

STATE OF TEXAS \*

COUNTY OF WILLIAMSON \*

CITY OF ROUND ROCK \*

I, JOANNE LAND, Assistant City Manager/City Secretary of the City of Round Rock, Texas do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed and adopted by the City Council of the City of Round Rock, Texas, at a meeting held on the 17<sup>th</sup> day of November, 19 91, which is recorded in the minutes of the City of Round Rock in book 28.

WITNESSED by my hand and seal of the City of Round Rock, Texas on this 14<sup>th</sup> day of November, 19 91.

Joanne Land  
JOANNE LAND  
Assistant City Manager/  
City Secretary

ORDINANCE NO. 1299

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ROUND ROCK, TEXAS ADOPTED IN SECTION 11.305(2), CODE OF ORDINANCES, 1990 EDITION, CITY OF ROUND ROCK, TEXAS, AND MAKING THIS AMENDMENT A PART OF THE SAID OFFICIAL ZONING MAP, TO WIT: TO CHANGE 2.56 ACRES OF LAND MORE OR LESS, OUT OF THE JACOB M. HARRELL SURVEY, WILLIAMSON COUNTY TEXAS, AS DESCRIBED BELOW FROM DISTRICT SF-2 (SINGLE FAMILY-STANDARD LOT) TO PLANNED UNIT DEVELOPMENT (P.U.D.) DISTRICT NO. 5.

WHEREAS, an application has been made to the City Council of the City of Round Rock, Texas to amend the Official Zoning Map to change the zoning classification of the property described in Exhibit One, attached hereto, from District SF-2 (Single Family-Standard Lot) to Planned Unit Development (P.U.D.) District No. 5, and

WHEREAS, the amendment to the Official Zoning Map has been submitted to the Planning and Zoning Commission for its recommendation and report, and

WHEREAS, the Planning and Zoning Commission held a public hearing concerning the requested amendment on the 19th day of September, 1991, following lawful publication of the notice of said public hearing, and

WHEREAS, after considering the public testimony received at such hearing, the Planning and Zoning Commission has recommended that the Official Zoning Map be amended so that the zoning classification of the above-described property be changed from District SF-2 (Single Family-Standard Lot) to Planned Unit Development (P.U.D.) District No. 5, and

WHEREAS, on the 22nd day of October, 1991, after proper notification, the City Council held a public hearing on the requested change, and

WHEREAS the City Council has determined that the zoning classification change provided for herein promotes the health, safety, morals and protects and preserves the general welfare of the community, and

WHEREAS, each and every requirement set forth in Chapter 211, Subchapter A, Texas Local Government Code, 1990 Edition and Section 11.300, Code of Ordinances, 1990 Edition, City of Round Rock, Texas concerning public notices,

hearings, and other procedural matters has been fully complied with,

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

I.

That the City Council has hereby determined the Planned Unit Development (P.U.D.) District No. 5 meets the following goals and objectives:

- (1) P.U.D. No. 5 is in harmony with the general purposes, goals, objectives and standards of the General Plan, and provides a buffer between proposed higher density uses proposed for land to the east and single family residential development to the west.
- (2) P.U.D. No. 5 does not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utilities or any other matters affecting the public health, safety and general welfare.
- (3) P.U.D. No. 5 will be adequately serviced by essential public facilities and services including streets, parking, drainage, water, wastewater facilities, and other necessary utilities.
- (4) P.U.D. No. 5 will be constructed, arranged and maintained so as not to dominate, by scale and massing of structures, the immediate neighboring properties or interfere with their development or use in accordance with any existing zoning district.

II.

That the Official Zoning Map adopted in Section 11.305 (2), Code of Ordinances, 1990 Edition, City of Round Rock, Texas is hereby amended so that the

zoning classification of the property described in Exhibit "One" attached hereto and incorporated herein shall be, and is hereby changed from District SF-2 (Single Family-Standard Lot) and shall be hereafter designated as Planned Unit Development (P.U.D.) No. 5, and that the Mayor is hereby authorized and directed to enter into the planned Unit Development (P.U.D.) agreement hereto as Exhibit "Two", which agreement shall constitute the Development and shall govern the development and use of said property.

III.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

**Alternative 1.**

By motion duly made, seconded and passed with an affirmative vote of all the Council members present, the requirement for reading this ordinance on two separate days was dispensed with.

READ, PASSED, AND ADOPTED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

**Alternative 2.**

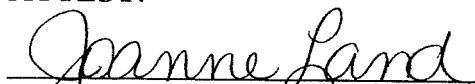
READ and APPROVED on first reading this the 22nd day of October, 1991.

READ, APPROVED and ADOPTED on second reading this the 7th day of November, 1991.



MIKE ROBINSON, Mayor  
City of Round Rock, Texas

ATTEST:

  
JOANNE LAND, City Secretary

# EXHIBIT ONE

The Land referred to in this document is described as follows:

BEING 2.46 acres of land out of the Jacob M. Harrell Survey, Abstract No. 284 in the City of Round Rock, Williamson County, Texas, said Land being that same tract conveyed by deed from Phillip Mays, et ux, to Frank Clayton, et al., of record in Volume 86, Page 584, of the Deed Records of Williamson County, Texas. Surveyed on the ground in the month of May, 1975, by Don more fully as follows:

BEGINNING at an iron pin set in the South right-of-way line of the Missouri Pacific Railroad (formerly called I & G.N.R.R. Co.), said point being the most westerly corner of the said Clayton tract, for the most westerly corner hereof;

THENCE, along the North line of Chisholm Valley, a subdivision shown on a plat of record in Volume 7, Page 51 of the Plat Records of Williamson County, Texas, as follows:

N 89° 39' E at 40.73 feet passing an iron pin found, in all 161.34 feet to an iron pin found, and

N 85° 07' E, 338.66 feet to an iron pin set for the S.E. corner hereof;

THENCE N 13° 00' W, 425.63 feet to an iron pin set in the South R.O.W. line of the said railroad for the most northerly corner hereof;

THENCE S 42° 12' W, 600.00 feet along the said South R.O.W. line to the place of BEGINNING;

AND an access easement containing 4800 square feet as described in the Private Road Encroachment Agreement between the Missouri Pacific Railroad Company and Brian L. Byrd, attached hereto as Exhibit B.

EXHIBIT TWO

PLANNED UNIT DEVELOPMENT NO. 5  
Application No. 91-5502

THIS AGREEMENT made the 7<sup>th</sup> day of NOVEMBER, 1991, BETWEEN the City of Round Rock, Texas having its offices at 221 East Main Street, Round Rock, Texas, 78664, (hereinafter called the "City") and Brian L. Byrd, his successors and assigns, whose address for purposes hereof is 300 Hickok Court, Austin, Texas, 78753 (hereinafter called the "Developer").

WHEREAS the Developer has requested a planned unit development from the City for the development of 2.45 acres of land and a 4,800 square foot access easement for an organic wholesale greenhouse on a tract of land located within the corporate limits of the City and more particularly described by metes and bounds in Exhibit "A" attached hereto and made part hereof (hereinafter called "the land"); and,

WHEREAS the Owner, in accordance with Chapter 11, Section 11.316(8), Code of Ordinances, City of Round Rock, Texas has submitted the development plan set forth in this Agreement ("Development Plan") to the City containing terms and condition for the use and development of the land; and

WHEREAS the City has held two public hearings required by law on the 19th day of September, 1991 and on the 22nd day of October, 1991 to solicit input from all interested citizens and affected parties; and,

WHEREAS the Planning and Zoning Commission has recommended approval of the P.U.D. zoning on October 1st, 1991; and,

WHEREAS the City Council has review the proposed Development Plan and determined that it promotes the health, safety, and general welfare of the citizens of Round Rock and that it complies with the intent of the Planned Unit Development Ordinance of the City; and

NOW THEREFORE BY THIS AGREEMENT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the City and the Developer covenant and agree as follows:

DUB

1. **Owner**

The Developer is the owner or has the right to purchase an estate in fee simple of all those certain parcels or tracts of land and premises, being in the City of Round Rock, Williamson County, Texas, and being more particularly known and described in Exhibit A, attached hereto; AND,

The Developer holds an access easement across those portions of the Missouri Pacific Railroad right-of-way, also being described in Exhibit A, attached hereto. (Together referred to herein as the "Land".)
2. **Consent**

The Developer has obtained the consent of all persons having a recorded interest in the Land.
3. **Development and Construction**

For the purpose of determining the use of Land, buildings, and structures upon the Land, and the regulation of the size, shape, and siting of buildings and structures, the provision of off-street parking and other zoning regulations, the Land shall be zoned to allow the development of a commercial wholesale greenhouse complex, certified organic by the State of Texas, not to exceed 44,000 sq.ft. gross floor area, together with an office not to exceed 1000 square feet gross floor area to serve said complex, and for no other purpose. No retail sales shall be permitted from the lands. No herbicides or pesticides shall be used in the operation of the greenhouses.
4. **Construction**

All roads, driveways and utilities to be constructed on or to the Land to serve the proposed development and provide adequate fire protection shall be constructed to current City standards, at the sole cost of the Developer, to the satisfaction of the Director of Public Works prior to the

DLB

issuance of any certificate of occupancy.

5. **Easements and Rights of Way**

The Developer shall provide, at his sole cost, all necessary utility and drainage easements or rights of way at the time of development of the Land. These shall be recorded in the Williamson County Deed Records.
6. **Fire Hydrants**

The Developer shall install, prior to the issuance of any certificate of occupancy, at his sole cost, all fire hydrants required by the City to the satisfaction of the Director of Public Works.
7. **Waste Water Disposal**

The Developer shall, at his sole cost, connect any building on the Land to the wastewater system of the City of Round Rock.
8. **Water**

The Developer shall connect any building on the Land to the City of Round Rock water supply system.
9. **Setback**

Minimum building setbacks shall be provided as follows:
  - A. Fifty (50) feet from the southern property line.
  - B. Twenty (20) feet from all other property lines.
10. **Fence**

The developer shall erect a six (6) foot (minimum) security fence, with poles set in concrete, along the boundary between the lands and Chisholm Valley Park.
11. **Buffer**

A fifty (50) foot landscaped buffer strip shall be maintained along the southern boundary of the land. Such buffer shall retain all native trees and major shrubs with a caliper size of two (2) inches or greater. This area shall not be used for any other purpose.

DLB



12. Parking

Parking shall be provided at the ratio of one parking space per 2000 square feet of gross floor area unless an alternate parking standard is approved by the Director of Planning and Community Development, in accordance with Chapter 11 of the Code of Ordinances.

13. Height

No building or structure shall exceed thirty (30) feet in height.

14. Zoning  
Conformity

For zoning purposes other than those specifically addressed in this agreement the land shall conform to the provisions of Chapter 11 of the Code of Ordinances of the city which pertain to the District C-1 (General Commercial) Zoning District.

15. Access

Access is provided by a twenty foot (20') wide easement provided by the License Agreement from the adjacent Railroad west to Bellview Drive as documented in Exhibit B attached hereto. All access driveways shall be constructed and paved to City standards using concrete, asphalt or paving blocks and shall extend from the parking lot to the nearest public street. ~~All access driveways constructed on access easements. The developer shall erect a four foot (4') security fence with poles set in concrete along the boundary of the access easement and the Chisholm Valley Park.~~ Driveways ~~and fences~~ shall be completed prior to the issuance of an occupancy permit for the proposed development.

DLP  
JMR

16. Texas Water  
Commission

The Developer shall meet any requirements of the Texas Water Commission as a condition of Development.

DLP

17. **Vehicles** Daily commercial vehicle trips to the site shall be limited to a maximum size of 3/4 ton vans or trucks and the number of commercial vehicle trips entering and leaving the site shall be limited to twenty vehicles per day. This restriction does not prohibit the occasional delivery of supplies by vehicles up to 1.5 tons no more often than once weekly. All dual axle vehicles shall be prohibited from making routine pickup or deliveries to the site. Commercial vehicles making deliveries to or from the site shall be prohibited between the hours of 10:00 P.M. and 6:00 A.M. daily.
18. **Outdoor Storage** Outdoor storage of materials shall be restricted as a conditional use and regulated by the Development Review Board in accordance with Chapter 11 Code of Ordinances. No storage of compost, fertilizers, or soil which would result in objectionable odors in the adjacent residential subdivision or park shall be permitted.
19. **Incorporation** Exhibits "A" and "B" hereinbefore referred to are hereby incorporated into and made part of this Agreement.
20. **Ordinances** Except as provided in this contract, the Land shall be used and developed strictly in compliance with the Code of Ordinances of the City.
21. **Representation** It is understood and agreed that the City has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this Contract.
22. **Recordation** This Agreement shall be construed as running with the DLB

Land and shall be recorded in the Williamson County Official Deed Records.

**23. Recording fees**

The Developer agrees to pay all costs related to the recording of this Agreement. This Agreement shall be deemed the "Development Plan" referred to by the Code of Ordinances.

**24. Interpretation**

Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

**25. Binding**

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

IN WITNESS WHEREOF the said parties to this Agreement have hereunto set their hands and seals the day and year first above written.

CITY OF ROUND ROCK, TEXAS

By: Mike Robinson  
MIKE ROBINSON, Mayor

Date: November 7, 1991

ATTEST:

Joanne Land  
JOANNE LAND, City Secretary

THE STATE OF TEXAS       §  
  §  
COUNTY OF WILLIAMSON   §

This instrument was acknowledged before on the 7<sup>th</sup> day of November 1991 by Mike Robinson, Mayor of the City of Round Rock, Texas.



Christine R. Martinez  
Notary Public, State of Texas

CHRISTINE R. MARTINEZ  
(Name Printed)

Commission Expires: 6-22-93

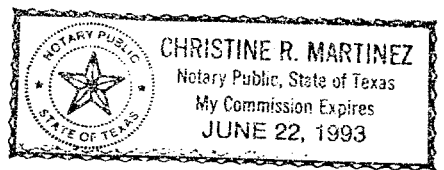
BLB

By: Brian L. Byrd  
BRIAN L. BYRD, President

Date: October 31, 1991

THE STATE OF TEXAS       §  
  §  
COUNTY OF WILLIAMSON   §

This instrument was acknowledged before on the 31<sup>st</sup> day of October, 1991  
by Brian L. Byrd.



Christine R. Martinez  
Notary Public, State of Texas

CHRISTINE R. MARTINEZ  
(Name Printed)

Commission Expires: 6-22-93

BLB

## EXHIBIT A

The Land referred to in this document is described as follows:

BEING 2.46 acres of land out of the Jacob M. Harrell Survey, Abstract No. 284 in the City of Round Rock, Williamson County, Texas, said Land being that same tract conveyed by deed from Phillip Mays, et ux, to Frank Clayton, et al., of record in Volume 86, Page 584, of the Deed Records of Williamson County, Texas. Surveyed on the ground in the month of May, 1975, by Don more fully as follows:

BEGINNING at an iron pin set in the South right-of-way line of the Missouri Pacific Railroad (formerly called I & G.N.R.R. Co.), said point being the most westerly corner of the said Clayton tract, for the most westerly corner hereof;

THENCE, along the North line of Chisholm Valley, a subdivision shown on a plat of record in Volume 7, Page 51 of the Plat Records of Williamson County, Texas, as follows:

N 89° 39' E at 40.73 feet passing an iron pin found, in all 161.34 feet to an iron pin found, and

N 85° 07' E, 338.66 feet to an iron pin set for the S.E. corner hereof;

THENCE N 13° 00' W, 425.63 feet to an iron pin set in the South R.O.W. line of the said railroad for the most northerly corner hereof;

THENCE S 42° 12' W, 600.00 feet along the said South R.O.W. line to the place of BEGINNING;

AND an access easement containing 4800 square feet as described in the Private Road Encroachment Agreement between the Missouri Pacific Railroad Company and Brian L. Byrd, attached hereto as Exhibit B.

# EXHIBIT B

File No. 1376-05

## PRIVATE ROAD ENCROACHMENT AGREEMENT

This agreement is made this 27th day of September, 1991, by and between MISSOURI PACIFIC RAILROAD COMPANY (hereinafter "Licensor") and BRIAN L. BYRD with mailing address at 300 Hickok Court, Austin, Texas 78753 (hereinafter "Licensee").

### RECITALS:

The Licensee desires to construct, maintain and use a non-exclusive private road (hereinafter called "Road Encroachment") upon and along the property of the Licensor at Round Rock, Texas, in the location shown on the attached print dated September 26, 1991, marked Exhibit "A". The Licensor is willing to grant the Licensee the right to use the Road Encroachment on the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

### Article I. LICENSOR GRANTS RIGHT

The Licensor grants the Licensee the right to use that portion of the Licensor's right of way for a Road Encroachment in the location shown on Exhibit "A", subject to the terms set forth herein and in the attached Exhibit "B". In consideration of the license and permission granted herein, the Licensee agrees to observe and abide by the terms and conditions of this agreement and to pay to the Licensor a license fee of \$500.00 per annum, payable annually in advance.

Effective on or after the fifth anniversary of this agreement, and on or after the anniversary date of each subsequent five-year period, the Licensor may adjust the license fee and shall advise the Licensee of any change by written notice to the Licensee not less than thirty days prior to the effective date for the new license fee, it being understood that adjustments to the license fee shall not be made more often than once during each successive five-year period.

### Article TERM

This agreement shall be effective as of October 1, 1991, and shall continue in full force and effect until terminated as provided in Exhibit "B".

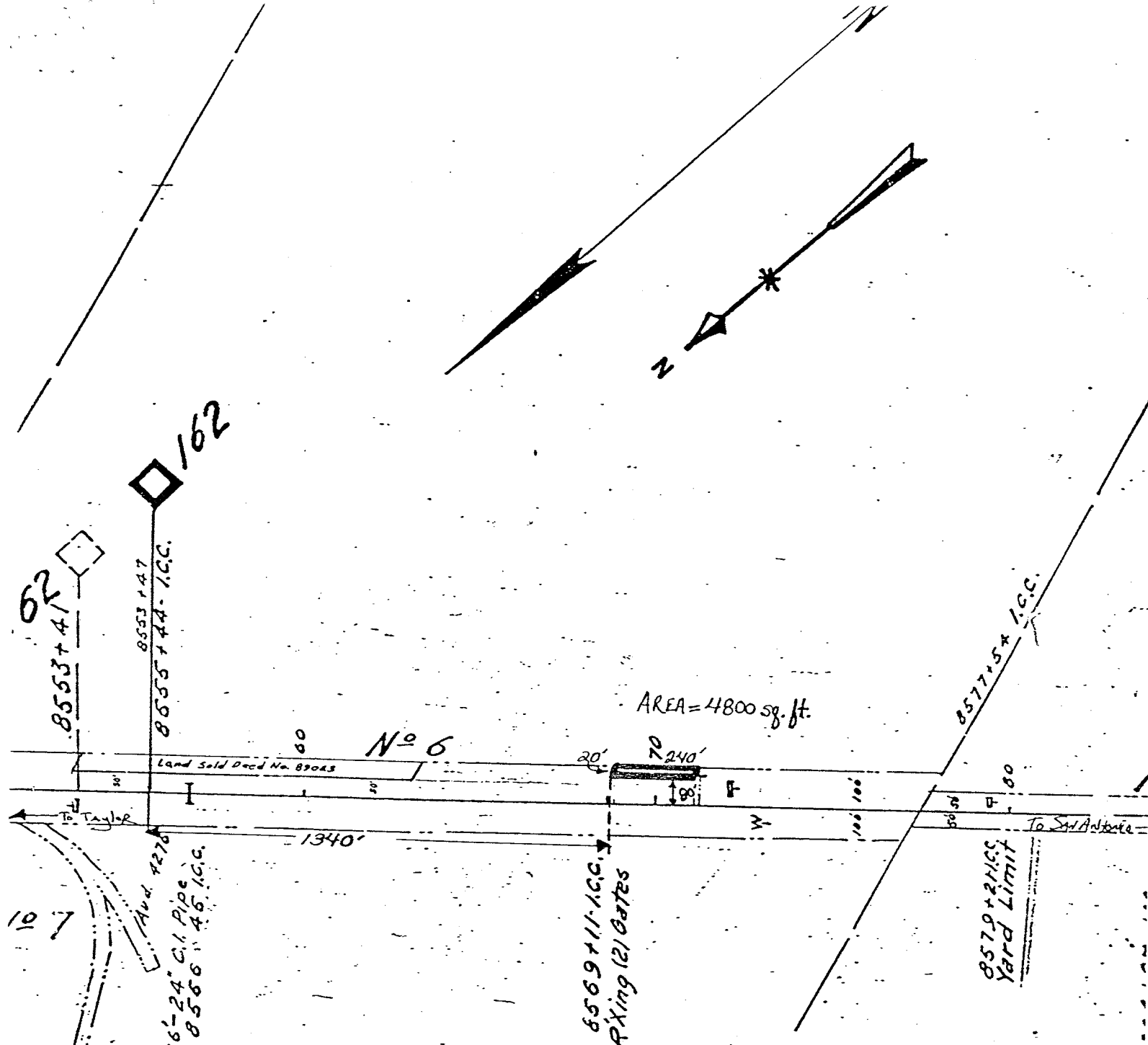
The parties hereto have caused this agreement to be executed as of the date first hereinabove written.

MISSOURI PACIFIC RAILROAD COMPANY

Brian L. Byrd  
Brian L. Byrd

DW  
Director Field Operations

BLB



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

EXHIBIT "A"

MISSOURI PACIFIC RAILROAD COMPANY

ROUND ROCK, WILLIAMSON COUNTY, TEXAS

MP 162.25 - AUSTIN SUBDIVISION

SCALE: 1" = 400'

LEASE TO BRIAN L. BYRD

OFFICE OF DIRECTOR  
CONTRACTS & REAL ESTATE

OMAHA, NEBRASKA SEPT. 26, 1991

KLB FILE: 1376-05

\* L E G E N D \*

LEASE AREA SHOWN.....  
MPRRCO. R/W OUTLINED.....

BLS



EXHIBIT B

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, wire lines, pipe lines or other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensee's rights are subject to all outstanding superior rights (including those in favor of other licensees, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

SECTION 2. ROAD ENCROACHMENT TO BE STRICTLY PRIVATE.

It is expressly stipulated that the Road Encroachment is to be a strictly private one and is not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Roadway and prevent its use as a public road.

SECTION 3. CONSTRUCTION, MAINTENANCE AND USE.

(a) The Licensee shall bear the entire cost and expense, furnish all necessary labor and material and perform all grading necessary for the construction, maintenance, repair or renewal of the Road Encroachment, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, or otherwise.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace any gates, fences, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Licensor or other appurtenances shown on Exhibit A. The Licensee shall, at its own expense, install and thereafter maintain any such appurtenances that may be required by the Licensor, by law, or by any public authority having jurisdiction. All work performed by the Licensee on the right of way shall be done to the satisfaction of the Licensor.

(c) The Licensee shall keep gates affording access to the Road Encroachment closed and locked at all times except during the time of actual passage. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property.

(d) The Licensee, at the request of the Licensor and at Licensee's own expense, shall erect a fence or barrier on the trackside of the Road Encroachment to protect the Licensor's tracks and/or property.

(e) The Licensee shall not use the Road Encroachment for the storage of any material without the written consent and approval of the Licensor and in no event shall the Licensee place material any closer than twenty (20) feet from the centerline of the track.

SECTION 4. NOTICE OF COMMENCEMENT OF WORK.

The Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon or entrance onto property of the Licensor in connection with the construction, maintenance, repair, modification, reconstruction, relocation, or renewal of the Road Encroachment. All such work shall be prosecuted diligently to completion.

SECTION 5. MODIFICATION OR RELOCATION OF ROAD ENCROACHMENT.

Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Road Encroachment, the Licensee shall, at the Licensee's sole expense, modify or move the Road Encroachment and the appurtenances thereto. All the terms of this agreement shall govern the continued maintenance and use of the modified or relocated Road Encroachment.

SECTION 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Licensor's premises.

DLD

(b) In addition to the liability terms elsewhere in this Agreement, the Licensee shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees, court costs, and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Licensee, and/or its contractor, agents and/or employees, on Licensor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property; or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

#### SECTION 7. INDEMNITY.

The Licensee assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorney fees, fines, penalties, and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever (including officers, agents and employees of the Licensor and of the Licensee, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the Licensee and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensor and such other railroad companies); or (3) violation by the Licensee of any federal, state, or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

- (a) the construction of the Road Encroachment;
- (b) any work done by the Licensee on or in connection with the Road Encroachment;
- (c) the use of the Road Encroachment by the Licensee, its officers, agents, employees, patrons or invitees, or by any other person;
- (d) the use of the Road Encroachment by the Licensee's successors or assigns or the officers, agents, employees, patrons or invitees of the Licensee's successors or assigns until the Licensee either assigns the agreement or terminates the agreement as provided herein; or
- (e) the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement; the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement;

regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensor, its officers, agents or employees.

#### SECTION 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Road Encroachment, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance, request, or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Road Encroachment, to prevent the same from becoming a charge or lien upon property of the Licensor and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction, maintenance or use of the Road Encroachment or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's personal property located upon the property of the Licensor as compared with the entire value of such property.

#### SECTION 9. TERMINATION ON BREACH OR ON NOTICE.

(a) The breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensor of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

(b) This agreement may be terminated by either party on thirty (30) days written notice to the other party.

SECTION 10. REMOVAL OF ROAD ENCROACHMENT AND RESTORATION OF PREMISES.

(a) Prior to termination of this Agreement howsoever, Licensee shall, at its own expense, remove the Road Encroachment and restore the premises to as good condition as existed prior to Licensee's work on the premises. Failure by the Licensee to restore the premises within 10 days following termination shall be deemed authorization by Licensee for Licensor to restore the premises at Licensee's expense.

(b) In the event the Licensee removed, relocated or disturbed any fence or other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Road Encroachment, with or without the Licensor's consent, the Licensee shall, at Licensee's sole expense, restore such fence or other property to the same condition it was in before such fence or other property was removed, relocated or disturbed.

SECTION 11. ASSIGNMENT.

The Licensee shall not assign this agreement, or any interest therein to any purchaser, lessee or to any other person without the written consent of the Licensor. If the Licensee fails to secure the Licensor's consent to any assignment, the Licensee will continue to be responsible for obligations and liabilities assumed herein.

SECTION 12. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 11 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

DLD

THIS SUPPLEMENTAL AGREEMENT is made as of this October 22, 1991, by and between MISSOURI PACIFIC RAILROAD COMPANY (hereinafter the "Licensor") and BRIAN L. BYRD (hereinafter the "Licensee").

RECITALS:

By instrument dated <sup>SEPTEMBER 27, 1991</sup>, the parties hereto entered into an agreement (hereinafter the "Basic Agreement") identified as Audit No. 156771, covering license of real estate for a private roadway at Round Rock, Texas.

The parties now desire to modify the Basic Agreement by amending Article II and Section 9(b) of Exhibit B thereof.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Section 1. AMENDMENT OF ARTICLE II.

Effective October 1, 1991, Article II of the Basic Agreement is hereby amended to read as follows: "This agreement shall be effective as of October 1, 1991, and shall continue in full force and effect to and including September 30, 1996, and thereafter from year to year, subject to termination as hereinafter provided."

Section I. AMENDMENT OF SECTION 9(b) OF EXHIBIT B.

Effective October 1, 1991, Section 9(b) of the Basic Agreement is hereby amended to read as follows: "Effective October 1, 1996, this agreement may be terminated by either party on thirty (30) days written notice given to the other party."

Section IV. AGREEMENT SUPPLEMENTAL

This agreement is supplemental to the Basic Agreement, as herein amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

MISSOURI PACIFIC RAILROAD COMPANY

Brian L. Byrd  
Brian L. Byrd

[Signature]  
Director-Field Operations

BLB

FILED FOR RECORD  
WILLIAMSON COUNTY, TX.

1991 NOV 14 PM 4: 54

*Clairie Bygell*

COUNTY CLERK

**STATE OF TEXAS    COUNTY OF WILLIAMSON**  
I hereby certify that this instrument was FILED  
on the date and at the time stamped hereon  
by me, and was duly RECORDED in the Volume  
and Page of the named RECORDS of Williamson  
County, Texas, as stamped hereon by me, on

NOV 14 1991



*Clairie Bygell*

COUNTY CLERK  
WILLIAMSON COUNTY, TEXAS