

SECOND AMENDMENT
TO DECLARATION OF INDUSTRIAL
STANDARDS AND PROTECTIVE COVENANTS
FOR McCARA FIRST ADDITION

Moorhead-Clay County Area Redevelopment Authority pursuant to Article II, Section d of the Declaration of Industrial Standards and Protective Covenants for McCARA First Addition hereby amends Article IX, Section d of said Declaration of Industrial Standards and Protective Covenants for McCARA First Addition as follows:

ARTICLE IX. POTENTIAL FUTURE LIABILITIES:

d) Railroad Lead Track Expenses and Maintenance:

"Lead track" means the railroad track running from the main line of the railroad right-of-way which serves the lots in the Park adjacent to said track.

"Spur track" means the railroad track which runs from the Lead Track to individual lots in the Park which are adjacent to the Lead Track.

"Spur track switch" means the switching mechanism necessary to divert railroad car from the Lead Track to the Spur Track and back to the Lead Track from the Spur Track.

"User" means the Owner or tenant of an Owner of property adjacent to the Lead Track who actually uses the Lead Track for rail service. For purposes of this restrictive covenant, actual use for any given calendar year will be deemed to have occurred upon receiving or shipping any product, material good, commodity or equipment by means of the Lead Track at any time during such calendar year and such use shall constitute the benefiting party a "User".

Each User located adjacent to the Lead Track shall pay a proportionate share of the costs of maintenance, upkeep, snow removal, and all other necessary repairs of the Lead Track once a calendar year. Maintenance for the purpose of these covenants shall include responsibility to provide proper drainage and to keep the tracks free and clear of snow, ice, weeds and other obstacles and debris and to provide a safe workway for Railroad employees. Said proportionate share shall be calculated by dividing the total of said costs by a fraction determined by using a number for the numerator which is equal to the amount of footage of trackage of the Lead Track which passes through or along the User's property and by using a number for the denominator which is equal to the

amount of total footage of trackage of the Lead Track which passes through or along the property of all other Users in the park. Said proportionate share of said costs shall be paid by each User to the Authority by February 15th of each year for the previous calendar year ending December 31.

Each User shall be responsible for and pay for all installation and maintenance and repairs of all Spur Tracks and Spur Track switches which serve its respective Property.

Before constructing Spur Track each User shall first procure without expense to Railroad or Authority all necessary right of way and all necessary public authority and permission for the construction, maintenance and operation of the Spur Track.

Each User shall construct, maintain and operate the Spur track subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad or Authority rather than to Landowner or Tenants and assumes any and all liability for and shall indemnify, defend and save harmless Railroad and Authority from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of noncompliance with or violation of the provisions of such public authority or permission by or through the sole or joint negligence or other actionable fault of the User.

If separation of the grade of said Spur track and of any highway or street is ordered by public authority, the User shall indemnify Railroad and/or Authority against any expense in connection therewith or consent to the removal of the Spur track.

Each User, at its own expense, will perform or will arrange for all grading and provide necessary drainage for that portion of Spur track which is located off Railroad property. Grading and drainage work on Railroad property will be performed by User at each User's expense.

Each User shall bear and pay any costs for changes or alterations in that portion of track owned by User or Authority that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control.

Any work performed by a User in constructing or maintaining any Spur track or any facilities extending over,

under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If a User fails to maintain said facilities or that portion of the Spur track herein agreed by it to be maintained or to pay the bills therefor or for the common maintenance of the Lead track within the prescribed time, Authority may request Railroad to refuse to operate over the User's said Spur track.

If the Lead track of the Spur track is used for the receiving, forwarding or storing of hazardous commodities, the User shall comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

"Cost" for the purpose of this covenant shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Landowner or Tenant shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of the Lead Track or any Spur Track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for herein, then Landowner or Tenant 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 covenant. Landowner or Tenant agrees to indemnify Authority, its commissioners, agents, or employees 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 herein.

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, Landowner or Tenant shall strictly comply with the terms of any such order and indemnify and hold harmless Authority

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.

Railroad'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 Landowner or Tenant contained herein or of Authority's right to recover for such damages to property or injury to or death of persons that may result therefrom.

Each User shall pay (a) its proportionate share as hereinabove defined of all compensation and assessments required at any time by a municipality, public authority or person for the privilege of constructing, maintaining and operating Lead track and all such costs relating to each such User Spur track, User shall indemnify and hold harmless (b) Authority, its commissioners, agents or employees for loss, damage, injury or death from any act or omission of User, its employees, or agents, to the person or property of any person or corporation while on or near said Lead or Spur Tracks.

In the event a User permits a party or parties, herein-after called "Permittee", other than itself or the Railroad to use said tracks for receiving, forwarding or storing shipments, User shall indemnify and hold harmless Authority, its commissioners, agents, or employees from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of any person or corporation while on or near said Lead or Spur tracks.

This covenant shall inure to the benefit of and be binding upon the successors and assigns of all Owners of Property in the Park and of the Authority.

Landowner or Tenant understands and acknowledges that Railroad shall be privileged to discontinue the maintenance and operation of its main track which serves the Lead and Spur tracks located within the Park, and to remove its turnout connection, in the event of any of the following contingencies, viz:

- (a) Authority ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the Park being served by the Railroad.
- (b) Railroad is authorized by competent public

authority to abandon its line to which said tracks are connected.

(c) Authority shall fail to keep and perform any obligation or stipulation stated in or resulting under Authority's agreements with Railroad.

No recourse or claim will exist in favor of or be asserted by Landowner or Tenant because of the discontinuance of operation and removal of any railroad track located within or without the Park.

This covenant is also made for the benefit of such other railroads which, either by prior understandings or agreements with the Railroad have the right to use the Lead track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

In the event Authority shall request Railroad to assume ownership and maintenance responsibility of Lead track between the point of clearance on the Lead track from the main line and the end of the Lead track and if Railroad will be agreeable to assuming said ownership and maintenance then all Users owning a private switch and Spur track will upgrade said privately owned switch and track from the headblock on the Lead track to the clearance point or the end of the easement which may be given by Authority to Railroad, whichever is more, pursuant to Railroad specifications, and said Users will be required to transfer title to any such privately owned and upgraded switch and track to Railroad upon the decision of such Authority to convert ownership of said tracks to Railroad.

Dated this 30th day of November, 1985.

Moorhead-Clay County Area
Redevelopment Authority

By Roger Larson
Roger Larson, Its Chairman

By Carol Krabbenhoft
Carol Krabbenhoft, Its Secretary
As Owner of all of the Lots in
McCARA First Addition except for
Lot One in Block Two and except
for Lots One and Two in Block
Three

CONCURRENCE

The above and foregoing Second Amendment to Declaration of Industrial Standards and Protective Covenants for McCARA First Addition is hereby concurred in by Moorhead-Clay County Area Redevelopment Authority as the owner of all of the lots in McCARA First Addition except for Lot One in Block Two and except for Lots One and Two in Block Three which concurrence is thus executed by a majority of the building sites within the park of McCARA First Addition.

Moorhead-Clay County Area
Redevelopment Authority

By Roger Larson
Roger Larson, Its Chairman

By Carol Krabbenhoft
Carol Krabbenhoft, Its Secretary

STATE OF MINNESOTA)
) SS.
COUNTY OF CLAY)

On this 3rd day of November, 1985, before me, a Notary Public within and for said County, personally appeared Roger Larson and Carol Krabbenhoft, to me personally known, who, being each by me duly sworn did say that they are respectively the Chairman and the Secretary of the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and by said authority of its Board of Commissioners, and said Roger Larson and Carol Krabbenhoft acknowledge said instrument to be the free act and deed of said corporation.

Kristy L. Maki

Notary Public
Clay County, Minnesota
My Commission Expires June 28, 1986

STATE OF MINNESOTA)
COUNTY OF CLAY)

8:05

I hereby certify that the within instrument was
filed in this office for record on the 13th
day of December A.D. 19 85 at 8:05
o'clock A. M. and was duly Recorded on
Micro Card # 392717
Silvia Anshel
County Recorder

Deputy

Doland, et al