

225467

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

Finance Docket No. 35239

AUG 04 2009

Part of
Public Record

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

SUPPLEMENTAL VERIFIED STATEMENT OF JOSEPH M. JACKOVIC

My name is Joseph M. Jackovic and I am the Executive Vice President and General Counsel of The Buncher Company (“Buncher”). My business address is Penn Liberty Plaza I, 1300 Penn Avenue, Suite 300, Pittsburgh, PA 15222-4211. I am authorized to make this Supplemental Verified Statement in support of the Motion to File Supplemental Evidence on behalf of Buncher.

As part of Exhibit A attached hereto, I submit a detailed map prepared by Consolidated Rail Corporation’s (“Conrail”) Real Estate Department which shows the exact location of the track that formerly existed on the Buncher property at issue (referred to on the map as a portion of the “Valley Industrial Track” and alternatively referred to by AVRR in its pleadings as Track No. 8)¹ in relation to numerous other Conrail tracks in the Strip District as of February 1983. The map was provided to Buncher as an attachment to its March 8, 1983 Agreement with Conrail for the purchase of the rectangular parcel of land between 16th and 21st Streets (the “Purchase Agreement” which is attached hereto as Exhibit A). The map contains an updated

¹ For convenience, we will also refer to this track herein as Track No. 8 unless otherwise noted because the track is depicted on the Exhibit A map attached hereto immediately north of Track No. 6 and Track No. 7 (which Buncher acquired ownership of from Conrail in 1983).

cross-section from the larger V.21.3/ST-1 Pennsylvania Railroad map that is Exhibit CC to AVRR's Reply.

The attached map, when viewed in conjunction with AVRR's Exhibit CC, shows that Track No. 8 constituted the southern edge of Produce Yard 1-B, traversed the Buncher parcel in a straight-line manner and was surrounded on both sides by concrete paving to facilitate loading and unloading cargo between rail to truck. Track No. 8 also was several tracks removed from a separate set of tracks which extended from the Railroad Street area to the immediate north of the Fruit Auction building. Beyond the boundaries of the Buncher parcel at issue between 16th and 21st Streets, Track No. 8 (i) crossed 21st Street to the east as the second of four tracks (south to north) running parallel to Railroad Street, and (ii) crossed 16th Street to the west as one of several tracks extending under the 16th Street Bridge into the Team Yard for Produce – A and then a subsequent connection with a series of Freight Storage Yard tracks leading to a convergence at the Ft. Wayne Bridge.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

I, Joseph M. Jackovic, Executive Vice President and General Counsel, The Buncher Company, swear or affirm and verify that the statements made in the foregoing Verified Statement are true and accurate to the best of my knowledge, information and belief.

8/4/09
DATE

Joseph M. Jackovic
SIGNATURE

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Melanie C. Zimmerman, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires June 13, 2010

Subscribed and sworn to before me this 4th day of August 2009.

Melanie C. Zimmerman
NOTARY PUBLIC

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**ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

SUPPLEMENTAL VERIFIED STATEMENT OF JOSEPH M. JACKOVIC

EXHIBIT A

March 8, 1983 Agreement between Consolidated Rail Corporation and The Buncher Company

THIS AGREEMENT, made this

8th

day of

March

A.D. 1983 by

CONSOLIDATED RAIL CORPORATION, a corporation of the Commonwealth of Pennsylvania, with its Real Estate system office at Room 901-1528 Walnut Street, Philadelphia, Pennsylvania, 19102, hereinafter called "Conrail," which has agreed through Kenneth F. Williams, its Manager-Real Estate, whose office is located at the Jacob Engineering Building, 100 Fleet Street, Pittsburgh, Pennsylvania, 15220, and subject to the approval of Conrail's Senior Management and Board of Directors to sell, quitclaim and release to **THE BUNCHER COMPANY** (hereinafter called Purchaser) a corporation of the Commonwealth of Pennsylvania with an office at 5600 Forward Avenue, Pittsburgh, Pennsylvania 15217 all of Conrail's right, title and interest in and to ALL THAT CERTAIN parcel of land situate between 16th and 21st Streets in the City of Pittsburgh, Allegheny County, Pennsylvania; a more complete and comprehensive description to be incorporated in the deed; (hereinafter called premises) containing 3.58 acres more or less, as shown in hatched outline on the plan dated February 16, 1983 attached hereto and made a part hereof, with Track No's 6 and 7 situate thereon, for **SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00)** of which 10% being **SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00)** has this day been paid on account, the receipt whereof is hereby acknowledged, and the balance of **FIFTY FOUR THOUSAND AND NO/100 DOLLARS (\$54,000.00)** is to be paid in cash or certified check upon the delivery of a deed quitclaiming Conrail's right, title and interest in and to the premises generally hereinbefore described to said Purchaser, and said deed shall provide as follows:

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

"that Purchaser (as Grantee) shall not have or assert 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 Conrail's (as Grantor) railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and Purchaser (as Grantee) hereby expressly releases Conrail (as Grantor) from liability for any such damages;

"that in the event the tracks of the railroad of Conrail (as 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, Purchaser (as 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.

"that should a claim adverse to the title given to Purchaser (as Grantee) be asserted and/or proved, no recourse shall be had against Conrail (as Grantor);

"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)."

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES HERETO:

Conrail will reserve the right and easement to operate and maintain the so-called Valley Industrial Track traversing said premises with nonexclusive access thereto for said purposes and Purchaser 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 grade crossing(s) of said track.

Real estate transfer fees in connection with this sale shall be split equally between Grantor and Purchaser.

Purchaser agrees that within five (5) days after receipt of a copy of this agreement signed by Conrail, it will order a survey and property description of the premises generally hereinbefore described by a licensed or registered surveyor and/or a survey that may be required by the County Recorder and a preliminary title report or such other evidence of title as Conrail may desire. Purchaser agrees that within sixty (60) days after so ordering, it will furnish a reproducible tracing of such plan of survey and property description, as well as a copy of the preliminary title report or other evidence of title. Purchaser further agrees to initiate within five (5) days after completion of survey a request for any sub-division approval required by law or ordinance, or any zoning change required hereunder. Purchaser shall assume the expense of furnishing and performing the foregoing with the understanding that if either Conrail's Senior Management or Board of Directors does not approve and authorize this transaction, Conrail shall not be responsible for any reimbursement whatsoever to Purchaser. In the event Purchaser elects not to order a preliminary title

report or other evidence of title, Purchaser agrees to accept said deed and it shall be deemed that Purchaser has waived any and all objections to title. If, however, such title report shows that Purchaser will not be obtaining good, marketable and insurable (at regular rates) fee simple title to the premises from Conrail, free and clear of all liens, Purchaser may by written notice to Conrail cancel this agreement whereupon the total (\$6,000.00) sum paid on account will be refunded without interest to Purchaser who hereby agrees to accept same and this agreement shall be cancelled and annulled and neither party hereto shall have any claim whatever against the other by reason hereof.

It is distinctly understood between the parties hereto that if Purchaser shall:

- (a) fail or neglect to furnish the survey data and title report or notify Conrail of Purchaser's election not to furnish same within the respective periods of time hereinabove specified, or
- (b) fail or neglect to approve a draft of deed within fifteen (15) days after receipt thereof, or
- (c) fail or neglect to complete the transaction by paying the balance of the purchase price and accepting delivery of the title documents within a period of ten (10) days after Purchaser has been advised in writing that such documents are ready for delivery; or
- (d) fail or neglect to complete or perform any other duty or undertaking agreed to herein,

then, in any such event, Conrail, at its option, may declare this agreement terminated and void, and Conrail shall be released from any obligation to convey the premises and shall retain the sum paid herewith as liquidated damages and not as a penalty.

The delivery of the title documents and payment therefor shall take place at a time and place to be mutually agreed upon, but within ten (10) days after receipt of notice from Grantor that deed is ready for delivery and rentals, real estate taxes, special assessments, water and sewer rents, and any other taxes and charges shall be apportioned between Conrail and Purchaser as of the date of transfer of title or settlement.

Conrail shall not be liable for any real estate broker's commission, agent's commission, finder's fees, ~~real estate transfer taxes~~ or recording fees, survey or title company fees in connection with this sale, and Purchaser shall indemnify Conrail against any and all claims for such commission or fees assessed to this transaction.

It is understood between the parties hereto that Conrail has not, as of this date, received notice from any local or other public body or pursuant to the authority or direction of any public body, with respect to work proposed and affecting the premises, and having to do with the installation of curbing, sidewalk paving, cartway or street paving or other street improvements,

or the installations of sewers, water or lighting facilities; and, therefore, in the event any such notice respecting the performances and the completion of work required is hereafter received by Conrail or Purchaser or notice of confirmed special assessment is issued to Conrail or Purchaser in connection therewith, it is agreed that Purchaser shall be responsible for compliance with such notice or notices, and shall pay for the work required or the assessment levied therefor.

It is understood between the parties hereto that the selling price is fixed without regard to area and is not to be abated or changed should a survey prove an area different from the area above mentioned.

In the event either Conrail's Senior Management or Board of Directors fails to approve and authorize this transaction as aforesaid, or in the event the conveyance on the terms herein provided would be contrary to any law, regulation or order of governmental authority, then the sum paid on account will be refunded without interest to Purchaser who hereby agrees to accept same, whereupon this agreement shall be cancelled and annulled and neither party hereto shall have any claim whatever against the other by reason hereof.

It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this agreement which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation made by the other which is not embodied in this agreement. The Purchaser has inspected the land, buildings and other improvements, if any, included in this transaction and is thoroughly acquainted with their condition.

It is further understood that any conveyance by Conrail shall be made subject to existing tenancy or tenancies, if any; to easements or agreement, if any; to covenants and restrictions of record, if any; 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 property to be conveyed, together with the right to maintain, repair, renew, replace, use and remove same; to all laws and ordinances, including but not limited to zoning or subdivision; to any state of facts that an accurate survey or an inspection of the property would show. Provided, however, that the same shall be set forth with particularity in the deed to be delivered pursuant to the terms hereof after completion of title examination and upon submission to Conrail by Purchaser of a preliminary title report or opinion of counsel setting forth the exact record status of the same; and provided further that if any of the same shall constitute a substantial interference or serious hazard to Purchaser's contemplated use of said premises, all monies paid on account of the purchase price shall at Purchaser's option be returned to Purchaser and this agreement shall be cancelled and annulled and neither party hereto shall have any claim whatever against the other by reason hereof.

This agreement may not be changed or terminated orally and any changes must be in writing and agreed to between Conrail and Purchaser. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties; provided, however, that no assignment hereof shall be made by Purchaser without the prior written consent of Conrail.

ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, IT IS DISTINCTLY UNDERSTOOD AND AGREED THAT THIS INSTRUMENT DOES NOT CONSTITUTE A BINDING AGREEMENT OR IMPOSE ANY OBLIGATION ON CONRAIL OR ITS SUCCESSORS OR ASSIGNS OR ITS AGENTS UNLESS AND UNTIL CONRAIL'S ASSISTANT VICE PRESIDENT-REAL ESTATE OR HIS DULY AUTHORIZED REPRESENTATIVE, AS AUTHORIZED BY CONRAIL'S SYSTEM REAL ESTATE OFFICE, GIVES WRITTEN NOTIFICATION TO PURCHASER TO THE EFFECT THAT THIS TRANSACTION HAS RECEIVED THE NECESSARY APPROVAL AND AUTHORIZATION OF CONRAIL'S SENIOR MANAGEMENT AND/OR BOARD OF DIRECTORS AND THAT CONRAIL IS LEGALLY BOUND.

Signed & Sealed in the Presence of:

[Signature]
[Signature]

R. S. Tozak

Purchaser:
THE BUNCHER COMPANY

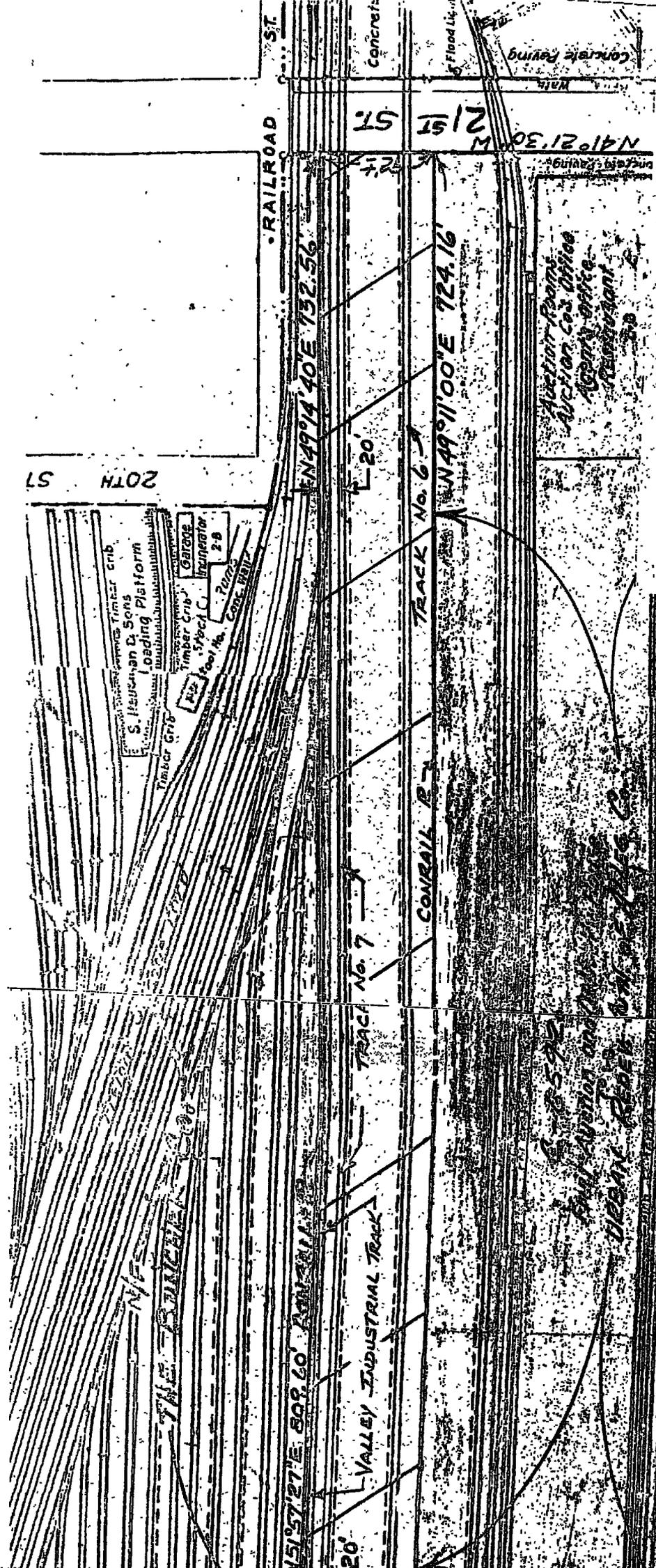
[Signature]

Attest:

[Signature] (SEAL)
Secretary

CONSOLIDATED RAIL CORPORATION
By:

[Signature]
Manager-Real Estate



CONSOLIDATED RAIL CORPORATION
 Real Estate Dept, Pittsburgh, Pa.



AREA OF PROPOSED
 SALE = 156,000 ± SQ. FT.
 = 3.58 Ac.

SMALLMAN (PIKE)



City of Pittsburgh, Allegheny Co., Pa.
 Map No. 500-7028-3-1 (V21.31)
 Line Code 2229 M.P. 0.2