates for this alternative, summarized in **Exhibit 6-9**, include a short tunnel extension from the Convention Center Station to an area near 14th Street in the Strip District, and a full double-tracked, electrified light rail system to Arnold. In addition, estimates include costs for expansion of the existing single-track tunnel between Steel Plaza and Convention Center to double track. Track costs also include a dual-gauge track that would allow freight service to continue to operate at night to serve existing freight customers on the AVR. Overall, 18.9 out of 19.3 miles would be new alignment, with 12 new stations, several of which would include extensive park & ride facilities.

The hard capital costs of this alternative inclusive of guideway, trackwork, facilities, systems, stations, contingency, and special conditions and mobilization are estimated at \$463 million. The procurement

of 30 light rail vehicles (26 plus 4 spares) would add an additional \$99 million and costs for stations, parking, and railroad related property would total \$56 million. Soft costs in the form of all remaining engineering, design, management, construction oversight and insurance is estimated at \$185 million for a total capital cost of \$804 million. Annualized costs are estimated at \$64.0 million.

Exhibit 6-9: Capital Costs (AV-LRT)

Category	Cost
Guideway	\$ 64.3 m
Trackwork	\$ 77.5 m
Facilities	\$ 21.5 m
Systems	\$ 65.7 m
Stations	\$ 84.4 m
Special Conditions and Mobilization	\$ 42.9 m
Contingency	\$ 106.9 m
Vehicles	\$ 99.0 m
Soft Costs	\$ 185.3 m
Right-of-Way	\$ 56.1 m
TOTAL COST	\$ 804.0 m
ANNUALIZED COST	\$ 64.0 m

Advantages and Disadvantages of AV-LRT

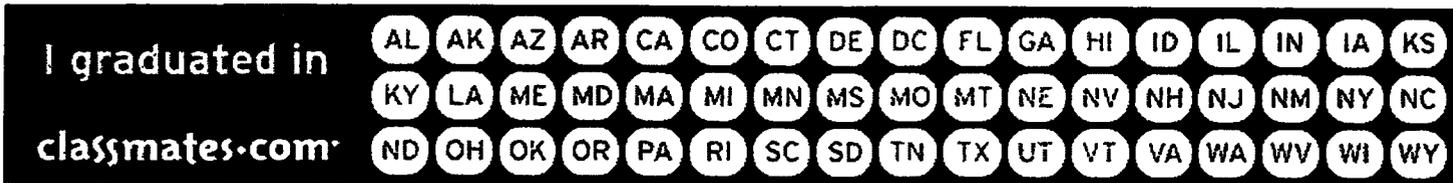
The following provides a general discussion of this alternative's advantages and disadvantages based on needs and technical/operational/institutional issues:

Advantages

- Uses existing right-of-way
- Supports redevelopment in the Allegheny Valley, a current goal of communities in the corridor
- Potential to offer significant transit travel time savings in the Allegheny Valley
- Potential to reduce congestion on roadways in the corridor
- Provides frequent service transit option with seven new stations in the City of Pittsburgh and direct connection to Downtown
- Serves two counties with high quality fixed guideway transit investment

Disadvantages

- Large elevation differences between track level and residential areas would make walk-up access difficult in some areas
- Many grade crossings in the Strip District and Lawrenceville, resulting in potential for pedestrian/automobile conflicts requiring closure or control
- Compatibility with existing freight vehicles is limited due to lower light rail vehicle strength
- Land available for park & ride lots is limited in this corridor



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Undeveloped Strip District land a focus of riverfront master plan

Sunday, November 02, 2008
 By Mark Belko, Pittsburgh Post-Gazette

Tom Balestrieri is raring to go.

For years, a prime Strip District riverfront parcel owned by the firm he heads has served as a parking lot for shoppers, revelers and commuters. But Mr. Balestrieri, the Buncher Co.'s chief executive officer and president, doesn't want it to stay that way much longer.

"I'm not a young man and I want to see it happen on my watch. From our standpoint, if the right project comes about, we're poised to go," he said.

The city is hoping so. It has singled out the Buncher property, stretching from 16th Street to 21st Street, bordering the Allegheny River on one side and Smallman Street on the other, as a "major focus" of a proposed master plan aimed at transforming the riverfront from Downtown to Highland Park.

Rob Stephany, executive director of the Urban Redevelopment Authority, which is seeking design teams to help craft the plan, sees the Buncher property as the "catalytic piece of the equation" for the entire six-mile stretch of proposed redevelopment.

"You've got essentially undeveloped property adjacent to Downtown, the cultural district, the convention center. There's probably not many people you would talk to who wouldn't acknowledge that what happens there sets the tone for what happens elsewhere," he said.

Mr. Balestrieri said Buncher is pleased the city is taking the lead in developing the master plan. It is keenly interested in developing its Strip District property, he said. But there could be a catch.

Terminal plans unknown

To be successful, any master plan, he said, must include the URA-owned produce terminal,

an iconic 140,000-square-foot building that served as the city's shipping center for many years.

Part of Buncher's property runs behind the produce terminal to the riverfront. Mr. Balestrieri said the firm has rejected "numerous opportunities" to redevelop the property in the past because it did not know what would happen with the terminal.

"Until we know what the future of the produce terminal is, it's been challenging for us to decide whether to accept something back there," he said.

Mr. Stephany said the terminal would definitely be part of the master plan. The URA has been working with Neighbors in the Strip to lease about 12,000 to 14,000 square feet of the building to local retail vendors to fill vacancies beside the produce wholesalers. There also are plans for a demonstration kitchen, a stage area and classroom space.

Buncher in the past has expressed an interest in cutting the produce terminal into sections to connect at least part of the Strip's street grid into its property behind the building. But that plan has run afoul of some tenants and preservationists who see it as a Strip landmark.

Mr. Stephany said there may be an opportunity to open up part of the property in a way that wouldn't affect the wholesalers "if the master plan calls for that." Pittsburgh History & Landmarks Foundation would oppose any effort to cut up the building, President Arthur Ziegler said.

"I don't think you should take a building that is quite handsome architecturally, unique in its size and configuration, and a symbol of the history of the area and continuing in use, and cut it into pieces," he said.

Rather than chop up the terminal, designers could place pathways to the river on both sides of it, he said.

Make it blend

Becky Rodgers, executive director of Neighbors in the Strip, said whatever development occurs between 16th and 21st streets must "blend in" with the existing amenities.

"I think what gives the Strip its national appeal is that it is uncompromisingly authentic. It's home to more entrepreneurial, mom-and-pop-type businesses than most other neighborhoods. What can make it better and not take it down?" she said.

Of the six miles of riverfront targeted for redevelopment, the Strip probably has been the most studied. Four years ago, graduate students at Arizona State University won an Urban Land Institute competition by developing a master plan for the Buncher property.

It featured loft-style housing inspired by the Strip's warehouse buildings as well as retail and office space, all built around a fan-shaped plaza that connected with the riverfront. There was also a marina near the plaza and a proposed water taxi to link people to PNC Park and Heinz Field. It recommended that the produce terminal be converted to retail.

While the ULI analysis could be a "good jumping off point" for the Strip component of the master plan, Mr. Stephany said, the broader study area could prove to be just a bit more challenging.

Overall, the city has identified some 544 parcels in the study area, not exactly a recipe for consensus. And unlike SouthSide Works, the North Shore between PNC Park and Heinz Field, and the Pittsburgh Technology Center along Second Avenue, neither the city nor its agents control all of the land.

Still Mr. Stephany relishes the opportunity before him.

"Welcome to community development, right? I don't think the city needs to be reborn by having the city or one of its authorities controlling all the land," he said. "I think multiple stakeholders can share a vision and key stakeholders can start to implement it and get it going."

Building blocks

In some respects, turning vision into reality may not be as difficult as it would seem at first. One reason is that there are large tracts of land under the control of a handful of developers, and that land could serve as building blocks for the rest of the corridor.

Buncher, for instance, has control over the Strip District land and additional property upriver. The URA owns the 21.7-acre former Tippins International Inc. site in Lawrenceville. The Regional Industrial Development Corp. of Southwestern Pennsylvania is redeveloping the former Heppenstall steel mill adjacent to the Tippins site.

The city is marketing 14 acres in the Strip between 29th and 31st streets, now home to the tow pound and other buildings, for redevelopment. Chuck Hammel, president of the Pitt Ohio Express trucking company, controls about 27 acres of real estate in the master plan area and is co-owner of the Cork Factory residential development.

"There are a lot of significant things you can weave together to redefine this corridor," said state Sen. Jim Ferlo, D-Highland Park.

Mr. Hammel said he would like to move his company's operation from its location at 26th and 27th streets in the Strip to another site and develop housing along the river. His company is "very interested" in the Tippins site but was told by the URA it doesn't know

what it will do with the property.

"If I had a place to move the trucking operation I would get serious about the plans and do something quickly," he said.

Mr. Hammel, however, believes the scope of the proposed city master plan is too broad and could inhibit development from taking hold quickly. He believes it should be broken into two segments, one from 11th Street to 36th Street, and another for property beyond.

"We can get a plan finished so that development can begin. I think it can be done a lot quicker if it were cut into pieces," he said.

Aaron Stauber, principal and president of Rugby Realty, which owns property at the corner of 21st and Smallman streets in the Strip, welcomed the proposed master plan.

He said it could help developers tailor their projects to complement each other rather than stepping on each other's toes. A master plan done more than two decades ago to guide development in the city's cultural district has paid huge dividends, he said.

Mr. Stauber hopes to turn his Strip property into a 45,000-square-foot retail center that would feature a drugstore, perhaps a bank and some type of food service designed to complement other Strip retailers and restaurateurs.

Whether he would be open to other uses under a master plan "depends on where we are" with the proposed development, he said.

Reconnect to the river

Mr. Stephany conceded that implementing the master plan probably is a 20-year endeavor, but he added, "We'd love to see a lot of the tone established in that first decade."

One of Mr. Stephany's main goals in the planning is to see neighborhoods, cut off from the river by industrial development, reconnected to the waterfront as much as possible.

"I think our big general excitement about this is what happens to city neighborhoods if they're intimately connected to the rivers again," he said.

He also wants to make sure new development becomes not an island unto itself but an impetus to spur growth in the broader neighborhood, using the South Side and the SouthSide Works complex as an example.

Even if it takes 15 to 20 years, Mr. Ferlo sees nothing but promise in the master planning endeavor.

"It's exciting. It's the next area of big development for this administration and a lot of stakeholders," he said. "This can really be a signature project for Pittsburgh."

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AVFC-Bunch

PITTSBURGH
BUSINESSTIMES

Friday, June 8 2007

Natural foods market, Italian restaurant aim to feed Cork Factory

Pittsburgh Business Times - by Tim Schooley

McCaffery Interests Inc. is close to bringing a 15,000- to 18,000-square-foot grocery to The Cork Factory, its 297-unit residential redevelopment of the Armstrong Cork Factory in the Strip District.

Katie Pliscott, leasing director for the 47,000 square feet of retail space in the new 427-space garage across the street, confirmed the market, specializing in natural foods, and a 10,000-square-foot Italian restaurant are committed to the project. Pliscott wouldn't divulge the names of the tenants, pending the signing of final lease agreements. She expects those will come within the next few weeks.

And she's working to lease the remaining space to a specialty bakery, a wine shop and a boutique restaurant. Pliscott emphasized that all the building's tenants will be local operators.

Beyond the 500 people expected to eventually reside in the building, Pliscott sees demand for the new retailers coming from throughout the city.

"That whole area is underserved, in terms of where people can go to get specialty items," Pliscott said.

So far, about 50 percent of the residential units at the Cork Factory, a \$50 million-plus redevelopment of a long-empty industrial building, have been leased. Its high-end units cost between \$1,200 and \$2,600 per month.

Describing the apartment leasing as ahead of schedule, Pliscott was confident the remaining retail space would be leased soon, as well. "It's people we're very confident signing 10-year leases with," she said.

Small markets have become highly coveted in new mixed-use developments throughout the city. Dallas-based Lincoln Property Co. expects to open a small market in its completed Encore building in the Cultural District, as does **Millcraft Industries** as part of its Fifth and Forbes redevelopment plan.

The Cork Factory's new market would find itself amid a long-established mix of food retailers and wholesalers, including Wholey's Market, **Pennsylvania Macaroni Co.** and Benkovitz Seafood.

"It will be wonderful for people to walk out their door and have more food shopping choices. Any project would love to have that as part of their site plan," said Patty Burk, vice president of housing and economic development for the Pittsburgh Downtown Partnership.



File photo by Joe Wejck

With a grocery and Italian restaurant committed, the Cork Factory is still hoping to land a bakery, wine shop and boutique restaurant.

[View Larger](#)

Burk's group and others have been working for some time to land such a market close to Downtown.

"A grocery store is an icon of the neighborhood," she said. "That's why it's been so important for us to focus on a grocery store."

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PITTSBURGH
BUSINESSTIMES

Friday, August 25, 2006

Plans for Strip District involve residential neighborhood look

Pittsburgh Business Times - by Tim Schooley

A new residential day is beginning to grow out of the Strip District and its long colorful history as a place where wholesalers, food purveyors and nightclubs have thrived.

Property owners and officials are working to develop a new consensus of how to help the Strip District transform into a fully realized residential neighborhood beyond its traditional roots as a warehouse district.

"Right now, the Strip is going in a direction that is residential," said Becky Rodgers, executive director of **Neighbors in the Strip**, a community development nonprofit organization. "With the Cork Factory, we're going to double, if not triple, our current population."

Currently, Chicago-based **McCaffery Interests Inc.** is redeveloping the former Armstrong Cork factory building into 297 riverfront apartments, a project seen by many as a watershed event that will lead to other residential projects.

A few months ago, New Rochelle, N.Y.-based **Rugby Realty Co.** Inc. bought two centrally located warehouses next to Benkovitz Seafood and is planning a mixed-use project with first-floor retail.

At the same time, Squirrel Hill-based The **Buncher Co.** has been consulting with Neighbors in the Strip and the city's **Urban Redevelopment Authority** on how best to develop a key riverfront parcel of 12 to 15 acres behind the URA's Pennsylvania Railroad Fruit Auction building.

Buncher, a Strip District property owner, is also developing a hotel in the District across Smallman Street from the Senator John Heinz Pittsburgh Regional History Center.

"They're thinking a combination of residential and mixed use, but nothing is definite at this time," Rodgers said of Buncher, a firm which typically talks very little to the media. "They're looking to see what is the best use of that property for the neighborhood and for them financially."

Currently, Neighbors in the Strip is considering whether it should pursue a more formal master plan for the neighborhood, something it has never done.

In the last year, the city's MAP Pittsburgh project has seen much of the neighborhood rezoned to an urban industrial designation, Rodgers said. The new zoning broadens the range of acceptable uses in the neighborhood in a way that may make a master plan more necessary than in the past, she said.

Perhaps the closest the Strip District has come to having a full master plan conducted was a student

design competition sponsored by the **Urban Land Institute** in 2004. The winner, a plan put together by students from Arizona State University, suggested much of the Strip be oriented for residents and mixed-use development.

Rodgers said the membership of NITS is undecided whether to pursue a master plan or establish some basic design guidelines and principles to help preserve the neighborhood's historic character.

Jeff Funovits, a principal with **Burt Hill**, the firm which put together a plan for the Strip a few months ago and is working on other tasks in the neighborhood, believes the timing might be right for Strip District master plan.

"There are a few major land owners in the Strip District," he said. "Each one of those landowners is looking at moving forward in very individual directions."

After convening with the neighborhood's major stakeholders, Aaron Stauber, president of Rugby Realty, one of the newest property owners in the Strip, sees a high level of common ground in how to move the neighborhood forward.

"Everybody agrees that there is tremendous potential for this area and that the Strip District is not currently being used to its highest and best use," Stauber said.

Rodgers wasn't sure how much value there would be for Buncher in turning a large portion of its key riverfront parcel into a public park.

A master planning process would entail input from all the neighborhood's property owners and stakeholders for a fully realized strategy with community backing.

"What the next step would be is get together in a more formal way and say maybe we should put together more of a joint master plan," Stauber said.

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Pittsburgh Business Times - May 29, 2006

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PITTSBURGH
BUSINESSTIMES

Friday May 26 2006

Rugby Realty planning condos, retail in Strip

Pittsburgh Business Times - by Tim Schooley

If a door of new development opportunity is swinging open in the Strip District, then Aaron Stauber and his company may be buying the hinge.

President of New Rochelle, N.Y.-based **Rugby Realty Co. Inc.**, Stauber confirmed that his company has an agreement to buy the **Ayoob-Acme Banana Co.** property, a 58,000-square-foot parcel next to Benkovitz Seafood at 21st and Smallman streets.

The property sits at a pivot point between a \$50 million apartment complex project and a five-block span of property owned by the city's **Urban Redevelopment Authority** that soon could be turned into a public market.

Currently, the parcel is occupied by two small refrigerated warehouses, one of which is leased on a month-to-month basis to produce concern **Tom Ayoob Inc.**

Stauber expects to tear down the buildings. He is exploring the possibility of building a mixed-use development that would include retail and condominium units.

"It's the highest and best use of the site," he said.

Stauber wouldn't divulge what his company is paying for the property. According to county records, it's valued at \$1.2 million. He expects to close on the sale in the next 75 days.

The seller is an entity called **SEP Real Estate I LLC**, which bought the buildings in February as part of a larger acquisition that included the Benkovitz facilities. R.J. McSorley, a principal of SEP, which is now a majority owner of Benkovitz as well, said the company doesn't need the property and wants to focus on its core business.

"We're in the fish business. We are not in the real estate business," he said. "Rugby, Aaron Stauber and Larry Walsh (a senior vice president with Rugby) have a very good reputation. I know that I can trust them."

Going to market

For years, the Strip District has been in a stalemate, Stauber said, as property owners waited for their neighbors to make improvements before invested themselves.

He sees that changing.

The property he is acquiring sits across the street from the landmark St. Stanislaw Church and neighbors the five-block-long Pennsylvania Railroad Fruit Auction Building. The Fruit Auction building, which still

serves as a produce terminal, is owned by the Urban Redevelopment Authority and is under consideration as the site of a new 25,000-square-foot public market that advocates hope will be a major shopping draw.

The public market house is still in the development phase, as Neighbors in the Strip, a community development company, pursues a feasibility study.

On the other side of the building and just past Benkovitz, Chicago-based **McCaffery Interests Inc.** is redeveloping the former Armstrong Cork Factory into 297 riverfront apartments. That \$50 million jolt of new investment includes a parking structure designed to include more than 40,000 square feet of new street-level retail.

New mixed-use, old neighborhood

After years of Rugby acquiring a portfolio of mature office buildings mostly within Downtown, Stauber is hoping the Strip District property will become the company's first ground-up development.

He said the project is still in the planning stages and estimated it will range in size from seven to 18 stories and cost anywhere from \$15 million to \$25 million.

Stauber expects to form his plans in conjunction with NITS and the URA. Stauber is a supporter of NITS' public market plan.

"I think the public market would be phenomenal," he said. "If they do that, then the project is a no-brainer," he added, further noting that if the market doesn't happen, his project will need more consideration.

NITS executive director Becky Rodgers didn't have specific information about Stauber's proposal but said she believes a new project that includes residential units could complement a new market. She also said the two 1930s-era warehouses are considered points of historic interest in the neighborhood but have been underused.

Gregg Perelman, a principal of Shadyside-based **Walnut Capital Partners**, said he isn't sure how much need there is for more new residential development in the Strip. He suspects it will take time for the Cork Factory and even the Heinz Lofts, just across the 16th Street Bridge on the North Side, to absorb demand for housing.

Yet, Walnut Capital redeveloped a nearby warehouse at 1400 Smallman St. into an entertainment property that now hosts Lidia's Pittsburgh and Sports Rock Cafe. Overall, Perelman is hopeful for new development nearby.

"It's great for the area," he said. "New life and new development help everybody."

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VERIFICATION

I, Russell A. Peterson, Chief Executive Officer of Allegheny Valley Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on April 16, 2009.



Russell A. Peterson

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

LEGAL ARGUMENT

A. AVRR acquired a permanent railroad easement between the northeast side of 16th Street and the center line of 21st Street under the terms of the 1995 deed of conveyance from Consolidated Rail Corporation as authorized by the Interstate Commerce Commission.

An easement is an incorporeal right of one party to use the land of another for some purpose or purposes. Although an easement does not involve title to or an estate in the land itself, it is nevertheless a property right or interest in the land. Simply stated, an easement is a privilege of the owner of one tenement to enjoy the tenement of another. The owner who enjoys the privilege to use another's land is said to possess the dominant tenement, while the owner burdened with the privilege is said to possess the servient tenement. The owner of the servient estate retains all rights to the property, except as limited by the easement, and may use the land burdened by the easement as long as the use does not interfere with the easement holder's rights.

An easement may be created in different ways. Depending upon the circumstances, an easement may be created by express grant, by implication or necessity, or by prescription. An easement created by express grant depends on the intent of the parties as drawn from the language of the deed, the circumstances existing at the time of execution, and the object and purpose to be accomplished by the easement.

In 1983, Conrail conveyed a 3.21 acre parcel 1541.56 feet long and approximately 90 feet wide between the northeast side of 16th Street and the southwest side of 21st Street in the Pittsburgh Strip District to Buncher and explicitly reserved for itself and its successors and assigns a permanent rail easement as set forth on Page 2 of the 1983 deed. The 1983 deed contains a reference to a surveyed plan prepared by Liadis Engineers which describes by metes and bounds the parcel conveyed to Buncher. A copy of that Plan, Exhibit E of Mr. Peterson's Verified Statement, indicates that the easement reserved by Conrail encompassed a 90 foot wide right of way extending from the southwest side of 21st Street, 1541.56 feet to the northeastern side of 16th Street on which four parallel railroad tracks were located. The northern most track was the mainline of Conrail's Valley Industrial Track and the three southern tracks were rail sidings from the main line serving the Pittsburgh Produce Terminal.

In 1995, Conrail conveyed the permanent rail easement over the Buncher parcel to AVRR as part of the Valley Industrial Track. The 1995 deed to AVRR, as corrected, specifically references and restates the permanent rail easement set forth in the 1983 deed to Buncher. The language of the deed states that the easement was a "permanent" right and easement to continue to operate over and maintain the Valley Industrial Track and to access the track for railroad purposes. The easement also precludes any action by Buncher to construct any improvements over the Valley Industrial Track within 18 feet of the track center line or to work or occupy a strip of land 12 feet in width on either side of the Valley Industrial Track from a track center line or to construct any at grade crossing over the track, thereby preserving a sixty foot wide standard railroad right of way clear space for the Valley Industrial Track. The parties further indicated their intent to create a permanent rail easement to permit renewed rail service with the following provision at the bottom of Page 2 and the top of Page 3 of the 1983 deed:

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(1) that the said Grantee shall not have or assert to have any claim or demand whatsoever for compensation for damages, whether said damages be direct or consequential, to the land hereinbefore described or to any buildings or improvements now or hereafter erected thereon, or the contents thereof, which may be caused by the operation, maintenance, repair or renewal of Grantor's railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and the said Grantee hereby expressly releases the said Grantor from liability for any such damages; (Emphasis Added)

In this provision, Buncher agreed that it would not seek future compensation for damages which might be caused by the operation, maintenance, repair or renewal of Grantor's railroad. Thus in its 1982 deed, Buncher explicitly acknowledged that the parcel it acquired from Conrail between 16th and 21st Street was subject to having rail service renewed over it, consistent with Conrail's continuing common carrier obligation to reinstitute rail service upon reasonable request.

The easement language agreed to by Buncher and reserved by Conrail in 1983 created a permanent right to occupy and use the 90 foot by 1541.56 foot railroad right of way comprising the western end of the Valley Industrial Track. Moreover, there is no language in the 1983 deed which makes the permanent rail easement conditional or subject to reversion or extinction¹. The fact that the permanent rail easement rights between 21st and 16th Street were reserved for Conrail and its successors and assigns further indicates that these rights were intended by the parties to be perpetual so long as the Valley Industrial Track was owned and used for current or future common carrier railroad purposes.

¹ On March 20, 1987, Conrail conveyed additional excess property to Buncher along the Allegheny Branch between 38th and 43rd Streets (Counsel Exhibit A). Conrail reserved an exclusive easement for railroad track and appurtenances and the right to provide rail service to McConway Torley until the track ceased to be used to serve that shipper and was removed by Conrail at which point the easement was to be extinguished. This deed indicates that when Conrail and Buncher intended to extinguish easement rights, they did so by the express terms of the easement.

B. Conrail and AVRR retained the permanent rail easement in order to carry out their railroad common carrier obligations.

Conrail could not have conveyed the 3.21 acre parcel to Buncher without retaining a permanent rail easement between 16th and 21st Street because without such an easement, Conrail would have been required to first obtain ICC abandonment authorization to terminate its statutory common carrier rail service obligations before selling any portion of the railroad right of way to Buncher. By reserving the permanent rail easement, Conrail retained sufficient interest and control over the line to permit it to carry out its common carrier railroad service obligations. It was therefore able to convey the 3.21 acre parcel to Buncher without prior ICC abandonment or acquisition authorization. Cf. New Jersey Transit Corp. – Acquisition Exemption – Certain Assets of Consolidated Rail Corporation, STB Finance Docket No. 33786 (February 11, 2000) 4 STB 512, 2000 WL 175282; Consolidated Rail Corporation – Petition for Declaratory Order – C&P Doc. STB Finance Docket 33296, December 10, 1996, 1996 WL 414556; Roaring Fork Railroad Holding Authority – Abandonment Exemption – in Garfield, Fogle and Pitkin Counties, CO, STB Docket No. AB-547X, slip opinion at 3 (May 21, 1999) (The reservation of sufficient right of way width to allow for future rail service negates any intent to abandon).

Since Conrail specifically reserved a 90 foot right-of-way to allow for future rail service², it also is clear that the 1983 conveyance to Buncher did not evidence any intent on the part of Conrail to abandon the Valley Industrial Track between 16th and 21st Streets. It is well settled that the mere sale of property underlying the right-of-way does not compel the conclusion that a railroad has abandoned its line. Rather, the Board has long held that “it is consistent with the common carrier obligation of a railroad... to sell underlying assets of the rail line while retaining an easement that is sufficient for carrying out rail operations.” Georgia Great S. Div. S.C. Cent. R.R. – Abandonment & Discontinuance Exemption – Between Albany & Dawson, in Terrell, Lee & Dougherty Counties, GA, STB Docket No. AB-389 (Sub No. 1X) (STB served Apr. 16, 1999) at 6, citing Maine, DOT-Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835, 837 (1991) (railroad’s transfer of underlying real property and track to State while retaining sufficient rights to access, maintain, operate, and renew the line in no way impairs the railroad’s ability to meet its common carrier obligation). Central Kansas Railway LLC – Abandonment Exemption – In

² Railroads have wide rights-of-way for good reasons and 90 to 100-foot rights-of-way are common. See e.g., Union Pac. R.R. Co. – Abandonment Exemption – in Dallas Cty., IA, STB Dkt. No. AB-33 (Sub-No. 213X), 2004 WL 1955412, at *1 (served Sept. 3, 2004) (abandonment proceeding where “[t]he line is generally 100 feet in width”); Union Pac. R.R. Co. – Abandonment Exemption – in Weld Cty., CO, STB Dkt. No. AB-33 (Sub-No. 216X), 2004 WL 1803881, at *1 (served Aug. 13, 2004) (abandonment proceeding where “[t]he width of the right-of-way *** varies from 100 to 200 feet”); Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in Crow Wing Cty., MN, STB Dkt. No. AB-6 (Sub-No. 421X), 2004 WL 1803880, at *1 (served Aug. 13, 2004) (abandonment proceeding where “the width of the right-of-way is 100 feet”)

Even if a railroad operates only one track in the center of a 90-foot right-of-way, it may need substantial room to maintain that track, to repair equipment, to store materials, to build access roads, to load and unload freight and/or passengers, to minimize property damage and personal injury from derailments, to act as a buffer against trespassers and noise, and to maintain sight lines for safe operation. It may also at some point in time need the full width of a right-of-way to build side tracks, to add additional main line tracks, to build switching and service tracks, and to add crew facilities, maintenance sheds, stations, parking facilities, passenger platforms, and other rail-related projects – all of which fall within the definition of “transportation” in 49 U.S.C. §10102(9).

Thus numerous cases have held that rail carriers are entitled to a presumption that their entire right-of-way is necessary for safe and effective transportation. See e.g., Midland Valley R.R. Co. v. Sutter, 28 F.2d 163, 167-68 (8th Cir. 1928); N. Pacific R.R. Co. v. Smith, 171, U.S. 260, 275-76 (1898); New Mexico v. U.S. Trust Co., 172 U.S. 171, 184 (1898). See also Michigan S. R.R. Co. v. City of Kendallville, 251 F.3d 1152, 1154-55 (7th Cir. 2001) (no distinction for federal preemption purposes between municipal efforts to regulate outer portions of railroad right-of-way and central portion of that right-of-way), City of Lincoln – Petition for Declaratory Order, 2004 WL 1802302

Marion and McPherson Counties, KS, STB Docket No. AB-406(Sub No. 6X) (December 8, 1999)

Under the 1983 deed to Buncher, Conrail retained a permanent and perpetual right to provide common carrier rail service over the Valley Industrial Track between 16th and 21st Streets. In 1995, Conrail conveyed those rights to AVRR in accordance with authorization received from the Interstate Commerce Commission in Finance Docket 32783, Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation (November 7, 1995). The permanent rail easement retained by Conrail in 1983 was created by an express reservation agreed to by Buncher. The intent of the parties is clearly and unambiguously set forth in the provisions of the 1983 deed. Moreover, retention of the permanent rail easement allowed Conrail to continue to hold itself out to provide common carrier railroad service to the Pittsburgh Produce Terminal as well as any new industrial facilities or warehouses that might be constructed between 16th and 21st Street on the property acquired for development purposes by Buncher which owns and manages numerous industrial and warehouse buildings in Western Pennsylvania. Thus, under the 1995 deed from Conrail to AVRR, AVRR, as Conrail's successor in interest, succeeded to all of Conrail's rights in the permanent rail easement and incurred a common carrier obligation with respect to the entire Valley Industrial Track including the railroad easement from 21st Street to 16th Street.

C. The permanent rail easement acquired by AVRR from Conrail in 1995 for the provision of common carrier railroad services is an easement held for public use and continues to be subject to the exclusive regulatory jurisdiction of the Surface Transportation Board until AVRR consummates an abandonment authorization obtained from the Board.

Railroad rights of way are acquired by railroads through grants of fee simple or conditional fee title, quit claim deeds, easements, or condemnation. Notwithstanding the means of acquisition or the quality of the railroad's title to its right of way, all such interests owned or utilized by railroads in the provision of common carrier railroad service are subject to the federal regulatory jurisdiction of the Surface Transportation Board. See 49 U.S.C. §§10101(5) and (6), 10501, 10502(b), 10901 and 11101. Under Pennsylvania and federal law, right of way easements held by common carrier railroads are impressed with a public interest and cannot be extinguished or abandoned by a railroad through mere nonuser or by the railroad's failure to maintain the easement. Thompson v. Maryland and Pennsylvania R.R. Preservation Soc., 417 Pa.S. 216, 612 A.2d 450 (1992) Before such an easement can revert or be extinguished, the common carrier railroad rights of way over which interstate railroad services are offered, must first be abandoned by the using railroad in accordance with 49 U.S.C. §10903 and the regulations issued by Surface Transportation Board governing rail abandonment proceedings. 49 C.F.R. §1152. Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 321-22 (1981); Phillips Co. v. Denver and Rio Grande Western Railroad, (97 F3d 1375 (10th Cir. 1996) cert. denied 521 U.S. 1104 (1997); Phillips Company – Petition for Declaratory Order, STB Finance Docket No. 32518, (Feb. 25, 1997) 1997 WL 78013. Neither Conrail nor AVRR have ever sought abandonment authorization from the ICC or the STB for the Valley Industrial Track between 21st Street and 16th Street. Nor did either railroad make application to the Pennsylvania Public Utility Commission for authority to abolish the at grade crossing of its tracks through 21st Street as required by 66 Pa. C.S.A. §2702(a).

As noted previously, AVRR acquired the permanent rail easement between 16th and 21st Streets as part of its purchase of the Valley Industrial Track from Conrail for the purpose of

providing continued common carrier rail service over that line pursuant to authority obtained from the Interstate Commerce Commission under 49 U.S.C. §10901. In the Notice of Exemption submitted to the Interstate Commerce Commission by AVRR, and in the Exemption Order issued by the ICC, AVRR obtained federal exemption authority to acquire and operate 22.6 miles of rail line owned by Conrail between Pittsburgh and Arnold in Allegheny and Westmoreland Counties, PA including “(1) the Valley Industrial Track – (a) between M.P. 0.3 and M.P. 4.7 ...” As set forth in the 1995 deed of conveyance from Conrail to AVRR at Map Sheet 1 of 27, (Exhibit B3) M.P. 0.3 is located on the northeastern side of 16th Street and the STB Exemption Notice thereby encompassed and authorized AVRR’s acquisition and operation of the permanent rail easement between 16th and 21st Street, (M.P. 0.3 to M.P. 0.6) as the western most end of the Valley Industrial Track.

In Finance Docket No. 32783, AVRR acquired the Valley Industrial Track as a common carrier rail line from Conrail. The acquisition of a nonabandoned rail line, and the common carrier obligation that goes with it, require Board approval under 49 U.S.C. §10901, even if the acquiring entity is a noncarrier. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980) AVRR was a new carrier and the Valley Industrial Track constituted its entire line of railroad to be used in common carrier freight operations. The acquisition of any rail line that becomes the entire line of a new common carrier railroad is subject to STB jurisdiction because, notwithstanding the use made of the tracks by the prior owner, the newly acquired tracks comprised AVRR’s entire line of railroad on which it offers through rail freight service. Effingham R.R. Co. – Petition for Declaratory Order, 2 STB 606 (1977), reconsideration denied, STB Docket No. 41986 (STB served September 18, 1998), aff’d. United Transportation Union v. STB, 183 F.3d 606 (7th Cir. 1999).

With AVRR's acquisition of the Valley Industrial Track, AVRR adopted Conrail's stations and published common carrier railroad tariffs for stations in the Pittsburgh Strip District. Allegheny Valley Company Railroad Tariff AVR 8100 (Exhibit G1) specifically adopts the station list and conditions contained in the National Open and Prepay Station List 6000 tariff. (Exhibit G2) Item 2020 of AVR 8100 lists the following stations within the Pittsburgh Industrial Switching Limits: Pittsburgh 43rd Street, Pittsburgh 34th Street, Pittsburgh Junction, and the Pittsburgh Produce Terminal (AVR Freight Station Accounting Code 3210 in Zip Code 15228, SPLC 218523). The Pittsburgh Produce Terminal (formally the location of the Pennsylvania Railroad Fruit Auction and Sales Building) (Exhibit F3) is located on the north side of Smallman Street in the Strip District and extends from 21st Street to 16th Street. (See Exhibit F2) This food produce warehouse building is adjacent to the AVRR line segment between 16th and 21st Streets and was served by the industrial side track that extended along the south boundary of the Valley Industrial Track right of way. Thus, in its common carrier tariff publications, AVRR holds itself out to the public to provide common carrier railroad freight service to potential shippers at warehouse facilities located in the immediate vicinity of the 16th to 21st Streets line segment³. While this line segment is only three tenths of a mile in length, it is the western end of the Valley Industrial Track which AVRR acquired as its main line for continued rail operation.

Acquiring the Valley Industrial Track enabled AVRR to extend its operations into territories formally served by Conrail but which constituted new markets and stations for AVRR. As a result of AVRR's acquisition, AVRR stations once local to Conrail can now obtain rail service to and from other rail carriers with which AVRR connects. AVRR's acquisition of the

³ At present, AVRR serves three customers in the Pittsburgh Produce Terminal from its team track just west of 21st Street. (Peterson Verified Statement at p. 4). Were AVRR's Pittsburgh Produce Terminal business to increase beyond the capacity of the present team track just east of 21st Street, AVRR could extend its track to 16th Street and conduct expanded team track operations between 21st and 16th Streets within its permanent rail easement.

Valley Industrial Track offered enhanced rail transportation services to and from the Pittsburgh Strip District. Moreover, the Valley Industrial Track including the line segment between 16th and 21st Street is essential for the through movement of traffic from shipper to consignee were a customer to locate on or request service from AVRR between 16th and 21st Streets. Accordingly, AVRR's Valley Industrial Track including the permanent rail easement between 16th and 21st Street, continues to be subject to the jurisdiction of the Surface Transportation Board. Riverview Trenton Railroad Company – Petition for an Exemption from 49 U.S.C. §10901 to Acquire and Operate Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (Service Date May 15, 2003).

D. There has been no de facto abandonment of the permanent rail easement segment of the Valley Industrial Track because of facts of record and testimony of Mr. Peterson establish that the line segment from 21st Street to 16th Street comprising the permanent rail easement has not been permanently disconnected from the interstate rail system.

As indicated on Exhibit F4, the tracks between 16th and 21st Streets were removed or paved over before the line was acquired by AVRR. Nonetheless, a rail line is not subject to *de facto* abandonment where the rail line is still connected to the interstate rail system and has not been permanently severed from the system. Yakima Interurban Lines Association – Abandonment Exemption – In Yakima County, WA, STB Docket No. AB-600 (Sub No. 1X) October 27, 2006. The issue of what constitutes sufficient severance to constitute a *de facto* abandonment has been addressed by the STB in several decisions. In Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat and Goldendale, WA, STB Docket No. AB-6 (Sub No. 335X) and Burlington Northern Railroad Company – Abandonment

Exemption – in Klickitat County, WA, STB Docket No. AB-6 (Sub No. 346X) decided June 7, 2005 the Board found that

both BNSF and the trail owners have provided evidence that BNSF specifically retains a connection between the trail and its main line so as to allow for the potential reactivation of active rail service on this rail banked right of way, and that KTC has obtained an easement connecting the trail to the national rail system, which encompasses rights for rail reactivation in the event active rail service on this line is restored. Thus, we cannot find on the record before us that the trail has been severed from the interstate rail network.

In Norfolk and Western Railway Company – Abandonment Exemption – Between Cocomo and Rochester in Howard, Miami and Fulton Counties, Indiana, STB Docket No. AB-290 (Sub No. 168X) (STB served May 4, 2005) the Board noted explicitly that all that was required to preserve the connection between a line which was claimed to be *de facto* abandoned and the national rail transportation system was for a former railroad right of way to connect to an active section of the national rail transportation network. (Emphasis added)

In Atchinson, Topeka and Sante Fe Railway Co. – Abandonment Exemption – In Lion County, KS, STB Docket No. AB52 (Sub No. 71X) (June 11, 1991), the ICC addressed the issue of track removal.

... where a carrier decides to extinguish or reduce service and/or remove track, the carrier's common carrier obligation remains and the line's status continues to be that of a line of railroad subject to the Commission's abandonment jurisdiction. These decisions also stand for the proposition that a carrier may not escape our abandonment jurisdiction simply by terminating service or removing track. For example, in the recent case of Colorado Springs, (Finance Docket No. 31271, City of Colorado Springs and Metex Metropolitan District – Petition for Declaratory Order – Abandonment Determination, (served March 31, 1989)) we declared that a rail carrier could not unilaterally terminate its common carrier obligations simply by claiming that circumstances had made the line an exempt spur. As we noted in Colorado Springs, the carrier removes track on its own initiative at the risk of having to restore the track to meet its common carrier obligation should service be requested. Removal of track alone does not extinguish a carrier's common carrier obligation over a right of way nor does it terminate our jurisdiction over the right of way. In Bushboom, the Seventh Circuit has ruled, that if a carrier were found to have improperly abandoned its line or if abandonment authority to do so was improperly given, the carrier could be required to

restore the line to the status quo ante. Thus, the fact that track here has been removed by Sante Fe is not dispositive of the track's status.

Because this track was clearly part of a through route rail line at one time, we find that it cannot be converted into an exempt spur and the Commission divested of jurisdiction over it solely through the railroad's unilateral decision to change its use of the track segment over time. To find that this is a spur would be inconsistent with our well established policy that where a carrier decides to reduce or cease service and/or remove track, the carrier's common carrier obligation remains until appropriate abandonment authority is obtained. As Sante Fe states, there are many branch lines on which railroads only store cars, or where segments of track have been removed for safety or other reasons. Yet it has never been held that these acts are sufficient to deprive the Commission of jurisdiction over a request to abandon the line. Moreover, there are many instances where a railroad has sought to abandon only a part of the line, with no expectation that this action would change the status of the track which is not abandoned. Based on well established case in this area, we find that this track remains a railroad line until the Commission authorizes its abandonment. (Emphasis added.)

The Board's decision and discussion of these issues in Docket No. AB-52(Sub No. 71X) effectively disposes of any contention that the Valley Industrial Track between 21st and 16th Streets is not subject STB jurisdiction or that covering the rail on the permanent rail easement between 16th and 21st Streets severed the line from the national rail network and thereby deprived the Board of its regulatory jurisdiction.

The Board has also conclusively determined that the paving over of tracks on a dormant piece of rail line does not constitute severance of a rail line from the national rail transportation system. In AB-290 (Sub No. 168X), the Board observed: "petitioners claimed that a portion of the (track) segment has been paved over. Norfolk Southern Railroad acknowledges that there may have been some paving over, because the line segment is currently dormant, but it argues that this would not preclude the use of this segment to link the southern segment to the interstate rail network at some point in the future." The Board found no severance of the Norfolk Southern line in that proceeding. See also Honey Creek Railroad, Inc. – Petition for Declaratory Order, F.D. No. 34869 (June 4, 2008).

Although the railroad tracks between M.P. 0.3 (16th Street) and M.P. 0.6 (21st Street), in the absence of active shippers, were removed or paved over to facilitate parking on adjacent property, the 0.3 mile segment has not been permanently severed from the interstate railroad system. As indicated by the 1995 deed, Map Sheet 1 of 27, AVRR retains ownership of a 90 foot wide railroad right of way commencing at the center line of 21st Street which directly abuts with the permanent rail easement extending from the centerline of 21st Street to the northeast side of 16th Street⁴. Thus, under the STB decisions noted above, there has been no severance of the permanent rail easement from the rest of the Valley Industrial Track owned and operated by AVRR. Additionally, given the Board's decisions regarding the removal and/or paving over of dormant sections of rail line, the removal or paving over of track between 21st Street and 16th Street in no way extinguishes or terminates AVRR's continuing right to use its permanent easement for common carrier railroad purposes.

E. AVRR has affirmatively asserted its intent to use the easement from 16th Street to the center line of 21st Street for railroad purposes.

As set forth in the Verified Statement of Russell A. Peterson, AVRR has demonstrated its intent to consider arrangements under which it would participate in the reestablishment of passenger rail service between New Kensington and downtown Pittsburgh which is currently being studied by Westmoreland and Allegheny Counties. The need for such passenger service is particularly acute in light of the plans announced by the Pennsylvania Department of Transportation to reconstruct and widen over a ten year period State Route 28 which is the main arterial four lane limited access highway which extends along the western (northern) shore of the Allegheny River and provides the primary highway access for residents of the Allegheny Valley

⁴ Note that the parcel sold to Buncher in 1983 is bounded by the southwestern side of 21st Street whereas the rail easement conveyed by Conrail extends from the northeast side of 16th Street the entire length of the Buncher parcel and continues for an additional 30 feet to the center line of 21st Street.

into downtown Pittsburgh. Passenger service plans currently under consideration will require the reactivation of the rail line from 21st Street to 16th Street and the construction of platforms to be used by passengers commuting to and from downtown Pittsburgh. In addition, with the reconstruction of the rail line between 21st and 16th Streets, AVRR will be able to improve rail freight service it currently provides to its Strip District shippers by using the new track for additional tail and head room and team track capacity when the line is not in use for passenger service, thereby avoiding the blockage of ten cross streets between 23rd and 33rd Streets.

The retention by Conrail and AVRR of a permanent rail easement between 21st and 16th Street has proved to be a prudent and far sighted decision which may have significant public benefits as plans for passenger service on the Valley Industrial Track continue to progress. However, those plans are currently subject to uncertainty created by Buncher's claims that AVRR's permanent rail easement between 16th and 21st Streets no longer exists. Furthermore, north of 21st Street the Valley Industrial Track extends along and/or through Railroad Street for ten blocks and there is no other space along the Valley Industrial Track in the Strip District which would provide an appropriate location and adequate space for passenger platforms. Space for such passenger facilities only exist along the 90 foot wide permanent rail easement between 21st and 16th Streets.

As indicated by the studies undertaken by Southwestern Pennsylvania Planning Commission and Westmoreland and Allegheny Counties, public convenience and necessity is served by the continued existence and preservation of the AVRR railroad right of way between 16th and 21st Streets for future passenger and rail freight service. AVRR holds itself out in its tariffs to the public to provide common carrier rail service between 16th and 21st Streets in the Strip District. AVRR has expressed its intent to continue its rail operations in the Strip District

and is cooperating with the proposals currently being studied by local governments to institute rail passenger service on the Valley Industrial Track. See Chelsea Property Owners – Abandonment – Portion of Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, New York, 8 I.C.C. 2d 773, 778-779 (1992), aff’d sub. nom., Consolidated Rail Corporation v. ICC, 29 F.3d 706 (D.C. Cir 1994) (Where there was potential for future traffic, ICC afforded weight to carrier’s intention to continue operating.) These facts establish a demonstrated need and potential for rail service requiring the use of AVRR’s right of way between 16th and 21st Streets. The public interest therefore supports an order from the Board confirming AVRR’s permanent rail easement between 16th and 21st Streets so that it can reactivate its line for rail freight and passenger service.

The light industrial and residential/commercial redevelopment plans being advanced by Buncher and public agencies will not be frustrated by confirmation of the railroad right of way between 16th and 21st Streets. The existence of this right of way and its reactivation for rail service must, at this point in time, be integrated into the redevelopment plans for the Pittsburgh Strip District. Indeed, the presence of commuter rail passenger platforms in the vicinity of 16th Street, could mean a steady flow of commuters who will patronize the restaurants, commercial establishments and other businesses which will locate in the Strip District redevelopment area. The availability of convenient rail commuter facilities will enhance employment prospects and provide excellent commuter access between the Strip District and the communities of the Allegheny River valley. These coordinated public benefits strongly weigh in favor of confirming AVRR’s continued right to provide rail service between 16th and 21st Street over the easement

rights agreed to by Buncher. Thus, the Board's confirmation of AVRR's rights will have a major beneficial impact on and foster positive community development in the Strip District⁵.

In light of the foregoing facts and legal argument, it is evident that AVRR has a legitimate and bonafide prospect for providing reactivated rail service which requires utilization of its permanent rail easement between 16th and 21st Streets. It was for just such an opportunity that first Conrail and then AVRR acquired and retained permanent rail easement rights between 16th and 21st Streets and those rights should be confirmed by the Board.

CONCLUSION

WHEREFORE, AVRR respectfully requests that the Board issue a Declaratory Order confirming (1) AVRR's full and unrestricted right to continue to provide common carrier rail service between 16th and 21st Street in the Pittsburgh Strip District over the permanent rail easement retained by Conrail in 1983 and conveyed by Conrail to AVRR in 1995 and (2) that AVRR may proceed to reconstruct railroad tracks over said easement along with other rail facilities including passenger platforms without further opposition from adjacent landowners or governmental entities.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:



Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

⁵ Local government agencies can not unilaterally prevent a railroad from reactivating and operating over a rail line that the Board has not authorized for abandonment. North San Diego Transit Development Board – Petition for Declaratory Order, STB Finance Docket 34111 (August 21, 2002); City of Encinitas v. N.S.D. Cty. Transit Dev. Bd., Case No. 01-CV-1734J (AJB) Jan. 14, 2002. State or local governments attempts to acquire through eminent domain nonabandoned railroad property held for railroad use are federally preempted. 49 U.S.C. §10502(b). City of Lincoln – Petition for Declaratory Order, STB Finance Docket 34425 (August 12, 2004), 2004 WL1802302.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
850.00

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
930.00

Handwritten: 12/27/07
12/28/07

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
950.00

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
800.00

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
443.08

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX MAR2007
PA 12.521
900.00

Handwritten: 12/28/07

part, and in part along a sidetrack adjacent thereto at 38th Street, a distance of 895 feet, more or less, to a point on the westerly projection of the southerly right of way line of 38th Street, said point also being distant 18 feet northwesterly, at right angles, from the centerline of the existing sidetrack aforementioned; thence by a line along the projection of the southerly right of way line of 38th Street in a northwesterly direction, a distance of 35 feet, more or less, to a point on the line of lands now or formerly of the Baltimore and Ohio Railroad; thence in a northwesterly direction, by a line following the courses and distances of the lands of the said Baltimore and Ohio Railroad, a distance of 1,010 feet, more or less; to a point at the line of lands now or formerly of the City of Pittsburgh, said point being on the apparent westerly projection of the southerly right of way line of 40th Street; thence in a southeasterly direction along the line of lands now or formerly of the City of Pittsburgh, being the apparent westerly projection of the southerly line of 40th Street, a distance of 145 feet, more or less, to a point; thence continuing by a line following the courses and distances of the land now or formerly of the City of Pittsburgh in a northeasterly direction, a distance of 470 feet, more or less, to a point at the line of lands now or formerly of the Leebro Management Company; thence in a northeasterly direction, by a line following the courses and distances of the said Leebro Management Company, a distance of 460 feet, more or less, to a point on the southerly right of way line of 43rd Street; thence along the southerly right of way line of 43rd Street in a southeasterly direction, a distance of 25 feet, more or less, to a point distant 12 feet, at right angles, from the centerline of the main line aforementioned, said point being the place of Beginning.

CONTAINING 2.60 acres.

PARCEL NO. 2

ALL THAT CERTAIN piece or parcel of land, situate in the 9th Ward, City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being more particularly bounded and described in accordance with a Plat of Survey prepared by Steve A. Liadis, Registered Land Surveyor No. SU-511A of Liadis Engineering and Surveying, Inc., 3100 Banksville Road, Pittsburgh, PA, Drawing No. 5799-D, dated April 21, 1986, as follows:

BEGINNING at a point on the northeasterly line of 43rd Street at a point distant 21 feet, northwestwardly from the centerline of the passing track of railroad of Consolidated Rail Corporation (formerly Penn Central Transportation Company) known as the Allegheny Branch and identified as Line Code 2229 in the records of the United States Railway Association, as located on April 21, 1986; said point of beginning also being distant North $46^{\circ} 38' 59''$ West, a distance of 517.19 feet from the northeasterly corner of the right of way lines of Willow Street (50 feet wide), and 4th Street (50 feet wide); thence from said point of beginning along the northeasterly line of said 43rd Street, North $46^{\circ} 38' 59''$ West, a distance of 192.54 feet to a point, said point being distant South $46^{\circ} 38' 59''$ East, a distance of 50 feet from the point of intersection of the prolongation southwestwardly of the southeasterly face of the existing brick and frame Conrail Building and the northeasterly line of 43rd Street; thence through property of Consolidated Rail Corporation, North $43^{\circ} 21' 01''$ East, a distance of 187.02 feet to a point distant 18 feet westwardly from the centerline of the existing railroad siding servicing the now or formerly McConway & Forley Corporation; thence along the same, parallel with and distant 18 feet westwardly from said centerline of siding, North $01^{\circ} 38' 29''$ West, a distance of 245.06 feet to a

point of curve; thence along the same, northeasterly by a curve to the right, concentric with and distant 18 feet by a radial measurement westerly from said centerline of siding, an arc distance of 231.53 feet to a point, said curve having a radius of 950.90 feet and a chord which bears North 05° 20' 27" East, a distance of 230.96 feet; thence along the same, North 57° 07' 09" West, a distance of 55.32 feet, more or less, to a point on the United States Harbor Line; thence along the U.S. Harbor Line, North 27° 13' East, a distance of 644.40 feet, more or less, to a point on the line of lands now or formerly McConway & Torley Corporation; thence along the lands of said McConway & Torley Corporation, South 57° 56' 10" East, a distance of 99.64 feet, more or less, to a point; thence by the same, North 53° 30' 30" East, a distance of 101.16 feet to a point of curve; thence by the same by the arc of a curve to the right, having a radius of 502.00 feet, an arc distance of 293.00 feet to a point, said curve having a chord bearing of North 70° 13' 45" East and a chord distance of 288.88 feet; thence by the same, North 88° 57' 00" East, a distance of 24.58 feet to a point of curve; thence continuing by the same by the arc of a curve to the left, having a radius of 522.50 feet, an arc distance of 375.23 feet to a point, said curve having a chord bearing of North 69° 07' 06" East and a chord distance of 320.00 feet, said point being on the southwesterly right of way line of 48th Street (40 feet wide); thence along said right of way line, South 46° 34' 58" East, a distance of 48.55 feet to a point, said point being on the southwesterly right of way line of 48th Street distant northwestwardly 21 feet, from the centerline of the passing track of Consolidated Rail Corporation as presently located, said point also being distant North 46° 34' 58" West, a distance of 587.49 feet from the Northwestly corner of the right of way lines of 48th Street and Hatfield Street (50 feet wide); thence through property of Consolidated Rail Corporation, parallel with, concentric with and distant 21 feet northwestwardly from the centerline of said passing track, the following seven (7) courses and distances: (1) South 40° 02' 18" West, a distance of 164.67 feet to a point of curve; (2) by the arc of a curve to the left having a radius of 1,881.00 feet, an arc distance of 91.40 feet, said curve having a chord bearing of South 38° 38' 44" West, a chord distance of 91.39 feet; (3) South 37° 15' 13" West, a distance of 198.89 feet to a point of curve; (4) by the arc of a curve to the left having a radius of 1,621.00 feet, an arc distance of 86.54 feet, said curve having a chord bearing of South 36° 04' 40" West, a chord distance of 86.54 feet; (5) South 34° 54' 06" West, a distance of 105.68 feet to a point of curve; (6) by the arc of a curve to the left having a radius of 2,221.00 feet, an arc distance of 93.83 feet, said curve having a chord bearing of South 33° 41' 29" West, a chord distance of 93.82 feet; and (7) South 32° 24' 52" West, a distance of 1,140.24 feet to a point on the right of way line of 43rd Street at the place of Beginning.

BEING designated as part of Block 80-N, Lot 16, in the Recorder's Office of Allegheny County.

CONTAINING 605,812 square feet, more or less (13.903 acres, more or less).

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173 dated March 30, 1978 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Volume 6001 at page 391, granted and conveyed the aforesaid property unto Consolidated Rail Corporation.

EXCEPTING and RESERVING thereout and therefrom an exclusive easement and right for all right, title and interest in and to

the railroad track and its appurtenances located along the northwesterly side of Parcel No. 2 hereof from the easterly right of way line of 43rd Street to Course North 57° 36' 10" West, as indicated on the aforesaid Plan of Survey dated April 21, 1988; together with the right and easement to use, operate, maintain, repair, replace, renew and remove the aforesaid railroad track and its appurtenances and the right to operate its locomotives, engines, trains, cars and railroad equipment over said track and the right and easement of unimpeded and immediate ingress and egress to and from the aforesaid parcel of land for the aforesaid purposes for so long as said track is used to serve McConway Torley, but not any successors or assigns of McConway Torley; at such time as the track ceases to be used to serve McConway Torley, the track will be removed by Grantor, and this right and easement shall be extinguished.

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 and creeks 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 herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(1) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the land hereinbefore described and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the land hereinbefore 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 thereof.

(3) Grantor shall not be liable or obligated to provide lateral support for the surface of the land hereinbefore described, and Grantee waives all right to ask for, demand, recover or receive any relief or compensation for any damage that may be caused by the sliding, shifting, or movement of any part of the slope or embankment supporting the surface of the land hereinbefore described. Grantee shall use due diligence to prevent the drainage or seepage of water, or the precipitation of snow or ice, or anything whatever, from the land hereinbefore described onto, under or upon the remaining lands of Grantor.

(4) 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 hereinbefore described, from and after the date of delivery of this deed.

(5) 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 hereinbefore 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.

(6) No right or means of ingress, egress or passageway to or from the land hereinbefore described is hereby granted, expressly or by implication, and Grantor shall not be liable or obliged to provide or obtain for Grantee such means of ingress, egress or passageway.

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

(8) Said Grantee shall and will, at its sole cost and expense, at the time of construction of any type of access roadways or streets on the property between 40th Street and 43rd Street immediately construct eighteen (18) inch curbing along Grantor's property between 40th Street and 43rd Street; such construction and installation work shall be done subject to the prior written approval and in a manner reasonably satisfactory to Grantor's Chief Engineer-Design and Construction, or his designee.

(9) Grantee will make no change to the present contour of the land hereinbefore described which will result in any increase in the amount of surface water being discharged onto the remaining land of the Grantor, its successors and assigns; and that Grantee hereby agrees that it will in any future development of Grantee's property lying adjacent to the property of the Grantor, that Grantee will grade and slope Grantee's property in such a manner so as to direct any surface or run off water away from property and right-of-way of Grantor; and, further, Grantee, at its sole cost and expense, in the construction of any roadways or streets in the aforesaid described parcels of land will construct such roadways and streets in such a manner to provide facilities for the drainage or water runoff from said roadways or streets so that water does not drain on the adjoining right of way and property of Grantor.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, EXCEPTING and RESERVING and UNDER and SUBJECT as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT as aforesaid.

NOTICE - "THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT

UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

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 in all cases the successors and assigns of the respective parties.

2 CR5 986.12

BOND
 TWP 29
 SEC. DIST. Pittsburgh
 CITY
AM'T \$ 494.306
REC'D. 16 24 71
 CASH
 CHECK BY MICHAEL A. DELLA VECCHIA, County Agent

9 88
CITY OF PITTSBURGH
DEED TRANSFER TAX
STAMP
No. 186
494.306
7414.59
CITY TREAS.

IN WITNESS WHEREOF, the said Grantor has caused this inden-

ture to be signed in its name and behalf by its Assistant Vice President-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED
in the presence of us:

James W. Hartman

CONSOLIDATED RAIL CORPORATION
By:

John F. Jaeger
John F. Jaeger, Assistant
Vice President-Real Estate JH

Attest:

Edith G. Kealey
Edith G. Kealey, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) SS

On this 27th day of March, A. D. 1987, before me, the subscriber, Joseph L. Keeley, the undersigned officer, personally appeared John F. Jaeger, who acknowledged himself to be the Assistant Vice President-Real Estate of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such Assistant Vice President-Real Estate, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Assistant Vice President-Real Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joseph L. Keeley
Notary Public

JOSEPH L. KEELEY
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires February 3, 1990

I HEREBY CERTIFY that the correct address of the within-named Grantee is:

5600 Forward Avenue
Pittsburgh, PA 15217
on behalf of Grantee.



THIS INSTRUMENT PREPARED BY:
James W. Hartman
Consolidated Rail Corporation
Ninth Floor, 1528 Walnut Street
Philadelphia, Pennsylvania 19102

smah

DEED
REGISTRY
MAR 30 '87
COUNTY OF
ALLEGHENY, PA.

Land situate in Pittsburgh,
Allegheny County, Pennsylvania

MAIL TO:
John H. White, Esq.
P.O. Box 2009
Pittsburgh, PA 15230

Prep:
Apvd:
CHKd:

Desep:
Compd:

J 361931

CONSOLIDATED RAIL CORPORATION

THE BUNCHER COMPANY

-10-

John H. White
361931

DEED

00000

Mar 26 1987 36095

Full Pl

(10)

RECORDED OF DEEDS
ALLEGHENY COUNTY, PA.
MAR 26 3 02 PM '87

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) S.S.

RECORDED IN THE OFFICE FOR THE RECORDING OF
DEEDS, ETC. IN AND FOR THE SAID COUNTY, ON THE 26th
DAY OF MARCH A.D. 19 87 IN DEED.....
BOOK VOL. 7517.....PAGE 528 WITNESS MY HAND AND
SEAL OF SAID OFFICE, THE DAY AND YEAR AFORESAID.

Michael J. Felix RECORDER



FOR
FIRST
AMENDMENT
RECORDED
9-22-87
SEE
MORTGAGE BOOK
VOL. 9475 PAGE 306

ASSIGNMENT OF LEASES AND RENTS

Made as of the 25th day of March, 1987, by WEST HILLS PARTNERS (hereinafter the "Assignor") a Pennsylvania general partnership to THE UNION NATIONAL BANK OF PITTSBURGH ("Assignee"), a national banking association;

FOR VALUE RECEIVED, and intending to be legally bound, Assignor hereby grants, sells, assigns, transfers, sets over and delivers unto Assignee all right, title and interest of Assignor in and to all Leases (as hereinafter defined) covering all or any part of those certain premises located in Moon Township, Allegheny County, as more particularly described in Exhibit A attached hereto and made a part hereof, and/or covering all or any part of the improvements now or hereafter located thereon (hereinafter collectively called the "Premises"), together with all the Rents (hereinafter defined) due and to become due to Assignor, and together with all rights of Assignor to amend, modify, terminate, extend and/or renew the Leases and/or to waive the Rents and/or the terms of the Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, for the purpose of securing the performance and discharge by Assignor of the Obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise requires:

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of April, 2009 served a copy of the Petition of

Declaratory Order upon the following by first class United States Mail, postage prepaid:

Office of Mayor Luke Ravenstahl
City of Pittsburgh
City County Building, Fifth Floor
414 Grant Street
Pittsburgh, PA 15219

Michael H. Wojick, County Solicitor
Allegheny County Law Dept.
Fort Pitt Commons
445 Fort Pitt Blvd, Ste. 300
Pittsburgh, PA 15219

George Spector, City Solicitor
Law Department
313 City County Bldg.
414 Grant Street
Pittsburgh, PA

Westmoreland County Board of
Commissioners
Main Office
2 North Main Street, Ste. 101
Greensburg, PA 15601

Rob Stephany, Executive Director
The Urban Redevelopment Authority of
Pittsburgh
200 Ross Street
Pittsburgh, PA 15219-2016

Mr. Chuck DiPietro, Transportation Dir.
Southwestern Pennsylvania Commission
425 Sixth Avenue, Ste. 2500
Pittsburgh, PA 15219-1852

Sharon O'Neill, Asst. General Counsel
The Urban Redevelopment Authority of
Pittsburgh
200 Ross Street
Pittsburgh, PA 15219-2016

Larry J. Larese, Executive Dir.
Westmoreland County IDC
40 N PA Avenue, Fifth Floor, Ste 520
Greensburg, PA 15601

Mr. Dan Onorato
Office of the County Executive
Courthouse
436 Grant Street, Rm. 101
Pittsburgh, PA 15219

Mr. Tom Balestrieri, President
The Buncher Company
Penn Liberty Plaza I
1300 Penn Avenue, Ste. 300
Pittsburgh, PA 15222-4211



Richard R. Wilson, Esq.
Attorney for Allegheny Valley
Railroad Company