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Cook County Recorder

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00-04114

LICENSE FOR A PRIVATE ROAD CROSSING



THIS AGREEMENT, made and entered into as of the 29th day of May, 1998, by and between the ILLINOIS CENTRAL RAILROAD COMPANY (hereinafter referred to as "Railroad"), whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345, and ROBERTSON-CECO CORPORATION (hereinafter referred to as "Licensee"), whose mailing address is 5000 Executive Parkway, Suite 425, San Ramon, California 94583.

WITNESSETH:

WHEREAS pursuant to an agreement, dated April 12, 1963 (the "1963 Agreement"), the Gulf, Mobile and Ohio Railroad Company, a predecessor-in-interest of Railroad, granted CECO Steel Products Corporation, a predecessor-in-interest of Licensee, subject to certain terms and conditions, the right to establish a private vehicular roadway for passage of vehicles and employees of Ceco and other persons and vehicles having lawful business with Ceco:

WHEREAS, pursuant to the terms of the 1963 Agreement, a roadway and crossing were constructed over certain property of Railroad and a system of train activated crossing signal was installed thereat;

WHEREAS, Railroad and Licensee desire to enter into a new agreement regarding the aforesaid private vehicular roadway, which new agreement shall supersede the 1963 Agreement and all supplements, modifications and amendments thereto; and

WHEREAS, this Agreement is not intended to supersede that certain agreement between Railroad and Austeel Lemont Company, Inc. dated December 30, 1993, as may have been amended, modified or supplemented, relating to the License Area, as hereinafter defined, which agreement shall remain in full force and effect.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein set forth, Railroad, insofar as it lawfully may, does hereby grant unto Licensee a right or license to construct, maintain and use a private vehicular roadway upon, over and across the property or right-of-way of Railroad (including the track located thereon) at Railroad's Joliet District Milepost A0-27.15 at/near Lemont, Illinois, as shown on the print attached hereto and made a part hereof,

UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **DEFINITIONS**.

- a. Railroad's Property. "Railroad's Property" shall mean the property shown on the attached print, to the extent owned by Railroad, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad's track, the land on which the track is situated, and any adjacent land of Railroad on either side of the track.
- b. <u>License</u>. "License" shall mean the right granted by Railroad to Licensee to construct, maintain and use a private vehicular road, together with a private pedestrian walkway, under the terms and conditions set forth hereinafter. This License is not exclusive, and Licensee shall enjoy its rights under this License in common with any other parties with whom Railroad has entered into an agreement for use of the License Area, specifically including but not limited to Austeel Lemont Company, Inc.
- c. <u>License Area</u>. "License Area" shall mean that portion of Railroad's Property over and across which the License is granted. The License Area extends from one edge of the Railroad's Property across the track to the opposite edge of the Railroad's Property and measures a distance of approximately 50 feet in width, lying 25 feet either side of the centerline of the existing roadway as presently located.
- d. Roadway. "Roadway" shall mean the roadway approaches on either side of the Crossing Proper within the License Area, including that portion between the tracks where multiple tracks exist.
- e. <u>Crossing Proper</u>. "Crossing Proper" shall mean that portion of the License Area encompassing an area from end-of-tie to end-of-tie.
- f. <u>Licensee's Property</u>. "Licensee's Property" shall mean the property or estate of Licensee to and from which the License provides ingress and egress for Licensee's benefit and use, which property is more specifically described in Exhibit A attached hereto and made a part hereof.
- g. <u>Cost</u>. "Cost" shall mean the actual cost of labor, equipment and materials plus Railroad's then current customary additives for over head and other indirect costs.

2. **USE.**

- a. The License shall only affect and burden the License Area and no other portion of Railroad's Property, and the Roadway and Crossing Proper shall be constructed, located, and maintained entirely within the License Area. Licensee shall have no right to use or cross any other portion of Railroad's Property or to use the Roadway and Crossing Proper for any purposes other than as expressly permitted herein, and Licensee, as a further consideration, cause, and condition without which the License would not have been granted, agrees to restrict its and its employees', agents' and invitees' use to those purposes and then only to said location and no other for crossing the Railroad's Property, including the track.
- b. Licensee shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad's operations or facilities.
- c. Licensee shall require and shall take all steps necessary to ensure that all persons using the Roadway and Crossing Proper come to a complete stop, look carefully for approaching trains before fouling or crossing Railroad's tracks, and yield to any approaching train.
- d. The Roadway and Crossing Proper shall be used only by Licensee and its employees, agents, contractors, patrons and invitees and then only for private ingress to and egress from Licensee's Property. The general public shall not be permitted by Licensee to use the Roadway and Crossing Proper.
- e. The Roadway and Crossing Proper shall not be used by vehicles of a size, configuration or weight that would damage the tracks, equipment, installations, or facilities of Railroad or any equipment, installations, or facilities located on Railroad's Property but belonging to third persons unless approved in advance in writing by Railroad and then only after suitable precautions have been taken to avoid any such damage.

3. **TERM.**

- a. This License shall become effective as of the date first written above and shall continue in effect thereafter until terminated in one of the manners set forth below:
 - (i) Either party may at any time give the other party written notice of termination specifying the date on which termination shall be effective, provided that such notice shall be delivered at least ninety (90) days in advance of the proposed date of termination. It is hereby agreed and understood that Railroad will not exercise its right herein to terminate this Agreement in the absence of any failure by Licensee to comply with the terms and conditions of this Agreement. In the event that Licensee fails or refuses to comply with any of the terms or conditions of this Agreement, Railroad shall notify Licensee in writing of the default and Licensee shall have 90 days to correct said default If after the said 90 days Licensee still fails or refuses comply, Railroad shall then have the right to terminate this Agreement at once.
 - (ii) This License simil terminate through non-use or in any other manner provided by law.
- b. Unless the parties mutually agree in writing to leave the Roadway and Crossing Proper in place after remination, the termination of this Agreement shall not be effective until all removal and restoration is complete. Termination of this Agreement shall not release Licensee from any liability or responsibility and duty which accrued prior to such termination, removal and restoration.
- 4. <u>CONSTRUCTION</u>. The construction of the Roadway, including the necessary grading, culverts and drainage on each side of the Railroad's track, shall be performed by Licensee at its own risk and expense, and to the satisfaction of the Railroad's authorized representative. Railroad will install the Crossing Proper over its track(s), from end-of-tie to end-of-tie, and make all adjustments required in Railroad's facilities, if any, at Licensee's sole expense.
- 5. <u>NOTIFICATION TO RAILROAD</u>. At least ten (10) days prior to entering upon the Roadway for the purpose of performing any construction or maintenance work hereunder, Licensee shall notify Railroad's Regional Manager in writing of the type of work to be performed and the date such work will commence. The notice shall be sent to the following address:

Regional Manager
Illinois Central Railroad Company
17641 S. Ashland Avenue
Homewood, IL 60430-1345

- 6. <u>SIGHTING AT CROSSING</u>. LICENSEE SHALL KEEP EACH QUADRANT OF THE INTERSECTION OF THE ROADWAY WITH RAILROAD'S TRACK FREE OF BUSHES, TREES, WEEDS, VEGETATION, AND ALL OTHER OBSTRUCTIONS OF ANY KIND THAT COULD INTERFERE WITH A MOTOR VEHICLE OPERATOR SIGHTING AN APPROACHING TRAIN.
- 7. **[RAISING WIRE LINES.** If it should be necessary to raise any wires on Railroad's property not belonging to Railroad to provide safe clearance for vehicles, Licensee shall make all arrangements therefor at its own sole risk and expense.
- 8. MAINTENANCE: Licensee shall, at its own risk and expense, maintain said Roadway in good and safe condition commensurate with its intended use. The Railroad shall, at the sole risk and expense of Licensee, maintain the Crossing Proper, however, Railroad shall have the right, but not the duty, to perform at Licensee's sole risk and expense, any repair or maintenance on the Roadway that Railroad considers reasonably necessary and Licensee shall pay the cost mereof upon receipt of a bill whether made at Licensee's request or otherwise.
- 9. CROSSING TO BE KEPT FREE OF DEBRIS. Licensee shall at all times during the term of this Agreement, keep the Railroad's track free of dirt, rocks or other debris or obstructions of any kind, and will not permit any condition which might interfere with the safe and efficient operation of trains over the Crossing Proper, or which might damage equipment or facilities belonging to Railroad or others or which might constitute a safety hazard of any kind. If at any time Licensee shall fail to do so, Railroad may, at its option, remove any dirt, rocks, debris or obstructions, and Licensee will pay Railroad the cost thereof promptly upon receipt of bill therefor. If the continued or rape ated presence of dirt, rocks, debris or obstructions should, in the opinion of Railroad, create an operating hazard, Railroad may keep a flagman on duty at Licensee's expense until such condition is corrected in a manner reasonably satisfactory to Railroad.
- 10. <u>UNAUTHORIZED USE</u>. It shall be Licensee's responsibility and duty to prevent all unauthorized persons from using the License Area and nothing herein shall be construed to relieve Licensee of this responsibility and duty.
- 11. **GATES AND FLAGGING.** Licensee shall, at its own risk and expense, install and maintain any gate or other barrier which Railroad indicates is reasonably necessary and shall keep the gates closed when the License Area is not in actual use. Licensee shall, at its own risk and expense, provide whatever flag protection Railroad shall indicate is necessary. Railroad shall have the right, but not the duty, to provide any such

flag protection at Licensee's sole risk and expense and Licensee shall pay the cost thereof upon receipt of a bill. It is further understood and acknowledged by Licensee that Railroad has no obligation or duty to determine the need for any gate or other barrier or the need for flag protection.

- Railroad has no obligation or duty to give audible warning of the approach of a train, nor erect whistle posts, nor reduce the speed of its trains, nor alter its operations in any manner, owing to the presence or existence of the roadway and crossing proper or other use or exercise of the right or license granted herein. Licensee assumes, at its own risk and expense, sole responsibility for determining if any signs, signals or other warning devices are necessary or appropriate for the safety of persons using the License Area and specifically acropyledges that Railroad has no obligation or duty whatever to make any such determination. If the installation of any signs, signals or warning devices on the License Area is presently or hereafter required by law or by competent public authority, or is otherwise requested by Licensee, same shall conform to any then currently applicable practices of the Railroad for such devices as to design, material and workmanship, and all costs incurred by the Railroad related to the installation, operation, maintenance, renewal, alteration and upgrading thereof shall be solely borne by Licensee.
- MAINTENANCE OF CROSSING WARNING DEVICES. Railroad, at 13. Licensee's sole cost, risk and expense, will maintain the existing system of train activated crossing signals. Licensee agrees to pay Railroad the sum of Four Thousand One Hundred Sixty Seven Dollars (\$4,167.00) arrayally, in advance, to cover routine maintenance, inspection, testing, and minor repairs to said signals. The agreed upon cost of routine maintenance, as set forth above, shall be adjusted annually effective January 1, 1999. The Index of Railroad Material Prices and Wag is Rates (1977=100), issued by the Economics and Finance Department, Association of American Railroads (AAR), Series RCR, shall be used in determining the percentage of increase or decrease. In making the determination, the Index of Material Prices, Wage Rates and Supplements Combined (excluding fuel) for the Southern District shall be used and the final index for the year 1997 shall be taken as the base. The rates shall be increased or decreased in the ratio that the Index for the year immediately preceding such year in which adjustment is to be made bears to the base year Index. In the event the base for the annual Indexes of Material Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made in the base for the calendar year 1997. If the AAR or any successor organization discontinues publication of this Index, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

Railroad shall also have the right, but not the duty, to perform, at Licensee's sole cost, risk and expense, any extraordinary maintenance, repairs, renewal, alteration, upgrading or replacement of said crossing signals that Railroad considers necessary and Licensee shall promptly reimburse Railroad for the full cost thereof upon receipt of bill(s) therefor.

- 14. **INDEMNITY.** As a further consideration for the License herein granted, and as a condition without which the License would not have been granted, Licensee agrees, regardless of any negligence or other legal fault by or on the part of Railroad or its officers, employees or agents, fully to defend, indemnify and save harmless Railroad and its officers, employees and agents, from and against any and all claims, demands, actions and causes of action, and to assume all risk, responsibility and liability (including all liability for expenses, attorney's fees and costs incurred or sustained by Railroad, whether in defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred),
 - a. for death of or injury to any and all persons, including but not limited to the officers, employees, agents, patrons, invitees and licensees of the parties hereto, and for any and all loss, damage or injury to any property whatsoever, including but not limited to that belonging to or in the custody and control of the parties hereto, in whole or in part arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to or resulting from the grant or exercise of this License, the failure of Licensee to confirm to the conditions of this Agreement, work performed by Railroad for Licensee under the terms of this Agreement, or from the construction, installation, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto, and
 - b. for death of or injury to the officers, employees, agents, patrons, invitees and licensee of Licensee and for any and all loss, damage or injury to their property, and to any property belonging to or in the care, custody or control of Licensee, in whole or in part arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to or resulting from the conduct of any railroad operations at or near the area in which the herein conferred License is granted or exercised.

It is the intention of the parties hereto that Licensee shall be solely responsible to all such destruction or damage to property or for personal injury to or death of any persons which would not have occurred if such private road crossing had never been constructed or used.

Licensee shall at its sole expense join in or assume, at the election and on demand of Railroad, the defense of any claims, demands, actions and causes of action hereunder arising. The word "Railroad" as used in this Section shall include the assigns of Railroad and any other railroad company that may be operating upon and over the tracks crossing the License Area.

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15. <u>INSURANCE</u>. Licensee shall procure and maintain during the life of this Agreement CONTRACTUAL LIABILITY INSURANCE which will insure the indemnity undertaking hereinabove set forth. Such insurance shall have a minimum combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 per annual policy period and said insurance shall be deemed primary as it relates to this Agreement. Licensee shall furnish the Railroad at the address shown below in this Section with a certificate evidencing that such insurance is in full force and effect and that the same will not be cancelled, terminated, or not renewed without at least thirty (30) days' advance written notice by the insurance carrier to the Railroad. AND IN ADDITION TO OTHER INFORMATION, THE CERTIFICATE SHALL CONTAIN THE FOLLOWING LANGUAGE:

Notwithstanding anything contained therein to the contrary, the Contractual Liability Insurance hereinabove referred to is extended to specifically insure the indemnity obligations assumed by Robertson-Ceco Corporation under Section 14 of an Agreement dated May 29, 1998 with Illinois Central Railroad Company covering use of Railroad's Property for a private road crossing. Insurer shall not cancel, terminate, or allow to lapse by reason of non-renewal the policy without providing Illinois Central/Chicago Central and Pacific Railroad Company at least thirty (30) days' written notice, caid notice to be sent via certified mail to:

Vice President-Maintenance Illinois Central Railroad Company 17641 Ashland Avenue Homewood, Illinois 60430-1545

- of this Agreement, Licensee shall remove its Roadway from Railroad's Property (except for the Crossing Proper located between the ends of ties) and restore the Railroad's Property, as near as may be, to its former condition insofar as such restoration may in the opinion of Railroad's duly authorized representative be practical, all at Licensee's sole risk and expense. If Licensee fails to so remove and restore, Railroad shall have the right, but not the obligation, to do so at Licensee's sole risk and expense. Upon termination, Railroad shall have the right, but not the duty, to remove the Roadway and Crossing Proper and to restore the Railroad's Property, all at Licensee's sole risk and expense. Licensee shall pay the cost of any work performed by Railroad upon presentation of a bill. Railroad shall have the right to require Licensee to deposit the estimated cost of any or all removal or restoration work involving the Roadway and/or Crossing Proper or to furnish an acceptable performance bond in such amount upon execution of this Agreement or at any time thereafter to assure complete performance under this Section.
- 17. **TAXES.** The Licensee shall pay all taxes, general and special, license fees or other charges which may become due or which may be assessed against the premises

UNOFFICIAL COP \$\frac{90681638}{2000} Page 9 of 15

of the Railroad because of the construction, existence, operation or use of said Roadway and Crossing Proper, or the business conducted in connection with said facility, and shall reimburse the Railroad for any such taxes, licensee fees or other charges which may be paid by the Railroad upon the presentation of bills therefor.

- 18. NON-CONVERSION TO PUBLIC USE. Licensee agrees to take no action of any kind whatsoever or to allow any third person to take any action which would result in the conversion of this License Area from a private road crossing to a public road crossing over Railroad's Property. In the event of a breach of this condition by the Licensee, the Licensee shall be liable for all damages incurred by the Railroad as a result of such breach.
- 19. All bills submitted by the Railroad to Licensee pursuant to the terms of this Agreement shall be paid by Licensee within fifteen (15) days of receipt thereof.
- 20. PRIOR AGREEMENTS. Upon execution of this Agreement, the 1963 Agreement (and all supplements, modifications and amendments thereto) shall be deemed superseded and of no further force or effect; however, same shall not release Licensee from any outstanding liability, responsibility or duty which accrued prior to such termination.
- 21. **ASSIGNMENT.** Licensee chall not have the right to assign this Agreement without first obtaining the consent in writing of the Railroad, which consent will not be unreasonably withheld.
- 22. **ENFORCEABILITY**. In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement in duplicate as of the date first above written.

ILLINOJ8 CENTRAL RAILROAD COMPANY

/: Mally San Bolly

D.C. Kelly, Vice-President Maintenance

ROBERTSON-CECO CORPORATION

Ronald D. Stevens, Executive Vice

President and Chief Financial Officer

UNOFFICIAL COPY 681638 Page 18 of 15

ACKNOWLEDGMENT

STATE OF ILLINOIS)
COUNTY OF Col) SS:)
On this the <u>29</u> day of May, 1 said County, personally appeared <u>De Ka</u>	998, before me, a Notary Public, in and for
said County, personally appeared De Ke	known to me (or satisfactorily
proven) to be a Vice President of Illinois C	entral Railroad Company, whose name is
subscribed to the within instrument, and ack	<u> </u>
the same for the purposes therein contained corporation.	a by signing his name as an oπicer of said
In witness whereof, I hereunto	set my hand and official seal.
4	
_7	avien a. Zenewsh.
Nota	ary Public
	C/
	"OFFICIAL SEAL
	PATRICIA A. ZIEMINSH NOTARY PUBLIC, STATE OF ILLING MY COMMISSION CAPIRES 2/10/04
	MIT COMMISSION SALINE CLAN.

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UNOFFICIAL COP 681638 Page 11 of 15

ACKNOWLEDGMENT

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this the day of May, 1998, before me, a Notary Public, in and for said County, personally appeared Ronald D. Stevens, Vice President and Chief Financial Officer of Robertson-Ceco Corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he, as such officer, being authorized to do so, executed the same for the purposes therein contained by signing his name as such officer.

In witness whereo! I pereunto set my hand and official seal.

Notary ⊬ublic

Notarial Seal
Many Ann Sabo, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Feb. 10, 2001

Member, Pennsylvania Association of Notarles

UNOFFICIAL COP \$\frac{1638}{2} \text{Page 12 of 15}

EXHIBIT "A"

PARCEL 1 (Will County)

All of the following described property situate in the County of Will and State of Illinois known and described as follows, to-wit:

That part of the East half of Section 25 in Township 37 North, Range 10 East of the Third Principal Meridian, in DuPage Township, Will County, Illinois, as hereinafter described:

Beginning at a point in the East line of said Section 25 at its point of intersection with the Southerly 90 foot reserve line of the Illinois and Michigan Cara, extending in a Northeasterly and Southwesterly direction through the said East half of said Section, thence South along the East line of said Section 531.5 feet to a point in the Northerly right of way line of the Gulf, Mobile and Ohio Railroad (Alton Railroad), extending in a Northeasterly and Southwesterly direction through the East half of said Section, afcresaid, thence Southwesterly along the said Northerly right of way line of said Railroad 2123.75 feet to a point. thence Northwesterly along a direct line 541.5 feet to a point in the said Southerly 90 feet reserve line of the said Illinois and Michigan Canal that is 2454.13 feet Southwesterly (measured along the said Southerly 90 foot reserve line of said canal) from the point of beginning, thence Northeasterly 2454.13 feet to the point of beginning, excepting therefrom that property conveyed by deed recorded January 19, 1982 as Document Number R8202168, described as follows:

That part of the East 1/2 of Section 25, Township 32 North, and in Range 10 East of the Third Principal Meridian, described as follows:

Commencing at a point in the East line of said Section 25 at its point of intersection with the Southerly 90 foot Reserve Line, of the Illinois and Michigan Canal, extending in a Northeasterly and Southwesterly direction through the East 1/2 of said Section; thence South along the East line of said Section, 531.5 feet to a point in the Northerly right of way line of the Gulf, Mobile and Ohio Railroad (Alton Railroad) extending in a Northeasterly and Southwesterly direction through the East 1/2 of said Section; thence Southwesterly along the said Northerly right of way line of said railroad, 2123.75 feet to the point of beginning: thence North 35 degrees 53 minutes 29 seconds West along a direct line, 541.50 feet to a point in the said Southerly 90 foot Reserve line of said Illinois and Michigan Canal that is 2454.13 feet Southwesterly (measured along the said Southerly 90 foot Reserve Line of said Canal) from the Point of Commencement; thence North 62 degrees 42 minutes 44 seconds East, along said Southerly Reserve Line, 60.89 feet; thence Southeasterly along a curve line, concave Northeasterly, having a radius

UNOFFICIAL COPY681638 Page 13 of 15

of 1187.78 feet and whose chord bears South 56 degrees 29 minutes 00 seconds East for an arc distance of 263.95 feet to a point of tangency; thence South 62 degrees 50 minutes 57 seconds East, 363.10 feet to said Northerly right of way line of said railroad; thence South 60 degrees 54 minutes 19 seconds East along the last described line, 319.69 feet to said point of beginning, Will County, Illinois.

Permanent Real Estate Number:

12-02-25-200-016-0000

Address of real estate:

New Avenue, Lemont, Illinois 60439

PARCEL 2 (Cook County)

All of the following described property situate in the County of Cook and State of Illinois known and described as follows, to-wit:

Lots 21, 26, 28, 41 and 43 in County Clerk's Division in Section 30, Township 37 North, Range 11 East of the Third Principal Meridian: excepting therefrom that part of Lots 21, 26, 28, 41 and 43 in County Clerk's Division in Section 30, Township 37 North, Range 11 East of the Third Principal Meridian, taken as a tract and described as follows: Beginning at a point on the Southerly line of tract at a point 2310 feet Northeasterly of the Southwesterly corner thereof; thence Northwesterly at 90 degrees to the Southerly line thereof a distance of 200 feet; thence Northeasterly at 90 degrees to last described course a distance of 120 feet, thence Southeasterly at 90 degrees to last described course a distance of 200 feet to the Southerly line of said tract; thence Southwesterly a distance of 120 feet to the point of beginning; in Cook County, Illinois.

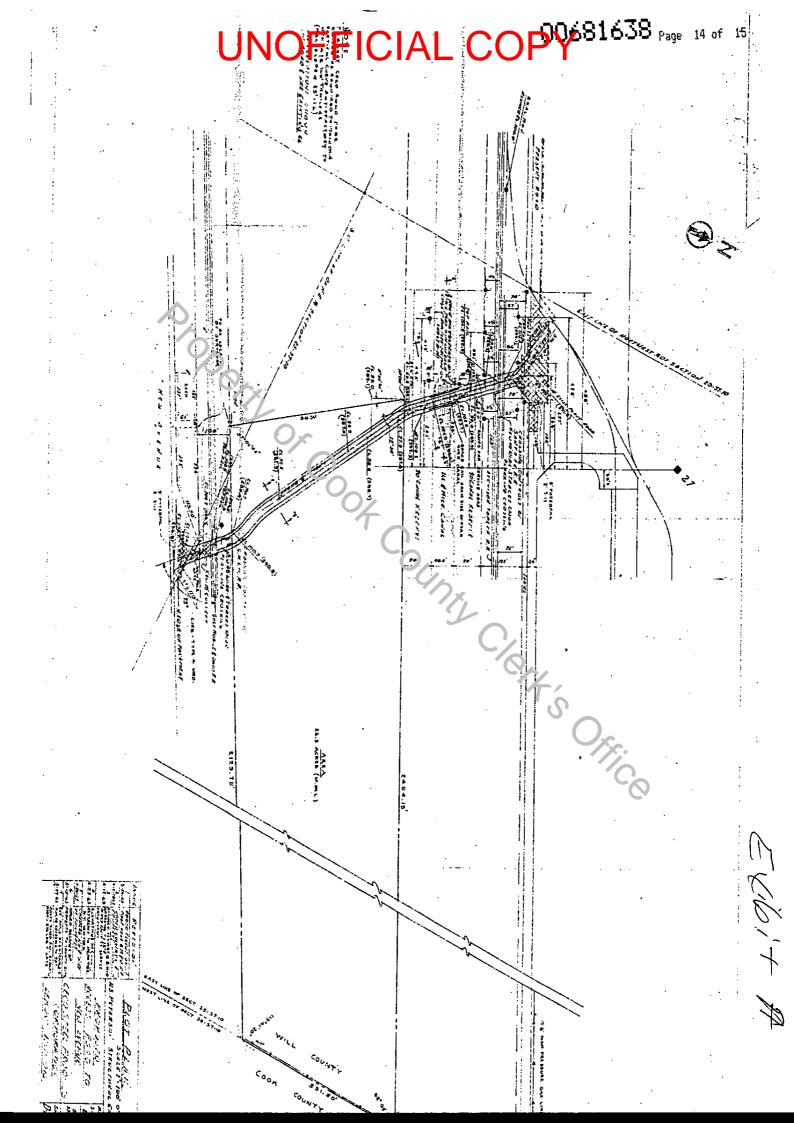
Permanent Real Estate Number:

22-30-100-012-0000

Address of real estate:

New Avenue, Lement, Illinois 60439 SOM CO

Prepared by:
Wail to:
Blank Sible
437 Krant St.
Frick Bldg. 7th fl
Pittsburgh PA 15219



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