

# C A T E L L U S



September 17, 1996

City of Arlington  
City Hall  
Arlington, WA 98223

RE: Lease #235,892      Location: Arlington, WA

Dear Lessee:

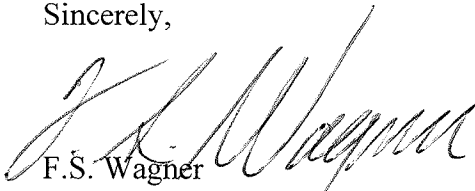
This is in regard to the rental established for the above captioned lease.

We are presently reviewing rentals on our system and have determined from current data that the rental should be \$500.00 per annum, payable annually in advance. This new rental will be effective November 1, 1996, and you will receive a statement with a return envelope shortly before then.

As a matter of clarification, quoting the rent for a specific period and payment in advance does not convert the lease to a definite term.

This letter is a supplement to your lease, which will remain in effect except as hereby amended.

Sincerely,

  
F.S. Wagner  
Area Property Manager  
(206) 625-6371



*CITY OF ARLINGTON*

July 18, 1996

Timothy Sharman  
Catellus Management Corporation  
2120 FIC Building  
999 Third Avenue  
Seattle, Wa 98104

Subject: Real Estate Purchase and Sale Agreement

Dear Mr. Sharman:

Please find enclosed the signed Real Estate Purchase and Sale Agreement and City of Arlington Check No. 11443 in the amount of \$ 67,000.

Please feel free to call me at 360-435-5785 if you have any questions or need additional information.

Sincerely,

CITY OF ARLINGTON

Kathy Peterson  
Finance Director

Encl.

11443

19-2/1250

July 18, 19 96

CITY OF ARLINGTON  
238 NORTH OLYMPIC  
ARLINGTON, WA 98223

PAY TO THE ORDER OF Burlington Northern Railroad

\$ 67,000.00

Sixty Seven Thousand and 00/100s----- DOLLARS

Security Features are available on back.

CITY OF ARLINGTON



Arlington Branch, 004408  
501 N. Olympic Ave.  
Arlington, WA 98223

TREASURER

*Kathy Peterson*

FOR

⑆011443⑆ ⑆125000024⑆ 35810 100⑆

# THE BURLINGTON NORTHERN RAILROAD COMPANY

## REAL ESTATE PURCHASE AND SALE AGREEMENT

Catellus Management Corporation  
2120 FIC Building  
999 Third Avenue  
Seattle, WA 98104

July 16, 1996

### **BUYER'S OFFER**

1. The undersigned, hereinafter called "Buyer", offers to purchase from [Burlington Northern Railroad Company], herein after called "Seller", all of Seller's right, title and interest in and to that parcel of land situated in or near the City of Arlington, County of Snohomish and State of Washington, shown hatched black on map marked Exhibit "A", dated 06-27-96, attached hereto and made a part hereof (said parcel of land being hereinafter called "the Property") at the price and upon the terms and conditions as follows.

### **PURCHASE PRICE AND PAYMENT**

2. Seller may approve or disapprove this Agreement for any reason whatsoever, in Seller's sole and absolute discretion, whether reasonable or unreasonable or whether arbitrary or capricious, subject to the approval of this Agreement by Seller, Buyer agrees to pay to Seller the purchase price of \$671,380.00 for Property, of which the amount of \$67,000.00 hereinafter called the "deposit", is paid to Seller, or Seller's assignee, to be applied on the purchase price. Said deposit shall be refunded to Buyer if this offer is not accepted by Seller within forty five (45) days from the date of said offer. The balance of said purchase price shall be paid in cash or by certified check to Seller or wire transfer to Seller's account as designated by Seller at the time Seller's deed to said property is delivered to Buyer. Notwithstanding anything set forth herein to the contrary, the balance of the purchase price shall be due ten (10) days from notice that Seller's deed is ready for delivery. Delivery of said deed shall be made at Seller's above stated office.

### **TAX-DEFERRED EXCHANGE**

3. Seller reserves the right to assign this Agreement to Apex Property & Track Exchange, Inc. ("Apex"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986,

as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Seller shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Buyer from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Buyer may incur as a result of Seller's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Buyer shall cooperate with Seller with respect to this tax-deferred exchange, and upon Seller's request, shall execute such documents as may be required to effect this tax-deferred exchange.

## **CONVEYANCE**

4. Seller shall convey or caused to be conveyed, all of Seller's right, title and interest in the premises, if any, to Buyer by Quitclaim Deed subject to the exceptions and reservations, whether or not of record and in accordance with the other terms conditions and reservations contained herein. Buyer shall, as soon as possible after acceptance of this offer, advise the Seller of Buyer's intent to have the premises surveyed. In the event the Seller's description of the premises used in the Deed and the use of an Exhibit map for reference in the Deed is not acceptable to the Buyer, the Buyer shall so advise the Seller of their objections of said description and within 15 days thereof, the Buyer shall, at their expense, arrange for a survey of the premises to be furnished to the Seller.

## **ACCEPTANCE CONSTITUTES AGREEMENT**

5. This offer of the Buyer to purchase the premises when duly accepted and signed by the Seller shall constitute the entire agreement between the parties for the sale and purchase of the premises and shall bind and inure to the benefit of the Seller, the Buyer, and their heirs, executors, administrators, successors and assigns.

## **LIQUIDATED DAMAGES AND SPECIFIC PERFORMANCE**

6. Time is of the essence of this contract. If the Buyer shall fail to perform this contract within the time limits herein specified, Seller may retain the deposit as liquidated damages, not as a penalty or forfeiture, and declare this contract terminated, or Seller may proceed to have this contract specifically enforced.

## **SUCCESSORS IN INTEREST**

7. Wherever referred to herein, the term Buyer shall imply, mean and apply to the Buyer, its successors, assigns, heirs, executors, administrators, or designees, who shall be severally and collectively liable for any and all performance hereunder. Wherever referred to herein the term Seller shall imply, mean and apply to the Seller, its successors, assigns, heirs, executors, administrators, or designees, who shall be severally and collectively liable for any and all performance hereunder.

**THIS OFFER IS AND THE CONVEYANCE OF THE PROPERTY SHALL BE SUBJECT TO THE FOLLOWING TERMS, CONDITIONS AND RESERVATIONS.**

8. Easements--A reservation of the necessary right of way, to be determined by Seller, for the continued maintenance, operation and use of all existing driveways, roads, utilities, tracks, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Seller, Seller's Licensees or other third parties and whether or not of records, and for the installation, construction and situation of facilities necessary to or beneficial for, the operation of Seller's railroad, with reasonable right of entry for the repair, reconstruction and replacement thereof, without limitation as a result of any further enumeration herein. In addition, reservation of a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines as presently located or may be located in the future on Property.

**OTHER TERMS AND CONDITIONS**

9. Title Defects--If, within the ten (10) day period following Seller's notice to Buyer that Seller's deed is ready for delivery, Buyer notifies Seller that Buyer has requested evidence of title to the Property, Buyer shall furnish to Seller at Buyer's expense such evidence of title within thirty (30) days of said notice from Buyer in the form of an abstract of title or a title commitment, and a written statement specifying the matters or defects other than said permitted exceptions and reservations and other than such usual exceptions contained in Owner's policies and the matters to which this sale is subject by the terms hereof, the time of payment of the balance of the purchase price shall be extended for a period of sixty (60) days after the receipt of said evidence of title and statement. If Seller is unable or unwilling to cure such matter or defects within said sixty (60) day period, and Buyer is unwilling to accept the deed subject to such matter or defects then either party may terminate this Agreement by serving written notice of termination upon the other party within fifteen (15) days thereafter and all further rights and liabilities under this Agreement shall cease and terminate except that Seller shall return the deposit to Buyer and Seller shall reimburse Buyer for the actual amount paid by Buyer, if any, to an abstractor for an abstract of title or to a title company for a title report (but not for title insurance), provided that said abstract or title report shall be delivered and assigned to Seller. Otherwise, Buyer shall remit to Seller, or Seller's assignee, the purchase price within ten (10) days or at closing, whichever is earlier.

10. Real Estate Commissions--If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finders fees to any party with respect to the sale of the Property, except a commission to Catellus Management Corporation ("Broker") pursuant to a separate agreement. On and prior to the Date of this Agreement, Broker has advised, and hereby advises, Buyer, by this writing and by other means, and Buyer hereby acknowledges that Buyer has been so advised, that the Broker is acting as the agent of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised

11. Liens of Seller's Mortgages--Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of Seller's mortgages, where required under the terms of any mortgage on the Property, within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the conveyance contemplated herein. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to terminate this Agreement upon serving written notice of termination upon Buyer within fifteen (15) days thereafter, and both parties shall thereupon be released and discharged from all liabilities and obligations hereunder, except that Seller shall repay to Buyer any and all sums therefore paid by Buyer to Seller upon a reconveyance of title to the Property to Seller free and clear of defects or objections to the same extent as if no conveyance had been made to Buyer hereunder.

12. Other Liens--Any judgment against Seller which may appear of record as a lien against the Property shall be settled and satisfied by Seller if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied. All outstanding assessments levied or due in the year the deed is delivered shall be paid by Buyer.

13. General Real Estate Taxes--Real estate taxes or assessments payable or paid in the year the deed is delivered shall be prorated by Seller and Buyer as of the date on which the deed is delivered on the basis of the most recent ascertainable taxes assessed against the subject Property, or as may be equitably apportioned thereto by the Seller if the Property is not separately assessed or unless the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer.

14. Transfer Taxes--Buyer agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the conveyance instrument. In the event of Buyer's failure to do so, if the Seller shall be obligated so to do, the buyer shall be liable for all costs, expenses and judgments to or against the Seller, including all of Seller's legal fees and expenses and same shall constitute a lien against the Property to be conveyed until paid by the Buyer.

15. Notices and Demands--All notices, demands, payments and other instruments required or permitted to be given or served by either party shall be in writing and deemed to have been given or served by either party if sent by registered or certified mail, addressed to the other party at the address shown herein.

16. Governmental Approval--If the approval of any governmental agency is required for the sale of the Property, it is understood and agreed that this Agreement is subject thereto and that both parties shall use their best efforts to obtain such approval. The closing date shall be extended for such period as may be required to obtain such approval. In the event said approval cannot be obtained, either party may terminate this Agreement without liability to the other, except that Seller shall return the deposit to Buyer.

In the event a city, county, or other governing authority wherein said Property is located requires a survey or plat or has a subdivision ordinance, the Buyer shall obtain such survey or plat, all at Buyer's sole cost and expense. The survey or plat shall be submitted by Buyer to Seller for review and approval prior to recording and within a period of forty five (45) days after the date of Seller's acceptance of this offer.

17. Deposit Authorization--Buyer hereby authorizes Seller to cash any checks that may be delivered to Seller as a deposit or option payment, and to take the amount of any such deposit or option payment into its

accounts, with the understanding that it will not constitute acceptance of this offer; provided, however, that such authorization is given with the understanding that in the event the offer is not accepted the Seller agrees to refund the amount of any deposit in full.

18. Rail Service--Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

19. Leases and License Prepayment Limitation -- Seller shall not refund any prepaid or unearned lease rentals unless such prepaid or unearned rentals for each lease exceeds the sum of \$500.00.

20. Lease Rentals Continuance Buyer's Lease -- Buyer agrees to keep rentals, taxes and other charges payable to Seller under the terms of lease(s) 500,694 and 500,336 fully prepaid with any refund or adjustment of same to be made on and as of the date of Closing. If a lease includes a site only partially located within the Property being purchased, the refund, if applicable, shall be apportioned for that part of said lease site within the Property. Cancellation of said lease shall be upon the date of conveyance of Property.

21. Leases Other than Buyer -- Lease(s) 243,647 and 214,879 being in the name of other than Buyer, shall be assigned to Buyer upon date of conveyance of the Property and will be subject to apportionment of prepaid rental, payable to Buyer, as of date of conveyance.

22. Complete Agreement -- This Agreement contains the entire Agreement between Seller and Buyer with respect to the Property and, except as set forth in this Agreement, neither Seller, nor Seller's agents or employees, have made any agreements, covenants, warranties or representations of any kind or character, express or implied, oral or written, with respect to the Property.

## **ADDENDUM PROVISIONS**

23. Buyer hereby acknowledges that he/she is the owner of the property lying adjacent to Burlington Northern Railroad Company's (BNRR) reversionary right-of-way as shown on Exhibit "A" attached hereto and by this reference made a part hereof. Buyer also acknowledges that the BNRR property for sale may be subject to reversion upon abandonment of use for Railroad purposes and that the quitclaim deed is for the purpose of releasing BNRR's interest in said subject property.

24. The sale herein is contingent upon the successful completion by Buyer of a quiet title action to eliminate the interest of or potential interest of the unknown heirs of James Mcleod. Buyer shall commence such action, at its expense, within 10 days of Seller's acceptance of this agreement and the same shall be complete within 90 days of the date of Seller's acceptance of this agreement. In the event said action is not completed within 90 days of Seller's acceptance of this agreement, Buyer shall have the option of proceeding to close with the transaction, notwithstanding the inability to complete the quiet title action within the 90 days referenced herein, or shall have the right to terminate this agreement and have the deposit refunded to Buyer.

25. The purchase price to be paid by Buyer to Seller for the property is \$3.71/NSF, subject to the following adjustment. Buyer may at its option perform a survey of the property. The survey shall be



performed at Buyer's sole cost and expense. Before finalizing said survey, it shall be submitted to Catellus Management for review and approval. If the survey is performed for the purpose of determining the precise number of net square feet comprising the property, then Buyer and Seller agree to adjust the purchase price to a sum equal to \$3.71 times the number of net square feet comprising the property. If the survey is not completed within forty-five (45) days of Seller's approval of this agreement, the purchase price shall remain as provided in paragraph 2. As used in this paragraph, "net square feet" shall mean the entire area of the property, with deduction for the portion of property lying within Third Street, if any.

26. In order to determine the existence or presence of any hazardous materials in or about the property, Buyer shall have the right, at Buyer's sole cost and expense, to conduct an environmental study provided that Buyer request a right of entry permit through Seller's permit department at 913-435-2227 prior to any commencement of such study. Buyer's approval of the soils condition of the property shall be on or before 45 days from the date of Seller's acceptance of this agreement. If Buyer finds the soil to be unacceptable, it shall have the right to terminate this Agreement.

27. This Agreement relates only to land. Unless otherwise herein provided, any conveyance shall exclude Seller's railroad tracks and appurtenances thereto, Seller's buildings and any other improvements on the Property, all of which may be removed by Seller within 90 days following conveyance of the Property, and if not removed, shall be deemed abandoned by the Seller without obligation on the Seller's part and shall thereafter be and become the Property of the Buyer in place.

28. A reservation to Seller of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, together with the right of access at all times to exercise said rights.

29. Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1954, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

30. It is specifically agreed and understood by the parties hereto that the Buyer shall, before July 19, 1996, accept and sign this Real Estate Purchase and Sale Agreement and return same together with the \$67,000.00 deposit named herein to Seller. Failure of the Buyer to perform within the time restrictions will render this Agreement null and void in its entirety.

31. **BUYER** has/have been allowed to make an inspection of the property and has knowledge as to the past use of the property. Based upon this inspection and knowledge, **BUYER** is/are aware of the condition of the property and **BUYER IS/ARE AWARE THAT BUYER IS/ARE PURCHASING THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND THAT BUYER IS/ARE NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY**, including the physical condition of the property and any defects thereof, the presence of any hazardous substances, wastes or contaminants in, on or under the property, the condition or existence of any of the above ground or underground structures or improvements in, of or under the property, the condition of title to the property, and the leases, easements or other

agreements affecting the property. **BUYER** is/are aware of the risk that hazardous substances and contaminants may be present on the property, and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller from any and all present or future claims or demands, and any and all damages, loss, injury, liability, claims or costs, including fines, penalties and judgments, and attorney's fees, arising from or in any way related to the condition of the property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any hazardous substances or contaminants in, on or under the property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause the Seller remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) Losses for injury or death of any person, and (d) Losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of **BUYER** to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any hazardous substances or contaminants on the property. This section shall survive closing.

The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

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**BUYER MUST CLEARLY SET FORTH FULL AND CORRECT NAMES OR PARTY OR PARTIES TO WHOM TITLE WILL BE CONVEYED, THEIR ADDRESS, THEIR RELATIONSHIP, IF ANY, AND WHETHER CONVEYANCE IS TO BE IN JOINT TENANCY OR OTHERWISE, AND IF A COMPANY, WHETHER IT IS A PARTNERSHIP, TRUST, TRUSTEE OR CORPORATION, ADDRESS OF PRINCIPAL OFFICE AND STATE OF INCORPORATION**

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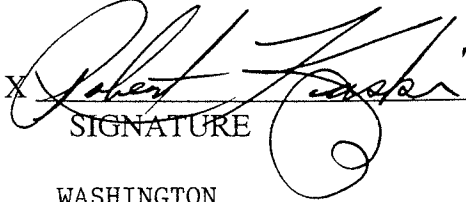
This offer consisting of 9 pages and by said Exhibit "A" attached hereto, is made a part hereof, has been made, signed and sealed in duplicate by the Buyer this 18 day of July, 1996.

CITY OF ARLINGTON name as it is to appear on deed:  
City of Arlington, a Washington State Municipal Corporation

(PRINTED/TYPED)

CITY OF ARLINGTON, A WASHINGTON  
STATE MUNICIPAL CORPORATION

BY ROBERT KRASKI, MAYOR  
NAME(PRINTED/TYPED)

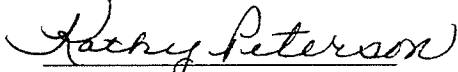
X   
SIGNATURE

TITLE (OR 2ND SIGNATURE IF PARTNERSHIP)


WASHINGTON  
STATE OF INCORPORATION

238 N. Olympic, Arlington, Wa 98223                      360-435-5785  
ADDRESS OF BUYER                      CITY, STATE AND ZIP CODE                      TELEPHONE NO.  
(INCLUDING AREA CODE)

Attest:

  
City Clerk

Approved as to form:

  
~~City~~ Attorney For City of Arlington

The foregoing offer is Accepted by Seller  
this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

**Burlington Northern Railroad Company**

BY \_\_\_\_\_

TITLE \_\_\_\_\_

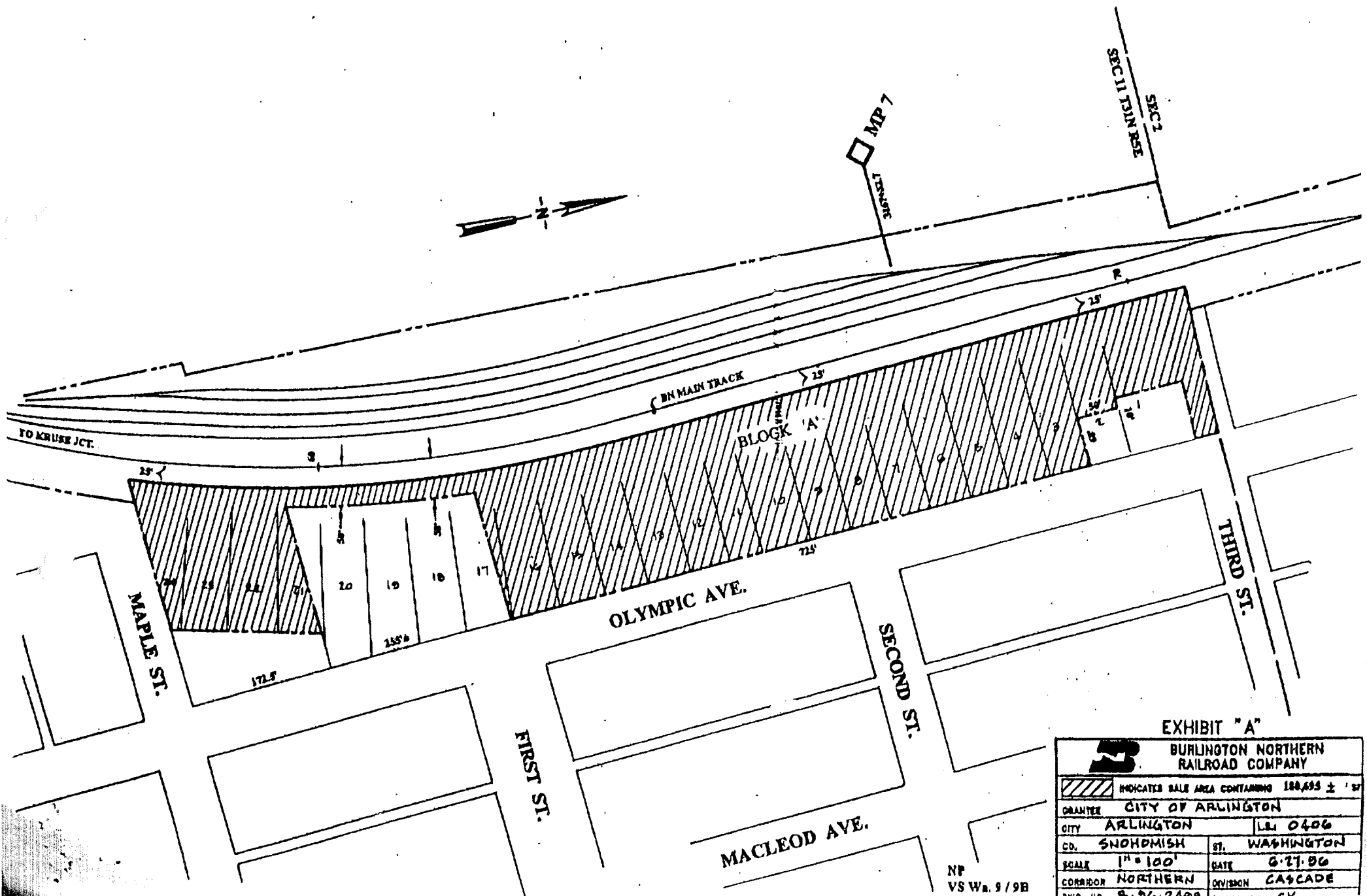



EXHIBIT "A"

		<b>BURLINGTON NORTHERN RAILROAD COMPANY</b>	
INDICATES SALE AREA CONTAINING 188,493 ± '57			
GRANTEE <b>CITY OF ARLINGTON</b>			
CITY <b>ARLINGTON</b>		L.S. <b>0406</b>	
CO. <b>SNOHOMISH</b>		ST. <b>WASHINGTON</b>	
SCALE <b>1" = 100'</b>		DATE <b>6-27-96</b>	
CORRIDOR <b>NORTHERN</b>		DIVISION <b>CASCADE</b>	
DWG. NO. <b>B-96-2498</b>		DRAWN BY <b>CK</b>	

NP  
VS Wa. 9/9B  
Rev. 7-16-96

No. 235,892  
INDEFINITE TERM LEASE

THIS LEASE made this **1st** day of **November**, 19**80**,  
between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Lessor", and  
**CITY OF ARLINGTON,**

whose post office address is **Third and Olympic, Arlington, Washington 98223**

, hereinafter called "Lessee",

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by Lessee, Lessor hereby leases to Lessee upon the terms and conditions hereinafter set forth the following described premises situate in the City of **Arlington**, County of **Snohomish**, State of **Washington**:

**All that part of the premises of the said Lessor as shown colored red on the print hereto attached, marked Exhibit "A" dated November 1, 1980, and made a part hereof.**

SAVING AND RESERVING to Lessor, its successors and assigns, the right to construct, maintain and operate a railroad track or tracks or to construct, maintain and use or permit others to construct, maintain and use buildings or other structures for railroad purposes located or to be located upon any part of the above-described premises not occupied by the buildings and structures hereinafter mentioned; to construct, maintain and use or permit to be constructed, maintained and used by others any existing or additional pipe, telephone, telegraph or power transmission line, or water or sewer system, or other such facilities, over, on or beneath the said premises; to make any change in grade or location of its railroad or any of its tracks, or to rearrange its station facilities, or to use the said premises or any part thereof for railroad purposes; to allow the placement of signs and signboards for commercial or other purposes upon the leased premises so long as the placement of such signs or signboards does not interfere with the operation of Lessee's business on said premises; and further saving and reserving to Lessor or its agent the right to enter thereon for any one or more of such purposes without payment to Lessee of any sum for damage of any nature which may be caused thereby.

Lessee hereby leases said premises from Lessor for the indefinite term hereof subject to the covenants and promises following, which Lessee agrees to observe and perform, to-wit:

The billing or acceptance by Lessor of any advance rental hereunder shall not imply any definite term to this lease nor will it serve to extend this lease for the period of time covered by such rental payment or otherwise operate to restrict either party hereto from terminating this lease in accordance with the provisions of paragraph 15.

3. Lessor reserves the right to change the rental stipulated herein at any time while this lease remains in effect.

4. (a) Lessee shall pay all taxes, license fees and other charges (see paragraph 4 (b) below for payment of special assessments for public improvements) which may become due or which may be assessed against said premises, against Lessee, against the business conducted on said premises or against any and all improvements placed thereon during or for the period of the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after expiration or cancellation of this lease. Lessee shall reimburse Lessor for any such taxes, license fees or other charges which may be paid by Lessor promptly upon the presentation by Lessor of bills for the amount thereof, and in default of such reimbursement, all sums so paid by Lessor shall be deemed to be and shall be treated as additional rental and recoverable as such hereunder.

(b) In the event the premises hereby demised, or any part thereof, shall be subject to any special assessment for any public improvement or improvements and said assessment is in the amount of Five Hundred Dollars (\$500.00) or less, Lessee shall reimburse Lessor in full, promptly upon the presentation by Lessor of bills for the amount thereof. In the event the amount of said assessment exceeds Five Hundred Dollars (\$500.00), the rental herein reserved and stipulated to be paid by Lessee shall be automatically increased by an amount equal to **thirteen percent (13%)** per annum of the total amount of said assessment.

5. Lessee shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8½ feet laterally of the center line or within 23 feet vertically from the top of the rail of any track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this paragraph 5, then Lessee shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this clause. Lessee agrees to indemnify Lessor and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this agreement.

Should either or both the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Lessee hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Lessor from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Lessor's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Lessee contained in this clause or of Lessor's right to recover for such damages to property or injury to or death of persons that may result therefrom.

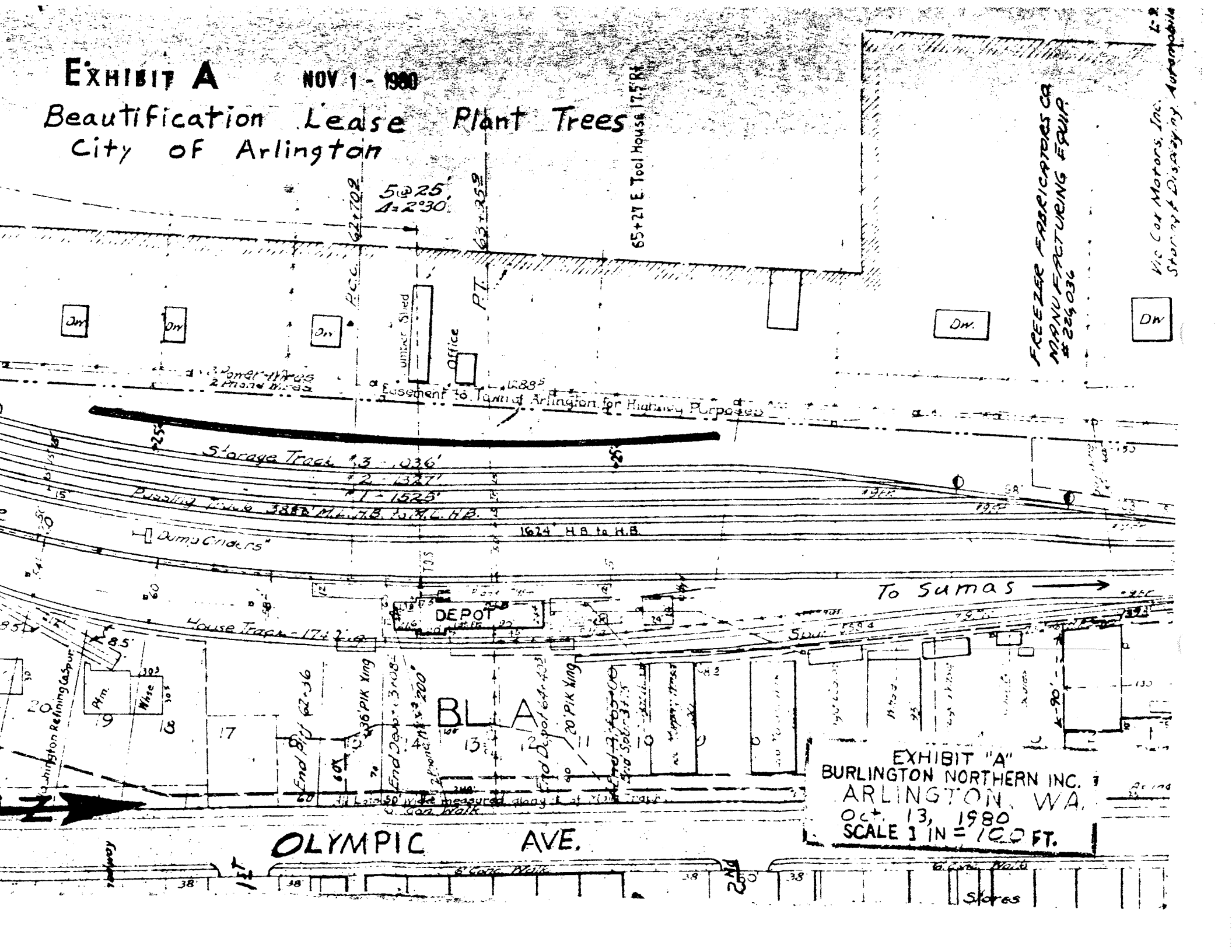
6. Lessee, at Lessee's sole cost and expense, shall install and maintain adequate facilities for fire protection in all buildings and structures upon said premises. Lessee also, at Lessee's sole cost and expense, shall observe and comply with all the rules, regulations and orders of any duly constituted authority and of any board of fire underwriters having jurisdiction of said premises and all provisions of any fire insurance policy covering said premises.

7. Lessee shall not permit the existence of any nuisance on said premises; shall maintain and keep the same in proper, clean, safe and sanitary condition and free and clear of any explosive, flammable or combustible material which would increase or tend to increase the risk of fire, except for such material as may be necessary to Lessee's business; and further, Lessee shall keep, observe and comply with all federal, state and local regulations, ordinances and laws, and with the regulations of any duly constituted legal authority having jurisdiction of the premises, and at Lessee's sole cost shall make any and all improvements, alterations, repairs and additions and install all appliances required on said premises by or under any such regulations, ordinances or laws. If, as a result of Lessee's occupancy of the premises and its operations hereunder, any such regulation, ordinance or law 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. Lessee shall not place or permit to be placed any advertising matter upon any part of said premises or upon any improvements thereon except such as is necessary to advertise Lessee's own business.

# EXHIBIT A

NOV 1 - 1980

## Beautification Lease Plant Trees City of Arlington



agreed, as one of the material considerations of this lease without which the same would not be granted, that Lessee assumes all risk of loss, damage or destruction by fire to buildings or contents or to any other property brought upon or in proximity to said premises by Lessee, or by any other person with the consent or knowledge of Lessee, without regard to whether such fire be the result of negligence or misconduct of any person in the employ or service of Lessor or of defective appliances, engines or machinery, except to the premises of Lessor and to rolling stock belonging to Lessor or to others, and to shipments of third parties in the course of transportation. Lessee hereby indemnifies and agrees to protect Lessor from all such loss, damage or destruction to property, including claims and causes of action asserted against Lessor by any insurer of said property.

(b) Lessee also agrees to indemnify and hold harmless Lessor for loss, damage, injury or death from any act or omission of Lessee, Lessee's invitees, licensees, employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or near said premises; 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.

**(c) Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification against the sole negligence of Lessor, its officers, employees or agents.**

11. It is agreed that the provisions of paragraphs 5 and 10 are for the equal protection of any other railroad company or companies, including National Railroad Passenger Corporation (Amtrak), heretofore or hereafter granted the joint use of Lessor's property, of which said premises are a part.

12. (a) Without the written consent of Lessor, Lessee shall not assign this lease or any interest therein, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet without such written consent.

(b) In the event of assignment of this lease, Lessor, having no advice to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by Lessor only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Lessor for its consent.

13. If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the demised premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands, including legal fees and court costs, resulting therefrom.

14. Each and all of the covenants and promises made by Lessee herein are material considerations herefor, and upon the breach or non-performance by Lessee of any of the said covenants or promises, Lessor, at its option, may re-enter said premises, or any part thereof in the name of the whole, upon ten (10) days' written notice to Lessee, and may have, repossess and enjoy the same as of its former estate, and may terminate this lease and all rights hereby granted. A waiver by Lessor of a default shall not be deemed a waiver of any subsequent default of Lessee. If the default shall consist of nonpayment of rental or taxes, or other charges, at the time of termination of this lease in accordance with the provisions of this clause, such nonpayment of rental and taxes shall, until paid, constitute a lien upon said structures, improvements and property owned by Lessee and the lien may be foreclosed according to law. Lessee shall not remove said structures, improvements or property until said rental, taxes or other charges are paid, unless directed to do so by Lessor.

15. Notwithstanding any requirement herein for payment of rental in advance for a period in excess of one month, it is further agreed that either party may terminate this lease at any time for any reason upon giving the other party not less than 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. Upon the date of termination of this lease, Lessee shall, at its own sole cost and expense, remove or cause to be removed all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities owned or used by Lessee or placed on, above or below the surface of the premises by Lessee or by any person, firm or corporation or former Lessee. Lessee agrees to restore and level the premises to a condition satisfactory to Lessor.

It is expressly understood by Lessee that until such time as the premises are surrendered to Lessor free and clear of all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities not belonging to Lessor and the premises are restored to a neat and orderly condition satisfactory to Lessor, Lessee shall be liable to Lessor for such rental, including taxes, as Lessor may from time to time determine. Lessee shall also be liable to Lessor for any and all losses and/or damages which Lessor may sustain or become



