

**LEASE OF PROPERTY**

203390

**THIS LEASE** ("Lease") is entered into on the 19<sup>th</sup> day of July, 2004, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **SWEENY, CITY OF**, a Texas municipal corporation, whose address is P O Box 248 102 W Ashley Wilson Rd, Sweeny, Texas 77480 ("Lessee").

**IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**Article I. PREMISES; USE.**

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Sweeny Texas, shown on the print dated March 05, 2004, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for location of Lessee's improvement, landscaping, beautification, and parking and purposes incidental thereto, only, and for no other purpose. For the purposes of mowing and maintenance the Premises shall also include all the Lessor's right of way within the City Limits of Sweeny, Texas, located over 25 feet from any railroad track.

**Article II. TERM.**

The term of this Lease is for 20 years beginning on June 30, 2004, and expiring on June 29, 2024, unless sooner terminated as provided in this Lease. In the event Lessor shall receive an offer to lease all or a portion of the Premises described in Article I as for mowing and maintenance for any industrial or commercial lease, Lessor shall retain the right to terminate that portion of the agreement.

**Article III. RENT.**

As consideration for this agreement Lessee agrees to mow and/or maintain vegetation control as well as remove all trash and debris in accordance with any and all current and future ordinances or other legal requirements on the Premises, and should said City Limits change, so shall the working of this provision change accordingly. This is intended to be self-policing by the Lessee. It is not the Lessor's intention to force or compel the Lessee to perform under this requirement in any way that would be inconsistent with compliance with weed and vegetation control ordinances policed and enforced by the Lessee either currently or in the future.

**Article IV. SPECIFICATIONS.**

Should the Lessee violate any of the following specifications, or use or attempt to use the Premises for any other or different purpose that that stated herein, then the Lessor may, at its option, immediately terminate this lease.

1. No planting or other landscaping material shall be allowed within 16 feet of the edge of the nearest tie nor allowed to grow into this zone other than grass or ground cover that will not grow in excess of three (3) feet in height.
2. Any planting or other landscape material done on the railroad right-of-way within 250 feet of any grade crossing shall be maintained so as not to exceed a height of three (3) feet.

3. Any grading or future planting done on Lessor's property must be approved in writing by Lessor at the following address:

Director – Track Maintenance  
24125 Aldine-Westfield Road  
Spring, Texas 77373  
Phone: (281) 350-7605  
Fax: (281) 350-7194

4. Any work done on Lessor's property closer than 25 feet from the centerline of the nearest track will require a flagman provided by Lessor at Lessee's expense.
5. There is to be no interference with Lessor's facilities, including pole lines, drainage structures and signal apparatus.
6. There is to be no adverse effect to visibility or drainage on Lessor's property.

**Article V. INSURANCE.**

A. Before commencement of the term of this Lease, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more recently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements shall be directed to: Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102, ATTN: Linda Baburek, Folder No. 02208-48.

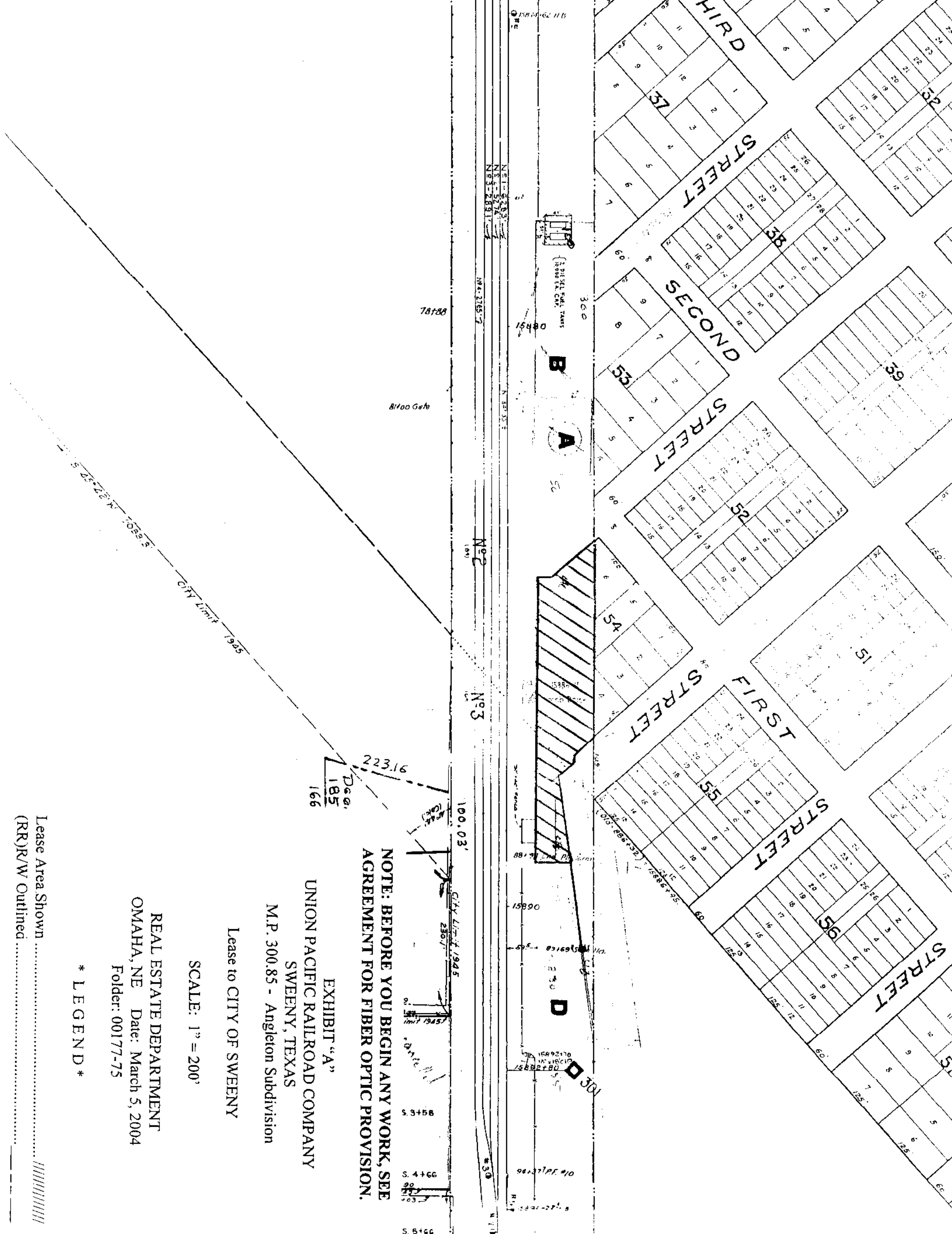
IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

**UNION PACIFIC RAILROAD COMPANY**

**SWEENY, CITY OF**

By: Mary B. Collins  
Director - Real Estate

By: [Signature]  
Title: MAYOR



**NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISION.**

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY  
SWEENY, TEXAS**

M.P. 300.85 - Angleton Subdivision

Lease to CITY OF SWEENY

SCALE: 1" = 200'

REAL ESTATE DEPARTMENT  
OMAHA, NE Date: March 5, 2004  
Folder: 00177-75

\* LEGEND \*

Lease Area Shown .....  
(RR)R/W Outlined .....

**EXHIBIT B  
TO  
LONG TERM INDUSTRIAL LEASE (UNIMPROVED)**

Section 1.     IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2.     RESERVATIONS, TITLE AND PRIOR RIGHTS.

A.     Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B.     Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C.     Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

Section 3.     PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4.     TAXES AND ASSESSMENTS.

Lessee shall pay, prior to delinquency, all Property Taxes on the Premises and on all personal property and improvements on the Premises. Lessee shall reimburse Lessor within thirty (30) days of rendition of Lessor's bill for any Property Taxes paid by Lessor, whether paid separately, as a part of the levy on other real property of Lessor, or as a part of the central or unit assessment of Lessor's property. For purposes of this Lease, "Property Taxes" means all governmental charges and levies (including, without limitation, real estate and personal property taxes, special assessments and other charges for public improvements or services, and impact fees, but not including income taxes) as may during the term of this Lease be levied upon, assessed against or imposed upon, or become due and payable with respect to, the Premises or the rents payable under this Lease.

Section 5.     WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any

adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Lessee acknowledges that Lessor's possible future needs for the Premises in connection with Lessor's transportation operations are paramount. Accordingly, if at any time Lessor, in its sole and absolute discretion, determines that the Premises or any portion thereof are necessary or desirable for use in connection with Lessor's transportation operations, or that Lessee's use of the Premises should be terminated due to safety considerations associated with Lessor's transportation operations, Lessor may terminate this Lease upon not less than thirty (30) days notice to Lessee or, in emergency situations, upon such shorter notice as is reasonable in the circumstances.

C. Lessor may terminate this Lease upon not less than thirty (30) days notice to Lessee in the event the Premises form a portion of Lessor's railroad operating right-of-way and such right-of-way is abandoned for railroad operating purposes.

D. After payment of the advance fixed rent to Lessor, Lessee may terminate this Lease without cause upon thirty (30) days notice to Lessor.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day



number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: General Manager - Real Estate, Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee may sublease the Premises or assign this Lease, by operation of law or otherwise, only if Lessee provides Lessor with advance notice of the assignment or sublease and the subtenant's or assignee's written agreement for the benefit of Lessor to be bound by the terms of this Lease. No subletting or assignment shall relieve Lessee of its obligations under this Lease. Any assignment or sublease by Lessee in violation of this Paragraph A shall be void and ineffective and shall, at the option of Lessor, result in an immediate termination of this Lease.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to

this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, Lease Audit No. \_\_\_\_\_ and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease. This Lease may be amended only by a written instrument signed by Lessor and Lessee.

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**EXHIBIT C  
TO  
LONG TERM INDUSTRIAL LEASE (UNIMPROVED)**

**UNION PACIFIC RAILROAD  
INSURANCE REQUIREMENTS**

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

**A. Commercial General Liability insurance.** This insurance shall contain broad form contractual liability with a single limit of at least \$1,000,000 each occurrence or claim and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and workers compensation related exclusions in the above policy apply only to Lessee's employees
- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Waiver of subrogation
- Designated Premises Pollution Coverage (CG00-39), unless Lessee does not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substance (as defined in Section 7F of **Exhibit B** to this Lease).

**B. Business Automobile Coverage insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and workers compensation related exclusions in the above policy apply only to Lessee's employees

- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

**C. Workers Compensation and Employers Liability insurance including but not limited to:**

- Lessee's statutory liability under the workers' compensation laws of the state where the Premises are located
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Lessee in states that require participation in state workers' compensation fund, Lessee shall comply with the laws of such states. If Lessee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

**D. Umbrella or Excess Policies** In the event Lessee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

**Other Requirements**

**E.** Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

**F.** Lessee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Lessor. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of its owned or leased property or property under its care, custody and control. Lessee's insurance shall be primary with respect to any insurance carried by Lessor. All waivers of subrogation **shall be indicated on the certificate of insurance.**

**G.** All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Lessor as an additional insured. The coverage provided to Lessor as additional insured shall not be limited by Lessee's liability under the indemnity provisions of this Lease. **Severability of interest and naming Lessor as additional insured shall be indicated on the certificate of insurance.**

**H.** Prior to the execution of this Lease, Lessee shall furnish to Lessor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing of any cancellation or material alteration. **Upon request from Lessor, a certified duplicate original of any required policy shall be furnished.**

**I.** Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

**J.** Lessee **WARRANTS** that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease and acknowledges that Lessee's insurance coverage will be primary.

**K.** If Lessee fails to procure and maintain insurance as required, Lessor may elect to do so at the cost of Lessee plus a 25% administration fee.

**L.** The fact that insurance is obtained by Lessee or Lessor on behalf of Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.