



BURLINGTON NORTHERN RAILROAD

SALES and PROPERTY
MANAGEMENT DEPARTMENT

3300 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102

April 10, 1985

City of Arlington
Third and Olympic
Arlington, Washington 98223

Gentlemen:

RE: Lease 248,001 - drainage ditch - Arlington, Washington
Permit 248,000 - 15-inch sanitary sewer pipeline - Arlington,
Washington

Attached is a copy of the completed Lease 248,001 for your file.

The application/lease completed by the City of Arlington to cover location of a sewer trunk line and retaining wall will not be executed by Burlington Northern Railroad Company as that form does not apply to such facilities.

Ms. Elaine L. Spencer of Bogel and Gates requested numerous changes to the application/lease which was originally completed by the City. The two previous permits with Canus Investment Corporation cannot be combined as the facilities must be covered by the proper contracts. Also, the Exhibit "A" to the permits should indicate the correct location of the sewer trunk line. It was to have been constructed according to the specifications provided in the application dated March 18, 1982 which was completed by Canus Investment Corporation. Burlington Northern has agreed to issue the permit on a perpetual basis and has reluctantly agreed to reduce the annual fee from \$1,250.00 to \$500.00 per annum.

Enclosed, in duplicate, is Permit 248,000 for signature of both copies by the Mayor of Arlington. It should also be attested by the City Clerk and returned to Burlington Northern Railroad Company for signature. A copy will be returned for the City's record.

Permission was never granted to Canus Investment Corporation to build a retaining wall on Burlington Northern property. Please complete the first thirteen questions of the enclosed application/lease, with typewriter if

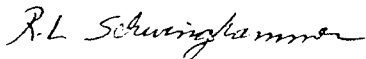
City of Arlington
April 10, 1985
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possible, and attach a sketch of the desired property. The application/lease should then be forwarded to our Regional Manager of Sales and Property Management at the following address:

Mr. D. A. Cowles
Regional Manager - Sales & Property Management
Burlington Northern Railroad Company
21st Floor, FIC Building
Seattle, Washington 98104

The lease will be returned with the effective date and established rental for signature by the City and attestation by the City Clerk.

Sincerely,



R. L. Schwinghammer
Lease Representative

Enclosures

erls0410.10

04,34

6/26/85



BURLINGTON NORTHERN RAILROAD

SALES and PROPERTY
MANAGEMENT DEPARTMENT

*Box to be lease
248,001
248,000 not done*

*See highlighted material
in BN's letter. Also
see yr ltr to Spencer.
Where is this applica-
tion? Did you send it
to Spencer? What
gives?*

April 10, 1985

City of Arlington
Third and Olympic
Arlington, Washington 98223

*This lease has been
placed in City's files.
6/26/85.*

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Called Gary L 6/27

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R. L. Schwinghammer
Lease Representative

Enclosures

er1s0410.10

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION OR LEASE AGREEMENT, PLEASE CALL BURLINGTON NORTHERN TOLL FREE 1-800-533-1223
TEXAS RESIDENTS MAY CALL COLLECT (817) 878-2150



LEASE NO. **248,001** **DUPLICATE**

DATE OF APPLICATION:

APPLICATION FOR LEASE OF SITE PLEASE USE TYPEWRITER OR PRINT LEGIBLY • TO BE FILLED OUT BY APPLICANT

1. APPLICANT'S TELEPHONE NUMBERS (INCLUDING AREA CODE) HOME / OFFICE: 206-435-5785		HOME ---	OFFICE City Hall, Arlington, WA
2. IN OR NEAR WHAT COMMUNITY IS SITE LOCATED? (Arlington) Edgecomb		COUNTY Snohomish	STATE Washington
3. EXACT LEGAL NAME AND ADDRESS OF APPLICANT (ALSO INCLUDE BILLING ADDRESS IF NOT THE SAME): City of Arlington			
4. IF APPLICANT IS A CORPORATION, IN WHAT STATE LEGALLY INCORPORATED? municipal corporation, Washington		IF AN INDIVIDUAL, UNDER WHAT FIRM NAME IS BUSINESS CONDUCTED?	
IF PARTNERSHIP, GIVE NAMES OF ALL PARTNERS:			
5. PRECISELY WHAT PROPERTY IS REQUIRED? (ATTACH A SKETCH TO SHOW SITE, INCLUDING DIMENSIONS): the drainage ditch presently existing along the property of the J. H. Baxter & Co., see attached exhibit from existing permit			
6. SPECIFY WHAT USE WILL BE MADE OF SITE: drainage ditch <i>See file 04.34</i>			
7. LIST ALL BUILDINGS OR STRUCTURES PRESENTLY ON SITE: none			
8. LIST AND DESCRIBE ANY BUILDINGS OR STRUCTURES TO BE ERECTED ON SITE AND ESTIMATED COST: none			
9. APPLICANT REQUESTS OCCUPANCY ON: (MONTH, DAY, YEAR) January 21, 1985			
10. DOES APPLICANT HAVE OTHER PROPERTY AT THIS LOCATION UNDER LEASE? (IF YES, SPECIFY LEASE NO.) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
11. REISSUE (IF APPLICABLE): THIS APPLICATION IS A REQUEST FOR ADDITIONAL ADJACENT PROPERTY, OR ELIMINATION OF PROPERTY COVERED BY AN EXISTING LEASE OF APPLICANT. LEASE(S) NO.: DATED:			
12. TRANSFER (IF APPLICABLE): THIS APPLICATION COVERS PROPERTY UNDER A CURRENT LEASE(S) HELD BY ANOTHER COMPANY OR INDIVIDUAL WILLING TO TRANSFER THE PROPERTY TO APPLICANT; (APPLICANT MUST ATTACH A LETTER FROM THE PRESENT LESSEE AUTHORIZING CANCELLATION OF THE PRESENT LEASE(S)) EXISTING LEASE(S) NO.: DATED: ISSUED TO: 216,817 Jan. 16, 1975 J. H. Baxter & Co.			
13. ARE THERE ANY SPECIAL PROBLEMS TO BE CONSIDERED?			

APPLICANT SHOULD NOW CAREFULLY READ THE FOLLOWING LEASE AGREEMENT. IF RAILROAD IS WILLING TO LEASE THE SITE TO APPLICANT, IT WILL FILL IN THE RENTAL RATE AND EFFECTIVE DATE AND RETURN THE AGREEMENT FOR APPLICANT'S SIGNATURE. IF THE PROPERTY IS DESIRED FOR USE AS A PUBLIC ELEVATOR, BULK OIL STATION, STORAGE OR USE OF HAZARDOUS MATERIAL, RETAIL COMMERCIAL USE, OR USE OF A RAILROAD BUILDING, AND RAILROAD IS AGREEABLE TO LEASING THE PROPERTY FOR SUCH USES, A SPECIAL ADDENDUM WILL BE ATTACHED OR DIFFERENT FORM OF AGREEMENT FURNISHED.

LEASE AGREEMENT TO BE COMPLETED BY RAILROAD AND SIGNED BY APPLICANT

BURLINGTON NORTHERN RAILROAD COMPANY ("Railroad"), hereby leases to the above-named Applicant ("Lessee"), the property applied for ("Premises"), on the following terms and conditions:

1. This Lease shall commence on February 1, 1985, and, as rental Lessee shall pay the sum of \$ 50.00 (Fifty and No/100 Dollars) annually in advance

4. Railroad reserves to itself, and others, right of access to its adjoining property and the right to construct, maintain and operate trackage, fences, pipelines, signal and communication facilities, telegraph, telephone, power, or other transmission lines upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, occasioned thereby. The foregoing rights, (except the right of access, which is unconditional), shall not be exercised in a manner that unreasonably interferes with Lessee's use of the Premises.

5. It is understood that Lessee has inspected the Premises and takes them "AS IS". Railroad is not obligated by this Lease to make any changes, removals, or repairs of any kind nor to construct any fences. Lessee shall use the Premises only in the manner described in the Application, and shall not construct or place on the Premises any advertising billboards, structures, additions, or improvements not described in the foregoing Application, or plant or remove trees and shrubbery, except with express written permission of Railroad, and at Lessee's sole risk.

6. (a) Lessee shall pay all taxes, utilities and other charges which may become due or be levied against the Premises, against Lessee, against the business conducted on the Premises or against improvements placed thereon during the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after cancellation of this Lease. If this is a transfer as provided in Item 12 of the above Application, Lessee must make arrangements with the present Lessee for payment of any delinquent and current taxes. If such arrangements are not made, Lessee agrees to pay all such taxes. If Railroad should make any such payments, Lessee shall reimburse Railroad for all such sums.

(b) Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less, Lessee shall promptly reimburse Railroad the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00), the rental herein shall be increased by twelve (12) percent per annum of the total.

(c) In case of nonpayment of rental, taxes, or other charges, the same shall, until paid, constitute a lien on any buildings or other property owned by Lessee on the Premises, foreclosable according to law. Lessee shall not remove said buildings or property until said rental, taxes, or other charges are paid, unless directed to do so by Railroad.

7. Lessee shall not place, or permit to be placed, 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. If, by statute or order of public authority, greater clearances shall be required, Lessee shall strictly comply with such statute or order.

If, on application by Lessee, either or both the lateral and vertical clearances are permitted to be reduced by order of competent public authority, Lessee shall strictly comply with the terms of any such order, and indemnify and hold harmless Railroad 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 such reduced clearance.

Railroad's continued operations with knowledge of an unauthorized reduced clearance shall not constitute a waiver of the foregoing covenants of Lessee or of Railroad's right to recover for resulting damages to property or injury to or death of persons.

use of the Premises or Lessee's violation of any laws, ordinances, regulations or requirements pertaining to solid or other wastes, chemicals, oil and gas, toxic, corrosive, or hazardous materials, air, water (surface or groundwater) or noise pollution, and the storage, handling, use or disposal of any such material. Lessee shall bear the expense of all practices or work, preventative or remedial, which may be required because of the condition or use of the Premises, by Lessee or those claiming by, through or under Lessee, during Lessee's period of occupancy. Lessee expressly agrees that the indemnification and hold harmless obligations it hereby assumes shall survive cancellation of this Lease. Lessee agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until Railroad discovers any such health or environmental impairment, and Lessee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

10. It is understood by Lessee that the Premises are in dangerous proximity to railroad tracks and that persons and property on Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers.

Lessee understands, as one of the material considerations of this Lease without which it would not be granted, that Lessee assumes all risk of injury to or death of all persons, and damage to or loss or destruction of buildings, contents, or other property (including animals) brought upon or in proximity to the Premises by Lessee, or by any other person with the consent or knowledge of Lessee, WITHOUT REGARD TO WHETHER SUCH BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF ANY PERSON IN THE EMPLOY OR SERVICE OF RAILROAD OR OF DEFECTIVE TRACKAGE, EQUIPMENT, OR TRACK STRUCTURES. Lessee hereby indemnifies and agrees to protect Railroad from all such injury or death and loss, damage or destruction to property, including claims and causes of action asserted against Railroad by any insurer of said property. NOTWITHSTANDING THE FOREGOING, HOWEVER, LESSEE SHALL NOT BE LIABLE FOR INJURY TO OR DEATH OF RAILROAD'S EMPLOYEES OR AGENTS, OR ROLLING STOCK BELONGING TO RAILROAD OR OTHERS, OR SHIPMENTS OF THIRD PARTIES IN THE COURSE OF TRANSPORTATION, WHEN SAID INJURY, DEATH OR DAMAGE IS CAUSED BY RAILROAD'S OWN, SOLE NEGLIGENCE. For example, if a train derails because of Railroad's sole negligence, Railroad will bear the cost of damage to its own people and property and property on the train, but Lessee will be responsible, and will have no recourse against Railroad, for its own damage, and will have to reimburse Railroad for any expense or judgment Railroad incurs from claims of persons on the Premises or having property on the Premises with Lessee's knowledge or consent.

Lessee also agrees to indemnify and hold harmless Railroad from any loss, damage, injury or death arising 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 the Premises.

11. It is agreed that the provisions of Sections 7 and 10 are for the equal protection of other railroad companies, including National Railroad Passenger Corporation (Amtrak), permitted to use Railroad's property.

12. Lessee shall not assign this Lease or any interest therein, or grant a security interest in any buildings or improvements on the Premises, 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 the express prior written consent of Railroad.

from Railroad to Lessee of the filing thereof, and shall indemnify and save harmless Railroad against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom.

14. Either party may cancel this Lease at will on thirty (30) days' advance *written* notice, in which event Lessee shall remove all property or improvements not owned by Railroad (regardless of who made them), including, without limitation, all foundations, slabs, and fences, and Lessee shall clear the Premises, including filling in and leveling any excavations and restoring the ground to a condition satisfactory to Railroad, within said 30 days. If Lessee fails to remove said property or improvements within the above time limit, Lessee hereby grants Railroad the absolute right to keep, convey, destroy, or otherwise dispose of them in any manner Railroad chooses, and, in addition, Lessee agrees to pay any net costs incurred by Railroad in doing so, within 10 days of receipt of Railroad's statement therefor.

15. If all or any part of the Premises is subjected to taking under eminent domain laws, this Lease shall terminate from the time possession is taken by the condemning entity, with prepaid rentals prorated. Lessee agrees that it is not entitled to, and hereby disclaims, any award made for such taking, excepting only an award issued solely and expressly to compensate for the taking of personal property or buildings owned or constructed by Lessee.

16. Nothing in this Lease shall prevent Railroad from discontinuing service over any railroad line or lines by which rail service may be provided to the Premises.

17. All notices to be given by Lessee to Railroad shall be given by letter, U.S. mail, postage prepaid, addressed to Railroad's Manager Leases, Industrial Development and Property Management Department at Continental Plaza, 777 Main Street, Fort Worth, Texas 76102. All notices to be given by Railroad shall be similarly given, addressed to Lessee at the address given in the Application above. It is the Lessee's duty to notify Railroad promptly in writing of any change in its address; if it fails to do so, any notice from Railroad sent to its last known address shall be effective, whether or not received.

18. If this Lease is a reissue as provided in Item 11 of the above Application, it shall supersede and cancel the previous Lease or Leases described therein, without prejudice to any liability accrued prior to cancellation.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.