

A-27862 27589
Sfr. O&E Lease No. 572 dated June 29, 1956 to
Himolot Soilbuilders

TERM LEASE

O&E NO. 721

vol. 77 Page 5533

ORIGINAL

R.W.2 6-64 1M

OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY, hereinafter called Railway Company,
hereby leases to

HARRY R. WAGGONER of Klamath Falls, Oregon,

Lessee, the following premises, situated at Klamath Falls
County of Klamath

and State of Oregon,

hereinafter called
station, in the

to-wit:

All that part of the premises of said Railway Company shown in red outline on the
print marked Exhibit "A", dated October 10, 1972, attached hereto and by this ref-
erence made a part hereof.

TO HAVE AND TO HOLD subject to the provisions following for the term of ten (10) years
commencing December 1, 1972 and ending November 30, 1982.

1. (a) Lessee shall occupy and continue to use said premises during the term for the purpose of construction and
maintenance of warehouse buildings.

(b) If a building or buildings have not already been constructed on said premises, Lessee shall, within six months of the
effective date of this lease, begin the construction and complete within 18 months of said date, a building or buildings according to
plans and specifications submitted to and approved by Railway Company in advance of construction; in event of destruction thereof
in whole or in part Lessee shall within three months thereafter commence the work of repairing or rebuilding and complete the same
within twelve months after the date of said destruction.

2. As annual rental Lessee shall pay annually in advance the sum of seven hundred and no/100 dollars (\$700.00)

for the first five (5) years of the term. The parties shall by rental agreement executed in writing by both parties, agree upon the
rental to be paid during any succeeding five (5) year period. Acceptance of any rental for any portion of any succeeding five (5)
year period not in accordance with an executed rental agreement applicable to said period, even though a bill has been rendered and
payment made thereof, shall not constitute an agreement as to the rate of rental to be paid during such succeeding five (5) year peri-
od. If, after expiration of any five (5) year period, the parties fail to agree upon the rental for the succeeding period, either party
deeming it impossible to fix the rental by mutual agreement may by choosing an appraiser as hereinafter provided cause the rental
to be determined in the following manner: The value of said premises shall be determined by appraisers and the rental shall be fix-
ed by Railway Company based upon the appraisal valuation. The party desiring the appraisal may choose one appraiser after which
the other party shall have twenty (20) days in which to choose an appraiser. Should a second appraiser not be chosen within said
twenty (20) days, the party naming the first appraiser may choose the second appraiser. The two so chosen shall select a third ap-
praiser within twenty (20) days, and if they fail to do so, the selection on application of either party may be made by any Justice of
the Supreme Court of the state in which said premises are located. The decision of any two of such appraisers shall be binding upon
the parties, but in no case shall the rental be less than that agreed upon for the first five (5) years of the term. If the term of this
lease is not a multiple of five (5) then rental for the final period of less than five (5) years shall be determined in the same manner
as hereinabove provided for the fixing of annual rental during a five (5) year period subsequent to the first five (5) year period.

3. (a) Lessee shall pay all general taxes, license fees, or other charges applicable to or assessed against said premises, or
any part thereof, during the term of this lease, including those for the year 1972, even though such taxes, license fees, or
other charges may not become due and payable until after expiration or cancellation of this lease. Any special assessment for pub-
lic improvements assessed or levied against said premises, or any part thereof, will be paid by Railway Company, and the annual
rental specified above will be increased from the date of such payment in a sum equal to 8% of the amount of such special assess-
ment. If any taxes or special assessment is applicable to or assessed or levied against any tract or parcel of which said premises
are a part, Railway Company may allocate the taxes or special assessment among the various parts of said tract or parcel, includ-
ing said premises. In case of taxes, Lessee will pay the part allocated to said premises; and in the case of special assessments,
Railway Company will pay the same and Lessee will pay increased rental as above provided.

(b) In case of nonpayment of rental, taxes, license fees, or other charges, the same shall, until paid, constitute a lien
upon any buildings or other property owned by Lessee located upon said premises, and the lien may be foreclosed according to
law. Lessee shall not remove said buildings or other property until said rental, taxes, license fees, or other charges have been
paid unless directed to do so by Railway Company.

4. Without the consent and approval of the Division Superintendent of Railway Company, no structure shall be erected on said
premises by Lessee if the same is not to be placed parallel to the main track of Railway Company. Lessee shall paint and keep
painted any frame building located upon said premises with a color satisfactory to Railway Company. Lessee shall not place or per-
mit to be placed any advertising matter upon any part of said premises or upon any improvements thereon except such as is neces-
sary to advertise Lessee's own business.

5. (a) No building or structure erected on said premises shall have a swinging door or window opening towards any railway
track, which, when open, will restrict the clearance to less than 8.5 feet from the center line of such track.

(b) Lessee shall not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8.5
feet laterally of the center line, or within 23 feet vertically from the top of the rails, of any track.

(c) Lessee agrees to indemnify and save harmless Railway Company from all loss, damage, penalties, costs or judgments
that may be assessed against or recovered from it on account of or in any manner growing out of a violation of the provisions of this
paragraph 5.

IN WITNESS WHEREOF

Signed, sealed

6. (c) It is understood by the parties that said premises are in dangerous proximity to the tracks of Railway Company and that property on said premises will be in danger of injury or destruction by fire incident to the operation, maintenance or improvement of the railway, and Lessee accepts this lease subject to such dangers. It is therefore 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 Railway Company or of defective appliances, engines, or machinery; except to the premises of Railway Company and to rolling stock belonging to Railway Company or to others, and to shipments of third parties in the course of transportation. Lessee hereby indemnifies and agrees to protect Railway Company from all such loss, damage or destruction to property, including claims and causes of action asserted against Railway Company by any insurer of said property.

(b) Lessee also agrees to indemnify and hold harmless Railway Company 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.

7. It is agreed that the provisions of paragraphs 5 and 6 are for the equal protection of any other railroad company or companies heretofore or hereafter granted the joint use of Railway Company's property of which said premises are a part.

8. (a) If Lessee shall default in any covenant or agreement herein assumed, and such default shall not be remedied or corrected within thirty (30) days after written notice by Railway Company to Lessee of such default, this lease shall terminate without further notice. Any waiver by Railway Company of any default shall not be construed as a waiver of any subsequent default. While such default continues Lessee shall not remove from said premises any building or other property owned by Lessee unless directed to do so by Railway Company.

(b) If Railway Company shall require said premises for railroad purposes at any time during the term, or shall desire the same for any purpose whatever at any time after five years from the date hereof, it may terminate this lease upon written notice of not less than six months. In case of such termination Railway Company shall purchase from Lessee the building or buildings owned by Lessee located on said premises, but shall not purchase equipment or movable fixtures or any of the contents thereof which are capable of being removed therefrom without damage to the said building or buildings. Railway Company shall pay a sum equal to the fair market value of said building or buildings at the time such notice is given. If the parties fail to agree on the said value, the same shall be determined by three disinterested appraisers selected in the manner hereinbefore provided, and the value agreed upon by any two of said appraisers shall be paid by Railway Company. In the event of termination of this lease pursuant to notice in accordance with this paragraph 8(b), Lessee, before the termination date fixed in said notice, shall remove from said premises Lessee's property not purchased by Railway Company, and in case of failure to do so, Railway Company may remove such property at the cost of Lessee, or may appropriate same to its own use without compensation.

(c) Any notice to be given by Railway Company as herein provided shall be good if served personally upon Lessee, posted upon said premises, or deposited in the United States mails addressed to Lessee at

2601 Pershing Way, P. O. Box 664, KLAMATH FALLS, OREGON 97601

9. Except as otherwise provided in paragraphs 3(b) and 8(a) hereof, upon the expiration of this lease, Lessee, before said lease expires shall remove Lessee's property and improvements from said premises and fill all excavations thereon and in case of failure to do so, Railway Company may remove such property and improvements and fill the excavations at the cost of Lessee, or may appropriate the same to its own use without compensation.

10. Lessee shall not permit the existence of any nuisance nor the accumulation of any material or refuse on said premises or adjacent to the tracks of Railway Company and shall at all times keep same in a clean and sanitary condition and shall comply with all laws and regulations in reference to combustible or flammable materials on said premises.

11. Railway Company reserves the right at any time to change the grade of its tracks without compensation to Lessee, and in the event such change is made, or the grade of any highway in proximity to said premises is changed, Lessee shall bear all expense necessary to adapt said premises and improvements thereon to the changed conditions.

12. Railway Company reserves the right to maintain its existing facilities and to construct or permit the construction of additional facilities on said premises for the benefit of or for the purpose of serving Railway Company or other Lessees of Railway Company and also the right to enter upon said premises for the purpose of constructing, reconstructing, repairing, operating, relocating and removing said facilities.

13. This lease is granted subject to permits, leases and licenses, if any, heretofore granted by Railway Company affecting said premises.

14. (a) Without the written consent of Railway Company, Lessee shall not assign this lease or any interest therein, or sublet, or assign or sublet without such written consent.

(b) In the event of assignment of this lease, Railway Company, 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 Railway Company only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Railway Company for its consent.

* COPIED SEE SIGN. DATED 11/16/77

IN WITNESS WHEREOF the parties have executed this lease in duplicate this 20th day of November 1972
OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY

By H. J. Sules
Attest Harry R. Waggoner
Secretary

Signed, sealed and delivered in presence of

James A. Linton
James A. Linton

as to
Lessee

HARRY R. WAGGONER

Lessee.

NOTE: If Lessee is a corporation and the corporate name, then the name of officer signing, followed by his title.

~~OC&E RY~~
Exhibit A

BURLINGTON NORTHERN, INC.
PORTLAND DIVISION 5TH SUB. DIV.

KLAMATH FALLS, ORE.

MANAGER ENGINEERING PORTLAND
SCALE 1" = 100' DATE 10-10-72

STATE OF OREGON)

5536

COUNTY OF MULTNOMAH) ss.

On this 20th day of November, 1972, before me, a Notary Public in and for said County and State, appeared W. J. Durlan and Roger J. Crosby, to me personally known, who, being duly sworn, did say that he, the said W. J. Durlan, is the Vice President and he, the said Roger J. Crosby, is the Secretary, of Oregon, California and Eastern Railway Company, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation, by authority of its board of directors, and said W. J. Durlan and Roger J. Crosby acknowledges the said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the day and year first in this, my certificate, written.

Betty Ann Root
Notary Public for Oregon
My Commission expires 10-25-74

I, V. E. Rued, Land Records Supervisor for Weyerhaeuser Company, hereby certify that the above is a true copy of a document in our files.

WEYERHAEUSER COMPANY

BY V. E. Rued
Land Records Supervisor

STATE OF OREGON; COUNTY OF KLAMATH; ss.

for record at request of KLAMATH COUNTY TITLE CO

THIS 4th day of APRIL, A. D. 19 77 at 11:40 o'clock AM, and

uly recorded in Vol. M77, of DEEDS on Page 5533

PER \$ 12.00

Wm D. Milne, County Clerk

By Wm D. Milne

Rel.
Klam Co Title
O.C. 134151
City