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December 21, 2004

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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: Finance Docket No. 34335
Keokuk Junction Railway Co.--Feeder Railroad Development Application
--Line Of Toledo, Peoria & Western Railway Corporation Between
LaHarpe And Hollis, IL

Dear Secretary Williams:

Yesterday, Keokuk Junction Railway Co. ("KJRY") filed its Reply to Toledo, Peoria and Western Railway Corporation's Petition for Reconsideration. Attached to that Reply was a Verified Statement of Brian Mooty, Exhibit C to yesterday's filing. KJRY has discovered that the copies filed with Board did not have Mr. Mooty's signature page and did not include his Exhibits B, C, and D.

Enclosed herein are eleven copies of Mr. Mooty's complete verified statement, which is a public document. Other than the signature page and the exhibits, there are no other differences to Mr. Mooty's statement filed yesterday. To the extent that leave is necessary to allow the filing of this corrected material, KJRY respectfully requests such leave.

Please acknowledge receipt of the enclosed material by date stamping the eleventh copy of the filing and returning it to the individual making this filing for return to me. If there are any questions about this matter, please contact me.

Sincerely,



William A. Mullins

Enclosure

cc: All Parties of Record

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December 17, 2004

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Mr. Daniel A. LaKemper
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Re: Supplementary Opinion Letter Regarding Title Conveyed by Deeds Contained in the Addendum of the Verified Statement of Todd N. Cecil regarding the matter before the Surface Transportation Board, Finance Docket No. 34335, including response to opinion letter by Wildman, Harrold, Allen & Dixon Dated November 24, 2004 attached to Petition for Reconsideration filed by Toledo, Peoria & Western Railway Corporation

Surface Transportation Board Finance Docket No. 34335

Our file No: 16442.1

Dear Mr. LaKemper,

You have requested that I provide you with my response to the statements and opinions contained in the Letter by the law firm of Wildman, Harrold, Allen & Dixon Dated November 24, 2004 (Wildman letter) included in Volume II of the Petition for Reconsideration of the Sale Decision of the Surface Transportation Board by the Toledo, Peoria & Western Railway Corporation Between La Harp and Hollis IL.

The Wildman letter focused primarily on my opinion letter dated October 28, 2003 regarding the type of ownership interest conveyed by the deeds contained in an Addendum to the verified statement of Todd N. Cecil (hereinafter referred to as the Addendum) regarding the above referenced matter.

After reviewing and analyzing the Wildman letter I have not substantively changed my opinion regarding the type of ownership interests conveyed by the deeds that were discussed in my original opinion letter of October 28, 2003. I do, however, wish to address the assumptions and opinions set forth in the Wildman letter that disagree with or attempt to assert a contrary finding regarding the type ownership interest conveyed by some of the deeds. I will utilize references to the "Mooty Chart" that was attached to my original October 28, 2003 letter for ease of reference and because

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the Wildman letter also utilizes the Mooty Chart for references to specific deeds. In addition to assist with your review of this letter I have attempted to address issues raised in the Wildman letter in the same order that they appear in Wildman letter.

For both my original opinion letter and this letter I have analyzed all of the deeds contained in the Addendum. My opinion is limited to the type of ownership interest conveyed based on the language contained in each of the deeds as governed by relevant Illinois case law interpreting railroad deeds and relevant Illinois statutes and the Illinois Constitution. I have not attempted fully to determine if the deeds set forth in the Addendum reflect all of the deeds necessary or affecting the rail line property in question, the chain of title regarding the deeds in the Addendum and whether the deeds in fact are the documents indicating the current record title ownership in the rail line. Nevertheless, I have conducted a search of the Peoria County records to determine when the existing Toledo Peoria and Western Railway obtained title to the rail line that is the subject of the STB proceeding and I have attempted to determine the current corporate status of the Toledo Peoria and Western Railway. Unless otherwise stated herein, my opinion is limited to what title or ownership interest was granted by the deeds to the grantee of each of the deeds contained in the Addendum.

Qualifications

I am a member of the law firm of Kavanagh, Scully, Sudow, White and Frederick P.C.. I was admitted to the practice of law in Illinois in 1986. I concentrate my practice in real estate law and represent both buyers and sellers of residential and commercial real estate. I assist many clients with commercial real estate issues including sales and acquisitions, leasing, development, zoning, environmental problems and status of title and title insurance. My real estate practice also includes public, affordable housing, and local government law. My firm is an agent of the Attorneys Title Guarantee Fund and I have personally acted as title agent on numerous transactions and I have issued many real estate title commitments and title policies as a title agent. I am admitted to practice before the U.S. District Court, Central District of Illinois; and the U.S. Court of Appeals, Seventh Circuit. Education: Bachelor of Arts degree in Political Science from Eastern Illinois University (B.A., 1983); and J.D. degree from The Southern Illinois University School of Law (with honors, 1986). I am a member: the Peoria County Bar Association (Member: Real Estate Committee (Chairman, Real Estate Committee, 1994-95 and 2002-03), and the Continuing Legal Education Committee 1990-present, Chairman 2004-05), I am a member of the joint PCBA Peoria Area Realtors Association Contract Committee. I am also a member of the Illinois State Bar Association (Member: Real Estate Section Council 1998-2004, assistant editor of the Real Property Law Section Council News Letter 2004-05), the Illinois Real Estate Lawyers Association and the National Apartment Association (NAA attorney for review of the NAA lease forms for compliance with Illinois law). I am the author of Chapter 18, Easements and Licenses, in *Residential Real Estate* (ICLE 2003) and Chapter 8, The Illinois Responsible Property Transfer Act, in *Environmental Law for Transactional Attorneys* (ICLE 2001). I have been a presenter at many seminars and continuing legal education programs regarding real estate law

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including most recently participating as a presenter at the Illinois Institute of Continuing Legal Education's Annual Real Estate Institute in October 2004.

Assumptions Relied Upon in the Wildman letter

On page 4 of the Wildman letter certain assumptions are stated as being relied on in formulating Wildman's opinions set forth in its letter.

Assumptions 1 and 2. No independent evidence is available regarding the authenticity of the documents. As stated in my original letter my opinion was limited to those deeds attached to Todd N. Cecil's exhibit. However, my rendering an opinion on what appears on the face of the deeds or copies of tract indexes should not be considered an endorsement or opinion by me on the admissibility or evidentiary value of the deeds and tract indexes before the STB or other adjudicatory body. No certified documents or statements from the Recorder's offices of the counties in question have apparently been presented regarding the documents in Cecil's verified statement to authenticate the documents as true and correct records found at the Recorder's or other governmental offices, or otherwise demonstrating their authenticity. As such, under Illinois law at least, the evidentiary admissibility of the documents may still be in question.

Assumption 3. It should be noted that there are many references to the "TP & W" railroad in documents before the STB in this matter. The "TP & W" in existence at the time of those conveyances to the TP & W was the Toledo, Peoria and Warsaw Rail Road Company. The current existing TP & W railroad corporation is the Toledo Peoria & Western Railway Corporation formed in New Jersey in 1987 as the TP & W Acquisition Corporation. The TP & W Acquisition Corporation obtained ownership of the rail line in question whether in fee, by easement or otherwise from the Atchison, Topeka and Santa Fe Railway Company by a quitclaim deed dated February 3, 1989. It should be noted that this quit claim deed that provided no warranties of title and that an easement for fiber optic lines was reserved by the Santa Fe that encumbers the entire rail line. See Exhibit A (Quit claim Deed from Atchison, Topeka and Santa Fe Railway Company to TP & W Acquisition Company).

I. The Wildman Letter Opinions Regarding Deeds Listed in Rows One and Two of Exhibit A: the TP & W RRR Form Deeds.

The Wildman letter in its discussion of the deeds listed in rows one and two state that the deeds conveyed a fee simple interest rather than an easement. For this finding the Wildman letter reviewed the granting and habendum clauses of the deeds and then also attempted to support their interpretation with the presence of the homestead exemption waivers found on some of the deeds as well as federal tax stamps. The use of the homestead waivers and federal tax stamps in the Wildman letter will be discussed below, then the granting and habendum language will be addressed.

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Homestead Exemption

On page 9 of the Wildman letter the letter recites a portion of the version of Illinois Homestead Exemption Act in existence during most of the 1800's and early 20th century. In the second paragraph under the subsection C entitled the "Homestead Exemption" the Wildman letter cites the United States Supreme Court case of *East Alabama Railway Company v. Doe*, 114 U.S. 340, 350 (1885) for the proposition that railroad rights of way in Alabama cannot be sold in satisfaction of a judgment and therefore there would be no reason under Illinois homestead law to waive a homestead interest in a conveyance of Illinois property granting an easement. The *Doe* case does not stand for this claimed rule of law which through a leap in logic and jurisdictions is asserted to be applicable to Illinois real estate law. Nor does *Doe* have any value as precedent, persuasive or binding application to the interpretation of title to rights of way and homestead law in Illinois. The Court in *Doe* based its decision on Alabama real estate and railroad law specific to Alabama. The actual holding in *Doe* was that a judgment creditor attempting to execute on a judgment against a railroad right of way cannot do so unless the creditor also had an Alabama franchise to operate a railroad along that same right of way upon which the judgment levy is sought to be executed.

The Wildman letter then states that it could find no Illinois case law regarding the "intertwining of the waiver of homestead rights with a determination of what type of estate was being conveyed." However, there are a number of Illinois cases that discuss waivers of homestead and the conveyance of less than a fee simple title. First, however, the Arkansas case of *Coleman v. Missouri Pacific Railroad Co.*, 745 S.W. 2d 622 (Ark. 1988) cited in the Wildman letter should be addressed. A 1988 Arkansas case interpreting the homestead laws of Arkansas has no relevance, persuasive, binding or value as precedent regarding the interpretation of the Illinois Homestead Act applicable in the 1800's. The third paragraph of the Wildman letter on page 9 begins by alleging there is no Illinois law that provides guidance on what is waived by a homestead waiver in a conveyance in Illinois, then cites irrelevant Arkansas law to reach the conclusion that if a homestead waiver is provided in Illinois that it could only mean that a fee simple interest was intended to be conveyed by the grantors.

In *Deere v. Chapman* 25 Ill. 610 (1861), the Illinois Supreme Court held that the purpose of the Homestead Act in Illinois was remedial in nature and should be construed to give effect to its purpose. In *Deere*, the court specifically rejected the argument that a waiver of homestead must only apply to conveyances in fee simple. The court held that an exemption may be asserted in property occupied as a homestead although the debtor does not own an estate in fee. The court stated that the intent of the statute is to "secure the head of the family in the possession and enjoyment of the lot and buildings for the maintenance and shelter of himself and his family as a home, without regard to the extent of the estate, or title by which he owned it." The purpose of the act was to "save them, amid all their losses and disasters, a shelter for a family - home." Thus, by 1861, the Illinois Supreme Court in *Deere* had established that the purpose of the

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Homestead Act in Illinois was to protect the homestead from levy by creditors, not as a statute to determine the status of title.

Therefore, in Illinois the homestead right of owners has been properly viewed as encumbrance on title because it is a specific estate in the land, to be removed as a question or objection to title whenever possible when important property rights are being transferred. The TP& W form documents included preprinted waivers of homestead that were necessary to clear title to an perpetual easement for which a substantial investment would be made by the construction and operation of a railroad. Obtaining a waiver of homestead rights can be critical. In *Cortelyou v. Barnsdal*, 140 Ill. App. 163 (4th Dist. 1908) the failure to obtain homestead waivers in accordance the requirements of the homestead statute rendered the attempted conveyance void. See also, *Logue v Van Almen*, 373 Ill. 208, 40 N.E. 2d 73 (1942) (because the value of the farm at the time of the conveyance were less than the statutory exemption a lease was deemed void; the value of subsequently discovered oil and gas on the property did not raise the value of the property above the homestead exemption – the value of the homestead at the time of the conveyance applied rather than subsequent appreciation in value of the land). Therefore, prudent grantees of property interests, whether in fee, by lease, for a security interest or by easement had substantial and prudent reasons to obtain homestead waivers because of the threat of the assertion of a homestead interest with the accompanying risk of voiding of the transaction in question or subjecting the property to an assertion of a homestead interest. Thus, the motivation of grantees of property interests including leases or easements for obtaining a waiver of homestead was relevant to avoiding the remedial nature of the statute and being confronted with the homestead rights of a spouse or children if a waiver was not obtained. An acknowledgement referring to the conveyance of homestead was essential to its validity, until an amendment effective July 16, 1941, and a void acknowledgement invalidated the conveyance of homestead. Ward, Illinois Law of Title Examination §42 (1942).

Under Illinois law regarding homestead the waiver of the right to homestead only applied to the interest the husband and wife conveyed and the grantor's homestead rights in the rights to property not conveyed would not be released. *Rice v. United Mercantile Agencies of Louisville, Ky.*, 395 Ill. 512, 70 N.E. 2d 618 (1947); Illinois Law and Practice, Homesteads §63 (West 1992). Therefore, it was and is possible, in fact presumed, that in Illinois a grantor can waive homestead rights as to an easement but will retain the homestead rights in the property to the extent rights in the property are retained in the grantors. As a consequence, the Wildman letter's assertion, ignoring Illinois real estate law and based on an irrelevant and inapplicable Arkansas case that the grantor's waiver of their homestead rights is an affirmative indication of an intent to convey a fee simple interest, because that was the only property interest that such a waiver could convey, is incorrect and clearly erroneous based on Illinois case law interpreting the Illinois Homestead Act.

The motivating factor of grantees for obtaining waivers of homestead in Illinois is to avoid the assertion of the existence or creation of the estate of Homestead attaching to the property rights

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transferred rather than as affirmative evidence of the intent of the grantors as to what type of estate the grantors intended to convey. The issue of what title was conveyed by an instrument in relation to homestead rights only becomes an issue regarding the quality or type of title conveyed when a waiver of homestead is *not* shown on the face of the document. Then the transaction must be analyzed to determine if the interest conveyed remains subject to a homestead interest under Illinois law. Therefore, the existence of waivers of homestead interests do not assist a title examiner in Illinois to determine the estate conveyed by the deed or instrument of conveyance unless the homestead waiver is absent, in which case the examiner must then consider whether the quality of title conveyed has been encumbered or impaired by a homestead interest.

Federal Tax Stamps

The Wildman letter states that evidence of the presence or absence of federal tax stamps on some of the deeds provide support or proof of an intent by the parties to those documents to transfer a fee interest in the property for those deeds that show tax stamps on the documents. To support this claim the Wildman letter cites the definition of "devolution" in the 2002 edition of the Merriam Webster's Collegiate Dictionary as the basis for the finding that the presence of tax stamps on the documents meant the transfer of a fee simple interest in property and therefore easement grants did not require the payment of taxes; apparently because the Wildman letter takes the position that an easement right is not property. No other authority for this interpretation of the 1797 Federal Tax Stamp Act is cited in the Wildman letter. No authority is cited in the Wildman letter supporting the proposition that the definition of "devolution" found in a 21st century dictionary should be used to define a statutory term in 18th and 19th century federal statutes. No authority is cited for the proposition that an easement does not constitute a transfer of a property interest or title to real estate. It is clear that under Illinois law that an easement is an interest in property. Illinois Law and Practice, Easements §1 (West 2004); Residential Real Estate, Ch 18, Easements and Licenses §§18.1-8 (IICLE 2004).

There is authority that the conveyance of long term real estate interests other than the conveyance of fee title were subject to taxation under the federal tax stamp statutes including perpetual easements. See attached as Exhibit B the monograph *Stamp Taxes on Conveyances of Real Estate*, Published by The Chicago Title and Trust December, 1957. On page 3 it states:

"For purposes of determining liability for the tax stamp ... the phrase 'lands tenements or other realty' embraces those interests that endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple, *perpetual easement*, etc" [emphasis added].

The Wildman letter on page ten cites the Stamp Act of 1864 Chapter 173, 13 Stat. 223 Sections 151 to 170. Section 151 extended the application of the payment of federal taxes evidenced by federal tax stamps to the transactions listed in Schedule B of the 1864 Act. In schedule B taxes are set forth for "Conveyances" by "deed, instrument or writing" of "lands, tenements or other

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realty." See Exhibit C for excerpts of "An Act to Provide Internal Revenue to Support the Government, to Pay interest on the Public Debt and for other Purposes," including section 151 thereof and conveyances as defined in schedule B. The word "devolution" is not used regarding conveyances under the 1864 Act. The operative words are "lands tenements or other realty," not "devolution." Thus, by the express language of the statute the conveyances taxable under the Act concern more than fee simple conveyances as tenements are expressly mentioned as taxable.

The same language "lands, tenements or other realty" is used in later versions of the statute as cited in the Chicago Title monograph regarding the applicability of the federal tax act to easements and long term leases. See also, *Morrow v. Scofield*, 116 F.2d 17 (5th Cir 1940), *cert. denied*, 313 U.S. 573 (Under statute imposing documentary stamp tax, and in accordance with Texas law, instruments whereby taxpayer assigned oil and gas leaseholds on land in Texas were instruments conveying an interest in 'realty' requiring stamps); *Jones v. Magruder*, 42 F.Supp. 193 (1941) (In stamp tax statute applicable to transfer or conveyance of "lands, tenements, or other realty", the quoted phrase was not used in the technical nicety of the common law in respect to interests in lands flowing from system of feudal tenure, but includes an interest or estate in land constituting a substantial ownership in whole or in part, as distinguished from a mere license or temporary right of possession, and hence Maryland ground rent lease for 99 years renewable forever was subject to the stamp tax.) Thus, contrary to the claims of the Wildman letter, the stamp act clearly applied to conveyances of less than fee simple interests in real estate.

In the deeds under consideration in this matter the TP & W deeds all granted an easement to "have and to hold the same ... proper to the operation of said railway, to the Railway Company and its successors and assigns forever." Thus, the easements in question were properly taxable under the federal stamp tax act because the long term perpetual nature of the easement grant.

More important than the applicability the federal taxes to a transaction, however, is the issue of whether the presence or absence of federal tax stamps on conveyancing documents should be used or considered when attempting to determine the intent of an instrument. In Patton and Patton, *Land Titles, A Treatise on Title Records, Records as Muniments of Title, Priorities, Incumbrance Shown by County, State and Federal Records or Existing Title, and the Nature of Titles Required to Fulfill Contracts for Sale or Security* (1938), at Section 212 it states that "a [title] examiner need not, however, examine as to these [federal tax stamps] for the reason that their presence or absence, without a state statute on the subject, cannot affect the validity of the instrument or the sufficiency of the record." See Exhibit D. Therefore, a major treatise on title examination written during the existence of the federal tax stamp act rejected the use of the presence or absence of federal tax stamps on a document to determine the validity or effect of title documents.

Therefore, contrary to the assertions in the Wildman letter long term or perpetual easements were taxable under the federal tax stamp act and, more importantly, the presence or absence of tax

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stamps were and should not be considered a reliable source of evidence regarding the validity or effect of a title document.

The Granting and Habendum Clauses of the TP & W Deeds in Rows 1 and 2 of the Mooty Chart

The deeds in Rows 1 and 2 provide for the grantor to "grant, bargain and sell unto" the TP & W RR "all that part of the of the following described Real Estate ... which is occupied and used by the said Railway of the width of _____ feet on each side of the main Track of the Railway Company, to wit," The legal description is then inserted.

The deeds then read in their *habendum* clause: "To Have and to Hold the Same, together with all the rights privileges, and appurtenances thereunto belonging or proper to the operation of said Railway, to the said Railway Company, its successors and assigns Forever."

The language of the deeds in question indicate that the ownership interest conveyed was for an easement allowing the grantee rail road the exclusive right to use the property included in the conveyance for railroad purposes. See *Walker v. Illinois Central Rail Road Co.*, 215 Ill. 610, 74 N.E. 812 (1905). In *Walker* the Illinois Supreme Court interpreted similar language in a deed to indicate that the grant was exclusive for the use of the railroad but for less than a complete grant of a fee interest. The grant was valid for so long as the property was used for railroad purposes.

The language of the deeds set forth in Rows 1 and 2 of the Mooty Chart state a similar intention; there is a grant of an interest, but it is qualified by "all that part occupied and used by the Railway." When a deed conveys land to a railroad with no language in the deed limiting the estate conveyed, the deed will be construed to convey a fee simple title. *Keen v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.*, 392 Ill. 362, 64 N.E.2d 499 (1945). See also *Penn Central Corp. v. Commonwealth Edison Co.*, 159 Ill. App. 3d 419, 512 N.E.2d 118 (3rd Dist. 1987). "The words of grant, 'convey and warrant,' convey the fee unless they are limited to a lesser estate by words found in the granting clause or in the *habendum* of the deed, if it contains an *habendum*. Limiting words may be used, however, in conveying a life estate or an estate for years, and words limiting the estate conveyed to an estate of the character of either of the two last mentioned are not inconsistent with such words of grant; and where there is language, either in the granting clause or in the *habendum* of the deed, limiting the estate conveyed by such granting words to one less in extent than a fee, such words of limitation will be given effect." *Tallman v. Eastern Illinois and Peoria Railroad Co.*, 379 Ill. 441, 453, 41 N.E.2d 537, 543 (1942).

Therefore, there was not a complete grant of a fee interest in the land described in the TP & W form deeds because the granting clause language was specifically limited to the land "occupied and used by the Railway." If part of the property described in the deed was not used and occupied by the railway then rights in the land were not conveyed to the railroad despite the fact that it may be described in the deed. In addition, the words "used and occupied" indicate that if

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the land ceases to be used and occupied by the railroad then the easement ownership interest ceases.

Moreover, the grantee railroad's use of the property and the rights granted were further restricted by the *habendum* language "To Have and to Hold the Same, together with all the rights privileges, and appurtenances thereunto belonging or proper to the operation of said Railway...." As a consequence this language indicates the intention of the parties to limit the grantee railroad's use of the property where the rail road was using and occupying the property described in the deed and then only to only those rights in the land necessary to the proper operation of the railway.

If a fee simple conveyance was intended then the limiting language in the granting clause of regarding occupancy and use would have not been necessary. In addition the "To Have and to Hold" language for the proper operation of the railway would not have been necessary. . If a fee simple grant is determined to be the effect of the deed then the "Have and to Hold" language would have to be disregarded and rendered as mere surplusage which is not permitted under Illinois law. See, *Tallman v. Eastern Illinois and Peoria Railroad Co.*, 379 Ill. 441, 41 N.E.2d 537 (1942). The Wildman letter claims to attempt to include all of the language in the deeds to arrive at the interpretation of the conveyance of a fee simple interest. However, to do so requires that the language of the "rights, priviledges and appurtenances thereunto belonging, or proper to the operation of said Railway..." to be treated as surplus and ignored language. The "or" in the *habendum* language refers to the rights and privileges and appurtenances of a belonging to a railroad or proper to a railroad. Thus, the grant to the TP & W was limited to rail road purposes.

If a fee simple grant was intended by the deeds no discussion or words referring to a railroad would be necessary as the grantee would be able to use the property for a railroad, farm or any other purpose allowed to a fee simple owner of the property. To find a fee simple conveyance by the Deeds in rows one and two require the entire *habendum* clause to be ignored and interprets the language separately rather than read in conjunction with the "used and occupied" language of the granting clause. The language of the granting clause and *habendum* properly read together rather than attempted to be separately interpreted and defined as in the Wildman letter, indicates an easement grant rather than a fee simple conveyance

The express language of the deeds noted in rows 1 and 2 of the Mooty chart state that the ownership interest conveyed are grants of exclusive easements to the grantee railroad which shall exist as long as the property is used for railroad purposes. The analysis of the Wildman letter is not persuasive because it relies on separate interpretations of the deed's granting and *habendum* language (despite arguing that it is attempting to interpret the deed's overall intent) supported by the homestead waiver and tax stamp arguments set forth in the Wildman letter which as stated above are incorrect and misleading or irrelevant. The interests granted in Rows 1 and 2 of the Mooty Chart were easements.

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Miscellaneous Deeds Noted in Wildman Letter at page 11 regarding specific Deeds in Rows 1 and 2.

1. Deed listed in Row 1 on page 38 (same deed repeated at pages 40 and 44). The Wildman letter is correct. This deed should be considered a fee and listed under Row 5 of the Mooty Chart as a fee simple conveyance.
2. The deed listed under 2) on page 11 of the Wildman letter are properly within the finds of Rows 1 and 2 of the Mooty Chart as easements.
3. The deeds listed under 3) on page 11 of the Wildman letter as being fee interests because of the reference to a strip of land and etcetera are properly noted as easements under Rows 1 and 2 of the Mooty chart as the language noted does not override or contradict the language cited in the original Mooty opinion letter and this letter regarding the interpretation of the language of the deeds as easements and that language can be read in conjunction with the balance of the language of the deed for a finding that an easement was granted.

II. Deed Listed in Row 3

The Wildman letter does not render an opinion regarding this document.

III. Deed Listed in Row 4

This deed contains the same language as the form deeds noted in Rows 1 and 2 and therefore is grant of an easement. However, the property described is in the City of Peoria and does not appear to be a part of the rail line in question. The Wildman letter does not render an opinion regarding this document

IV. Deeds Listed in Row 5

The form deeds with grantee being the TP & W RR noted in Row 5 are form quitclaim deeds with out language of limitation in the granting clause or elsewhere in the deeds. **It is noteworthy that the TP & W RR did use a separate form of quit claim deed without the limiting language shown in the deeds in Rows 1 and 2 of the Mooty Chart.** The ownership interest granted is a fee simple interest of whatever interest, if any, held by the grantor. The Wildman letter does not render an opinion regarding this document.

V. Deed Listed in Row 6

The deed noted in Row 6 (the same deed was included three times in the Addendum) has somewhat different granting language but contains the same limiting language of the deeds in Rows 1 and 2 of Exhibit A, and, therefore, convey an easement to the grantee railroad of the

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same nature as the deeds in Rows 1 and 2. The Wildman letter asserts the analysis it utilizes regarding the deeds in rows 1 and 2. The cited limiting language indicates and easement. VI.

VI. Deeds Listed in Row 7

The Wildman letter does not render an opinion regarding this document. These deeds are the same form of deed used in Rows 1 and 2 but contain express references to the land described in the deeds as having been part of a condemnation action. Railroad condemnation actions prior to August 8, 1870 provided for the railroads to obtain fee simple title to the property. Therefore, the title to the property held by the railroad described in these two deeds may be in fee simple, however, additional research regarding the condemnation would be necessary to confirm the status of title and intent of the deeds.

VII. Deeds Listed in Rows 8 and 9: The Mississippi and Wabash Railroad Grants of Right of Way

The Wildman letter states that the conveyances are "more likely than not" easements. Easements were conveyed.

VIII. Deeds Listed at Row 10

The Wildman letter does not render an opinion regarding these documents.

IX. Deeds Listed in Rows 11 and 12

The Wildman letter does not render an opinion regarding these documents.

X. Deeds Listed in Row 13

The deeds noted in Row 13 of Exhibit A are forms containing the granting language "Convey__ and Quitclaim__." This language without more would indicate a fee simple grant. However, in each of the noted deeds under Row 13 the same or very similar language appears handwritten in after the legal description of the property: "It is understood between the parties hereto that this deed is a settlement of the right of way over the above described land...." As a consequence the deeds indicate that the intent of the parties was to settle the railroads claim of a right of way. Therefore, based on the expressed intent of the parties only an easement for a right of way was conveyed by these deeds. The Wildman letter disagrees and finds an intent to convey a fee. However if a fee grant was intended then the reference to a right of way would be unnecessary as earlier in the deeds a reference is made to a "strip of land" thus the words right of way, to have meaning in the deeds must have been meant to clarify the extent to the settlement of the parties to the deeds.

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XI. Deeds Listed in Rows 14 and 15

The deeds are the TP & W RR forms noted in Rows 1 and 2. The same analysis applies with additional language regarding the grant of an easement. An easement was granted.

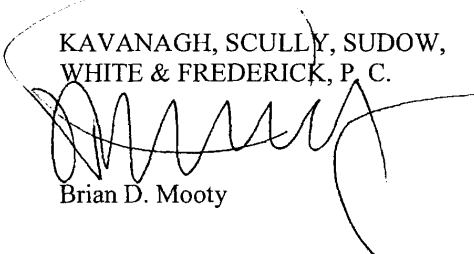
XII. Deeds Listed in Rows 16, 17 and 18

Each of these deeds contain language granting a fee interest but then indicate an intent to grant a right of way. The deed at page 333 was incomplete but appears to grant an easement. All three appear to grant an easement.

If you have any questions please call.

Very truly yours,

KAVANAGH, SCULLY, SUDOW,
WHITE & FREDERICK, P. C.


Brian D. Mooty

BDM:mjg
Enclosure

DOCUMENT NO.

89-03986

QUITCLAIM DEED
(ILLINOIS)

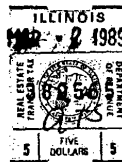
Grantor, The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation, with offices at 80 East Jackson Boulevard, City of Chicago, County of Cook, State of Illinois, for the consideration of TEN DOLLARS (\$10.00), and other good and sufficient consideration, receipt of which is hereby acknowledged by Grantor, conveys and quitclaims to Grantee, TP&W Acquisition Corporation, a New Jersey corporation, with offices at 1550 Park Avenue, Post Office Drawer D, South Plainfield, New Jersey 07080, all of Grantor's interest, except as set forth herein, in the following described real estate:



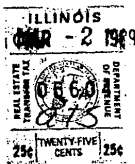
ALL OF THE REAL ESTATE AND IMPROVEMENTS THAT CONSTITUTE THAT CERTAIN LINE OF RAILROAD DESIGNATED IN THE RECORDS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (SANTA FE) AS THE PEORIA SUBDIVISION OF THE ILLINOIS DIVISION (FORMERLY KNOWN AS THE TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY), EXTENDING IN A GENERALLY EASTERLY DIRECTION FROM THE VILLAGE OF LOMAX, IN THE COUNTY OF HENDERSON, THROUGH SAID COUNTY OF HENDERSON AND THE COUNTIES OF HANCOCK, MC DONOUGH, FULTON, PEORIA, TAZEWELL, WOODFORD, MC LEAN, LIVINGSTON, FORD AND IROQUOIS, STATE OF ILLINOIS, TO THE EASTERLY LINE OF THE STATE OF ILLINOIS AT THE UNINCORPORATED COMMUNITY OF EFFNER, IROQUOIS COUNTY, ILLINOIS, THE LINE OF RAILROAD IS DESCRIBED MORE SPECIFICALLY AS FOLLOWS:



HENDERSON COUNTY, ILLINOIS



BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE SOUTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED SECOND IN DEED DATED MAY 25, 1906 TO THE ATCHISON, TOPEKA AND SANTA FE, RECORDED JULY 28, 1906 IN BOOK 51 AT PAGE 413, RECORDS OF HENDERSON COUNTY, LYING IN THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 8 NORTH, RANGE 6 WEST



Peoria County 50%

89-03986

STATE OF ILLINOIS, }
County of Peoria, } SS Filed for record
C. DICK MCGINNIS, County Recorder, on
C. D. McGinnis
Recorder of Deeds

02931

Exhibit A

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OF THE FOURTH PRINCIPAL MERIDIAN; THENCE IN A GENERALLY SOUTHERLY DIRECTION THROUGH SAID NORTHEAST QUARTER OF SECTION 15 AND THROUGH SECTIONS 14, 23, 26, 25, 35 AND 36, TOWNSHIP 8 NORTH, RANGE 6 WEST OF THE FOURTH PRINCIPAL MERIDIAN TO THE SOUTHERLY LINE OF SAID SECTION 36, SAID SOUTHERLY LINE ALSO BEING THE COUNTY LINE BETWEEN HENDERSON COUNTY AND HANCOCK COUNTY.

ALSO, ALL OF THE LAND DESCRIBED IN DEED DATED SEPTEMBER 22, 1871, FROM THOMAS J. SMITH ET UXOR TO TOLEDO, PEORIA AND WARSAW RAILWAY COMPANY, FILED FOR RECORD FEBRUARY 6, 1872 IN BOOK 27 AT PAGE 259 OF THE RECORDS OF HENDERSON COUNTY.

ALSO, ALL OF THE LAND DESCRIBED IN DEED DATED MAY 11, 1927, FROM LOMAX INDUSTRIAL CORPORATION ET ALIA TO TOLEDO, PEORIA AND WESTERN RAILROAD, FILED FOR RECORD JUNE 4, 1927 IN BOOK 79 AT PAGE 209 OF THE RECORDS OF HENDERSON COUNTY.

ALSO, ALL OF THE LAND DESCRIBED IN DEED DATED AUGUST 23, 1927, FROM ALFRED COX ET UXOR TO TOLEDO, PEORIA AND WESTERN RAILROAD, FILED FOR RECORD SEPTEMBER 17, 1927 IN BOOK 79 AT PAGE 594 OF THE RECORDS OF HENDERSON COUNTY.

HANCOCK COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE NORTHERLY LINE OF SECTION 1, TOWNSHIP 7 NORTH, RANGE 6 WEST OF THE FOURTH PRINCIPAL MERIDIAN, SAID NORTHERLY LINE ALSO BEING THE COUNTY LINE BETWEEN HANCOCK COUNTY AND HENDERSON COUNTY; THENCE IN A GENERALLY SOUTHEASTERLY DIRECTION THROUGH SAID SECTION 1 AND THE UNINCORPORATED COMMUNITY OF DISCO; THENCE CONTINUING IN A GENERALLY SOUTHEASTERLY AND EASTERLY DIRECTION THROUGH SECTIONS 6, 7, 18, 17, 20, 21, 22, 27, 23, 26 AND 25, TOWNSHIP 7 NORTH, RANGE 5 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE CITY OF LA HARPE, TO THE EASTERLY LINE OF SECTION 25, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN HANCOCK COUNTY AND MC DONOUGH COUNTY.

MC DONOUGH COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 4 WEST OF THE FOURTH PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN MC DONOUGH COUNTY AND

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HANCOCK COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 30, 31, 29, 32, 33, 34, 35, 26, 25 AND 36 TOWNSHIP 7 NORTH, RANGE 4 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF BLANDINSVILLE; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 30, 31, 29, 32, 28, 33, 27, 34, 35 AND 36, TOWNSHIP 7 NORTH, RANGE 3 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE VILLAGES OF SCIOTA AND GOOD HOPE; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 31, 32, 33, 34, 35 AND 36, TOWNSHIP 7 NORTH, RANGE 2 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF SCOTTSBURG; THENCE CONTINUING IN A GENERALLY EASTERLY AND SOUTHERLY DIRECTION THROUGH SECTIONS 31, 32 AND 33, TOWNSHIP 7 NORTH, RANGE 1 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE CITY OF BUSHNELL; THENCE CONTINUING IN A GENERALLY SOUTHERLY AND EASTERLY DIRECTION THROUGH SECTIONS 4, 9, 16, 15, 22, 23 AND 24, TOWNSHIP 6 NORTH, RANGE 1 WEST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF NEW PHILADELPHIA, TO THE EASTERLY LINE OF SECTION 24, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN MC DONOUGH COUNTY AND FULTON COUNTY.

FULTON COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 19, TOWNSHIP 6 NORTH, RANGE 1 EAST OF THE FOURTH PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN FULTON COUNTY AND MC DONOUGH COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 19, 20, 21, 22, 27, 23 AND 24, TOWNSHIP 6 NORTH, RANGE 1 EAST OF THE FOURTH PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 19, 30, 29, 28, 27, 26, 25 AND 24, TOWNSHIP 6 NORTH, RANGE 2 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF SMITHFIELD; THENCE IN A GENERALLY NORTHEASTERLY DIRECTION THROUGH SECTIONS 19, 20, 17, 16, 15, 10, 11, 12 AND 1, TOWNSHIP 6 NORTH, RANGE 3 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE CITY OF CUBA; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY DIRECTION THROUGH SECTIONS 6 AND 5, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE FOURTH PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY AND EASTERLY DIRECTION THROUGH SECTIONS 32, 33, 34, 35 AND 36, TOWNSHIP 7 NORTH, RANGE 4 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE CITY OF CANTON; THENCE CONTINUING IN A GENERALLY EASTERLY AND NORTHEASTERLY DIRECTION THROUGH SECTIONS 30, 31, 29, 32, 33, 34, 27,

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26 AND 25, TOWNSHIP 7 NORTH, RANGE 5 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF BREEDS; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY DIRECTION INTO SECTION 19, TOWNSHIP 7 NORTH, RANGE 6 EAST OF THE FOURTH PRINCIPAL MERIDIAN TO THE COUNTY LINE BETWEEN FULTON COUNTY AND PEORIA COUNTY.

PEORIA COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE COUNTY LINE BETWEEN PEORIA COUNTY AND FULTON COUNTY IN SECTION 19, TOWNSHIP 7 NORTH, RANGE 6 EAST OF THE FOURTH PRINCIPAL MERIDIAN; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 19, 20, 28, 21, 22, 23 AND 24, TOWNSHIP 7 NORTH, RANGE 6 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF GLASFORD; THENCE CONTINUING IN A GENERALLY EASTERLY AND NORTHEASTERLY DIRECTION THROUGH SECTIONS 19, 30, 29, 20, 21, 22, 15, 14, AND INTO 11, TOWNSHIP 7 NORTH, RANGE 7 EAST OF THE FOURTH PRINCIPAL MERIDIAN TO THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY AT THE RAILROAD STATION OF SOMMER NEAR THE UNINCORPORATED COMMUNITY OF ORCHARD MINES.

ALSO, ALL OF THE REAL ESTATE AND IMPROVEMENTS THAT CONSTITUTES THAT CERTAIN SPUR TRACK DESIGNATED IN THE RECORDS OF THE SANTA FE AS THE KOLBE SPUR OF SAID PEORIA SUBDIVISION, WHICH BEGINS AT THE WYE TRACKS AT THE RAILROAD STATION OF KOLBE, NEAR THE VILLAGE OF MAPLETON AND EXTENDS IN A SOUTHWESTERLY DIRECTION THROUGH SECTIONS 21, 28, 29 AND 30, TOWNSHIP 7 NORTH, RANGE 7 EAST OF THE FOURTH PRINCIPAL MERIDIAN AND INTO THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 6 EAST OF THE FOURTH PRINCIPAL MERIDIAN, TOWARDS THE VILLAGE OF KINGSTON MINES.

ALSO, ALL OF THAT PORTION OF LOTS 1 AND 2 OF BLOCK 48 IN THE BIGELOW AND UNDERHILL'S ADDITION TO THE CITY OF PEORIA, LYING NORTHERLY OF THE NORTHERLY LINE OF THAT CERTAIN 4906.89 SQUARE FOOT PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 25, 1864 FROM TOLEDO, PEORIA AND WARSAW RAILWAY COMPANY TO CHICAGO BURLINGTON AND QUINCY RAILROAD COMPANY, FILED FOR RECORD DECEMBER 22, 1864 IN BOOK "QB" AT PAGE 31 OF THE RECORDS OF PEORIA COUNTY.

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ALSO, A STRIP OF LAND IN THE TOWN (TOWNSHIP) OF HOLLIS, COUNTY OF PEORIA, STATE OF ILLINOIS, LYING IN THE EAST-HALF OF SECTION 11, TOWNSHIP 7 NORTH, RANGE 7 EAST OF THE FOURTH PRINCIPAL MERIDIAN, THE STRIP OF LAND BEING 30 FEET IN WIDTH, 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF THE EXISTING 33-FOOT WIDE TOWNSHIP ROAD THROUGH SAID EAST-HALF OF SECTION 11, AS SAID ROAD WAS ESTABLISHED BY AN AGREEMENT DATED NOVEMBER 14, 1891 AND FILED NOVEMBER 14, 1891 IN BOOK "A" AT PAGE 348 OF THE RECORDS OF SAID TOWN OF HOLLIS, WITH THE SOUTHEASTERLY LINE OF THAT CERTAIN 8.85 ACRE PARCEL OF LAND DESCRIBED IN TRACT 1 IN DEED DATED DECEMBER 6, 1983 FROM TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, RECORDED DECEMBER 8, 1983 AS DOCUMENT NUMBER 83-20926 OF THE RECORDS OF SAID COUNTY; THENCE SOUTH 27°55'00" WEST (BEARING ASSUMED FOR THE PURPOSES OF THIS DESCRIPTION) ALONG SAID SOUTHEASTERLY LINE, 160.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A NONTANGENT CURVE FROM WHICH A RADIAL BEARS SOUTH 19°21'31" WEST, CONCAVE SOUTHERLY AND SOUTHWESTERLY, HAVING A RADIUS OF 458.20 FEET, THROUGH A CENTRAL ANGLE OF 12°30'16", A DISTANCE OF 283.28 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 8.85 ACRE PARCEL.

THE SIDE LINES OF SAID STRIP ARE TO BE LENGTHENED OR SHORTENED TO ORIGINATE IN SAID SOUTHEASTERLY LINE AND TO TERMINATE IN SAID NORTHWESTERLY LINE. THE STRIP OF LAND CONTAINS AN AREA OF 0.19 OF AN ACRE, MORE OR LESS.

TAZEWELL COUNTY,

BEGINNING AT THE INTERSECTION OF THE COUNTY LINE BETWEEN TAZEWELL COUNTY AND PEORIA COUNTY WITH THE ORIGINAL CENTER LINE OF SAID LINE OF RAILROAD; THENCE IN A GENERALLY SOUTHEASTERLY AND EASTERLY DIRECTION THROUGH SECTIONS 29, 28, 32, 33, 34, 35 AND 36, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE CITY OF EAST PEORIA; THENCE CONTINUING IN A GENERALLY EASTERLY AND NORTHEASTERLY DIRECTION THROUGH SECTIONS 31, 32, 29, 28, 27, 22, 23, 14 AND 13, TOWNSHIP 26 NORTH, RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE CITY OF WASHINGTON; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY DIRECTION THROUGH SECTIONS 18, 17, 16 AND 9, TOWNSHIP 26 NORTH, RANGE 2 WEST OF THE THIRD PRINCIPAL MERIDIAN, TO THE

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EASTERLY LINE OF SECTION 9, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN TAZEWELL COUNTY AND WOODFORD COUNTY.

ALSO, ALL OF THE REAL ESTATE AND IMPROVEMENTS THAT CONSTITUTE THAT CERTAIN SPUR TRACK DESIGNATED IN THE RECORDS OF SANTA FE AS THE MORTON INDUSTRIAL SPUR OF SANTA FE'S PEORIA SUBDIVISION (FORMERLY A PORTION OF THE PEKIN SUBDIVISION OF THE ILLINOIS DIVISION), WHICH BEGINS AT THE INTERSECTION OF THE NORTHERLY LINE OF SECTION 11, TOWNSHIP 25 NORTH, RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN AND EXTENDS IN A GENERALLY SOUTHWESTERLY DIRECTION THROUGH SECTIONS 11, 10, 15, 16, 17, 20 AND 19, TOWNSHIP 25 NORTH, RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN THEN CONTINUES IN A GENERALLY SOUTHWESTERLY DIRECTION THROUGH SECTION 24 AND THE NORTHEAST QUARTER OF SECTION 23 OF TOWNSHIP 25 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, TO THE SOUTHERLY LINE OF THE NORTHEAST QUARTER OF SECTION 23.

EXCEPTING THEREFROM THE FOLLOWING TWO (2) PARCELS OF LAND IN THE CITY OF EAST PEORIA, COUNTY OF TAZEWELL, STATE OF ILLINOIS LYING IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

PARCEL 1

ALL OF THAT CERTAIN 0.75 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED MAY 22, 1928, FROM WILLIAM J. AND NORA A. GIBBONS TO TOLEDO, PEORIA AND WESTERN RAILROAD (PREDECESSOR IN INTEREST TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY) RECORDED JUNE 7, 1928 AS DOCUMENT NO. 107064 IN BOOK 244 AT PAGE 394 OF THE RECORDS OF TAZEWELL COUNTY, DESCRIBED IN SAID DEED FOR REFERENCE AS FOLLOWS:

"BEGINNING AT A POINT AT THE INTERSECTION OF THE WESTERLY LINE OF THE RIGHT OF WAY OF THE TOLEDO, PEORIA & WESTERN RAILROAD AND THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF FARM CREEK, SAID POINT OF BEGINNING BEING DISTANT 1993.15 FEET SOUTHEASTERLY FROM THE INTERSECTION OF THE EASTERLY LINE OF WEST WASHINGTON STREET AND THE WESTERLY RIGHT OF WAY LINE OF THE TOLEDO, PEORIA & WESTERN RAILROAD; THENCE NORTHWESTERLY ALONG THE FARM CREEK RIGHT OF WAY WITH A RADIUS OF 1545.19 FEET A DISTANCE OF 703.66 FEET; THENCE NORTH 70° AND 20' EAST 161.06 FEET TO THE WESTERLY LINE OF THE RIGHT OF WAY OF THE TOLEDO, PEORIA & WESTERN RAILROAD; THENCE SOUTHEASTERLY ALONG THE RAILROAD RIGHT OF WAY 646.26 FEET TO THE PLACE OF BEGINNING, CONTAINING SEVENTY-FIVE HUNDREDTHS (0.75) ACRE OF GROUND, MORE OR LESS."

PARCEL 2

BEGINNING AT A POINT ON THE EASTERLY LINE OF THAT CERTAIN 0.75 ACRE PARCEL OF LAND DESCRIBED IN AFORESAID DEED (BK. 244, PG. 394) DISTANT NORTHERLY 382.26 FEET FROM THE SOUTHERLY CORNER OF SAID 0.75 ACRE PARCEL OF LAND; THENCE SOUTH 42°02'48" EAST (BEARING ASSUMED FOR THE PURPOSES OF THIS DESCRIPTION) 146.20 FEET; THENCE SOUTH 47°57'12" WEST 26.78 FEET TO THE EASTERLY LINE; THENCE NORTH 31°40' WEST ALONG THE EASTERLY LINE 148.63 FEET TO THE POINT OF BEGINNING.

PARCEL 2 CONTAINS AN AREA OF 0.045 OF AN ACRE, MORE OR LESS.

ALSO EXCEPTING THEREFROM THE FOLLOWING TWO (2) PARCELS OF LAND IN THE CITY OF EAST PEORIA, COUNTY OF TAZEWELL, STATE OF ILLINOIS, LYING IN THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

PARCEL 3

THAT PORTION OF THAT CERTAIN 1.09 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED MAY 19, 1972, FROM TRANSIT ICE COMPANY TO TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY, RECORDED MAY 24, 1972 AS DOCUMENT NUMBER 510807 IN BOOK 900 AT PAGE 329 OF THE RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE SOUTHERLY LINE OF THAT CERTAIN 0.8904 ACRE PARCEL OF LAND SHOWN ON THAT CERTAIN STREET DEDICATION PLAT RECORDED JANUARY 15, 1987 AS DOCUMENT NUMBER 745171 IN PLAT BOOK "GG" AT PAGE 129 OF THE RECORDS OF SAID COUNTY, AND LYING EASTERLY OF THE EASTERLY LINE OF THAT CERTAIN 2.685 ACRE PARCEL OF LAND SHOWN ON THAT CERTAIN SURVEY PLAT RECORDED JANUARY 15, 1987 AS DOCUMENT NUMBER 745172 IN PLAT BOOK "GG" AT PAGE 130 OF THE RECORDS OF TAZEWELL COUNTY.

PARCEL 4

THAT PORTION OF THAT CERTAIN 0.75 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED SEPTEMBER 7, 1967, FROM TRANSIT ICE COMPANY TO TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY, RECORDED SEPTEMBER 8, 1967 AS DOCUMENT NUMBER 452295 IN VOLUME 779 AT PAGE 122 OF THE RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE SOUTHERLY LINE OF THAT CERTAIN 0.6239 ACRE PARCEL OF LAND SHOWN ON THAT CERTAIN STREET DEDICATION PLAT RECORDED JANUARY 15, 1987 AS DOCUMENT NUMBER 745171 IN PLAT BOOK "GG" AT PAGE 129 OF THE RECORDS OF TAZEWELL COUNTY.

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WOODFORD COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 10, TOWNSHIP 26 NORTH, RANGE 2 WEST OF THE THIRD PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN WOODFORD COUNTY AND TAZEWELL COUNTY; THENCE IN A GENERALLY NORTHEASTERLY DIRECTION THROUGH SECTIONS 10, 15, 11 AND 12, TOWNSHIP 26 NORTH, RANGE 2 WEST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE CITY OF EUREKA; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY DIRECTION THROUGH SECTIONS 7, 8, 9, 10, 11, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 1 WEST OF THE THIRD PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY NORTHEASTERLY AND EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 1 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF SECOR; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5 AND 4, TOWNSHIP 26 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE CITY OF EL PASO, TO THE EASTERLY LINE OF SAID SECTION 4, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN WOODFORD COUNTY AND MC LEAN COUNTY.

MC LEAN COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 3, TOWNSHIP 26 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN MC LEAN COUNTY AND WOODFORD COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 3 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF GRIDLEY; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF MEADOWS AND THE CITY OF CHENOA; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 5 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF WESTON, TO THE EASTERLY LINE OF SAID SECTION 1, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN MC LEAN COUNTY AND LIVINGSTON COUNTY.

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LIVINGSTON COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 6, TOWNSHIP 26 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN LIVINGSTON COUNTY AND MC LEAN COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE CITY OF FAIRBURY; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF FORREST; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE TOWN OF CHATSWORTH, TO THE EASTERLY LINE OF SAID SECTION 1, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN LIVINGSTON COUNTY AND FORD COUNTY.

FORD COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 6, TOWNSHIP 26 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN FORD COUNTY AND LIVINGSTON COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF PIPER CITY, TO THE EASTERLY LINE OF SAID SECTION 1, THE EASTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN FORD COUNTY AND IROQUOIS COUNTY.

IROQUOIS COUNTY, ILLINOIS

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID LINE OF RAILROAD WITH THE WESTERLY LINE OF SECTION 6, TOWNSHIP 26 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WESTERLY LINE ALSO BEING THE COUNTY LINE BETWEEN IROQUOIS COUNTY AND FORD COUNTY; THENCE IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4 AND 3, TOWNSHIP 26 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 33, 34, 35 AND 36, TOWNSHIP 27 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, THROUGH THE UNINCORPORATED COMMUNITY OF LA HOGUE; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH

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SECTION 31, TOWNSHIP 27 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 31, 32, 33, 34, 35 AND 36, TOWNSHIP 27 NORTH, RANGE 14 WEST OF THE SECOND PRINCIPAL MERIDIAN AND SECTIONS 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 14 WEST OF THE SECOND PRINCIPAL MERIDIAN, THROUGH THE CITY OF GILMAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 31, 32, 33, 34, 35 AND 36, TOWNSHIP 27 NORTH, RANGE 13 WEST OF THE SECOND PRINCIPAL MERIDIAN AND SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 13 WEST OF THE SECOND PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF CRESCENT CITY; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 31, 32, 33, 34, 35 AND 36, TOWNSHIP 27 NORTH, RANGE 12 WEST OF THE SECOND PRINCIPAL MERIDIAN AND SECTION 6, TOWNSHIP 26 NORTH, RANGE 12 WEST OF THE SECOND PRINCIPAL MERIDIAN, THROUGH THE CITY OF WATSEKA; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 2 AND 1 OF TOWNSHIP 26 NORTH, RANGE 12 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTIONS 6, 5, 4, 3, 2 AND 1, TOWNSHIP 26 NORTH, RANGE 11 WEST OF THE SECOND PRINCIPAL MERIDIAN, THROUGH THE VILLAGE OF SHELTON; THENCE CONTINUING IN A GENERALLY EASTERLY DIRECTION THROUGH SECTION 6, TOWNSHIP 26 NORTH, RANGE 10 WEST OF THE SECOND PRINCIPAL MERIDIAN, INTO THE UNINCORPORATED COMMUNITY OF EFFNER, TO THE STATE LINE BETWEEN THE STATE OF ILLINOIS AND THE STATE OF INDIANA.

TRACK AND EASEMENT AT LOMAX

ALL OF GRANTOR'S INTEREST, EXCEPT AS SET FORTH HEREIN, IN THE FOLLOWING DESCRIBED TRACK AND AN EASEMENT INTEREST IN THE REAL ESTATE EXTENDING 10 FEET EACH SIDE OF CENTERLINE OF THE TRACK FOR AS LONG AS THE TRACK IS REQUIRED BY GRANTEE:

ALL THE TRACK KNOWN AS THE PEORIA SUBDIVISION MAIN TRACK ON THE PROPERTY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN SECTION 15, TOWNSHIP 8 NORTH, RANGE 6 WEST OF THE FOURTH PRINCIPAL MERIDIAN AT AND NEAR LOMAX, HENDERSON COUNTY, ILLINOIS BETWEEN MILE POST 206.11, OPPOSITE HEAD OUT SIGNAL, TO MILE POST 205.54 WHERE SAID TRACK LEAVES PROPERTY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND ENTERS PROPERTY BEING CONVEYED TO GRANTEE AT THIS TIME, SAID TRACK BEING 2920 FEET IN LENGTH. GRANTOR RETAINS TO ITSELF THE RIGHT TO USE THE TRACK AND EASEMENT AREA, OR TO PERMIT ITS AGENTS, LICENSEES OR ASSIGNEES TO USE THE TRACK AND EASEMENT AREA TO CONDUCT ANY ACTIVITIES, SO LONG AS GRANTEE IS ADEQUATELY COMPENSATED FOR ANY UNREASONABLE INTERFERENCE WHICH ANY SUCH ACTIVITIES MAY CAUSE WITH RESPECT TO RAIL TRANSPORTATION OPERATIONS CONDUCTED BY GRANTEE.

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ADDITIONAL PROPERTY TO BE CONVEYED

ALL OF THE REAL ESTATE OWNED BY THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN THE COUNTIES OF TAZEWELL, PEORIA AND WOODFORD, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

TAZEWELL COUNTY

PARCEL T-3

ALL OF THE REAL ESTATE LYING IN THE WEST-HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN RAILROAD EASEMENT RESERVATION DESCRIBED AND SHOWN ON SURVEY PLAT DATED DECEMBER 1, 1986 AND REVISED DECEMBER 16, 1986, RECORDED JANUARY 15, 1987 AS DOCUMENT NUMBER 745172 IN BOOK "GG" OF PLATS AT PAGE 130 OF THE RECORDS OF TAZEWELL COUNTY.

ALSO, ALL OF THAT CERTAIN 1-FOOT WIDE STRIP OF LAND DESCRIBED IN EXCEPTION TO DEED DATED MAY 17, 1957 FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO THE KROGER CO., RECORDED MAY 20, 1957 AS DOCUMENT NUMBER 339458 IN VOLUME 561 AT PAGE 298 OF THE RECORDS OF TAZEWELL COUNTY.

ALSO, ALL OF THE LAND LYING BETWEEN THE SOUTHERLY RIGHT OF WAY LINE OF THE NORFOLK AND SOUTHERN RAILWAY COMPANY AND THE NORTHERLY LINE OF THAT CERTAIN 10.67 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 6, 1956, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO SECKEL-BLANCHARD, INC., RECORDED AUGUST 21, 1956 AS DOCUMENT NUMBER 332120 IN VOLUME 544 AT PAGE 173 OF THE RECORDS OF TAZEWELL COUNTY.

PARCEL T-6

A STRIP OF LAND IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, BEING ALL OF THAT CERTAIN 20-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, RECORDED DECEMBER 9, 1983 AS DOCUMENT NUMBER 703585 IN BOOK 2648 AT PAGE 162 OF THE RECORDS OF TAZEWELL COUNTY.

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EXCEPTING THEREFROM, ALL OF THAT CERTAIN 20-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED DATED JULY 21, 1987 FROM TRANSIT ICE COMPANY TO SAMUEL M. KENT, RECORDED JULY 23, 1987 AS DOCUMENT NUMBER 754072 IN BOOK 2975 AT PAGE 19 OF THE RECORDS OF TAZEWELL COUNTY.

PARCEL T-18

A STRIP OF LAND IN THE WEST-HALF OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, BEING ALL OF THAT CERTAIN 225-FOOT WIDE STRIP OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, RECORDED DECEMBER 9, 1983 AS DOCUMENT NUMBER 703589 IN BOOK 2648 AT PAGE 177 OF THE RECORDS OF TAZEWELL COUNTY.

PARCEL T-32

ALL OF THE REAL ESTATE LYING IN THE EAST-HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN 50-FOOT WIDE STRIP OF LAND DESCRIBED IN EXCEPTION TO DEED DATED AUGUST 6, 1956 FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO SECKEL-BLANCHARD, INC., RECORDED AUGUST 21, 1956 AS DOCUMENT NUMBER 332120 IN VOLUME 544 AT PAGE 173 OF THE RECORDS OF TAZEWELL COUNTY.

ALSO, ALL OF THE LAND LYING BETWEEN THE SOUTHERLY RIGHT OF WAY LINE OF THE NORFOLK AND SOUTHERN RAILWAY COMPANY AND THE NORTHERLY LINE OF THAT CERTAIN 10.67 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 6, 1956, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO SECKEL-BLANCHARD, INC., RECORDED AUGUST 21, 1956 AS DOCUMENT NUMBER 332120 IN VOLUME 544 AT PAGE 173 OF THE RECORDS OF TAZEWELL COUNTY.

ALSO, ALL OF THE LAND LYING BETWEEN THE SOUTHERLY RIGHT OF WAY LINE OF THE NORFOLK AND SOUTHERN RAILWAY COMPANY AND THE NORTHERLY LINE OF THAT CERTAIN 5.658 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JULY 28, 1961, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO H.F. CAMPBELL CONSTRUCTION COMPANY, RECORDED JULY 28, 1961 AS DOCUMENT NUMBER 382955 IN VOLUME 649 AT PAGE 213 OF THE RECORDS OF TAZEWELL COUNTY.

ALSO, ALL OF THE FOLLOWING DESCRIBED PARCEL:
BEGINNING AT THE POINT OF BEGINNING OF THAT CERTAIN

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EXCEPTION DESCRIBED FOURTH IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, RECORDED DECEMBER 9, 1983 AS DOCUMENT NUMBER 703594 IN BOOK 2648 AT PAGE 199 OF THE RECORDS OF TAZEWELL COUNTY; THENCE NORTH 86°24'32" WEST (BEARING ASSUMED FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE NORTHERLY LINE OF SAID FOURTH EXCEPTION, 136.51 FEET TO THE SOUTHEASTERLY CORNER OF THAT CERTAIN 4.465 ACRE PARCEL OF LAND DESCRIBED IN DEED JULY 22, 1957, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO SECKEL-BLANCHARD, INC. RECORDED IN BOOK 574 AT PAGE 280 OF THE RECORDS OF TAZEWELL COUNTY; THENCE ALONG THE BOUNDARY OF THAT 4.465 ACRE PARCEL THE FOLLOWING TWO (2) COURSES, ONE (1) NORTHERLY ON AN EIGHT DEGREE (8°) CURVE TO THE RIGHT, AN ARC DISTANCE OF THREE HUNDRED SEVENTEEN AND FIVE-TENTHS (317.5) FEET, ITS LONG CHORD OF THREE HUNDRED FIFTEEN (315) FEET BEARING NORTH TWENTY DEGREES FIFTY-TWO MINUTES THIRTY SECONDS WEST (N20°52'30"W) TO A POINT ON A LINE ONE HUNDRED (100) FEET SOUTH OF AND MEASURED NORMALLY TO THE CENTER LINE OF MAIN TRACK OF NORFOLK AND SOUTHERN RAILWAY COMPANY; THENCE TWO (2) WESTERLY PARALLEL WITH AND FIFTY (50) FEET SOUTHERLY OF AND NORMALLY DISTANT FROM THE SOUTHERLY RIGHT OF WAY LINE OF SAID NORFOLK AND SOUTHERN RAILWAY COMPANY AND CONCENTRIC TO A CURVE OF ZERO DEGREES FIFTY-NINE MINUTES FIFTY-NINE SECONDS, PARALLEL WITH AND ONE HUNDRED (100) FEET SOUTH OF AND NORMALLY DISTANT FROM SAID CENTER LINE, AN ARC DISTANCE OF SIX HUNDRED SEVENTY-SIX AND TWO-TENTHS (676.2) FEET, ITS LONG CHORD OF SIX HUNDRED SEVENTY-FIVE AND EIGHT TENTHS (675.8) FEET BEARING SOUTH EIGHTY-NINE DEGREES THIRTY-SIX MINUTES WEST (S89°36'W) TO THE EASTERLY LINE OF THAT CERTAIN 10.67 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 6, 1956, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO SECKEL-BLANCHARD, INC., RECORDED AUGUST 21, 1956 AS DOCUMENT NUMBER 332120 IN VOLUME 544 AT PAGE 173 OF THE RECORDS OF TAZEWELL COUNTY; THENCE NORTH 12°43'55" WEST ALONG SAID EASTERLY LINE (VOL. 544, PG. 173), AND ITS PROLONGATION, 50.04 FEET TO SAID SOUTHERLY RIGHT OF WAY LINE OF NORFOLK AND SOUTHERN RAILWAY COMPANY; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 805 FEET, MORE OR LESS TO THE POINT OF INTERSECTION OF SAID SOUTHERLY RIGHT OF WAY LINE WITH THE NORTHERLY PROLONGATION OF THE MOST WESTERLY LINE OF THAT CERTAIN 5.658 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JULY 28, 1961, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO H.F. CAMPBELL CONSTRUCTION COMPANY, RECORDED JULY 28, 1961 AS DOCUMENT NUMBER 382955 IN VOLUME 649, AT PAGE 213 OF THE RECORDS OF TAZEWELL COUNTY; THENCE SOUTHERLY ALONG SAID PROLONGATION AND

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THE WESTERLY BOUNDARY OF SAID 5.658 ACRE PARCEL (VOL. 649, PG. 213) THE FOLLOWING THREE (3) COURSES, ONE (1) SOUTH 1°23' EAST, 110.95 FEET; THENCE TWO (2) SOUTH 21°31' EAST, 75.5 FEET; THENCE THREE (3) SOUTH 31°33' EAST, 191.84 FEET TO THE POINT OF BEGINNING.

PARCEL T-41

A PARCEL OF LAND IN THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, BEING THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, RECORDED DECEMBER 9, 1983 AS DOCUMENT NUMBER 703600 IN BOOK 2648 AT PAGE 221 OF THE RECORDS OF TAZEWELL COUNTY.

PEORIA COUNTY

PARCEL P-18

✓ THAT PORTION OF THAT CERTAIN STRIP OF LAND DESCRIBED AS "A STRIP OF LAND FOUR (4) RODS WIDE OFF OF THE NORTH SIDE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION THIRTY-SIX (36), IN TOWNSHIP EIGHT (8) NORTH, RANGE SEVEN (7) EAST OF THE FOURTH PRINCIPAL MERIDIAN, EXCEPTING HOWEVER THE RIGHT OF WAY OF THE ST. LOUIS, PEORIA AND NORTHWESTERN RAILWAY OVER AND ACROSS THE SAME, ALSO EXCEPTING THE RIGHT OF WAY OF THE PEORIA AND PEKIN UNION RAILWAY OVER AND ACROSS THE SAME, ALSO EXCEPTING THE RIGHT OF WAY OF THE PEORIA RAILWAY TERMINAL COMPANY OVER AND ACROSS THE SAME, SITUATED IN THE COUNTY OF PEORIA AND STATE OF ILLINOIS." IN DEED DATED MAY 1, 1931 TO TOLEDO, PEORIA & WESTERN RAILROAD (PREDECESSOR IN INTEREST TO TRANSIT ICE COMPANY) RECORDED OCTOBER 13, 1932, IN BOOK 440, PAGE 341, RECORDS OF SAID PEORIA COUNTY, WHICH LIES WESTERLY OF SAID RIGHT OF WAY OF THE PEORIA RAILWAY TERMINAL COMPANY AND EASTERLY OF THAT CERTAIN 4338 SQUARE FOOT PARCEL OF LAND DESCRIBED IN DEED DATED APRIL 10, 1953, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO ALLIED MILLS, INC., SAID 4338 SQUARE FOOT PARCEL OF LAND DESCRIBED IN SAID DEED (4-10-53) FOR REFERENCE AS FOLLOWS:

"PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36), TOWNSHIP EIGHT (8) NORTH, RANGE SEVEN (7) EAST OF THE FOURTH (4TH) PRINCIPAL MERIDIAN, IN THE VILLAGE OF BARTONVILLE, COUNTY OF PEORIA AND STATE OF

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ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36); THENCE EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36), SIXTY-NINE AND SIXTY-FIVE HUNDREDTHS (69.65) FEET TO THE WESTERLY LINE OF NEW STATE HIGHWAY U.S. NO. 24 (FORMERLY ILLINOIS NO. 9); THENCE SOUTHERLY ALONG SAID WESTERLY LINE SIXTY-SIX (66) FEET, MORE OR LESS, TO A PIPE; THENCE WEST PARALLEL WITH AND SIXTY-SIX (66) FEET NORMALLY DISTANT FROM SAID NORTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36), SIXTY-ONE AND EIGHT-TENTHS (61.8) FEET TO THE WEST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36); THENCE NORTH ALONG THE WEST LINE SIXTY-SIX (66) FEET TO THE POINT OF BEGINNING, CONTAINING 4,338 SQ. FT., MORE OR LESS".

PARCEL P-26

THAT CERTAIN 0.6 ACRE PARCEL OF LAND DESCRIBED IN TRACT 2 IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, FILED DECEMBER 8, 1983, AS DOCUMENT NO. 83-20927, RECORDS OF PEORIA COUNTY, SAID PARCEL OF LAND DESCRIBED IN SAID DEED FOR REFERENCE AS FOLLOWS:

TRACT 2

"A PART OF THE EAST HALF (E 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION FIFTEEN (15), TOWNSHIP SEVEN (7) NORTH, RANGE SEVEN (7) EAST OF THE FOURTH (4TH) PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION FIFTEEN (15) AND THE SOUTHEASTERLY RIGHT OF WAY LINE OF TOLEDO, PEORIA & WESTERN RAILROAD COMPANY (SAID RAILROAD RIGHT OF WAY LINE BEING FIFTY (50) FEET DISTANT SOUTHEASTERLY FROM AND PARALLEL WITH THE CENTER LINE OF THE MAIN TRACK OF

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SAID RAILROAD AS NOW LAID AND CONSTRUCTED);
THENCE SOUTHWESTERLY ALONG SAID RAILROAD
RIGHT OF WAY LINE SEVEN HUNDRED NINETEEN AND
THIRTY-SIX HUNDREDTHS (719.36) FEET TO THE
SOUTH LINE OF SAID SOUTHWEST QUARTER (SW
1/4) OF SECTION FIFTEEN (15); THENCE EAST
ALONG SAID SOUTH LINE ONE HUNDRED THREE AND
THIRTY-FOUR HUNDREDTHS (103.34) FEET; THENCE
NORTH 43°-10'-15" EAST SIX HUNDRED
FORTY-FIVE AND FOUR-TENTHS (645.4) FEET TO
THE POINT OF BEGINNING; CONTAINING
SIX-TENTHS (0.6) ACRE, MORE OR LESS:"

PARCEL P-27

THAT CERTAIN PARCEL OF LAND DESCRIBED IN
TRACT 1 IN DEED DATED DECEMBER 6, 1983, FROM
TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO
TRANSIT ICE COMPANY, FILED DECEMBER 8, 1983,
AS DOCUMENT NO. 83-20927, RECORDS OF PEORIA
COUNTY, SAID PARCEL OF LAND DESCRIBED IN
SAID DEED FOR REFERENCE AS FOLLOWS:

*TRACT 1

"A PART OF THE NORTHWEST QUARTER (NW 1/4) OF
SECTION TWENTY-TWO (22), TOWNSHIP SEVEN (7)
NORTH, RANGE SEVEN (7) EAST OF THE FOURTH
(4TH) PRINCIPAL MERIDIAN, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

"BEGINNING AT A T-RAIL AT THE SOUTHWEST
CORNER OF SAID NORTHWEST QUARTER (NW 1/4) OF
SECTION TWENTY-TWO (22); THENCE NORTH
89°-47' EAST, ALONG THE SOUTH LINE OF SAID
NORTHWEST QUARTER (NW 1/4) OF SECTION
TWENTY-TWO (22), FOUR HUNDRED FORTY (440)
FEET; THENCE NORTH 25°-29'-45" EAST FIVE
HUNDRED THREE (503) FEET; THENCE NORTH
38°-54'-30" EAST ONE THOUSAND FOUR HUNDRED
SIXTY-FIVE (1,465) FEET; THENCE NORTH
36°-44'-30" EAST TWO HUNDRED FORTY-EIGHT
(248) FEET; THENCE NORTH 37°-17'-04" EAST
SIX HUNDRED THIRTY-TWO AND FIVE-TENTHS
(632.5) FEET; THENCE NORTH 3°-30'-30" EAST
THREE HUNDRED FORTY-SEVEN (347) FEET; THENCE
NORTH 6°-32' EAST THIRTY-EIGHT (38) FEET,
MORE OR LESS, TO THE NORTH LINE OF SAID
NORTHWEST QUARTER (NW 1/4) OF SECTION
TWENTY-TWO (22); THENCE WEST ALONG SAID
NORTH LINE ONE HUNDRED THREE AND THIRTY-FOUR
HUNDREDTHS (103.34) FEET TO THE

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SOUTHEASTERLY RIGHT OF WAY LINE OF THE TOLEDO, PEORIA & WESTERN RAILROAD COMPANY (THE RAILROAD RIGHT WAY LINE BEING FIFTY (50) FEET DISTANT SOUTHEASTERLY MEASURED PERPENDICULARLY FROM AND PARALLEL WITH THE CENTER LINE OF THE MAIN TRACK OF SAID RAILROAD AS NOW LAID AND CONSTRUCTED); THENCE SOUTH 49°-09' WEST ALONG THE RAILROAD RIGHT OF WAY LINE ONE THOUSAND TWO HUNDRED THIRTY-NINE AND NINE-TENTHS (1,239.9) FEET TO THE CENTER LINE OF THE PUBLIC HIGHWAY KNOWN AS STATE BOND ISSUE ROUTE 9 AND U.S. ROUTE 24; THENCE SOUTH 10°-16' EAST THIRTEEN (13) FEET ALONG SAID HIGHWAY CENTER LINE; THENCE CONTINUING ALONG SAID HIGHWAY CENTER LINE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 501.96 FEET, FOUR

HUNDRED SIXTY-THREE AND FOUR-TENTHS (463.4) FEET; THENCE SOUTH 42°-38' WEST ALONG SAID HIGHWAY CENTER LINE NINE HUNDRED NINETY AND FOUR-TENTHS (990.4) FEET; THENCE SOUTH 47°-22' EAST THIRTY (30) FEET; THENCE SOUTH 66°-18' EAST FIFTY-ONE (51) FEET; THENCE SOUTH 42°-38' WEST ONE HUNDRED SIXTEEN (116) FEET; THENCE NORTH 66°-18' WEST ONE (1) FOOT; THENCE SOUTH 43°-53' WEST ONE HUNDRED TEN (110) FEET; THENCE SOUTH 66°-18' EAST THIRTY-FOUR AND EIGHT-TENTHS (34.8) FEET; THENCE SOUTH 28°-21' WEST ONE HUNDRED AND FIFTY-FIVE HUNDREDTHS (100.55) FEET; THENCE NORTH 43°-08' WEST FIVE AND TWENTY-FIVE HUNDREDTHS (5.25) FEET; THENCE SOUTH 39°02' WEST FORTY-SEVEN AND THIRTY-FIVE HUNDREDTHS (47.35) FEET; THENCE NORTH 42°-05' WEST TEN AND ONE-TENTH (10.1) FEET; THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2814.93 FEET, TWO HUNDRED TWENTY-FIVE (225) FEET TO THE WEST LINE OF SAID NORTHWEST QUARTER (NW 1/4) OF SECTION TWENTY-TWO (22); THENCE SOUTH ALONG SAID WEST LINE TWO HUNDRED SIXTEEN AND FOUR-TENTHS (216.4) FEET TO THE PLACE OF BEGINNING;"

PARCEL P-28

THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, FILED DECEMBER 8, 1983, AS DOCUMENT NO. 83-20928, RECORDS OF

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PEORIA COUNTY, SAID PARCEL OF LAND DESCRIBED
IN SAID DEED FOR REFERENCE AS FOLLOWS:

"A PART OF THE NW 1/4 OF THE SW 1/4 OF
SECTION 22, TOWNSHIP 7 NORTH, RANGE 7 EAST
OF THE 4TH PRINCIPAL MERIDIAN, PEORIA
COUNTY, ILLINOIS, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

"BEGINNING AT A T-RAIL AT THE NORTHWEST
CORNER OF THE SW 1/4 OF SAID SECTION 22 AS
THE POINT OF BEGINNING OF THE TRACT TO BE
DESCRIBED; THENCE SOUTH ALONG THE WEST LINE
OF THE SW 1/4 OF SAID SECTION 22, A DISTANCE
OF 596 FEET; THENCE N23°-11'-10"E, 649.4
FEET TO THE NORTH LINE OF THE SW 1/4 OF SAID
SECTION 22; THENCE IN A WESTERLY DIRECTION
ALONG THE NORTH LINE OF THE SW 1/4 OF SAID
SECTION 22, A DISTANCE OF 255.68 FEET, MORE
OR LESS, TO THE PLACE OF BEGINNING,
CONTAINING 1.75 ACRES MORE OR LESS, AND
SUBJECT TO ANY AND ALL EASEMENTS,
RIGHTS-OF-WAY, DEDICATIONS, ETC. FOR
WHATEVER PURPOSE DESIGNATED, SITUATE, LYING
AND BEING IN THE COUNTY OF PEORIA AND STATE
OF ILLINOIS."

PARCEL P-29

THAT CERTAIN TRACT 1, AND THAT CERTAIN TRACT
2 DESCRIBED IN DEED DATED DECEMBER 6, 1983,
FROM TOLEDO, PEORIA & WESTERN RAILROAD
COMPANY TO TRANSIT ICE COMPANY, FILED
DECEMBER 8, 1983, AS DOCUMENT NO. 83-20930,
RECORDS OF PEORIA COUNTY, SAID TRACTS
DESCRIBED IN SAID DEED (DOC. NO. 83-20930)
FOR REFERENCE AS FOLLOWS:

"TRACT 1

"A PART OF THE EAST HALF (E1/2) OF THE
NORTHEAST QUARTER (NE1/4) OF SECTION
TWENTY-ONE (21), TOWNSHIP SEVEN (7) NORTH,
RANGE SEVEN (7) EAST OF THE FOURTH (4TH)
PRINCIPAL MERIDIAN, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

"BEGINNING AT A T-RAIL AT THE SOUTHEAST
CORNER OF SAID NORTHEAST QUARTER (NE 1/4) OF
SECTION TWENTY-ONE (21); THENCE NORTH, ALONG
THE EAST LINE OF THE NORTHEAST QUARTER

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(NE 1/4) OF SECTION TWENTY-ONE (21), TWO HUNDRED SIXTEEN AND FOUR-TENTHS (216.4) FEET; THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2814.93 FEET, TWO HUNDRED THIRTY-NINE AND THREE-TENTHS (239.3) FEET TO A POINT IN A LINE BEARING NORTH 13°-31'-30" WEST FIFTY AND ONE-TENTH (50.1) FEET FROM THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-ONE (21); THENCE SOUTH 13°-31'-30" EAST FIFTY AND ONE-TENTH (50.1) FEET TO SAID SOUTH LINE; THENCE EAST ALONG SAID SOUTH LINE ONE HUNDRED SIXTY-TWO AND FIVE-TENTHS (162.5) FEET TO THE PLACE OF BEGINNING, CONTAINING ONE-HALF (1/2) ACRE, MORE OR LESS.

"TRACT 2

"A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-ONE (21), TOWNSHIP SEVEN (7) NORTH, RANGE SEVEN (7) EAST OF THE FOURTH (4TH) PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"BEGINNING AT A POINT IN THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-ONE (21), ONE HUNDRED SIXTY-TWO AND FIVE-TENTHS (162.5) FEET WEST OF A T-RAIL AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-ONE (21); THENCE WEST ALONG SAID SOUTH LINE SIXTY-SEVEN AND SIX-TENTHS (67.6) FEET; THENCE NORTHEASTERLY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2814.93 FEET, SEVENTY-FOUR AND THREE-TENTHS (74.3) FEET TO A POINT IN A LINE BEARING NORTH 13°-31'-30" WEST FIFTY AND ONE-TENTH (50.1) FEET FROM THE POINT OF BEGINNING; THENCE SOUTH 13°-31'-30" EAST FIFTY AND ONE-TENTH (50.1) FEET TO THE POINT OF BEGINNING; CONTAINING FIVE-HUNDREDTHS (0.05) ACRE, MORE OR LESS"

PARCEL P-30

THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA & WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY, FILED DECEMBER 8, 1983, AS DOCUMENT NO. 83-20931, RECORDS OF PEORIA COUNTY, THE PARCEL OF LAND DESCRIBED IN SAID DEED FOR REFERENCE AS FOLLOWS:

820724

"A PART OF THE SE 1/4 OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 7, EAST OF THE 4th PRINCIPAL MERIDIAN, PEORIA COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"A STRIP OF LAND 30 FEET IN WIDTH AND 800 FEET IN LENGTH, THE SOUTH LINE OF THE STRIP BEING 98 FEET SOUTH OF THE SOUTH RIGHT OF WAY LINE OF OLD HIGHWAY U.S. ROUTE 24 PRODUCED, ON A TANGENT BEARING S88°-51'E, THE STRIP EXTENDING EASTERLY 800 FEET FROM THE WEST LINE OF THE SE 1/4 OF SECTION 21, CONTAINING 0.54 ACRE, MORE OR LESS, . . ."

WOODFORD COUNTY

PARCEL WD-1

A PARCEL OF LAND IN THE COUNTY OF WOODFORD, STATE OF ILLINOIS, LYING IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 26 NORTH, RANGE 1 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED DECEMBER 6, 1983, FROM TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY TO TRANSIT ICE COMPANY FILED FOR RECORD DECEMBER 16, 1983 AS DOCUMENT NUMBER 83-3262 OF THE RECORDS OF WOODFORD COUNTY, LYING EASTERLY OF THE EASTERLY LINE OF THAT CERTAIN 3.76 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JULY 15, 1970, FROM TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY TO AMERICAN CYANAMID COMPANY FILED FOR RECORD JULY 21, 1970 AS DOCUMENT NUMBER 245821 IN VOLUME 39 AT PAGE 445 OF THE RECORDS OF WOODFORD COUNTY.

Grantor reserves and excepts from this grant for itself or any assignee(s) or licensee(s) a non-exclusive easement for construction, reconstruction, maintenance, use and/or operation of fiber optic communication lines, facilities and appurtenances in, under, across, along and through the above-described real estate, including the right for Grantor or any assignee(s) or licensee(s) to enter, disturb the surface and occupy the above-described real estate for purposes of

constructing, reconstructing, maintaining, using and/or operating fiber optic communication lines, facilities and appurtenances in, under, across, along and through the above-described real estate; provided however, that (1) Grantor or any assignee(s) or licensee(s) shall notify Grantor in advance of any such entry, and shall enter and occupy the property in a manner which conflicts to the minimum degree practicable with Grantee's railroad operations on the above-described real estate, and, except where circumstances do not permit, subject to Grantee's approval as to time of entry; (2) Grantor or any assignee(s) or licensee(s) shall reimburse Grantee for any damage to Grantee's property which is caused by any such entry; and (3) Grantor or any assignee(s) or licensee(s) shall reimburse Grantee for any reasonable additional cost which Grantee incurs as a result of any such entry. If Grantee at some future date abandons all or a portion of its rail operations conducted on the above-described real estate, Grantor agrees that if Grantor desires to continue to exercise its reserved easement rights, Grantor shall purchase from Grantee, at a price agreeable to both parties, whatever structures on the above-described real estate are necessary to enable Grantor to keep in place the

922724

- 22 -

reserved easement or any fiber optics construction under such easement.

Dated this 3rd day of February, 1989.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY

By *[Signature]*

Senior Vice President-Finance
Its and Chief Financial Officer



[Signature]
Assistant Secretary

89-03986

0293r

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Patricia Daum, a Notary Public in and for the County and State aforesaid, do hereby certify that G. W. Dodd, Senior Vice President-Finance and Chief Financial Officer and T. M. McGovern, Assistant Secretary of The Atchison, Topeka and Santa Fe Railway Company, personally known to me to be the persons holding such offices in such corporation whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of February, 1989.

Patricia Daum
Notary Public



THIS INSTRUMENT PREPARED BY:

Dennis W. Wilson
THE ATCHISON, TOPEKA & SANTA
FE RAILWAY COMPANY
80 E. Jackson Boulevard
Chicago, Illinois 60604

AFTER RECORDING RETURN TO:

Richard Demarest Yant
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
55 E. Monroe St., Ste. 4200
Chicago, Illinois 60603

89-03986

0508z

924824

February 21, 1989

TP&W Acquisition Corporation - Tax Numbers

Hollis Township - No. 20

20-19-506-004
20-30-506-001
20-30-506-003
20-29-506-001
20-29-506-002
20-29-506-003
20-29-506-004
20-20-506-003
20-21-506-006
20-22-506-001
20-15-506-001
20-15-506-002
20-15-506-003
20-14-506-008
20-11-506-025

Timber Township - No. 19

19-19-506-001
19-19-506-002
19-20-506-003
19-28-506-001
19-21-506-002
19-21-506-003
19-22-506-001
19-22-506-004
19-22-506-003
19-23-506-003
19-24-506-001
19-24-506-002

City of Peoria - No. 18

18-09-501-001

89-03986

Stamp Taxes on Conveyances of Real Estate



Published by:

CHICAGO TITLE AND TRUST COMPANY
111 WEST WASHINGTON STREET
CHICAGO 2, ILLINOIS

December, 1957

EXHIBIT 

FOREWORD

The Internal Revenue Code was completely revised in 1954. However, there were no substantial changes in the Code provisions relating to stamp taxes on conveyances of realty. The principal change was in the section numbers.

The Regulations pertinent to the taxation of deeds have not, as yet, been revised. The Regulations applicable under the former Code are still in force. New Regulations are in process of issuance, but will not be available for some time.

No attempt is made in this booklet to construe or interpret the pertinent material. Unusual or controversial situations should be referred to the District Director of Internal Revenue or to the Commissioner of Internal Revenue.

December, 1957

STAMP TAXES ON CONVEYANCES OF REALTY SOLD

(I. R. C. references are to the Internal Revenue Code of 1954, as amended, and paragraph references (§) are to Regulations 71 of the Treasury Department)

Imposition of Tax

"I. R. C. 4361. IMPOSITION OF TAX. There shall be imposed a tax on each deed, instrument, or writing (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrances remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, in the amount of 55 cents; and at the rate of 55 cents for each additional \$500 or fractional part thereof.

§113.80 SCOPE OF TAX.

Scope of Tax

(a) Section 4361 imposes a tax upon deeds, instruments, or other writings (unless deposited in escrow before April 1, 1932), whereby realty sold is granted, assigned, transferred, conveyed to, or vested in, the purchaser or, at his direction, in any other person, when the consideration for, or value of, the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100.

When Tax Accrues

(b) The tax is limited to conveyances of realty sold and does not apply to other conveyances. The tax accrues at the time the deed or other instrument of conveyances is delivered, irrespective of the time when the sale is made.

Deeds in Escrow

(c) Deeds deposited in escrow become subject to the tax upon delivery to the grantee, unless deposited in escrow before April 1, 1932.

Equity of Redemption

(d) A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires.

§113.82 RATE AND COMPUTATION OF TAX.

Rate of Tax

(a) The rate of tax is 55 cents on each \$500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed, that is, the gross consideration or gross value less, in either case, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby.

Computation of Tax

(b) The tax is based upon the net consideration where it is definite in amount, or may be definitely determined.

(c) The tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies.

Liens and Encumbrances Which are Excluded

(d) In determining the amount of the net consideration for, or net value of, the realty conveyed, only the amount of the liens and encumbrances on the property existing before the sale and not removed thereby may be deducted. Thus, for example, taxes or assessments which are liens on the property before the sale and are not paid at the time of sale are deductible. No deduction shall be made on account of any lien or encumbrance placed upon the property in connection with the sale, or by reason of deferred payments of the purchase price whether represented by notes or otherwise.

Mortgage Payment by Purchaser

Where realty is purchased subject to an existing mortgage, the mortgage is not removed by the sale of the realty even though the purchaser agrees with the mortgagee to pay the mortgage at the same time that he takes title to the realty and the amount of such mortgage may be excluded from the sale price of the realty in computing the tax.

Revenue Ruling 54-197, Cumulative Bulletin, 1954-1, p. 276.

Who Pays Tax

"I.R.C. 4383. The tax imposed by this chapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the taxes imposed by this chapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

United States a Party

Condemnation

Where real estate is conveyed to the United States or any of its agencies or instrumentalities in condemnation proceedings the tax is payable by the nonexempt party to the transaction.

Revenue Ruling 57-72, Internal Revenue Bulletin, 1957-8.

U. S. A Party

When real property is conveyed on behalf of a mortgagee to the United States, or where real estate is conveyed by the United States, the purchaser is liable for documentary stamps on the deed.

Endler v. United States (U.S.D.C., N.J.)
110 Fed. Supp. 945.

§113.2 LIABILITY FOR TAX

**Who Liable
for Tax**

(a) The tax is payable by any of the parties to a taxable transaction. The parties to the transaction may agree among themselves as to which shall pay the tax, but such agreement does not relieve the others in the event it is not carried out.

(b)

**United States
or Agency
a Party**

(c) On and after October 22, 1942, the United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

§113.81 DEFINITIONS. As used in this subpart:

**Definitions
"Deed"**

(a) The term "deed" includes any instrument or writing whereby realty is assigned, transferred, conveyed to, or vested in, the purchaser or, at his direction, in any other person.

"Sold"

(b) The term "sold" imports transfer of title for a valuable consideration which may involve money or anything of value.

**"Lands,
Tenements or
Other Realty"**

For the purpose of determining liability for the stamp tax imposed by section 3482, I.R.C., (now 4361) the phrase "lands, tenements or other realty" embraces those interests which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple, life estate, perpetual easement, etc., and those interests enduring for a fixed period of years but which,

either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, convey a bundle of rights approximating those of the class of interests first above mentioned. Thus, for example, a lease of real estate for 999 years, or a lease for 99 years renewable forever or for several succeeding terms is taxable. On the other hand, a lease for five years is not taxable even if the right is granted to renew it for several successive terms. (General Counsel Memoranda 23295, Cumulative Bulletin 1942-2, p. 271.)

See also:

Morrow v. Scofield
(C.C.A. 5th) 116 Fed. (2) 17
(cert. denied 313 U.S. 573)

Jones v. Magruder
(D.C. Md) 42 Fed. Supp. 193

What is Taxed

The stamp tax on conveyances is a tax upon the transaction itself.

Endler v. United States
(U.S.D.C., N.J.) (1953), 110 Fed. Supp. 945.

SUBJECT TO TAX

§113.83 CONVEYANCES SUBJECT TO TAX.—The following are examples where the tax applies:

Exchange

(a) A conveyance of realty in exchange for other property; also the conveyance of the other property if it is realty.

**Life
Maintenance**

(b) A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.

**Mortgagor to
Mortgagee**

(c) A conveyance by a defaulting mortgagor to the mortgagee in consideration of the cancellation of the mortgage debt. The tax is computed on the amount of the mortgage debt plus unpaid accrued interest.

See also:

Mutual Life Ins. Co. of N. Y. v. U.S. (Ct. of Claims) 110 Fed. Supp. 606 (Cert. denied 346 U. S. 817).

**Master's Deeds
Sheriff's Deeds**

(d) Deeds given by masters in chancery, sheriffs, clerks of court, etc., for realty sold under foreclosure

or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee or judgment creditor, or any other person.

**Building and
Loan
Associations**

(e) Conveyances to or by building and loan associations. However, the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.

**By Corporation
for Stock**

(f) A conveyance of realty to a corporation in exchange for shares of its capital stock.

**Corporate
Liquidation**

(g) A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation; however, if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply.

See also:

Greyhound Corp. v. U. S. (7th Circuit 1954)
208 Fed. (2) 858.

**Timber-Mines
Dower**

(h) Deeds to standing timber and to mines.

(i) In jurisdictions where common-law dower still exists, an instrument conveying the estate acquired by a widow upon assignment of dower. However, an instrument purporting to convey the inchoate right of dower of a wife, or the consummate right of dower of a widow prior to assignment of dower, is not subject to the tax. Where by statute dower has been abolished and in lieu thereof a different interest in the husband's real property conferred upon the wife, the taxability of an instrument purporting to convey such interest prior to its assignment must be determined by the nature of the wife's interest as fixed by the statutes and decisions of the jurisdiction in which the real estate is located.

By or to U. S.

(j) A conveyance of real estate sold to or by the United States of America.

**Tax Exempt
Organizations**

The conveyance of real property by one organization exempt from Federal income tax to another organization also exempt, is not exempt from the documentary stamp tax.

Revenue Ruling 56-689, Internal Revenue Bulletin, 1956-52.

EXEMPTIONS

Security for a Debt "I.R.C. 4362. The tax imposed by Section 4361 shall not apply to any instrument or writing given to secure a debt.

"I.R.C. 4382.

(a)

b. The taxes imposed by sections.....4361 shall not apply to—

Reorganiza- tions

(1) Corporate and railroad reorganizations.—The issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment confirmed or approved as indicated below, provided that the issuance, transfer, or exchange of securities, or the making, delivery or filing of instruments of transfer or conveyances, occurs within 5 years from the date of such confirmation or approval—

(A) confirmed under the Bankruptcy Act, as amended,

(B) approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended,

(C) approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended;

Securities and Exchange Commission

(2) The issuance, transfer, or exchange of securities, or making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a): *Provided*, That—

(A) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities or conveyances are made recites that such issuance, transfer, or exchange, or conveyances are necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935,

(B) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed, and

(C) such issuance, transfer, or exchange, or conveyance is made in obedience to such order.

Exemptions	§113.84 CONVEYANCES NOT SUBJECT TO TAX.— In addition to the various exemptions prescribed in section 4383 and the Bankruptcy Act as amended, the following are examples where the tax does not apply:
Security Transactions	(a) The conveyance of realty to secure a debt; also the reconveyance of such realty upon payment of the debt.
Deeds without Consideration	(b) Conveyances of realty without consideration and otherwise than in connection with a sale, including a deed conveying realty as a bona fide gift, although the deed may recite a consideration for the transfer, such as
Gift	"natural love and affection and \$1," "desire to promote public welfare and \$1," or "\$1 and other valuable consideration"; a gift of realty by a husband to his wife accomplished through the conveyance of the property for an ostensible consideration to a "straw man" who immediately reconveys the property to the wife; and a deed to or by a trustee not pursuant to a sale.
Strawman	
Confirmatory Deeds	(c) A deed to confirm title already vested in the grantee, such as a quitclaim deed to correct a flaw in title.
Deeds under Wills	(d) A deed given by an executor in accordance with the terms of the will; however, if, by reason of a consideration passing between devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey such greater share is subject to a tax computed upon the amount of such consideration.
Executors Deed	(e) A deed from an agent to his principal conveying real estate purchased for and with funds of the principal.
Agent to Principal	(f) An option for the purchase of real property or a contract for the sale of real property, if the contract does not vest legal title.
Options Contracts	(g) Partition deeds, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess.
Partition Deeds	(h) Deeds to burial sites which do not convey title to land, but only a right to sepulture, to erect monuments, etc.
Burial Sites	(i) Ordinary leases of real property for a definite term of years.
Leases	

**For Benefit of
Creditors**

(j) A deed executed by a debtor conveying property to a trustee for the benefit of his creditors; however, when the trustee conveys such property to a creditor or sells it to any other person, the deed executed by him is taxable.

To Receiver

(k) Conveyance to a receiver of realty included in the receivership assets, and reconveyance of such realty upon termination of the receivership.

Foreign Realty

(l) A deed conveying real estate situated in a foreign country.

MISCELLANEOUS

**Where Stamps
Shall be
Affixed**

§113.85 Requisite documentary stamps shall be affixed to the deed, instrument or other writing by which realty is conveyed.

**Denominations
of
Stamps**

§113.130 Documentary stamps are issued in the following denominations: 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 55 cents, 80 cents, \$1, \$1.10, \$1.65, \$2, \$2.20, \$2.75, \$3, \$3.30, \$4, \$5, \$10, \$20, \$30, \$50, \$60, \$100, \$500, \$1,000, \$2,500, \$5,000, \$10,000.

**Documentary
Stamps only
to be Used**

§113.131.

(a) Documentary stamps only shall be used in payment of documentary stamp taxes.

(b) Documentary stamps issued under the acts of October 22, 1914, October 3, 1917, February 24, 1919, June 2, 1924, and February 26, 1926, may be used in payment of documentary stamp taxes imposed by the Internal Revenue Code.

(c) Ordinary postage stamps cannot be used in payment of documentary stamp taxes.

§113.132.

Use of Stamps

(a) Wherever feasible a stamp tax shall be paid by the use of a single stamp. If a stamp of a denomination equal to the tax is not readily available, the smallest practicable number of stamps shall be used.

**Removal of
Stamps**

(b) A stamp affixed to an instrument and canceled cannot lawfully be removed therefrom and affixed to another instrument requiring a stamp.

**Cancellation
of Stamps**

§113.133. A person using or affixing a stamp shall cancel it and so deface it as to render it unfit for reuse, by marking it with his initials and the day, month, and year when the affixing occurs. Such marking shall be made by writing or stamping in ink or by perforating with a machine or punch. In addition, unless a stamp of the value of 50 cents or more is canceled by perforation, three parallel incisions shall be made lengthwise through the stamp with some sharp instrument after the stamp has been affixed. However, the stamp shall not be so defaced as to prevent ready determination of its denomination and genuineness.

**Manner of
Cancellation**

**Where Stamps
May be Pur-
chased**

§113.140. Documentary stamps may be purchased from:

- (a) Collectors, and duly authorized deputy collectors;
- (b) Postmasters in all post offices of the first and second classes and such post offices of the third and fourth classes as are located in county seats; and
- (c) Depositaries of the United States designated under section (I.R.C.) 6802.

Note: Chicago Title and Trust Company, Cashier's Department, has a complete supply of documentary stamps.

RELATED STATUTES

Other sections of the Internal Revenue Code relate to the stamp tax on conveyances. They are here cited for purposes of reference in those relatively rare situations where they may be pertinent.

I.R.C. 6801 deals with the preparation and form of stamps and with the issuance of instructions, regulations, etc., concerning them.

I.R.C. 6802 is concerned with the sale and distribution of stamps.

I.R.C. 6804 provides that stamps shall be "attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary (of the Treasury) or his delegate may prescribe by rules or regulations." (See Regulations ¶113.133 page 9, above)

I.R.C. 6805 relates to the redemption of spoiled or unused stamps.

I.R.C. 7201 is the section specifying the criminal penalties for willful violations of stamp tax requirements.

I.R.C. 7271 (1)(3) set out penalties for offenses relating to stamps.

I.R.C. 6653 (e) prescribes penalties for willful failure to pay stamp taxes.

I.R.C. 7208 describes other offenses relating to stamps, such as counterfeiting, mutilation, use of mutilated or counterfeited stamps and re-use of stamps.

I.R.C. 7209 relates to unauthorized use or sale of stamps.

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Cross and Liberty Drive

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LAKE COUNTY DIVISION — WAUKEGAN, ILLINOIS

28 N. Utica Street

Telephones: Ontario 2-8000 and Hollycourt 5-0717

ST. CLAIR DIVISION — BELLEVILLE, ILLINOIS

28 Public Square

Telephone: Adams 3-5800

WILL COUNTY DIVISION — JOLIET, ILLINOIS

110 N. Ottawa Street

Telephones: Joliet 4744 and Bishop 2-1491

REGIONAL OFFICES

OTTAWA — 207½ W. MADISON STREET

DANVILLE — 23 W. MAIN STREET

EDWARDSVILLE — 112 HILLSBORO AVENUE

MT. VERNON — 831 MAIN STREET

SPRINGFIELD — 403 E. WASHINGTON STREET

ASSOCIATED TITLE COMPANIES

KANE COUNTY TITLE COMPANY, 113-117 SOUTH 3RD ST., GENEVA, ILL.

McHENRY COUNTY TITLE COMPANY, 114 BENTON ST., WOODSTOCK, ILL.

PEORIA TITLE COMPANY, 105 N. MONROE STREET, PEORIA 2, ILL.

TITLE INSURANCE CORPORATION OF ST. LOUIS, 810 CHESTNUT STREET,
ST. LOUIS 1, MO.

LAKE COUNTY TITLE COMPANY, INC., 208 S. MAIN ST., CROWN POINT, IND.

Local abstract companies act as Agents and Representatives of Chicago Title and Trust Company in 85 additional Illinois cities. Applications for title insurance policies on property anywhere in the state may be ordered through one of these companies or at the nearest Regional or Divisional Office.

CHAP. CLXXIII. — *An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes.*

June 30, 1864.

1865, ch. 78.

Post, p. 468.

1865, ch. 78.

Post, p. 468.

Commissioner

of internal revenue.

Salary.

Duty.

Authority.

Printing.

Clerks.

Franking privilege.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of superintending the collection of internal duties, stamp duties, licenses, or taxes, imposed by this act, or which may hereafter be imposed, and of assessing the same, the commissioner of internal revenue, whose annual salary shall be four thousand dollars, shall be charged, under the direction of the Secretary of the Treasury, with preparing all the instructions, regulations, directions, forms, blanks, stamps, and licenses, and distributing the same, or any part thereof, and all other matters pertaining to the assessment and collection of the duties, stamp duties, licenses, and taxes which may be necessary to carry this act into effect, and with the general superintendence of his office, as aforesaid, and shall have authority, and hereby is authorized and required, to provide cotton marks, hydrometers, and proper and sufficient adhesive stamps, and stamps or dies for expressing and denoting the several stamp duties, or the amount thereof in the case of percentage duties, imposed by this act, and to alter and renew or replace such stamps, from time to time, as occasion shall require. He may also contract for or procure the printing of requisite forms, decisions, regulations, and advertisements; but the printing of such forms, decisions, and regulations shall be done at the public printing-office, unless the public printer shall be unable to perform the work. And the Secretary of the Treasury may, at any time prior to the first day of July, eighteen hundred and sixty-five, assign to the office of the commissioner of internal revenue such number of clerks as he may deem necessary, or the exigencies of the public service may require; and the privilege of franking all letters and documents pertaining to the duties of his office, and of receiving free of postage all such letters and documents, is hereby extended to said commissioner.

GENERAL PROVISIONS.

SEC. 2. *And be it further enacted, That it shall be the duty of the commissioner of internal revenue to pay over daily to the treasurer of the United States all public moneys which may come into his possession, for which the treasurer shall give proper receipts and keep a faithful account; and at the end of each month the said commissioner shall render true and faithful accounts of all public moneys received or paid out, or paid to the treasurer of the United States, exhibiting proper vouchers therefor, and the same shall be received and examined by the fifth auditor of the treasury, who shall thereafter certify the balance, if any, and transmit the accounts, with the vouchers and certificate, to the first comptroller for his decision thereon; and the said commissioner, when such accounts are settled as herein provided for, shall transmit a copy thereof to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the comptroller, or either of them, the inspection of moneys in his hands, and shall, prior to the entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the Secretary of the Treasury and by the first comptroller, in a sum of not less than one hundred thousand dollars, payable to the United States, conditioned that said commissioner shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in obedience to law and in compliance with the order or regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession, and for the safe-keeping and faithful account of all stamps, adhesive stamps, or vellum, parchment or paper bearing a stamp denoting any duty thereon, which bond shall be filed in the office of the first comptroller of the treasury. And such*

Commissioner to pay over moneys daily;

to render accounts.

Bond.

EXHIBIT "C"

SEC. 147. *And be it further enacted*, That any person liable to pay duty in respect to any succession, shall give notice to the assessor or assistant assessor of his liability to such duty, and shall, at the same time, deliver to the assessor or assistant assessor a full and true account of said succession, for the duty whereon he shall be accountable, and of the value of the real estate involved, and of the deductions claimed by him, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper for enabling the assessor or assistant assessor fully and correctly to ascertain the duties due; and the assessor or assistant assessor, if satisfied with such account and estimate as originally delivered, or with any amendments that may be made therein upon his requisition, may assess the succession duty on the footing of such account and estimate; but it shall be lawful for the assessor or assistant assessor, if dissatisfied with such account, or if no account and estimate shall be delivered to him, to assess the duty on the best information he can obtain, subject to appeal as hereinafter provided; and if the duty so assessed shall exceed the duty assessible according to the return made to the assessor or assistant assessor, and with which he shall have been dissatisfied, or if no account and estimate has been delivered, and if no appeal shall be taken against such assessment, then it shall be in the discretion of the assessor, having regard to the merits of each case, to assess the whole or any part of the expenses incident to the taking of such assessment, in addition to such duty; and if there shall be an appeal against such last-mentioned assessment, then the payment of such expenses shall be in the discretion of the commissioner of internal revenue.

Persons liable to duty to give notice to assessor

If assessor is dissatisfied.

When expenses may be added.

SEC. 148. *And be it further enacted*, That if any person required to give any such notice, or deliver such account, as aforesaid, shall wilfully neglect to do so for the period of ten days after being notified, he shall be liable to pay to the United States a sum equal to ten per centum upon the amount of duty payable by him; and if any person liable under this act to pay any duty in respect of his succession shall, after such duty shall have been finally ascertained, wilfully neglect to do so within ten days after being notified, he shall also be liable to pay to the United States a sum equal to ten per centum upon the amount of duty so unpaid, at the same time and in the same manner as the duty to be collected.

Penalty for neglect in furnishing lists.

SEC. 149. *And be it further enacted*, That it shall be lawful for any party, liable to pay duty in respect of his succession, who shall be dissatisfied with the assessment of the assistant assessor, within thirty days after the date of such assessment, to appeal to the assessor from such assessment, who shall decide on such appeal, and give notice thereof to such party, who, if still dissatisfied, may, within twenty days after notice as aforesaid, appeal from such decision to the commissioner of internal revenue, and furnish a statement of the grounds of such appeal to the commissioner, whose decision upon the case, as presented by the statements of the assessor or assistant assessor and such party, shall be final.

Appeals.

Post, p. 481.

Decision of commissioner to be final.

SEC. 150. *And be it further enacted*, That the duties levied and assessed upon successions by this act shall be collected by the same officers, in the same manner, and by the same processes as are or may be prescribed by law for the collection of direct taxes assessed upon lands under the authority of the United States.

Duties upon successions to be collected by what officers.

STAMP DUTIES.

Stamp duties.

SEC. 151. *And be it further enacted*, That all laws in force at the time of the passage of this act in relation to stamp duties shall continue in force until the first day of August, eighteen hundred and sixty-four, and

Post, p. 491.

Stamp duties to be paid by party signing instrument, &c.	on and after the first day of August, eighteen hundred and sixty-four, there shall be levied, collected, and paid, for and in respect of the several instruments, matters, and things mentioned and described in the schedule (marked B) hereunto annexed, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them shall be written or printed, by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several duties or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.
Instruments not to be recorded without a stamp.	SEC. 152. <i>And be it further enacted</i> , That it shall not be lawful to record any instrument, document, or paper required by law to be stamped, unless a stamp or stamps of the proper amount shall have been affixed; and the record of any such instrument, upon which the proper stamp or stamps aforesaid shall not have been affixed, shall be utterly void, and shall not be used in evidence.
What stamp may be used.	SEC. 153. <i>And be it further enacted</i> , That no instrument, document, writing, or paper of any description, required by law to be stamped, shall be deemed or held invalid and of no effect for the want of the particular kind or description of stamp designated for and denoting the duty charged on any such instrument, document, writing, or paper, provided a legal stamp, or stamps, denoting a duty of equal amount, shall have been duly affixed and used thereon: <i>Provided</i> , That the provisions of this section shall not apply to any stamp appropriated to denote the duty charged on proprietary articles, or articles enumerated in schedule C.
Proviso.	SEC. 154. <i>And be it further enacted</i> , That all official instruments, documents, and papers, issued or used by the officers of the United States government, shall be, and hereby are, exempt from duty.
Official United States documents exempt, &c.	SEC. 155. <i>And be it further enacted</i> , That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die, or any part of any stamp or die, which shall have been provided, made, or used in pursuance of this act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp or die, as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper, with any such forged or counterfeited stamp or die, or part of any stamp or die, as aforesaid, with intent to defraud the United States of any of the duties hereby imposed, or any part thereof; or if any person shall utter or sell, or expose to sale, any vellum, parchment, or paper, article, or thing, having thereupon the impression of any such counterfeited stamp or die, or any part of any stamp or die, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same respectively to be forged, counterfeited, or resembled; or if any person shall knowingly use any stamp or die which shall have been so provided, made, or used as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp or die which shall have been provided, made, or used in pursuance of this act, from any vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the duties hereby imposed; or if any person shall wilfully remove, or cause to be removed, from any stamped envelope the cancelling or defacing marks thereon, with intent to use the same, or cause the use of the same, the second time, or shall knowingly or wilfully sell or buy such washed or restored stamps, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the second use thereof, then, and in every such case, every person so offend-
Penalty for forging, &c., stamps, &c.	
or the impression of stamps, &c.;	
for stamping with forged stamps;	
for selling paper, &c., with forged stamp, &c. thereon;	
for using forged stamps;	
for fraudulently, &c., removing impression of dies, &c.;	
for selling washed or restored stamps, &c.	

ing, and every person knowingly and wilfully aiding, abetting, or assisting in committing any such offence as aforesaid, shall be deemed guilty of felony, and shall, on conviction thereof, forfeit the said counterfeit stamps and the articles upon which they are placed, and be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor, not exceeding five years, or both, at the discretion of the court.

SEC. 156. *And be it further enacted*, That in any and all cases where an adhesive stamp shall be used for denoting any duty imposed by this act, except as hereinafter provided, the person using or affixing the same shall write thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any duty imposed by this act without so effectually cancelling and obliterating such stamp, except as before mentioned, he, she, or they shall forfeit the sum of fifty dollars: *Provided*, That any proprietor or proprietors of proprietary articles, or articles subject to stamp duty under schedule C of this act, shall have the privilege of furnishing, without expense to the United States, in suitable form, to be approved by the commissioner of internal revenue, his or their own dies or designs for stamps to be used thereon, to be made under the direction, and to be retained in the possession of, the commissioner of internal revenue for his or their separate use, which shall not be duplicated to any other person. That in all cases where such stamp is used, instead of his or their writing the date thereon, the said stamp shall be so affixed on the box, bottle, or package, that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof, shall be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this act. Any person who shall fraudulently obtain or use any of the aforesaid stamps, or designs therefor, and any person forging, or counterfeiting, or causing or procuring the forging or counterfeiting any representation, likeness, similitude, or colorable imitation of the said last-mentioned stamp, or any engraver or printer who shall sell or give away said stamps, or selling the same, or, being a merchant, broker, peddler, or person dealing, in whole or in part, in similar goods, wares, merchandise, manufactures, preparations, or articles, or those designed for similar objects or purposes, shall have knowingly or fraudulently in his, her, or their possession, any such forged, counterfeited likeness, similitude, or colorable imitation of the said last-mentioned stamp, shall be deemed guilty of a felony, and, upon conviction thereof, shall be subject to all the penalties, fines, and forfeitures prescribed in the preceding section of this act.

Cancellation of stamps.

Penalty.

Proprietary articles.

Dies, &c., for stamps.

Stamps to be so affixed as to be destroyed.

Fraudulently using or forging.

SEC. 157. *And be it further enacted*, That the commissioner of internal revenue be, and he is hereby, authorized to prescribe such method for the cancellation of stamps, as substitute for, or in addition to, the method now prescribed by law, as he may deem expedient and effectual. And he is further authorized in his discretion to make the application of such method imperative upon the manufacturers of proprietary articles, or articles included in schedule C, and upon stamps of a nominal value exceeding twenty-five cents each.

Mode of cancellation.

SEC. 158. *And be it further enacted*, That any person or persons who shall make, sign, or issue, or who shall cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, or shall accept or pay, or cause to be accepted or paid, any bill of exchange, draft, or order or promissory note, for the payment of money, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the duty chargeable thereon, with intent to evade the provisions of this act, shall, for every such offence, forfeit the sum of two hundred dollars, and such instrument, document, or paper,

Penalty for making, paying, &c., unstamped instruments, &c.

[Amended, Post, p. 481.]

bill, draft, order, or note shall be deemed invalid and of no effect: *Provided*, That the title of a purchaser of land by a deed duly stamped, shall not be defeated or *effected* [affected] by the want of a proper stamp on any deed conveying said land by any person from, through, or under whom his grantor claims or holds title.

Foreign bills of
exchange to be
stamped before
payment.

SEC. 159. *And be it further enacted*, That the acceptor or acceptors of any bill of exchange or order for the payment of any sum of money drawn, or purporting to be drawn, in any foreign country, but payable in the United States, shall, before paying or accepting the same, place thereupon a stamp, indicating the duty upon the same, as the law requires for inland bills of exchange, or promissory notes, and no bill of exchange shall be paid or negotiated without such stamp; and if any person shall pay or negotiate, or offer in payment, or receive or take in payment, any such draft or order, the person or persons so offending shall forfeit the sum of two hundred dollars.

Stamp duty
not required on,
&c.

SEC. 160. *And be it further enacted*, That no stamp duty shall be required on powers of attorney or any other paper relating to applications for bounties, arrearages of pay, or pensions, or to the receipt thereof from time to time, or upon tickets or contracts of insurance when limited to injury to persons while travelling; nor on certificates or [of] the measurement or weight of animals, wood, coal, or other articles; nor on deposit notes to mutual insurance companies for insurance upon which policies subject to stamp duties have been, or are to be, issued; nor on any certificate of the record of a deed or other instrument in writing, or of the acknowledgment or proof thereof by attesting witnesses; nor to any indorsement of a negotiable instrument, or on any warrant of attorney, accompanying a bond or note, when such bond or note shall have affixed thereto the stamp or stamps denoting the duty required; and whenever any bond or note shall be secured by a mortgage, but one stamp shall be required to be placed on such papers: *Provided*, That the stamp duty placed thereon shall be the highest rate required for said instruments, or either of them.

Post, p. 482.

Mortgages.

Stamps,
stamped papers,
&c., may be sold
to collectors, &c.

SEC. 161. *And be it further enacted*, That the commissioner of internal revenue be, and is hereby, authorized to sell to and supply collectors, deputy collectors, postmasters, stationers, or any other persons, at his discretion, with adhesive stamps, or stamped paper, vellum, or parchment, as herein provided for, in amounts of not less than fifty dollars, upon the payment, at the time of delivery, of the amount of duties said stamps, stamped paper, vellum, or parchment, so sold or supplied, represent, and may allow, upon the aggregate amount of such stamps, as aforesaid, the sum of not exceeding five per centum as commission to the collectors, postmasters, stationers, or other purchasers; but the cost of any paper, vellum, or parchment shall be paid by the purchaser of such stamped

Commission.

Commission on
stamps for prop-
rietary articles,
when, &c.

paper, vellum, or parchment, as aforesaid: *Provided*, That any proprietor or proprietors of articles named in schedule C, who shall furnish his or their own die or design for stamps, to be used especially for his or their own proprietary articles, shall be allowed the following commission, namely: On amounts purchased at one time, of not less than fifty nor more than five hundred dollars, five per centum; on amounts over five hundred dollars, ten per centum. The commissioner of internal revenue may, from time to time, make regulations, upon proper evidence of the facts, for the allowance of such of the stamps issued under the provisions of this act as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been paid in error, or remitted; and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed for, or by repaying the amount or value, after deducting therefrom, in case of repayment, the sum of five per centum

Allowance for
spoiled, &c.,
stamps.

to the owner thereof; but no allowance shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the commissioner of internal revenue, or until satisfactory proof has been made showing the reason why said stamps cannot be so returned: *Provided*, That the commissioner of internal revenue may, from time to time, furnish, supply, and deliver to any manufacturer of friction or other matches, cigar-lights, or wax tapers, a suitable quantity of adhesive or other stamps, such as may be prescribed for use in such cases, without prepayment therefor, on a credit not exceeding sixty days, requiring, in advance, such security as he may judge necessary to secure payment therefor to the treasurer of the United States, within the time prescribed for such payment. And upon all bonds or other securities taken by said commissioner, under the provisions of this act, suits may be maintained by said treasurer in the circuit or district court of the United States, in the several districts where any of the persons giving said bonds or other securities reside, or may be found, in any appropriate form of action.

Certain stamps may be delivered on credit, by giving security.

SEC. 162. *And be it further enacted*, That it shall be lawful for any person to present to the collector of the district, subject to the rules and regulations of the commissioner of internal revenue, any instrument not previously issued or used, and require his opinion whether or not the same is chargeable with any stamp duty; and if the said collector shall be of opinion that such instrument is chargeable with any stamp duty, he shall, upon the payment therefor, affix and cancel the proper stamp; and if of the opinion that such instrument is not chargeable with any stamp duty, or is chargeable only with the duty by him designated, he is hereby required to impress thereon a particular stamp, to be provided for that purpose, with such words or device thereon as he shall judge proper, which shall denote that such instrument is not chargeable with any stamp duty, or is chargeable only with the duty denoted by the stamp affixed; and every such instrument, upon which the said stamp shall be impressed, shall be deemed to be not chargeable, or to be chargeable only with the duty denoted by the stamp so affixed, and shall be received in evidence in all courts of law or equity, notwithstanding any objections made to the same by reason of it being unstamped, or of it being insufficiently stamped.

Instruments not used may be presented to commissioner to determine the duty.

SEC. 163. *And be it further enacted*, That no deed, instrument, document, writing, or paper, required by law to be stamped, which has been heretofore signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded, or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of duty, shall have been affixed thereto, and the date when the same is so used or affixed, with his initials, shall have been placed thereon by the person using or affixing the same; and the person desiring to use or record any such deed, instrument, document, writing, or paper as evidence, his agent or attorney, is authorized in the presence of the court, register, or recorder, respectively, to affix the stamp or stamps thereon required: *Provided*, That no instrument, document, or paper made, signed, or issued, prior to the passage of this act, without being duly stamped, or having thereon an adhesive stamp or stamps, to denote the duty imposed thereon, shall, for that cause, if the stamp or stamps required shall be subsequently affixed, be deemed invalid and of no effect: *Provided, further*, That any power of attorney, conveyance, or document of any kind, made, or purporting to be made, in any foreign country to be used in the United States, shall pay the same duty as is required by law on similar instruments or documents when made or issued in the United States; and the party to whom the same is issued, or by whom it is to be used, shall, before using the same, affix thereon the stamp or stamps indicating the duty required.

Instruments required to be stamped not to be used without; or recorded.

Stamps may be subsequently affixed to certain deeds, &c.

Proviso.

SEC. 164. *And be it further enacted*, That all the provisions of this act relating to dies, stamps, adhesive stamps, and stamp duties shall extend to and include (except where manifestly impracticable) all the articles or

Provisions as to dies, to include what.

Penalty for making, selling, &c., certain articles without affixing stamps.

Proviso.
Post, p. 482.

Penalty for removing stamps once affixed to evade duty;

for selling, &c., certain articles without stamps.

Post, p. 482.

Medicines, &c., to be made, &c., without duty, to be manufactured in warehouses.

Post, p. 482.

Manufacturers to give bonds, &c.

objects enumerated in schedule marked C, subject to stamp duties, and apply to the provisions in relation thereto.

SEC. 165. *And be it further enacted*, That if any person, firm, company, or corporation shall make, prepare, and sell, or remove for consumption or sale, drugs, medicines, preparations, compositions, articles, or things, including perfumery, cosmetics, lucifer or friction matches, cigar-lights, or wax tapers, photographs, ambrotypes, daguerreotypes, or other sun-pictures of any description, and playing-cards, upon which a duty is imposed by law, as enumerated and mentioned in schedule C, without affixing thereto an adhesive stamp or label denoting the duty before mentioned, he or they shall incur a penalty of ten dollars for every omission to affix such stamp: *Provided*, That nothing in this act contained shall apply to any uncompound medicinal drug or chemical, nor to any medicine compounded according to the United States or other national pharmacopœia, nor of which the full and proper formula is published in either of the dispensaries, formularies, or text-books in common use among physicians and apothecaries, including homœopathic and eclectic, or in any pharmaceutical journal now used by any incorporated college of pharmacy, and not sold or offered for sale, or advertised under any other name, form, or guise, than that under which they may be severally denominated and laid down in said pharmacopœias, dispensaries, text-books, or journals, as aforesaid, nor to medicines sold to, or for the use of, any person, which may be mixed and compounded specially for said persons, according to the written recipe or prescription of any physician or surgeon.

SEC. 166. *And be it further enacted*, That every manufacturer or maker of any of the articles for sale mentioned in schedule C, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, who shall take off, remove, or detach, or cause, or permit, or suffer to be taken off, or removed, or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offence shall be committed, be subject to a penalty of fifty dollars, to be recovered together with the costs thereupon accruing; and every such article or commodity as aforesaid shall also be forfeited.

SEC. 167. *And be it further enacted*, That on and after the passage of this act every maker or manufacturer of any of the articles or commodities mentioned in schedule C, as aforesaid, who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the duty thereon shall have been fully paid, by affixing thereon the proper stamp, as provided by law, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the duty chargeable thereon, or any part thereof, shall be subject to a penalty of one hundred dollars, together with the forfeiture of any such article or commodity.

SEC. 168. *And be it further enacted*, That all medicines, preparations, compositions, perfumery, cosmetics, lucifer or friction matches, and cigar-lights, or wax tapers, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided for by law, in order to be manufactured and sold or removed, without being charged with duty, and without having a stamp affixed thereto, shall, under such rules and regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in treasury regulations as bonded warehouses, class two: *Provided*, That such manufacturer shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the

provisions of law and the rules and regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary of the Treasury from persons allowed bonded warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation, under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury, without being charged with duty, and without having a stamp affixed thereto. Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse, as aforesaid, shall be at liberty, under such rules and regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary of the Treasury may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and, when so used, shall be exempt from stamp and excise duty; and the receipt of the officer in charge, as aforesaid, shall be received as a voucher for the manufacture of such articles. Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom, except for exportation, under the direction of the proper officer having charge thereof, as aforesaid, whose certificate, describing the articles by their marks, or otherwise, the quantity, the date of importation, the name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bonds, or return of the amount of foreign import duties. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

Manufactured goods may be removed for exportation.

Warehouses may be used for what.

Materials used in the manufacture.

Labor.

SEC. 169. *And be it further enacted*, That any person who shall offer for sale any of the articles named in schedule C, whether the articles so offered are imported, or are of foreign or domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamp or stamps denoting the duty paid thereon: *Provided*, That when any such imported articles shall be sold in the original and unbroken package in which the bottles or other enclosures were packed by the manufacturer, the person so selling said articles shall not be subject to any penalty on account of the want of the proper stamp.

Who to be deemed manufacturers of certain articles.

Post, p. 482.

Proviso.

Post, p. 483.

SEC. 170. *And be it further enacted*, That in any collection district where, in the judgment of the commissioner of internal revenue, the facilities for the procurement and distribution of stamped vellum, parchment, or paper, and adhesive stamps, are or shall be insufficient, the commissioner, as aforesaid, is authorized to furnish, supply, and deliver to the collector and to the assessor of any such district, and to any assistant treasurer of the United States, or designated depositary thereof, or any postmaster, a suitable quantity or amount of stamped vellum, parchment or paper, and adhesive stamps, without prepayment therefor, and shall allow the highest rate of commissions allowed by law to any other parties purchasing the

In certain districts, stamps, &c., may be delivered to collector without prepayment.

Bond to be
given.

Deputy col-
lectors to be sup-
plied with
stamps.

Regulations.

Schedule B.

Stamp duties.

same, and may in advance require of any such collector, assessor, assistant treasurer of the United States, or postmaster, a bond, with sufficient sureties, to an amount equal to the value of any stamped vellum, parchment, or paper, and adhesive stamps which may be placed in his hands and remain unaccounted for, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment, monthly, of all quantities or amounts, sold or not, remaining on hand. And it shall be the duty of such collector to supply his deputies with, or sell to other parties within his district who may make application therefor, stamped vellum, parchment, or paper, and adhesive stamps, upon the same terms allowed by law, or under the regulations of the commissioner of internal revenue, who is hereby authorized to make such other regulations, not inconsistent herewith, for the security of the United States and the better accommodation of the public, in relation to the matters hereinbefore mentioned, as he may judge necessary and expedient. And the Secretary of the Treasury may, from time to time, make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such stamped vellum, parchment, paper, and adhesive stamps.

SCHEDULE B.

STAMP DUTIES.

	Duty. Dolls. cts.
AGREEMENT or CONTRACT, other than those specified in this schedule; any appraisement of value or damage, or for any other purpose; for every sheet or piece of paper upon which either of the same shall be written, five cents.....	5
<i>Provided</i> , That if more than one appraisement, agreement, or contract shall be written upon one sheet or piece of paper, five cents for each and every additional appraisement, agreement, or contract.	
BANK CHECK, draft, or order for the payment of any sum of money whatsoever, drawn upon any bank, banker, or trust company, or for any sum exceeding ten dollars drawn upon any other person or persons, companies, or corporations, at sight or on demand, two cents.....	2
BILL of EXCHANGE, (inland,) draft, or order for the payment of any sum of money, not exceeding one hundred dollars, otherwise than at sight or on demand, or any promissory note, (except bank-notes issued for circulation, and checks made and intended to be forthwith presented, and which shall be presented to a bank or banker for payment,) or any memorandum, check, receipt, or other written or printed evidence of an amount of money to be paid on demand, or at a time designated, for a sum not exceeding one hundred dollars, five cents.....	5
And for every additional hundred dollars, or fractional part thereof in excess of one hundred dollars, five cents.....	5
BILL of EXCHANGE, (foreign,) or letter of credit, drawn in but payable out of the United States, if drawn singly, or otherwise than in a set of three or more, according to the custom of merchants and bankers, shall pay the same rates of duty as inland bills of exchange or promissory notes.	
If drawn in sets of three or more: For every bill of each set, where the sum made payable shall not exceed one hundred dollars, or the equivalent thereof, in any foreign currency in which such bills may be expressed, according to the standard of value fixed by the United States, two cents.....	2
And for every additional hundred dollars or fractional part thereof in excess of one hundred dollars, two cents.....	2
BILL of LADING or receipt, (other than charter-party,) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.....	10
BILL of SALE by which any ship or vessel, or any part thereof, shall be conveyed to or vested in any other person or persons, when the consideration shall not exceed five hundred dollars, fifty cents.....	50
Exceeding five hundred dollars and not exceeding one thousand dollars, one dollar.....	1 00
Exceeding one thousand dollars for every additional amount of five hundred dollars, or fractional part thereof, fifty cents.....	50
BOND for indemnifying any person for the payment of any sum of money, where the money ultimately recoverable thereupon is one thousand dollars or less, fifty cents.....	50
Where the money ultimately recoverable thereupon exceeds one thousand	

	Duty, Dolls. cts.	Stamp duties.
dollars, for every additional one thousand dollars or fractional part thereof in excess of one thousand dollars, fifty cents.....	50	
BOND for the due execution or performance of the duties of any office, one dollar.....	1 00	
BOND of any description, other than such as may be required in legal proceedings, or used in connection with mortgage deeds, and not otherwise charged in this schedule, twenty-five cents.....	25	
CERTIFICATE of stock in any incorporated company, twenty-five cents...	25	
CERTIFICATE of profits, or any certificate or memorandum showing an interest in the property or accumulations of any incorporated company, if for a sum not less than ten dollars and not exceeding fifty dollars, ten cents.....	10	
Exceeding fifty dollars and not exceeding one thousand dollars, twenty-five cents.....	25	
Exceeding one thousand dollars, for every additional one thousand dollars, or fractional part thereof, twenty-five cents.....	25	
CERTIFICATE. — Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, twenty-five cents.....	25	
CERTIFICATE of deposit of any sum of money in any bank or trust company, or with any banker or person acting as such —		
If for a sum not exceeding one hundred dollars, two cents.....	2	
For a sum exceeding one hundred dollars, five cents.....	5	
Certificate of any other description than those specified, five cents.....	5	
CHARTER-PARTY. — Contract or agreement for the charter of any ship or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship or vessel, or steamer, and any other person or persons for, or relating, to the charter of such ship or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship or vessel, or steamer, does not exceed one hundred and fifty tons, one dollar....	1 00	
Exceeding one hundred and fifty tons, and not exceeding three hundred tons, three dollars.....	3 00	
Exceeding three hundred tons, and not exceeding six hundred tons, five dollars.....	5 00	
Exceeding six hundred tons, ten dollars.....	10 00	
CONTRACT. — Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, ten cents.....	10	
CONVEYANCE. — Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons by his, her, or their direction, when the consideration or value does not exceed five hundred dollars, fifty cents	50	
When the consideration exceeds five hundred dollars, and does not exceed one thousand dollars, one dollar.....	1 00	
And for every additional five hundred dollars, or fractional part thereof, in excess of one thousand dollars, fifty cents.....	50	
ENTRY of any goods, wares, or merchandise at any custom-house, either for consumption or warehousing, not exceeding one hundred dollars in value, twenty-five cents.....	25	
Exceeding one hundred dollars, and not exceeding five hundred dollars in value, fifty cents.....	50	
Exceeding five hundred dollars in value, one dollar.....	1 00	
ENTRY for the withdrawal of any goods or merchandise from bonded warehouse, fifty cents.....	50	
Gaugers' returns, if for a quantity not exceeding five hundred gallons gross, ten cents.....	10	
Exceeding five hundred gallons gross, twenty-five cents.....	25	
INSURANCE, (LIFE.) — Policy of insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made upon any life or lives —		
When the amount insured shall not exceed one thousand dollars, twenty-five cents.....	25	
Exceeding one thousand dollars and not exceeding five thousand dollars, fifty cents.....	50	
Exceeding five thousand dollars, one dollar.....	1 00	
INSURANCE, (MARINE, INLAND, AND FIRE.) — Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description, whether against perils by the sea or by fire, or other peril		

Stamp duties.

	Duty. Doll. cts
of any kind, made by any insurance company, or its agents, or by any other company or person, the premium upon which does not exceed ten dollars, ten cents	10
Exceeding ten and not exceeding fifty dollars, twenty-five cents.....	25
Exceeding fifty dollars, fifty cents.....	50
LEASE, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof, where the rent or rental value is three hundred dollars per annum or less, fifty cents.....	50
Where the rent or rental value exceeds the sum of three hundred dollars per annum, for each additional two hundred dollars, or fractional part thereof in excess of three hundred dollars, fifty cents	50
MANIFEST for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port—	
If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.....	1 00
Exceeding three hundred tons, and not exceeding six hundred tons, three dollars.....	3 00
Exceeding six hundred tons, five dollars.....	5 00
MEASURERS' returns, if for a quantity not exceeding one thousand bushels, ten cents.....	10
Exceeding one thousand bushels, twenty-five cents.....	25
MORTGAGE of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable; also any conveyance of any lands, estate, or property whatsoever, in trust, to be sold or otherwise converted into money, which shall be intended only as security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; or any personal bond given as security for the payment of any definite or certain sum of money exceeding one hundred dollars, and not exceeding five hundred dollars, fifty cents.....	50
Exceeding five hundred dollars, and not exceeding one thousand dollars, one dollar.....	1 00
And for every additional five hundred dollars, or fractional part thereof, in excess of one thousand dollars, fifty cents.....	50
Provided, That upon each and every assignment or transfer of a mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, a stamp duty shall be required and paid equal to that imposed on the original instrument.	
PASSAGE TICKET, by any vessel from a port in the United States to a foreign port, not exceeding thirty-five dollars, fifty cents.....	50
Exceeding thirty-five dollars and not exceeding fifty dollars, one dollar.....	1 00
And for every additional fifty dollars, or fractional part thereof, in excess of fifty dollars, one dollar.....	1 00
POWER OF ATTORNEY for the sale or transfer of any stock, bonds, or scrip, or for the collection of any dividends or interest thereon, twenty-five cents	25
POWER OF ATTORNEY OR PROXY for voting at any election for officers of any incorporated company or society, except religious, charitable, or literary societies, or public cemeteries, ten cents.....	10
POWER OF ATTORNEY to receive or collect rent, twenty-five cents.....	25
POWER OF ATTORNEY to sell and convey real estate, or to rent or lease the same, one dollar	1 00
POWER OF ATTORNEY for any other purpose, fifty cents.....	50
PROBATE OF WILL, or letters of administration: Where the estate and effects for or in respect of which such probate or letters of administration applied for shall be sworn or declared not to exceed the value of two thousand dollars, one dollar.....	1 00
Exceeding two thousand dollars, for every additional thousand dollars, or fractional part thereof, in excess of two thousand dollars, fifty cents....	50
PROTEST.—Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any state or states to make such protest, twenty-five cents.....	25
Receipts for the payment of any sum of money, or for the payment of any debt due, exceeding twenty dollars, not being for the satisfaction of any mortgage or judgment or decree of any court, and a receipt for the delivery of any property, two cents.....	2
Warehouse receipt for property, goods, wares, or merchandise, not otherwise provided for, in any public or private warehouse, when the property or goods so deposited or stored shall not exceed in value five hundred dollars, ten cents	10

Post, p. 482.

Post, p. 482.

Post, p. 482.

	Duty. Dolls. cts.	Stamp duties.
Exceeding in value five hundred dollars and not exceeding one thousand dollars, twenty cents	20	
Exceeding in value one thousand dollars, for every additional one thousand dollars, ten cents	10	
Warehouse receipt for any goods, merchandise, or property of any kind, not otherwise provided for, held on storage in any public or private warehouse or yard, twenty-five cents	25	
Weighers' returns, if for a weight not exceeding five thousand pounds, ten cents	10	
Exceeding five thousand pounds, twenty-five cents	25	

LEGAL DOCUMENTS:

Writ, or other original process by which any suit is commenced in any court of record, either of law or equity, fifty cents	50
Where the amount claimed in a writ, issued by a court not of record, is one hundred dollars or over, fifty cents	50
Upon every confession of judgment, or cognovit, for one hundred dollars or over, (except in those cases where the tax for the writ of a commencement of suit has been paid,) fifty cents	50
Writs or other process on appeals from justices' courts or other courts of inferior jurisdiction to a court of record, fifty cents	50
Warrant of distress, when the amount of rent claimed does not exceed one hundred dollars, twenty-five cents	25
When the amount claimed exceeds one hundred dollars, fifty cents	50
<i>Provided</i> , That no writ, summons, or other process issued by, and returnable to, a justice of the peace, except as hereinbefore provided, or by any police or municipal court having no larger jurisdiction as to the amount of damages it may render than a justice of the peace in the same state, or issued in any criminal or other suits commenced by the United States, or any state, shall be subject to the payment of stamp duties: <i>And provided, further</i> , That the stamp duties imposed by the foregoing schedule B on manifests, bills of lading, and passage-tickets, shall not apply to steamboats or other vessels plying between ports of the United States and ports in British North America.	

Affidavits in suits or legal proceedings shall be exempt from stamp duty.

SCHEDULE C.

MEDICINES OR PREPARATIONS.

For and upon every packet, box, bottle, pot, phial, or other enclosure, containing any pills, powders, tinctures, troches, lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, essences, spirits, oils, or other medicinal preparations or compositions whatsoever, made and sold, or removed for consumption and sale, by any person or persons whatever, wherein the person making or preparing the same has, or claims to have, any private formula or occult secret or art for the making or preparing the same, or has, or claims to have, any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters-patent, or held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or as remedies or specifics for any disease, diseases, or affections whatever affecting the human or animal body, as follows: where such packet, box, bottle, pot, phial, or other enclosure, with its contents, shall not exceed, at retail price, or value, the sum of twenty-five cents, one cent	1
Where such packet, box, bottle, pot, phial, or other enclosure, with its contents, shall exceed the retail price or value of twenty-five cents, and not exceed the retail price or value of fifty cents, two cents	2
Where such packet, box, bottle, pot, phial, or other enclosure, with its contents, shall exceed the retail price or value of fifty cents, and shall not exceed the retail price or value of seventy-five cents, three cents	3
Where such packet, box, bottle, pot, phial, or other enclosure, with its contents, shall exceed the retail price or value of seventy-five cents, and shall not exceed the retail price or value of one dollar, four cents	4
Where such packet, box, bottle, pot, phial, or other enclosure, with its contents, shall exceed the retail price or value of one dollar, for each and every fifty cents or fractional part thereof over and above the one dollar, as before mentioned, an additional two cents	2

Schedule C.

Medicines or preparations.

LAND TITLES

A Treatise on
Title Records, Records as Muniments of Title, Priorities,
Incumbrance Shown by County, State and Federal Records
or Existing in Pais, Proof of Title, Examination of
Title, and the Nature of Titles Required to
Fulfill Contracts for Sale or Security

By

RUFFORD G. PATTON, L.L.B.

Past-Chairman, Real Property Section, American Bar Association

And

CARROLL G. PATTON, L.L.B.

Joint Authors, Minnesota Annotations to Restatement
of Law of Property, Real Property Actions and
Proceedings, Examiner of Titles and Deputy
Examiner of Titles, Minnesota District Court, Fourth Judicial District

KANSAS CITY, MO.

VERNON LAW BOOK COMPANY

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PATTON LAND TIT.

by conveyance of the property to an innocent purchaser for value, by decree, or by limitation.

§ 212. Revenue Stamps

Federal laws have at different periods required that revenue stamps be affixed to conveyances. An examiner need not, however, examine as to these, for the reason that their presence or absence, without a state statute on the subject, cannot affect the validity of the instrument or the sufficiency of the record. Congress may prescribe proper penalties for failure to attach and cancel such stamps, but has no power, under the guise of penalties, to prescribe rules of evidence for the states, nor to limit the methods or means by which property within their borders may be transferred.³¹⁴

314. *Dowell v. Applegate*, C.C., 8 F. 698;

Griffin v. Ranney, 35 Conn. 239;

Garland v. Gaines, 49 A. 19, 73 Conn. 662, 84 Am.St.Rep. 182;

Moore v. Quirk, 105 Mass. 49, 7 Am. Rep. 499;

Taft v. Simpson, 84 N.W. 77, 125 Mich. 206;

Moore v. Moore, 47 N.Y. 467, 7 Am. Rep. 466;

Knox v. Rossi, 57 P. 179, 25 Nev.

96, 48 L.R.A. 305, 83 Am.St.Rep. 566;

Southern Ins. Co. v. Estes, 62 S.W. 149, 106 Tenn. 472, 52 L.R.A. 915, 82 Am.St.Rep. 892.

Presumption When Record Fails to Show a Stamp

It is presumed that a deed properly recorded bore a revenue stamp, although such stamp is not shown by the record thereof. *Hall v. Cardell*, 82 N.W. 503, 111 Iowa 206.