

227407

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

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Pittsburgh, PA 15219  
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851 Twelfth Street  
Oakmont, PA 15139

July 9, 2010

**ENTERED**  
**Office of Proceedings**

JUL 9 2010

**Part of**  
**Public Record**

Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Re: Allegheny Valley Railroad Company – Petition for Declaratory Order –  
William Fiore; Finance Docket No. 35388

Dear Sir:

Enclosed for filing in connection with the above captioned proceeding, please find a Petition for Declaratory Order filed on behalf of Allegheny Valley Railroad Company in connection with a Complaint filed by William Fiore in the Common Pleas Court of Allegheny County, Pennsylvania regarding the operation and use of Petitioner's use of railroad right of way for common carrier railroad purposes. AVRR is filing this Petition for Declaratory Order pursuant to an Order of Referral entered by the Honorable Ronald W. Felino on June 21, 2010. Enclosed please find a check in the amount of \$1,400.00 issued by the Petitioner in payment of the filing fee associated with this Petition.

Copies of this Petition have been served on all parties of record. Should you have any questions in connection with this matter, please do not hesitate to contact the undersigned. Please date stamp and return to the undersigned a copy of this letter as evidence of filing of this Petition.

Very truly yours,

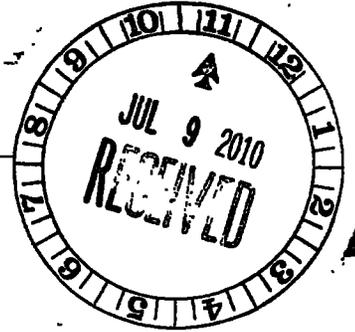
RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

RRW/bab  
Enclosures  
xc: All Parties of Record

Before the  
SURFACE TRANSPORTATION BOARD



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FINANCE DOCKET NO. 35388

ALLEGHENY VALLEY RAILROAD COMPANY – PETITION FOR  
DECLARATORY ORDER – WILLIAM FIORE

---

EXPEDITED HANDLING REQUESTED

**FILED**

JUL 9 - 2010

**SURFACE  
TRANSPORTATION BOARD**

RICHARD R. WILSON, ESQ.  
Attorney for Allegheny Valley Railroad  
Company  
Pa. I.D. #25661  
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**FEE RECEIVED**

JUL 9 - 2010

**SURFACE  
TRANSPORTATION BOARD**

Date: July 9, 2010

**ENTERED  
Office of Proceedings**

JUL 9 2010

**Part of  
Public Record**

Before the  
SURFACE TRANSPORTATION BOARD



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FINANCE DOCKET NO. 35388

ALLEGHENY VALLEY RAILROAD COMPANY – PETITION FOR  
DECLARATORY ORDER – WILLIAM FIORE

A. INTRODUCTION

On January 27, 2010, William Fiore filed a Complaint in the Common Pleas Court of Allegheny County, Pennsylvania against Allegheny Valley Railroad Company, Consolidated Rail Corporation, Peter D. Friday, Susan F. Dalton and Robert L. Wiseman alleging in Count I a cause of action against Allegheny Valley Railroad Company (“AVRR”) and Consolidated Rail Corporation (“CRC”) to quiet title and for declaratory judgment asserting possession and title to Lot 4B a portion of which encroaches on AVRR’s railroad right of way to within fifteen feet of AVRR’s mainline track in the Municipality of Penn Hills, Pennsylvania. Lot 4B was initially established on a 1984 municipal subdivision plan and Mr. Fiore claims title to the encroachment area based on the contention that the subdivision plan created a “consentable line” between Lot 4B and the AVRR right of way for over 21 years. This allegation under Pennsylvania law requires a factual determination that AVRR and its predecessors in title ceased use of the disputed property for common carrier railroad purposes and acceded to the subdivision boundary in the operation and use of its railroad right of way for over 21 years.

In Count II of the Complaint, Plaintiff asserted that AVRR made false claims of title to the portion of its railroad right of way acquired pursuant to 49 U.S.C. §10901 on which Lot 4B encroaches preventing Plaintiff’s use, enjoyment and marketability of his land. Count III alleged a count for injunctive relief to prevent AVRR from fencing its

property. Count IV asserted a claim in equity for inverse condemnation and *de facto* taking or alternatively for a Petition for Appointment of a Board of View. A copy of the Plaintiff's Complaint is attached as Exhibit A to this Petition.

On March 15, 2010, AVRR filed Preliminary Objections Raising Questions of Fact and asserting, inter alia, that it owns its right of way which includes the encroachment portion of Lot 4B in fee title as evidenced by a 1920 general warranty deed to its predecessor in title, the Pennsylvania Railroad Company, recorded in the Allegheny County Recorder of Deeds Office at Deed Book Vol. 2070, Page 173. AVRR also asserted in its Preliminary Objections that the railroad right of way property claimed by Mr. Fiore was acquired by AVRR incident to regulatory authorization 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) 1995 W.L. 681254 and that issues regarding AVRR's use of its operating right of way was subject to the exclusive jurisdiction of the Surface Transportation Board under 49 U.S.C. §10501(b).

Accordingly, AVRR moved to dismiss Counts I, II, III, and IV for lack of subject matter jurisdiction or alternatively, to refer these issues to the Surface Transportation Board for an advisory ruling from the Board on the preemptive effective of its exclusive jurisdiction as it pertains to the remedies sought by Plaintiff in the Common Pleas Court of Allegheny County, Pennsylvania. On June 21, 2010, the Honorable Ronald W. Felino entered an Order of Referral to the Surface Transportation Board, a copy of which is attached as Exhibit C herewith.

Accordingly, pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721, AVRR petitions the Surface Transportation Board to institute a Declaratory Order proceeding to terminate a controversy or remove uncertainty with respect to AVRR's possession and continued

right to use its operating railroad right of way which is subject to the encroachment of Plaintiff's Lot 4B. 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 4 of Title 49 U.S. Code with respect to regulation of rail transportation are exclusive and preempt all 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 railroad property acquired and operated under exemptions issued pursuant to 49 U.S.C. §10901. 49 U.S.C. §10501(b).

WHEREFORE, AVRR respectfully requests that the Board initiate a Declaratory Order proceeding and issue a Procedural Order affording AVRR and Mr. Fiore an opportunity to file pleadings under the Board's modified procedure so that the Board can provide the Common Pleas Court of Allegheny County, Pennsylvania with an advisory ruling on these jurisdictional issues.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

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

RICHARD R. WILSON, P.C.  
518 N. Center Street, Suite 1  
Ebensburg, PA 15931  
(814) 419-8152

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of July, 2010, a copy of the foregoing Petition for Declaratory Order was served upon the following via first class United States mail, postage prepaid:

Kathleen McConnell, Esq.  
John H. Prorok, Esq.  
Miello, Brungo & Miello, LLC  
1 Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235

Kathleen Jones Goldman, Esq.  
BUCHANAN, INGERSOL & ROONEY, PC.  
One Oxford Centre  
301 Grant Street, 20<sup>th</sup> Floor  
Pittsburgh, PA 15219-1410

Austin P. Henry, Esq.  
Russell P. Mills, Esq.  
Charles P. Jones, Esq.  
MILLS & HENRY  
200 Benedum Trees Bldg.  
223 Fourth Avenue  
Pittsburgh, PA 15222

  
Richard R. Wilson, Esq.

E-FILED

JAN 27 2016

DEPT. OF JUSTICE

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,

Plaintiff,

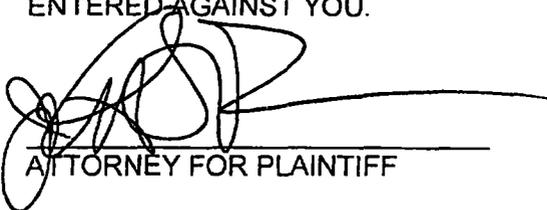
v.

ALLEGHENY VALLEY RAILROAD  
COMPANY, a Pennsylvania corporation,  
CONSOLIDATED RAIL  
CORPORATION, a Pennsylvania  
corporation, PETER D FRIDAY,  
SUSAN F. DALTON, and ROBERT L.  
WISEMAN,

Defendants

TO DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE  
A WRITTEN REPLY TO THE  
ENCLOSED COMPLAINT WITHIN  
TWENTY (20) DAYS FROM SERVICE  
HEREOF OR A JUDGEMENT MAY BE  
ENTERED AGAINST YOU.

  
ATTORNEY FOR PLAINTIFF

CIVIL DIVISION

NO. GD

10-1721

COMPLAINT

Filed on Behalf of:

Plaintiff, William Fiore

Counsel of Record for this Party:

JOHN H. PROROK, ESQUIRE  
PA I.D. #66910

LAWRENCE J. MAIELLO, ESQUIRE  
PA I.D. #53482

KATHLEEN C. McCONNELL, ESQUIRE  
PA I.D. #92294

MAIELLO, BRUNGO & MAIELLO, LLP  
Firm #515  
One Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235  
(412) 242-4400

191484,11543.2

Exhibit A

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WILLIAM FIORE,	)	
	)	
Plaintiff,	)	NO. GD
	)	
v.	)	
	)	
ALLEGHENY VALLEY RAILROAD	)	
COMPANY, a Pennsylvania corporation,	)	
CONSOLIDATED RAIL	)	
CORPORATION, a Pennsylvania	)	
corporation, PETER D. FRIDAY,	)	
SUSAN F. DALTON, and ROBERT L.	)	
WISEMAN,	)	
	)	
Defendants.	)	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**LAWYER REFERRAL SERVICE  
The Allegheny County Bar Association  
11<sup>th</sup> Floor Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: (412) 261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WILLIAM FIORE, )  
 )  
 Plaintiff, ) NO. GD  
 )  
 v. )  
 )  
 ALLEGHENY VALLEY RAILROAD )  
 COMPANY, a Pennsylvania corporation, )  
 CONSOLIDATED RAIL )  
 CORPORATION, a Pennsylvania )  
 corporation, PETER D. FRIDAY, )  
 SUSAN F. DALTON, and ROBERT L. )  
 WISEMAN, )  
 )  
 Defendants. )

**COMPLAINT**

AND NOW, comes the Plaintiff, William Fiore, by and through his counsel John H. Prorok, Esquire, Lawrence J. Maiello, Esquire, Kathleen C. McConnell, Esquire and Maiello, Brungo & Maiello, LLP and files the within Complaint averring as follows:

**PARTIES**

1. Plaintiff William Fiore is an individual, having an address of 1523 Marion Land, Oakmont, Allegheny County, Pennsylvania 15139.

2. Defendant Allegheny Valley Railroad Company ("AVRR") is a Pennsylvania corporation having a business address at 519 Cedar Way, Oakmont, Allegheny County, Pennsylvania 15139-2010.

3. Defendant Consolidated Rail Corporation ("Conrail") is a Pennsylvania corporation, having a business address at Two Commerce Square, 2001 Market Street, Philadelphia, Philadelphia County, Pennsylvania 19101-1419.

4. Upon information and belief Defendant Peter D. Friday is an individual having an address of 468 Beaver Road, Sewickley, Pennsylvania 15143.

5. Upon information and belief Defendant Susan F. Dalton is an individual having an address of 51 Litchfield Drive, Carlisle, Massachusetts 01741

6. Upon information and belief Defendant Robert L. Wiseman is an individual having a business address at Forbes Trail Development at 4642 Hatfield Street, Pittsburgh Pennsylvania 15201.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction and venue over the causes of action herein, as the property in question is located in the Municipality of Penn Hills, County of Allegheny, Commonwealth of Pennsylvania.

#### **SUMMARY OF RELATED LITIGATION**

8. The claims herein regard a dispute as to a fee simple title property line boundary which (i) if located outside the railroad right of way would render a dispute regarding the railroad right of way moot; and (ii) if located within the railroad right of way, would then give rise to a claim potentially under the jurisdiction of the Federal Surface Transportation Board for determination regarding disputes over the railroad right of way location. Plaintiff, if necessary, has or will file contemporaneously with this action a petition with the Federal Surface Transportation Board requesting a determination as to the railroad right of way location as it affects Plaintiff's real estate. In the event the railroad right of way determination gives rise to a de facto taking or claim of inverse condemnation, this Court will have jurisdiction over claims relating to the taking.

#### **AVERMENTS OF FACT COMMON TO CAUSES OF ACTION**

9. On August 5, 1997, Defendants Peter D. Friday, Susan F. Dalton and Robert L. Wiseman conveyed to Plaintiff by general warranty deed (recorded in Deed Book Volume 10015, Page 169, with the Allegheny County Department of Real Estate) a parcel of real estate described as being Lot 4-B ("Lot 4-B") in the First Revision to the USSCC Subdivision Plan, dated June 12, 1985, recorded in Plan Book Volume 138, Pages 19-20, Allegheny County Department of Real Estate ("First Revised USSCC

Plan"). A true and correct copy of the deed is attached hereto as Exhibit A (the "Fiore Deed"). A true and correct copy of the First Revised USSCC Plan is attached as Exhibit B.

10. The metes and bounds description for Lot 4-B, conveyed by the Fiore Deed, is as follows:

BEING all that certain lot or parcel of real estate situate in the Municipality of Penn Hills, County of Allegheny, Commonwealth of Pennsylvania being Lot No 4-B in the First Revision to USSCC Subdivision, recorded in the Allegheny County Department of Real Estate (the "Plan"), more particularly described as BEGINNING at an iron pin set in the Northern right of way of Allegheny River Boulevard at a point of intersection with the dividing line between the Municipality of Penn Hills and the Borough of Verona, running then along the dividing line between the Municipality of Penn Hills and Borough of Verona N 87° 37' 00" W 147.7 feet to an iron pin set; running thence along a curve to the right having an Arc of 272.59 feet, a radius of 3776.18 feet, a chord bearing of S 18° 02' 29" W to an iron pin set; thence running S 53° 34' 30" W 45.02 feet to a point in the Northern right of way of Allegheny River Boulevard, running thence along said right of way N 36° 25' 30" E 344 feet to the point and place of BEGINNING; containing approximately .6079 acres, as shown on the Plan, and the survey of Lot 4-B, entitled "As Built Locations Plan of Property Situate in Penn Hills Borough, All'y. Co., PA Made for Fiore Glass Co.", dated November 2, 1998, prepared by Tait Engineering.

11. A true and correct copy of the survey of Lot 4-B, entitled "As Built Locations Plan of Property Situate in Penn Hills Borough, All'y. Co., PA Made for Fiore Glass Co.", dated November 2, 1998, prepared by Tait Engineering, is attached hereto as Exhibit C [reduced copy] (the "Survey").

12. Plaintiff is in possession of Lot 4-B.

13. The western, southern and eastern parcel boundaries and area of Lot 4-B, conveyed to Plaintiff by the Fiore Deed, is consistently shown on the records of the Allegheny County Department of Real Estate in numerous recorded deeds since May 28, 1959, when American Steel Foundries conveyed real estate to Rospec Realty Company, Inc., by deed recorded in Deed Book Volume 3726, Page 715, Allegheny County Department of Real Estate. In addition to the First Revised USSCC Plan, attached as Exhibit B, the lot line and right of way are consistently shown on the

19. In or about October of 1998, Mr. Russell Peterson approached Mr. Fiore at the Lot 4-B site claiming that Plaintiff's business operations would encroach on the AVRR railroad right of way. The location or nature of the encroachment was not specified, apart from the de minimus encroachment of asphalt paving as shown on the Survey (Exhibit C), and concerns regarding the location of an Allegheny County Sewer Authority ("ALCOSAN") vault as is shown on the Survey.

20. In or about October of 1998 Mr. Russell Peterson wrote to representatives of the Municipality of Penn Hills to complain that Plaintiff's business operations at Lot 4-B would encroach on an ACLOSAN vault location purportedly located within the AVRR railroad right of way (a true and correct copy of letter dated October 7, 1998, from Russell Peterson as President of AVRR to Howard Davidson, Municipality of Penn Hills, is attached hereto as Exhibit I).

21. In or about October of 1998, Plaintiff, with the assistance of counsel, disputed the non-specific claims made by Mr. Peterson both to Mr. Peterson and to the Municipality of Penn Hills, based on the recorded First Revised USSCC Plan.

22. No further action was taken by Mr. Peterson, Defendant AVRR or any Defendant, nor was the location or nature of the encroachment or claim further specified by Defendant AVRR, and Plaintiff in good faith believed the matter to be settled consistent with the First Revised USSCC Plan and the Survey.

23. In March of 2008, Plaintiff and ALCOSAN resolved any issues or concerns regarding the ALCOSAN vault location by mutual and amicable agreement directly with ALCOSAN, and by recording an easement agreement from Plaintiff to ALCOSAN for the Lot 4-B property, recorded April, 2008 at Deed Book Volume 13585, Page 521, Allegheny County Department of Real Estate (a true and correct copy of the ALCOSAN easement is attached hereto as Exhibit J).

following subdivision plans of record (attached hereto as Exhibits D, E and F, respectively): USSCC Subdivision Plan dated September 11, 1984, recorded in Plan Book Volume 133, Pages 28 – 30 (Exhibit D); the "Verona Shopping Center Plan", dated June 13, 1990, recorded in Plan Book Volume 165, Pages 56-59 (Exhibit E); and the "Verona Shopping Center Revised" plan, dated January 20, 1994, recorded in Plan Book Volume 185, Pages 139-142 (Exhibit F). A true and correct copy of the Title Abstract and deed chain for Lot 4-B is attached hereto as Exhibit G (the "Abstract").

14. On October 27, 1995, Defendant Conrail conveyed to Defendant AVRR, by quitclaim and for \$1 present consideration, certain easement and railroad rights of way by instrument recorded in Deed Book Volume 9571, Page 204, Allegheny County Real Estate Department (the "Conrail Deed").

15. The Conrail Deed description relevant to Lot 4-B and the Fiore Deed is difficult to discern, as the location falls between the drawing pages at 232 and 233 of said recorded deed (copy of pages 232 and 233 of the Conrail Deed are attached as Exhibit H); however, this description appears to locate the Lot 4-B line, and the railroad right of way, consistent with the Fiore Deed, the First Revised USSCC Plan and the Survey.

16. Upon information and belief, Conrail retained reversionary rights in all of the title and interests conveyed by the Conrail Deed and is joined as a necessary defendant herein as its reversionary rights are potentially impacted by this action.

17. Upon information and belief, there exists an easement for a railroad right of way over the Lot 4-B, in the location and as shown on the First Revised USSCC Plan (Exhibit B), as referenced in the Fiore Deed (Exhibit A), and as shown on the Survey (Exhibit C).

18. Upon information and belief, Mr. Russell Peterson is an officer and/or director and/or majority shareholder in Defendant AVRR.

24. In 2009, Plaintiff elected to retire from his solely owned business, Fiore Glass and Mirror, which he operated at Lot 4-B for over 10 years, and to sell or lease Lot 4-B.

25. In August of 2009 Plaintiff entered into an agreement of sale for Lot 4-B for a price of \$350,000.

26. Shortly thereafter the buyer under the agreement of sale requested clarification that Defendant AVRR's unspecified claims of encroachment made to the Municipality of Penn Hills in 1998 were resolved.

27. Plaintiff's counsel then requested, through AVRR's counsel, that Defendant AVRR either confirm that there were no disputes or encroachments, or, if any, that they quantify such claims so that the sale could proceed.

28. Defendant AVRR failed to resolve or quantify its claims, and the buyer terminated the agreement of sale as a result of the cloud placed on title by Defendant AVRR, causing damages to Plaintiff in excess of \$350,000.

29. On September 2, 2009, after repeated requests, Defendant AVRR finally specified the nature of its claim, not as a railroad right of way location dispute or a dispute over the ALCOSAN vault location, but rather claiming fee simple title to a substantial portion of Lot 4-B.

30. As shown on the drawing provided with the September 2, 2009 letter, entitled "Plan Made for Allegheny Valley Railroad", dated September 1, 2009, prepared by Liadis Engineering & Surveying, Inc., the fee title claims of AVRR would materially and substantially restrict and condemn any use of Lot 4-B or the improvements thereon. A true and correct copy of letter and the Liadis drawing, from Richard Wilson, Esq. as counsel to AVRR addressed to undersigned as counsel for Plaintiff, is attached hereto as Exhibit K).

31. Plaintiff disputes Defendant AVRR's claim to title to a portion of Lot 4-B, and avers that the Lot 4-B lot boundaries are as shown on the Fiore Deed (Exhibit A)

and the First Revised USSCC Plan (Exhibit B), consistent with the deed records since 1956 and the Survey.

**COUNT I**

**CAUSE OF ACTION  
AGAINST AVRR and CONRAIL  
TO QUIET TITLE AND FOR DECLARATORY JUDGMENT  
Pa R.C.P. §§1061 - 1068**

32. Plaintiff incorporates and makes a part of this Count paragraphs 1 through 31 as though set forth herein in full.

33. Lot 4-B is located in Allegheny County, Pennsylvania.

34. Plaintiff is in possession of Lot 4-B and/or possession is disputed.

35. Plaintiff has fee simple title to Lot 4-B as described hereinabove.

36. Plaintiff, and his predecessors in title, have claimed Lot 4-B on his side of the property line shown in the USSCC Subdivision Plan as their own.

37. Plaintiff AVRR has claimed Lot 4-B on its side of the property line shown in the USSCC Subdivision Plan as its own.

38. A consentable line has existed as shown on subdivision plans and deeds of record for the disputed Lot 4-B parcel boundaries for over 21 years.

WHEREFORE, Plaintiffs respectfully requests that this Court:

A. Order that Defendants be barred from asserting any right, lien, title or interest in the land inconsistent with the claim of the Plaintiff;

B. Order that Lot 4-B parcel boundaries are as shown on the subdivision plans of record and the Survey;

C. Declare that title to Lot 4-B as shown on the subdivision plans of record and the Survey rests solely with Plaintiff; and/or

D. Such other relief as this Court deems just and proper.

**COUNT II**

**CAUSE OF ACTION AGAINST AVRR  
SLANDER OF TITLE**

39. Plaintiff incorporates and makes a part of this Count paragraphs 1 through 38 as though set forth herein in full.

40. Plaintiff has fee simple title to Lot 4-B as shown on the First Revised USSCC Plan (Exhibit B), subject only to the railroad right-of-way as shown on said plan and the Survey (Exhibit C).

41 Defendant AVRR has made false and abusive claims of title to a substantive portion of Lot 4-B, injurious to Plaintiff and preventing Plaintiff from the use, enjoyment and marketability of his land.

42. The claim of title made by Defendant AVRR is false and excessive.

43. Defendant AVRR's false claims are published, public and injurious.

44. The harm to Plaintiff as a result of Defendant AVRR's slander were and are reasonably foreseeable.

45. The injurious claims caused the termination of an agreement of sale for Lot 4-B, and have negatively affected Plaintiff's ability to use, sell or lease Lot 4-B.

46. Plaintiff has suffered pecuniary loss as a result of the slander in excess of \$350,000, together with attorney fees and costs.

47 Defendant AVRR has shown knowledge of the falsity of its slander, and/or reckless disregard for the truth.

48. Defendant AVRR acted with an intent to harm and harass Plaintiff, and with an intent to profit from the slander of title.

49. Defendant AVRR has abused its conditional privileges and rights as a quasi public utility.

WHEREFORE, Plaintiff prays that this Court award actual and punitive damages from Defendant AVRR to Plaintiff.

**COUNT III**

**CAUSE OF ACTION AGAINST AVRR and CONRAIL  
INJUNCTIVE RELIEF**

50. Plaintiff incorporates and makes a part of this Count paragraphs 1 through 49 as though set forth herein in full.

51. An actual, substantial and justiciable controversy exists between Plaintiff and Defendants AVRR and Conrail, in respect to which Plaintiff is entitled to an injunction.

52. Defendant AVRR has threatened to wrongfully deprive Plaintiff of the use and enjoyment of its property as follows:

- a. In or about September of 2009 Defendant AVRR threatened to construct a fence on Lot 4-B, which would restrict and impede use of or access to the property;
- b. In or about November of 2009 the Plaintiff and AVRR entered into a standstill agreement while attempting to resolve the dispute, which attempts were unsuccessful. The standstill agreement expired December 15, 2009;
- c. On January 4, 2010, Defendant AVRR advised of its intent to immediately construct a fence on Lot 4-B, which would restrict and impede use of or access to the property.

WHEREFORE, Plaintiffs prays that this Court permanently enjoin and restrain Defendants AVRR, Conrail and/or their successors and assigns from attempting to impede, restrict, burden or otherwise obstruct the free use or enjoyment of Lot 4-B except within the railroad right-of-way area as shown on the recorded subdivision maps and Survey unless such rights are properly obtained through proceedings of taking or eminent domain with just compensation to Plaintiff.

**COUNT IV**

**CAUSE OF ACTION AGAINST AVRR and CONRAIL  
IN EQUITY REGARDING INVERSE CONDEMNATION AND DE FACTO TAKING OR  
IN THE ALTERNATIVE PETITION FOR APPOINTMENT OF BOARD OF VIEW  
26 Pa.C.S. §502, et seq.**

53. Plaintiff incorporates and makes a part of this Count paragraphs 1 through 52 as though set forth herein in full, and pleads in the alternative as follows.

54. Defendant AVRR is clothed with the power of eminent domain as a railroad entity under 15 Pa C.S. § 1511.

55. Plaintiff has suffered a compensable injury by the taking of land by Defendant AVRR, and no declaration of taking therefore has been filed.

56. Plaintiff has been substantially deprived of the use or marketability of Lot 4-B as a result of the taking.

57. No compensation has been provided to Plaintiff as a result of the de fact taking of its land by Defendant AVRR.

58. The deprivation of the use of Lot 4-B is the direct and necessary consequence of the actions of Defendant AVRR.

WHEREFORE, Plaintiff prays in the alternative that (i) this Court in equity order that AVRR and Conrail commence proper proceedings to declare a taking such that Plaintiff may object and defend its rights in connection therewith in order to preserve title to its land; or (ii) this Court order that a Board of View be appointed and an award of just compensation for the de facto taking of Lot 4-B be awarded to Plaintiff.

**COUNT V**

**CAUSE OF ACTION AGAINST FRIDAY, DALTON AND WISEMAN  
DAMAGES FOR BREACH OF GENERAL WARRANTY OF TITLE**

59. Plaintiffs incorporate and make a part of this Count paragraphs 1 through 58 as though set forth herein in full, and pleads in the alternative as follows.

60. The Fiore Deed conveyed title to Lot 4-B, as described hereinabove, to Plaintiff with a general warranty and covenant that fee simple title to the Lot 4-B was being conveyed.

61. Defendants AVRR and/or Conrail have claimed title to a substantial portion of Lot 4-B, which title in Defendants AVRR and/or Conrail constitutes a constructive eviction and deprivation of Plaintiff's right or ability to use or occupancy of the land.

62. Defendants Friday, Dalton and Wiseman have breached the warranty and covenant of title set forth in the Fiore Deed.

63. Defendants Friday, Dalton and Wiseman did not disclose or advise Plaintiff of any claim, right or easement against title to Lot 4-B apart from the railroad right-of-way as shown on the recorded subdivision plans, and the Survey.

64. The breach of warranty of title has caused Plaintiff substantial and actual harm and damages, in excess of \$350,000, together with attorneys fees and costs.

WHEREFORE, Plaintiff prays that this Court award Plaintiff damages for Defendants' breach of the covenant and warranty of title, and such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED:

MAIELLO BRUNGO & MAIELLO, LLP



---

John H. Prorok, Esquire  
Lawrence J. Maiello, Esquire  
Kathleen C. McConnell, Esquire  
Attorneys for Plaintiff

**VERIFICATION**

I, William Fiore, verify that the statements and averments made in this **COMPLAINT** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 1-18-10

*William Fiore*  
William Fiore

✓ 365-K-348

DEED

MADE the 27<sup>th</sup> day of August, 1997.

BETWEEN

PETER D. FRIDAY and SUSAN F. DALTON, and ROBERT L. WISEMAN,  
Grantors

AND

WILLIAM FIORE, ("Grantee")

BLOCK & LOT NUMBER  
DEED REGISTRY

DATE 8-21-97

WITNESSETH, that Grantors, in consideration of SIXTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$62,500.00) to them now paid by Grantee do grant, bargain, sell and convey unto Grantee, his heirs and assigns:

ALL that certain lot or piece of ground situate in the Municipality of Penn Hills, County of Allegheny and Commonwealth of Pennsylvania being Lot No. 4-B in the First Revision to USSCC Subdivision, recorded in the Recorder's Office of Allegheny County in Plan Book Volume 138, pages 19 and 20.

BEING part of the same premises which vested in the Grantors by a deed from River Town Associates dated November 2, 1994 and recorded in the Recorder's Office of Allegheny County in Deed Book Volume 9342, page 268.

SUBJECT to all oil and gas and mineral rights, easements, conditions, restrictions, rights of way and covenants as may affect the hereinabove described premises and as are contained in prior instruments of record.

DBV10015PG169

EXHIBIT  
"A"

365-K-348

TOGETHER with rights in common with others and subject to the provisions in an Amended and Restated Reciprocal Easements Agreement dated November 3, 1994 and recorded in Deed Book Volume 9342, page 275.

TOGETHER with the appurtenances.

TO HAVE AND TO HOLD the same unto and for the use of the Grantee, his heirs and assigns forever.

AND the Grantors for themselves and their heirs and assigns hereby covenant and agree that they will warrant generally the premises hereby conveyed.

WITNESS the due execution hereof as of the day and year first above written.

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE OF THE ABOVE-DESCRIBED PROPERTY, 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 ABOVE-DESCRIBED PROPERTY AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH PROPERTY. 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 July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.)

DBV10015PG170

IN WITNESS WHEREOF, the said Grantors have executed these presents as of the day and year first above written.

WITNESS:

*Arnold Lewis*

*Peter D. Friday*

*Brett J. Herrig*

*Peter D. Friday*  
PETER D. FRIDAY

*Susan F. Dalton*  
SUSAN F. DALTON

*Robert L. Wiseman*  
ROBERT L. WISEMAN

**NOTICE** THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS

*[Signature]*

*Wm Stone Jr*

OBV10015PG171

STATE OF Maryland )  
COUNTY OF Montgomery ) SS:

On this the 5<sup>th</sup> day of August, 1997, before me, a Notary Public, the undersigned officer, personally appeared ROBERT L. WISEMAN, who acknowledged himself to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Virginia M. McKenna  
Notary Public  
(Notarial Seal)  
VIRGINIA M. MCKENNA  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 1, 1997

My commission expires:

**CERTIFICATE OF ADDRESS**

I, the undersigned do hereby certify that the correct address of the within Grantee is 413 Harrison Avenue, Baltimore, Md 21204

Hereby certified this 15<sup>th</sup> day of August, 1997.

[Signature]

DBV10015PG172



STATE OF Maryland )  
COUNTY OF Montgomery ) SS:

On this the 5<sup>th</sup> day of August, 1997, before me, a Notary Public, the undersigned officer, personally appeared SUSAN F. DALTON, who acknowledged herself to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Virginia M. McKenna  
Notary Public  
(Notarial Seal)

VIRGINIA M. MCKENNA  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 1, 1997

My commission expires:



I hereby CERTIFY that this document is recorded in a Deed Volume in the Recorder's Office of Allegheny County, Pennsylvania

Michael A. Della Vecchia

MICHAEL A. DELLA VECCHIA  
RECORDER OF DEEDS

DBV 10015PG 174

DEED REGISTRY  
57 AUG 21 11:10:31

COUNTY OF  
ALLEGHENY

RECORDER OF DEEDS  
ALLEGHENY COUNTY, PA  
AUG 19 1 42 PM '97

Aug 19 1997 11 7694

DEED	
FROM PETER D. FRIDAY, SUSAN F. DALTON and ROBERT L. WISEMAN	
TO WILLIAM FIORE	
D 27.50 PNTL 715	
JOHN R. COOK, ESQUIRE JOHN R. COOK & ASSOCIATES 106 Arcadia Court 9380 McKnight Road Pittsburgh, PA 15237 (412) 366-8980	

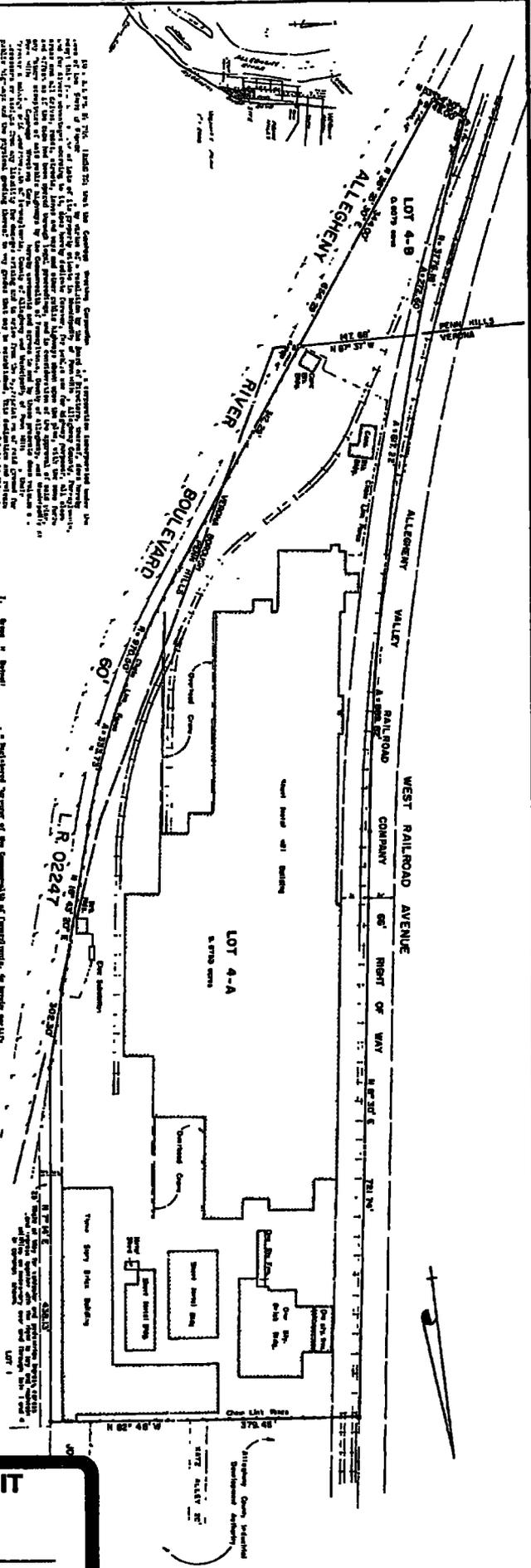
DBV10015PG175

07116

10. In the City of Verona, New Jersey, the following property is being offered for sale by the City of Verona, New Jersey, through the City Engineer, James J. ...

WHEREAS, the property is being offered for sale by the City of Verona, New Jersey, through the City Engineer, James J. ...

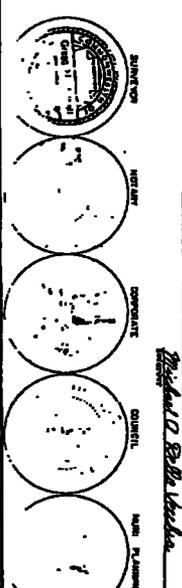
By the City Engineer, James J. ...



Approved by the Board of Municipalities of Verona, New Jersey, on this 14th day of March, 1968.

Approved by the Mayor of Verona, New Jersey, on this 14th day of March, 1968.

Approved by the Board of Municipalities of Verona, New Jersey, on this 14th day of March, 1968.

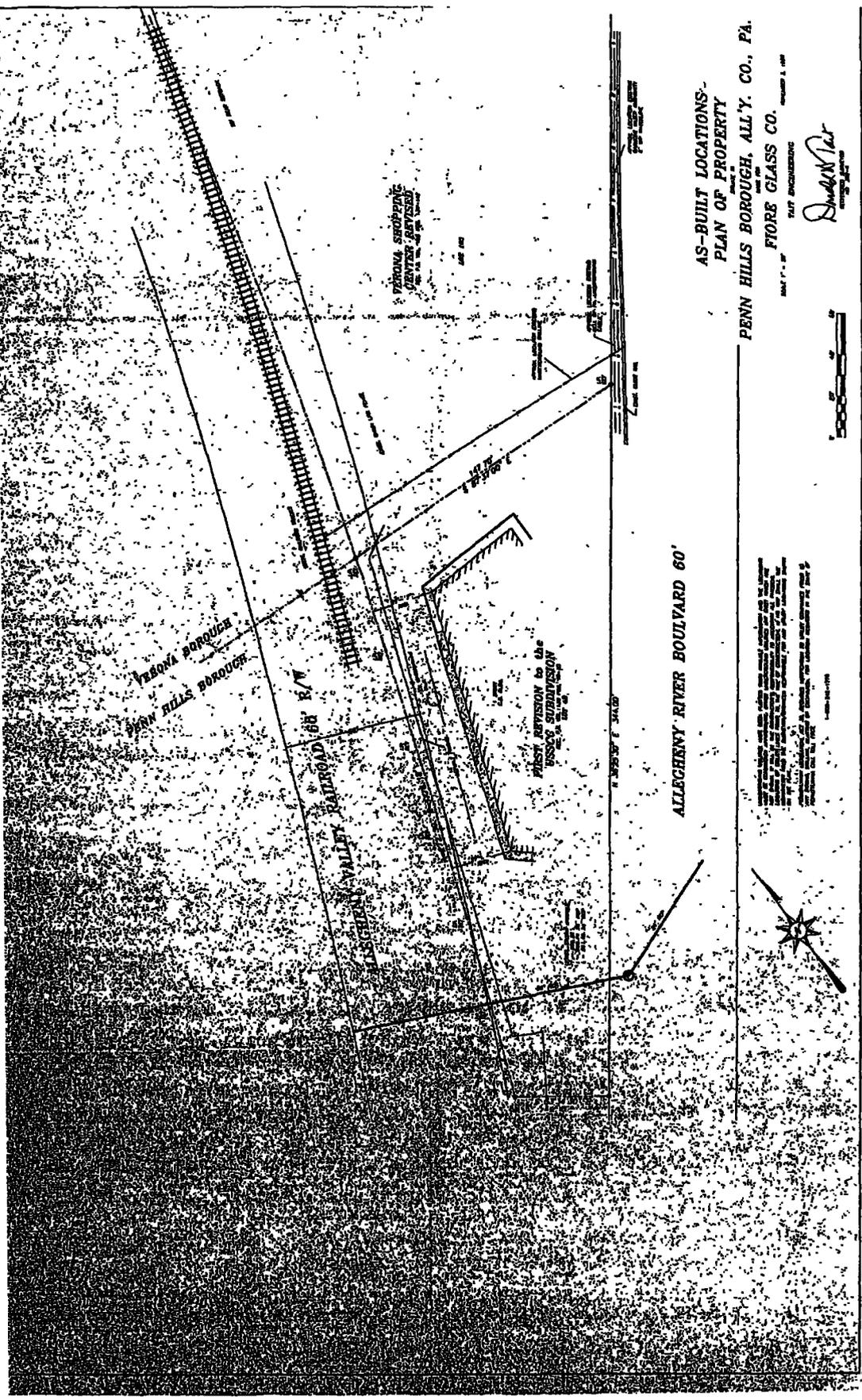


NOTE: THE BOROUGH OF VERONA DOES NOT SUBDIVISION ZONING ORDINANCES.

EXHIBIT

FIRST REVISION to the SUBDIVISION MAP of LOT 4-A, ALLEGHENY COUNTY, PENNSYLVANIA, prepared by the City of Verona, New Jersey, on this 14th day of March, 1968.

CUNAHOGA WRECKING CORPORATION



AS-BUILT LOCATIONS-  
 PLAN OF PROPERTY  
 MADE BY  
 PENN HILLS BOROUGH, ALL'Y. CO., PA.  
 DATE 1952  
 FIORE GLASS CO.  
 CIVIL ENGINEERING  
 REGISTERED P. E.

*Fiore Glass*  
 CIVIL ENGINEERING



ALLEGHENY RIVER BOULEVARD 60'

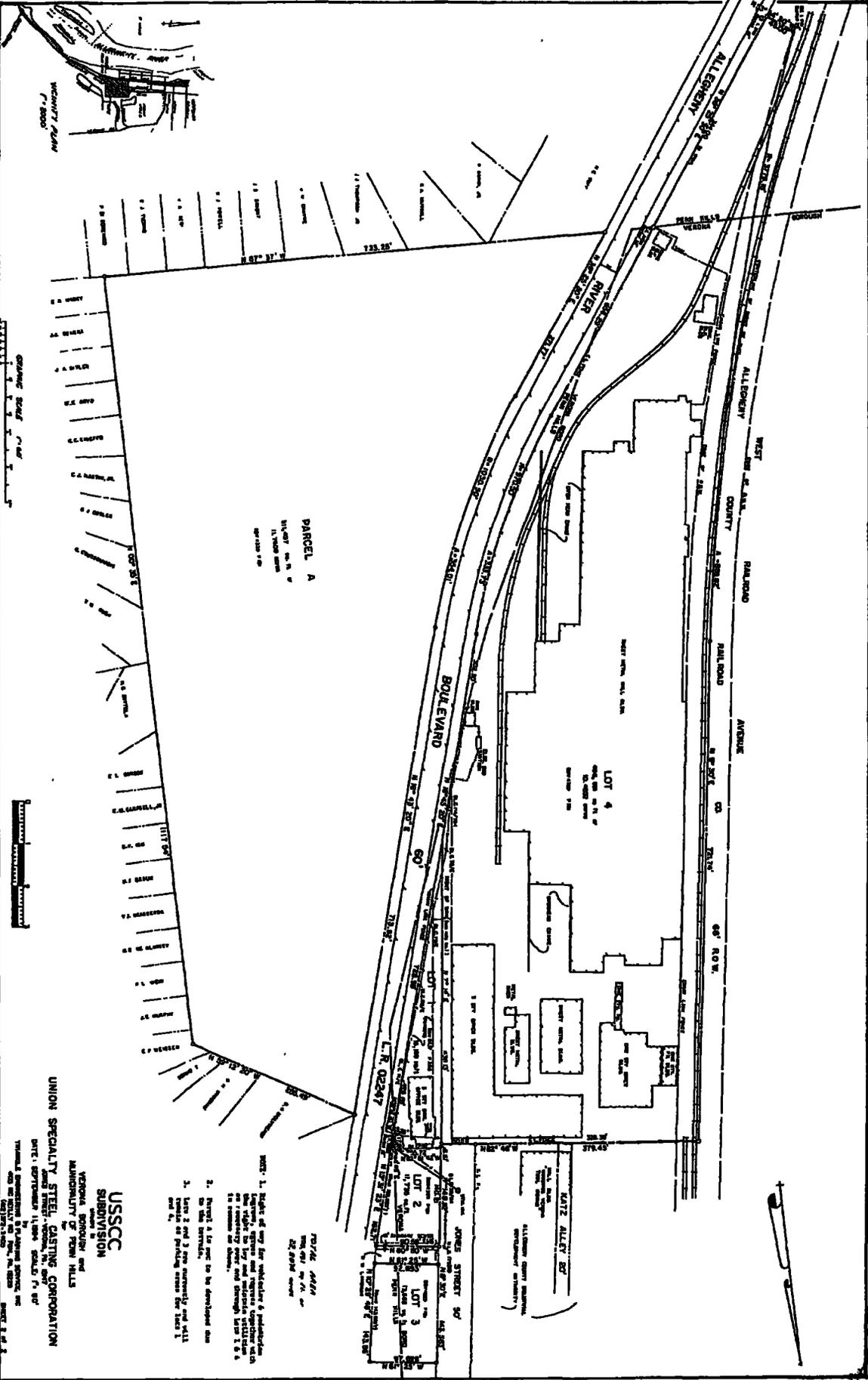
THIS PLAN IS A REVISION OF THE PLAN OF THE ALLEGHENY RIVER BOULEVARD 60' PROJECT, MADE BY THE PENN HILLS BOROUGH, ALL'Y. CO., PA., IN 1952. THE REVISIONS ARE AS SHOWN ON THIS PLAN. THE ORIGINAL PLAN IS FILED IN THE OFFICE OF THE ENGINEER, PENN HILLS BOROUGH, ALL'Y. CO., PA., UNDER FILE NO. 100-100-100.



35544-960357

tabbies  
**EXHIBIT**  
 "C"



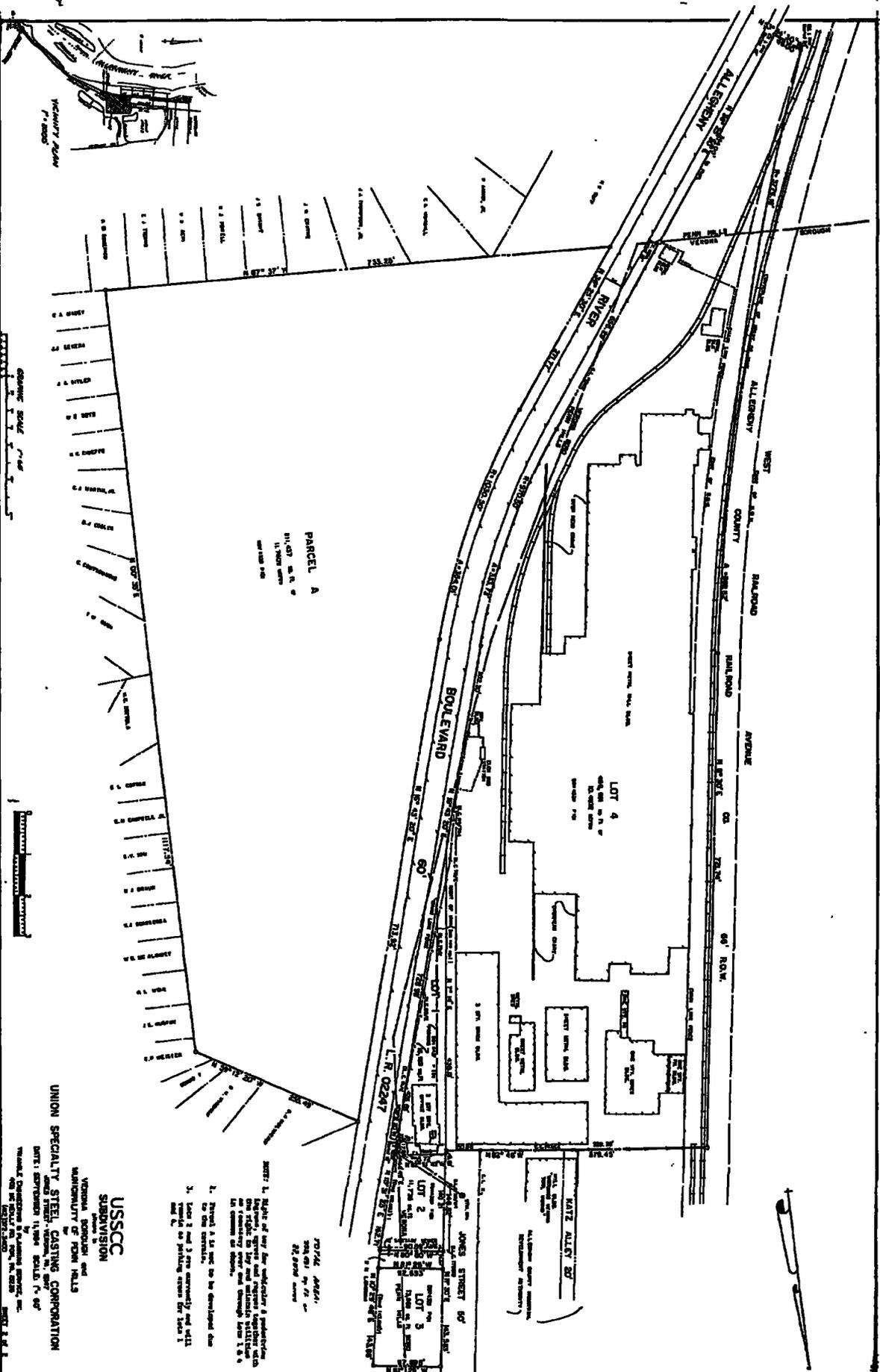


PARCEL A  
 11,700 sq. ft.  
 11,700 sq. ft.  
 11,700 sq. ft.

UNION SPECIALTY STEEL CASTING CORPORATION  
 DIVISION OF  
 U.S. STEEL CORPORATION  
 PITTSBURGH, PA.  
 11,700 sq. ft.  
 11,700 sq. ft.  
 11,700 sq. ft.

- NOTE: 1. Right of way for waterworks & production  
 water, steam and refuse disposal  
 easements are shown on this plan  
 as necessary for and through Lots 1 & 2  
 as shown on drawing.
1. Parcel 1 is not to be developed and  
 to be reserved.
  2. Lots 2 and 3 are intended for mill  
 use and parking space for Lot 1  
 and 2.

TO/AS AGENT  
 11,700 sq. ft.  
 11,700 sq. ft.



VIENNA PLANT  
P. 1000

PARCEL A  
 11.037 AC. ±  
 11.7628 AC. ±  
 0.7251 AC. ±

UNION SPECIALTY STEEL CASTING CORPORATION  
 1100 S. 10TH ST. S. W.  
 ALLEGANY COUNTY, PA. 15004

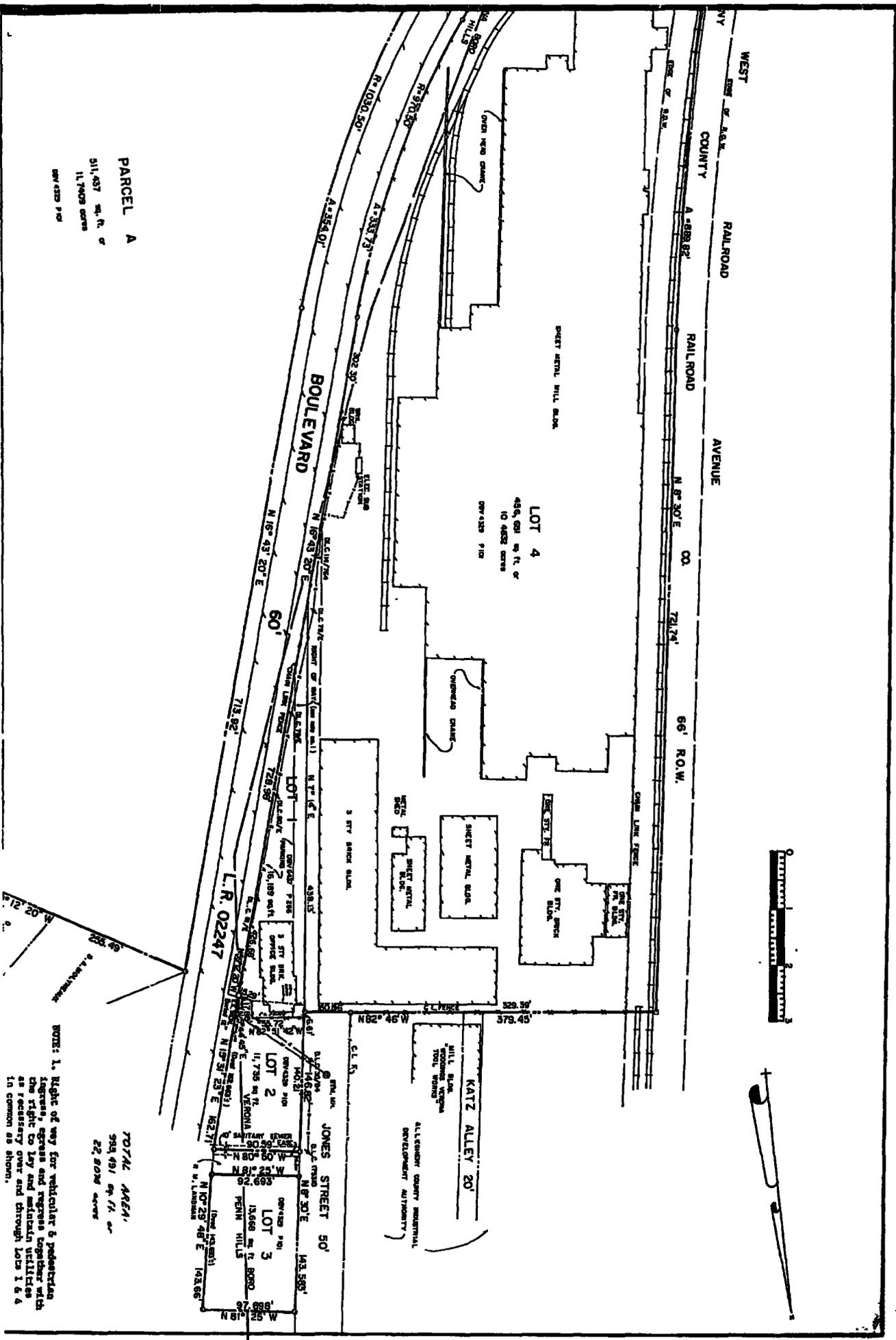
USSCC  
 SUBDIVISION

- NOTES:
1. Right of way for utility & pedestrian easements, streets and parking easements are shown on this plan and adjacent sections as shown on sheets 1 through 10 of this subdivision.
  2. The lots in this plan to be developed are:
  3. Lots 1 and 2 are currently owned by USSCC and are being offered for sale.

FOY/DA  
 2004.09.17 BY: [Signature]  
 22.02.00.000



PARCEL A  
 511,437 sq. ft. ±  
 11,740.9 acres  
 DW/4320 P/01



TOTAL AREA:  
 993,491 sq. ft. ±  
 22,804 acres









Lawyers Title Insurance Corporation  
One PPG Place - 12<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(412) 261-6410  
FAX: (412) 261-1160

**Record Owner and Lien Certificate**

Order No.: 410005262

Effective Date: July 18, 2006

Premises: 50 Allegheny River Boulevard

Based upon the examination of evidence in the appropriate public records from January 1, 1940 to July 18, 2006, the Company certifies that the premises endorsed hereon are subject only to the sewer easements hereinafter set forth. This Certificate does not constitute title insurance; liability hereunder is assumed by the Company solely in its capacity as abstractor for its negligence, mistakes or omissions in a sum not exceeding Two Thousand Dollars (\$2,000.00) unless otherwise endorsed hereon.

---

**Legal Description**

(See attached copy of Deed)

**1. Record Owner:**

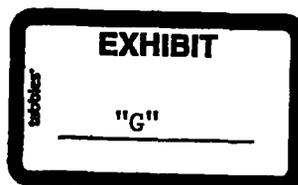
Title to said premises is vested in:

William Fiore by deed from Peter D. Friday, et al, dated August 5, 1997 and recorded in Deed Book Volume 10015, page 169.

**2. Taxes:**

Block and Lot 365-K-348

Assessed Value      \$219,700.00



3. Rights of Way: See attached copy of the policy
4. Easements and rights of way and any other matters which would be disclosed by an accurate survey and inspection of the premises.
5. Rights of claims of parties in possession not shown by the public records.

The status of validity of title to the subject premises may be affected by matters disclosed by survey, rights of parties in possession and other items not found of record and not certified hereon. Therefore, the Applicant is cautioned against using this Certificate as a basis for consummating a real estate transaction, until the Certificate is converted into a Title Report, binder or Commitment at which time additional exceptions and settlement requirements will be added.

Settlement or the removal of items and exceptions will not be made on this certificate. This Certificate may be converted into a report for title insurance at any time. If the conversion is made within six months from the date hereof, credit will be allowed against the fee previously paid.

**Lawyers Title Insurance Corporation**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'C. J. P.', written over a horizontal line.



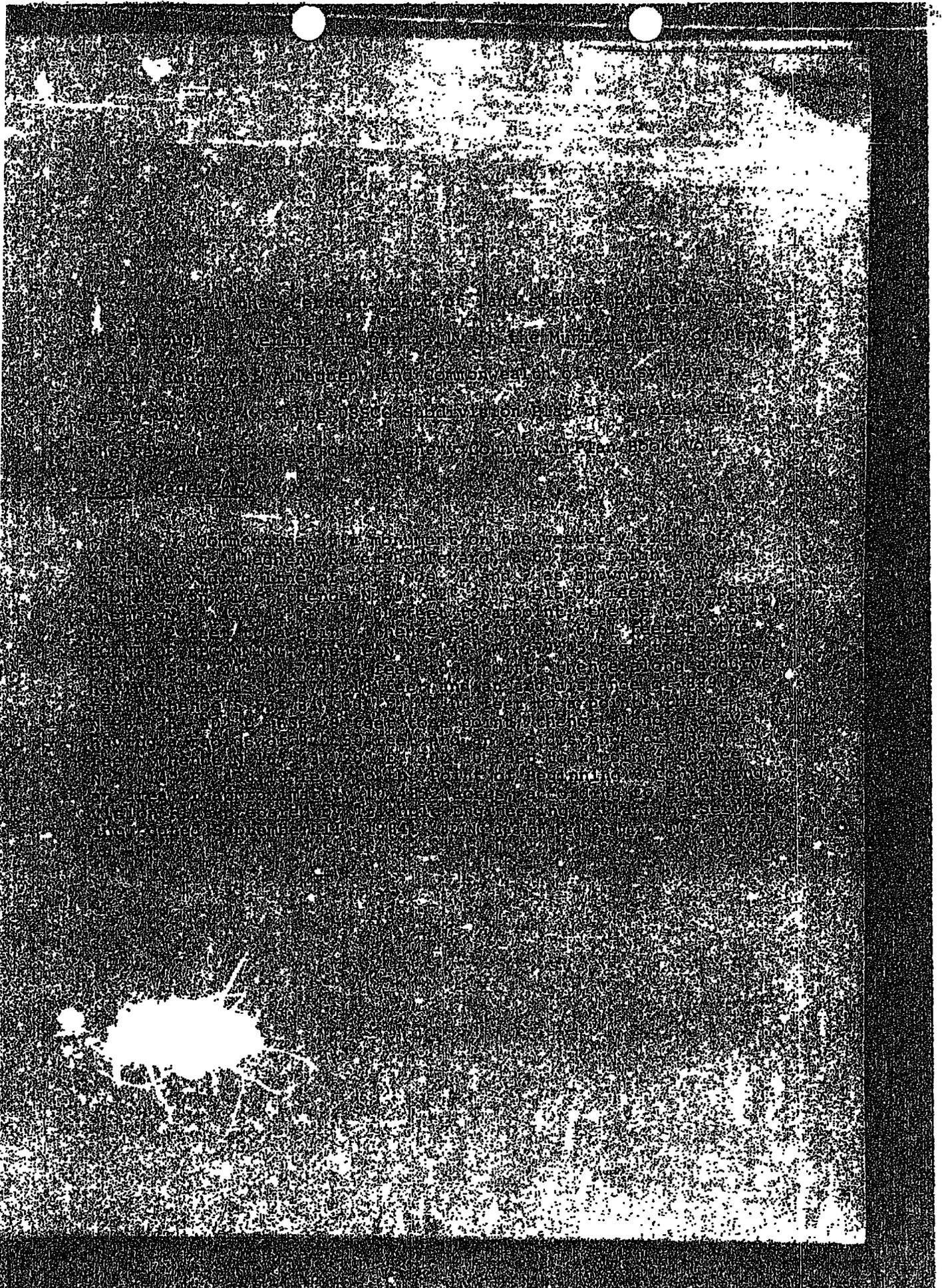
**COMMONWEALTH**  
TITLE INSURANCE COMPANY  
Pittsburgh, Pa. Office of the Secretary

**POLICY OF TITLE INSURANCE**

Policy Number  
**00-05218**

Approved by the State of Pennsylvania

1953



100-112196  
100-112196-4

is hereby referred to the following:

and

is hereby referred to the following:



**COMMONWEALTH LAND**

**TITLE INSURANCE COMPANY**

AN Alliance Group Holding Company

Policy No. 100-024196

Policy No. 100-024196

Policy No. 100-024196

Policy No. 100-024196

1/8/2010 3:36:54 PM

[Search Results](#) [New Search](#) [Help](#) [Subscription Login](#)



Maps

1 OF 11

### Maps

Parcel ID : 0385-K-00348-0000-00  
Property Address : 50 ALLEGHENY RIVER BLVD  
VERONA, PA 15147

Municipality : 934 PENN HILLS  
Owner Name : FIORE WILLIAM

Data displayed on this map is for informational purposes only. There is no guarantee as to its completeness or accuracy.



Send data errors to [landhelp@alleghenycounty.us](mailto:landhelp@alleghenycounty.us)

[Property Assessments Home Page](#)

[Legal Disclaimer](#)

**DEED CHAIN**  
**Tax Parcel ID 365-K-348**  
**50 Allegheny River Boulevard**  
**Partially in Borough of Verona and Partially in Municipality of Penn Hills, Allegheny County, PA**

<b>CURRENT OWNER</b>	William Fiore
<b>DEED CHAIN (60+ years) (Recorder's Office Allegheny County Department of Real Estate)</b>	
<p><b>Date:</b> 8/5/1997  <b>Grantors:</b> Peter D. Friday and Susan F. Dalton and Robert L. Wiseman  <b>Grantees:</b> William Fiore  <b>Consideration:</b> \$62,500.00  <b>Recorded:</b> 8/21/1997 Deed Book Volume 10015, Page 169  <b>Description:</b> ALL that certain lot or piece of ground situate in the Municipality of Penn Hills, County of Allegheny and Commonwealth of Pennsylvania being Lot No. 4-B in the First Revision to USSCC Subdivision, recorded in the Recorder's Office of Allegheny County in Plan Book Volume 138, Pages 19 and 20.</p>	
<p><b>Date:</b> 11/2/1994  <b>Grantors:</b> River Town Associates  <b>Grantees:</b> Peter D. Friday and Susan F. Dalton and Robert L. Wiseman  <b>Consideration:</b> None recited  <b>Recorded:</b> 11/9/1994 Deed Book Volume 9342, Page 268  <b>Description:</b> ".....and (2) property in the Municipality of Penn Hills, Pennsylvania, and identified as Lot No. 4-B on the First Revision to USSCC Subdivision, recorded in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, in Plan Book Volume 138, pages 19-20..."</p>	
<p><b>Date:</b> 10/1/1990  <b>Grantors:</b> Peter D. Friday, Susan F. Dalton and Robert L. Wiseman  <b>Grantees:</b> River Town Associates  <b>Consideration:</b> \$1.00  <b>Recorded:</b> 10/5/1990 Deed Book Volume 8346, Page 603  <b>Description:</b> ".....All those certain lots or parcels of land situate partly in the Municipality of Penn Hills and partly in the Borough of Verona, County of Allegheny and Commonwealth of Pennsylvania, being Lot No. 4-B in the First Revision to the USSCC Subdivision as recorded in the Recorder's Office of Allegheny County, Pennsylvania in Plan Book Volume 138, Pages 19 and 20..." [cont'd]</p>	
<p><b>Date:</b> 9/8/1989  <b>Grantors:</b> Chester B. Saloman, as Trustee of the Estate of Cuyahoga Wrecking Corporation  <b>Grantees:</b> Peter D. Friday, Susan F. Dalton and Robert L. Wiseman  <b>Consideration:</b> \$415,000  <b>Recorded:</b> 10/6/1989 Deed Book Volume 8114, Page 458  <b>Description:</b> "All that certain parcel of land situate partly in the Municipality of Penn Hills and partly in the Borough of Verona, County of Allegheny and Commonwealth of Pennsylvania, being all of Lot No. 4 in the USSCC subdivision Plan of record in Plan Book Volume 133, Pages 28 through 30..."</p>	
<p><b>Date:</b> 2/28/1985  <b>Grantors:</b> Union-Specialty Steel Casting Corporation  <b>Grantees:</b> Cuyahoga Wrecking Corporation  <b>Consideration:</b> \$392,500  <b>Recorded:</b> 3/1/1985 Deed Book Volume 7039, Page 353  <b>Description:</b> "...All that certain tract of land situate partially in the Borough of Verona and partially in the Municipality of Penn Hills, County of Allegheny and Commonwealth of Pennsylvania, being Lot No. 4 of the USSCC Subdivision Plat of Record with the Recorder of Deeds of Allegheny County in Plan Book Vol. 133, Pages 28-30. Commencing at a monument on the westerly right of way line of Allegheny River Boulevard, a 60 foot right of way, at the dividing line of Lots Nos 1 and 2 as shown on said Subdivision Plat; thence N 59° 12' 20" W, 15.29 feet to a point; thence N 5° 44' 45" E, 187.88 feet to a point; thence N 82° 51' 42" W, 55.72 feet to a point, thence S 8° 30' W, 6.61 feet to the POINT OF BEGINNING; thence N 82° 46' W, 379.45 feet to a point, thence S 8° 30' W 721.74 feet to a point; thence along a curve having a radius of 3776.18 feet and an arc distance of 889.82</p>	

feet; thence S 53° 34' 30" E, 45 feet to a point; thence N 36° 25' 30" E, 656.29 feet to a point; thence along a curve having a radius of 970.50 feet and an arc distance of 333.73 feet; thence N 16° 43' 20" E, 302.30 feet to a point; thence N 7° 14' E, 438.13 feet to the point of Beginning. Containing an area of approximately 10.4832 acres, according to said Subdivision Plan prepared by Triangle Engineering and Planning Service, Inc., dated September 11, 1984..."

**Date:** 12/13/1965

**Grantors:** Rospec Realty Company, Inc.

**Grantees:** Union-Specialty Steel Casting Corporation

**Consideration:** \$225,000

**Recorded:** 3/3/1966 Deed Book Volume 4329, Page 101

**Description:** Multiple parcels – See attached deed copy reference Parcel 1 "... to a concrete monument on the line dividing the Borough of Verona on the north from the Township of Penn Hills on the south; thence continuing along the westerly side of Allegheny River Boulevard as presently located South 36° 25' 30" West a distance of 343.66 feet to an iron pin on the line common to the lands formerly of Farmers Investment Company and the Pennsylvania Railroad Company; thence by the line of lands formerly of The Pennsylvania Railroad company North 53° 34' 30" West a distance of 44.96 feet to an iron pin on the easterly side of the right of way of the Conemaugh Division of The Pennsylvania Railroad, formerly the Allegheny Valley Railroad; thence northwardly by a curve to the left having a radius of 2,852.07 feet a distance of 365 feet, more or less, to a point of intersection with the center line of said Railroad; as described in Deed dated November 16, 1926 from Verona Steel Castings company to American Steel Foundries, of record in the office of the Recorder of Allegheny County, Pennsylvania in Deed Book Volume 2382, page 259; ....."[cont'd]

**Date:** 5/28/1959

**Grantors:** American Steel Foundries

**Grantees:** Rospec Realty Company, Inc.

**Consideration:** \$190,000

**Recorded:** 6/5/1959

**Description:** Multiple parcels – See attached deed copy reference Parcel 1 "... to a concrete monument on the line dividing the Borough of Verona on the north from the Township of Penn Hills on the south; thence continuing along the westerly side of Allegheny River Boulevard as presently located South 36° 25' 30" West a distance of 343.66 feet to an iron pin on the line common to the lands formerly of Farmers Investment Company and the Pennsylvania Railroad Company; thence by the line of lands formerly of The Pennsylvania Railroad company North 53° 34' 30" West a distance of 44.96 feet to an iron pin on the easterly side of the right of way of the Conemaugh Division of The Pennsylvania Railroad, formerly the Allegheny Valley Railroad; thence northwardly by a curve to the left having a radius of 2,852.07 feet a distance of 365 feet, more or less, to a point of intersection with the center line of said Railroad; as described in Deed dated November 16, 1926 from Verona Steel Castings company to American Steel Foundries, of record in the office of the Recorder of Allegheny County, Pennsylvania in Deed Book Volume 2382, page 259; ....."[cont'd]

**Date:** 6/25/1956

**Grantors:** The Pennsylvania Railroad Co.

**Grantees:** American Steel Foundries

**Consideration:** \$1,500

**Recorded:** 8/31/1956 Deed Book Volume 3591, page 63

**Description:** ALL THAT PARCEL of land situate partly in the Borough of Verona and partly in the Township of Penn, County of Allegheny and Commonwealth of Pennsylvania, bounded and described according to a plan based upon a plan of survey made by Wagner Engineering Company, Oakmont, Pennsylvania, dated February 2, 1956, as follows, viz: BEGINNING at an iron pin where the westerly line of land of American Steel Foundries meets the northwesterly right of way line of Allegheny River Boulevard, 60 feet wide, in said Township of Penn; EXTENDING from said place of beginning the following five courses and distances, the first three thereof being along lines of said land of American Steel Foundries: (1) northwardly on a curve to the left, having a radius of 2, 884.93 feet, the chord of which bears N 19° 16' 05" E. for a length of 297.89 feet, an arc length of 298.05 feet to an iron pin in the line dividing said Borough of Verona on the north from said Township of Penn on the South; (2) S° 87' 37" E along said Borough and Township dividing line 12.97 feet; (3) northwardly, on a curve to the left having a radius of 1,897.93 feet, the chord of which bears N 12° 22' 00" E for a length of 410.39 feet, an arc length of 410.81 feet to a concrete monument; the following two courses and distances being by remaining land of The Pennsylvania Railroad Company; (4) southwardly crossing said Borough and Township dividing line, on a curve to the right having a radius of 2,854.93 feet, the chord of which bears S 19° 46' 10" W for a length of 695.82 feet an arc length of 697.59 feet to an iron pin; and (5) S. 53° 34' 30" E 45.00 feet to the place of beginning..."

**Date:** 1/15/1954

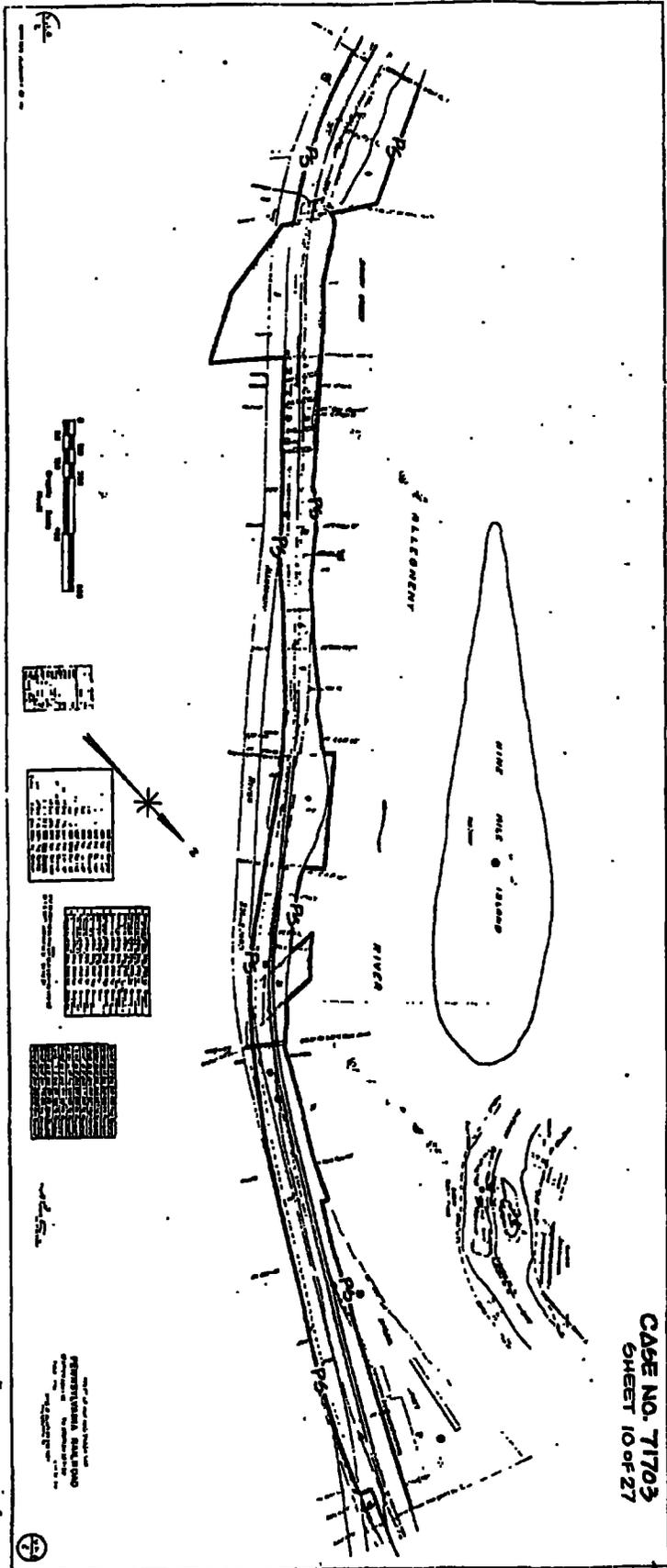
**Grantors:** Farmers Investment Co.

**Grantees:** American Steel Foundries

**Consideration:** \$16,000

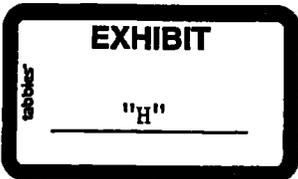
**Recorded:** 1/28/1954 Deed Book Volume 3323, Page

**Description:** "...All that certain tract of land situate in the Township of Penn, County of Allegheny and Commonwealth of Pennsylvania, bounded and described as follows, to wit: BEGINNING at an iron pin on the Northwesterly side of the Allegheny River Boulevard, 60 feet wide, on the southerly line of other land of American Steel Foundries, said point also being on the dividing line between the Borough of Verona and Penn Township; thence along said side of Allegheny River Boulevard, south  $36^{\circ} 25' 30''$  West, 344 feet to an iron pin at line of land of Pennsylvania railroad Company; thence along said land of Pennsylvania Railroad Company, by the arc of a circle curving to the left, having a radius of 2884.93 feet (chord bearing North  $19^{\circ} 16' 05''$  East, 297.89 feet) an arc distance of 298.05 feet to an iron pin on line of land formerly of Jones, said line also being at dividing line between the Borough of Verona and Penn Township; thence along said Borough line, being also the line of land formerly of Jones, part of said line being land now or late of Pennsylvania Railroad Company and the other part of said line being other land of American Steel Foundries, south  $87^{\circ} 37'$  east 105.05 feet to the northwesterly side of Allegheny River Boulevard at the place of beginning..."



CASE NO. 71703  
SHEET 10 of 27

DB 09571 PG 232







60 2008 00011009

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

Instrument Number: 2008-11009

Recorded On: April 23, 2008

As-Deed Right of Way

Parties: FIORE WILLIAM JR

To ALLEGHENY COUNTY SANITARY AUTH

# of Pages: 10

Comment:

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

Deed Right of Way	55.00
Pages > 4	5
Names > 4	0
<b>Total:</b>	<b>55.00</b>

Valerie McDonald Roberts, Manager	-	BLOCK AND LOT NUMBER
<i>Valerie McDonald Roberts</i>		R OF W
Date: 4-30-2008	nl. By: VZ	

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: 2008-11009  
 Receipt Number: 1118087  
 Recorded Date/Time: April 23, 2008 10:15:00A  
 Book-Vol/Pg: BK-DE VL-13585 PG-521  
 User / Station: D Dobbs - Cash Station 22

KATHY ROTH  
 BCCZ  
 2 GATEWAY CENTER 7TH FL  
 PITTSBURGH PA 15222



EXHIBIT	"J"
	_____

*Valerie McDonald Roberts*  
 Valerie McDonald Roberts, Manager  
 Dan Onorato, Chief Executive

9

**PERMANENT AND TEMPORARY  
RIGHT OF WAY AND EASEMENT AGREEMENT**

THIS INDENTURE made the 12th day of March, 2008, from **WILLIAM FIORE, JR.** an unmarried individual, having an address at 50 Allegheny River Boulevard, Verona, PA 15147, (hereinafter "Grantor"),

TO

**ALLEGHENY COUNTY SANITARY AUTHORITY**, a Pennsylvania municipal authority organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in the City of Pittsburgh, Allegheny County, Pennsylvania (hereinafter "Grantee").

WHEREAS, Grantor is the owner of that certain parcel of land known as lot and block number 4-B-50 and situate in Allegheny County, Pennsylvania, more particularly described on **Exhibit A** attached hereto and incorporated herein (hereinafter "Grantor's Parcel");

WHEREAS, Grantee desires to obtain from Grantor a permanent easement over, across, or along Grantor's Parcel at a particular location more particularly described and shown type on **Exhibit B** attached hereto and incorporated herein (hereafter the "Easement Area");

WHEREAS, Grantor is willing to grant to Grantee a non-exclusive permanent right and privilege to enter upon the Easement Area; and

NOW, THEREFORE, WITNESSETH, that Grantor, intending to be legally bound hereby, for and in consideration of \$1.00 (one dollar) and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of Grantee keeping and performing the covenants and conditions hereinafter stated on the part of Grantee to be kept and performed, hereby represents and warrants that Grantor has good and marketable title to Grantor's Parcel, free and clear of all liens and encumbrances, and does hereby grant unto Grantee, a nonexclusive and permanent Easement for the space and dimensions of the Easement Area solely for the purpose of Grantee operating, maintaining, repairing and replacing the existing underground vault and sewer line facilities (hereinafter the "Uses") over, across or along Grantor's Parcel in the Easement Area and a nonexclusive and temporary easement for such space on Grantor's Parcel as is reasonable and mutually agreed solely for the purposes of construction work required to lower the surface of the vault to the level of the adjoining pavement (the "Project") (hereinafter the "Temporary Uses") over, across, or along Grantor's Parcel.

1. The foregoing recitals are incorporated herein by reference and made a part hereof.
2. The Uses and Temporary Uses shall be performed in accordance with all applicable laws, rules and regulations.

3. Grantee will at all times exercise its rights so as not to unreasonably interfere with the uses by Grantor of Grantor's Parcel and the Easement Area to the extent permitted hereby, and that after doing any work in connection with the Uses and Temporary Uses and, subject to the performance of the Project, shall restore the Easement Area and Grantor's Parcel substantially to the condition in which same were found before such Uses and Temporary Uses were undertaken.

4. During the performance of the Uses and Temporary Uses, Grantee will cause its contractors doing the work to name Grantor as an additional insured on contractor's commercial general liability insurance with limits of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering personal injury or death to any person and damage to property.

5. The Uses and Temporary Uses shall be performed at the sole cost and expense of Grantee. Grantor shall not be liable for any expense incurred in connection with the Uses and Temporary Uses by Grantee in the Easement Area and/or on Grantor's Parcel or the Project.

6. The permanent Easement granted hereby shall run with the land and shall burden Grantor's Parcel and benefit Grantee and its successors and assigns.

7. Grantee shall, at its sole cost and expense, repair any damage it may cause to the Easement Area and Grantor's Parcel and shall, to the extent permitted by law, indemnify Grantor against any expense, loss, damage or injury to person or property caused by or resulting from Grantee's use of the said Easement Area and Grantor's Parcel.

8. The mention in this Agreement of any of the parties hereto by name or otherwise, shall be deemed to include their successors and assigns, unless otherwise inconsistent with the terms and provisions hereof.

9. Grantee agrees that it will use its best efforts to complete construction of the Project no later than September 30, 2008.

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 July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

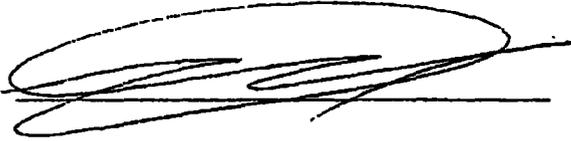
TO HAVE AND TO HOLD, all and singular the rights and privileges aforesaid, to the only proper use and behoof of Grantee, its successors and assigns forever.

This Permanent and Temporary Right-of-Way and Easement is entered into pursuant to ALLEGHENY COUNTY SANITARY AUTHORITY Resolution No. 3-1 of 2008, which was adopted at a Regular Meeting of the Board of Directors, held on the 27<sup>th</sup> day of MARCH, 2008.

[SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first above written.

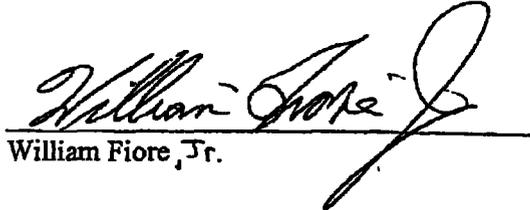
ATTEST:



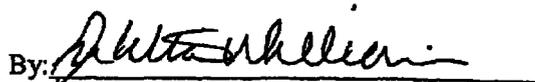
ATTEST:

  
By: Susan A. Jakubowski  
Its: Executive Assistant

GRANTOR:

  
William Fiore, Jr.

ALLEGHENY COUNTY  
SANITARY AUTHORITY

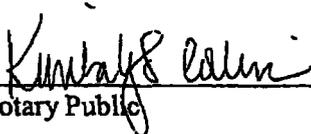
By:   
Arletta Williams, Executive Director

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY )

ss:

On this 12th day of March, 2008, before me, a notary public in and for said county and state, personally appeared **William Fiore, Jr.**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and notary seal the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

My commission expires:

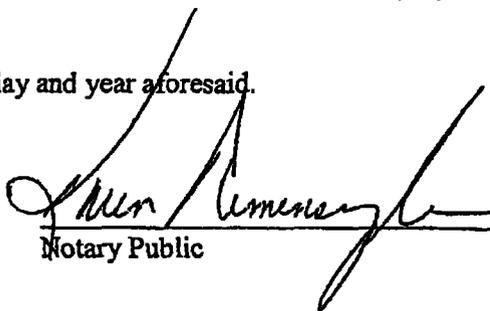
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Kimberly S. Collins, Notary Public  
Churchill Boro, Allegheny County  
My Commission Expires Apr. 24, 2010  
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY )

ss:

On this 27th day of March, 2008, before me, a notary public in and for said county and state, personally appeared **Arletta Williams**, who acknowledged herself to be the Executive Director of the Allegheny County Sanitary Authority, a Pennsylvania municipal authority, and that as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the authority by herself as Executive Director of the authority.

WITNESS my hand and notary seal the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Karen Remensnyder, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires Oct. 8, 2008  
Member, Pennsylvania Association Of Notaries

**EXHIBIT A**

---

[Legal description of Fiore property ]

BEING all that certain lot or piece of ground situate in the Municipality of Penn Hills, County of Allegheny and Commonwealth of Pennsylvania being Lot No. 4-B in the First Revision to USSCC Subdivision, recorded in the Recorder's Office of Allegheny County in Plan Book Volume 138, Pages 19 and 20.

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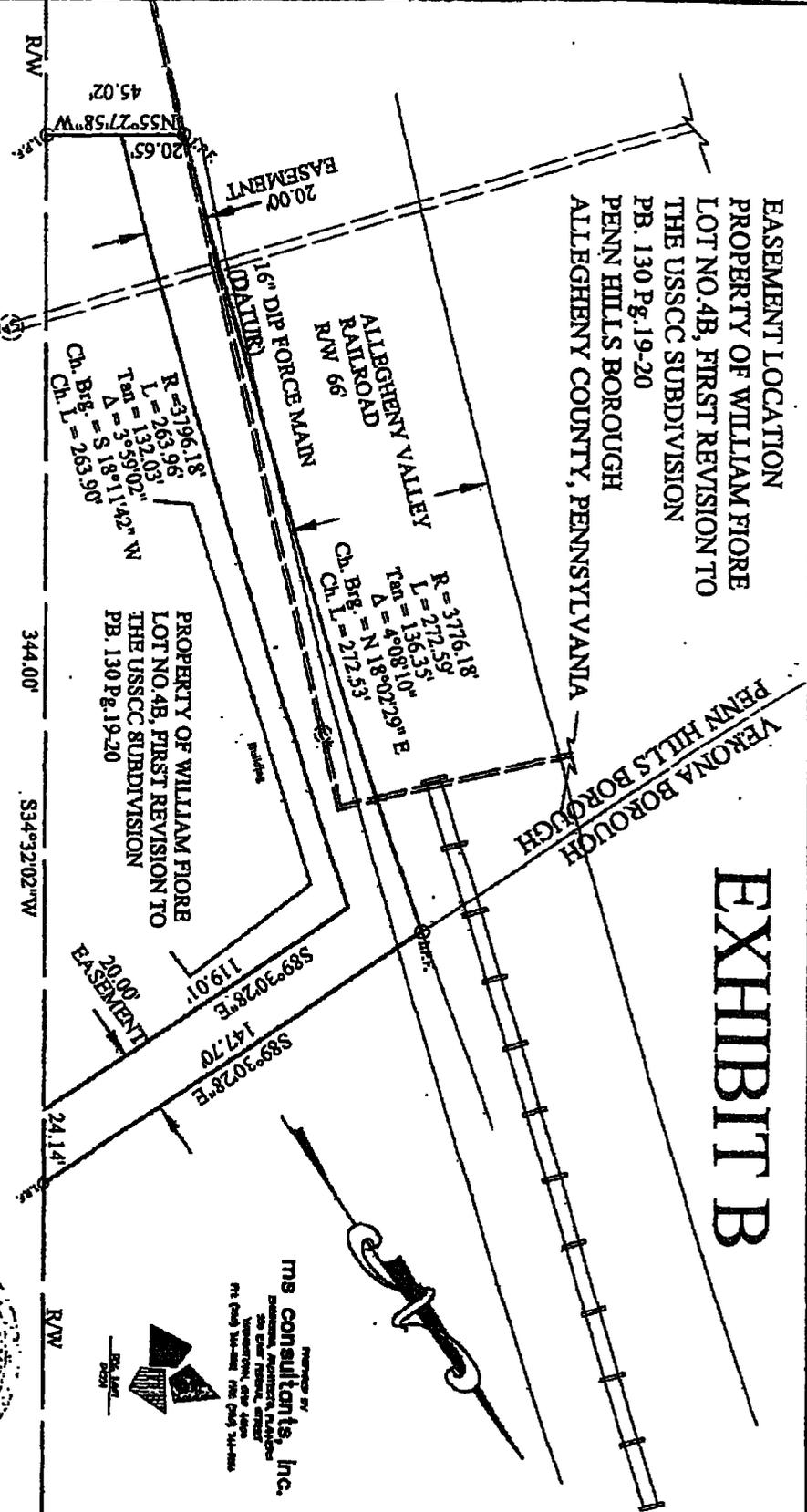
**EXHIBIT B**

[Description/drawing of easement]



# EXHIBIT B

EASEMENT LOCATION  
 PROPERTY OF WILLIAM FIORE  
 LOT NO.4B, FIRST REVISION TO  
 THE USSCC SUBDIVISION  
 PB. 130 Pg.19-20  
 PENN HILLS BOROUGH  
 ALLEGHENY COUNTY, PENNSYLVANIA



## GRAPHIC SCALE



( IN FEET )  
 1 inch = 50 ft.

DATUM : Data Acquired Through Utility Records

Note:  
 The above drawing of the location of RR Tracks, RR Right of Way, and property lines are based on a survey by Tait Engineering, dated Nov. 2, 1998, and field verified by a survey made by ms consultants is based on the found iron pins.

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT IS A TRUE REPLICATION OF AN EASEMENT SURVEY MADE BY ME OR UNDER MY SUPERVISION IN DECEMBER 2007, AND THAT ALL DIMENSIONS AS SHOWN ARE IN ACCORDANCE WITH THE RECORDS OF THE COMMONWEALTH OF PENNSYLVANIA.



*Richard John Swan*  
 RICHARD JOHN SWAN  
 REGISTERED PROFESSIONAL SURVEYOR No. SU057465  
 DATE 1/04/08

ms consultants, inc.  
 2000 W. 10th Street  
 Erie, PA 16590  
 Tel: (814) 833-1111  
 Fax: (814) 833-1112

Sanitary Sewer Easement  
Legal Description

Situated in the Borough of Penn Hills, County of Allegheny, State of Pennsylvania:

Known as being part of Lot No. 4B, in the First Revision to The USSCC Subdivision, as found in Plat Book 138 at Pages 19 and 20 of the plat records of Allegheny County and being further bounded and described as follows;

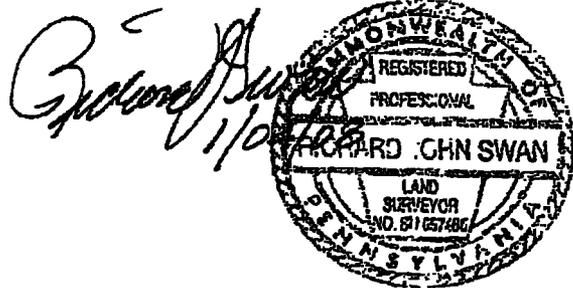
Beginning at an iron pin found at the northeasterly corner of said Lot No. 4B, being on the westerly right of way line of Allegheny River Boulevard, and being on the line between the Borough of Penn Hills and the Borough of Verona, said point being the **TRUE PLACE OF BEGINNING** of the parcel herein described;

thence along said westerly right of way line of Allegheny River Boulevard S 34°32'02" W, a distance of 24.14 feet to a point on the proposed easement line;  
thence through the land of the grantor along the easement line N 89°30'28" W, a distance of 119.01 feet to a point;  
thence along a curve to the right, having a radius of 3,796.18 feet, a chord bearing of S 18°11'42" W, and a chord length of 263.90 feet, for an arc distance of 263.96 feet to a point on the southerly line of the grantors land;  
thence along said southerly line N 55°27'58" W, a distance of 20.65 feet to an iron pin found at the southwesterly corner of the grantors land;  
thence northerly along the grantors westerly line by the arc of a curve to the left, having a radius of 3,776.18 feet, a chord bearing of N 18°02'29" E, and a chord length of 272.53 feet, for an arc distance of 272.59 feet to an iron pin found at the northwesterly corner of the grantors land;  
thence along the northerly line of the grantor S 89°30'28" E, a distance of 147.70 feet to the **TRUE PLACE OF BEGINNING** and containing within said bounds 8,032.44 square feet or 0.184 acres of land.

'NORTH' for this description is based on Pennsylvania State Plane Co-Ordinate System, South Zone NAD83.

The above description was prepared by Richard John Swan, Registered Professional Land Surveyor No. SU057465 in January 2008, and is based on found iron pins previously set in a survey by Tait Engineering in November 1998 and field verified by ms consultants, inc. in December 2007.

Mail to  
Kathy Roth  
BCC  
2 Gateway Center 7th Floor  
Pittsburgh PA 15222



**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**518 N. Center Street, Ste. 1**

**Ebensburg, PA 15931**

(814) 419-8152

888-454-3817 (Toll Free)

(814) 419-8156 FAX

[rwilson@rrwilson.net](mailto:rwilson@rrwilson.net) – Email

[www.rrwilsonesq.com](http://www.rrwilsonesq.com) - Website

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

September 2, 2009

Kathleen C. McConnell, Esq.  
Miello, Brungo & Miello, LLC  
1 Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235

SENT VIA FEDERAL EXPRESS

SENT VIA FACSIMILE

412-242-4377

Rc: 50 Allegheny River Boulevard, Verona, PA;  
Lot 4B Verona Shopping Center Subdivison

Dear Attorney McConnell:

I have been requested by Allegheny Valley Railroad Company ("AVRR") to respond to your letter of August 31, 2009 regarding the dispute concerning the above captioned property. As you may be aware, the AVRR is a federally regulated common carrier railroad which acquired the railroad right of way adjacent to the subject property from Consolidated Rail Corporation under authorization issued by the Interstate Commerce Commission in 1995. As such, the railroad right of way and the AVRR's, use and occupation of that right of way for railroad purposes is subject to the exclusive jurisdiction of the Federal Surface Transportation Board and your attempt to file an action in state court to quiet title to a portion of that right of way would be preempted pursuant to the provisions of 49 U.S.C. §10501. See also General Railway Corporation, d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickenson Counties, Iowa (June 13, 2007) 2007 W.L. 1723364 (S.T.B.); The Phillips Company – Petition for Declaratory Order (April 4, 1995) 1995 WL 226043 (STB); and Trustees of the Diocese of Vermont v. State, 496 A.2d 151(1985). The foregoing case citations indicate that until and unless a railroad line has been authorized for abandonment by the Surface Transportation Board and that abandonment authorization has been consummated by the railroad company, state courts have no jurisdiction to determine title for the purpose of occupying and asserting ownership and control over federally regulated railroad rights of way.



Kathleen McConnell, Esq.  
September 2, 2009  
Page 2

Moreover, I am advised by the AVRR that before your client constructed the Fiore Glass building adjacent to the AVRR right of way, he was advised by Mr. Russell Peterson of the location of the AVRR right of way. Rather than seek a resolution of conflicting surveys at that time, he proceeded to construct that structure at his own risk with full notice of AVRR's property lines. Thus, any alleged injuries incurred by your client from a so-called "cloud" on his title are self-inflicted.

I am further advised that in response to your correspondence, the railroad has reviewed the various surveys related to this matter and has determined that the survey plans relied on by your client may be in error. Your correspondence references the First Revision to the USSCC Subdivision recorded in Plan Book Volume 138, Pages 19-20, however, a subsequent revised USSCC Subdivision Plan was recorded in Plan Book Volume 185, Pages 139 -142. Therefore, based on our surveyor's assessment of the subdivision plan which created your client's lot (Lot 4-B in the First Revision to the USSCC Subdivision), Mr. Fiore's westerly property line, adjacent to the railroad, appears to be erroneously defined. I have attached a partial copy of the AVRR Valuation map covering this area to this letter for your inspection. As you can see on this attachment, the northern point of the property sold by the railroad to Mr. Fiore's predecessor in title in 1956 is located on the easterly railroad right of way line. Based on these facts, it is evident that the westerly line of Mr. Fiore's property as defined by the USSCC plan, was placed in error.

Moreover, on this same subdivision plan, there appears to be a dashed line beginning at the westerly end of the southerly property line of Lot 4-B and extends northwardly through Lot 4-B. This line is not specifically labeled or mathematically defined but is consistent in line type and weight to the line defining the opposite side of the railroad right-of-way as depicted on the plan of lots. In addition, the line also runs directly to the thirty three foot (33') dimension line defining the limits of the depicted railroad sixty six foot (66') right-of-way. This line appears to define the limit of the railroad right-of-way as it runs through your client's property. The depiction of this line on the plan further supports AVRR's assertion that even if the property line may be disputed by your client, it is clear the property, as a minimum, is encumbered by the rights of the railroad in its operating right-of-way.

Before you attempt to litigate this matter and incur the costs associated therewith, would it not benefit both parties to meet and discuss this matter with the objective of identifying what AVRR believes to be the source of this dispute and perhaps consider alternatives that might address your client's encroachment on AVRR's right of way?

Kathleen McConnell, Esq.  
September 2, 2009  
Page 3

If your client is willing to forego litigation for a short period of time to enable such a meeting to take place, we will use our best efforts to promptly schedule a meeting with you.

Please advise me how you wish to proceed.

Very truly yours,

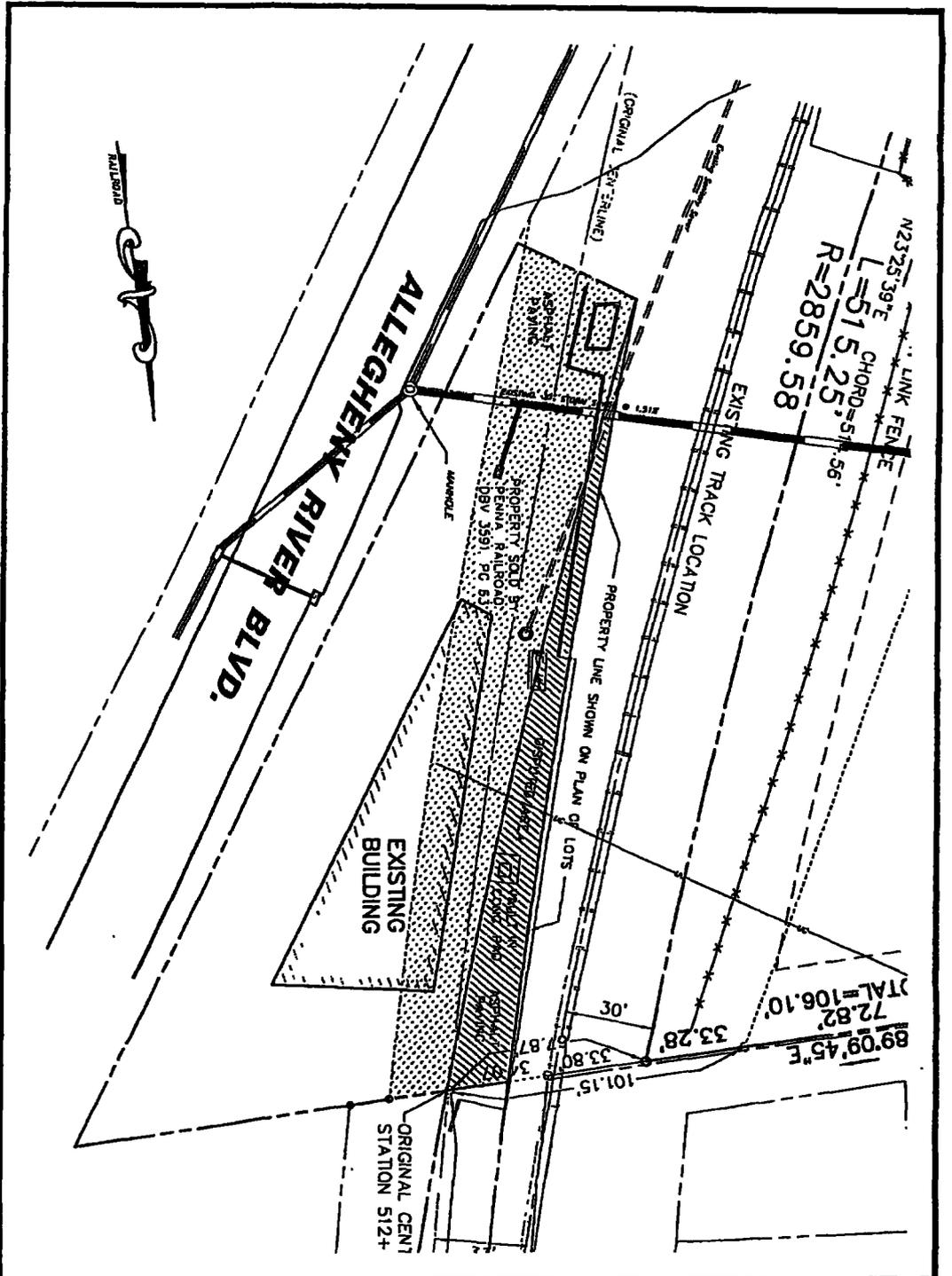
RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

RRW/bab  
Enclosure

xc: Allegheny Valley Railroad Company  
Jason Cervone, Esq.



PLAN MADE FOR	ALLEGHENY VALLEY RAILROAD	
SITUATE IN	MUNIC. OF PENN HILLS ALLEGHENY COUNTY, PA	
LIADIS ENGINEERING & SURVEYING, INC. 3100 BANKSVILLE ROAD - PITTSBURGH, PA 15216		
SCALE: 1" = 40'	SEPTEMBER 1, 2009	DRAWING No. 21278-A

**ALLEGHENY VALLEY RAILROAD**

**P.O. Box 127 Verona, PA 15147**

**Telephone: (412) 426-6600 Fax: (412) 426-4000**

**October 7, 1998**

**To: Howard Davidson  
Director of Planning and Code Enforcement  
Municipality of Penn Hills  
12245 Frankstown Road  
Penn Hills, PA 15206**

**Re: Unauthorized Occupation of Railroad Right-of-Way  
New Building by William Fiore Jr.**

**Dear Mr. Davidson,**

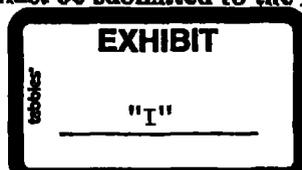
**On October 6, 1998, Tim Prevost of Allegheny County Sanitary Authority ("Alcosan") met with the Allegheny Valley Railroad (the "Railroad") to investigate an alleged unauthorized encroachment upon Alcosan's license (the "License") for longitudinal occupation of the Railroad's Right-of-Way in the Township of Penn Hills.**

**Upon inspection of photographs submitted by Alcosan, the Railroad conducted an inspection of the site and found a new building purportedly constructed for William Fiore Jr. ("Fiore"). The Railroad determined that said construction encroached upon both the Railroad's right-of-way and rights granted by the Railroad to Alcosan to construct, maintain, repair, alter, renew, relocate and ultimately remove raw sewage sanitary facilities through the lands and under and across and along the Railroad.**

**Said License requires that the sanitary facilities be located, constructed and maintained in exact accordance with the construction plans submitted by Alcosan to the Railroad, and that no departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer of Railroad. Permission for the observed departure has not been sought by Alcosan or Fiore, nor granted by the Chief Engineer of Railroad.**

**The Railroad finds Fiore to be trespassing on Railroad right-of-way property. The Railroad petitions the Municipality of Penn Hills to act in a manner consistent with the public necessity of protecting the rail transportation corridor and sanitary facilities from unauthorized occupation.**

**From time to time the Railroad grants license agreements for the occupation of railroad property. Requests for such licenses must be submitted to the Railroad in writing and must**



accompanied with engineering plans in accordance with the current issues of Railroad Specifications CE 8. Such requests may or may not be approved by the Railroad. The necessity of protecting the corridor, a public utility, will be given first consideration. The legal clearance requirements of Pennsylvania Title 52.33C will also be observed.

Please feel free to contact me regarding this matter at the above phone number. Thank you for your kind cooperation.

Yours truly,



Russell A. Peterson  
President

cc: Tim Prevost  
ALCOSAN  
3300 Preble Avenue  
Pittsburgh, PA 15233

Jack Mason  
Fire Marshall  
Municipality of Penn Hills

Mr. William Fiore Jr.  
413 Larimer Avenue  
Pittsburgh, PA 15206  
VIA U.S. REGISTERED RETURN RECEIPT

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,

Plaintiff,

v.

ALLEGHNEY VALLEY RAILROAD CO.,  
CONSOLIDATED RAIL CORPORATION,  
PETER D. FRIDAY, SUSAN F. DALTON,  
AND ROBERT L. WISEMAN,

Defendants.

TO THE PARTIES:

You are hereby notified to file a written  
Response to the enclosed PRELIMINARY  
OBJECTIONS within twenty (20) days from  
service hereof or a judgment may be entered  
against you.

CIVIL DIVISION

No. GD10-1721

**PRELIMINARY OBJECTIONS  
RAISING QUESTIONS OF FACT**

Filed on behalf of:  
Allegheny Valley Railroad Company

Counsel of record for this party:

Richard R. Wilson, Esq.  
Pa. I.D. No. 25661

RICHARD R. WILSON, P.C.  
518 N. Center Street, Ste. 1  
Ebensburg, PA 15931  
(814) 419-8152

and

2310 Grant Building  
Pittsburgh, PA 15219  
412-471-1800



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

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,	)	CIVIL DIVISION
Plaintiff,	)	No. GD10-1721
v.	)	
ALLEGHNEY VALLEY RAILROAD CO.,	)	
CONSOLIDATED RAIL CORPORATION,	)	
PETER D. FRIDAY, SUSAN F. DALTON,	)	
AND ROBERT L. WISEMAN,	)	
Defendants.	)	

**PRELIMINARY OBJECTIONS**

Defendant, Allegheny Valley Railroad Company, by and through its undersigned counsel, Richard R. Wilson, P.C. files the following Preliminary Objections and states as follows:

1. This case arises out of property line dispute between Plaintiff and Defendant Allegheny Valley Railroad Company (“AVRR”) regarding the location of a common boundary line between their properties in the Municipality of Penn Hills. AVRR is a Class III common carrier railroad which acquired its railroad right of way adjacent to what is now Plaintiff’s property (referred to as Lot 4-B) from Consolidated Rail Corporation by deed dated October 27, 1995 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 W.L. 681254. (AVRR Exhibit A) AVRR is a railroad public utility pursuant to 66 Pa.C.S.A. §102.

2. The AVRR track and right of way which is the subject of this dispute is located along the east bank of the Allegheny River and extends through the Municipality of Penn Hills and Verona Borough. The properties of the parties are adjacent to each other and are situated immediately south of the Verona Borough-Penn Hills municipal boundary in the Municipality of Penn Hills. (AVRR Exhibit B)

3. The original Allegheny Valley Railroad Company acquired and constructed its railroad line to Kittanning, PA, including that portion of the line which is presently subject to dispute, by 1862. In 1910, the original AVRR was consolidated into the Pennsylvania Railroad and ceased to exist as a separate company.

4. After the Penn Central bankruptcy in 1970, the line was transferred to Conrail pursuant to the 1975 United States Railroad Association Final System Plan as mandated by the Regional Rail Reorganization Act of 1973, 45 U.S.C. §701 et seq., and was owned and operated by Consolidated Rail Corporation until 1995 when Conrail sold and conveyed the line to AVRR. (AVRR Exhibit C) Accordingly, the AVRR right of way adjacent to Plaintiff's Lot 4-B has been used in active common carrier railroad service for over 150 years.

5. The right of way acquired by the original AVRR was obtained by 1862 under releases of condemnation damages. In 1920, the Pennsylvania Railroad Company, successor to the original AVRR and a predecessor in interest to Defendant AVRR acquired by general warranty deed fee title to the property comprising its railroad right of way south of the Verona Borough line from Lucy E. Haworth, et al. which deed is recorded in the Allegheny County Recorder of Deeds Office at Deed Book Vol. 2070, Page 173. (AVRR Exhibit D). The legal description and the associated calls in this deed definitively identify the original easterly line of the railroad right of way adjacent to

property subsequently acquired by Plaintiff on August 5, 1997. This deed also confirms the railroad's fee simple title to its right of way adjacent to Plaintiff's parcel. (Affidavits of Russell A. Peterson and David M. Kalina)

6. Subsequently, the Pennsylvania Railroad Company conveyed a small 0.3815 acre parcel from its right of way to American Steel Foundries by deed dated June 25, 1956 and recorded in the Allegheny County Record of Deeds Office in Deed Book Vol. 3591, Page 63. Based on the 1956 conveyance to American Steel Foundries, the new easterly railroad right of way boundary line adjacent to Plaintiff's Lot 4-B is described in call (4) after 1956 deed as a line "southwardly crossing said Borough and Township dividing line on a curve to the right having a radius of 2854.93 feet, the cord of which bears S 19° 46' 10" W for a length of 695.82 feet an arc length of 697.59 feet to an iron pin." This is now the present easterly line of AVRR's railroad right of way. (AVRR Exhibit E) (Affidavits of Russell A. Peterson and David M. Kalina)

7. American Steel Foundries, having acquired several parcels of property in connection with its business located adjacent to the railroad right of way, in 1959 conveyed by a single deed its multi parcel holdings to Rospec Reality Co. by deed recorded in the Allegheny County Recorder of Deeds Office, Deed Book Vol. 3726, Page 715. In this deed, separately described parcels owned by American Steel Foundries in both Penn Hills and Verona were combined into one legal description and, inexplicably, two courses of differing radii were used to describe the common property line along the railroad right of way which was described with a single course and a single radius in the railroad's 1956 deed to American Steel Foundries. (See Fiore Exhibit G, Chain of Title) (Affidavit of David M. Kalina)

8. Thereafter, when the original and revised USSCC Subdivision Plan was prepared, (Fiore Exhibits D & F) the inaccurate legal description from the Rospec Realty deed (Deed Book Vol. 3726, Page 715) was apparently utilized by the surveyors who prepared the Subdivision Plans. As a consequence of these and other errors, the Subdivision Plan misdescribed the westerly boundary of Lot 4-B adjacent to the railroad right of way causing a triangular overlap of Lot 4-B with AVRR's right of way. The parties' boundary line descriptions coincide at the southerly end of the Lot 4-B but overlap in excess of 20 feet at the northerly end of Lot 4-B. (See AVRR Exhibit B) (Affidavit of David M. Kalina)

9. In late 1997 or early 1998 after observing a sign stating "future site of Fiore Glass and Mirror", Mr. Russell Peterson, President of AVRR, prior to Plaintiff's construction of his building, provided Plaintiff a copy of the railroad's valuation maps and indicated that Mr. Fiore's proposed construction would encroach on AVRR's right of way. Notwithstanding that prior notice, Mr. Fiore proceeded with the construction of his building and the paving of that portion of his parcel which encroached onto AVRR's right of way.

10. In 1998, Mr. Peterson gave counsel for Mr. Fiore AVRR's chain of title information providing the legal basis for AVRR title to the disputed property (AVRR Exhibit F) On September 2, 2009 and October 6, 2009, AVRR again provided counsel for Plaintiff with a letter setting forth the foregoing facts regarding the derivation of Plaintiff's encroachment on AVRR's railroad right of way and AVRR's plans for future development and use of its railroad right of way. (Plaintiff's Exhibit K and AVRR Exhibit G)

11. At no time subsequent to the 1956 conveyance of the small parcel from Pennsylvania Railroad Company to American Steel Foundries did Pennsylvania Railroad Company or its successors in interest participate in any conveyance or other transaction resulting in a change of its easterly boundary line adjacent to Plaintiff's Lot 4-B.

12. At no time from 1862 to 2010 has Defendant AVRR or its predecessors in interest ever sought or obtained abandonment authorization from the Interstate Commerce Commission or its successor agency, the Surface Transportation Board, for its railroad right of way and track adjacent to what is now Plaintiff's Lot 4-B.

**PRELIMINARY OBJECTIONS PURUSANT TO PA. R.C.P. 1028(a)(1) – LACK OF SUBJECT MATTER JURISDICTION**

13. AVRR incorporates Paragraphs 1 through 12 as though fully set forth at length.

14. Pennsylvania Rule of Civil Procedure 1028(a)(1) provides that preliminary objections may be filed by any party to any pleading on the ground of lack of jurisdiction over the subject matter of the action of the Defendant.

15. Counts I, II, III and IV of the Complaint seek judicial remedies to dispossess and/or cause AVRR to pay for property which it already owns and which is used by AVRR and is necessary for the current and future provision of common carrier railroad service in interstate commerce.

16. AVRR acquired its railroad right of way from Consolidated Rail Corporation under regulatory authorization 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) 1995 W.L. 681254 and is therefore subject to the exclusive

jurisdiction of the Surface Transportation Board under 49 U.S.C. §10501(b) which provides:

the jurisdiction of the Board over (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange and other operating rules), practices, routes, services, and facilities of such carriers; and (2) the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks or facilities even if the tracks are located, or intended to be located entirely within one state is exclusive and except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under federal or state law (Emphasis added)

Under 49 U.S.C. §10102(6), a “railroad” includes – (B) the road used by a rail carrier and owned by it or operated under an agreement; and (C) a switch, spur, track, terminal, terminal facility and a freight depot, yard, and ground, used or necessary for transportation; ...” Under 49 U.S.C. §10102 (9) “transportation” includes – (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property or both by rail regardless of ownership or an agreement concerning use; ... (Emphasis Added)

17. WHEREFORE, AVRR respectfully requests the court dismiss Counts I, II, III, and IV against AVRR for lack of subject matter jurisdiction or alternatively order Plaintiff to file a Petition for Declaratory Order with the Surface Transportation Board referring to that federal agency the issues regarding the subject matter jurisdiction of the Board over this dispute and federal preemption of the state law claims asserted by Plaintiff against AVRR.

**PRELIMINARY OBJECTION PURSUANT TO PA. R.C.P. 1028(a)(7) – FAILURE TO EXHAUST STATUTORY ADMINISTRATIVE REMEDIES**

18. AVRR incorporates Paragraphs 1 through 17 herein as though fully set forth at length.

19. On October 6, 2009 and January 4, 2010, Plaintiff was advised by AVRR counsel of the general warranty deeds by which AVRR's common carrier railroad right of way is described and by which AVRR is vested with fee simple title to its property adjacent to Plaintiff's Lot 4-B including AVRR's property on which Plaintiff has encroached. (AVRR Exhibit G)

20. Plaintiff was advised of AVRR's status as a federally regulated common carrier railroad and the exclusive preemptive jurisdiction of the Surface Transportation Board ("STB") over the claims asserted by the Plaintiff with respect to AVRR's operating railroad right of way. In Paragraph 8 of his Complaint, Plaintiff acknowledges the STB's jurisdiction over this dispute.

21. Plaintiff has failed to avail itself of and exhaust its administrative remedies before the Surface Transportation Board regarding issues related to AVRR's ownership and use of its operating railroad right of way for common carrier railroad purposes and the preemption of Plaintiff's state law claims.

22. WHEREFORE, AVRR respectfully requests the court to dismiss Counts I, II, III, and IV against AVRR for failure of Plaintiff to exhaust administrative remedies before the Surface Transportation Board under the provisions of 49 U.S.C. §10101 et seq.

**PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. 1028(2) – FAILURE TO CONFORM TO LAW OR RULE OF COURT – COUNT I**

23. AVRR incorporates Paragraphs 1 through 22 herein as though fully set forth at length.

24. AVRR, having acquired and operated its railroad right of way adjacent to Plaintiff's Lot 4-B pursuant to authority granted by the Interstate Commerce Commission, as a matter of law has exclusive present and future possession and use of that property for common carrier railroad purposes.

25. Even if this court had jurisdiction over Plaintiff's claims, and it does not, AVRR is vested with exclusive possession and use of its property for common carrier railroad purposes under 49 U.S.C. §10901 and only an action in ejectment may be asserted against a railroad which has acquired and is utilizing disputed land for railroad purposes. An action to quiet title and for declaratory judgment with respect to AVRR's operating railroad right of way is not available to Plaintiff where an action in ejectment will lie.

26. Since Plaintiff does not have federal regulatory authorization under 49 U.S.C. §10901 to acquire, possess or occupy AVRR's railroad right of way, absent federal preemption, the only cause of action available to Plaintiff under Pennsylvania law would be to challenge AVRR's possession and use of its property by an action in ejectment.

27. WHEREFORE, AVRR respectfully requests that Count I of the Complaint be dismissed for failure to conform to law or rule of court.

**PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. 1028(a)(4) – LEGAL INSUFFICIENCY – COUNT II**

28. AVRR incorporates Paragraphs 1 through 27 herein as though fully set forth at length.

29. Count II of the Complaint purports to state a claim for slander of title against AVRR but fails to plead any facts to establish that AVRR abused its conditional privilege to assert legal title to its property.

30. Count II of the Complaint also fails to plead any facts to establish that AVRR's assertion of its conditional privilege was not based on (a) its acquisition and operation of a federally regulated railroad right of way for common carrier railroad purposes and (b) deeds of record in its chain of title.

31. On December 11, 1998, October 6, 2009 and January 4, 2010, AVRR advised counsel for Plaintiff of the factual and legal basis for AVRR's assertion of its legally protected interest in its property, said interest being inconsistent with that claimed by the Plaintiff. (AVRR's Exhibits F & G, Plaintiff's Exhibit K)

32. Since AVRR is entitled as a matter of law to assert an inconsistent legally protected interest in the disputed property; Plaintiff has failed to plead an essential element of a claim for slander of title, i.e. any false, abusive or bad faith assertions or conduct by AVRR that is not privileged.

33. WHEREFORE, AVRR respectfully requests the court to dismiss Count II of the Complaint for failure to plead a legally sufficient claim for slander of title.

**PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. §1028(a)(4) – LEGAL INSUFFICIENCY – COUNT IV**

34. AVRR incorporates Paragraphs 1 through 33 herein as though fully set forth at length.

35. AVRR's predecessors in interest, the Pennsylvania Railroad Company acquired fee simple title to the railroad right of way adjacent to Plaintiff's parcel by general warranty deed dated December 24, 1920, recorded in the Allegheny County Recorder of Deeds Office at Deed Book Vol. 2070, Page 173. (AVRR Exhibit D).

36. AVRR's predecessors in interest, Pennsylvania Railroad Company conveyed a 0.3815 acre portion of its railroad right of way adjacent to property which now includes Plaintiff's parcel to American Steel Foundries by deed dated June 25, 1956,

and recorded in the Allegheny County Recorder of Deeds Office at Deed Book Vol. 3591, Page 63 (AVRR Exhibit E). Plaintiff has plead no error, defect or invalidity regarding the 1920 or the 1956 deeds.

37. With the sole exception of the 1956 deed, Plaintiff has pled no other conveyance of the railroad right of way adjacent to what is now Plaintiff's Lot 4-B by AVRR or its predecessors in title from 1920 to the current time. (Plaintiff's Exhibit G – Deed Chain)

38. Based on the 1920 and 1956 conveyances, AVRR is vested with fee simple title to its railroad right of way adjacent to Plaintiff's parcel with an easterly boundary extending "southwardly crossing said Borough and Township dividing line on a curve to the right having a radius of 2854.93 feet, the cord of which bears S 19° 46' 10" W for a length of 695.82 feet an arc length of 697.59 feet to an iron pin." as set forth in call 4 of the 1956 deed.

39. AVRR asserts no railroad right of way ownership interest other than its fee simple estate as described in the deeds referenced in Paragraphs 36 and 38 above.

40. AVRR and its predecessors in title have occupied and used the above described railroad right of way adjacent to what is now Plaintiff's Lot 4-B since 1862 for common carrier railroad purposes and have sought no abandonment authorization with respect to said right of way at any time.

41. Under the 1920 and 1956 deeds, as a matter of law, neither AVRR nor its predecessors in title have effected a *de facto* taking of Plaintiff's property because fee simple title to the operating railroad right of way was acquired *de jure* by AVRR's predecessors in title by general warranty deed in 1920.

42. Only the owner of Plaintiff's parcel at the time that AVRR's predecessors in title acquired or asserted title thereto is entitled to compensation for any alleged *de facto* taking. Subsequent owners are not entitled to compensation and cannot therefore, challenge any alleged *de facto* taking outside their period of ownership.

43. WHEREFORE, AVRR respectfully requests that the court dismiss Count IV for legal insufficiency of a claim for inverse condemnation and *de facto* taking or for appointment of a Board of View.

**PRELIMINARY OBJECTION PURSUANT TO PA R.C.P. §1028(a)(4) – LEGAL INSUFFICIENCY – COUNTS I, II, III, AND IV**

44. AVRR incorporates Paragraphs 1 through 43 herein as though fully set forth at length.

45. Plaintiff's deed dated August 5, 1997 appended to the Complaint as Plaintiff's Exhibit A specifically states that the premises conveyed is Lot No. 4-B, in the First Revision to USSCC Subdivision Plan and Lot 4-B is made "subject to all oil and gas and mineral rights, easements, conditions, restrictions, rights of way, and covenants as they may effect the above herein described premises and as are contained in prior instruments of record." (Emphasis added)

46. AVRR's railroad right of way and the deeds describing the boundary of that right of way adjacent to Lot 4-B are all contained in prior instruments of record in the Allegheny County Recorder of Deeds Office as hereinabove set forth.

47. Plaintiff's title to and the legal description of Lot No. 4-B is, as a matter of law, made subject by Plaintiff's own deed to AVRR's railroad right of way as described in prior instruments of record.

48. Plaintiff's complaint contains no allegation referring to or contesting the validity of the recorded deeds in AVRR's chain of title despite the fact that AVRR provided such information to Plaintiff's counsel long before the filing of this Complaint.

49. Since Plaintiff's title to Lot 4-B is explicitly made subject to all prior recorded rights of way, including AVRR's railroad right of way described in the 1920 and 1956 deeds, the eastern boundary of the AVRR right of way set forth in the 1956 deed from the Pennsylvania Railroad Company to American Steel Foundries quoted in Paragraph 38 of these Objections is, as a matter of law, by reference in Plaintiff's own deed, the legally established and acknowledged property line between the parties.

50. WHEREFORE, Plaintiff has failed to plead a legally sufficient factual basis for Counts I, II, III and IV of the Complaint and said counts must be dismissed with prejudice.

Respectfully submitted,

RICHARD R. WILSON, P.C.

  
Richard R. Wilson, Esq. (PA 25661)  
518 N. Center Street, Ste. 1  
Ebensburg, PA 15931  
(814) 419-8152

Counsel for Defendant Allegheny  
Valley Railroad Company

Date: March 15, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15 day of March, 2010, a copy of the foregoing Preliminary Objections to Plaintiff's Complaint was served upon the following via first class United States mail, postage prepaid:

Kathleen McConnell, Esq.  
Miello, Brungo & Miello, LLC  
1 Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235

  
Richard R. Wilson, Esq.

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE, ) CIVIL DIVISION  
 )  
Plaintiff, ) No. GD10-1721  
 )  
v. )  
 )  
ALLEGHENY VALLEY RAILROAD CO., )  
CONSOLIDATED RAIL CORPORATION, )  
PETER D. FRIDAY, SUSAN F. DALTON, )  
AND ROBERT L. WISEMAN, )  
 )  
Defendants.

ALLEGHENY VALLEY RAILROAD  
EXHIBITS TO PRELIMINARY OBJECTIONS

- A. Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation, ICC Finance Docket No. 32783, (Nov. 17, 1995) 1995 WL 681254 (I.C.C)
- B. Plan for Allegheny Valley Railroad Company adjacent to Lot 4-B, Liadis Engineering Company, March 8, 2010
- C. Deed dated October 27, 1995 between Consolidated Rail Corporation and Allegheny Valley Railroad Company
- D. Deed dated December 24, 1920 between Lucy E. Haworth et al. and The Pennsylvania Railroad Company
- E. Deed dated June 25, 1956 between Pennsylvania Railroad Company and American Steel Foundries
- F. 1998 Correspondence between Allegheny Railroad Company, The Municipality of Penn Hills and counsel for William Fiore  
Re: Encroachment
- G. 2009-2010 Correspondence between counsel for Allegheny Valley Railroad Company and counsel for William Fiore

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE, ) CIVIL DIVISION  
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Plaintiff, ) No. GD10-1721  
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v. )  
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CONSOLIDATED RAIL CORPORATION, )  
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Westlaw

1995 WL 681254 (I.C.C.)

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**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.<sup>11211</sup> 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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WEST RAILROAD STREET - 50.05' R/W

198.26' SHIFT

POINT OF CURVE  
PER USSCC PLAN

POINT OF CURVE ON  
RAILROAD CENTERLINE PER  
RAILROAD VAL MAPS AND  
PRIOR DEEDS OF RECORD

EXISTING TRACK LOCATION

PROPERTY LINE PER USSCC/PLANS

PRR DEED=685.82'

DEED=L=697.58'

PRR DEED=410.39'

PRR DEED=L=410.81'

MATCH LINE

SEE SHEET 1

SEE SHEET 2

LOT 102

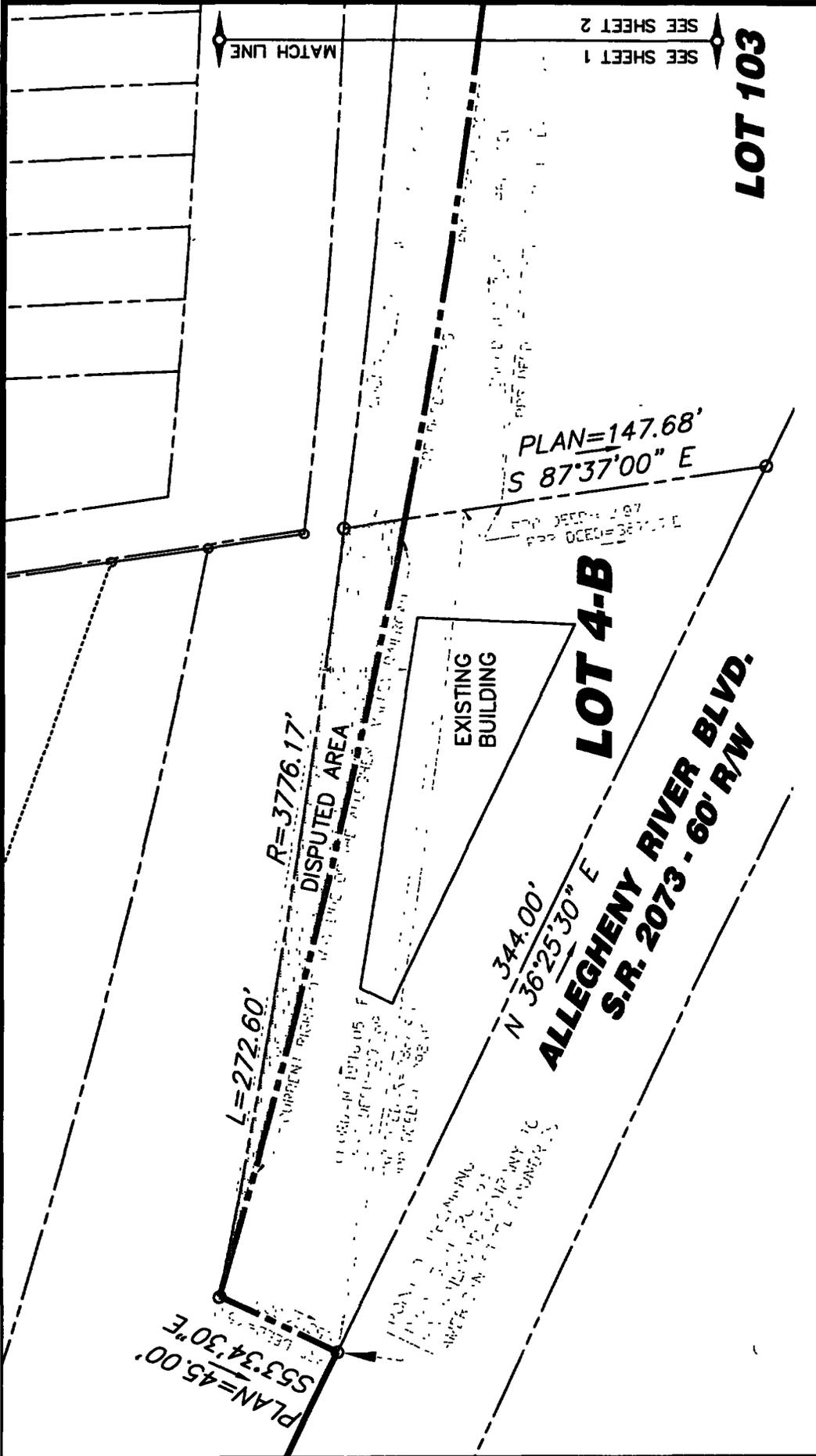
SHOPPING CENTER BUILDINGS

LOT 104

LOT 103

PLAN MADE FOR	ALLEGHENY VALLEY RAILROAD
SITUATE IN	BOROUGH OF VERONA ALLEGHENY COUNTY, PA
LIADIS ENGINEERING & SURVEYING, INC. 3100 BANKSVILLE ROAD - PITTSBURGH, PA 15216	
SCALE: 1" = 50'	PREPARED MARCH 8, 2010
DRAWING No. 21287-B-FE	
SHEET 2 OF 2	





PLAN MADE FOR	ALLEGHENY VALLEY RAILROAD	
SITUATE IN	MUNICIPALITY OF PENN HILLS AND BOROUGH OF VERONA ALLEGHENY COUNTY, PA	
	LIADIS ENGINEERING & SURVEYING, INC. 3100 BANKSVILLE ROAD - PITTSBURGH, PA 15216	
SCALE: 1" = 50'	PREPARED MARCH 8, 2010	SHEET 1 OF 2
		DRAWING No. 21287-B-FE



SEE SHEET 1  
SEE SHEET 2

MATCH LINE

**LOT 103**

PLAN=147.68'  
S 87°37'00" E

FOR DEED= 187  
FOR DEED= 38711 E

**LOT 4-B**

344.00'  
N 36°25'30" E

**ALLEGHENY RIVER BLVD.**  
**S.R. 2073 - 60' R/W**

EXISTING BUILDING

R=3776.17'  
DISPUTED AREA

L=272.60'

PLAN=45.00'  
S53.34.30" E

CURRENT PROJECT: ALLEGHENY VALLEY RAILROAD  
DATE: 03/08/10  
BY: [Signature]

LIADIS ENGINEERING & SURVEYING, INC.  
1000 10TH AVENUE, SUITE 200  
PITTSBURGH, PA 15222  
PHONE: 412-261-1111  
FAX: 412-261-1112  
WWW.LIADIS.COM

WEST RAILROAD STREET - 50.05' R/W

PROPERTY LINE PER USSCC PLANS

**LOT 102**

SHOPPING CENTER BUILDINGS

**LOT 104**

**LOT 103**

MATCH LINE

SEE SHEET 1  
SEE SHEET 2

PLAN MADE FOR	ALLEGHENY VALLEY RAILROAD	
SITUATE IN	BOROUGH OF VERONA ALLEGHENY COUNTY, PA	
	LIADIS ENGINEERING & SURVEYING, INC. 3100 BANKSVILLE ROAD - PITTSBURGH, PA 15216	

SHEET 2 OF 2

SCALE: 1" = 50' PREPARED MARCH 8, 2010

DRAWING No. 21287-B-FE





BLDG & RECD  
DEED REG:

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

DATE: BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2061 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and ALLEGHENY VALLEY RAILROAD COMPANY, a Corporation on the Commonwealth of Pennsylvania, having a mailing address of 2391 Whispering Brook Lane, Grove City, Ohio 43123, hereinafter referred to as the Grantee

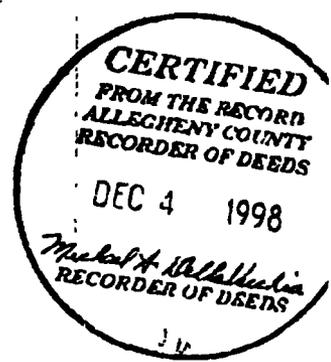
WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor has 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 to, on, and under the surface of said Premises/Easement Areas to

000557100001

AVRR Exhibit C



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 Area. 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

000007116200

Indenture 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:

CONSOLIDATED RAIL CORPORATION  
By:

Nancy B. Reynolds      M. Virginia Ebert  
NANCY B. REYNOLDS      M. Virginia Ebert,  
Assistant Vice President-Real Estate

Attest:

Nancy B. Reynolds      Wilberta C. Jackson  
NANCY B. REYNOLDS      Assistant Secretary  
WILBERTA C. JACKSON

COMMONWEALTH OF PENNSYLVANIA )  
: SS  
COUNTY OF PHILADELPHIA )

On this 27<sup>th</sup> day of October A.D. 1995, before me, the subscriber, the undersigned officer, personally appeared M. Virginia Ebert, who acknowledged herself to be the Assistant Vice President-Real Estate of CONSOLIDATED RAIL CORPORATION, a corporation, and that she 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 herself as Assistant Vice President-Real Estate

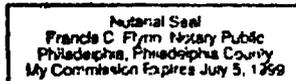
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Francis C. Flynn  
Notary Public

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

Allegany County Railroad Company

209 West Virginia Street, Union City, Pa. 15084  
by Francis C. Flynn Notary Public  
on behalf of Grantee.



THIS INSTRUMENT PREPARED BY:

Francis C. Flynn  
Consolidated Rail Corporation  
19-B, Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19101-1419  
:nl:

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.

DEED 71703 11

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 Map 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.

000907196212

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. FC-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 5291 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.

080957175213

CASE NO. 77-203

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 Westmoreland 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.

020957116214

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.

020957176215

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 Counties 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, therout 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.

060937100716

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, 1976, 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.

050057.0217

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 Cenemaugh 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.

00000/10000

CASE NO 71701

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. Boad and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor by Conveyance Document No. PC-CPC-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 101 PAGES, OF WHICH THIS IS PAGE 9 OF 10.

050977.10210

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-C RC-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.

58095710820

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.

05037706221

CASE NO. 71705

EXHIBIT C

DEED

and

GRANT OF EASEMENT

to

ALLEGHENY VALLEY RAILROAD COMPANY

MAP ATTENDUM

THIS EXHIBIT 'C' CONTAINS 27 MAPS.

00095716022

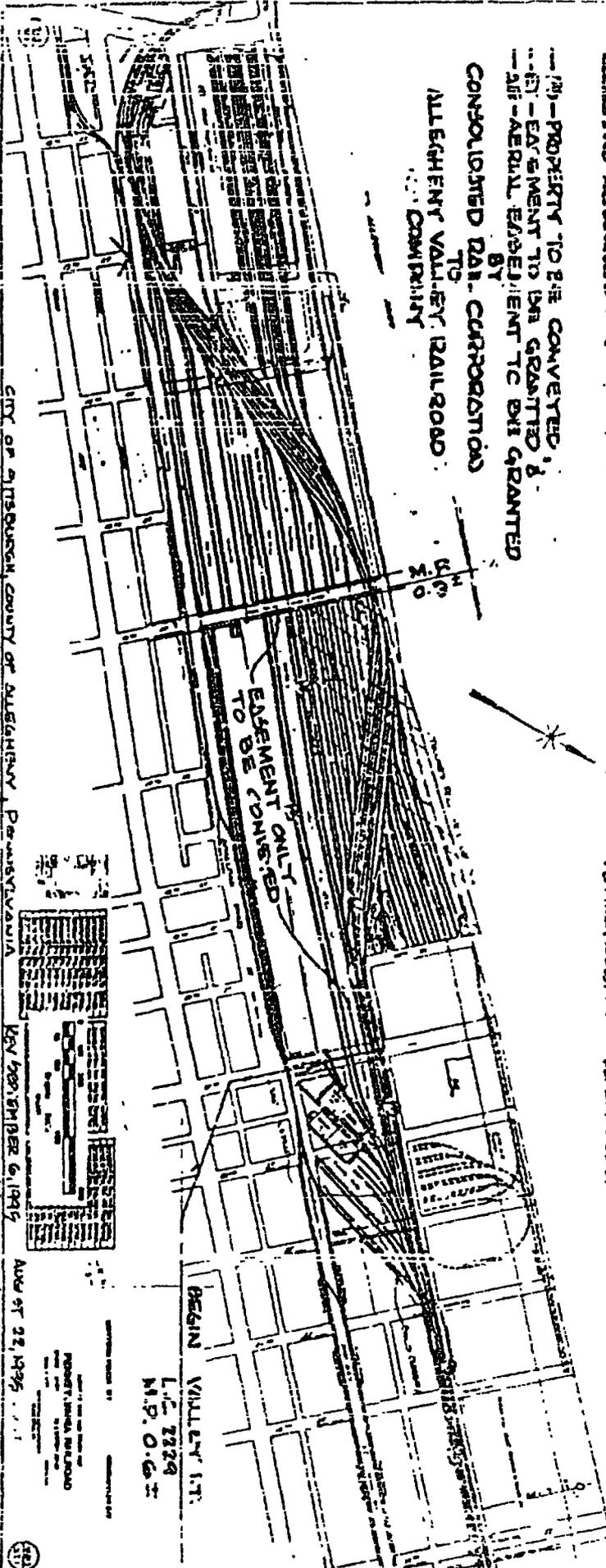
PROPERTY TO BE EXCEPTED  
AND RESERVED:

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

V. 81 (X) (1920) / 1-8  
V. 81 (A) (1920) / 1-12  
V. 81 (A) (1920) / 1-9  
V. 81 (A) (1920) / 1-9

V. 6, 214 (1920) / 21-22  
V. 6, 211 (1920) / 21-22  
V. 6, 211 (1920) / 21-22  
V. 6, 211 (1920) / 21-22

CASE NO. 71703  
SHEET 1 OF 27



EASEMENT ONLY  
TO BE CONVERTED

BEGIN VALLEY I.T.

L.C. 2229  
M.P. 0.62

CITY OF PITTSBURGH, COUNTY OF ALLEGHENY, PENNSYLVANIA

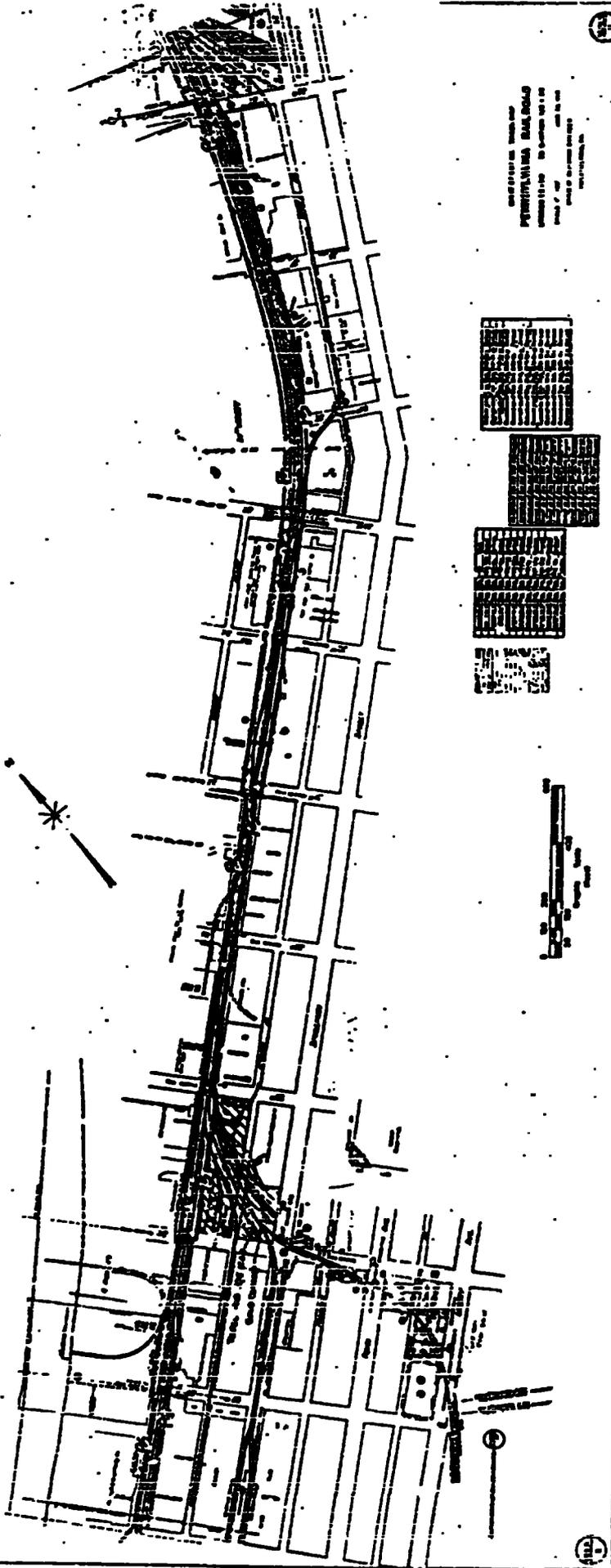
KEN KOSCHNER 6, 1914

AUGUST 22, 1926

PROPERTY OF THE  
CONSOLIDATED RAIL CORPORATION

0309571 PG223

CASE NO. 71703  
SHEET 2 OF 27

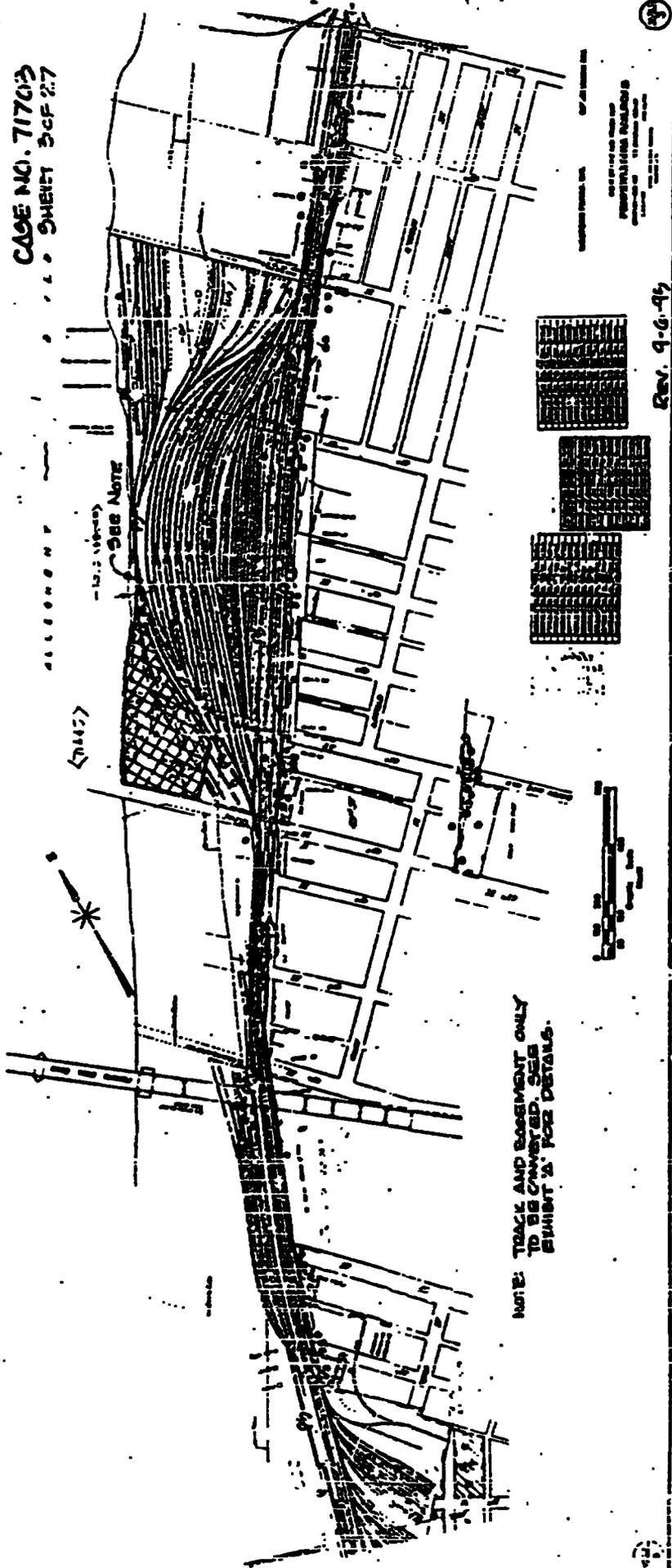


PROPOSED IMPROVEMENTS  
PENNSYLVANIA STATE ROAD  
SECTION 11.100 TO SECTION 11.100  
TOWNSHIP OF ...  
COUNTY OF ...



08095716224

CASE NO. 71703  
SHEET 3 OF 27

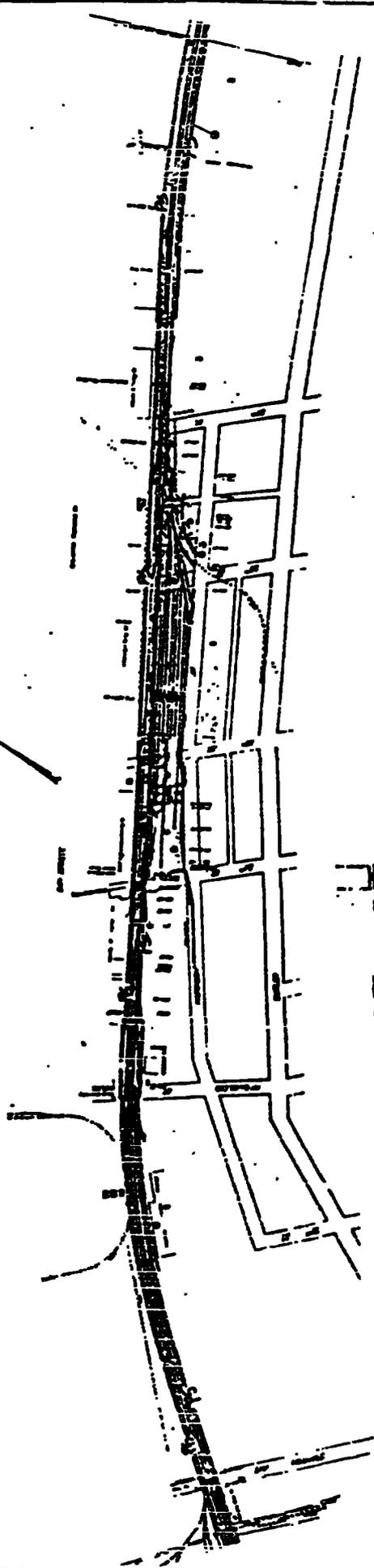
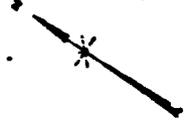


NOTE: TRACK AND BASEMENT ONLY  
TO BE COVERED. SEE  
SHEET 2 FOR DETAILS.

Rev. 9-6-95  
10/1/95

0809571PG225

CASE NO. 1703  
SHEET 4 OF 27



THE STATE OF TEXAS  
COUNTY OF TARRANT  
CITY OF FORT WORTH

(17)

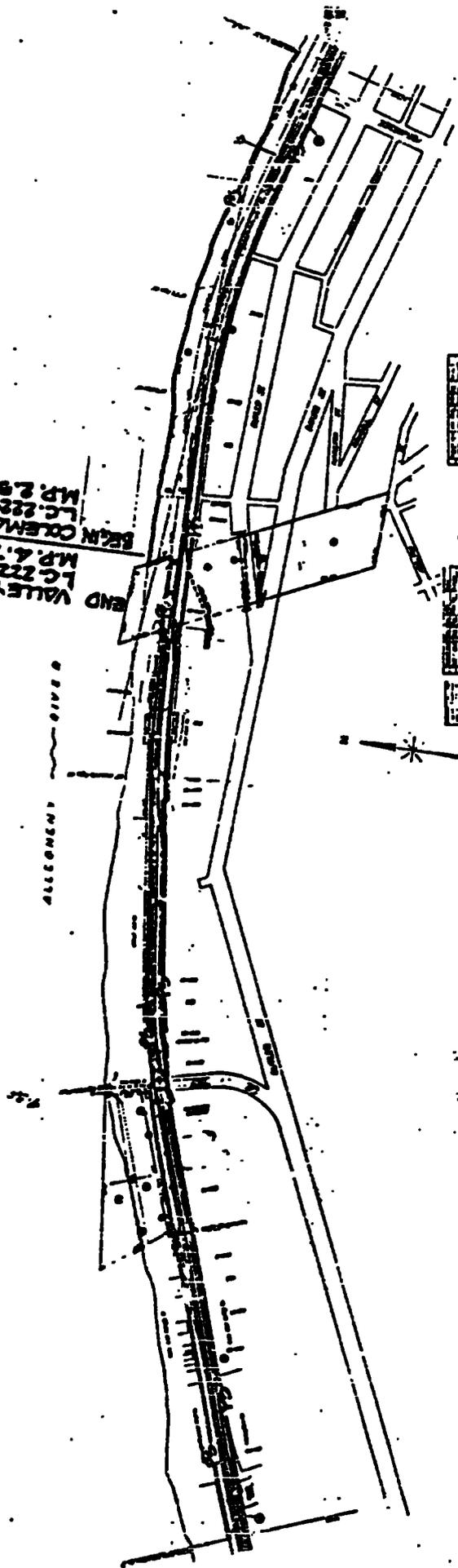
(18)

0809571PG2.26

CASE NO. 71703  
SHEET 5 OF 27

END VALLEY I.T.  
L.C. 2229  
M.P. 4.7  
BRN CREAM SEC  
L.C. 2229  
M.P. 2.9

ALLEGHENY RIVER



13 11 18 25 44 51 60 71 81 91

PROPERTY OF THE  
PENNSYLVANIA RAILROAD  
PHILADELPHIA, PA.  
DRAWN BY  
CHECKED BY



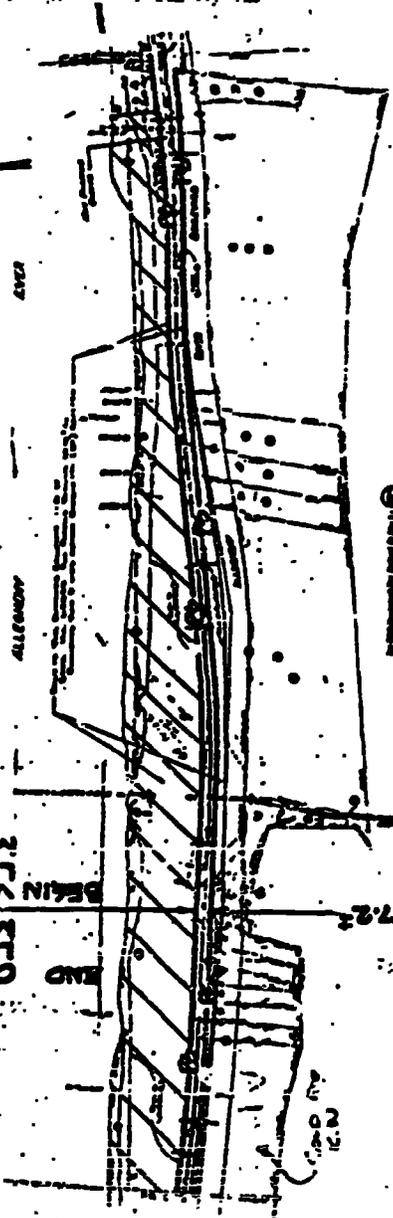
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CASE NO. 71713  
SHEET 13 OF 27

END COLEMAN SEC.  
L.C. 2224  
M.P. 003  
BEAN VALLEY LT.  
L.C. 2224  
M.P. 011



41/2'

ALLEYWAY

— AKA. MR. 723

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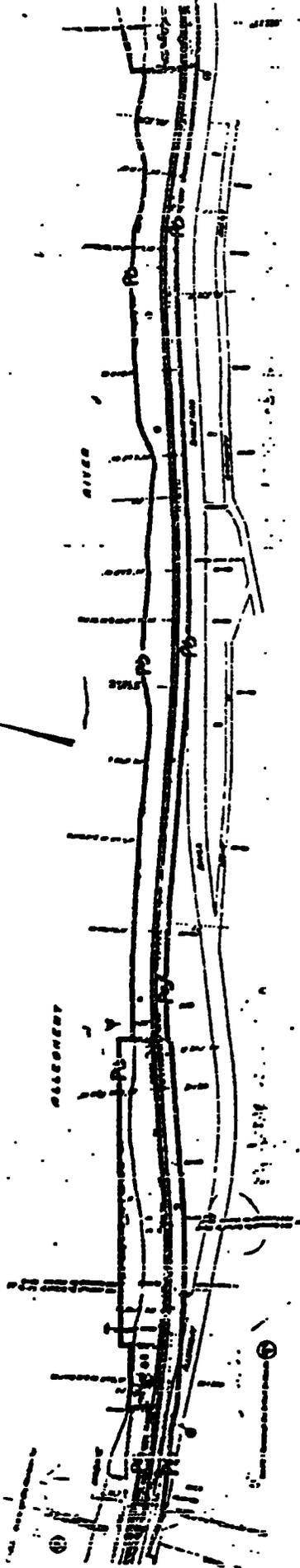
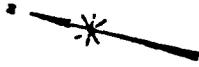
THESE PLANS HAVE BEEN PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS. I AM A LICENSED ARCHITECT IN THE STATE OF CALIFORNIA. MY LICENSE NO. IS 12345. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE ACCURACY OF THESE PLANS.

DATE OF THIS PLAN: 1/15/2024  
PROJECT: 71713  
DRAWN BY: J. SMITH  
CHECKED BY: M. JONES



CB09571PG230

CASE NO. 71703  
SHEET 9 OF 27



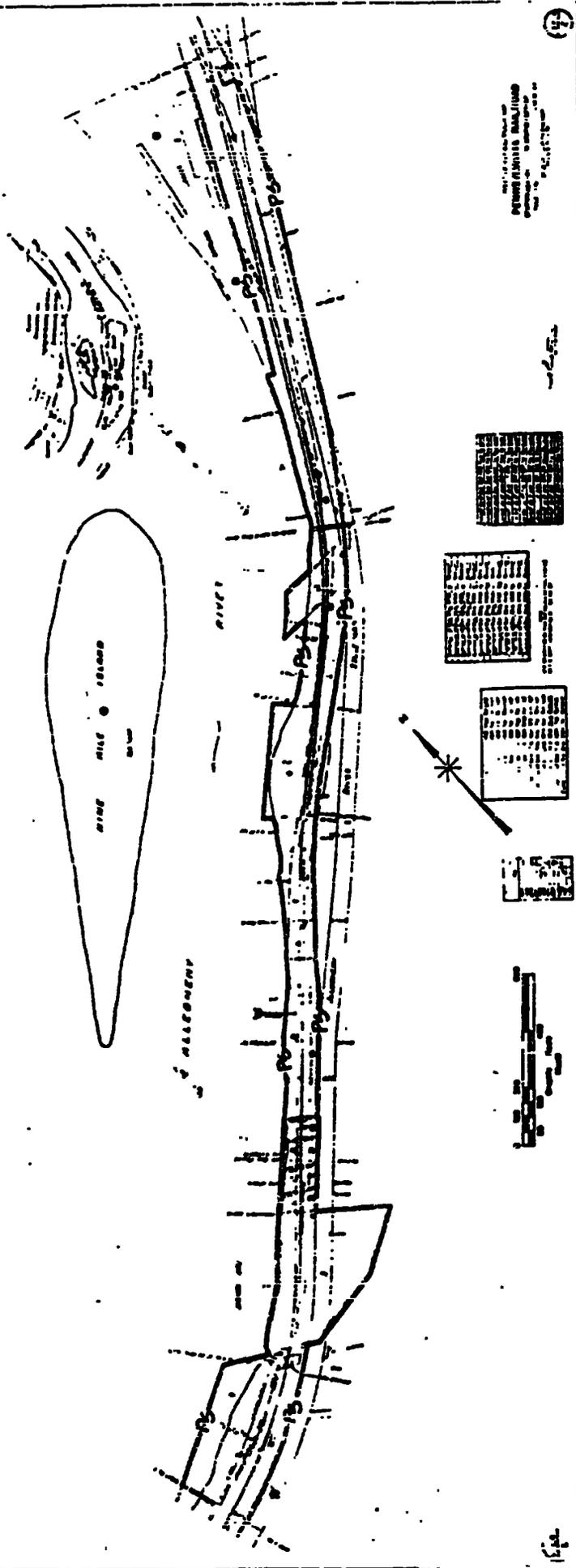
DATE OF ISSUE  
BY  
CHECKED BY  
APPROVED BY

4453

2.2.29 16-86

0809571PG231

CASE NO. 71703  
SHEET 10 of 27



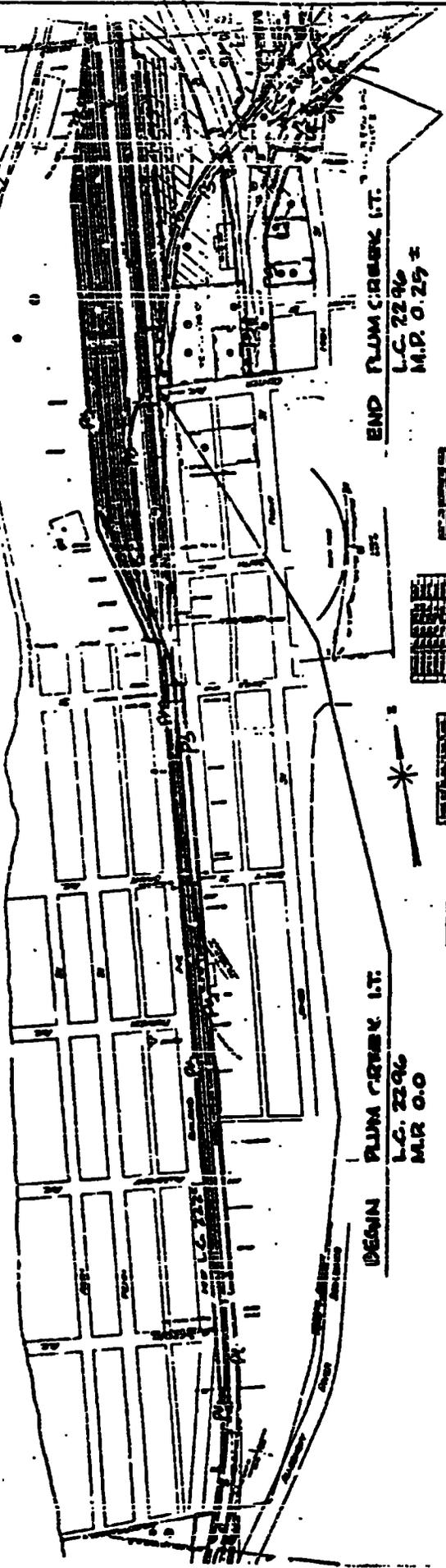
ENGINEERING DRAWING  
SCALE 1" = 100'

DB09571 PG232

CASE NO. 71703  
SHEET  
11 OF 27

RIVER

ALLEYWAY



DESIGN PLUM CORKER I.T.  
L.C. 2296  
M.R. 0.0

END PLUM CORKER I.T.  
L.C. 2296  
M.R. 0.25 ±

SCALE 1/8" = 1'-0"

REV 9-6-95

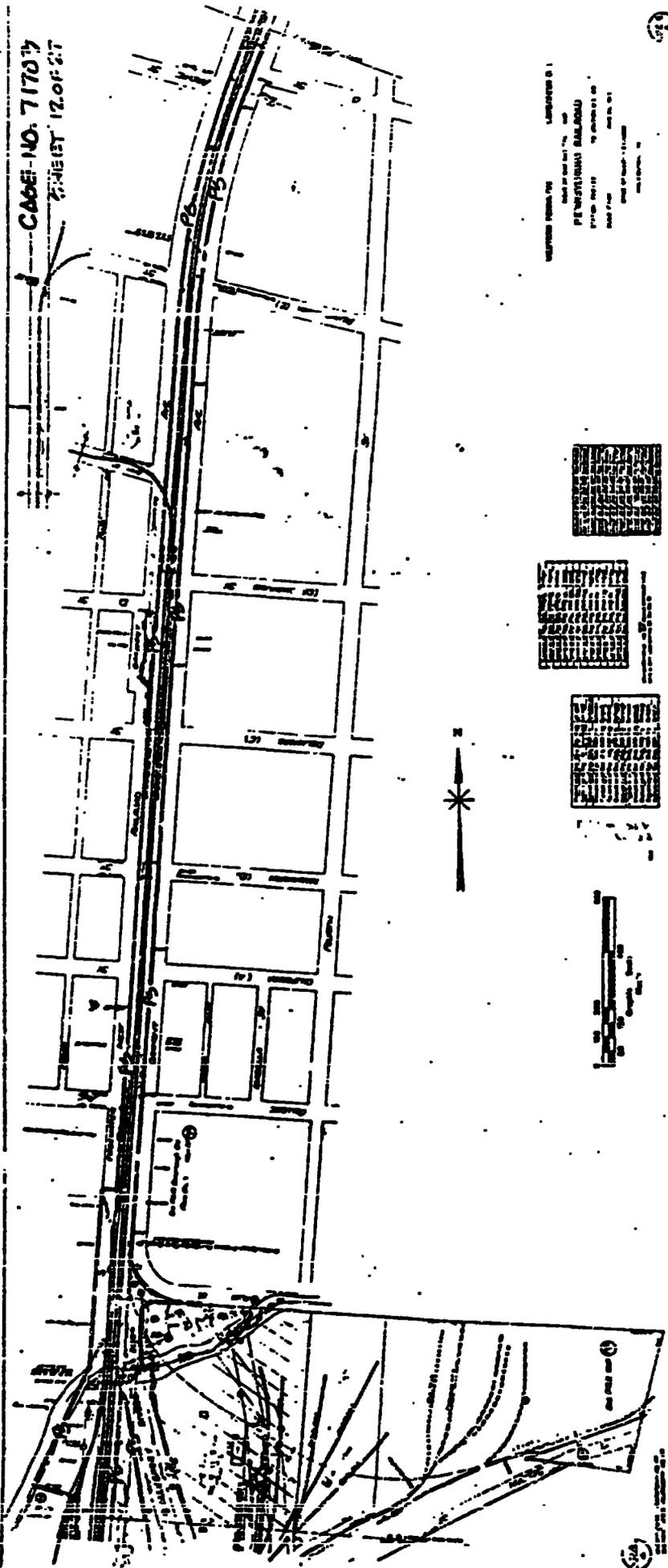
NO. 1107 4-22-95 11-11-95

DESIGNED BY THE ENGINEER  
FOR THE CITY OF BOSTON



DB(1957)PG233

CASE NO. 71707  
SHEET 12 OF 27

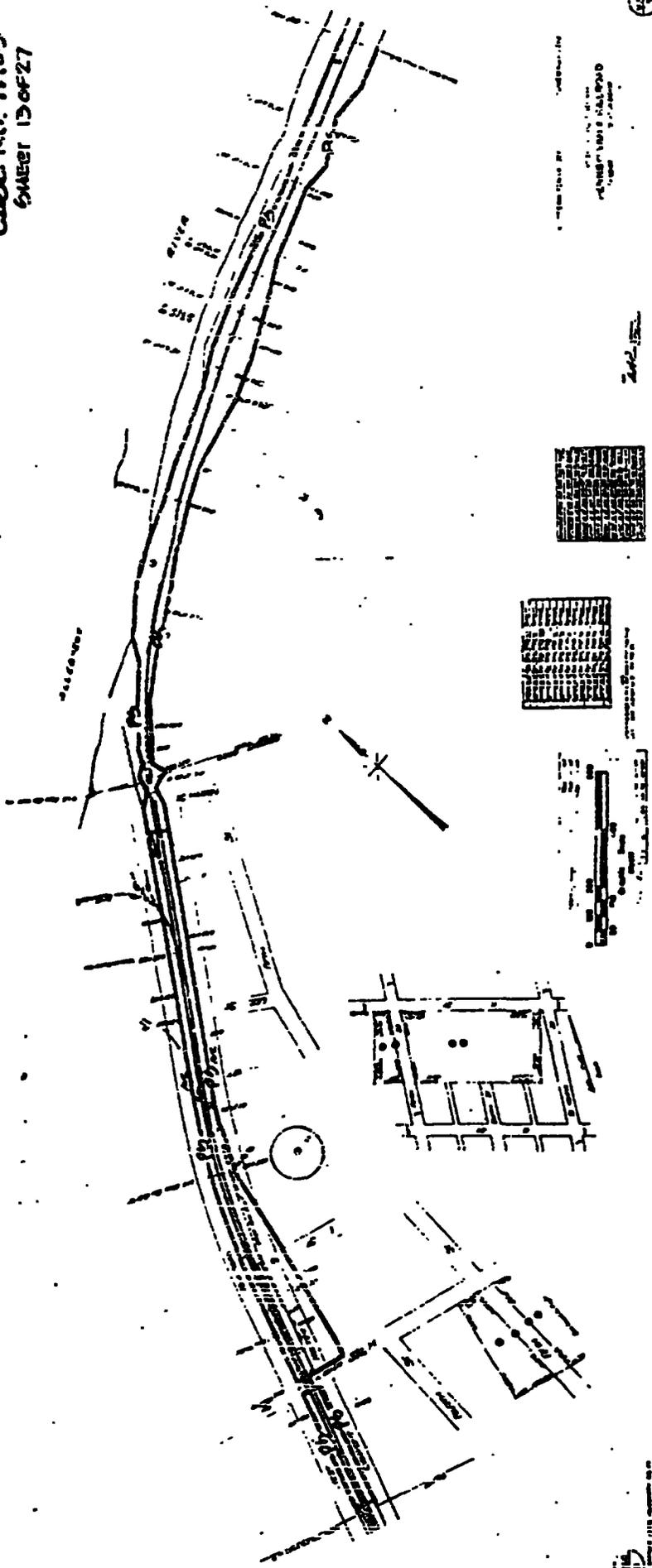


UNIVERSITY MICROFILMS  
SERIALS ACQUISITION  
300 N ZEEB RD  
ANN ARBOR MI 48106  
TEL 313 763 0700  
FAX 313 763 0699



BB09571PG234

CASE NO. 71709  
SHEET 13 OF 27



421

REVISIONS  
NO. DATE BY

REVISIONS  
NO. DATE BY

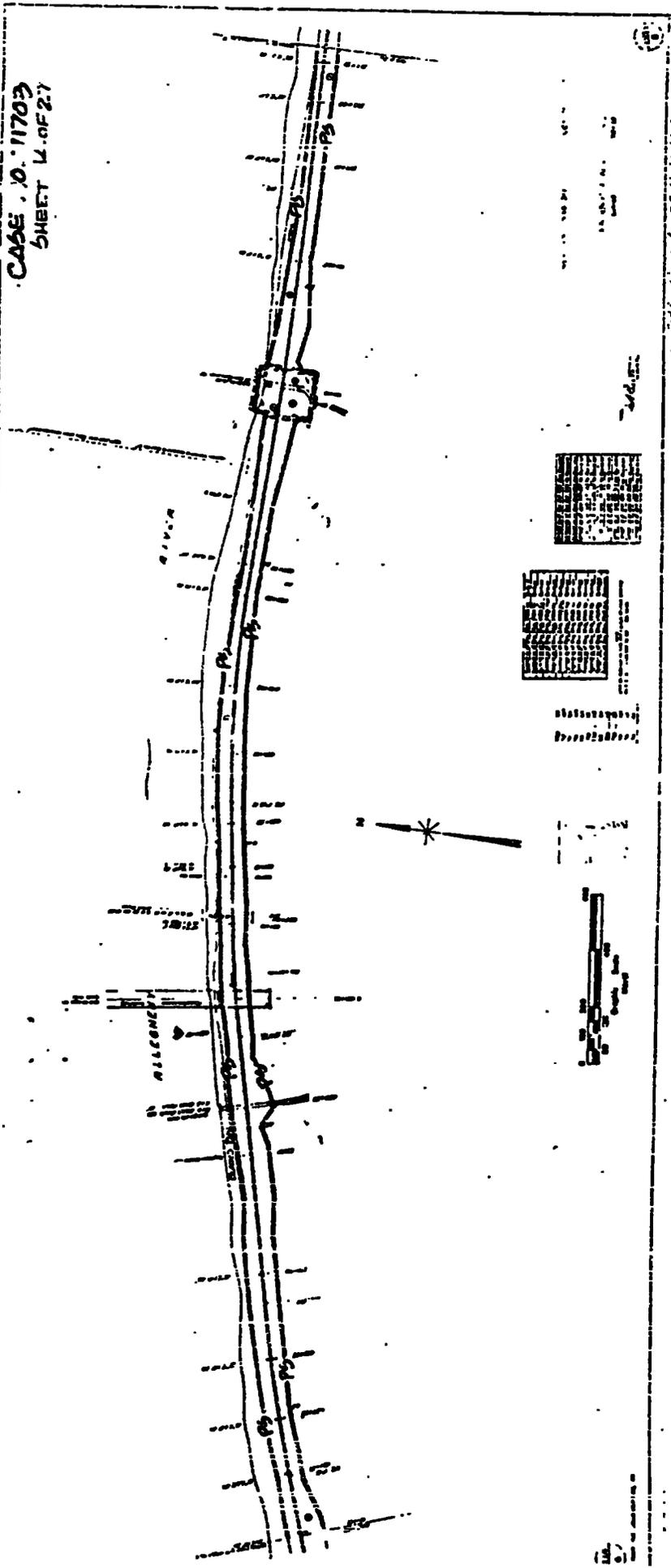
REVISIONS  
NO. DATE BY

REVISIONS  
NO. DATE BY

421

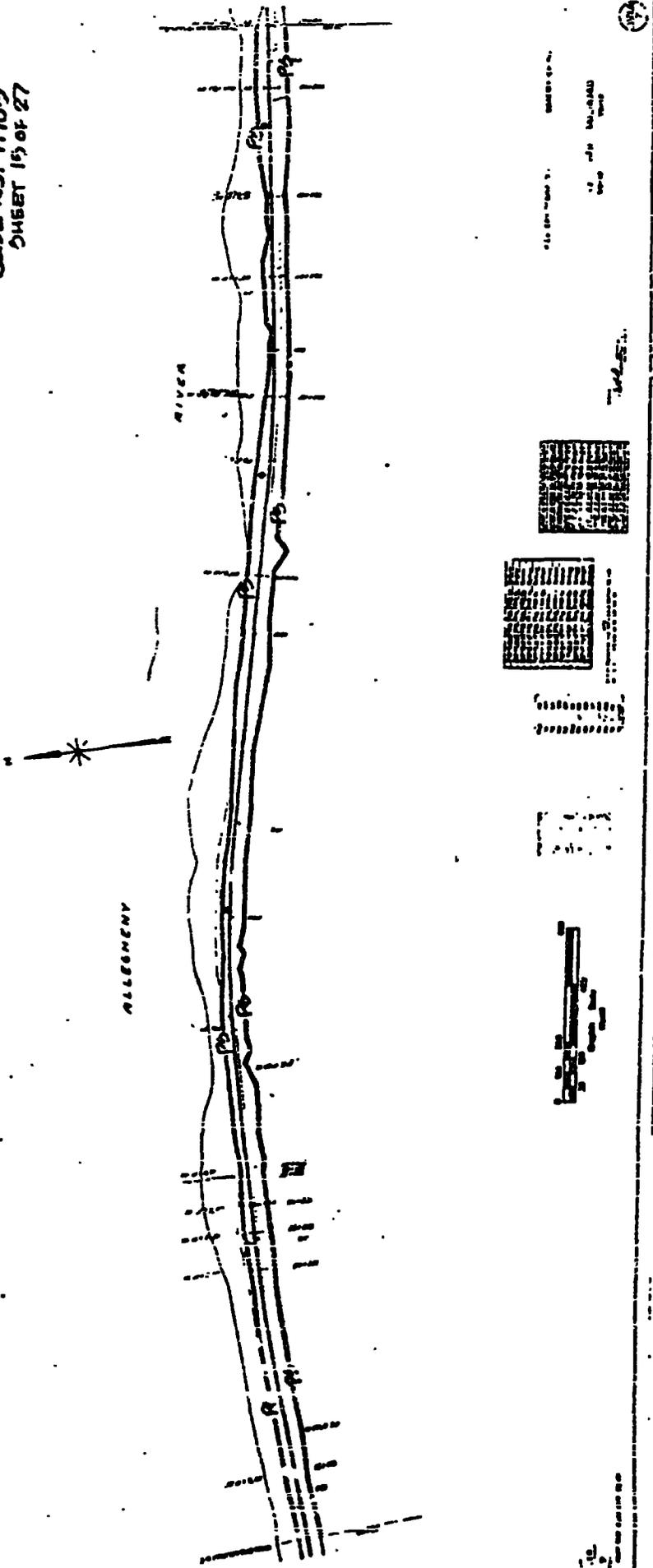
080957-1 PG235

CASE . D. 11703  
SHEET 4. OF 27



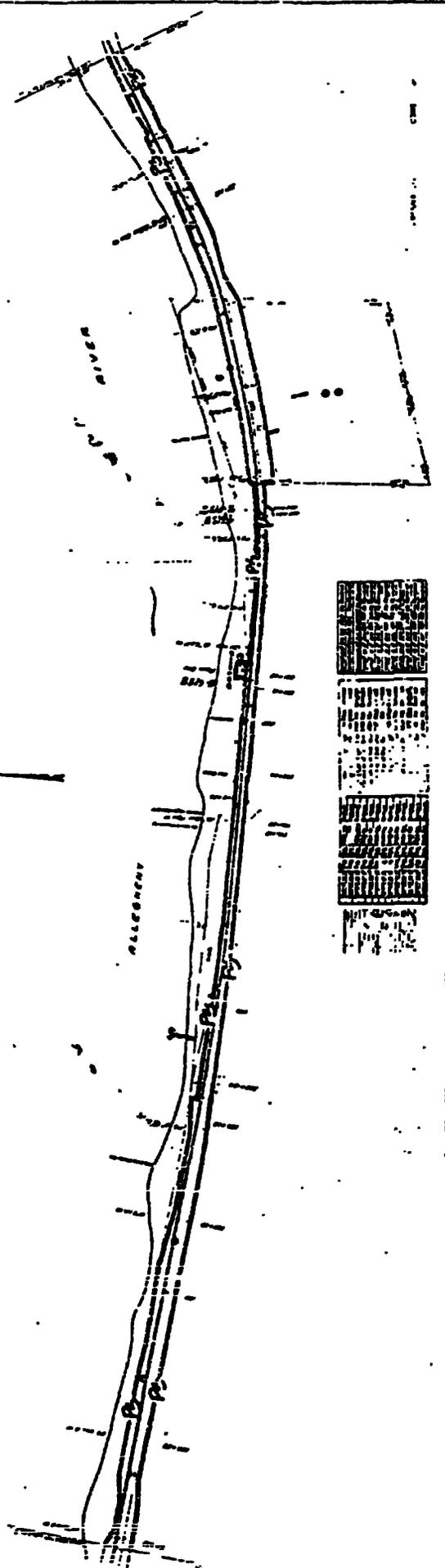
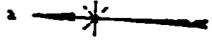
080957 | PG236

CASE NO. 71703  
SHEET 15 OF 27



090957 | PG237

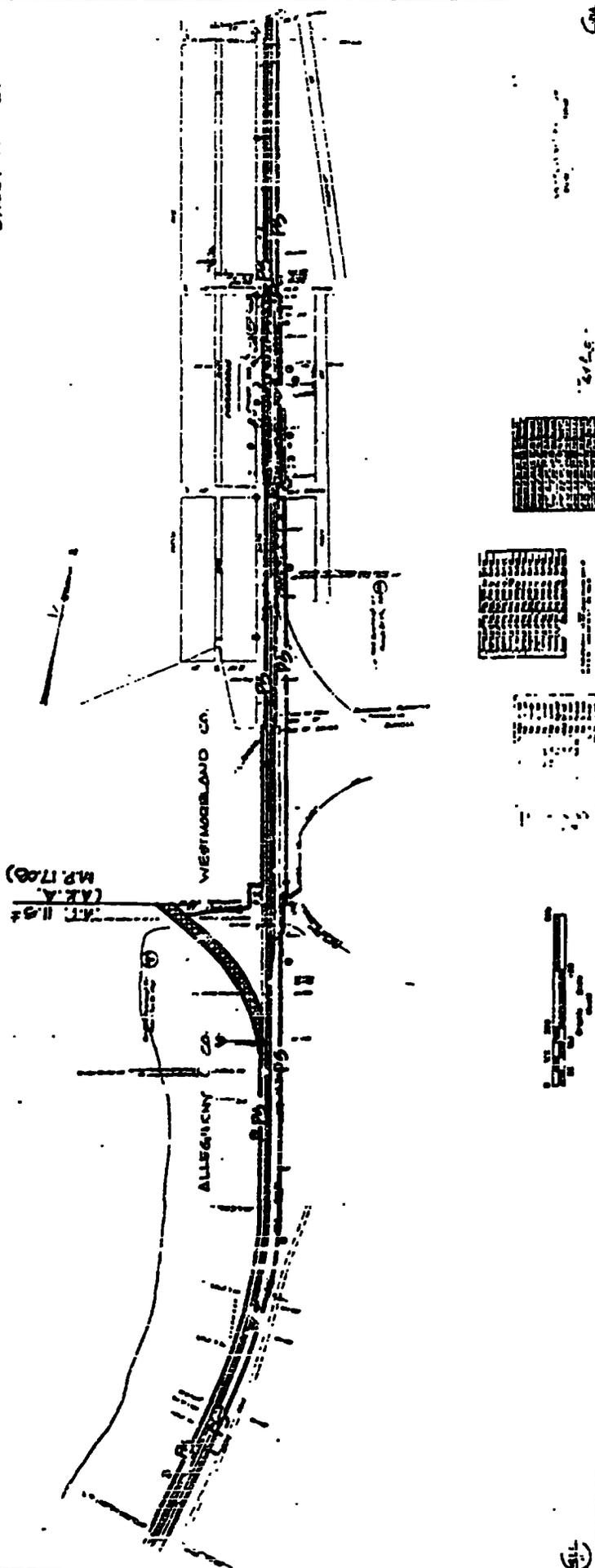
CASE NO. 71703  
SHEET 1 OF 27



08095716238



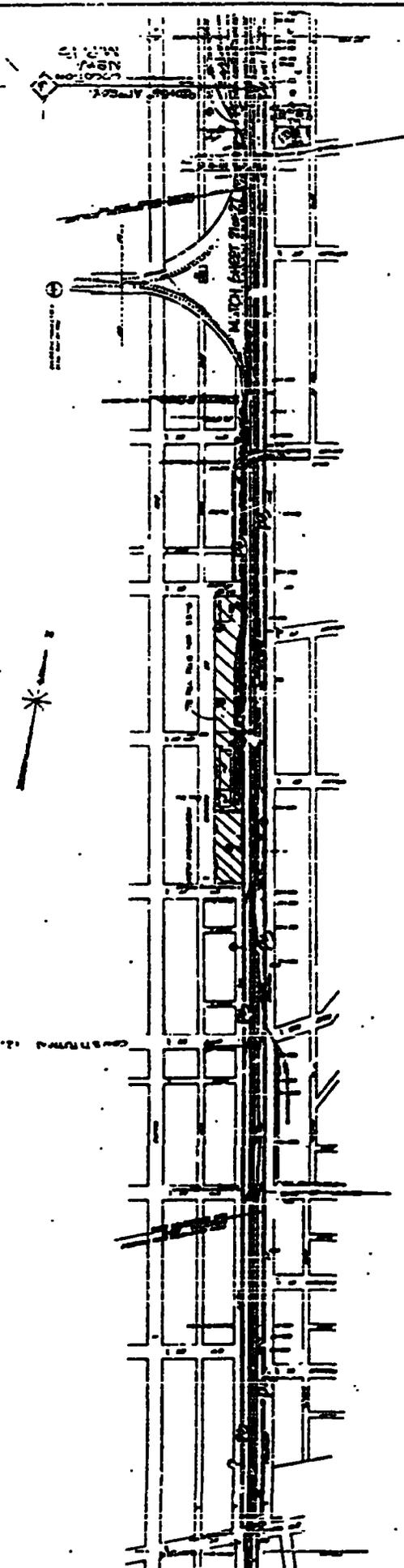
CASE NO. 71702  
SHEET 10 OF 27



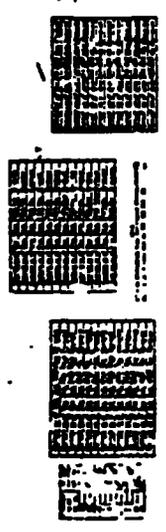
REV 9-6-95

DB09571 PG240

CASE NO. 71023  
SHEET 19 OF 27

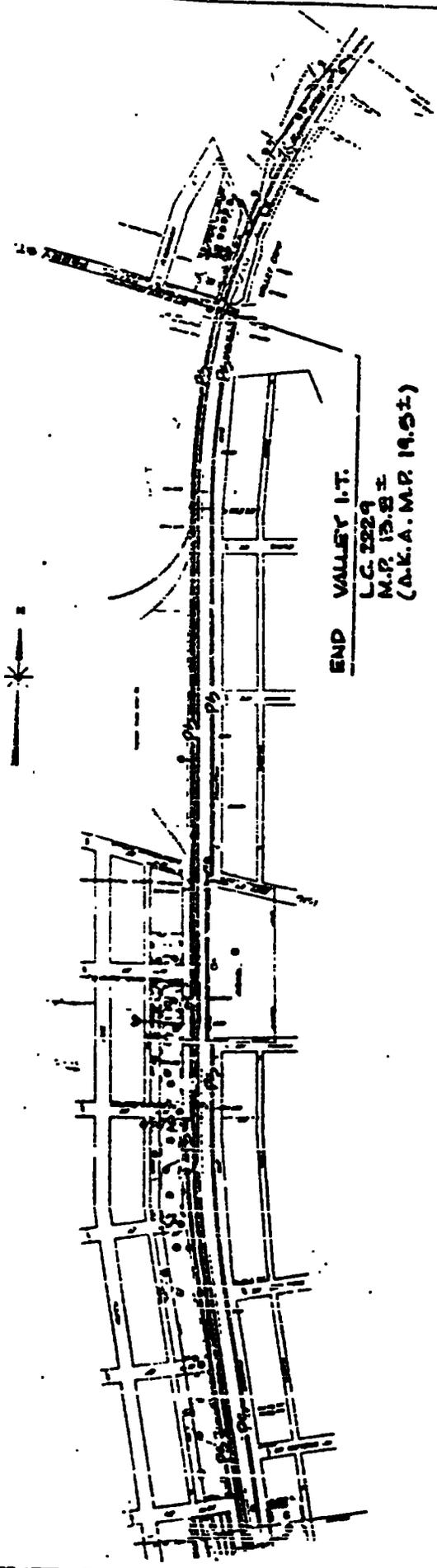


FOR THE ARCHITECT  
FOR THE ENGINEER  
FOR THE CONTRACTOR



DB09571PG241

CASE NO. 71103  
SHEET 20 OF 27



END VALLEY I.T.  
L.C. 3229  
M.P. 13.8 ±  
(A.K.A. M.P. 14.5 ±)



APPROVED BY: [Signature]  
DATE: 11/11/1978

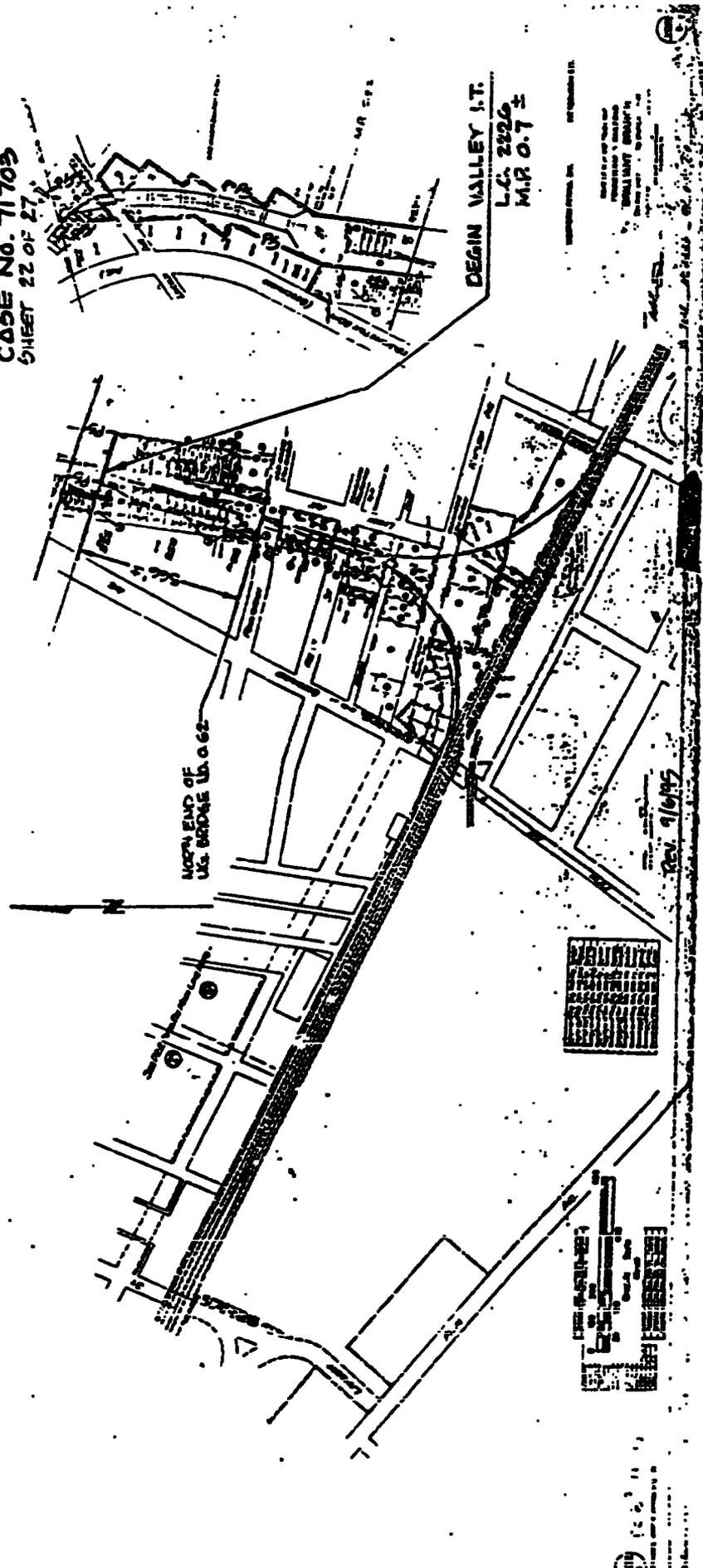
REV. 9-6-75

20

0809571PG242

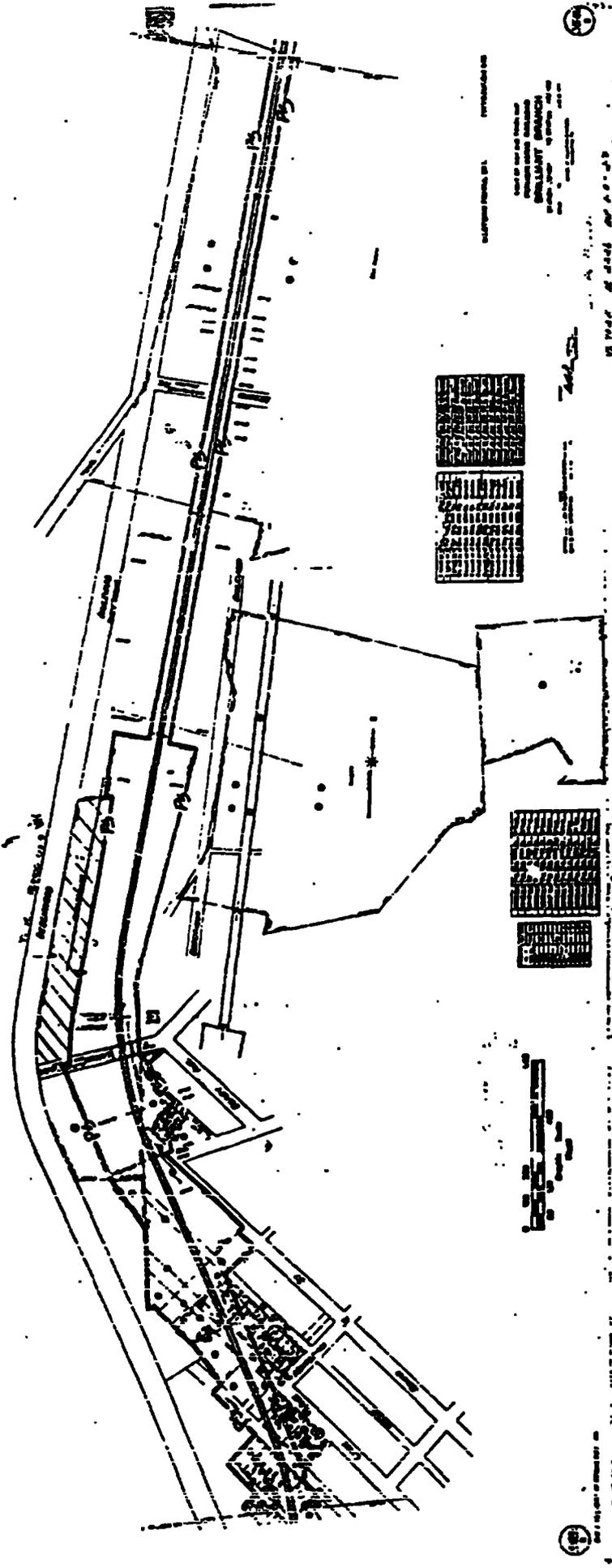


CASE NO. 71709  
SHEET 22 OF 27



0809571PG244

CASE NO. 71703  
SHEET 25 OF 27

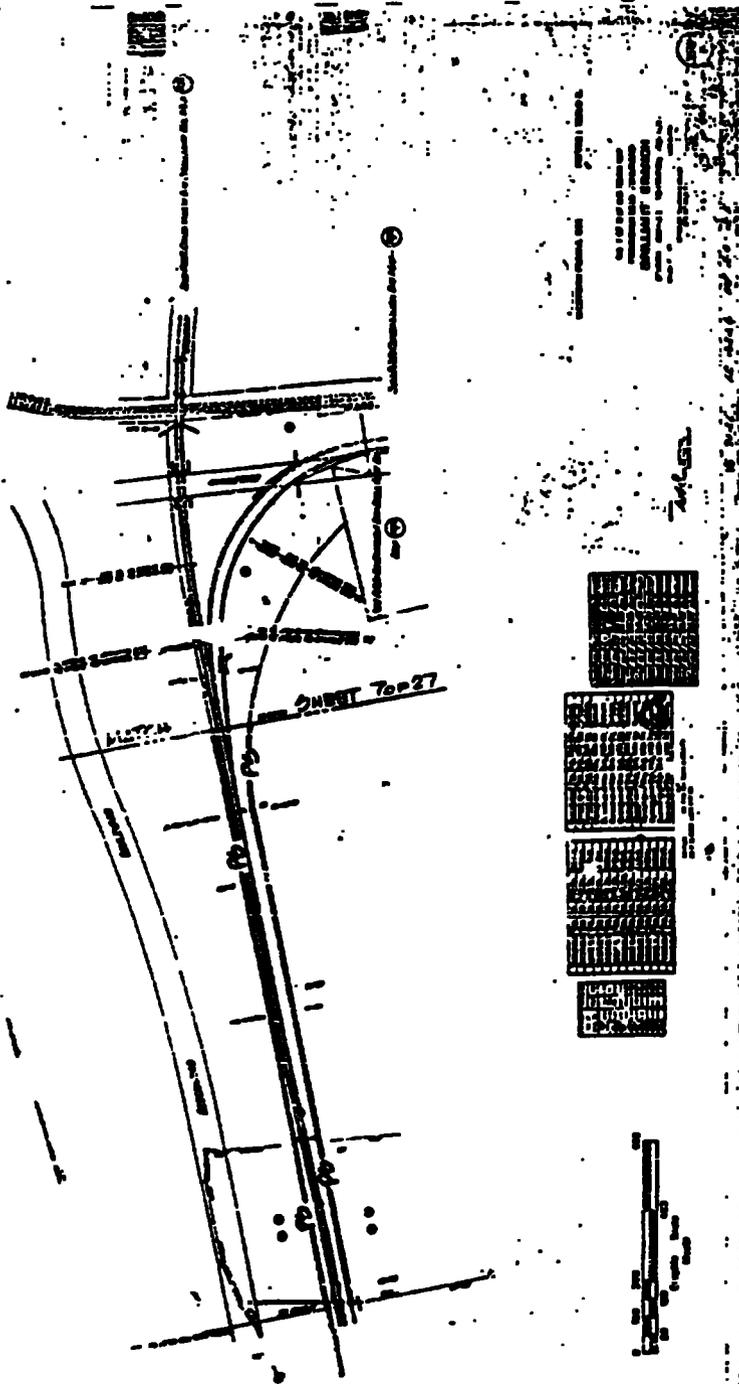


DATE OF THIS PLAN IS  
PREPARED BY  
ARCHITECT  
15 YEAR AS BUILT ON 11-1-83



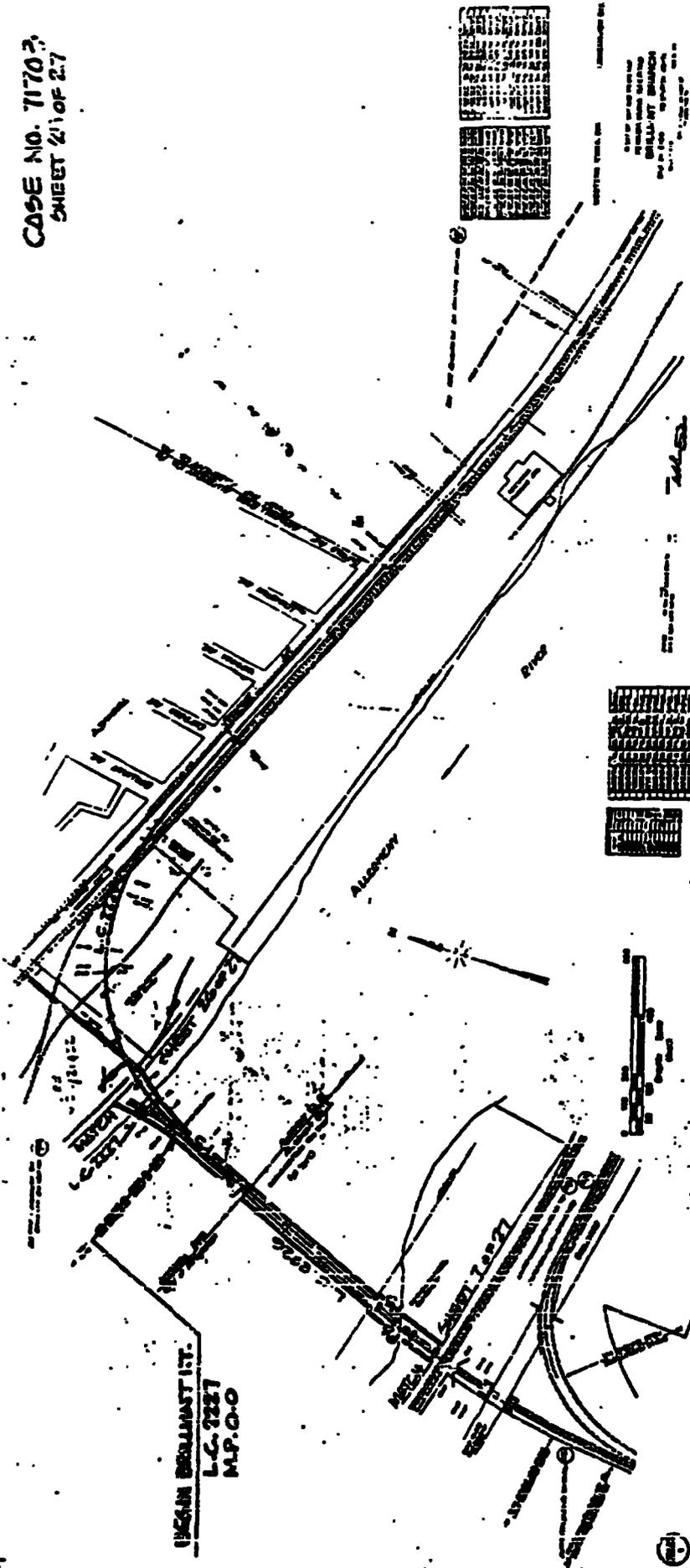
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CASE NO. 71703  
SHEET 24 OF 27



DB095716246

CASE NO. 7170-3  
SHEET 21 OF 27



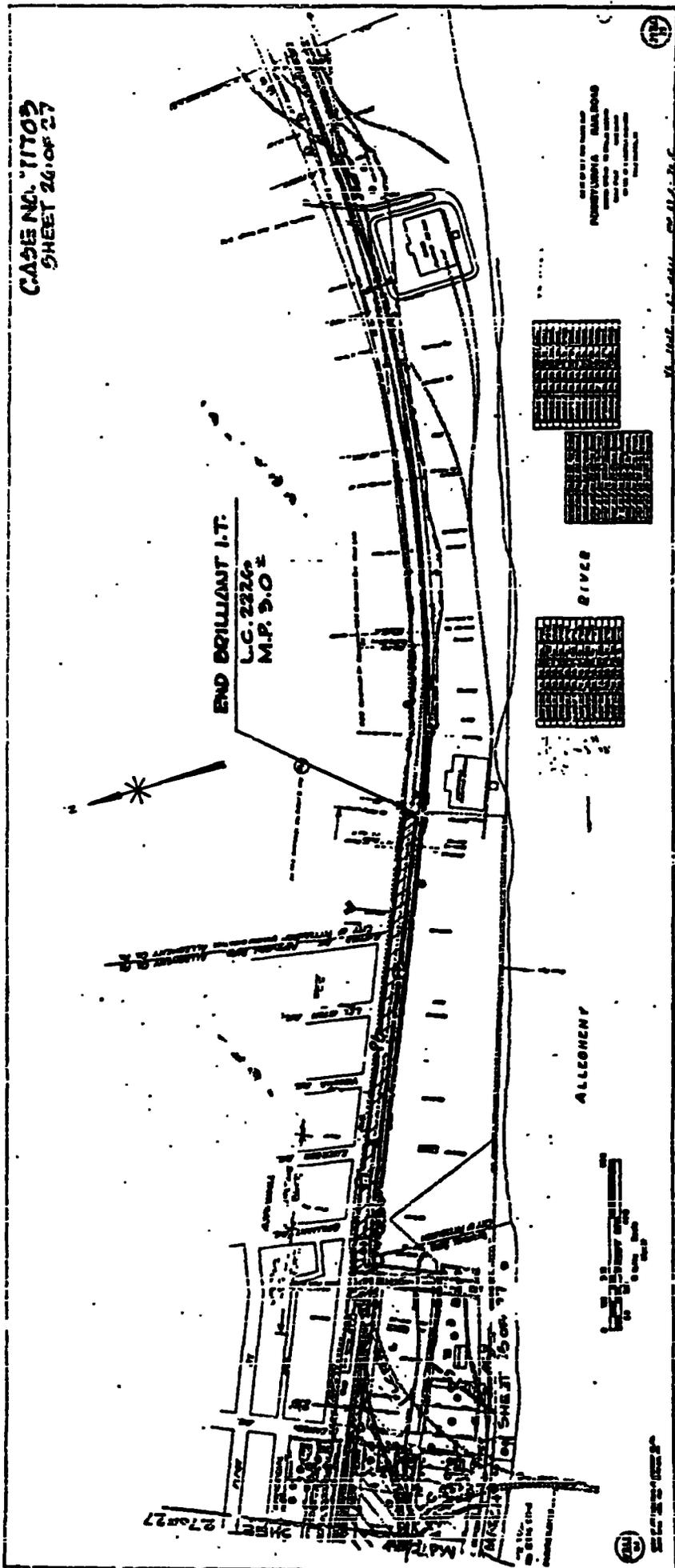
DESIGN BRUNNAST IT.  
L.C. 2227  
M.P. 0-0

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080957 | PG247

CASE NO. 11702  
SHEET 26 OF 27



DB0957 | PG248





I hereby CERTIFY that this document is recorded in a Deed Volume in the Recorder's Office of Allegheny County, Pennsylvania

*Michael A. Della Vecchia*

MICHAEL A. DELLA VECCHIA  
RECORDER OF DEEDS

Oct 31 95 136468

Consolidated Rail  
Corporation

Grantor

AND

Allegheny Valley  
Railroad Company  
Grantee

Deed

50

106. RP

D

414

mail to:

*IB*

D. E. Malecki

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

DEED  
REGISTRY  
NOV 2 1995  
COUNTY OF  
ALLEGHENY, PA

56, 11/04 1 1E 100  
RECORDED IN DEEDS  
ALLEGHENY COUNTY, PA



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
BUREAU OF INDIVIDUAL TAXES  
DPT. 330403  
HARRISBURG, PA 17126-0403

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

See Reverse for Instructions

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

Complete each section and file in duplicate with Recorder of Deeds when (1) if 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 easement. If more space is needed, attach additional sheet(s).

**A CORRESPONDENT** - All Inquiries may be directed to the following person:  
Name: Dennis E. Larson Telephone Number: \_\_\_\_\_  
Street Address: \_\_\_\_\_ City: Grove City, OH Area Code: 614 Telephone Number: 871-7290  
State: OH Zip Code: 43123

**B TRANSFER DATA**

Grantor(s)/Lessor(s): Consolidated R<sup>e</sup>l Corporation  
Street Address: Two Commerce Square, 2001 Market Street  
City: Philadelphia, PA Zip Code: 19101-1419

Grantee(s)/Resident(s): Allegheny Valley Railroad Company  
Street Address: 2391 Whispering Brook Lane  
City: Grove City, OH Zip Code: 43123

**C PROPERTY LOCATION**  
Street Address: SEE ATTACHED LIST City, Township, Borough: \_\_\_\_\_  
County: \_\_\_\_\_

**D VALUATION DATA**

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

**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 or power of attorney 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 Book 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.

2509571PG251

ABV 2070

173  
110

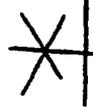
D.B. Vol 2070

LUCY E. HAWORTH ET AL ) THIS INDENTURE  
 TO ) MADE the twenty-fourth day of December in the year of our  
 THE PENNSYLVANIA R.R.CO. ) Lord one thousand nine hundred and twenty ( 1920 )  
 ) BETWEEN Lucy E. Haworth, unmarried, M.M. Alice Haworth,  
 unmarried, and Amanda M. Dewhurst, widow, all of the County of Allegheny and State of  
 Pennsylvania, ( hereinafter called Grantors ) of the one part, and The Pennsylvania Railroad  
 Company, a corporation, of said State of Pennsylvania, ( hereinafter called Grantee ) of  
 the other part,

WITNESSETH, That the said Grantors for and in consideration of the sum of Sixty  
 Thousand Dollars (\$60,000.00) lawful money of the United States of America, unto them well  
 and truly paid by the said Grantee, at or before the sealing and delivery of these presents  
 the receipt whereof is acknowledged, have granted, bargained, sold, released and conveyed  
 and by these presents do grant, bargain, sell, release, and convey unto the said Grantee  
 its successors and assigns.

ALL that certain tract or parcel of land situate in Penn Township, Allegheny County, State  
 of Pennsylvania, described as follows, to-wit:-

BEGINNING at a point in the line dividing lands of the Grantors from lands now or  
 formerly of Emil J. Bigenho, adjoining the Grantors on the South, said point being twenty  
 (20) feet Southeastwardly by rectangular measurement from the center line of -- the  
 Easterly of the two main tracks of the Pennsylvania Railroad Company, as now constructed  
 and operated; thence along a line parallel with and twenty (20) feet distant Southeastwardly  
 from the center line aforesaid, North forty-one degrees, twenty-two minutes East ( N. 41° 22'  
 E. ) one hundred twenty-nine and eight hundredths ( 129.08 ) feet; thence continuing along  
 said parallel line Northeastwardly, four hundred one and fifty hundredths ( 401.50 ) feet,  
 in the arc of a circle convex toward the Northwest having a radius of two thousand fifty and  
 ninety-three hundredths ( 2050.93 ) feet; thence continuing along said parallel line,  
 tangent, North fifty-two degrees, thirty-five minutes East ( N. 52° 35' E. ) three hundred  
 six and eighty-four hundredths ( 306.84 ) feet; thence continuing along said parallel line  
 Northeastwardly one hundred ninety-one and eighty-seven hundredths ( 191.87 ) feet, in the  
 arc of a circle, convex toward the Southeast, having a radius of two thousand seven  
 hundred forty-eight and thirty-seven hundredths ( 2748.37 ) feet; thence continuing along  
 said parallel line, Northeastwardly, four hundred four and sixty-eight hundredths ( 404.68 )  
 feet in the arc of a circle, convex toward the Southeast, having a radius of one thousand  
 seven hundred thirty-nine and twelve hundredths ( 1739.12 ) feet; thence continuing  
 along said parallel line Northeastwardly, four hundred ninety-seven and forty-one hundredths  
 ( 497.41 ) feet, in the arc of a circle, convex toward the Southeast, having a radius of  
 four thousand seven hundred ninety-four and sixty-five hundredths ( 4794.65 ) feet; thence  
 continuing along said parallel line, tangent, North twenty-nine degrees, eighteen minutes  
 forty-five seconds, East ( N. 29° 18' 45" E. ) five hundred ninety-one ( 591 ) feet;  
 thence continuing along said parallel line Northeastwardly eight hundred one and fifty-  
 eight hundredths ( 801.58 ) feet, in the arc of a circle, convex toward the Northeast,  
 having a radius of two thousand eight hundred eighty-four and ninety-three hundredths  
 ( 2884.93 ) feet, to an intersection with the Northerly line of Grantors' land, the same  
 coinciding with the Southerly line of the Borough of Verona; thence along said last



mentioned boundary line, South eighty-nine degrees, nine minutes, forty-five seconds, West ( S. 89° 09' 45" W. ) to low water in the Allegheny River; thence Southwestwardly along the Allegheny River, binding along the meanderings of low water thereof, to the dividing line between land of Grantors and land now or formerly of Emil J. Eigenho, first herein mentioned; thence along the line of said land now or formerly of Emil J. Eigenho, South eighty-nine degrees, twenty minutes East ( S. 89° 20' E. ) to the place of beginning.

EXCEPTING therefrom and thereout a piece of land at or near the mouth of Quigley's Run, conveyed by James Kerney and wife to John Gornley, by deed dated October 14, 1848, and recorded in the Recorder's Office of Allegheny County in Deed Book, Volume 86, page 27; and a piece of land conveyed by Richard Dewhurst et ux. to H. Harris, by deed dated June 4, 1866 and recorded in said Recorder's Office in Deed Book Volume 204 ; page 221.

BEING part of the same premises which Richard Dewhurst, et ux, by their deed dated

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August 29, 1877, and recorded in Deed Book 371, page 513, granted and conveyed unto James B. Dewhurst, and Anna Mary Haworth, wife of Jehu Haworth.

And the said Jehu Haworth having died May 2, 1899, said Anna Mary Haworth by her deed dated December 15, 1920, conveyed her interest therein unto the said Lucy E. Haworth and M.M. Alice Haworth, And the said James B. Dewhurst, being so seized of an undivided interest in said premises, died on March 27, 1898, and, by his Last Will and Testament bearing date of July 29, 1897, and duly proven and recorded in the Register's Office in and for said Allegheny County in Will Book 56, page 107, inter alia, devise and bequeath the same unto his son, Richard Miles Dewhurst, and the residue of his estate unto his widow Amanda M. Dewhurst, and the said Richard Miles Dewhurst et ux, by deed dated December 12, 1917 and recorded in Deed Book 1903, page 468, conveyed their interest therein to the said Amanda M. Dewhurst, party hereto.

AND the said parties of the first part reserve unto themselves, their heirs and assigns, Forever;

(1) The right to locate, construct, maintain and operate an overhead tramway, of one or more tracks, and tipple. from their land on the Easterly side of the above described land to the low water line of the Allegheny River, with the right to construct and maintain on the land conveyed, all appropriate pillars and supports for said overhead structure, and all necessary or appropriate devices for loading and unloading what may be transported thereon, provided, however, that said structure shall conform to the following requirements:- (a) the overhead structure shall be not less than twenty-five (25) feet above the level of the roadbed of the main line of said Railroad on the land above described; (b) the pillars and supports for the said structure over the land above described shall not be located and placed until after the then owner or occupant of the land has been given written notice of the proposed erection of said structure and of its proposed size and location and has been requested to designate locations for such pillars and supports; and if within sixty (60) days after such notice and request the owner or occupant of the land designates locations which do not require any greater span than sixty-six (66) feet and do provide adequate and reasonable sites for such pillars and supports, the said pillars and supports shall be located accordingly. The operation of said tramway and tipple may include the mooring of river craft thereto;

(2) The right to locate, construct, maintain and operate one or more tunnels under the land above described, provided, written notice of the proposed size, location and character and process of construction of any such tunnel be given to the owner or occupant of said land at least sixty (60) days before the construction thereof be commenced, and provided that the construction, maintenance and operation of any such tunnel shall not disturb the surface of said land, or endanger or interfere with any structures, traffic or operations at any time on or over said land, and provided that the then owner or occupant of said land shall have the right at all times to inspect said tunnels.

Said tramway, tipple and tunnels, and either and any of them shall be used only for purposes of travel and transportation of persons and property to and from the lands now owned by said parties of the first part ( but not for the benefit of any other lands ) which were described in deed of Richard-Dewhurst et ux. to James B. Dewhurst and Anna Mary Haworth, dated August 29, 1877, recorded in said Recorder's Office in Deed Book Volume 371

page 513, and in deed of William M. Richey to James B. Dewhurst and Anna M. Haworth, dated May 1, 1896, recorded in said Recorder's Office in Deed Book Volume 932, page 356.

TOGETHER with all and singular, the buildings, improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property claim and demand whatsoever of the said parties of the first part, in law, equity or otherwise, howsoever, of, in and to the same and every part thereof, excepting and reserving as hereinbefore set forth.

TO HAVE AND TO HOLD the premises hereby granted or mentioned or intended so to be, with the appurtenances, excepting and reserving as aforesaid, unto the said Grantee, its successors and assigns, to and for the only proper use and behoof of the said Grantee, its

successors and assigns, Forever.

Under and subject, however, to the right of way easement of the Allegheny Valley Railroad Company and its successors in title; to the existing public road, and to the regulations of the Harbor Line for the left bank of the Allegheny River as established by the United States authorities.

AND the said Grantors for themselves, their heirs, executors and administrators, do by these presents, covenant, grant, and agree to and with the said party of the second part, its successors and assigns, that they, the said Grantors and their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned, and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, against them the said Grantors and their heirs and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, excepting, reserving and subject as aforesaid, shall and will Warrant and Defend.

IN WITNESS WHEREOF, the said parties of the first part, have to these presents set their hands and seals. Dated the day and year first above written.

Sealed, Signed and Delivered

in the Presence of us.

Watson G. Adair, as to

L.E.H.  
M.M.A.H.

Lucy E. Haworth ( Seal )

M.M. Alice Haworth ( Seal )

J.R. Van Kirk

Amanda M. Dewhurst ( Seal )

( \$60.00 U.S.I.R.S. CANCELLED )

STATE OF PENNSYLVANIA ) ON this twenty-fourth day of December A.D. 1920, before  
COUNTY OF ALLEGHENY ) SS: me, Curtis H. Paschold a Justice of the Peace, came the  
above named Lucy E. Haworth and M.M. Alice Haworth, and  
acknowledged the foregoing Indenture to be their act and deed, desiring the same to be  
recorded as such.

WITNESS my hand and official seal, the day and year aforesaid.

Curtis H. Paschold ( J.P. Seal )

Justice of the Peace.

My Commission expires First Monday January 1926.

STATE OF PENNSYLVANIA ) ON this 24th day of December A.D. 1920, before me, J.R.  
COUNTY OF ALLEGHENY ) SS: Van Kirk, a Notary Public came the above named Amanda M. Dewhurst  
widow, and acknowledged the foregoing Indenture to be her  
act and deed, desiring the same to be recorded as such.

WITNESS my hand and Notarial seal, the day and year aforesaid.

J.R. Van Kirk ( N.P. Seal )

Notary Public

My Commission expires end next Session of Senate.

Reg. Allegheny Co.

Recorded Dec. 31, 1920

No. 63884

The Pennsylvania Railroad Co. )  
 To )  
 American Steel Foundries )

THIS INDENTURE,

MADE THE 25th day of June in the year of our Lord  
 one thousand nine hundred and fifty-six (1956)  
 BETWEEN THE PENNSYLVANIA RAILROAD COMPANY, a

Corporation of the Commonwealth of Pennsylvania, hereinafter called Grantor of the one part  
 and AMERICAN STEEL FOUNDRIES, a Corporation of the State of New Jersey, authorized to do  
 business in the Commonwealth of Pennsylvania, having an office or place of business in  
 the Borough of Verona, Pennsylvania, hereinafter called Grantee of the other part;

WITNESSETH, that the said Grantor for and in consideration of the sum of  
 \$1,500.00 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 granted, bargained, sold, released and conveyed and by these  
 presents does grant, bargain, sell, release and convey unto the said Grantee, its successors  
 and assigns,

ALL ITS ESTATE, RIGHT, TITLE AND INTEREST, of, in and to

ALL THAT PARCEL of land situate partly in the Borough of Verona and partly in  
 the Township of Penn, County of Allegheny and Commonwealth of Pennsylvania, bounded and  
 described according to a plan based upon a plan of survey made by Wagner Engineering  
 Company, Oakmont, Pennsylvania, dated February 2, 1956, as follows, viz:

BEGINNING at an iron pin where the westerly line of land of American Steel  
 Foundries meets the northwesterly Right of Way line of Allegheny River Boulevard, 60 feet  
 wide, in said Township of Penn;

EXTENDING from said place of beginning the following five courses and distance  
 the first three thereof being along lines of said land of American Steel Foundries:

(1) northwardly on a curve to the left, having a radius of 2,884.93 feet,  
 the chord of which bears N. 19° 16' 05" E. for a length of 297.89 feet, an arc length of  
 298.05 feet to an iron pin in the line dividing said Borough of Verona on the north from  
 said Township of Penn on the south; (2) S. 87° 37' E. along said Borough and Township  
 dividing line 12.97 feet; (3) northwardly, on a curve to the left having a radius of  
 2,897.93 feet, the chord of which bears N. 12° 22' 00" E. for a length of 410.33 feet, an  
 arc length of 410.81 feet to a concrete monument; the following two courses and distances  
 being by remaining land of The Pennsylvania Railroad Company; (4) southwardly crossing  
 said Borough and Township dividing line, on a curve to the right having a radius of  
 2,854.93 feet, the chord of which bears S. 19° 46' 10" W. for a length of 695.82 feet an  
 arc length of 697.59 feet to an iron pin; and (5) S. 53° 34' 30" E. 45.00 feet to the  
 place of beginning.

CONTAINING 0.3815 of an acre, ±.

TOGETHER with all and singular the improvements, streets, alleys, passages,  
 ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances  
 whatsoever unto the hereby granted premises belonging, or in anywise appertaining and the  
 reversions 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.

TO HAVE AND TO HOLD the premises hereby granted, or mentioned and intended so  
 to be, with the appurtenances, unto the said Grantee, its successors and assigns, to and  
 for the only proper use and behoof of the said Grantee, its successors and assigns,  
 forever.

THIS INDENTURE is executed, delivered and accepted, however, upon the under-  
 standing and agreement: (1) that neither the said Grantor nor its successors or assigns  
 shall be liable or obliged to construct or maintain any fence between the parcel of land  
 hereinbefore described and land of the said Grantor adjoining the same; or be liable or  
 obliged to pay for any part of the cost or expense of constructing or maintaining such a  
 fence or any part thereof; or be liable for compensation for any damage that may result by  
 reason of the non-existence of such a fence; (2) that a right or means of ingress, egress  
 or passageway to or from the land hereby conveyed is not hereby granted, specifically or  
 by implication, and that the said Grantor, its successors or assigns, shall not and will  
 not be liable or obliged to obtain for the said Grantee, its successors or assigns, such  
 means of ingress, egress or passageway, and also that the said Grantee, its successors or  
 assigns, will obtain a means of access to and from the said land hereby conveyed at its  
 their own cost and expense; and (3) that neither the said Grantee, nor its successors or  
 assigns, shall have or assert to have any claim or demand whatsoever for compensation for  
 damages, whether said damages be direct or consequential, to the parcel of 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  
 said Grantor's railroad or which may be caused by vibration resulting from the operation,  
 maintenance, repair or renewal thereof; and the said Grantee, for itself and its successors  
 and assigns, hereby expressly releases the said Grantor, its successors and assigns, from  
 liability for any such damages.

THE said THE PENNSYLVANIA RAILROAD COMPANY does hereby constitute and appoint  
 its Director, Real Estate J. W. EWALT to be its Attorney, for it and in its name, and as  
 and for its corporate act and deed to acknowledge this Indenture before any person having  
 authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to  
 the intent that the same may be duly recorded.

IN WITNESS WHEREOF, the said THE PENNSYLVANIA RAILROAD COMPANY has caused its common or corporate seal to be hereunto affixed, duly attested, the day and year first above written.

ATTEST:

G. C. Johnson, Jr.  
Asst. Secretary.

THE PENNSYLVANIA RAILROAD  
COMPANY (CORP. SEAL)  
BY: J. W. Swalt  
Director, Real Estate.

**ALLEGHENY VALLEY RAILROAD**

**P.O. Box 127 Verona, PA 15147  
Telephone: (412) 426-6600 Fax: (412) 426-4000**

October 7, 1998

**To: Howard Davidson  
Director of Planning and Code Enforcement  
Municipality of Penn Hills  
12245 Frankstown Road  
Penn Hills, PA 15206**

**Re: Unauthorized Occupation of Railroad Right-of-Way  
New Building by William Fiore Jr.**

Dear Mr. Davidson,

On October 6, 1998, Tim Prevost of Allegheny County Sanitary Authority ("Alcosan") met with the Allegheny Valley Railroad (the "Railroad") to investigate an alleged unauthorized encroachment upon Alcosan's license (the "License") for longitudinal occupation of the Railroad's Right-of-Way in the Township of Penn Hills.

Upon inspection of photographs submitted by Alcosan, the Railroad conducted an inspection of the site and found a new building purportedly constructed for William Fiore Jr. ("Fiore"). The Railroad determined that said construction encroached upon both the Railroad's right-of-way and rights granted by the Railroad to Alcosan to construct, maintain, repair, alter, renew, relocate and ultimately remove raw sewage sanitary facilities through the lands and under and across and along the Railroad.

Said License requires that the sanitary facilities be located, constructed and maintained in exact accordance with the construction plans submitted by Alcosan to the Railroad, and that no departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer of Railroad. Permission for the observed departure has not been sought by Alcosan or Fiore, nor granted by the Chief Engineer of Railroad.

The Railroad finds Fiore to be trespassing on Railroad right-of-way property. The Railroad petitions the Municipality of Penn Hills to act in a manner consistent with the public necessity of protecting the rail transportation corridor and sanitary facilities from unauthorized occupation.

From time to time the Railroad grants license agreements for the occupation of railroad property. Requests for such licenses must be submitted to the Railroad in writing and must

accompanied with engineering plans in accordance with the current issues of Railroad Specifications CE 8. Such requests may or may not be approved by the Railroad. The necessity of protecting the corridor, a public utility, will be given first consideration. The legal clearance requirements of Pennsylvania Title 52.33C will also be observed.

Please feel free to contact me regarding this matter at the above phone number. Thank you for your kind cooperation.

Yours truly,

Russell A. Peterson  
President

cc: Tim Provest  
ALCOSAN  
3300 Preble Avenue  
Pittsburgh, PA 15233

Jack Mason  
Fire Marshall  
Municipality of Penn Hills

Mr. William Fiore Jr.  
413 Larimer Avenue  
Pittsburgh, PA 15206  
VIA U.S. REGISTERED RETURN RECEIPT

**LAW OFFICES**  
**JOHN R. COOK & ASSOCIATES**  
106 ARCADIA COURT  
9380 MCKNIGHT ROAD  
PITTSBURGH, PENNSYLVANIA 15237  
412/366-8980  
FAX NO. 412/366-0510

JOHN R. COOK

ROBERT J. TATE  
LOUIS R. PAULICK

**October 14, 1998**

Russell A. Peterson, President  
Allegheny Valley Railroad  
P. O. Box 127  
Verona, PA 15147

Re: William Fiore, Jr. construction

Dear Mr. Peterson:

Your October 7, 1998 letter to Howard Davidson has been referred to me for investigation and response. I hope you can understand that neither we nor Penn Hills can operate on the basis of your conclusions as to trespass. We are in the process of having surveys done of the property which were, in any event, required by Mr. Fiore's lender.

We are operating on the premise that the two easements or right of way that impact this Lot 103, are represented by a deed from Rospec Realty Company, Inc. to Union Specialty Steel Casting Corporation, dated December 13, 1965 and of record in the Office of the Recorder of Deeds of Allegheny County in Deed Book Volume 4329, Page 101 and the Deed from the Pennsylvania Railroad Company to American Steel Foundries of record in the Office of the Recorder of Deeds of Allegheny County in Deed Book Volume 3591, Page 63. If you are relying on any other document, please supply a copy of that document to us or, if you prefer, provide the appropriate Deed Book Volume and page number reference so that we can obtain a copy of the document through the Recorder of Deeds Office.

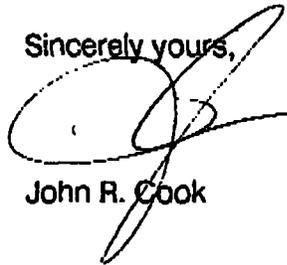
We are anticipating that the survey process will be completed promptly. As a result, if you have any documents which should be imputed into the survey, we would appreciate them promptly as well. Once the survey process is completed, we will be in a position to

Russell A. Peterson, President  
October 14, 1998  
Page 2

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respond to your letter. Obviously, unless you are quite sure that a trespass or other infringement of your rights is taking place, I, were I you, would be very cautious about disrupting Mr. Fiore's property rights or his relationship with the municipal authorities.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John R. Cook', written over a faint circular stamp or watermark.

John R. Cook

JRC:lmc

LAW OFFICES  
**JOHN R. COOK & ASSOCIATES**  
106 ARCADIA COURT  
9380 MCKNIGHT ROAD  
PITTSBURGH, PENNSYLVANIA 15237  
412/366-8980  
FAX NO. 412/366-0510

JOHN R. COOK

ROBERT J. TATE  
LOUIS R. PAULICK

**December 1, 1998**

Russell A. Peterson, President  
Allegheny Valley Railroad  
P O Box 127  
Verona, PA 15147

**Re: William Fiore, Jr. Construction  
Allegheny River Boulevard, Penn Hills**

Dear Mr. Peterson:

I last wrote you concerning this matter on October 14, 1998. At that time I requested of you a reference to or a copy of any document you were relying on other than the documents referenced in my letter. My records indicate that, other than your call to confirm my representation of Mr. Fiore, you have not contacted my office and thus have not provided any additional documents for my review.

As I indicated in my October 14, 1998 letter, Mr. Fiore was required by his lender to provide an "as-built" survey of the property. I am providing you with the best copy I could prepare of that "as-built" survey. As you can see, no permanent improvements have been installed in the Allegheny Valley Railroad 66' right of way. Thus, unless there is some additional document providing you greater rights, it wouldn't seem that there is any objectionable infringement on your (Allegheny Valley Railroad) right of way.

Please note, however, that there is a 7' underground vault located well outside the Allegheny Valley Railroad 66' right of way and entirely on Mr. Fiore's property. We have been told by a Jan Oliver of Alcosan that they have installed this underground vault within an easement or right of way provided by Allegheny Valley Railroad. In the absence of these additional documents that I requested from you, it would appear that Allegheny Valley Railroad has granted an easement over property in which it had no interest or right. I am thus, again, requesting of you that you provide me with any documentation justifying your (Allegheny Valley Railroad) granting of an easement to Alcosan over property which would appear to be that of Mr. Fiore. If I have not received this information from you or otherwise heard from you or your counsel by the close of business on December 18<sup>th</sup>, I will so notify

Russell A. Peterson, President  
December 1, 1998  
Page 2

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Mr. Fiore and will initiate an action against Alcosan and/or Allegheny Valley Railroad as is appropriate.

Sincerely yours,

John R. Cook

JRC:Imc

**ALLEGHENY VALLEY RAILROAD COMPANY**

**P.O. Box 127 Verona, PA 15147**  
**Telephone: (412) 426-6600 Fax: (412) 426-4000**

December 11, 1998

**To: John R. Cook & Associates**  
**106 Arcadia Court**  
**9380 McKnight Road**  
**Pittsburgh, PA 15237**

**Re: Allegheny Valley v. William Fiore, Jr.**  
**Encroachment**

Dear Mr. Cook,

I am sorry for the delay, but there were two Complaints in Ejectment ahead of your case. You requested that I supply documents of the Allegheny Valley Railroad Company Right-of-Way. This was done long ago. In fact, when Mr. Fiore first put up his "Future Site of Fiore Glass & Mirror" sign, prior to any on-site survey or construction activity, I called the phone number posted on the sign, made an appointment and delivered to Mr. Fiore, Jr. a copy of valuation survey map labeled Right-of-Way and Track Map, Pennsylvania Railroad, V 21.4, Map 3.

For your convenience please find enclosed another 1:1 copy of the 1" = 100' scale Valuation Survey Map. The surviving main track is highlighted in pink and the Allegheny Valley Right-of-Way is highlighted in yellow. By Deed dated October 27, 1995, and recorded in the Office of the Recorder of Deeds of Allegheny County, in Deed Book Volume 9571, page 204, Allegheny Valley Railroad Company acquired all of Conrail's railroad facilities and all right, title and interest to all real estate connected therewith. The "Premises" are indicated by "PS" on the Exhibits therein. Copies of Exhibit Sheet 11 is enclosed herewith for your perusal.

The Allegheny Valley Railroad Right-of-Way line is located forty (40) feet, more or less, from the center of existing track on the side impacting your client. The Right-of-Way is certainly not, as shown on your plan, a sixty-six (66) foot wide corridor through this area. In fact, to the east of the surviving main track is located the line of the eastward passing track, which is highlighted in blue. To the east of the passing track is the line of the Alcosan sanitary sewer, a liccused occupation of Allegheny Valley's premises. To the east of that is the Right-of-Way line.

The 3.468 acre parcel shown as No. 1 on the Valuation Survey was granted by Deed from Richard Dewhurst to the Allegheny Valley Railroad Company in November 1863. The 16.9 acre parcel shown as No. 23 was granted by Deed from Anna M. and Lucy E. Haworth, to the Pennsylvania Railroad Company on December 24, 1920 as recorded in Deed Book Volume 2070,

page 173, on December 31, 1920. Parcel No. 23 includes Parcel No. 1. The .5867 acre parcel shown as No. 37 was granted by Deed from Pennsylvania Railroad Company to American Steel Foundries on June 25, 1956. Parcel No. 37 includes part of Parcel Nos. 1 and 23.

The railroad chain of title went Allegheny Valley Railroad Company to Pennsylvania Railroad Company to Penn Central Transportation Company to Consolidated Rail Corporation to Allegheny Valley Railroad Company.

Your client, in defiance of Allegheny Valley's advance notice of location of Right-of-Way, occupied the premises without permission, modified the drainage courses, removed company materials including the existing crosstics of the eastward passing siding, impacted the Alcosan sanitary sewer without Allegheny Valley's authority or engineering approval, obstructed the line of the eastward passing track, planted trees and installed permanent structures including paved parking and driveways.

Although your client and its contractors have entered the premises without authority and at risk of liability to the Allegheny Valley, I will act swiftly to prevent your client from inducing retail traffic to enter the Right-of-Way. In addition, if this matter is not resolved in the near future, Allegheny Valley will have no alternative but to initiate legal proceedings to protect the public's interest in this railroad corridor.

Yours truly,



Russell A. Peterson  
President

Enclosure.

cc: P. Brennan Hart, Esquire  
Michael Magee, Esquire  
Marshall, Dennehey, Warner, Coleman & Goggin  
Attorneys at Law  
USX Tower, Suite 2900  
600 Grant Street  
Pittsburgh, PA 15219

**RICHARD R. WILSON, P.C.**

**Attorney at Law  
A Professional Corporation  
518 N. Center Street, Ste. 1  
Ebensburg, PA 15931**

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[rwilson@rrwilson.net](mailto:rwilson@rrwilson.net) – Email  
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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

October 6, 2009

Kathleen C. McConnell, Esq.  
Miello, Brungo & Miello, LLC  
1 Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235

Re: Encroachment of Fiore Glass and Mirror, Inc.'s Driveway on Allegheny Valley Railroad Company's Right of Way

Dear Attorney McConnell:

In response to your recent correspondence concerning the Fiore Glass property, my client, Allegheny Valley Railroad Company ("AVRR"), has carefully researched the property conveyances into the original Allegheny Valley Railroad and the conveyances of various parcels adjacent to the Allegheny Valley Railroad property at the Penn Hills Township - Verona Borough line.

The original Allegheny Valley Railroad obtained its initial railroad right of way in 1856 under releases of condemnation damages. However, in 1926 the Pennsylvania Railroad, successor to the original Allegheny Valley Railroad and a predecessor in interest to AVRR, acquired by general warranty deed fee title to the property comprising its railroad right of way at the Verona Borough line from Lucy E. Haworth, et al. which deed is recorded at Deed Book Vol. 2070, Page 173 (copy attached). This deed describes the eastern boundary of the railroad right of way as extending along a line parallel to the center line of the easterly of the two main tracks of the Pennsylvania Railroad Company "continuing along said parallel line northeasterly 801 and 58/100 (801.58) feet, in the arc of a circle, convex towards the northeast having a radius of 2884 and 93/100 (2884.93) feet, to an intersection with the northerly line of grantor's line, the same coinciding with the southerly line of the Borough of Verona." This legal description and the associated calls definitively identify the original easterly line of the railroad right of way. This deed also confirms the railroad's fee ownership of its right of way adjacent to your client's lot.

In comparing this original eastern boundary line of the AVRR right of way, adjacent to your client's property, with the subsequent conveyance by Pennsylvania Railroad to American Steel in Deed Book Volume 3591, Page 63, that deed utilizes the same 2884.93 radius to

Kathleen C. McConnell, Esq.

October 6, 2009

Page 2

describe the existing easterly right-of-way line for the parcel conveyed. It is only in later deeds from American Steel to Rospec Realty Company at Deed Book Vol. 3726, Page 715 when the separately described parcels owned by American Steel in both Penn Hills and Verona were combined into one legal description that inexplicably, two (2) courses with differing radii were used to describe the railroad's property line which was previously described with a single course and a single radius. This is the first time that two different radii were used to describe the railroad's property line. As you know, the railroad was not a party to that transaction or conveyance.

Thereafter, when the original and revised USSCC subdivision plans were prepared, the inaccurate legal description from Deed Book Vol. 3726, Page 715, was apparently misinterpreted by the surveyor who prepared those plans. These compounded errors have caused the westerly boundary of your client's lot to be erroneously described. As you are aware, use of the subdivision plan to define your client's property line is what has caused a triangular overlap of your client's lot and the railroad right-of-way. These lines generally coincide at the southerly line of the Fiore lot but overlap in excess of twenty (20) feet at the northerly line.

Having reviewed this matter in great detail, our surveyor has concluded that given the discrepancy in the descriptive language and calls, which first occurs in the deed from American Steel to Rospec Realty, the surveyors charged with the preparation of the USSCC subdivision plan failed to properly research the existing deed records for the property underlying the subdivision plan and the railroad right-of-way and did not properly plot the correct reference point and deed radius set forth in the Pennsylvania Railroad Company deed. Accordingly, subsequent property descriptions, including those relied on by your client, are in error and resulted in the encroachment of your client's driveway on AVRR's right of way. AVRR would be happy to provide you with the various deeds confirming this conclusion and with maps illustrating the source and extent of your client's encroachment.

Moreover, shortly after Mr. Peterson observed the sign stating "future site of Fiore Glass and Mirror" and prior to your client's construction of his building, Mr. Peterson contacted Mr. Fiore and pointed out the AVRR right of way boundary and gave Mr. Fiore a copy of the railroad valuation maps for that location. Thus, your client was fully aware that AVRR's property records conflicted with his own but he failed to take any action to resolve that conflict.

As we have previously advised you, AVRR intends to exercise full possession and control over the property comprising its right of way. AVRR has plans for future development of the railroad corridor which involve enhanced rail transportation facilities and it will need the property on which your client has encroached to assure that there are sufficient set backs and safety clearances to accommodate these development plans.

Accordingly, in the near future AVRR intends to erect a chain link fence along its right of way line to protect its property and to preclude unauthorized personnel from entering its property. This will necessitate placing the fence along that portion of your client's asphalt driveway which encroaches on the AVRR right of way. As we have previously advised you and

Kathleen C. McConnell, Esq.  
October 6, 2009  
Page 3

as indicated by the Surface Transportation Board in Mark Lange – Petition for Declaratory Order, 2008 WL 219583 and the federal district court decision in Wilson v. Norfolk Southern Railway, 2009 WL 189397 attached to this letter, if your client wishes to contest AVRR's assertion of its property rights with respect to its railroad right of way, you may file a complaint with the Federal Surface Transportation Board in Washington, DC which would be in the nature of a Petition for Declaratory Order. As indicated in the enclosed decisions, state courts have no jurisdiction to provide judicial remedies with respect to the operation and use of regulated common carrier railroad rights of way. See 49 U.S.C. §10501(b).

As AVRR has previously indicated, it is willing to provide a revocable license to your client to temporarily occupy the encroachment area on an interim basis until such time as AVRR revokes that license as rail development plans for its property progress. However, beyond that interim measure, AVRR cannot accommodate your client's encroachment on its property and it must insist that your client recognize AVRR's ownership of the property on which he has encroached.

Very truly yours,

RICHARD R. WILSON, P.C.

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

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

RRW/bab  
Enclosure  
xc: Allegheny Valley Railroad Co.

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

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Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

851 Twelfth Street

Oakmont, PA 15139

January 4, 2010

Kathleen C. McConnell, Esq.  
Miello, Brungo & Miello, LLC  
1 Churchill Park  
3301 McCrady Road  
Pittsburgh, PA 15235

Re: Fiore Glass Property - Allegheny Valley Railroad Company

Dear Kathleen:

I have reviewed your letter of December 16, 2009 with Allegheny Valley Railroad and with its surveying firm. However, your analysis of this matter is confused and misapprehends the legal basis for the source of the legal description which defines the AVRR right of way adjacent to Mr. Fiore's property. In 1852, the railroad right of way described on the Pennsylvania Railroad Company valuation map was based on right of way easements acquired by the original Allegheny Valley Railroad Company. However, as we noted in our October 6 letter to you, in 1920 the Pennsylvania Railroad Company acquired by general warranty deed full fee title to the current right of way adjacent to your client's property from Lucy E. Haworth, et al. at Deed Book Vol. 2070, Page 173. This deed is the operative title document which definitively establishes the original easterly line of the railroad right of way adjacent to your client's lot and the calls in that 1920 deed were again recited in the 1956 deed conveying a parcel (comprising fee ownership south of the Verona town line and an easement north of the Verona line) from the Pennsylvania Railroad to American Steel Foundries. Your letter of December 16, 2009 fails to address the property descriptions contained in these deeds. Rather, your analysis appears to assign errors to the 1956 deed based on the 1852 Pennsylvania Railroad valuation map that predates the 1920 conveyance into the Pennsylvania Railroad. Thus, the 1852 Valuation Map is irrelevant to the current dispute over the line described in the 1926 and 1956 deeds.

Subsequent deeds prepared by American Steel Foundries or Respect Reality and relied on in the USSCC subdivision plan which incorrectly describe the easterly right of way line of the Allegheny Valley Railroad cannot be attributed to the Pennsylvania Railroad or its successors in title. Those improperly prepared deeds do not diminish or call into question AVRR's fee ownership of its right of way adjacent to Mr. Fiore's property. Moreover, your proposed alternative description of the parcel purportedly conveyed by the Pennsylvania Railroad to

Page Two  
January 4, 2010

American Steel in 1956 violates fundamental rules of surveying and would require that the clear and unambiguous metes and bounds description contained in the 1956 deed be ignored in favor a parcel description based on ambiguous references to "concrete monument" which you assume is a "stone monument" depicted on the 1852 valuation map which is neither recorded nor contains any descriptive calls. Thus, your analysis of this matter is bootstrapping of the first order.

Suffice it to say, AVRR finds no merit in the various theories, conjectures and unsupported assertions contained in your December 16 letter. The legally effective property line of the AVRR right of way was established by the 1920 deed from Lucy E. Haworth to the Pennsylvania Railroad as modified by the 1956 conveyance by the Pennsylvania Railroad to American Steel Foundries.

Finally, and this is a fact that you also continue to ignore, your client was given notice by AVRR of his encroachment on the railroad right of way prior to constructing his building on that parcel. Thus, your client has no recourse against AVRR and should look to his own surveyor who failed to properly research and describe your client's parcel when placed on notice regarding the encroachment.

In light of the foregoing, AVRR intends to proceed with the erection of a fence to exercise control over its right of way and to preclude further use of its property by your client.

Very truly yours,

RICHARD R. WILSON, P.C.



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

RRW/bab

cc: Allegheny Valley Railroad Company  
Liadis Engineering and Surveying, Inc.

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,	)	CIVIL DIVISION
Plaintiff,	)	No. GD10-1721
v.	)	
ALLEGHNEY VALLEY RAILROAD CO.,	)	AFFIDAVIT OF
CONSOLIDATED RAIL CORPORATION,	)	RUSSELL A. PETERSON
PETER D. FRIDAY, SUSAN F. DALTON,	)	
AND ROBERT L. WISEMAN,	)	
Defendants.	)	

COMMONWEALTH OF PENNSYLVANIA

County of Allegheny

Before me, the undersigned notary public, personally appeared Russell A. Peterson, to be known or proven, who being duly sworn according to law, deposes and says:

1. My name is Russell A. Peterson and I am Chief Executive Officer and owner of the Allegheny Valley Railroad Company. I am authorized to make this affidavit on behalf of Defendant Allegheny Valley Railroad Company (“AVRR”).
2. AVRR acquired the line of railroad comprising the railroad track and right of way adjacent to Plaintiff’s Lot 4-B from Consolidated Rail Corporation pursuant to Interstate Commerce Commission authorization granted in Finance Docket No. 32783, Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation, (November 7, 1995) 1995 WL 681254 and by deed dated October 27, 1995 recorded in the Allegheny County Recorder of Deeds office

at Deed Book Vol. 9571, Page 204 et seq. for purposes of operating a common carrier railroad in interstate commerce. (AVRR's Exhibits A & C)

3. The railroad right of way adjacent to what is now Plaintiff's Lot 4-B was originally acquired in 1862 by means of releases of condemnation but in 1920 the Pennsylvania Railroad acquired the entire fee simple estate in the right of way south of the Verona Borough line by deed dated December 24, 1920, and recorded at Deed Book Vol. 2070, Page 173.(AVRR Exhibit D) Thereafter, in 1956, the Pennsylvania Railroad conveyed a small 0.3815 acre parcel of its right of way to American Steel Foundries.(AVRR Exhibit E) No further conveyances of railroad property have been made to date adjacent to what is now Lot 4-B and no abandonment authority for this segment of AVRR's rail line has been sought by AVRR or its predecessors or issued by the Interstate Commerce Commission or the Surface Transportation Board, its successor agency.

4. AVRR presently utilizes the entire width of its railroad right of way for railroad purposes adjacent to Lot 4-B for necessary safety clearances and set backs for right of way and crossing visibility for train operations on our main line track. Future economic development plans for the AVRR right of way also entail projected use of the right of way adjacent to Lot 4-B for rail facilities associated with the reestablishment of a second track and passenger rail service into downtown Pittsburgh.

5. In late 1997 or early 1998, prior to Plaintiff beginning construction of his building on Lot 4-B, I observed a sign board announcing the future home of Fiore Glass & Mirror along with a phone number. I could not imagine how a new building could be constructed on that site without encroaching upon AVRR's property. I therefore called the phone number, spoke with William Fiore Jr. and made arrangement to deliver AVRR's valuation maps to him. I hand delivered a copy of the valuation maps for his use

and pointed out the location of the AVRR's right-of-way line. Despite this notice, in 1998 Plaintiff proceeded with construction of his current building and placed asphalt paving on the disputed triangular shaped parcel which encroaches on AVRR's railroad right of way.

6. Later, in October of 1998, Allegheny County Sanitary Authority ("Alcosan") contacted me and presented photographs of a new building constructed for William Fiore Jr. which encroached upon both the AVRR's right-of-way and rights granted by AVRR's predecessor Consolidated Rail Corporation ("Conrail") to Alcosan to maintain a sanitary sewer facility through the land owned by AVRR. Apparently, Mr. Fiore sought modifications to the Alcosan facility in order to obtain approvals from Municipality of Penn Hills Planning and Code Enforcement. Alcosan believed that it had a valid license from the railroad to occupy railroad property and questioned the need to respond to William Fiore Jr. I then sent a letter to the Municipality of Penn Hills with copies to Alcosan and William Fiore Jr. (Plaintiff's Exhibit I)

7. Thereafter, I had an exchange of correspondence with counsel for Mr. Fiore in which I provided Mr. Fiore's counsel with the railroad's title information including references to the 1920 and 1956 deeds. (AVRR Exhibit F)

FURTHERMORE, Affiant sayeth naught.

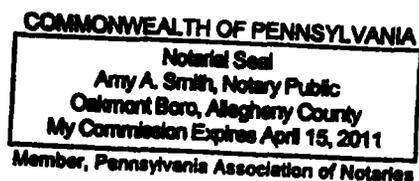


Russell A. Peterson

Sworn to and subscribed before me this

9<sup>th</sup> day of March, 2010

Amy A. Smith  
Notary Public



IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,	)	CIVIL DIVISION
Plaintiff,	)	No. GD10-1721
v.	)	
ALLEGHNEY VALLEY RAILROAD CO.,	)	
CONSOLIDATED RAIL CORPORATION,	)	
PETER D. FRIDAY, SUSAN F. DALTON,	)	
AND ROBERT L. WISEMAN,	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2010, it is hereby  
ORDERED, ADJUDGED and DECREED that the Preliminary Objections of Defendant  
Allegheny Valley Railroad Company are GRANTED and the Complaint is DISMISSED,  
with prejudice.

BY THE COURT:

\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,	)	CIVIL DIVISION
Plaintiff,	)	No. GD10-1721
v.	)	
ALLEGHNEY VALLEY RAILROAD CO.,	)	AFFIDAVIT OF
CONSOLIDATED RAIL CORPORATION,	)	DAVID M. KALINA
PETER D. FRIDAY, SUSAN F. DALTON,	)	
AND ROBERT L. WISEMAN,	)	
Defendants.	)	

COMMONWEALTH OF PENNSYLVANIA

County of Allegheny

Before me, the undersigned notary public, personally appeared David M. Kalina, to be known or proven, who being duly sworn according to law, deposes and says:

1. My name is David M. Kalina and I am a Registered Professional Land Surveyor (Registration No. 23660-E) employed by Liadis Engineering & Surveying, Inc. I am authorized to make this affidavit on behalf of Allegheny Valley Railroad Company ("AVRR") which has retained Liadis Engineering & Surveying, Inc. to investigate and determine the Plaintiff's encroachment on AVRR's right of way.

2. I have thoroughly investigated the deed records and property descriptions related to the disputed properties of the parties in this matter to identify the origin of the boundary line discrepancy which has lead to Plaintiff's encroachment on AVRR property.

3. The original Allegheny Valley Railroad Company obtained its initial railroad right of way adjacent to the present location of Plaintiff's Lot 4-B in 1862 under releases of condemnation damages. On December 24, 1920, the Pennsylvania Railroad, successor in interest to the original Allegheny Valley Railroad and a predecessor in interest to AVRR acquired by general warranty deed fee simple title to the property comprising its right of way within the Municipality of Penn Hills, immediately south of the Verona Borough line from Lucy E. Haworth, et al. which deed is recorded in Deed Book Vol. 2070, Page 173 (AVRR Exhibit D). This deed describes the easterly line of the property conveyed to the railroad as "being 20 feet southwesterly by rectangular measure from the centerline of the easterly of the two main tracks as now constructed and operated" (in 1920) thence along a line parallel to the center line of the easterly of the two main tracks of the Pennsylvania Railroad Company "continuing along said parallel line northeasterly 801 and 58/100 (801.58) feet in an arc of a circle convex towards the northeast having a radius of 2884 and 93/100 (2884.93) feet, to an intersection with the northerly line of Grantor's line, the same coinciding with the southerly line of the Borough of Verona." This legal description and the associated calls contained in this deed identify the original easterly line of the railroad right of way as of 1920. This deed also confirms the railroad's fee ownership of its right of way adjacent to what would become Lot 4-B.

4. In 1930, Allegheny County constructed Allegheny River Boulevard requiring relocation of the Railroad's tracks from their location as described in the 1920 deed toward the river to provide adequate clearance to permit construction of the new roadway. The relocation of the railroad tracks associated with the construction of

Allegheny River Boulevard created a larger expanse of railroad property between the relocated position of the tracks and the easterly right-of-way line of the railroad specified in the 1920 deed.

5. On June 25, 1956, the Pennsylvania Railroad Company conveyed to American Steel Foundries by deed recorded at Deed Book Vol. 3591, Page 63 a small parcel containing 0.3815 acres along the railroad's eastern property line adjacent to what would become Lot 4-B. (AVRR Exhibit E) The 1956 deed utilizes the same 2884.93 radius contained in the 1920 deed to describe easterly line of the parcel conveyed to American Steel Foundries. As a result of this conveyance, the new easterly line of the railroad right of way is described in call 4 of the 1956 deed as a line "southwardly crossing said Borough and Township dividing line on a curve to the right having a radius of 2854.93 feet, the chord of which bears S 19° 46' 10" W for a length of 695.82 feet an arc length of 697.59 feet to an iron pin." This is depicted on AVRR Exhibit B which I prepared based on the parcel descriptions in the 1920 and 1956 deeds.

6. Thereafter, in a 1959 deed from American Steel Foundries to Rospec Reality Company recorded at Deed Book Vol. 3726, Page 715 the former separately acquired parcels owned by American Steel Foundries located in Penn Hills and Verona were combined into one legal description for that conveyance, and inexplicably, two (2) courses with a different radii were used to describe the Grantor's property line adjacent to the railroad in the area which would later become Lot 4-B (the Fiore lot). The curved course of the railroad's easterly right of way line described in the railroad's 1956 deed into American Steel Foundries as being a single curved course having a radius of 2854.93 feet was somehow mischaracterized as a curve with two (2) courses beginning at the

railroad's easterly right of way line and ending at the centerline. Nowhere in the railroad's deed records was the railroad's easterly right of way line ever described in this fashion. The railroad was not a party to the conveyance to Rospec Realty and had no part in the preparation of the erroneous description contained in that consolidated deed description.

7. When the original and revised USSCC subdivision plans were prepared, the inaccurate legal description from the Rospec Realty deed at Deed Book Vol. 3726, Page 715 was improperly utilized by the surveyor who prepared the subdivision plans. In addition, the surveyor preparing the original subdivision plan took what was described as two curved courses with differing radii and replaced them with one curved course of yet another erroneously described radius. As a result, the errors in the Rospec Realty deed were compounded by the surveyor during his preparation of the USSCC Subdivision plans and caused the westerly boundary line of Lot 4-B to be erroneously described again, creating a triangular overlap of the westerly line of Lot 4-B across the fee ownership of the railroad right of way. While the property corner common to the railroad right of way and Lot 4-B generally coincide at the southerly line of Lot 4-B, as one proceeds northward from the southwest corner of Lot 4-B, the westerly line of Lot 4-B increasingly encroaches into the railroad right of way culminating in an overlap in excess of 20 feet at the northwesterly corner of Lot 4-B. At the northwesterly corner of Lot 4-B, its property line comes within approximately 14 feet of centerline of the AVRR's railroad track. See AVRR Exhibit B which I prepared.

8. For purposes of determining the proper and legal metes and bounds description for Lot 4-B in Plaintiff's 1997 deed, reference must be made first to the lot as

described in the First Revision of the USSCC Subdivision Plan. However, the Lot 4-B premises description in Plaintiff's deed is further subject to "all ... conditions, restrictions, rights of way, and covenants as they may affect the herein above described premises and as are contained in prior instruments of record" (Emphasis added).

Therefore, reference must next be made to the property descriptions for the railroad right of way contained in prior instruments of record to confirm whether the westerly property line of Lot 4-B is consistent with the adjacent easterly property line of the railroad's right of way. Since the westerly property line of Lot 4-B is not consistent with the easterly property line of AVRR's railroad right of way described in the 1956 deed from the Pennsylvania Railroad Co. to American Steel Foundries, based on the condition contained in Plaintiff's own deed, the westerly property line of Lot 4-B is therefore subject to and determined by AVRR's easterly property line as set forth in the prior 1956 deed recorded at Deed Book Vol. 3591, Page 63, as depicted on AVRR Exhibit B. This result is further confirmed by the fact that from 1956 to date not one deed in Plaintiff's chain of title or the two subdivision plans in which Plaintiff's Lot 4-B is described used Call No. 4 in the 1956 Pennsylvania Railroad Company deed to American Steel Foundries to describe the Railroad's present easterly property line.

FURTHERMORE, Affiant sayeth naught.

  
David M. Kalina

Sworn to and subscribed before me this

10<sup>th</sup> day of March, 2010

W. D. Baird  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Warren D. Baird - Notary Public  
Municipality of Mt. Lebanon, Allegheny County  
MY COMMISSION EXPIRES MAR. 03, 2011

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**518 N. Center Street, Ste. 1**

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851 Twelfth Street  
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Of Counsel to:

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2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

June 30, 2010

Department of Court Records  
Civil Division  
700 City County Bldg.  
414 Grant Street  
Pittsburgh, PA 15219

Re. William Fiore v. Allegheny Valley Railroad Company, et al  
Docket No. GD-10-001721

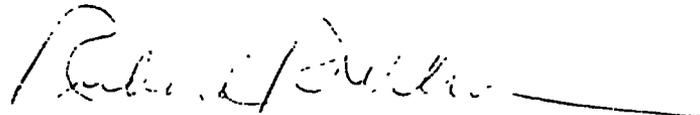
Dear Sir or Madame,

Enclosed for filing in the above captioned docket, please find an Order of Referral to the Surface Transportation Board signed by the Honorable Ronald W. Felino on June 21, 2010. Copies of this Order have been served on all parties of record.

Please time stamp the copy of this Order as proof of filing and return it to the undersigned in the prepaid, self-addressed stamped envelope provided. If there are any questions, please contact the undersigned.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company,  
Defendant

RRW:bab

Enclosures

cc: Allegheny Valley Railroad Company  
All Parties of Record

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM FIORE,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. GD-10-001721
	)	
v.	)	
	)	
ALLEGHENY VALLEY RAILROAD CO.,	)	
CONSOLIDATED RAIL CORPORATION,	)	
PETER D. FRIDAY, SUSAN F. DALTON,	)	
AND ROBERT L. WISEMAN,	)	
	)	
Defendants.	)	

ORDER OF REFERRAL

TO THE SURFACE TRANSPORTATION BOARD

AND NOW, this 21st day of June, 2010, upon consideration of the pleadings, briefs and arguments of counsel concerning the Preliminary Objections Raising Questions of Fact filed by Defendant, Allegheny Valley Railroad Company ("AVR"), it is hereby ORDERED:

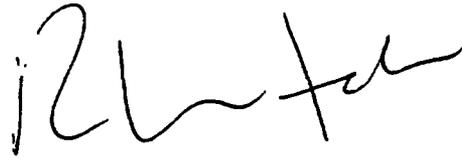
(1) Defendant AVR shall file, within 20 days of the date of this order, a Petition to the Surface Transportation Board for an Advisory Opinion by Referral from this Court, which Petition shall:

(a) Request an Advisory Opinion directed to the Court with respect to the following question:

Does 49 U.S.C. §10501(b), or any other law, rule or regulation applicable to the Board's jurisdiction, preempt the subject matter and/or personal jurisdiction of the state courts of the Commonwealth of Pennsylvania, including this Court, to grant the judicial remedies sought by Plaintiff against AVR in the attached Complaint?

(2) All proceedings in this docket, except ongoing discovery, are stayed pending receipt of the Board's Declaratory Order.

(3) All statutes of limitation with respect to the time for filing or service of the claims alleged in the Complaint against all defendants named therein are tolled pending receipt of the Board's Advisory Opinion.

A handwritten signature in black ink, appearing to read 'R. Folino', written over a horizontal line.

Ronald W. Folino (JUDGE)

/80196