

ENTERED
Office of Proceedings

NOV 09 2006

Part of
Public Record

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

8 November 2006
by express



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

Re: PYCO Industries -- Feeder Line Application -- 218054
South Plains Switching, Ltd., F.D. 34890 and
related cases (F.D. 34889, 34802, and ~~34992~~) 34922
PYCO's Reply to SAW de facto Petition to Reopen
filed November 6 218055 218056 218057

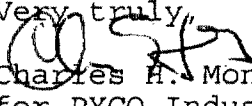
Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find an original and ten copies of PYCO's Reply to a de facto Petition to Reopen, filed by South Plains Switching, Ltd. (SAW), on November 6, 2006. SAW's out-of-time petition to reopen was directed at this Board's August 3, 2006 decision F.D. 34890 and certain related cases invalidating certain property transfers by SAW to Choo Choo Properties, Inc. Because SAW's November 6 "response" includes a petition to reopen, PYCO has a right to reply to this aspect of it without seeking leave.

PYCO also seeks leave (in Part IV of our pleading tendered herewith) to file a limited "reply" to a "reply," to show that an affidavit by Mr. Wisener which SAW submitted on November 6 mischaracterizes a document and misleads as to its date, and thus that the affidavit itself is erroneous and misleading. Because time is limited, the "limited reply" is also included in Part IV. The Exhibit attached to our Opposition corroborates the limited reply, assuming leave is granted to make it, is tendered to set the record straight.

Thank you for your assistance.

Very truly,


Charles H. Montange
for PYCO Industries, Inc.

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren (for PYCO) (w/encl.)

BEFORE THE
SURFACE TRANSPORTATION BOARD



PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34890
SOUTH PLAINS SWITCHING LTD.)

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34889
SOUTH PLAINS SWITCHING)

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34802
SOUTH PLAINS SWITCHING)

Opposition by PYCO Industries, Inc.
to
the De Facto Late-Filed
Petition to Reopen
Submitted by
South Plains Switching, Ltd. (SAW)
in connection with
Transfers of Property by SAW to Choo Choo

PYCO Industries, Inc. opposes the de facto petition to reopen filed by incumbent railroad South Plains Switching Ltd. (SAW) against this Board's decision of August 2, 2006.

Relevant Procedural Background

Pursuant to an emergency petition filed by PYCO Industries, this Board on August 3 served an order among other things voiding all sales by incumbent railroad South Plains Switching, Ltd. of its properties subsequent to May 5, 2006 [the date on which PYCO filed its initial feeder line application (FLA)], voiding all lease terminations by SAW or Choo Choo Properties after that date, and ordering SAW and Choo Choo to desist from retaliation against any shipper filing comments in support of the FLA. Neither SAW nor Choo Choo sought administrative or judicial review from that decision.

Pursuant to this Board's scheduling orders, SAW responded on September 21, 2006, to PYCO's discovery requests, including requests for documents bearing on SAW's title, and property transfers.

On October 12, 2006, PYCO filed "initial comments" and a "status report" in Finance Dockets 34890 and 34992 noting that Choo Choo had petitioned a Texas state court to enforce a deed dated June 13, 2006, which this Board had expressly invalidated in its August 3 order. In addition, PYCO in its "initial comments" indicated that Choo Choo was likewise seeking to enforce lease terminations which this Board had invalidated.¹

At approximately the same time, PYCO completed review of the various deeds that SAW had furnished PYCO in response to discovery. PYCO ascertained for the first time that SAW had purported to transfer certain leases to Choo Choo Properties in March of 2006, and had purported to deed out to Choo Choo additional properties in April 2006. By verified motion dated October 13, and filed Monday, October 16, PYCO moved to invalidate all transfers of property interests from SAW to Choo Choo after December 20, 2005 (the date of filing of the alternative rail service petition in F.D. 34802), or, in the alternative, after January 9, 2006. On January 9, PYCO had served notice to the world that it intended to file a feeder

¹ PYCO attached as Exhibits C and D to its "initial comments" two pleadings filed by Choo Choo and SAW in state court indicating the continued efforts by those entities to enforce instruments which this Board had voided.

line application under 49 U.S.C. § 10907.²

PYCO listed three specific transfers between 9 March 2006 and 28 April 2006 from SAW to Choo Choo for which it sought invalidation.³ PYCO did not seek an order invalidating SAW's deed to Choo Choo dated June 12, 2006, because this Board had already invalidated it in this Board's order served August 3, 2006. Nonetheless, Choo Choo Properties (SAW's alter ego, owned by Larry Wisener) was (and is) still seeking to enforced its alleged rights under the voided June 12 deed in Texas state court.⁴ This is a not so indirect attack on this Board's jurisdiction and order; it certainly is contrary to it.

I. SAW's "Response" Includes a De Facto Petition to Reopen

On November 6, SAW filed a "response" to PYCO's motion to void additional property transfers. If SAW had limited itself to a "response," then PYCO would be barred from further reply by 49 C.F.R. § 1114.13(c) (no replies to replies). However, SAW's "response" begins by specifically "mov[ing]" this Board to "revisit and reverse its order of August 2 [sic], 2006, voiding any transfers from South Plains to Choo-Choo after May 5, 2006."⁵

Under this Board's rules, a party may file a discretionary

² PYCO's Verified Motion to Void Additional Transfers, in F.D. 34890, et al., filed October 16, 2006, at p. 6.

³ id. pp. 3-4.

⁴ Id. at p. 5 n.3.

⁵ SAW motion, p.1, item 1.

administrative appeal, but such appeals must be filed within 20 days of the order against which they are directed. 49 C.F.R. § 1115.3(e). When timely filed as provided in the referenced regulation, an administrative appeal is termed a "petition for reconsideration." Id. § 1115.3(a). A party opposed need not reply, but clearly may do so. Id. § 1115.3(e) & (f).

SAW's motion to revisit the August 3, 2006 order was filed more than 90 days from the date of that order and is thus obviously not a timely "petition for reconsideration." An untimely appeal/petition/motion to revisit, like that filed by SAW on November 6, is called a "petition to reopen" and is governed by 49 C.F.R. § 1115.4. Among other things, it "must state in detail the respects in which the proceeding involves material error, new evidence or substantially changed circumstances." The regulation states that the petitioner must ask for the Board to make a "determination" in that regard.

In addition, if the petition to reopen seeks to produce evidence, SAW must explain why the evidence was not previously adduced. 49 C.F.R. § 1115.4, requiring compliance with 49 C.F.R. § 1115.3.

PYCO has a general right to reply to a petition to reopen pursuant to 49 C.F.R. § 1104.13(a). Because SAW's "Response" is tantamount to a petition to reopen in its attack on the August 3 order, PYCO thus has a right to reply. To the extent this Board believes PYCO does not have a right to reply, PYCO moves for the opportunity to submit the following opposition to SAW's de facto

petition to reopen.

II. Opposition to Petition to Reopen

The only portion of this Board's August 3 order which SAW seeks to reopen is the portion invalidating SAW's transfer of the "wye" property to Choo Choo by deed dated June 12. SAW does not attack this Board's declaration that the lease terminations were void, nor does SAW attack this Board's bar on future transfers or rescissions.

SAW argues that the deed invalidation is an "unreasonable requirement." SAW says the deed was dated June 12, and thus fell in the interregnum between the Director's dismissal of the initial OFA on June 2, and PYCO's filing of a Revised FLA on June 14. Nothing in this argument presents either "new evidence" or "changed circumstance." All the evidence and circumstances were extant prior to August 3. Thus, the SAW argument appears to be that the Board committed a "material error."

But SAW fails to show material error. If SAW's assertion that the invalidation is "unreasonable" means that it somehow unduly burdens SAW, then SAW makes no showing of burden at all. In its written "Response," SAW nowhere contends that it suffered or will suffer any economic harm by reason of invalidation of the June 12 deed. SAW submits two affidavits (one by Larry Wisener⁶ and another by Edward Landreth), but neither contend

⁶ Mr. Wisener was president of SAW from 1999 until January 2006, is married to the current president of SAW, and owns Choo Choo Properties. As PYCO has documented elsewhere,

that SAW has sustained or will sustain any loss due to invalidation of the deed.⁷ To the contrary, both affidavits appear directed at defending SAW's transfer of various PYCO leases to Choo Choo.⁸

On the record, the only "burden" imposed by the invalidation "requirement" is that Mr. Wisener cannot insulate his retaliation against PYCO from this Board's jurisdiction. But that is hardly unreasonable.

The only grounds other than "unreasonableness" that SAW offers to justify "revisiting" and "reversing" the August 3 order is that the date (June 12, 2006) of the deed conveying the "wy" to Choo Choo was after the Director's dismissal of the initial FLA (in F.D. 34844, on June 2, 2006) and before PYCO filed a revised FLA (June 14, 2006). SAW says that it had "no

Wisener told PYCO in November of 2005 that he intended to make PYCO's business miserable if PYCO did not agree to buy unspecified SAW property for \$5.5 million. Mr. Wisener is still trying to be true to his word, as shown in his state court litigation against PYCO to enforce voided deeds, and voided lease rescissions, and as manifest in his petition to reopen the August 3 decision at issue here.

⁷ It is not clear Choo Choo paid anything substantial to SAW for the alleged transfers, and this Board should not assume Choo Choo did: the owner of Choo Choo is the husband of the owner of SAW.

⁸ Even there, the affidavits show no loss to SAW by reason of any rescission of the transfer. If the lease transfer were not rescinded, then Choo Choo has terminated PYCO's ability to operate Plant No. 1. This would put PYCO out of business, and at the very least diminish the value of SAW's rail operations to a subsequent purchaser. Thus, it is hard to see how the lease transfer carries any benefit for SAW. It is simply a means for SAW's owners to retaliate against PYCO for seeking relief before this agency.

indication" that PYCO would file a revised FLA prior to June 14, and that the sale was thus lawful when it occurred. See SAW November 6 "Response" at pp. 2-3. On SAW's logic, the sale would have been lawful on June 1, or June 15 as well, or on any date up to August 3, 2006. After all, STB did not issue an order actually barring or voiding any sales until August 3. SAW basically contends that a party must formally seek an order preserving status quo, and that any sales an incumbent railroad makes before the status quo order is issued are "tough luck" for the shipping public.

SAW cites no case in support of its position at pp. 2-3 of its "Response." SAW's legal argument is confined to pages 9-10 of its paper. The legal argument does not appear to be directed at the June 12 deed from SAW to Choo Choo, but at the other transfers referenced at pages 8-9 of its Response.⁹ SAW's

⁹ At page 9 of its response, SAW does claim that in Railroad Adventures [sic], 4 STB 567 (January 6, 2000), this Board allowed a property transfer by the incumbent railroad of a utility crossing easement and of certain interests for a rail trail on the ground that these transfers did not affect rail operations. Perhaps SAW intends this case as support for its argument. In that decision (actually released on January 7, 2000) this Board invalidated a grade-separated crossing agreement, and indicated that it would take into account certain other property transfers in its valuation of the rail corridor in the absence of evidence of interference with rail operations.

But the decision must be read in context with a subsequent decision in the same proceeding, Railroad Ventures, AB 556 (Sub-no. 2X) and F.D. 33385, served October 4, 2000, aff'd Railroad Ventures v. STB, 299 F.3d 523 (6th Cir. 2003). In its October 4, 2000 decision, this Board invalidated the purported alienation of utility crossing rights (both above and below surface) from the surface estate of the railroad to an affiliate, much as SAW is attempting here.

The Board indicated that there cannot be "any reasonable assurance that rail operations will be unhampered unless the

argument is disingenuous and lacking any logic or precedential support.

Even if the initial FLA was dismissed by the Director on June 2, that dismissal was not without prejudice to re-filing, and moreover was subject to appeal to the full Board. PYCO in fact timely filed an appeal to the full Board on June 12, 2006, the same day as the deed. The general rule in abandonment proceedings is that if a proceeding is still subject to further review, a rail carrier disassembles its line "at its own peril." E.g., NYCECD -- Adverse Abandonment -- New York Cross Harbor Railroad, AB 596, served Aug. 28, 2003, slip at p.7, citing Busboom Grain Co. Inc. v. ICC, 830 F.2d 74, 75-76 (7th Cir. 1987). That is, if the rail carrier actually purports to sell off parts of its rail property, it bears the risk of having to re-assemble it. There is no reason for a different rule on FLA's before the Board, and that essentially was what STB held on August 3. Any sale by SAW between June 2 and June 12 was just as much at SAW's peril as were sales from (at least) May 5

offeror possesses sufficient property rights to determine unimpeded who may enter the right of way at what times and under what circumstances, as well as whether any underground or additional overhead cables or similar structures would interfere with its own rail use of the right of way." Slip op. at 10. The Board also invalidated the sale of an acreage to the Park District on the grounds that it "contravene[s] our continuing and exclusive regulatory jurisdiction over the rail line prior to its abandonment." Slip at 11.

In short, SAW's reliance on the Board's January 2000 decision is misplaced in light of this Board's October 2000 decision. This Board's August 3 decision invalidating the SAW deed is consistent with Railroad Ventures, not a material error in light of it.

to June 2, and from June 14 onward.

In any event, SAW's claim that the sale was "lawful" when made is not the real issue. Even assuming arguendo the sale was lawful when made (i.e., not void ab initio), it could still be subsequently voided in order to protect this Board's jurisdiction or to accomplish the purposes of the ICC Termination Act. Thus the question is not whether the sale was void when made, but whether it was subsequently voidable. While PYCO believes the sale void when made, it clearly was subsequently voidable for a variety of reasons.

For example, the order voiding the sale of June 12 was issued in a variety of proceedings (including PYCO's F.D. 34802 alternative service proceeding filed in December 2005, PYCO's F.D. 34889 alternative service proceeding filed in July 2006, and PYCO's F.D. 34870 complaint proceeding filed in April 2006). Indeed, this Board's August 3 decision specifically notes that its action voiding the June 12 sale, rescinding the lease cancellations, and enjoining future sales or transfers will preserve the status quo in the Complaint proceeding. August 3 Decision at p. 7. Whatever SAW says about the feeder line proceeding, the Board clearly has jurisdiction to preserve the status quo in the Complaint proceeding (and in the alternative service proceedings as well).

In addition, SAW had notice from January 9 that an FLA was coming. In abandonment proceedings, this Board has voided transfers undertaken by incumbent railroads during the course of

abandonment proceedings but before the filing of an actual offer of financial assistance ("OFA").¹⁰ As we have said, PYCO advised SAW on January 9, 2006, that it intended to file a successful alternative service application with a feeder line application. PYCO's alternative service application was successful in F.D. 34802 as of January 26, 2006. SAW thus is properly deemed as on notice from January 9 that any subsequent transfers would be voidable at the request of the feeder line applicant.

In this Board's October 4, 2000 Rail Ventures decision (AB 556 (Sub-no. 2X) & F.D. 33385, aff'd Rail Ventures v. STB, 299 F.3d 523 (6th Cir. 2003)), this Board indicated that there is a "presumption that all the [incumbent railroad's] property is needed to provide effective transportation services" in the context of a forced sale proceeding. Slip. at 10. The Board further indicated that the incumbent railroad bears a "heavy burden" to rebut that presumption. This should especially be

¹⁰ E.g., Rail Ventures, AB 556 (Sub-no. 2X) & F.D. 33385, served Oct. 4, 2000, aff'd Railroad Ventures v. STB, 299 F.3d 523 (6th Cir. 2003). In the Railroad Ventures proceeding, the OFA applicant evidently submitted an offer on November 8, 1999, and timely requested terms and conditions on December 8, 1999. This Board voided a November 8, 1999, contract into which the incumbent railroad had entered, and an October 28, 1999 transfer of utility (air and subsurface rights) from the incumbent railroad to an affiliate. Just as PYCO notified SAW (and the world) on January 9, 2006 (well before the transfers PYCO is attacking), the OFA applicant in Rail Ventures evidently provided notice to the railroad of an intent to file an offer prior to November 8, 1999. If prior notice is a requirement for voiding a transfer in OFA proceedings, and if that requirement applies in the FLA context, then PYCO fulfilled that requirement on January 9, 2006, in respect to SAW.

the case in an expedited proceeding with limited discovery opportunities, much less limited time to digest responses and move for relief before this Board, such as is manifestly the case at bar. In all events, SAW has not carried its "heavy burden." Indeed, SAW could not possibly carry the burden as to the property transfers directly affecting PYCO. Those transfers were clearly designed to allow Mr. Wisener through Choo Choo to retaliate against PYCO's rail dependent operations and put PYCO, historically the major user of SAW's rail services, out of business. The record shows that Mr. Wisener d/b/a Choo Choo through his attorney Mr. Gorsuch (who represents both Choo Choo and SAW) not only served PYCO with notice of lease terminations, but also pursued litigation in Texas state courts to exclude PYCO from the wye, and to oust PYCO from its utilities and crossings necessary to operate Plant No. 1, in direct contravention of this Board's order of August 3. As SAW/Choo Choo/Wisener actions right up through the instant de facto petition to reopen indicate, Mr. Wisener still aspires to shut PYCO down. Putting PYCO out of business will hardly help any successor railroad achieve successful rail operations, and it diminishes the value of SAW by depriving it of its major shipper.

SAW's transfers serve no rail purpose. SAW's June 12, 2006, transfer of a portion of the "wye" which serves as SAW's major north-south lead to other shippers to Choo, and SAW's March 9 transfer of utility rights under and over the SAW

yard to Choo Choo clearly interfere with future rail operations, for all the reasons to which Rail Ventures alludes (see note 9).

In SAW's de facto petition to reopen, SAW at one point claims to have an operating agreement with Choo Choo. In its discovery response furnished PYCO on September 21, 2006, SAW furnished no evidence of any operating agreement with Choo Choo permitting SAW (or any successor to SAW) to operate on or over any of the properties conveyed by SAW to Choo Choo anywhere, whether that property was the "we," the alleged "vacant lot" with a portion of line crossing it, or the lead serving 84 Lumber conveyed by SAW to Choo Choo.

If SAW has any operating agreement with Choo Choo, it should have been produced to PYCO. Absent production of one, the only presumption that can be made on this record is that SAW in a variety of transactions with Choo Choo in 2006 sought to sever rail customers from rail service.

IV. Correction to Record

SAW makes many comments in its "Response" and SAW's witnesses make many statements in their affidavits which PYCO believes are incorrect. However, since replies to replies are not permitted, PYCO will not offer argument on those points. Nonetheless, there is one aspect of Larry Wisener's affidavit which is a complete misrepresentation. PYCO moves for leave to file a limited reply as to that, and the reply is as follows:

On the last page of his affidavit, Larry Wisener claims that PYCO orally agreed to buy SAW for \$5.5 million. PYCO's

executives have already supplied sworn testimony denying that allegation. See PYCO Rebuttal, Exhibit B (Rebuttal Declaration of Robert Lacy, ¶ 2) in F.D. 34890 filed October 19, 2006. But Wisener purports to annex a confidentiality agreement signed May 10, 2005, by PYCO's Robert Lacy, and a document entitled "Rail Sale Proposal Portions of South Plains Switching Ltd." Wisener implies the 2005 confidentiality agreement relates to that "Rail Sale Proposal." He evidently seeks thereby to bolster his claim that PYCO made a \$5.5 million offer.

But Mr. Wisener's "evidence" is an unconscionable misrepresentation of the documents. The "Rail Sale Proposal" document Wisener annexes to his affidavit was sent to PYCO's Lubbock counsel (Mr. McLaren) on June 8, 2006, by SAW's rail counsel (Mr. McFarland), and not to Robert Lacy by Ms. Wisener in May 2005 as Mr. Wisener seemingly implies.¹¹ This is manifest not only in the actual fax Mr. McLaren received from Mr. McFarland (attached in Exhibit A), but on the face of the "Rail Sale Proposal," for it refers to a sale of track to 84 Lumber, which subsequent discovery suggests refers to SAW's sale of 84 Lumber trackage to Choo Choo in April 2006.

In any event, PYCO's counsel on behalf of PYCO did make a

¹¹ SAW's June 8 solicitation to PYCO contained little information in comparison to SAW's solicitation package which it voluntarily sent Pioneer in July. A copy of that package is attached as Appendix A (under seal) to PYCO's "initial comments" dated October 11 in F.D. 34890 and 34992. In addition, SAW's June 8 solicitation to PYCO offered only a portion of SAW's lines rather comparable to PYCO's Alternative Two. SAW solicited Pioneer on essentially all of SAW's lines.

formal offer in response to the "Rail Sale Proposal" which Mr. Wisener appends to his affidavit. That offer, in the form of a letter faxed to SAW's counsel (Mr. McFarland) on June 15, 2006, is also presented in Exhibit A. In this June 15 response, PYCO did not offer \$5.5 million for SAW. PYCO instead offered \$2,094,000 for all of SAW, or \$435,000 for "Alternative Two." These figures were consistent with the numbers PYCO presented in PYCO's feeder line application, as then pending. PYCO has not subsequently withdrawn its offer of \$2,094,000. PYCO to date has received no response from SAW (other than lease terminations and state court trespass litigation by Mr. Wisener d/b/a Choo Choo).

The point is that Mr. Wisener's use of documents in his affidavit is like the thirteenth chime of a clock. It is all mixed up and utterly misleading. Such chimes not only themselves are false, but call into question all that came before. As with a broken clock, Mr. Wisener's affidavit in general should not be accorded any weight.

The only offer PYCO has made to SAW is set forth in Exhibit A. So far as the record shows, this is the only formal and reliable made to SAW assets for its rail assets in Lubbock by any party, including specifically PYCO.

V. Conclusion

SAW has failed to show material error in the August 3 decision. SAW's de facto petition to reopen accordingly must be denied. On this record, the SAW system must be reassembled

at least to the extent sought by PYCO in order to operate it for rail purposes.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibit A -- PYCO June 15, 2006, response to SAW solicitation for bid as set forth in Wisener affidavit; SAW solicitation received by PYCO on June 8, 2006

Certificate of Service

I hereby certify service of the foregoing Appeal and Petition upon the following counsel of record by express service, next business day delivery, this 8th day of November 2006:

Thomas McFarland
208 South LaSalle Street, Suite 1890
Chicago, IL 60606-1112 (for SAW)

William Sippel, Esq.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832 (for US Rail Partners)

John Heffner, Esq.
1920 N Street, N.W., Suite 800
Washington, D.C. 20036 (for WTL)

William A. Mullins, Esq.
Baker & Miller
2401 Pennsylvania Ave. NW, Suite 300
Washington, D.C. 20037 (for Pioneer/KJRY)

Adrian Steel, Esq.
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, D.C. 20006-1101

Andrew Goldstein, Esq.
McCarthy, Sweeney & Harkaway
2175 K Street, N.W., Suite 600
Washington, D.C. 20027

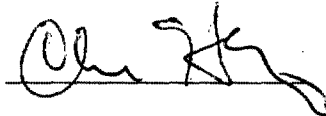


Exhibit A

Only PYCO Offer to SAW (June 2006)

SAW Solicitation of Offer (June 2006)

Fax Cover Page

To:

~~Tham McFarland~~

From: Charles H. Montange
426 NW 162 St.
Seattle, WA 98177

(206) 546-1936
fax: 546-3739

Date:

15 Jan

Message:

Lussard

Gary McLaren

Gail Krueger
Robert Lacy

Attached page(s):

2

The attached sheet(s) may contain privileged or work product information, and is/are intended only for the person to whom this cover sheet is directed. If the reader of this message is not the intended recipient, please do not read or disseminate the attachments. If you have received this material in error, please immediately notify me by telephone and return the original material by U.S. Mail. Thank you.

llh

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

15 June 2006

by fax

Thomas McFarland, Esq.
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112

Re: Rail Sale Proposal

Dear Mr. McFarland:

This letter on behalf of PYCO Industries is in response to the material identified as "Rail Sale Proposal" for portions of SAW's assets in Lubbock, which you faxed to Mr. McLaren on June 8.

In settlement of all litigation, PYCO is prepared to entertain a reasonable sale proposal. As you know, PYCO has offered to acquire either the entire set of SAW's lines, or Alternative Two as defined in the feeder line application, for the prices stated therein. The "Rail Sale Proposal" which you forwarded appears to be an offer of property somewhat similar to PYCO's Alternative Two. We are uncertain how SAW proposes to operate the Orchard Lead (e.g., would SAW wish to retain trackage rights in the old FWD yard or mainline to serve the Orchard Lead), but we would be prepared to discuss the option should you wish. However, the stumbling block is the "minimum" bid of \$5.9 million. PYCO's calculations show the maximum value of the entire SAW system is about \$2,094,000. The "Rail Sale Proposal" contained no information suggesting that there was in error in PYCO's extensive due diligence such the purchase price for the entire system should be adjusted upward, let alone for a portion of the entire system.

PYCO reiterates its offer of \$2,094,000 for all SAW's remaining lines in Lubbock, or \$435,000 for the package described in our Alternative Two, and our willingness to discuss a package in between.

The conveyance shall be by quitclaim deed, free of encumbrances other than existing easements and leases, inclusive of track, ties, other track material and rail-related structures, exclusive of rolling stock and locomotives. PYCO may modify or withdraw the offer at any time, and the offer

shall be deemed modified if and when PYCO modifies the values associated with, or the property included in, its feeder line application statements. The offer is also contingent upon any required STB authorization and BNSF approval, and upon negotiation of a mutually agreeable definitive contract approved by the boards of the two companies to the extent necessary and containing mutual releases of claims. PYCO is prepared to close within ten (10) days of completion of a satisfactory contract and obtaining STB and BNSF authorizations.

Please advise how you wish to proceed.

Very truly,



Charles H. Montange
for PYCO Industries, Inc.

cc. Mr. McLaren
PYCO

C O V E R

S H E E T

FAX

To: Charles Montange
Fax #: 206-546-3739
Copy: Gail Kring
Robert Lacy
744-3221
Re: PYCO/Railroad
Date: June 8, 2006
Pages: _____, including cover sheet

Chuck, Gail and Robert:

Attached is a copy of the bid package received from Tom McFarland via telefax this morning.

Gary R. McLaren

*First: 18 pages
Second: 13 pages*

From the desk of...

Gary R. McLaren
Attorney at Law
Phillips & McLaren, L.L.P.
3305 86th Street, Suite 1A
Lubbock, Texas 79413

(806) 788-0609
Fax: (806) 785-2521

FIRST FAX
18 PAGES

Rail Sale Proposal Portions of South Plains Switching, LTD. Company Lubbock, TX

Introduction

This sale package outlines property offered for sale and conditions of sale for portions of South Plains Switching, LTD. (SAW)

Description of Property for Sale

The property for sale consists of rail track generally located south and west of the BNSF south yard in Lubbock, TX. The original sale was made from BNSF to SAW by Sale Agreement for Sale of Certain Assets, Rights, and Obligations of The Burlington Northern and Santa Fe Railway Company to South Plains Switching, LTD dated May 3rd, 1999. Provisions in this sale agreement will be assigned to any new rail line owner.

SAW operations are on both sides of BNSF main line in Lubbock, TX. Crossing of BNSF to connect these properties is done on a regular basis by SAW obtaining dispatch authority from BNSF.

Interchange between SAW and BNSF is made in BNSF South yard as mutually agreed.

Buyer accepts the rights and obligations as set forth in the provisions of the Sale Agreement for Sale of Certain Assets, Rights, and Obligations of the Burlington Northern and Santa Fe Railway Company to South Plains Switching, Ltd. Co. dated May 3, 1999, Quit Claim deed given for property. Bill of Sale given for all tracks, etc., as received from BNSF.

All SAW operating property except those retained below, but including PYCO leases #6793, 8678, PX91-12025, PX91-12021, 4536 and 4677 (copies attached).

Some track and property outlined in the Sale Agreement of May 3rd, 1999 has already been sold, or will be retained by SAW. The sold property and removed trackage in general was non-operational and was sold to remove tax liability.

Description of Property not for Sale

Properties to be retained by SAW are as follows:

A portion of the Orchard Lead track (see attachment A)

Track 380 with adjacent side tracks and the shipper/receivers located along those tracks.

A portion of Track 9420 West of Elm Street (sold to 84 Lumber) see attachment A

Track 4, 7, and 12 (Burns properties in litigation)

Non-operating leases currently in litigation

Track 340

Boxcars used for equipment storage in Lubbock

Locomotives and maintenance of way equipment and tools

Divisions of Revenue Paid by BNSF to SAW

The line sale agreement between SAW and BNSF outlines the divisions of revenue paid by BNSF to SAW. There are two different sets of payments; one for cars waybilled in shipments less than 27 cars and a different set for cars waybilled in shipments of over 27 cars.

Provisions in the sale agreement provide for annual adjustment of divisions of revenue paid by BNSF to SAW.

Union Pacific Traffic

Most traffic interchanged between SAW and BNSF moves under BNSF rail provisions.

There is an operating agreement between the Union Pacific Railroad (UP) and BNSF where BNSF contracts to handle traffic to or from Lubbock for UP. There are no payments made by UP to SAW. All payments are made from BNSF from their revenues obtained from the UP.

Free Time on Equipment

Free time for cars interchanged between BNSF and SAW are covered in the sale agreement. Free time, is 120 hours.

Demurrage Car Storage etc.

SAW maintains their own "price and condition sheet" setting forth such things as free time, demurrage, storage of cars, local switching charges etc. A new buyer would need to publish their own price and condition sheet.

Electronic Interchange of Cars

It is very important for a rail line interchanging equipment with BNSF, to have electronic interchange. This function is being performed by SAW through RMI an outside firm.

BNSF also provides an interchange package should a buyer decide to work directly with BNSF.

Locomotives, Maintenance of Way Equipment

Locomotives or Maintenance of Way equipment or materials would not be part of the sale. SAW does, however, have a number of operational locomotives and it is possible that two of these units could be sold as a separate agreement.

BNSF Right of First Refusal

The BNSF has first right of refusal, with their response due within 60 days of an agreement between SAW and a new rail line.

Offer Conditions

The following offer conditions exist:

Minimum offer \$5,900,000.00 (this has been met)

Response due on or before 12:00 Noon, June 16, 2006.

SAW may elect to reject any and all offers:

Response to be made to:

Mr. Thomas F. McFarland
208 South LaSalle Street, Suite 1890
Chicago, Illinois 60604-1194
Phone: (312)236-0204
Fax: (312)201-9695

Attachments

Attachment A Maps
Copies of PYCO Leases

COPY

PRIVATE CROSSING CONTRACT

This AGREEMENT, made this 20th day of March, 1928, between Fort Worth and Denver Railway Company, party of the first part, hereinafter called "Railway Company," and Plains Cooperative Oil Mill, Inc., party of the second part,

WITNESSETH: That, WHEREAS, Railway Company controls and operates a line of railway through various counties in the State of Texas, and maintains along the right of way thereof, fences for the protection of property and the prevention of injury to persons and animals; and,

WHEREAS, party of the second part owner, is in charge of a certain tract of land located in the County of Rockwall, State of Texas, and adjoining the right of way of Railway Company, and is desirous of having a private crossing over said Railway Company's track and right of way at Mile Post 1-30.45;

NOW, THEREFORE, in consideration of the premises and the promises hereinafter made and to be performed by the parties hereto, IT IS AGREED:

1. For and in consideration of the sum of One & 00/100 Dollars (\$ 1.00), receipt of which is hereby acknowledged by Railway Company, party of the second part will within thirty (30) days from the execution of this contract, under the supervision of Railway Company and in compliance with the requirements of Railway Company, construct a crossing over the right of way and tracks of Railway Company at the following location, to-wit:

Across the Oil Mill Spur, main track and right of way at a point opposite Mile Post 1-30.45, Rockwall, Texas

as shown on blue print marked "Exhibit A", attached hereto and made a part hereof. The said crossing to be installed at the sole expense of party of the second part, and party of the second part further agrees to maintain said crossing with all appurtenances that may be required, at its sole expense and without cost to Railway Company; provided, however, Railway Company, in the event party of the second part fails to keep said crossing in good repair, shall have the right to repair the same at the cost of party of the second part, and party of the second part shall pay the full cost of such repairs within twenty (20) days of receipt of bill therefor from Railway Company.

3. Party of the second part agrees that it will at all times indemnify and save harmless Railway Company against any loss of or damage to property, and against all claims, demands, actions or causes of action growing out of the loss of or damage to property, or injury to or death of persons, resulting in any manner from construction, maintenance, use, state of repair, or presence of the crossing upon Railway Company's premises (except where such loss or damage to property or such injury to or death of persons is directly caused by the sole negligence of Railway Company), and shall promptly pay to Railway Company the full amount of any damages which Railway Company may sustain and incur, or become liable for, and all sums which Railway Company may pay or be compelled to pay in settlement or satisfaction of any such claims, demands, actions, or causes of action; it being fully understood and agreed that Railway Company shall not be liable for any damage to the crossing howsoever caused.

4. If at any time party of the second part fails or declines to keep the agreements herein contained, Railway Company may annul and cancel this agreement by giving five (5) days' written notice to party of the second part to that effect; and likewise, at any time, at its own option, upon giving ninety (90) days' notice in writing to party of the second part, its assigns and successors, Railway Company may terminate this contract.

5. It is further agreed and understood that this is a covenant to run with the land of party of the second part, its, his or their heirs, executors, administrators, personal representatives, successors or assigns, and shall be binding upon them.

As one of the considerations herein, it is expressly agreed and understood that this contract is made on behalf of any successors or assigns of Railway Company, and that the same is also made on behalf of and inures to the benefit of any other person, firm, corporation or railway company who may at any time run trains over or in any

in, under or way operate the tracks and property of Railway Company; and as to such persons, firm, corporation or railway company, whether operating the same in any manner or way by operation of law or otherwise, said party of the second part obligates himself as provided for by the terms of this contract.

Attachment to Page 2 of Private Crossing Contract with Plains Cooperative Oil Mill, Inc., dated March 30, 1962.

6. This contract and all its provisions shall terminate July 1, 1962.

7. It is agreed that party of the second part shall reimburse the Railway Company for any expenses Railway Company incurs incident to the installation of this crossing.

8. It is further agreed that the movement of traffic across said Railway Company's tracks will not be made at such times that it will interfere with movements of engines or cars. An employee of party of the second part will precede each movement on foot across tracks to make certain there is ample time to get across said tracks without possibility of being struck by engines or cars.

Secretary

By

Party of the Second Part

APPROVED AS TO FORM:

General Attorney

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared

M. G. Houghton,

General Manager

Fort Worth and Denver Railway Company

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of April, 1962

H. M. Williamson

H. M. WILLIAMSON

Notary Public in and for Tarrant County, Texas

STATE OF TEXAS

COUNTY OF Tarrant

BEFORE ME, the undersigned authority, on this day personally appeared

Milmer Smith

known to me to be the person whose name

is subscribed to the foregoing instrument and acknowledged to me that He executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5th day of April, 1962

Harwood Green

Notary Public in and for Tarrant County, Texas

...or way operate the tracks and property of Railway Company; and as to such persons, firm, corporation or railway company, whether operating the same in any manner or way by operation of law or otherwise, said party of the second part obligates himself as provided for by the terms of this contract.

~~IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and~~

~~year first above written~~

ATTEST: **CORPORATE**

SEAL

(SIGNED) J. R. BARNHILL

Assistant Secretary

APPROVED:

(Signed) E. A. GRAHAM

~~General Manager~~

L. G. KEY

~~General Manager~~

(Signed) I. P. Nelson

WITNESS:

ATTEST:

Roy A. Davis
Secretary

APPROVED AS TO FORM:

General Attorney

STATE OF TEXAS

COUNTY OF TARRANT }

BEFORE ME, the undersigned authority, on this day personally appeared

M. G. Monaghan

~~General Manager~~

Fort Worth and Denver Railway Company

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of April, 1906

H. M. Williamson

H. M. WILLIAMSON

Notary Public in and for Tarrant County, Texas

STATE OF TEXAS

COUNTY OF Lubbock }

BEFORE ME, the undersigned authority, on this day personally appeared

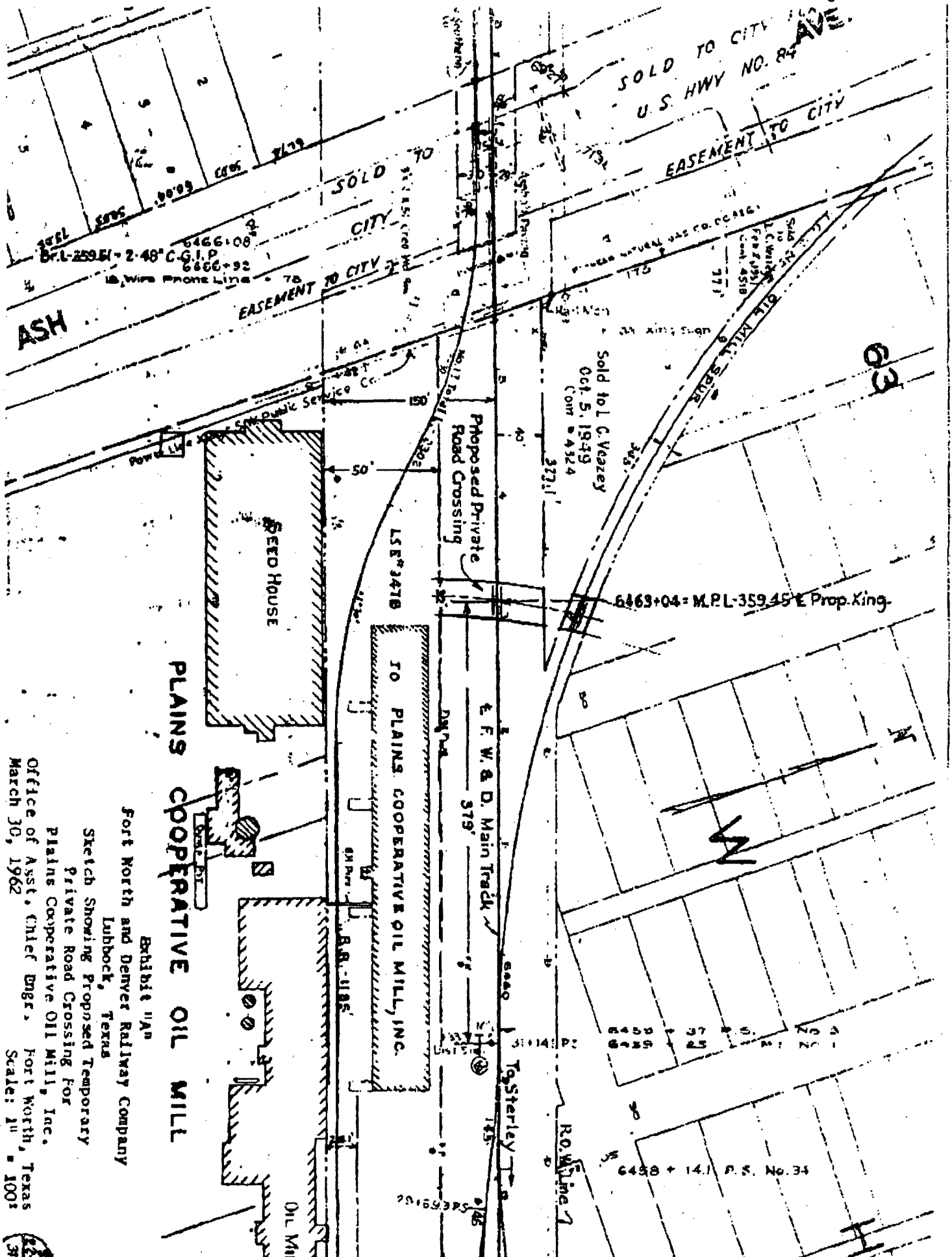
Milmer Smith

known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that He executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5th day of April, 1906

Edward Green
Notary Public in and for Lubbock County, Texas

00-00-00 10.10 19. 20 10



CONTRACT FOR PIPE LINE ACROSS OR ALONG RIGHT OF WAY

COPY

THIS AGREEMENT, Made and entered into as of this 8th day of October, 1972,

between FORT WORTH AND DENVER RAILWAY COMPANY, hereinafter called the "Railway," and

Plains Cooperative Oil Mill
a Texas Corporation

of Lubbock State of Texas
hereinafter called the "Licensee."

WITNESSETH:

ARTICLE 1: In consideration of Ten (\$1000) dollars initial and only to be paid by Licensee to Railway immediately upon the execution of this agreement, and an annual rental of \$ payable in advance, and upon the terms and conditions hereinafter set forth, Railway hereby grants unto Licensee license to enter upon the premises of Railway at or near Lubbock, Lubbock County, Texas and construct and thereafter maintain across or along said premises at the sole expense of Licensee, a Twelve (12") inch pipe line to be used for conveying Water only, the location of said pipe line being shown in red on the Railway's print No. SP 22-102.7 hereto attached, and made a part hereof.

SIDE-B Said Water line crosses under spur trk #17, #126 and main track at M.P.L. 357+22.95' and under track #3

ARTICLE 2: The top of said pipe line shall be placed at a depth of not less than five (5) feet six (6) inches below the base of the rails of the track or tracks of Railway where it passes under the same and not less than three (3) feet below the surface of the ground at any point on Railway's property. If the said pipe line shall be of a diameter four inches or larger the portion of same directly under the said track or tracks, and under the roadbed thereof, shall be of cast iron or other material of approved strength.

ARTICLE 3: The said pipe line shall be constructed and maintained in such manner and at such time or times and of such materials as shall meet with the approval of the Superintendent of Railway, and as shall not hinder, delay or endanger the operation of engines, trains, cars or business of Railway over its track or tracks now laid or hereafter laid on said premises, or in any manner interfere with the present or future use of the said premises. The Licensee shall not enter upon said premises for the purpose of constructing, maintaining or removing said pipe line except upon forty-eight hours' notice to Superintendent of Railway, and then a designated representative of Railway may oversee or inspect all of said work as it progresses, at the expense of Licensee, and performance of such work shall be subject to his approval. If deemed necessary by Railway so to do, Licensee shall, at the expense of Licensee, support the said track or tracks, as directed by Railway, while the work of constructing, maintaining or removing said pipe line is being done.

In the event the pipe line shall be used to carry any liquid or other substance under pressure, and shall be located under any track or within forty-five (45) feet of any track, bridge or structure of the Railway, the pipe line shall be constructed and maintained strictly in accordance with Railway's Plan No. 905998-B, copy of which shall be attached to, and thereby become a part of, this agreement.

105999-D

In case Railway shall, after said pipe line has been constructed, build upon its premises any additional track or tracks, or structures, or make any changes in existing tracks or structures over said pipe line, the Licensee shall, at once, at its own expense, make such changes in its said pipe line as may be necessary to make the same conform in its relation to said new tracks or structures, or changes in existing tracks or structures, in all respects to the conditions herein required for said present tracks or structures, or as may be required by the Railway.

ARTICLE 4: In the event any cathodic electrolysis or other electrical grounding system is installed in connection with said pipe line which in the opinion of Railway in any way interferes with any train signals, telephone or telegraph lines, or other facilities of Railway, the Licensee immediately shall discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid all such interference. Licensee further agrees to indemnify and save harmless Railway from and against any damages, claims, losses, suits or expenses in any manner arising from or growing out of interference with the signals, telephone or telegraph lines of Railway by the operation, use or existence of any such grounding system.

ARTICLE 5: The Licensee further covenants and agrees at all times during the existence of said pipe line upon the premises of Railway to keep and maintain the soil over the same thoroughly compacted, and the grade even with the adjacent surface of the ground, and that Licensee will at all times release, protect, indemnify and save harmless Railway from all claims, demands, judgments, loss, costs and expenses, for injury to or death of any person, or loss or damage to the property of any person or persons whomsoever (including both parties hereto and their employees), in any manner arising from or growing out of in whole or in part, the construction, reconstruction, maintenance, operation, repair, change, existence, use or removal of said pipe line or the subsidence of soil over the same whether caused by the negligence of the Railway, its servants or employees, or otherwise.

ARTICLE 6: If Licensee shall well and faithfully comply with all the terms, covenants, and conditions herein set forth on the part of Licensee to be observed and complied with, the license herein granted by Railway shall continue in force to the full expiration of the period of one (1) year from the date hereof, and thereafter until terminated, upon not less than sixty (60) days' written notice by either party hereto to the other; but if Licensee shall fail to perform any of the covenants herein contained, Railway shall have the right to terminate this license forthwith and without notice. Any notice herein provided for shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to Licensee. Upon the termination of this license in any of the modes herein provided for, Licensee shall, at its own expense, upon being notified so to do by Railway, remove said pipe line from said premises, and restore the ground to a safe and level condition, and in case of its failure so to do, the Railway may at its option, either remove the said pipe line from said premises at the sole expense of Licensee, or disconnect the same at points where it enters and leaves the said premises.

ARTICLE 7: The Licensee shall not transfer or assign this license without the written consent of Railway. The said license shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

In WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first herein written.

ATTEST:

Secretary.

PORT WORTH AND DENVER RAILWAY COMPANY.

By _____
First To Its President
Plains Cooperative Oil Mill
Licensee.

ATTEST:

APPROVED AS TO FORM:

By _____
Its

Attorney.

Recommended:

Chief Eng'r.

General Superintendent

Supt. Communications & Signals

FAX 3572 04 : 316601000

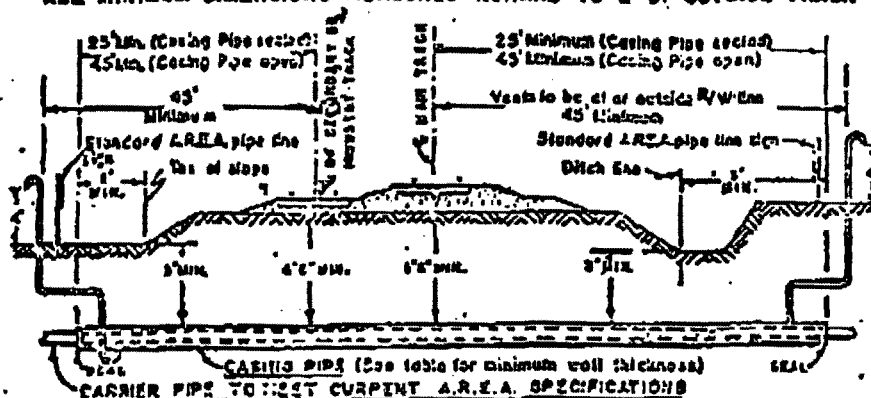
4-21-71

This includes oil, gas, cellulose, petroleum products, or other flammable or highly volatile substances under pressure.

APPROVED GAS/NG PIPE

Steel or Cast Iron for all pressure.

ALL MINIMUM DIMENSIONS MEASURED NORMAL TO C OF OUTSIDE TRACK



bands diameter at every pipe shall exceed outside diameter of carrier pipe by 2" for carrier pipe less than 8" diameter, 3 1/4" for 8" to 10" carrier pipe and 4 1/2" for carrier pipe greater than 10" diameter.

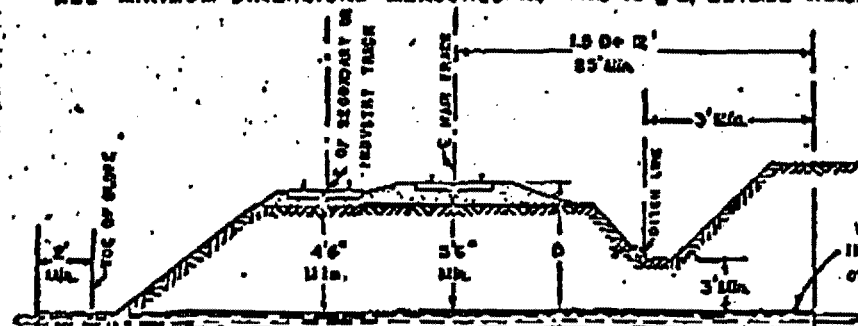
This includes electric water or any non-flammable substances which from its nature or pressure might cause damage if escaping on or in the vicinity of railway property. Benares and Cuttack do not require casting pipe unless conditions exist which will endanger security of track, but slings be of sufficient strength to withstand 8-72 railway loading.

APPROVED CASINO PIPE:

Steel or Cast Iron for all pressures.

Reinforced Concrete or Corrugated Metal for pressures less than 100 P.S.I.

ALL MINIMUM DIMENSIONS MEASURED NORMAL TO ϕ OF OUTSIDE TRACK



100-11000-1000 (See 1000 for summary and instructions)

Where the ends of the casing are at or above ground surface and above high water level they may be left open, provided drainage is afforded in such manner that leakage will be conducted away from railway tracks or structures.

~~CARRIER AIRCRAFT TO TEST CURRENT ALC SPECIFICATIONS~~

Inside diameter of casing pipe shall exceed outside diameter of carrier pipe, joints or couplings by 2" for carrier pipe less than 4" in diameter and 4" for carrier pipe 4" in diameter and larger.

WALL THICKNESS FOR STEEL JOINT PIPE
(MINIMUM YIELD STRENGTH 33,000 P.S.I.)

PIPE COATED & CATHODICALLY PROTECTED MIN THICKNESS INCHES	PIPE NOT COATED OR CATHODICALLY PROTECTED MAX THICKNESS INCHES	DIAMETER & PIPE INCHES
0.100	0.180	UNDER 14
0.210	0.282	14 AND 16
0.260	0.312	18
0.281	0.344	20
0.312	0.373	22
0.344	0.406	24
0.373	0.438	26
0.406	0.468	28 AND 30
0.438	0.500	32
0.468	0.531	34 AND 36
0.500	0.563	36, 40 AND 42

CAST IRON PIPE:

Installations must be by open trench. Pipe shall conform to American Standards Ass'n. Specification A21 class 150 for 12" and under and class 250 for over 12". Pipe to have mechanical joints or compression couplings.

REINFORCED CONCRETE PIERS:

Pipe shall conform to current A.S.T.M. C-76
type IV/wall "B".

CORRUGATED METAL PIPES

Pipe shall be galvanized, asbestos bonded and asphalt coated.

Age of Mast before galvanizing U.S.Navy age	Diameter of pipe (inches)
14	18 and under
12	24, 30 and 36
10	42 and 48

Where the ends of the casing are below ground they shall be suitably protected against the entrance of foreign material but shall not be tightly sealed.

Recommended:

Approved:

B. A. Anderson
Assistant Vice President-Engineering

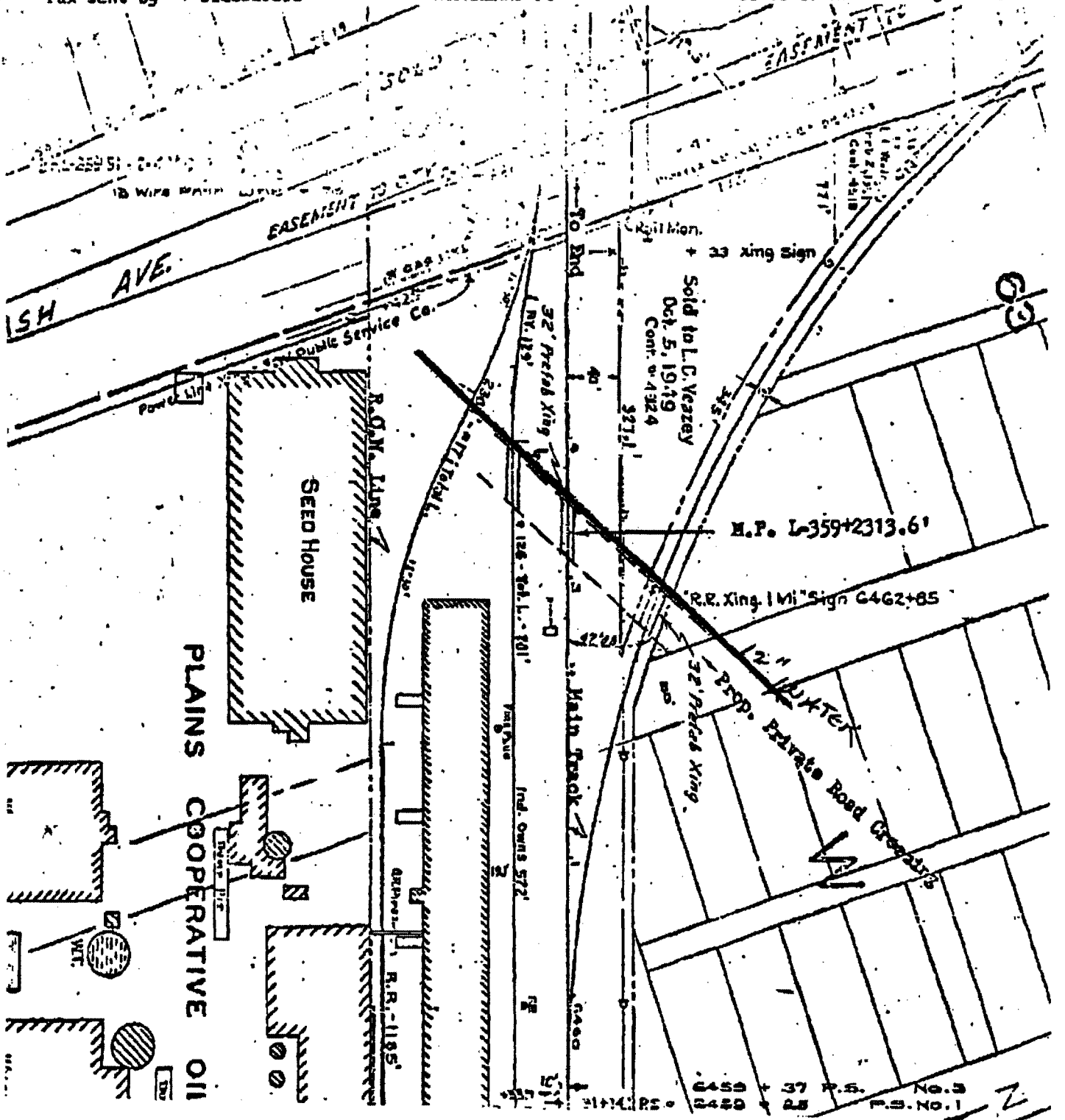
LEHman
Vice President-Operations

Office of Assistant Vice President-Engineering
St. Paul, Minnesota
April 21, 1971

PLAN No. 105999-D

Fax sent by : 3122019675

RECEIVED



Fax sent by : 3122819695

MCFARLAND PC

00:00:00 10:30

PX 91-12025
12025

Page 1 of 4

PIPELINE PERMIT

No. PX91-12025



COPY

THIS AGREEMENT, made this 25th day of April, 19 91, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", and Plains Cooperative Oil Mill, hereinafter called "Permittee", whose address is 2901 Avenue A Lubbock Texas 79408

WITNESSETH:

Burlington, for and in consideration of the fee herein provided to be paid by Permittee to Burlington, and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission to excavate for, construct, maintain, and operate

Overhead Conveyor Structure

hereinafter referred to as "Facility" upon, along or across the right-of-way of Burlington, underneath the surface thereof, and under the tracks of Burlington, as the case may be, at or near Lubbock Station, in the County of Lubbock, State of Texas, to be located as follows, to wit:

MP 359.0

as shown in Red on the plat attached hereto, marked Exhibit "A", dated March 6 1991, and by this reference made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. For this Permit, Permittee will pay Burlington, in advance, the sum of Four Hundred Fifty Dollars (\$450) for the entire time this Permit remains in effect and Permittee will also pay or reimburse Burlington for all taxes and assessments that may be levied or assessed against said Facility. Burlington reserves the right to change the fee on future Permits at any time without notice. This provision shall in no way affect Burlington's right to terminate said Permit pursuant to Paragraph 10 hereof.

Page 2 of 4

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair said Facility placing same in accordance with the specifications provided in application dated February 4 1991, heretofore approved by Burlington. Permittee shall fill in the excavation and restore the surface of the ground upon which the Facility is located to its previous condition subject to the Division Superintendent's approval. Said Superintendent shall have the right at any time when in his/her judgment it becomes necessary or advisable to require any material used in the work to be replaced with like material or with material of a more permanent character, also to require additional work or change of location of said Facility as a matter of safety and/or appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of Burlington's railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the Division Superintendent at least two (2) days advance notice of any work to be done by Permittee in the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of said Facility, and shall conduct said work in such a manner as not to interfere with the maintenance and operation of Burlington's railroad.

4. In the event that Burlington, at the request of Permittee, agent, or contractor of Permittee, or for the protection of Burlington property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, reconstruction, maintenance, repair, change of location, removal of the Facility, or otherwise, Permittee shall reimburse Burlington for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of the Facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track, or other railroad facilities by work or flagging, engineering, and/or supervision, such work is to be performed by Burlington employees and the cost borne by Permittee.

5. (a) Fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in this Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

6. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the Facility which, in the opinion of Burlington, interferes with train signals in any way, telephone or telegraph lines, or other facilities of Burlington, Permittee, upon being informed by Burlington of such interference, shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Burlington from and against any damages, claims, losses, suits, or expenses in any manner arising from or growing out of interference with the signals, telephone, or telegraph lines of Burlington by the operation, use, or existence of any such grounding system.

7. Permittee shall and hereby releases and discharges Burlington of and from any and all liability for damage to or destruction of said Facility, and any other property of Permittee located on or near Burlington's premises, and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees, and agents of the parties hereto, and loss of or damage to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the parties hereto, in any manner arising from or during the excavation for, construction, reconstruction, use, maintenance, repair, or removal of said Facility, however such injury, death, loss, damage, or destruction aforesaid may occur or be caused, and shall and hereby does indemnify and save harmless Burlington of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with any such injury, death, loss, damage, or destruction aforesaid. Permittee further agrees to appear and defend in the name of Burlington any suits or actions at law brought against Burlington on account of any such personal injuries or death, and loss and damage to or destruction of property, and to pay and satisfy any final judgment that may be rendered against Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

8. Permittee shall not transfer or assign this permit without the written consent of Burlington.

9. Nothing herein contained shall imply or import a covenant on the part of Burlington for quiet enjoyment.

10. It is expressly understood and agreed that Burlington may at any time cancel and terminate this license and permission by giving to Permittee thirty (30) days written notice of its intention to cancel the same and at the expiration of such notice this license and permission shall terminate. Upon receipt of such notice and before the expiration thereof, Permittee, under the supervision and direction of Burlington's Division Superintendent, or his authorized representative, shall remove said Facility from the right-of-way of Burlington and restore the right-of-way and premises of Burlington in a manner and to such condition as shall be satisfactory to said Superintendent. If Permittee fails to remove the Facility and restore said right-of-way to such condition within said thirty (30) day period, Burlington at its option may remove same and restore said right-of-way to its previous condition, and Permittee shall pay to Burlington the cost and expense thereof.

11. Upon any failure of Permittee to punctually and strictly observe and perform the covenants and promises made herein by Permittee to be kept and performed, Burlington may terminate this agreement on ten (10) days notice to Permittee, remove said Facility, and restore said right-of-way to its previous condition at the cost and expense of Permittee.

12. Any notices given under the provisions of this agreement shall be good if properly deposited with the United States Postal Service addressed to Permittee at Permittee's post office address above stated.

Page 4 of 4

13. The license and permission herein granted is subject to permits, leases, and licenses, if any, heretofore granted by Burlington affecting the premises upon which said Facility is located.

Subject to the foregoing provisions, this Agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, Burlington and Permittee have executed this agreement in duplicate as of the day and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By

D. M. Tate

Title

Division EngineerPLAINS Cooperative Oil Mill
(Permitted)

By

Trine Kung

Title

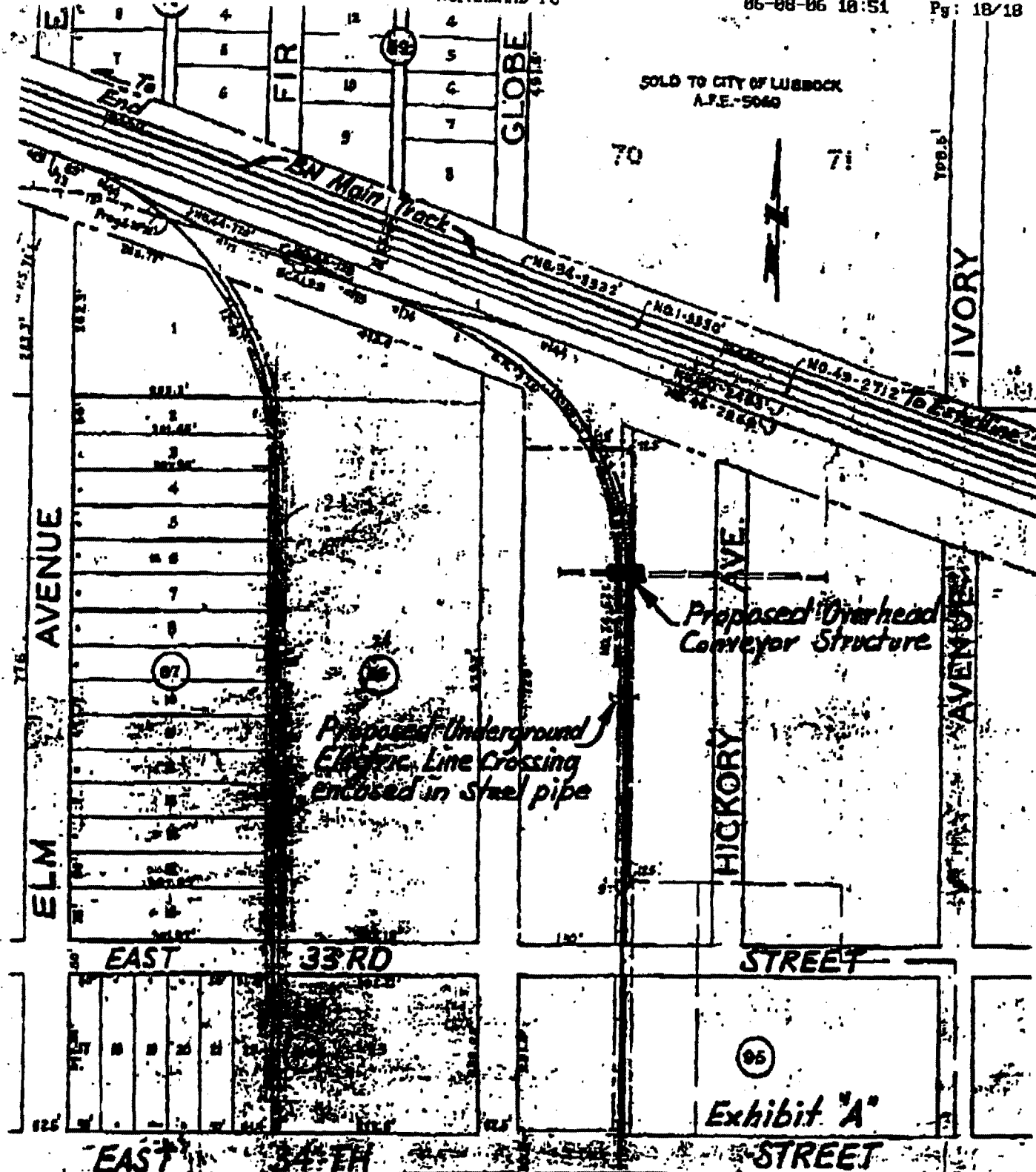
So. V.P.Diana L. Belmont
(Witness)Mary Reese
(Witness)

Fax sent by : 3122019695

McFARLAND PC

06-08-06 18:51

Page 18/18



REVISION

BURLINGTON NORTHERN RAILROAD COMPANY

FORT WORTH DIVISION

PRINT SHOWING

**Plains Cooperative Oil Mill
Proposed Overhead Conveyor Structure**

LINE SEGMENT - 487

M.P. 359.0

Lubbock, Lubbock County, Texas

SCALE: 1" = 200'

DATE: March 6, 1991

SECOND FAX
13 PAGES

Fax sent by : 3122019695

MCFARLAND PC

06-08-06 10:52 Pg: 1/13

PX 91-12021

Page 1 of 4

PIPELINE PERMIT

No. PX91-12021



COPY

THIS AGREEMENT, made this 25th day of April, 19 91, between
BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", and
Plains Cooperative Oil Mill, hereinafter called "Permittee", whose address is
2901 Avenue A Lubbock Texas 79408

WITNESSETH:

Burlington, for and in consideration of the fee herein provided to be paid by Permittee to Burlington,
and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby
grant to Permittee license and permission to excavate for, construct, maintain, and operate

Underground Electric Line

hereinafter referred to as "Facility" upon, along or across the right-of-way of Burlington, underneath the
surface thereof, and under the tracks of Burlington, as the case may be, at or near Lubbock
Station, in the County of Lubbock, State of Texas, to be located as follows, to wit:

MP 359.0

as shown In Red on the plat attached hereto, marked
Exhibit "A", dated March 6 1991, and by this reference made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. For this Permit, Permittee will pay Burlington, in advance, the sum of Four Hundred Fifty Dollars (\$450) for the entire time this Permit remains in effect and Permittee will also pay or reimburse Burlington for all taxes and assessments that may be levied or assessed against said Facility. Burlington reserves the right to change the fee on future Permits at any time without notice. This provision shall in no way affect Burlington's right to terminate said Permit pursuant to Paragraph 10 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair said Facility placing same in accordance with the specifications provided in application dated February 4 1991 heretofore approved by Burlington. Permittee shall fill in the excavation and restore the surface of the ground upon which the Facility is located to its previous condition subject to the Division Superintendent's approval. Said Superintendent shall have the right at any time when in his/her judgment it becomes necessary or advisable to require any material used in the work to be replaced with like material or with material of a more permanent character, also to require additional work or change of location of said Facility as a matter of safety and/or appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of Burlington's railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the Division Superintendent at least two (2) days advance notice of any work to be done by Permittee in the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of said Facility, and shall conduct said work in such a manner as not to interfere with the maintenance and operation of Burlington's railroad.

4. In the event that Burlington, at the request of Permittee, agent, or contractor of Permittee, or for the protection of Burlington property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, reconstruction, maintenance, repair, change of location, removal of the Facility, or otherwise, Permittee shall reimburse Burlington for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of the Facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track, or other railroad facilities by work or flagging, engineering, and/or supervision, such work is to be performed by Burlington employees and the cost borne by Permittee.

5. (a) Fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in this Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

6. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the Facility which, in the opinion of Burlington, interferes with train signals in any way, telephone or telegraph lines, or other facilities of Burlington, Permittee, upon being informed by Burlington of such interference, shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Burlington from and against any damages, claims, losses, suits, or expenses in any manner arising from or growing out of interference with the signals, telephone, or telegraph lines of Burlington by the operation, use, or existence of any such grounding system.

7. Permittee shall and hereby releases and discharges Burlington of and from any and all liability for damage to or destruction of said Facility, and any other property of Permittee located on or near Burlington's premises, and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees, and agents of the parties hereto, and loss of or damage to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the parties hereto, in any manner arising from or during the excavation for, construction, reconstruction, use, maintenance, repair, or removal of said Facility, however such injury, death, loss, damage, or destruction aforesaid may occur or be caused, and shall and hereby does indemnify and save harmless Burlington of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with any such injury, death, loss, damage, or destruction aforesaid. Permittee further agrees to appear and defend in the name of Burlington any suits or actions at law brought against Burlington on account of any such personal injuries or death, and loss and damage to or destruction of property, and to pay and satisfy any final judgment that may be rendered against Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

8. Permittee shall not transfer or assign this permit without the written consent of Burlington.

9. Nothing herein contained shall imply or import a covenant on the part of Burlington for quiet enjoyment.

10. It is expressly understood and agreed that Burlington may at any time cancel and terminate this license and permission by giving to Permittee thirty (30) days written notice of its intention to cancel the same and at the expiration of such notice this license and permission shall terminate. Upon receipt of such notice and before the expiration thereof, Permittee, under the supervision and direction of Burlington's Division Superintendent, or his authorized representative, shall remove said Facility from the right-of-way of Burlington and restore the right-of-way and premises of Burlington in a manner and to such condition as shall be satisfactory to said Superintendent. If Permittee fails to remove the Facility and restore said right-of-way to such condition within said thirty (30) day period, Burlington at its option may remove same and restore said right-of-way to its previous condition, and Permittee shall pay to Burlington the cost and expense thereof.

11. Upon any failure of Permittee to punctually and strictly observe and perform the covenants and promises made herein by Permittee to be kept and performed, Burlington may terminate this agreement on ten (10) days notice to Permittee, remove said Facility, and restore said right-of-way to its previous condition at the cost and expense of Permittee.

12. Any notices given under the provisions of this agreement shall be good if properly deposited with the United States Postal Service addressed to Permittee at Permittee's post office address above stated.

MCFARLAND PC

06-08-06 10:53

Pg: 4/13

Page 4 of 4

13. The license and permission herein granted is subject to permits, leases, and licenses, if any, heretofore granted by Burlington affecting the premises upon which said Facility is located.

Subject to the foregoing provisions, this Agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, Burlington and Permittee have executed this agreement in duplicate as of the day and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By

D.M. Tate

Title

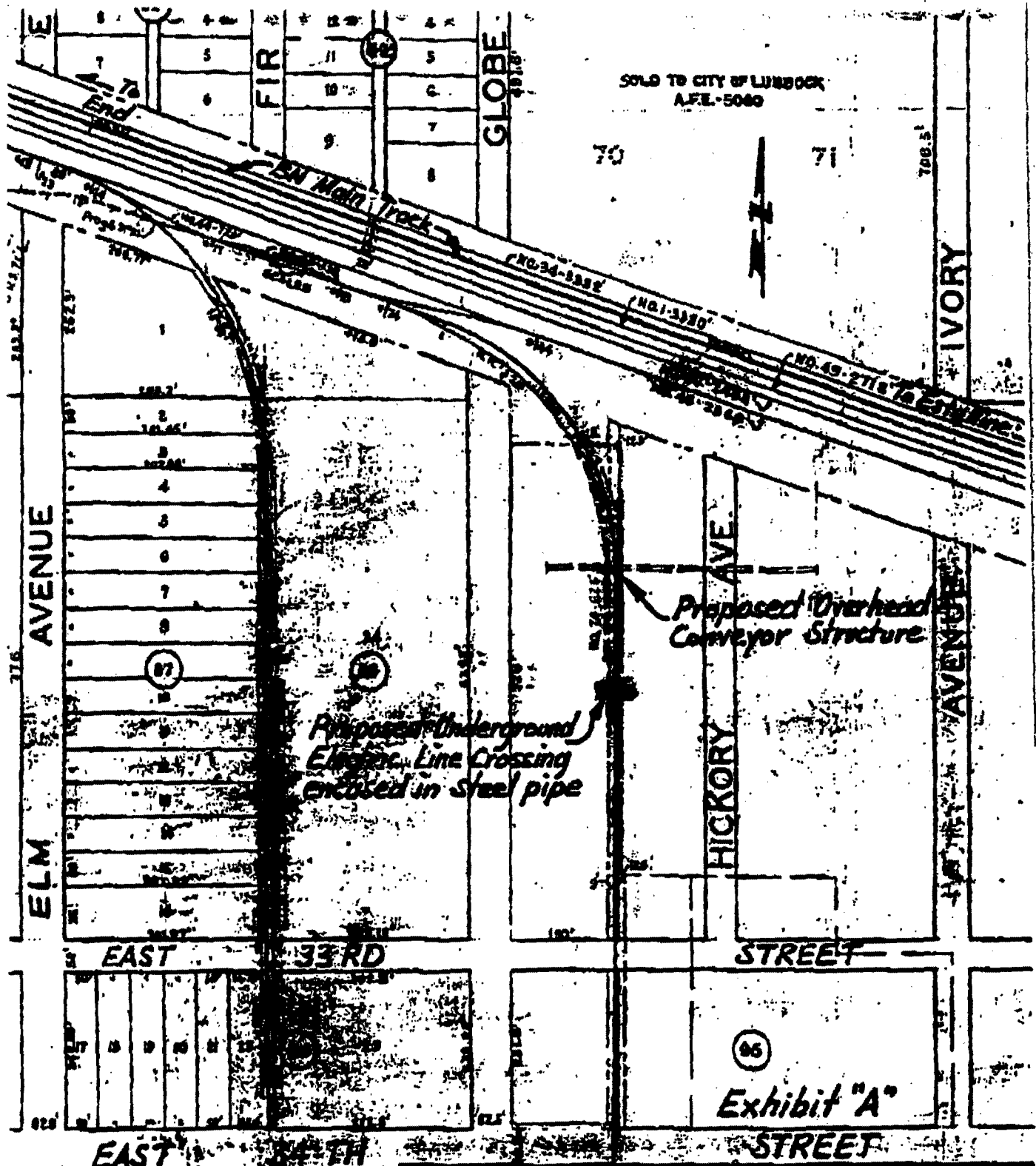
Division EngineerPLAINS COOPERATIVE OIL MILL
(Permittee)

By

Paul Krueger

Title

Sa.V.P.James L. Brown
(Witness)
Mary L. Brown
(Witness)



REVISION

BURLINGTON NORTHERN RAILROAD COMPANY

FORT WORTH DIVISION

PRINT SHOWING

**Plains Cooperative Oil Mill
Proposed Underground Electric Line**

LINE SEGMENT 487

M.P. 359.0

Lubbock, Lubbock County, Texas

SCALE: 1" = 200'

DATE: March 6, 1991

McKAYLAND PC

06-08-06 10:54 Pg: 6/13

RAILWAY COMPANY "EDITOR'S LEASE NO. 4536

Sheet 1 of 3

Form 2761

COPY LEASEThis Indenture, Made this 13 day of January, 1976between the **PORT WORTH AND DENVER RAILWAY COMPANY**, hereinafter called the Railway Company, andPLAINS COOPERATIVE OIL MILL

hereinafter called the Lessee; Witnesseth,

1. That in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the Lessee, the Railway Company hereby leases to said Lessee certain premises situate
at Lubbock in the County of Lubbock and State of Texas which

said premises are described, and the location thereof shown in red S.P. 22-1098/312-5 hereto attached, and made a part hereof, reserving to the Railway Company, its successors, and assigns the right to maintain and operate all railroad tracks, now on said premises, and the further right to construct, maintain and operate other railroad tracks upon and over said premises where the same shall not interfere with the structures of the Lessee. The Railway Company also hereby reserves unto itself, its successors, assigns, and licensees the right to operate, maintain, and renew such pipe lines, electric transmission lines, telephone lines, telegraph lines, signal lines, and other facilities of like character as may exist upon, under, or over said premises as of the date of this lease, and from time to time to construct, operate, maintain, and renew such additional facilities of the same character, or relocate existing facilities, in such manner as will not interfere with the use of said premises by Lessee for the purposes hereinafter specified, it being agreed that this lease is subject and subordinate to any and all rights granted by the Railway Company for any such lines and facilities, and the Lessee hereby releases the Railway Company from any and all loss or damage which the Lessee may sustain on account thereof.

2. TO HAVE AND TO HOLD the same from January 1, 1976, and thereafter
until such time as this lease shall be terminated as hereinafter provided; and the Lessee in consideration of the leasing of the premises as above set forth, covenants and agrees to pay to the Railway Company as rent for the same the sum of ONE HUNDRED TWENTY-FIVE AND NO/100 Dollars (\$ 125.00)

per ANNUUM payable as follows: annually, in advance

The rent for said premises shall be subject to revision at least once every two (2) years during the time this lease shall continue in effect.

3. It is further agreed that the premises hereby leased are to be used by the Lessee for building encroachment,
drainage, ditch and fence

only; that all the provisions of law applicable to such use shall be fully observed, and that the Lessee will not do or permit to be done, upon said premises, anything forbidden by law, and will maintain and keep said premises, fences, buildings and appurtenances in good repair as well as keep all catch basins and vaults thereon and the streets and sidewalks adjoining such premises in proper condition and as may be required by any law, ordinance or direction of public officials, and whenever required by said Railway Company so to do, will cover all buildings with at least one coat of mineral paint of such color as the Railway Company may direct.

4. All buildings, structures, facilities, fences, and objects of every kind and character constructed, maintained, repaired, extended, or reconstructed on the premises shall have both side and vertical clearances of the track or tracks as those established by the Railroad Commission of Texas, and Lessee hereby promises and agrees to observe such clearances at all times.

5. The Lessee also covenants and agrees to pay all state, county, and municipal taxes or special assessments that may be levied upon the improvements and property owned by the Lessee on or about the demised premises during the continuance of this lease. And in case any taxes are levied on the premises as a whole, the Lessee shall pay such proportion of the same as the value of any improvements or property owned by the Lessee on or about said premises bears to the value

of the entire premises. In the event that the premises hereby demised, or any part thereof, shall be subjected to any special assessment for any public improvement or improvements, the rental herein reserved and stipulated to be paid by the Lessee shall be automatically increased by an amount equal to 6% per annum on the total amount of assessment; and in case any such special assessment is levied as a whole upon premises of which the premises hereby demised are only a part, then and in such case the rental herein reserved and stipulated to be paid by the Lessee shall be automatically increased by an amount equal to 6% of that portion of the total amount of such assessment as the value of the premises hereby demised bears to the total value of the premises upon which such special assessment is levied.

6. It is further agreed that either party may terminate this lease at any time ~~XXXX~~ upon giving the other party thirty (30) days' written notice of such termination; provided, however, that rent shall be paid by said Lessee to the date of termination fixed by said notice; and if rent has been paid in advance, the proportionate amount for the unexpired term shall be returned to the Lessee.

7. If under the laws of the United States or any state in which these premises are located, public body or tribunal now has, or during the term of this lease shall have, the right to require the termination of this lease, then this lease may be terminated by such public body or tribunal in accordance with law.

8. And the Lessee further agrees to cause, during the continuance of this lease, the policies of fire insurance on the structures of Lessee and the contents thereof whether the property of the Lessee or of others upon or about the demised premises and upon other property of Lessee upon or about the demised premises or there located with the consent of Lessee to be so written that in the event of any destruction or damage by fire, no insurance company shall have recourse against the Railway Company.

9. Upon the termination of this lease, by notice as aforesaid, or otherwise, the Lessee shall at once remove from the premises all structures and property not belonging to the Railway Company and restore the demised premises to substantially their former state, and in case of failure so to do the Railway Company may tear down or remove the same and restore said premises at the expense of the Lessee without any liability to damages therefor in any respect whatsoever.

10. It is understood that the movement of railroad locomotives and equipment and the operation of the Railway Company's railroad involves some risk of fire, and the Lessee hereby assumes all responsibility for, and agrees to indemnify the Railway Company against, loss or damage to property of the Lessee or to property of others upon said premises, regardless of railroad negligence, arising from fire caused by the operation of locomotives or railroad equipment, or the railroad, on or in the vicinity of said premises; but this assumption and indemnity shall not apply to property of the Railway Company, or to rolling stock of the Railway Company or others, or to shipments in the course of transportation. The Lessee also agrees to indemnify and hold harmless the Railway Company against all liability, claims, or loss because of damage to or destruction of property of, or injury to or death of, all persons whomsoever, including the parties hereto and their employees, while on or in the vicinity of said premises, when caused by any act or omission of the Lessee, its employees, or agents, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

11. In the event any part of said premises is used for the loading, unloading, storage, or other handling of any inflammable liquids or petroleum products, Lessee shall observe and comply with all applicable rules published from time to time by the Association of American Railroads or any successor agency relating thereto, and with all applicable laws and regulations of State and local governments regulating loading, unloading, storage and handling of inflammable liquids and the bonding and grounding of railway tracks where such loading or unloading is performed, which laws, rules and regulations are hereby made a part hereof as fully as if written out herein. Lessee also agrees that such loading and unloading shall be done only through dome openings on cars, and that the rails on which the cars stand shall be bonded and grounded to the piping system used in connection with such loading or unloading, and insulated rail joints installed where there is evidence of stray electric currents, all at the expense of Lessee, and in a manner satisfactory to the Railway Company. Lessee agrees to indemnify the Railway Company against all loss or claims arising out of or resulting from failure of Lessee to observe and comply with the provisions of any of said laws, rules or regulations, or the requirements of this paragraph.

12. The Lessee agrees that artificial lighting in pump houses, warehouses, or other enclosures where oil or other inflammable fluid supplies are handled or stored, except when in unbroken original containers, shall be by electricity, and all electrical installations on said premises shall conform to and be maintained in accordance with the provisions of the current edition of the National Electrical Code with respect to Class I hazardous locations, and also in accordance with requirements of all applicable local ordinances and State and Federal laws regulating electrical installations.

13. The Lessee accepts said premises, fences and buildings and appurtenances in their existing state without any warranty, express or implied, of their present or future fit, safe or habitable condition, and the Railway Company shall be under no obligation to repair or support the same or perform any duty in respect to the same imposed by common or statutory law or public authority.

14. Upon the failure of the Lessee to promptly pay the rent herein reserved as and when the same shall become due and payable, or to faithfully perform any of the other covenants and agreements herein stipulated to be by said Lessee observed, the Railway Company may without demand or notice immediately or at any time thereafter enter into and upon said premises and repossess the same as of its former estate and expel the Lessee and those claiming under him and remove their effects (forcibly if necessary) without being guilty of trespass or subject to liability for damages and without prejudice to any other remedies then existing in favor of the Railway Company.

15. The Railway Company shall in addition have a lien for the rent herein reserved, for the entire term of this lease, upon all crops grown, improvements made, and personal property, including household goods exempt from execution, of the said Lessee used or brought upon the said demised premises during the continuance of this lease.

Sheet 3 of 3

16. This lease shall not be assigned, nor shall said premises, nor any part thereof, be sublet, nor shall the Lessee consent that the same be used or occupied by any party other than the Lessee, without the prior written consent of the Railway Company. If any of the foregoing conditions are violated, all of the provisions of this lease shall be binding upon such assignee, sublessee, user, or occupant, and the Lessee hereby guarantees the performance of all such provisions by any such assignee, sublessee, user, or occupant. Nothing in the last above sentence shall be deemed to be a waiver by the Railway Company of the restrictions set forth in the first sentence of this paragraph. The provisions of this paragraph constitute a part of the consideration without which this lease would not have been made, and said provisions, and each of them, shall run with the land hereby leased.

17. The Lessee will, at his own expense, correct at the direction of the Railway Company any drainage problems occasioned by construction on said premises of any additional buildings or facilities.

18. Any notice to be given under this lease shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to the Lessee at P. O. Box 1889, Lubbock, Texas, 79408, or to Fort Worth and Denver Railway Company, Fort Worth Club Building, Fort Worth, Texas 76101.

19. Lessee shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any Governmental authority promulgated thereunder controlling environmental standards and conditions on the premises. If, as a result of the Lessee's occupancy of the premises and its operations hereunder, any such law, ordinance, rule, regulation or requirement is violated, Lessee shall protect, save harmless, defend and indemnify Lessor from and against any penalties, fines, costs and expenses, including legal fees and Court costs incurred by Lessor, caused by, resulting from or connected with such violation or violations.

20. It is hereby understood and agreed that Lessee will observe fourteen (14) foot clearance from centerline of nearest Railway Company track in the construction of fence, as indicated on print attached hereto.

21. It is hereby understood and agreed that this Lease cancels and supersedes Lease No. 3661, dated August 23, 1961.

IN WITNESS WHEREOF the parties have executed this instrument the day and year first above written.

Attest:

FORT WORTH AND DENVER RAILWAY COMPANY

H. L. Krueger
Secretary.

By

W. B. Smith
Its Manager, Industrial Development
and Real Estate
PLAINS COOPERATIVE OIL MILL

XXXXXX

Attest:

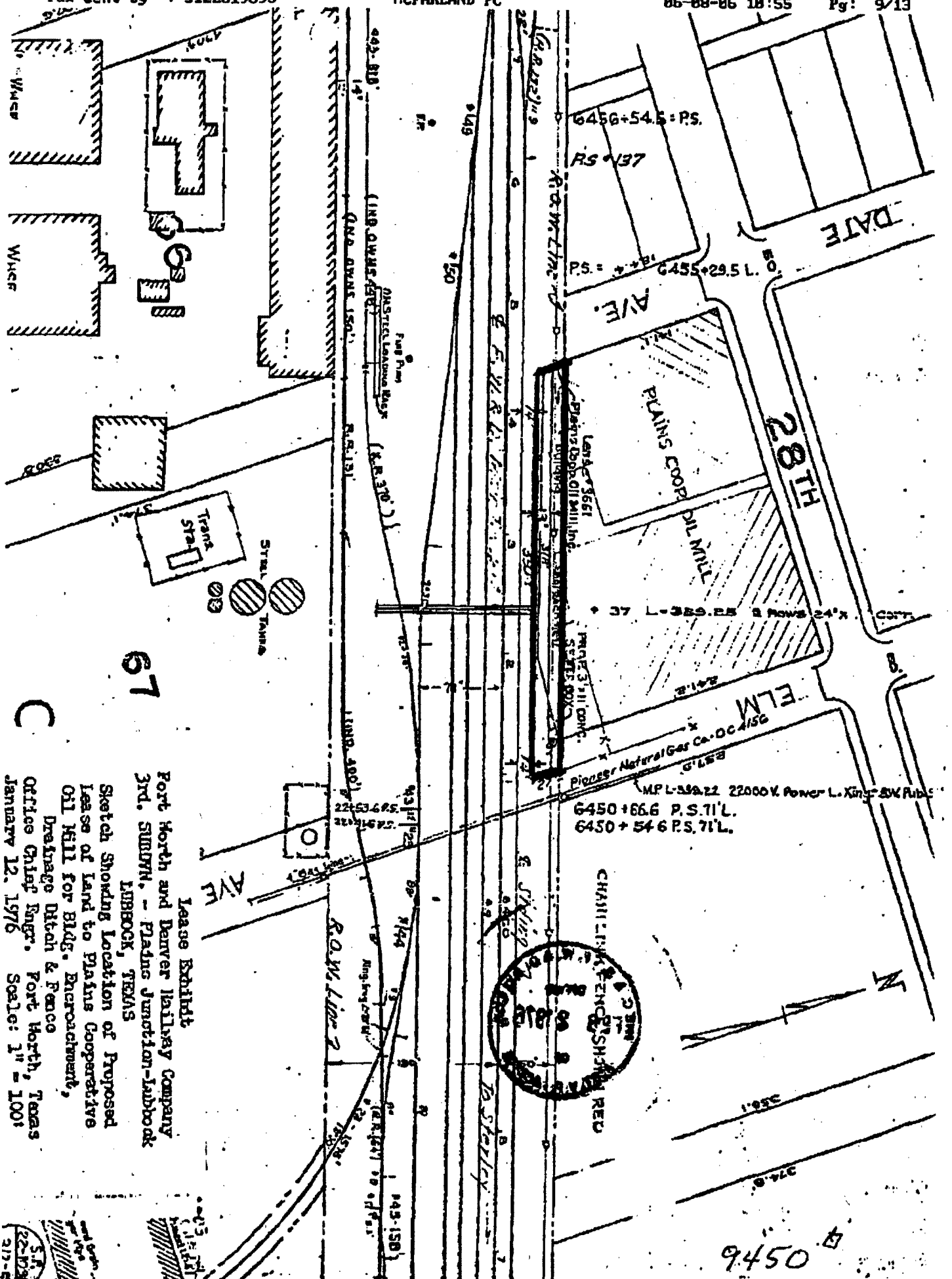
L. H. H. H. H.
Assistant Secretary

X By Wayne Martin
Its President

Approved as to form:

W. B. Smith
Attorney for Railway Company

Recommended:



RAI; Y COMPANY AUDITOR'S LEASE NO. 4. /

Sheet 1 of 3

COPY

Form 2761

LEASEThis Indenture, Made this 13th day of February, 1979between the FORT WORTH AND DENVER RAILWAY COMPANY, hereinafter called the Railway Company, and
PLAINS COOP OIL MILL, INC.

hereinafter called the Lessee; Witnesseth,

1. That in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the Lessee, the Railway Company hereby leases to said Lessee certain premises situate at Lubbock in the County of Lubbock and State of Texas which

said premises are described, and the location thereof shown in red outline, on the print No. S.P. 22-1155/313-1 hereto attached, and made a part hereof, reserving to the Railway Company, its successors, and assigns the right to maintain and operate all railroad tracks, now on said premises, and the further right to construct, maintain and operate other railroad tracks upon and over said premises where the same shall not interfere with the structures of the Lessee. The Railway Company also hereby reserves unto itself, its successors, assigns, and licensees the right to operate, maintain, and renew such pipe lines, electric transmission lines, telephone lines, telegraph lines, signal lines, and other facilities of like character as may exist upon, under, or over said premises as of the date of this lease, and from time to time to construct, operate, maintain, and renew such additional facilities of the same character, or relocate existing facilities, in such manner as will not interfere with the use of said premises by Lessee for the purpose hereinafter specified, it being agreed that this lease is subject and subordinate to any and all rights granted by the Railway Company for any such lines and facilities, and the Lessee hereby releases the Railway Company from any and all loss or damage which the Lessee may sustain on account thereof.

2. TO HAVE AND TO HOLD the same from March 1, 1979, and thereafter until such time as this lease shall be terminated as hereinafter provided; and the Lessee in consideration of the leasing of the premises as above set forth, covenants and agrees to pay to the Railway Company as rent for the same the sum of ONE HUNDRED FIFTY \$ Dollars (\$ 150.00)

per Annun, payable as follows: annually, in advance

The rent for said premises shall be subject to revision at least once every two (2) years during the time this lease shall continue in effect.

3. It is further agreed that the premises hereby leased are to be used by the Lessee for
- construction of concrete road -

only; that all the provisions of law applicable to such use shall be fully observed, and that the Lessee will not do or permit to be done, upon said premises, anything forbidden by law, and will maintain and keep said premises, fences, buildings and appurtenances in good repair as well as keep all catch basins and vaults thereon and the streets and sidewalks adjoining such premises in proper condition and as may be required by any law, ordinance or direction of public officials, and whenever required by said Railway Company so to do, will cover all buildings with at least one coat of mineral paint of such color as the Railway Company may direct.

4. All buildings, structures, facilities, fences, and objects of every kind and character constructed, maintained, repaired, extended, or reconstructed on the premises shall have both side and vertical clearances of the track or tracks as those established by the Railroad Commission of Texas, and Lessee hereby promises and agrees to observe such clearances at all times.

5. The Lessee also covenants and agrees to pay all state, county, and municipal taxes or special assessments that may be levied upon the improvements and property owned by the Lessee on or about the demised premises during the continuance of this lease. And in case any taxes are levied on the premises as a whole, the Lessee shall pay such proportion of the same as the value of any improvements or property owned by the Lessee on or about said premises bears to the value

of the entire premises. In the event that the premises hereby demised, or any part thereof, shall be subjected to any special assessment for any public improvement or improvements, the rental herein reserved and stipulated to be paid by the Lessee shall be automatically increased by an amount equal to 6% per annum on the total amount of assessment; and in case any such special assessment is levied as a whole upon premises of which the premises herein demised are only a part, then and in such case the rental herein reserved and stipulated to be paid by the Lessee shall be automatically increased by an amount equal to 6% of that portion of the total amount of such assessment as the value of the premises herein demised bears to the total value of the premises upon which such special assessment is levied.

6. It is further agreed that either party may terminate this lease at any time ~~after~~ upon giving the other party thirty (30) days' written notice of such termination; provided, however, that rent shall be paid by said Lessee to the date of termination fixed by said notice; and if rent has been paid in advance, the proportionate amount for the unexpired term shall be returned to the Lessee.

7. If under the laws of the United States or any state in which these premises are located, public body or tribunal now has, or during the term of this lease shall have, the right to require the termination of this lease, then this lease may be terminated by such public body or tribunal in accordance with law.

8. And the Lessee further agrees to cause, during the continuance of this lease, the policies of fire insurance on the structures of Lessee and the contents thereof whether the property of the Lessee or of others upon or about the demised premises and upon other property of Lessee upon or about the demised premises or there located with the consent of Lessee to be so written that in the event of any destruction or damage by fire, no insurance company shall have recourse against the Railway Company.

9. Upon the termination of this lease, by notice as aforesaid, or otherwise, the Lessee shall at once remove from the premises all structures and property not belonging to the Railway Company and restore the demised premises to substantially their former state, and in case of failure so to do the Railway Company may tear down or remove the same and restore said premises at the expense of the Lessee without any liability to damages therefor in any respect whatsoever.

10. It is understood that the movement of railroad locomotives and equipment and the operation of the Railway Company's railroad involves some risk of fire, and the Lessee hereby assumes all responsibility for, and agrees to indemnify the Railway Company against, loss or damage to property of the Lessee or to property of others upon said premises, regardless of railroad negligence, arising from fire caused by the operation of locomotives or railroad equipment, or the railroad, on or in the vicinity of said premises; but this assumption and indemnity shall not apply to property of the Railway Company, or to rolling stock of the Railway Company or others, or to shipments in the course of transportation. The Lessee also agrees to indemnify and hold harmless the Railway Company against all liability, claims, or loss because of damage to or destruction of property of, or injury to or death of, all persons whatsoever, including the parties hereto and their employees, while on or in the vicinity of said premises, when caused by any act or omission of the Lessee, its employees, or agents, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

11. In the event any part of said premises is used for the loading, unloading, storage, or other handling of any inflammable liquids or petroleum products, Lessee shall observe and comply with all applicable rules published from time to time by the Association of American Railroads or any successor agency relating thereto, and with all applicable laws and regulations of State and local governments regulating loading, unloading, storage and handling of inflammable liquids and the bonding and grounding of railway tracks where such loading or unloading is performed, which laws, rules and regulations are hereby made a part hereof as fully as if written out herein. Lessee also agrees that such loading and unloading shall be done only through dome openings on cars, and that the rails on which the cars stand shall be bonded and grounded to the piping system used in connection with such loading or unloading, and insulated rail joints installed where there is evidence of stray electric currents, all at the expense of Lessee, and in a manner satisfactory to the Railway Company. Lessee agrees to indemnify the Railway Company against all loss or claims arising out of or resulting from failure of Lessee to observe and comply with the provisions of any of said laws, rules or regulations, or the requirements of this paragraph.

12. The Lessee agrees that artificial lighting in pump houses, warehouses, or other enclosures where oil or other inflammable fluid supplies are handled or stored, except when in unbroken original containers, shall be by electricity, and all electrical installations on said premises shall conform to and be maintained in accordance with the provisions of the current edition of the National Electrical Code with respect to Class I hazardous locations, and also in accordance with requirements of all applicable local ordinances and State and Federal laws regulating electrical installations.

13. The Lessee accepts said premises, fences and buildings and appurtenances in their existing state without any warranty, express or implied, of their present or future fit, safe or habitable condition, and the Railway Company shall be under no obligation to repair or support the same or perform any duty in respect to the same imposed by common or statutory law or public authority.

14. Upon the failure of the Lessee to promptly pay the rent herein reserved as and when the same shall become due and payable, or to faithfully perform any of the other covenants and agreements herein stipulated to be by said Lessee observed, the Railway Company may without demand or notice immediately or at any time thereafter enter into and upon said premises and repossess the same as of its former estate and expel the Lessee and those claiming under him and remove their effects (forcibly if necessary) without being guilty of trespass or subject to liability for damages and without prejudice to any other remedies then existing in favor of the Railway Company.

15. The Railway Company shall in addition have a lien for the rent herein reserved, for the entire term of this lease, upon all crops grown, improvements made, and personal property, including household goods exempt from execution, of the said Lessee used or brought upon the said demised premises during the continuance of this lease.

Sheet 3 of 3

16. This lease shall not be assigned, nor shall said premises, nor any part thereof, be sublet, nor shall the Lessee consent that the same be used or occupied by any party other than the Lessee, without the prior written consent of the Railway Company. If any of the foregoing conditions are violated, all of the provisions of this lease shall be binding upon such assignee, sublessee, user, or occupant, and the Lessee hereby guarantees the performance of all such provisions by any such assignee, sublessee, user, or occupant. Nothing in the last above sentence shall be deemed to be a waiver by the Railway Company of the restrictions set forth in the first sentence of this paragraph. The provisions of this paragraph constitute a part of the consideration without which this lease would not have been made, and said provisions, and each of them, shall run with the land hereby leased.

17. The Lessee will, at his own expense, correct at the direction of the Railway Company any drainage problems occasioned by construction on said premises of any additional buildings or facilities.

18. Any notice to be given under this lease shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to the Lessee at P.O. Box 1889, Lubbock, Texas, 79408 or to Fort Worth and Denver Railway Company, Fort Worth Club Building, Fort Worth, Texas 76101.

19. Lessee shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any Governmental authority promulgated thereunder controlling environmental standards and conditions on the premises. If, as a result of the Lessee's occupancy of the premises and its operations hereunder, any such law, ordinance, rule, regulation or requirement is violated, Lessee shall protect, save harmless, defend and indemnify Lessor from and against any penalties, fines, costs and expenses, including legal fees and Court costs incurred by Lessor, caused by, resulting from or connected with such violation or violations.

20. This Agreement is performable in Tarrant County, Texas, and Lessor shall be entitled to recover its reasonable Attorney's fees in event of default hereunder.

IN WITNESS WHEREOF the parties have executed this instrument the day and year first above written.

Attest:

W. L. Kergitnick
Secretary.

FORT WORTH AND DENVER RAILWAY COMPANY

By

W. D. Smith
Its Manager, Industrial Development & Real Estate

Witness
Attest:

Edward D. Brubaker

PLAINS COOP OIL MILL, INC.

By

J. H. Rankin
Its President

Approved as to form:

S. D. [Signature]
Attorney for Railway Company

Recommended:

