Stephen A. Belin
Manager, Eastern Region
HSE/Remediation Management

PHILLIPS 66
420 S. Keeler Avenue, PB-1740-01
Bartlesville, OK 74003-6670
Phone 918-977-5399

212784

VIA E-MAIL AND U.S. MAIL

December 2, 2013

Mr. Michael A. Mintzer
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

Re: Response Information Request dated September 16, 2013 to ConocoPhillips Company; Newtown Creek Superfund Site, Kings County and Queens County, New York

Dear Mr. Mintzer:

ConocoPhillips Company ("ConocoPhillips") forwarded the above-referenced information request regarding the Newtown Creek Superfund Site to Phillips 66 Company ("Phillips 66") for response. Please note that, as a result of a corporate repositioning last year, Phillips 66 is now the correct legal entity for any further communications with respect to this matter. We sincerely appreciate your generosity in granting us an extension through December 2, 2013 to provide responses, which are enclosed.

Because the questions relate primarily to a company that was legally dissolved eight decades ago, there were very few documents in our corporate files or the archives of ConocoPhillips relevant to this matter. In addition, the lack of any witnesses with personal knowledge has made investigation of this matter difficult. Nevertheless, Phillips 66 has endeavored to provide complete and accurate information based on a diligent investigation and review of documents it has located to date, primarily from external sources.

We are not aware of any requirement in CERCLA that responses to information requests include a notarized certificate of the type requested. Although we respectfully decline to provide such a certificate, please be assured that the enclosed responses reflect our best understanding of the relevant corporate histories and transactions based on an extensive investigation of recorded title documents, Secretary of State Records, court files, and documents provided by EPA, among many other sources.

As indicated in the enclosed response, the historic documents reflect the existence of two separate companies, incorporated years apart in different states, but both bearing the name "The American Agricultural Chemical Company." The first of these companies was incorporated under Connecticut law in 1863 (the "Connecticut Company"). A half century later, a second company with the same name was incorporated under the laws of Delaware in 1913 (the "Delaware Company"). These two companies at all times remained legally separate entities up to the May 22, 1936 full dissolution of the original Connecticut Company.

Title records show that the Connecticut Company sold one of the three parcels of the facility in question, located at 38-20 Newton Creek, to the Delaware Company in 1930. That property, which was a former sales warehouse for the Connecticut Company, apparently was no longer in use at the time of conveyance and was the only portion of the facility that the Delaware Company ever owned.

A year earlier, the Van Iderstine Company, an unrelated entity, absorbed the business and assets of two of the Connecticut Company's wholly owned subsidiaries, Herman Brand, Inc. and G. Selner Company, along with the so-called Preston Works rendering plant they operated on another portion of the property. A third parcel, with an address of 37-90 Newton Creek, apparently was never owned by either the Connecticut or Delaware Company.

The Delaware Company subsequently sold its assets in 1963 to a subsidiary of Continental Oil Company, a predecessor of ConocoPhillips. Those assets did not include the one property at 39-20 Newton Creek that the Delaware Company previously owned, much less the separate property and rendering business that the Connecticut Company sold to Van Iderstine thirty-four years earlier. Indeed, the Delaware Company leased the 39-20 Newton Creek parcel to a coal company that later exercised an option to purchase it in 1941—more than two decades before the 1963 asset acquisition. In any event, the asset-purchase agreement did not involve an assumption of then-unknown liabilities under CERCLA, which was not enacted for another 17 years.

The enclosed documents also provide information about Continental Oil's subsequent incorporation of Agrico Chemical Company as a wholly owned subsidiary in the 1960s. In addition, we have provided details regarding Agrico's later merger into Willchemco, Inc., a subsidiary of the Williams Companies, in connection with Continental Oil's 1972 sale of all its plant-food business and assets. Although it does not appear to have any connection with the Newtown Creek Site, we understand that Agrico continues to exist today as a company wholly unrelated to ConocoPhillips or Phillips 66.

In light of the information provided in the enclosed response, we are unaware of any basis for concluding that ConocoPhillips/Phillips 66 is legally responsible for any environmental remediation costs with regard to the Newtown Creek Site. Accordingly, we would appreciate receiving confirmation from you at your earliest opportunity that we may close our file on this matter.

Please do not hesitate to call Steve Slagel, Senior Counsel for Phillips 66, if you have additional questions or if you would like to discuss the matter further. Steve's contact information is provided in the response to question 3.

Very truly yours,

Stephen A. Belin
Eastern Region Manager
Remediation Management
Phillips 66 Company

Enclosures

cc: Caroline Kwan
Remedial Project Manager
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, New York 10007-1866

RESPONSES TO SEPTEMBER 16, 2013 EPA REQUEST
FOR INFORMATION ADDRESSED TO CONOCOPHILLIPS COMPANY

Newtown Creek Superfund Site ("Site")
Kings County and Queens County, New York

The responses set forth herein are based on the present knowledge, information and belief of Phillips 66 Company, which is providing these responses for itself and on behalf of ConocoPhillips Company. Phillips 66 Company reserves the right to amend or supplement these responses when and if appropriate. Phillips 66 Company does not concede the relevancy of the responses, nor does it accept or adopt as accurate any statements or implications that may be drawn from the requests themselves. All evidentiary objections, claims, rights and defenses relating to the matters addressed herein, including objections to the form of the requests, are hereby reserved. These responses are not and should not be taken as an admission or waiver of any kind to the jurisdiction, statutory authority, or regulatory authority of the United States Environmental Protection Agency ("EPA") for this information request or any EPA remedial actions.

QUESTIONS AND RESPONSES

1. Company Identification. Provide the following information with respect to the Company (see Definition 7).

a. The full legal, corporate name and mailing address.

Response

As a result of a tax-free spinoff effective May 1, 2012, Phillips 66 Company is the legal name and relevant corporate entity for any further communications with respect to the matters raised in this request. This request was addressed to ConocoPhillips Company, which continues to exist as a separate company and whose mailing address is correctly identified in EPA's cover letter. As noted, however, any further communications should be addressed to Phillips 66 Company as provided in response to question 3 below.

b. The state and date of incorporation of the Company, the date of qualification to do business in the State of New York and the Company's agents for service of process in the state of incorporation and the State of New York.

Response

ConocoPhillips Company was incorporated in Delaware on June 13, 1917. The company qualified to do business in New York on December 12, 1932. Effective May 1, 2012, the refining and marketing business of ConocoPhillips Company was transferred to Phillips 66 Company via a tax-free spinoff.

Phillips 66 Company, which was incorporated in Delaware on November 10, 2011, is now a separate, stand-alone company and is the relevant entity for any further communications regarding this matter. Phillips 66 Company qualified to do business in New York on November 18, 2011.

Both Phillips 66 Company and ConocoPhillips Company have the same agents for service of process in Delaware and New York, as provided below.

Delaware:
Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

New York:
United States Corporation Company
80 State Street
Albany, New York 12207-2543

c. The identity of the Chief Executive Officer or other presiding officer of the Company.

Response

The name and address of the Chairman and Chief Executive for Phillips 66 Company are:

Greg C. Garland
Chairman and Chief Executive Officer
Phillips 66 Company
3010 Briarpark Drive
Houston, Texas 77042

The name and address of the Chairman and Chief Executive for ConocoPhillips Company are correctly identified in the cover letter to these information requests.

d. Please identify each separate corporation named Conoco or Continental Oil that was affiliated with the Conoco Inc. company that merged into ConocoPhillips, and describe the relationship of each such entity to Conoco, the purpose for that entity and the relationship of that entity to ConocoPhillips.

Response

Conoco Inc. merged with and into Phillips Petroleum Company in 2002 to form ConocoPhillips Company. Conoco Inc. was the successor-in-interest to Continental Oil Company, which officially changed its name to Conoco Inc. in 1979. ConocoPhillips Company and its predecessors have been involved in the energy business and other endeavors for over 100 years. As a result of the corporate repositioning discussed above, ConocoPhillips Company has been principally involved in exploration and production operations, and Phillips 66 Company has focused on refining and marketing activities since May 1, 2012.

e. Please identify the relationship between the Company and the Williams Company with respect to The American Agricultural Chemical Company.

Response

Phillips 66 Company has learned through extensive research from public sources that there were two former companies called The American Agricultural Chemical Company, one incorporated in Connecticut and the other in Delaware.[1] As discussed in response to question 2(a) below, neither ConocoPhillips Company nor Phillips 66 Company is a successor to either of these former corporations. The response to question 2(a) describes the corporate histories in greater detail, including the 1972 acquisition and merger of Agrico Chemical Company by and into a subsidiary of the Williams Companies. The Williams Companies are and were, at all relevant times, wholly independent from ConocoPhillips Company and Phillips 66 Company.

2. Relationship to The American Agricultural Chemical Company and Agrico Chemical Company and Other Related Entities.

a. Identify The American Agricultural Chemical Company and Agrico Chemical Company and the Company's relationship to each such entity. Provide a copy of all documents informing the response to this question.

Response

Historic records reflect the existence of two separate companies, incorporated twenty years apart in different states, but both bearing the name "The American Agricultural Chemical Company." The first of these companies was incorporated as the Agwa Company by Resolution of the Connecticut General Assembly in January 1893 (the "Connecticut Company"). The Connecticut Company changed its name to The American Agricultural Chemical Company on April 10, 1899.[2]

The Connecticut Company should not be confused with an identically named Delaware corporation (the "Delaware Company"), which was incorporated on December 9, 1913, two decades after the Connecticut Company was formed. Upon its incorporation, the Delaware Company became a separate, wholly-owned subsidiary of the original Connecticut Company.[3] According to a 1916

[1] There was also a Florida company of the same name, but its operations apparently were limited to that state. For purposes of these responses, Phillips 66 Company has focused its research on the Connecticut and Delaware companies only.

[2] Attachment A, State of Connecticut General Assembly, House Joint Resolution No. 565, Incorporating The Agawa Company and Amendment Thereto, June 30, 1893; Attachment B, State of Connecticut, Secretary of State Records, at 2-3 (Change of Name of The Agawa Company to The American Agricultural Chemical Company), Apr. 10, 1899.

[3] Attachment C, Certificate of Incorporation, The American Agricultural Company (Delaware), Dec. 5, 1913, as amended June 23, 1930.

United States Federal Trade Commission report, the Delaware Company's business was limited to producing plant food at four facilities it leased in California, North Carolina, and Ohio only.[4] Neither the Delaware Company nor any other subsidiary of the Connecticut Company conducted fertilizer manufacturing operations in New York State.[5]

In 1929, the Connecticut Company divested miscellaneous properties and interests in New York that were unrelated to its core fertilizer business. These ventures included two wholly-owned New York subsidiaries—Herman Brand, Inc. and G. Selner Company, which were engaged exclusively in the collection (Herman Brand, Inc.) and rendering (G. Selner Company) of animal fats, bones, and grease. On June 21, 1929, the Connecticut Company divested both of these subsidiaries along with the plant and equipment they operated, including a facility on Newtown Creek, to the Van Iderstine Company.[6]

A year later, on June 30, 1930, the Connecticut Company conveyed certain other properties to the Delaware Company, including a former sales warehouse in the Newtown Creek area that apparently was not then in use.[7] The consideration for that transfer included the Delaware subsidiary's assumption of the Connecticut Company's obligations under first-refunding mortgage bonds that had been issued several years earlier.[8] Those mortgage bonds represented a significant impairment of capital that contributed to the Connecticut Company's inability to declare dividends to its shareholders.

The Connecticut Company's Thirty-First Annual Report, for the fiscal year ended June 30, 1930, signaled that a capital readjustment plan may be advantageous to shareholders. No such plan had been formulated or proposed, however, at the time of the partial sale of properties to the Delaware Company earlier that

[4] Attachment D, FTC, *Report on the Fertilizer Industry,* Aug. 19, 1916, at 196. The tax laws at the time and the limited nature of the operations apparently made it impractical for the larger Connecticut Company to conduct business in these three states. *Id.* at 180.

[5] *Id.* at 198.

[6] Attachment E, Agreement between the Connecticut Company and the Van Iderstine Company, June 21, 1929 (Exhibit A in the arbitration proceeding, *In re Arbitration Between Van Iderstine Co. & Am. Agric. Chem. Co.,* (N.Y. Chamber of Commerce Mar. 3-18, 1931)) (from Columbia Univ. Rare Books & Manuscripts Library).

[7] Attachment F, Recorded Indenture between the Connecticut Company, as Grantor, and the Delaware Company, as Grantee, June 30, 1930 (Book 3418, Page 249); *see also* Attachment G, Walter W. Brown, *1915 "Year Book" Authentic List of Fertilizer Manufacturers,* at 102 (1915) (referring to the Greenpoint Warehouse in Long Island as a fertilizer sales facility); Attachment H, Board of Eng'rs for Rivers & Harbors War Dep't, *The Port of New York,* Port Series No. 20, Part 2, at 517 (1932) (showing that bulkhead at former Greenpoint facility was "[n]ot in use").

[8] Attachment I, Comm. on Stock List, NYSE, *The American Agricultural Chemical Company,* No. A-9557, Sept. 24, 1930, at 2. There is no reason to believe that the Delaware Company broadly assumed other liabilities in connection with the conveyance of some, but not all, of the Connecticut Company's properties. Regardless, the parties could not have contemplated the transfer of liabilities under the Superfund law, which was enacted more than a half century later.

year.[9] The Board of Directors of the Connecticut Company later announced a voluntary plan under which shareholders of the Connecticut Company could exchange their stock for newly issued shares of the Delaware Company. That plan, which was outlined in a circular letter to shareholders dated September 18, 1930,[10] was never fully implemented. Indeed, the Connecticut Company continued to exist until it was legally dissolved almost five years later on May 22, 1935.[11]

A letter dated May 23, 1935, from the Trustees in Dissolution of the Connecticut Company states that the Connecticut Company's assets at the time of the dissolution consisted of 15,403 shares of the capital stock of the Delaware subsidiary and an unspecified amount of cash. As part of the dissolution of the parent company, the capital stock of the Delaware Company was liquidated in a cash sale to others for $50 per share. At least some of the proceeds from that cash sale were then distributed to the preferred shareholders of the Connecticut Company as an initial liquidating dividend.[12]

After all known debts of the Connecticut Company had been paid and the statutory period for submitting claims had expired, the Connecticut Company's remaining assets, which had been fully liquidated for cash, were distributed to its individual shareholders on or around May 29, 1936.[13] Having been sold in anticipation of the Connecticut Company's dissolution, the Delaware Company continued to exist as a separate entity unrelated to its former parent for another twenty-seven years.

In 1963, a newly-formed subsidiary of Continental Oil called Fos-Kem Liquidation Corporation ("Fos-Kem")[14] acquired all or substantially all of the then-existing assets of the Delaware Company and agreed to assume certain liabilities existing at the time of closing.[15] Fos-Kem was later renamed as American Agricultural Chemical Company ("ACC").[16] As discussed more fully in response to question

---

[9] Attachment J, Thirty-First Annual Report of The American Agricultural Chemical Co. for the Fiscal Year Ended June 30, 1930, at 9.

[10] Attachment K, Letter to Stockholders, Sept. 18, 1930.

[11] Attachment L, Letter from Hughes Mayo, Secretary and Treasurer of The American Agricultural Chemical Company (Delaware) to Chas. A. Day & Co., Mar. 18, 1958.

[12] Attachment M, Letter from Trustees in Dissolution of The American Agricultural Chemical Company (Connecticut) to the Holders of Preferred Stock, May 23, 1935.

[13] Attachment N, Notice of Final Liquidating Dividend to the Holders of Preferred Stock of The American Agricultural Chemical Company (Connecticut), May 29, 1936.

[14] Attachment O, Delaware Certificate of Incorporation, Fos-Kem Liquidation Corporation, June 12, 1963.

[15] Attachment P, Asset Purchase Agreement, July 11, 1963, at ¶ 1(b)(ii) (assumption of liabilities "as the same shall exist at the Closing Date").

[16] Attachment Q, Certificate of Amendment of Certificate of Incorporation, Oct. 15, 1963.

4(a) below, none of the three parcels that make up the Facility in question was among the assets Fos-Kem/ACC acquired in 1963.

As an asset purchaser, Continental Oil's former subsidiary did not, in any event, succeed to unknown liabilities under CERCLA, a statute enacted some seventeen years after the transaction. Moreover, the limited assumption of liabilities in the asset purchase agreement expressly applied only "as the same shall exist at the Closing Date" in 1963. Fundamentally, that language cannot be read to apply to liabilities under a statute that was not only non-existent at the time, but also completely unforeseeable, based on properties and operations of sister companies that were either divested many decades earlier or never owned by the Delaware Company in the first place.[17]

At the end of 1965, ACC was merged out of existence under Delaware law. In January 1966, Continental Oil incorporated Agrico Chemical Company ("Agrico") as a wholly owned subsidiary.[18] Agrico thereafter operated as a separate division to consolidate the domestic plant food business of ACC and Continental's former Mid-South Chemical Company Division.[19] Agrico was later merged into Willchemco, Inc., a subsidiary of the Williams Companies ("Williams"), in connection with Conoco's sale of all its plant food business and assets to Williams in 1972.[20] The surviving company assumed the Agrico name and continues to exist today as an entity wholly unrelated to either ConocoPhillips Company or Phillips 66 Company.[21]

b. Describe the 2002 merger of Conoco, Inc. and Phillips Petroleum Company and the provisions in the merger documents for addressing legacy liabilities of the constituent entities. Provide a copy of merger documents relating to such legacy liabilities. Provide a copy of all documents relating to liabilities associated with the former ownership or operation of

[17] *See, e.g., Georgia-Pacific Consumer Prod. L.P. v. Int'l Paper Co.,* 566 F. Supp. 2d 246 (S.D.N.Y. 2008) (pre-CERCLA agreement to assume all liabilities existing on the closing date did not include CERCLA liabilities, because CERCLA did not then exist).

[18] Attachment R, Certificate of Incorporation, Agrico Chemical Company, Jan. 27, 1966.

[19] Attachment S, Continental Oil Annual Report 1965, at 13.

[20] Attachment T, Agreement of Merger—Agrico Chemical Company and Willchemco, Inc., June 23, 1972; *see also* Attachment U, *Briefly Told,* L.A. Times, Feb. 3, 1972, at D9 ("Williams Companies completed the purchase of the Agrico Chemical division of Continental Oil . . . ."); *The Williams Companies, Inc.,* Company Histories and Profiles (Williams "[a]dded Agrico Chemical Company, Continental Oil Company's fertilizer subsidiary . . . and merged the two operations under the Agrico name."), *available at* http://www.fundinguniverse.com/company-histories/The-Williams-Companies-Inc-Company-History.html

[21] Attachment V, Minnesota Secretary of State documents (listing Agrico Chemical Company (DE) as an active corporation in good standing, with an initial filing of May 3, 1971, under its previous name, Willchemco, Inc.). The Williams Companies apparently sold Agrico to Freeport-McMoRan Resource Partners Limited Partnership in1986. *See* Attachment W, The Williams Companies 1986 Annual Report, at 2.

The American Agricultural Chemical Company and Agrico Chemical Company.

Response

As described in response to question 1(d) above, Conoco Inc. merged with and into Phillips Petroleum Company to form ConocoPhillips Company in 2002. It would be unduly burdensome and should be unnecessary for Phillips 66 Company or ConocoPhillips Company to search for and provide records related to the merger that occurred more than a decade ago. There is no question that the surviving company became the legal successor to both Conoco Inc. and Phillips Petroleum Company. Accordingly, Phillips 66 Company respectfully objects to this request for merger documents.

As discussed in response to the preceding question, ConocoPhillips Company did not succeed to any liabilities associated with either of the former entities known as The American Agricultural Chemical Company. Moreover, neither ConocoPhillips Company nor any of its predecessors ever owned or operated any portion of the Facility in question, either directly or through any subsidiary.

c. Identify each site investigated, remediated or otherwise addressed under the jurisdiction of EPA or of any state or local environmental agency, including without limitation, the Agrico Chemical Company Superfund site in Pensacola, Florida where the Company (including its predecessor entities) was named as a responsible party or where the Company (including its predecessor entities) performed or participated in the performance of any response activities. Please identify the site and the work done by the Company and provide a copy of each notice letter or notice of violation.

Response

Phillips 66 Company specifically objects to this question on the ground that it seeks information that is irrelevant, overbroad, and unduly burdensome. It would take an extraordinary effort to locate every notice letter and catalogue detailed information regarding each property, including numerous gasoline service station facilities across the country, that ConocoPhillips Company or any of its predecessors ever investigated or remediated over the years. Moreover, we are not aware of any other site ever investigated or remediated by ConocoPhillips Company or any of its predecessors that would have any bearing on the Facility at issue here.

Subject to and without waiving any objections, Phillips 66 Company provides the following information regarding the so-called Agrico Chemical Company Superfund Site in Pensacola, Florida (the “Pensacola Site”). Unlike the Facility at issue here, the Pensacola Site was among the properties Continental Oil’s former subsidiary acquired in 1963 as part of its acquisition of assets from the

Delaware Company. Operations of the Pensacola Site reportedly continued from 1963 until 1975, approximately three years after a subsidiary of the Williams Companies purchased Agrico and merged the company into itself.[22] By contrast, neither Continental Oil nor its former Agrico subsidiary ever owned or operated any portion of the Facility in the Newtown Creek area now in question.

Regarding the investigation and remediation of the Pensacola Site, Conoco participated with Agrico, which was then a division of Freeport-MacMoRan Resources, in performing a Remedial Investigation/Feasibility Study ("RI/FS") pursuant to an Administrative Order on Consent dated September 29, 1989. The RI/FS was completed in 1992. Without admitting any liability, Freeport-McMoRan's Agrico and Conoco entered into a Consent Decree with EPA under which they conducted a soil cleanup consisting of excavation and solidification/stabilization of contaminated soil/sludge, and capping the soil/sludge with a multimedia cap. The soil remedy, which was completed in 1997, also included a slurry wall for containment of solidified material and institutional controls (*i.e.,* security fencing and access restrictions). In January 1995, the Consent Decree was amended to include remedy design, monitoring well installation, and operation and maintenance of a groundwater monitoring network. The selected remedy for groundwater for the Pensacola Site consists of monitored natural attenuation, which is ongoing.

Please note that Conoco committed to participate in the investigation and remediation of the Pensacola Site at a time when the scope of CERCLA liability for a parent company was still unsettled. In 1998, the United States Supreme Court unanimously held that a parent company cannot be held liable under CERCLA based on actions of its former subsidiaries absent a showing that the corporate form was being used for a wrongful purpose such as fraud. *United States v. Bestfoods,* 524 U.S. 51, 61-63 (1998). Notwithstanding that landmark ruling, Conoco and its successors have continued to honor their prior commitments concerning the Pensacola Site.

d. Describe the relationship between the Company and the Williams Company with respect to The American Agricultural Chemical Company and Agrico Chemical Company.

Response

Please refer to the response to questions 1(e) and 2(a) above.

e. Please identify any other entity not related to the Company who the Company believes may be responsible pursuant to CERCLA for contamination attributable to The American Agricultural Chemical Company/Agrico Chemical Company.

[22] Extensive background information and documents regarding the Pensacola Site are available on EPA Region IV's Internet site. *See generally* EPA Region IV, *Agrico Chemical Company Superfund Site*, at http://www.epa.gov/region4/superfund/sites/npl/florida/agricchemfl.html.

Please describe the basis for such belief and provide any documentation information supporting the Company's belief.

Response

Please refer to the response to questions 1(e) and 2(a) above regarding the relevant corporate histories and to question 4(a) below regarding the three distinct portions of the Facility as defined in the information request. As discussed, the Van Iderstine Company absorbed the business and assets of two of the Connecticut Company's wholly owned subsidiaries, Herman Brand, Inc. and G. Selner Company, along with the so-called Preston Works portion of the defined Facility, in 1929. The Delaware Company later acquired an unrelated portion of the Facility, as defined in the information request, and leased it to the predecessor of Pocahontas Coal Corporation, which exercised an option to purchase the parcel in 1941. Phillips 66 Company does not have sufficient information to determine the extent to which Herman Brand, Inc., G. Selner Company, the Van Iderstine Company, Pocahontas Coal Corporation, or their successors may bear liability based on transactions involving them, their business operations, or assets after the divestitures in 1929 and 1941. Both divestitures occurred long before a subsidiary of Continental Oil acquired the Delaware Company's remaining assets in 1963.

3. Future EPA Communications. If the addressee of this letter requests that future communications from EPA regarding the Site be sent to a particular individual or office, provide the name, address, telephone number, e-mail address and capacity of such individual or office.

Response

Please direct any further communications regarding this matter to:

Steven L. Slagel
Senior Counsel
Phillips 66 Company
PWC.8119 Pinnacle
3010 Briarpark Drive
Houston, Texas 77042
Phone: (832) 765-1217
E-mail: Steven.L.Slagel@P66.com

4. Ownership of the Facility:

a. Identify the dates of acquisition, disposition and operation of the Facility by The American Agricultural Chemical Company and the identity and relationship, if any, between the transferor and transferee.

Response

To be as thorough and diligent as possible in responding to this request, Phillips 66 Company initiated a title search of each of the three parcels of the Facility in question and conducted considerable corporate history research from records obtained from Secretary of State offices, Internet sites, special collections in university archives, court records, and other publicly available sources.

Please note that all of the documents Phillips 66 Company has located that contain any information on the three portions of the Facility at issue were obtained from public sources and are not business records of ConocoPhillips Company or any of its predecessors. The transactions at issue occurred many decades ago and involve companies and properties that apparently were never part of ConocoPhillips Company's holdings or operations. As a result, it is not surprising that we have been unable to locate documents in our corporate files that may be responsive to this request.

As noted in response to question 2(a) above, none of the three parcels that make up the Facility in question was among the assets Continental Oil's Fos-Kem/ACC subsidiary acquired in 1963. For each parcel of the Facility, the information Phillips 66 Company has gathered from its external research is described below.

37-90 Newtown Creek Parcel—Lot 272

Based on recorded title documents, it appears that the parcel located at 37-90 Newtown Creek (Borough of Queens, Block 312, Lot 272), Long Island, New York, was never owned nor operated by either the Connecticut or Delaware Company at any time.[23] Rather, this lot was part of the extensive holdings and rendering operations of the Van Iderstine Company and its successor, Darling-Delaware, Inc., for more than 70 years, from 1907 until 1979.[24]

3798 Railroad Avenue Parcel—Lot 279

The property located at 3798 Railroad Avenue (Borough of Queens, Block 312, Lot 279) in Long Island was never transferred to, and thus never owned nor operated by, the Delaware Company. Moreover, it was not part of the assets Continental Oil's former subsidiary purchased in 1963.

On May 15, 1900, the Connecticut Company acquired a portion of the property located in current Lot 279 along Newtown Creek, including the phosphate, glue,

[23] Attachment X, NETR – Real Estate Research & Information, Historical Chain of Title Report, 37-90 Newton Creek, Block 312, Lot 272, Long Island, New York.

[24] *Id.*; *see also* Newtown Creek Alliance, *Former Van Iderstine Rendering Plant,* at http://habitatmap.org/markers?marker_id=1663-former-van-iderstine-rendering-plant (noting that Lot 272 was within the larger footprint of the Van Iderstine rendering plant).

and rendering works formerly owned by Preston Fertilizer Company.[25] The Preston Fertilizer Company apparently was a separate operating subsidiary of the Connecticut Company.[26]

A 1915 Sanborn map identifies this portion of the property as the American Agricultural Chemical Company's Preston Works, built in 1912.[27] As reflected in historic documents obtained from the Columbia University Rare Books and Manuscripts Library, the so-called Preston Works was a separate business unit or division of the Connecticut Company, distinct from the company's core fertilizer business.[28]

The operations of the Preston Works were conducted through two subsidiaries of the Connecticut Company—Herman Brand, Inc. and G. Selner Company, both of which were incorporated under the laws of New York.[29] The separate business of these two subsidiaries involved the collection and rendering of animal fat, bone, and grease—the very same business conducted by the Van Iderstine Company on either side of the Preston Works parcel.[30]

On August 18, 1917, the Van Iderstine Company sold to the Connecticut Company a small strip of land on an adjoining parcel, reserving a perpetual easement for Van Iderstine to construct foundations, piers, or other substructures for its benefit or to support buildings, fences, or other structures on Van Iderstine's neighboring property.[31]

---

[25] Attachment Y, Recorded Indenture between Preston Fertilizer Co., as Grantor, and the Connecticut Company, as Grantee, May 15, 1900 (Book 1239, Page 21); *see also* Attachment Z, The American Agricultural Chemical Co., Cost of Property Purchased, July 30, 1903, at 40-41 (from oversized accounting ledger in the archives of the University of South Florida Library, Special Collections).

[26] Attachment AA, FTC, *Report of the Federal Trade Commission on the Fertilizer Industry*, Mar. 3, 1923, at 14.

[27] Attachment BB, Environmental Data Resources Inc., *Certified Sanborn Map Report,* 3798 Railroad Ave., Long Island, N.Y., Oct. 31, 2013, at 36 (1915 Sanborn Map).

[28] Attachment E, *supra,* at 1. The Preston Works was also the name of the rendering plant that the Connecticut Company owned, but apparently did not operate, in Lot 279. Attachment DD, Arbitration Transcript, Vol. 2, Testimony of Albert C. Hornberger, *In re Arbitration Between Van Iderstine Co. & Am. Agric. Chem. Co.,* Mar. 4, 1931, at 158, 165 (N.Y. Chamber of Commerce).

[29] Attachment E, *supra,* at 1; *see also* Attachment CC, Arbitration Transcript, Vol. 1, *In re Arbitration Between Van Iderstine Co. & Am. Agric. Chem. Co.,* Mar. 3, 1931, at 30 (N.Y. Chamber of Commerce).

[30] A certified Sanborn map shows that the adjoining property to the north had been the site of the Peter Van Iderstine Grease Rendering Factory since at least 1898. *See* Attachment BB, *supra,* at 37 (1898 Sanborn Map). A 1915 map shows that the Preston Works property was flanked on both sides by Van Iderstine's rendering operations. *Id.* at 36 (1915 Sanborn Map).

[31] Attachment EE, Recorded Indenture between the Van Iderstine Company, as Grantor, and the Connecticut Company, as Grantee, Aug. 18, 1917 (Book 2146, Page 69).

On June 29, 1929, the Van Iderstine Company completely absorbed the Connecticut Company's Preston Works division, including the business and assets of both Herman Brand, Inc. and G. Selner Company.[32] As Van Iderstine's president later recalled,

> In 1929 I [C.A. Alling] was a personal friend of Mr. Burton who was president of the American Agricultural Chemical Company. The company was chiefly in the fertilizer business and Burton decided to clean out a number of sidelines, one of which was the rendering business.
>
> In 1929 The Van Iderstine Company bought the A.A.C. plant and rendering business in Long Island City which was sandwiched between Van Iderstine's two plants. . . .[33]

In a 1931 arbitration between the parties arising out of the transaction, the Connecticut Company's counsel explained that:

> Now, this contract had been preceded by negotiations between the parties, which extended I think over a couple of months. The contract itself was not signed until June 21, 1929. The facts are that the business, apart from the real estate and plant and the tangible assets, — that *the business which was sold was the business of two subsidiary companies of The American Agricultural Chemical Company*. I think one company was the Brand Company. . . .
>
> THE ARBITRATOR: Do you mean [Herman] Brand, Incorporated?
>
> MR. MILLER: Yes, [Herman] Brand, Incorporated; and the other was the G. Selner Company. Those were both wholly owned subsidiaries of The American Agricultural Chemical Company. . . .[34]

Herman Brand, Inc. apparently operated the collecting business and G. Selner ran the Preston Works rendering plant.[35] The Van Iderstine Company took over

---

[32] Attachment E, *supra,* at 5 ¶ 5; Attachment FF, Recorded Indenture between the Connecticut Company, as Grantor, and the Van Iderstine Company, as Grantee, June 28, 1929 (Book 3312, Page 300).

[33] Attachment GG, Darling-Delaware Co., *Darling-Delaware Centenary* 83-84 (1981).

[34] Attachment CC, *supra,* at 30 (emphasis added).

[35] *See* Attachment DD, *supra,* at 165 (stating that "Preston" was synonymous with "Selner," suggesting that G. Selner Co. ran the Preston Works rendering operations); *see also* Attachment HH, Records of Herman Brand, Inc. Loan to Solomon Meat Supply, Inc., May 21-22, 1929 (Unmarked Exhibit in Arbitration, *In re Arbitration Between Van Iderstine Co. & Am. Agric. Chem.*

both companies, including all of their business, properties, and accounts. In addition, the Van Iderstine Company obtained the "sole and exclusive right to use the name 'Preston' in connection with said business and any trademarks or trade names owned by Herman Brand (Inc.), G. Selner Co. and The Preston Works."[36] As provided in the contract, Van Iderstine thereby acquired a "business regularly carried on" as a going concern.[37]

The Van Iderstine Company and its merger successor, Darling-Delaware Company, continued to own and operate the rendering business it absorbed on the Preston Works parcel for at least another fifty years after the 1929 takeover.[38] We are not aware of any other business relationship between the former Connecticut Company and Van Iderstine or Darling-Delaware.

Having been absorbed by the Van Iderstine Company in 1929, Herman Brand, Inc. and G. Selner Company were, at most, former sister companies of the Delaware Company. The Delaware Company never held the stock of either company and was not involved in the animal fat collecting and rendering business in Long Island.

Moreover, the rendering and collection business and properties that Van Iderstine absorbed in the 1929 transaction with the Connecticut Company were not part of, nor in any way related to, the fertilizer assets Continental Oil's former subsidiary acquired from the Delaware Company sixty-four years later.

38-20 Newtown Creek Parcel—Lot 280

On August 2, 1905, the Connecticut Company acquired title to a separate parcel approximately rectangular in shape between Newtown Creek and Review Avenue from George F. and Grace B. Piper, husband and wife, and Walter D. Douglas, a single man.[39] The Pipers and Mr. Douglas had many business interests, but they apparently were not affiliated with the Connecticut Company or its operations.[40]

Co., Mar. 3-18, 1931 (N.Y. Chamber of Commerce)) (from Columbia Univ. Rare Books & Manuscripts Library).

[36] Attachment E, *supra,* at 5 ¶ 5.

[37] *See id.*

[38] *See* Attachment II, Letter of Patent issued to the Van Iderstine Company, recorded Aug. 8, 1939 (Book 4072, Page 173); Attachment JJ, Recorded Indenture between Darling-Delaware Co, successor-by-merger to the Van Iderstine Company, as Grantor, and Carl A. Capasso, as Grantee, Apr. 12, 1979 (Book 1155, Page 1030).

[39] Attachment KK, Recorded Indenture between Walter D. Douglas and George F. & Grace B. Piper, as Grantors, and the Delaware Company, as Grantee, Aug. 2, 1905 (Book 1383, Page 423).

[40] *See, e.g.,* Attachment LL, *Searchlight for Titanic Too Late,* Chicago Daily Tribune, Apr. 21, 1912, at 3 (Walter D. Douglas, who perished aboard the Titanic, was director of the Quaker Oats

Railroad tracks bisected the rectangular parcel into two distinct parts. One portion was located within the boundaries of current Lot 280 and the other in an upland area now considered part of Lot 69. A 1915 Sanborn map identifies the portion of the property located southwest of the rail line, in what is now Lot 280, as the Connecticut Company's "Greenpoint Ware House." The upland parcel is shown as unoccupied.[41]

The Connecticut Company apparently used the warehouse parcel as a sales storage facility for fertilizer,[42] but never used the upland parcel at all.[43] On August 18, 1917, the Connecticut Company conveyed part of the land to the Van Iderstine Company and granted Van Iderstine a perpetual easement over other portions of its property.[44] Three years later, the Connecticut Company reportedly transferred a strip of land sixteen feet wide along the railroad right-of-way to the Long Island Railroad Company in fee simple and free from any reservations or encumbrances.[45]

On June 30, 1930, nearly five years before the Connecticut Company was legally dissolved, the Delaware Company purchased the former warehouse property and vacant upland parcel from its parent company.[46] Less than a year later, the Delaware Company sold the southern half of the upland tract to Triplex Oil Refining Company.[47] The other half of that upland property, which the Delaware Company never used for any purpose, remained vacant with no building or structure of any kind until it was sold to Triplex Oil Refining in 1938.[48]

Company); *History of Bushaway Road and Its Neighborhood,* Sept. 2009, at 10 (noting early history and business interests of the Piper family), at https://www.soc.umn.edu/~rea/documents/large%20bushaway%20files/Bushaway%20history%20with%20cover%2012sep09%20.pdf.

[41] Attachment BB, *supra,* at 36 (1915 Sanborn Map).

[42] Attachment G, *supra,* at 102 (showing Greenpoint Warehouse as a sales facility).

[43] Attachment BB, *supra,* at 35-36 (1915 and 1928 Sanborn Maps, showing no use of upland parcel).

[44] Attachment MM, Recorded Indenture between the Connecticut Company, as Grantor, and the Van Iderstine Company, as Grantee, Aug. 18, 1917 (Book 2142, Page 106).

[45] Attachment NN, Record of Controversy Submitted Under Civil Practice Act, *Am. Agric. Chem. Co. v. Pocahontas Coal Corp.* (N.Y. Sup. Ct. App. Div. 1939), at 4 ¶ 5 (copied from original court files).

[46] *Id.* at 5 ¶ 7; Attachment F, *supra.*

[47] Attachment NN, *supra,* at 5-9, ¶ 8; Attachment OO, Recorded Indenture between the Delaware Company, as Grantor, and Triplex Oil Refining Company, as Grantee, May 1, 1931 (Book 3480, Page 504).

[48] Attachment NN, *supra,* at 9, 11, ¶¶ 9, 15. The upland parcel is not, in any event, part of the Facility as defined in the information request. Further, it appears that the upland parcel was never operated by the Delaware Company nor anyone else in the short time the Delaware Company held title to the property. Moreover, the upland parcel was not among the assets Continental Oil's Fos-Kem/ACC subsidiary acquired from the Delaware Company in 1963.

A United States government report from 1932 shows that the bulkhead on Newtown Creek was not in use, suggesting that both the upland and former warehouse parcels were unoccupied after the Delaware Company acquired title.[49] On February 20, 1934, Avers Fuel Corporation leased the former warehouse parcel from the Delaware Company, with an option to purchase the land, for use as a coal yard.[50] Pocahontas Coal Corporation later succeeded Avers Fuel as lessee.[51] On February 20, 1941, Pocahontas Coal purchased the property from the Delaware Company.[52] In 1955, Pocahontas Coal sold the property to the Van Iderstine Company,[53] which retained control of the lot for the next fourteen years.[54] The parcel south of the railroad tracks was thus an asset of Van Iderstine, not the Delaware Company, when Continental Oil's former subsidiary acquired the Delaware Company's remaining assets in 1963.

b. Provided a copy of all deeds evidencing the acquisition or disposition of the Facility and of all leases relating to the operation of the Facility.

Response

Copies of all relevant deeds obtained from the county recorder's office as well as the lease copied from the court files of the New York Supreme Court, Appellate Division, in *American Agricultural Chemical Co. v. Pocahontas Coal Corp.*, are referenced above and included as attachments to this response.

5. Operations at the Facility.

a. Please identify the principal business operations conducted by The American Agricultural Chemical Company during the years 1900 through 1932.

Response

Phillips 66 Company has only limited, second-hand information regarding the business operations of the two companies formerly known as The American Agricultural Chemical Company. The thirty-two year time frame encompassed by

[49] Attachment H, *supra,* at 517.

[50] Attachment NN, *supra,* at 10 ¶ 11 and attached Ex. A, Indenture of Lease and Option to Purchase, Feb. 20, 1934; Attachment PP, *Leases on Newtown Creek,* N.Y. Times, Mar. 28, 1934, at 42; Attachment QQ, *Improvement, Due in Industrial Areas; Some Recent Waterfront Deals Reviewed,* N.Y. Times, Jan. 6, 1935, at RE1-2.

[51] Attachment NN, *supra,* at 10 ¶ 12 and attached Ex. B, Assignment of Lease, Aug. 2, 1937; *Am. Agric. Chem. Co. v. Pocahontas Coal Corp.,*10 N.Y.S.2d 298 (App. Div. 1939).

[52] Attachment RR, Indenture between the Delaware Company, as Grantor, and Pocahontas Coal Corp., as Grantee, Feb. 20, 1941 (Book 4346, Page 546).

[53] Attachment SS, Indenture between Pocahontas Coal Corp., as Grantor, and the Van Iderstine Co., as Grantee, Sept. 28, 1955 (Book 6814, Page 260).

[54] Attachment JJ, *supra.*

this request ended more than three decades before Continental Oil's Fos-Kem subsidiary acquired assets from the Delaware Company in 1963. Moreover, those assets did not include any portion of the Facility at issue.

Based on the information currently available, it appears that the principal business of both the Connecticut Company and the Delaware Company prior to 1932 involved the manufacture and sale of fertilizer for agricultural purposes. Notably, the Delaware Company did not exist until 1913, and thus could not have had any operations before then.

b. Please identify all business operations conducted at the Facility by The American Agricultural Chemical Company between the years 1900 and 1932.

Response

Please refer to the response to questions 2(a), 4(a), and 5(a) above. Phillips 66 Company has no other knowledge, information, or documentation regarding business operations, if any, of either the Connecticut or Delaware Company at any of the parcels in question during the thirty-two-year timeframe of this request.

c. Please identify all products produced, manufactured, assembled or otherwise made available for sale at or from the Facility and identify the markets into which those products were sold or traded.

Response

Please see the response to questions 2(a), 4(a), and 5(a) above. Neither ConocoPhillips Company nor any of its predecessors ever owned or conducted any operations at the Facility. Moreover, Phillips 66 Company has no knowledge, information, or documentation regarding the products, if any, ever produced, manufactured, or made available for sale at or from any portion of the Facility.

d. Identify all products produced, manufactured, assembled or otherwise made available for sale by The American Agricultural Chemical Company at any of its plants between the years 1900 and 1932.

Response

Please see the response to questions 2(a), 4(a), and 5(a) above. Phillips 66 Company does not have knowledge, information, or documentation sufficient to identify any particular products produced, manufactured, assembled or otherwise made available at the Facility or any other plant operated by the Connecticut Company or the Delaware Company during the thirty-two-year timeframe encompassed by this request.

6. Facility Plan and Historic Maps, Drawing, Surveys and Photographs of the Facility.

a. Facility Plan. Please provide a Facility Plan, if in the possession of the Company, showing, to the extent known:

i. Buildings and improvements,
ii. Bulkheads,
iii. Ship loading and unloading and vehicle loading and unloading areas,
iv. Sanitary and storm sewers,
v. Below-ground infrastructure including tanks and pipes,
vi. Above-ground infrastructure including tanks, spill containment facilities and pipes,
vii. Over-water or in-water facilities (e.t., piers, docks, cranes), and
viii. Discharge facilities including pipes discharging to Newton Creek or NYC sewers and other discharge features.

Response

With the exception of Sanborn maps, which are included in Attachment BB, Phillips 66 does not possess any plans, maps, diagrams, surveys, photographs, or similar documents depicting the Facility in question or operations at the Facility at any time.

b. Historic Photos, Maps, Surveys, Etc. Please provide such other maps, drawings, surveys (including Sanborn maps) and historic photographs (including aerial photos) in the Company's possession which provide information relevant to the layout, construction, processes, bulkheads, or vehicle activities (washing, servicing, fueling or storage), or other operations at the Facility.

Response

Please refer to the response to question 6(a) above.

7. Current and Historic Depiction of the Facility.

a. Provide a copy of schematic drawings or plans, in the Company's possession, depicting the manufacturing processes and infrastructure employed in operations at the Facility.

Response

Please refer to the response to question 6(a) above.

b. Provide such other drawings, maps, photographs and surveys, including, for example, Sanborn maps of the Facility, in the Company's possession showing features of the Facility etiher before or during the time of ownership or operation that would provide an understanding of the configuration of and operations at the Facility.

Response

Please refer to the response to question 6(a) above.

8. Bank Erosion, Overland Transport and Overwater Activities at or From the Facility to Newtown Creek.

a. Description of Bulkheads and Bank Stabilization. Describe all bank stabilization systems at the Facility, including bulkheads, rip rap, vegetation or other systems, and the construction materials and mode of construction used. Identify on the Facility Plan the extent and type of shoreline stabilization at all areas of the Facility. Sate whether there has been or whether there is any ongoing bank erosion, and identify on the Facility Plan the location of shoreline erosion. Identify the Company's role and responsibility in building and maintaining the bulkheads and other shoreline stabilization systems. Describe the system, if any, for preventing materials upland of the bulkhead from releasing into Newtown Creek. State whether there are weep holes or gaps or openings in the bulkheads or shoreline stabilization systems and, if so, whether upland storm water, Facility materials or water from Newtown Creek passes through the bulkhead or shoreline stabilization system.

Response

Please refer to the responses to questions 2(a) and 6(a) above. ConocoPhillips Company and its predecessors never owned nor conducted any operations at the Facility and thus had no role in, or responsibility for, building and maintaining bulkheads or other shoreline stabilization systems, if any, at the Facility. Moreover, Phillips 66 Company does not possess any Facility Plan and has no knowledge, information, or other documentation that may be responsive to this request.

b. Documents Relating to Bank Stabilization.

i. Provided a complete set of construction drawings and specifications relating to bulkheads and other bank stabilization systems.

ii. Identify all permits issued to the Company for bulkheads or other bank stabilization systems and provide a copy of all permits and permit applications.

iii. Provide a copy of all correspondence with regulatory authorities relating to bulkheads and bank stabilization, including without limitation, notices of violation and their disposition.

iv. Provide a copy of all studies, reports or plans relating to the construction, repair or maintenance of bulkheads and other shoreline stabilization systems.

v. Provide a copy of all contracts and invoices with third parties relating to repair or maintenance of bulkheads and other bank stabilization systems.

Response

Please refer to the response to question 8(a) above.

9. Outfalls into Newton Creek. Identify and show on the Facility Plan all outfalls or discharge points from the Facility into Newton Creek, including location of outfall, gallons per day and source of influent to Newton Creek.

Response

Please refer to the response to question 8(a) above. Phillips 66 Company does not have any knowledge, information, or documents regarding outfalls or discharge points, if any, from any portion of the Facility into Newton Creek.

10. Construction, Excavation and Land Filling Activities.

a. Describe all construction, excavation, and land fill activities undertaken by the Company at the Facility, including without limitation removal or installation of underground or above ground infrastructure.

Response

Neither ConocoPhillips Company nor any of its predecessors ever undertook any construction, excavation, or landfill activities at the Facility. Please also refer to the response to questions 2(a) and 4(a) above.

11. Facility Storm Water Drainage.

a. Describe how storm water was managed and drained at the Facility and depict on the Facility Plan all drainage flow and drainage infrastructure including all receiving facilities for storm water. Separately explain and depict point source

drainage through pipes or other conveyances as well as sheet flow or surface water runoff.

Response

Please refer to the responses to questions 2(a), 6(a), and 8(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company does not possess any Facility Plan and has no knowledge, information, or other documentation that may be responsive to this request.

b. Provide a copy of all drainage studies, report or plans for all periods during the Company's ownership, operation or occupancy of the Facility.

Response

Please refer to the response to question 11(a) above.

c. Identify on the Facility Plan elevations of the Facility relative to Newton Creek. State whether elevations have changed during the period of the Company's ownership or operation of the Facility and describe all such changes.

Response

Please refer to the response to question 11(a) above.

12. Facility Process Water Management. Identify all waste water streams, other than sanitary waste water from rest rooms that is generated at the Facility, and identify the activities generating such waste water. Describe how process waste water is managed at the Facility and depict on the Facility Plan all process and waste water treatment and disposal facilities. If waste water facilities have changed over the years of the Company's ownership or operations, describe infrastructure changes and the dates such changes were placed into use. Identify and provide a copy of all permits for management or drainage of process waste water. Provide a copy of all data from sampling discharges of waste water, including all data from sampling any process or business waste stream currently or formerly generated at the Facility. Provide a copy of all waste water management and drainage studies, reports or plans for all periods during the Company's ownership or occupancy of the Facility.

Response

Please refer to the response to question 11(a) above.

13. <u>Connections to New York City sewer system</u>.

a. State whether the Facility is or was connected to the New York City sewer during the Company's ownership or operation and the date that the Facility was first connected.

b. Identify the waste steams (sanitary, storm water, process water), if any, connected to the New York City sewer.

c. Identify all liquid waste streams not connected to the New York City sewer and describe disposal of such waste streams.

d. State whether the Facility ever discharged any liquid wastes other than to the New York City sewer system and, if so, provide details on such discharges.

e. State whether the Facility participated in the New York City pretreatment program, and whether the Company has even been classified as a significant industrial user.

f. Provide copies of all permits and permit applications for New York City Industrial Wastewater discharge permits.

g. Provide copies of all notices of violations, correspondence, hearing transcripts and dispositions relating to the Company's use of the New York City sewer system.

h. Provide copies of all surveys, reports or analyses delineating or characterizing the Company's liquid wastes.

<u>Response</u>

Please refer to the responses to questions 2(a), 6(a), 8(a), and 11(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company has no knowledge, information, or other documentation responsive to the requests contained in any of the subparts to question 13.

14. <u>Other Newtown Creek Properties.</u> Please identify each Other Newtown Creek Property (see Definition number 9.b for "Other Newtown Creek Property"), if any, currently or formerly owned or operated by the Company (including any predecessor or affiliate (see Definition 8)), including:

a. Nature of the Company's interest in each Other Newtown Creek Property.

b. Corporate identity of the entity that holds or held such interest.

c. Address, Borough, Block and Tax Lot Identification of each Other Newton Creek Property.

d. The principal business and each other line of business conducted at each Other Newtown Creek Property.

e. All deeds evidencing the acquisition or disposition of the Facility and all leases relating to the operation of the Facility, and provide copies of such deeds and leases.

Response

Phillips 66 Company is not presently aware of the existence of any Other Newtown Creek Property as defined in the information request. Please also refer to the response to question 2(a) above.

15. Storage and Combustion of Coal. Did the operations at the Facility include the storage or combustion of coal during the time of ownership or operation by The American Agricultural Chemical Company? If your answer is yes, please respond to the following requests for information and identify the following for all periods of time related to the responses:

a. The purpose for which coal was present at the Facility.

b. The annual volume and type or types of coal (i.e. bituminous, anthracite, etc.) handled at the Facility.

c. The location and manner of coal storage at the Facility.

d. The coal storage, shipment and transfer locations on the Facility Plan.

Response

Please refer to the responses to questions 2(a) and 6(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company does not possess any Facility Plan and has no knowledge, information, or other documentation regarding whether or to what extent coal was ever stored or combusted at the Facility.

16. Bulk Storage Containers.

a. If the Facilities has or had bulk storage of petroleum or chemicals, please show the location of each storage tank on the Facility Plan and describe each tank by volume, construction materials, spill prevention and containment systems and whether it is located above- or below-ground. Identify the materials currently and historically stored in each tank, including the types of petroleum products and additives handled at any time during the operation of the Facilities, and identify the purpose and use of such stored materials at the

Facility. Provide a copy of the material safety data sheet ('MSDS") for each such material.

b. Provide all documents related to permitting, inspection, maintenance, cathodic protection, product inventory levels, spills, cleaning and closure of such tanks and correspondence between the Company and regulatory authorities concerning the storage tanks.

Response

Please refer to the responses to questions 2(a) and 6(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company does not possess any Facility Plan and has no knowledge, information, or other documentation that may be responsive to any of the subparts of question 16.

17. Chemicals and Other Materials Used, Produced and Generated at the Facility. Identify the compounds and chemicals received, stored and used at the Facility and the purpose that the compounds and chemical were acquired.

a. For receipt of materials, please identify all such materials, being specific in identifying such each item including brand name of any chemical or, if generic, the identity and description of such each material, the purpose for which it was received and the process in which it was employed. Please provide copies of MSDSs for each such chemical. Identify the annual volume of receipt of such materials.

b. Identify all products produced at the Facility or shipped from the Facility and, if applicable, provide copies of MSDSs. Identify the approximate annual volume of production at the Facility by product line.

c. Describe in detail how and where the hazardous substances, hazardous wastes, and industrial wastes are or were generated at the Facility and how they were disposed. For each disposal location and method, state the nature and quantity or the material disposed on an annual basis.

Response

Please refer to the responses to questions 2(a) and 6(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company does not have any knowledge, information, or documentation that may be responsive to any of the subparts of question 17.

18. Oil/Water Separators. Identify all oil/water separators at the Facility during the ownership or operation of the Facility by The American Agricultural Chemical Company, including dates of installation, dates of replacement or major modification, purpose of installation and source of influent, and location of discharge. Provide a copy of each permit and permit application, influent and effluent sampling results and copies of all submissions to federal, state, city or county environmental agencies or public health agencies relating to oil/water separators.

Response

Please refer to the responses to questions 2(a) and 6(a) above. ConocoPhillips Company and its predecessors never owned, occupied, or conducted any operations at the Facility. Moreover, Phillips 66 Company does not have any knowledge, information, or documentation that may be responsive to this request.

19. Civil Litigation, Administrative Enforcement and Criminal Matters:

a. Has the Company been a party to any litigation or involved in any other claim where an allegation by or against the Company included environmental contamination of Newtown Creek or contamination of the Facility or any other upland property within one thousand five hundred feet from Newtown Creek (whether or not such other property was owned or operated by the Company and whether the claim was based on the Company's alleged ownership, operation, transporter status, or arranger relationship to the Facility or some other basis)? If yes, identify such litigation or claim, briefly describe the allegation by or against the Company, the status of the litigation or claim, and provide a copy of the pleadings and any settlement agreement or court order.

Response

ConocoPhillips Company is one of more than 50 third-party defendants in two lawsuits involving alleged contamination of upland properties located at 37-80 and 37-88 Review Avenue, Queens, New York.[55] The third-party complaints allege that ConocoPhillips Company is among many businesses that generated materials that were transported to or disposed of at a waste oil recycling and storage facility on one of the parcels sometime between 1970 and 1981.

[55] *See DMJ Assocs., L.L.C. v. Capasso, et al.,* No. CV 97 7285 (DLI) (RML) (E.D.N.Y); *Phoenix Beverages, Inc., et al. v. ExxonMobil Corp., et al.,* No. 1:12-CV-03771 (PKC) (JO) (E.D.N.Y.). The third-party complaints against ConocoPhillips Company and others in both of these actions are included as part of Attachment TT hereto, along with the answers in which ConocoPhillips Company expressly denied any liability.

ConocoPhillips Company has expressly denied any liability in these actions. The lawsuits do not, in any event, have any bearing on the Newtown Creek Superfund Site or the Facility at issue here.

b. Without limitation, include in your response to subparagraph a above, any claims involving owners, operators, transporters or generators involved with the Facility after the time that The American Agricultural Chemical Company owned and operated the Facility, including claims relating to the Estate of Carl Capasso or to a company identified as Quanta Resources.

Response

Please see the response to question 19(a) above.

c. Has the Company been identified by EPA or by any New York State or New York City agency as a party responsible for environmental contamination at or from the Facility upland property within the Newtown Creek drainage basin whether or not such other property was owned or operated by the Company (whether the claim was based on the Company's alleged ownership, operation transporter status, or arranger relationship to the facility or some other basis)? If yes, state the Company's understanding of the basis for such notice of responsibility and provide a copy of any correspondence, orders or agreements between the Company and the governmental agency.

Response

A diligent search of company records did not reveal any such notice of responsibility or other identification issued to ConocoPhillips Company or any of its predecessors at any time. Phillips 66 Company is not presently aware of any basis for such a notice or identification.

d. Has the Company or an employee, contractor or agent ever been accused of any criminal violation relating to illegal disposal or any other environmental matter in connection with any activity or operation at the Facility? If so, describe the disposition of such accusation and provide details on such accusation.

Response

A diligent search of company records did not reveal any such accusation against ConocoPhillips Company or any of its predecessors at any time. Further, Phillips 66 Company is not presently aware of the basis for such an accusation.

20. Insurance and Indemnification.

a. Provide a schedule of liability insurance policies that may provide coverage to the Company for environmental liability associated with Newtown Creek.

Response

Phillips 66 Company is not aware of any potentially applicable liability insurance policy that may provide coverage with respect to this matter.

b. Identify each entity that may have a duty to indemnify the Company for any potential environmental liability in connection with Newtown Creek, identify the circumstances giving rise to the indemnity, and provide a copy of any document that reflects a requirement to so indemnify the Company.

Response

In connection with a corporate repositioning in 2012, Phillips 66 Company assumed the downstream, petroleum and refining business formerly conducted by ConocoPhillips Company and is now the relevant legal entity with respect to this matter. Phillips 66 Company is not aware of any agreement by which any other party may be obligated to indemnify it with respect to the Site or issues raised in this request.

c. Identify each entity that the Company has agreed to indemnify for any potential environmental liability in connection with Newtown Creek. Provide a copy of any document that reflects a requirement to indemnify by the Company.

Response

None.

21. Financial Information: Provide a copy of the Company's public financial statements for its most recent fiscal year.

Response

The most recent public financial statements for Phillips 66 Company and ConocoPhillips Company are readily available on the Internet and may be downloaded from http://www.phillips66.com/EN/investor/financial_reports/Pages/index.aspx and http://www.conocophillips.com/investor-relations/Pages/default.aspx.

Exhibit A

1-22-1920-8000

State of Connecticut,

Office of the Secretary.

GENERAL ASSEMBLY,

JANUARY SESSION, A.D. 1893.

(House Joint Resolution No. 565.)

(704.)

INCORPORATING THE AGAWA COMPANY.

RESOLVED BY THIS ASSEMBLY: SECTION 1. That Henry F. James of Ogdensburg, N.Y., Frank W. Gard of Groton, and William J. Brennan of New London, and such other persons as are or may hereafter be associated with them and their successors and assigns, be, and they are hereby created a body politic and corporate under the name of The Agawa Company, to be located at New London, and by such name shall have perpetual succession, and enjoy all the powers and privileges conferred by statute law upon private corporations generally, and may do and execute all matters, acts, and things which may be deemed necessary or convenient to carry into effect the powers and privileges herein granted.

Sec. 2. The capital stock of said corporation shall be fifty thousand dollars, divided into shares of one hundred dollars each, which shares shall be deemed to be personal property, and may be issued, transferred, and forfeited for non-payment in such manner as the by-laws of the corporation may provide. No person shall be any wise liable as a stockholder of said corpiration, except for unpaid installments upon any subscription for capital stock.

Sec. 3. Any two persons above named as corporators may call the first meeting of the corporation for the organization thereof, at such time and place as they may appoint, by mailing a proper

notice of such meeting to each of such corporators at least five days before the time appointed. And in case a majority of such corporators shall attend such meeting, either in person or by proxy, they may open books for subscriptions to the capital stock. And whenever said capital stock shall be subscribed for, and ten per centum of said subscriptions shall have been paid in cash, the stockholders of said corporation may organize the same, and said corporation may proceed to business.

Sec. 4. Each share of stock shall entitle the holder thereof to one vote in person or by proxy at all meetings of the stockholders. The holders of a majority in interest of the capital stock present, in person or by proxy, shall constitute a quorum. The corporation shall have a lien upon all the stock and property of its members invested therein for all debts due by them to said corporation, which lien may be enforced in such manner as the by-laws shall prescribe.

Sec.5. The stock,property, and affairs of said corporation shall be managed by a board of directors of such number not less than three, as may from time to time be determined by the corporators or stockholders. The directors shall be elected by the stockholders at such timesand in such manner and for such times as the stockholders may prescribe. No person shall be a director who is not a stockholder, and a majority of the directors present and acting shall be a quorum to do business. In case of a vacancy in the board, the same may be filled by the directors until the next annual meeting of the corporation. The capital stock of the corporation may,from time to time, be increased or diminished to such sum as may be determined by the board of directors; but the capital stock shall at no time be increased to exceed the par value of the stock,bonds, or other securities held by the corporation, together with the cash on hand and the cash value of the property owned by the corporation; and no diminution of the capital stock shall be made when the corporation is insolvent, or when such diminution would make it insolvent.

Sec. 6. Said corporation is hereby authorized and empowered to conduct a general manufacturing business, and to contract for and to acquire by purchase, or other lawful manner, and to hold,own,lease, construct,extend, enlarge, repair, complete, equip, and operate, and to aid in constructing, extending,enlarging, repairing, completing, equipping, operating, and furnishing railroads, railroad bridges, engines, cars, rolling stock, and other railroad equipment, hotels, stores, buildings,and warehouses, telephone, telegraph, cable, street railway and electric lines, steamship and steamboat lines, vessels, ferry boats, wharves,electric,surface, underground,and other railroads;waterworks, irrigating works, dams, reservoirs,pipes,conduits,refineries,canals,bridges,canning,smelting,assaying,chemical,mining, guano, phosphate, and fertilizing works of all kinds, and all buildings,wharves, and structures necessary or appurtenant thereto; and it may contract for, acquire, receive in trust or otherwise, hold, own, and sell real estate and personal property, and the bonds, stocks, obligations, securities, and franchises of any other corporation,company, or association, and the bonds, obligations, and securities of any state, territory,government, local authority, or individual; and it may enter into contracts with any corporation, company, association, individual,state, territory, government, or local authority in respect to their stocks, bonds, obligations, franchises, leases, or securities,and in respect to the construction,establishment,acquisition,holding,equipping,leasing,maintaining,or operating any such railroads, telegraph,telephone, or electric lines, steamship or steamboat lines, vessels, irrigating works,refineries,mining, and fertilizing works, or any public or private improvements, or any appurtenances thereof, in any state or territory of the United States, or in any foreign country; and it may buy, hold, own, and sell all kinds of public and private stocks, bonds, or securities, and exercise all rights and powers incident to or connected with said ownership; and said corporation may

borrow and loan money, issue its bonds or other evidences of indebtedness, and sell, negotiate, and pledge the same to such amount not exceeding seventy-five per centum of the cash value of its assets, upon such terms and in such manner as may, from time to time, be determined by the directors of said corporation; and it may mortgage all or any of its property, assets, and franchises to secure such bonds and the interest thereon, upon such terms and conditions as shall be prescribed by its directors; but said corporation shall not have power to make joint stock with, lease, hold, own, or operate any steam railroad within said state of Connecticut unless it shall operate the same within said state in conformity with the provisions of the general railroad law of this state; and it shall not have power to use or occupy any highway or public grounds in this state, for the purpose of constructing any street railway, or for the transmission or use of electricity in any manner for any purpose, or for the building of water or gas works, or the distribution of water or gas, without special authority of the general assembly; nor shall it furnish to any corporation or person in this state electricity, for any purpose whatsoever, in the incorporated territory of any existing electrical light, heating, or power company, or in the territory of any such company which may be incorporated by the general assembly at its present session.

Sec. 7. The books of said corporation containing its accounts of every kind and nature shall at all reasonable times, and for any proper purpose, be open to the inspection of the stockholders, and as often as once in each year a full and complete statement of the accounts of said corporation shall be made to the stockholders. The corporation shall at all times keep an office at such place or places in this state as may be fixed by its by-laws, a certificate of the location of which office or offices shall be filed with the secretary of this state within thirty days after the organization of this corporation; and said corporation may maintain offices at such other places outside this state as its business may require. At least one

director of this corporation, and the treasurer and secretary, or an assistant treasurer and assistant secretary to be appointed by the directors, who may be one and the same person, shall at all times be residents of this state, and service of process of any kind against this corporation, and returnable within this state, may be made by leaving copies of the same with such treasurer, secretary, or assistant treasurer or assistant secretary.

Approved, June 30, 1893.

STATE OF CONNECTICUT,

GENERAL ASSEMBLY,

JANUARY SESSION, A.D. 1899.

(Senate Joint Resolution No. 131.)

(53.)

AMENDING THE CHARTER OF THE AGAWA COMPANY.

RESOLVED BY THIS ASSEMBLY: That section five of the resolution incorporating The Agawa Company, passed by the general assembly at its January session, 1893, is hereby amended by striking out the word "par" in the thirteenth line of said section, and inserting in lieu thereof the word "fair"; by inserting after the word "corporation," in the fourteenth line of said section, the words "or purchased by the issue of its stock"; and by inserting after the word "corporation," in the fifteenth line of said section, the words "or purchased as aforesaid, and in the absence of fraud the judgment of the directors as to such values shall be conclusive," so that the concluding sentence of said section when amended shall read as follows: The capital stock of the corporation may, from time to time, be increased or diminished to such sum as may be determined by the board of

directors; but the capital stock shall at no time be increased to exceed the fair value of the stock, bonds, or other securities held by the corporation or purchased by the issue of its stock, together with the cash on hand, and the cash value of the property owned by the corporation or purchased as aforesaid, and in the absence of fraud the judgment of the directors as to such values shall be conclusive; and no diminution of the capital stock shall be made when the corporation is insolvent or when such diminution would make it insolvent.

(Note by the Secretary.-The above resolution, not having been returned by the governor within the time limited by the constitution, became a law without his approval, March 31, 1899.)

State of Connecticut, }
Office of the Secretary, } *ss.*

I, DONALD J. WARNER Secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the Acts and Resolutions of the General Assembly of said State, *DO HEREBY CERTIFY* that I have compared the annexed copy of the

RESOLUTION INCORPORATING THE AGAWA COMPANY, AND AMENDMENT THERETO

with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

AND I FURTHER CERTIFY, that the said original record is a public record of the said State of Connecticut, now remaining in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford, this 31st day of January 19 21

Donald J. Warner

Secretary.

Exhibit B

State of Connecticut,

Office of the Secretary.

THE AGAWA COMPANY.

Increase of Capital Stock.

THIS IS TO CERTIFY; That at a special meeting of the stockholders of the Agawa Company, duly warned and holden for such purpose at room No. 5, Garfield Block, New London, Connecticut, March 27th at 2 o'clock p.m. all the stockholders being present and voting, the following vote was passed:-

RESOLVED: That the capital stock of this corporation be increased from five hundred shares of the par value of one hundred dollars each, and of the total par value of fifty thousand dollars, to four hundred thousand shares of the par value of one hundred dollars each and of the total par value of forty million dollars; that two hundred thousand shares of said capital stock, each of the par value of one hundred dollars, and of the total par value of twenty million dollars, be issued as preferred stock, and that two hundred thousand shares of said capital stock, each of the par value of one hundred dollars, and of the total par value of twenty million dollars, be issued as common stock; that the preferred stock be entitled to a preference in dividends, out of the net profits, whenever declared by the board of directors; such dividends to be at the rate of six per cent per annum, for the fiscal year beginning April 1, 1899, and for each and every fiscal year thereafter, and to be cumulative and payable in preference and priority to any dividend on the common stock; that in the case of dissolution or liquidation of said corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares, out of the funds of the

corporation, before anything shall be paid therefrom to the holders of the common stock; that the common stock shall be subject to the said prior rights of preferred stock; and if, after payment of said dividends on preferred stock, any net profits shall remain, the same shall be applicable to dividends upon common stock as and when declared by the board of directors:

Aug. Brandegee	Directors of
William J. Brennan	The Agawa
Frank B. Brandegee	Company.

State of Connecticut
Hartford County Hartford, March 29, 1899.

Personally appeared:- Augustus Brandegee, Frank B. Brandegee and William J. Brennan, the subscribers to the above, being a majority of the directors of the Agawa Company, and made oath to the truth of the foregoing certificate.

Before me

(U.S.Int.Rev. Stamp for 10/100 dollars duly cancelled.)

John G. Mitchell
Notary Public.

Rec'd & filed Mar 30, 1899.

THE AGAWA COMPANY.

Change of Name.

The Agawa Company of New London, Conn.	Superior Court,
	New London County.
Application for a change of name	April 10th, 1899.

JUDGMENT.

This application for a change of name came to the present session of this Court, when the applicant appeared by its attorneys. Brandegee, Noyes & Brandegee.

The court having inquired into the truth of the allegations

contained in the said application, finds that said corporation "The Agawa Company," a private corporation under the laws of this State, has duly voted to change its corporate name to that of "The American Agricultural Chemical Company", and has given the notice of its intended application to this Court by advertisement as required by law; and that the allegations contained in said application are true.

WHEREFORE, it is ordered, adjudged and decreed that the prayer of the applicant be granted, and that the name of the applicant corporation be changed from that of "The Agawa Company" to that of "The American Agricultural Chemical Company", which shall hereafter be the legal name of said corporation

By the Court

John C. Averill, Clerk

State of Connecticut)
) ss
County of New London) Norwich, April 10th, 1899.

Office of the Clerk of the Superior Court, I John C. Averill, Clerk of said Court, Keeper of the seal, files and records thereof, do hereby certify that the within and foregoing is a true copy of the original judgment in the above entitled cause as on file and of record will appear.

In testimony whereof I hereunto set my hand and the seal of said Court the day and year last above named

(L.S.)

(U.S.Int.Rev.)
(Stamp for 10.100)
(dollar duly)
(canceled. "

Attest

John C. Averill, Clerk

Rec'd & filed, Apr. 17, 1899. 1:35 p.m.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

INCREASE OF PREFERRED CAPITAL STOCK. ($12,000,000.

THIS IS TO CERTIFY: That at the Annual Meeting of the Stockholders of The American Agricultural Chemical Company duly

warned and held at the office of the Company, #5 Garfield Block, New London, Connecticut, on the 17th day of September, 1908, at 2 o'clock P.M., the notice of which meeting stated particularly and specifically that the question of increasing the Capital Stock of the Company would be submitted for the consideration of the stockholders at such meeting, more than two-thirds of all the stockholders being present either in person or by proxy, and voting, the following resolution was adopted:

RESOLVED, That the Preferred Capital Stock of this Company be, and the same is, hereby increased by the additional amount or sum of $12,000,000, making the total issue and authorized issue of said Preferred Capital stock $32,000,000, such Preferred Stock to be issued in such form and to contain such provisions, and to give the same rights and privileges to the holders and purchasers thereof, and to provide for the payment of dividends in the same manner as the 6% cumulative Preferred Stock of the Company heretofore issued or authorized, the said additional stock to have the same force and effect and to be subject to the same rights, privileges and conditions as though the said Stock had been a part of the original issue of the Preferred Stock of the Company, except taat the right to receive dividends thereon shall not antedate the actual issue thereof; and that in conformity with Chapter 194, Part 2, Sec. 50 of the laws of the State of Connecticut, (Public Acts of 1903) being "An Act Concerning Corporations," the amount of Preferred Stock so to be issued shall be not exceeding $12,000,000; the number of shares thereof shall be not exceeding 120,000, and the par value of each share shall be $100.; the dividends to be paid thereon shall be 6% cumulative, and the said stock shall be Preferred with reference to dividends and assets in the same manner as provided with reference to the Preferred Stock heretofore issued and outstanding;

RESOLVED FURTHER, That the proper officers of this Company be, and they are, hereby authorized and empowered from time

to time to take such steps as they may find essential in order to issue said Preferred Stock of $12,000,000., or any part thereof, and that they be, and are, hereby authorized and empowered from time to time to issue and deliver said additional stock of $12,000,000 or any part thereof, as they shall from time to time deem necessary or advisable in order to enable the Company to exchange its Preferred Stock for the bonds or debentures which may be issued by the Company, or to enable said company to call in, retire, or discharge said bonds or debentures or any part thereof, or for such other purposes as may be deemed expedient by the Board of Directors or the Executive Committee of the Company.

A stock vote was thereupon called for and after all ballots had been cast, the tellers reported that more than two-thirds of the Preferred Stock and more than two-thirds of the Common Stock of the Company, to wit:- 130,635 shares of the Preferred Stock (par value $100.) and 131,645 shares of the Common Stock (par value $100.) of said Company had voted in favor of the resolution, and that no shares of the Preferred Stock and no shares of the Common Stock of said Company had voted against the resolution, and on report of said tellers, the chairman of the meeting declared the resolution to have been duly carried.

On motion, duly seconded,

RESOLVED, That the proper officers of this Company, be and they are, hereby authorized, empowered and instructed to execute, deliver, record or file such instruments in writing as may be essential in order to carry into forceand effect any of the resolutions adopted at this annual meeting of the stockholders.

Attest:

Horace Bowker

Co's seal) Secretary.

Peter B. Bradley
Wm W. Baker
Albert French
John F. Kehoe
Thos. A. Doe
D. Crawford Clark
A B Hepburn
H L. Dudley
Gardiner M. Lane
James M Gifford
Rob S Bradley
W H Bowker

Directors of The American Agricultural Chemical Company, being a majority of the Board of Directors.

State of New York)
) SS.
County of New York)

Oct. 14, 1909.

Personally appeared Peter B. Bradley, Wm. W. Baker, Albert French, John F. Kehoe, Thos. A. Doe, D. Crawford Clark, A. B. Hepburn, H. L. Dudley, Gardiner M. Lane, James M. Gifford, the subscribers to the above, Directors of The American Agricultural Chemical Company, and made oath or affirmation to the truth of the foregoing certificate.

C. P. Leggett

(Seal) Notary Public #29

Commonwealth of Massachusetts)
(SS.
County of Suffolk)

October 15th, 1909.

Personally appeared Robt. S. Bradley and W. H. Bowker, subscribers to the above, Directors of The American Agricultural Chemical Company, and made oath or affirmation to the truth of the foregoing Certificate.

Henry G. Burrage

(Seal) Notary Public.

Approved, Oct. 28, 1909.
Fee, $12,000., Paid Oct. 28, 1909.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

Increase of Preferred Capital Stock $18,000,000.

Increase of Common Capital Stock $30,000,000.

THIS IS TO CERTIFY, That at a special meeting of the stockholders of The American Agricultural Chemical Company, duly warned and held, at the office of the Company, Garfield Block, New London, Connecticut, on the 28th day of March, 1912, at two o'clock P.M., the notice of which meeting stated properly and specifically that the question of increasing the capital stock of the company would be submitted for the consideration of the stockholders at said meeting, more than two-thirds of all the stockholders being present, either in person or by proxy, and voting, the following resolution was adopted:

"RESOLVED, that the Preferred Capital Stock of this company be, and the same is hereby, increased, by the additional amount or sum of eighteen million dollars ($18,000,000), making the total issue and authorized issue of said Preferred Capital Stock Fifty million dollars ($50,000,000), such additional preferred stock to be issued in such form and to contain such provisions, and to give the same rights and privileges to the holders and purchasers thereof, and to provide for the payment of dividends in the same manner as the six per cent. cumulative Preferred Stock of the Company heretofore issued or authorized, and to have the same force and effect and to be subject to the same rights, privileges and conditions as though the said stock had been a part of the original issue of the Preferred Stock of the Company, except that the right to receive dividends thereon shall not antedate the 1st day of April, 1912, and that in conformity with Chapter 194, Part 2, Section 50, of the Laws of the State of Connecticut (Public Acts, 1903) being "An Act Concerning Corporations,"

the amount of Preferred Stock so to be issued shall be not exceeding $18,000,000; the number of shares thereof shall be not exceeding 180,000, and the par value of each shares shall be $100; the dividends to be paid thereon shall be 6% cumulative, and the said stock shall be preferred with reference to dividends and assets in the same manner as provided with reference to the Preferred Stock heretofore issued and outstanding.

RESOLVED FURTHER, that the Common Capital stock of this Company be, and the same is hereby, increased by the additional amount or sum of Thirty million dollars ($30,000,000), making the total issue and authorized issue of said Common Capital stock Fifty million dollars ($50,000,000), such additional Common Stock to be issued in the same form and to contain the same provisions and to give the same rights and privileges to the holders and purchasers thereof, and to have the same force and effect, and to be subject to the same rights, privileges, conditions and limitations as though said stock had been a part of the original issue of the common Stock of the company, except that the right to receive any dividends thereon shall not antedate the 1st day of April, 1912, and that the amount of Common Stock so to be issued shall be not exceeding $30,000,000; the number of shares thereof shall be not exceeding 300,000, and the par value of each shars shall be $100.; and that said Common Stock shall be issued on the same terms and subject to the said rights, privileges, conditions and limitations which apply to and affect the Common Stock of this Company heretofore issued or authorized.

RESOLVED FURTHER, that the proper officers of this Company be, and they are hereby authorized and empowered from time to time to issue and deliver said additional Preferred Stock of $18,000,000 or any part thereof, and said additional Common Stock of $30,000,000, or any part thereof, for such purposes as may be deemed expedient by the Board of Directors or the Executive Committee of the Company."

A stock vote was thereupon called for, and after all ballots had been cast, the tellers reported that more than two-thirds of the Preferred Stock and more than two-thirds of the Common Stock of the Company, to wit: One Hundred and forty-six thousand, seven hundred and ten (146,710) shares of the Preferred Stock (par value of $100), and One Hundred and fifty-two thousand, nine hundred and sixty-one (152,961) shares of the Common Stock (par value of $100) of said Company had voted in favor of the resolution, being all of the stock represented and voting at said meeting.

on motion duly seconded and carried it was

RESOLVED, that the proper officers of this Company be and they are hereby, authorized, empowered and instructed to execute, deliver, record or file such instruments in writing as may be essential in order to carry into force and effect any of the resolutions adopted at this special meeting of the stockholders.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY,

By Peter B. Bradley, President.

Attest:

Horace Bowker, Secretary.

(Corporate Seal)

Peter B. Bradley
F. L. Ames
Gardiner M. Lane
Robert S. Bradley
Samuel Carr
W. H. Bowker,
Ross L. Coe
H. L. Dudley
John F. Kehoe
Wm. W. Baker
Thos. A. Doe
Wm. Prescott
James M. Gifford

Directors of The American Agricultural Chemical Company, being a majority of the Board of Directors.

State of New York)
ss.:
County of New York)

April 3, 1912.

Personally appeared H. L. Dudley, John F. Kehoe, Wm. W. Baker, Thos. A. Doe, Wm. Prescott and James M. Gifford, the subscribers to the above, Directors of The American Agricultural Chemical Company, and made oath or affirmation to the truth of the foregoing certificate.

J. A. Starrett,
Notary Public, Kings County,
(SEAL) Certificate filed in New York County.

State of Massachusetts)
ss
County of Suffolk)

Boston, April 2nd, 1912.

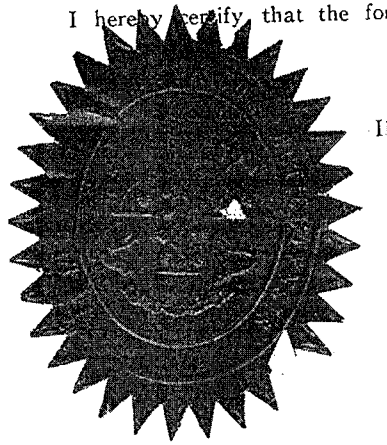
Personally appeared, Peter B. Bradley, F. L. Ames, Gardiner M. Lane, Robert S. Bradley, Samuel Carr, W. H. Bowker, Ross L. Coe, the subscribersto the above, Directors of The American Agricultural Chemical Company, and made oath or affirmation to the truth of the foregoing certificate.

Fred M. Montgomery,
(Seal) Notary Public

Approved April 9, 1912.
Fee $48.000 , paid
Apr 9, 1912.

State of Connecticut, } ss.
OFFICE OF THE SECRETARY, }

I hereby certify that the foregoing is a true copy of record in this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Seal of said State, at Hartford, this 31st day of January A. D. 1921

Secretary.

Exhibit C

Certificate of Incorporation

(AS AMENDED TO JUNE 23, 1930)

OF

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

(Delaware)

CERTIFICATE OF INCORPORATION

(AS AMENDED TO JUNE 23, 1930)

OF

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

FIRST: The name of this Corporation is

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

SECOND: The location of its principal office in the State of Delaware is in the City of Wilmington, County of New Castle. The name of the agent therein and in charge thereof is the DELAWARE TRUST COMPANY.

THIRD: The objects and purposes of this Corporation and the nature of the business proposed to be transacted, promoted or carried on by this Corporation are as follows:

To manufacture, or otherwise produce, to buy, import, or otherwise procure, to mix, treat, or otherwise prepare for market, and to sell, distribute, transport, export and generally to deal in any and all manner of chemicals, chemical agents and material, acid, alkalies, bone black, gelatine, glue, fertilizers, phosphate rock, phosphate deposits, lime marl, bone and fertilizer and rendering material of every sort and description, and products of a similar, allied or different nature of every sort and description; and

Generally and without any limitation to be imposed by the express enumeration of powers hereinbefore set forth, to manufacture, or otherwise produce, buy, sell, distribute, transport, import, export, trade and generally deal in, goods, wares and merchandise and personal property of every kind and nature; and

To buy, lease, hire, contract or otherwise acquire and to maintain, improve, cultivate, use, operate, sell, mortgage, let or otherwise dispose of and in any way to utilize lands, mines, farms, ranches, plants, wharves, piers, docks, industrial railroads, electric power and transmission lines, laboratories, factories, depots, warehouses and buildings of any description, machinery, tools, equipment and any other property, real, personal or mixed, necessary, desirable, useful or convenient for carrying on any business herein provided for or otherwise; and

To acquire all or any part of the good will, rights, property, franchises and/or business of any person, entity, partnership, association or corporation heretofore or hereafter engaged in any business similar to any business which this Corporation has power to conduct and to pay for the same in cash or in stock, bonds or other obligations of this Corporation or otherwise; and

To hold, operate, utilize and in any manner dispose of the whole or any part of the good will, rights, property franchises and/or business so acquired and to assume in connection therewith any liability of any person, entity, partnership, association or corporation and to conduct in any lawful manner the whole or any part of the business thus acquired; and

To make any guaranty respecting stocks, dividends, securities, indebtedness, bonds, interest, contracts or other obligations of any person, entity, partnership, association or corporation, so far as the same may be permitted to be done by a corporation organized under the laws of Delaware; and

To purchase, acquire, hold, pledge, hypothecate, exchange, sell, deal in and dispose of, alone or in syndicate or otherwise, stocks, bonds and other evidences of indebtedness and obligations of any corporation, association, partnership, syndicate, entity, person or governmental, municipal or public authority, domestic or foreign, and evidences of any interest in respect of any such stocks, bonds and other evidences of

indebtedness and obligations and to issue in exchange therefor its own stocks, bonds or other obligations and while the owner or holder of any such stocks, bonds and other evidences of indebtedness to exercise all the rights, powers and privileges of ownership in respect thereof; and

To aid by loan, subsidy, guaranty or in any other manner whatsoever any corporation or association whose stocks, bonds, securities or other obligations are in any manner, either directly or indirectly, held or guaranteed by this Corporation and to do any and all other acts and things towards the preservation, protection or enhancement in value of any such stocks, bonds, securities or other obligations and to do all such acts and things designed to accomplish such purpose; and

To engage in any building, construction, mercantile, manufacturing or trading business of any kind or character whatsoever within or without the State of Delaware and to do all things incidental to any such business, cause to be formed, merged or reorganized or liquidated and to promote, take charge of and aid in any way permitted by law the formation, merger, reorganization or liquidation of any corporation, association or entity within or without the United States of America; and

To apply for, obtain, register, purchase, lease or otherwise acquire, hold, own, use, develop, operate, introduce, sell or assign or otherwise dispose of any and all copyrights, trade-marks, trade names, brands, labels and patents and any and all inventions, improvements, apparatus, appliances and processes used in connection with or secured under letters patent of the United States of America or elsewhere or otherwise and to use, exercise, develop or grant licenses in respect of or otherwise turn to account any such copyrights, trade-marks, trade names, brands, labels, patents, inventions, improvements, apparatus, appliances, processes and the like or any property or information so acquired; and

To borrow or raise moneys for any of the purposes of the Corporation and from time to time without limitation

as to amount to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and to secure the payment thereof and interest thereon by mortgage on or pledge, conveyance or assignment in trust of the whole or any part of the assets of the Corporation, real, personal or mixed, and to sell, pledge or otherwise dispose of such securities or obligations of the Corporation for its corporate purposes; and

To purchase, hold, sell, transfer, reissue or cancel the shares of its own capital stock and/or any securities or other obligations of the Corporation in the manner and to the extent now or hereafter permitted by the laws of Delaware; and

In general, to carry on any business not contrary to the laws of Delaware and to have and exercise all of the powers conferred by the laws of Delaware upon corporations formed thereunder; and to do any and all of the acts and things herein set forth to the same extent as natural persons could do, and in any part of the world, as principal factor, agent, contractor, trustee or otherwise, either alone or in company with any person, entity, syndicate, partnership, association or corporation; to establish and maintain offices and agencies within, and anywhere outside of, the State of Delaware; and to exercise all or any of its corporate powers and rights in the State of Delaware and in any and all other states, territories, districts, colonies, possessions or dependencies of the United States of America and in any foreign countries;

To do everything necessary, proper, advisable or convenient for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein set forth and to do every other act and thing incidental thereto or connected therewith, provided the same be not forbidden by the laws of Delaware;

The foregoing clauses shall be construed as powers as well as objects and purposes, and the matters expressed in each clause shall, except if otherwise expressly provided, be in no wise limited, by reference to or inference from the terms of any other clause, but shall be regarded as independent objects, purposes and powers; and the enumeration of specific objects, purposes and powers shall not be construed to limit or restrict in any manner the meaning of general terms or the general powers of the Corporation; nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature;

The Corporation shall be authorized to exercise and enjoy all other powers, rights and privileges granted by an Act of the General Assembly of the State of Delaware entitled "An Act providing a General Corporation Law", approved March 10, 1899, to corporations of this character and all the powers conferred upon such corporations by the laws of Delaware, as in force from time to time, so far as not in conflict herewith, or which may be conferred by all acts heretofore or hereafter amendatory of or supplemental to said Act or said laws and the enumeration of certain powers as herein specified is not intended as exclusive of, or as a waiver of, any of the powers, rights or privileges granted or conferred by said Act or said laws now or hereafter in force; provided, however, that the Corporation shall not in any state, territory, district, possession or country carry on any business, or exercise any powers, which a corporation organized under the laws thereof could not carry on or exercise.

FOURTH: The total number of shares of stock that may be issued by the Corporation is two million (2,000,000) all of which are to be without par value and of one class.

The minimum amount of capital with which the Corporation will commence business is the sum of Twenty-four hundred dollars ($2,400).

All or any of the shares of stock of the Corporation without par value may be issued from time to time by the Corporation acting through the Board of Directors without action by the stockholders for such consideration as may be fixed from time to time by the Board of Directors. Any and all such shares without par value so issued for which the consideration so fixed has been paid or delivered, shall be deemed full paid stock and shall not be liable to any further call or assessment thereon.

Whenever shares of stock of the Corporation without par value shall have been issued for a consideration of which or of the value of which a part only shall have been determined by resolution of the Board of Directors to be capital, there shall be credited to reserve or to surplus so much of the amount or value of such consideration as is in excess of the part so determined to be capital. Against any reserve or surplus so established, there may be charged losses at any time incurred by the Corporation, also dividends or other distributions on stock. Such reserve or surplus may be reduced from time to time by the Board of Directors for the purposes above specified, or by transfer from such reserve or surplus to capital account or otherwise.

No holder of stock of the Corporation shall be entitled, as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of the Corporation of any class, whether now or hereafter authorized, and whether issued for money or for a consideration other than money, or of any issue of securities convertible into stock.

FIFTH: The names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name.	*Residence.*	*Number of Shares.*
Charles B. Bishop,	Wilmington, Delaware,	18
S. E. Roberson,	Wilmington, Delaware,	3
Harry W. Davis,	Wilmington, Delaware,	3

SIXTH: This Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

EIGHTH: All corporate powers of the Corporation shall be exercised by the Board of Directors except as otherwise provided by law. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the by-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

The number of directors which shall constitute the whole Board shall be fixed from time to time by, or in the manner provided in, the by-laws and may be altered from time to time by amendment of, or in the manner provided in, the by-laws, but in no case shall the number be less than three. In case of any increase in the number of directors, the additional directors shall be elected as may be provided in the by-laws.

The Board of Directors may hold their meetings and have an office or offices outside the State of Delaware if the by-laws so provide.

None of the directors need be a stockholder of the Corporation or a resident of the State of Delaware.

Subject to any limitations that may be imposed by the stockholders, the Board of Directors may make by-laws and from time to time may alter, amend or repeal any by-laws, but any by-laws made by the Board of Directors or the stockholders may be altered, amended or repealed by the stockholders at any annual meeting or at any special meeting,

provided that notice of such proposed alteration, amendment or repeal is included in the notice of such special meeting.

The Board of Directors shall have power from time to time to fix the amount to be reserved by the Corporation over and above its capital stock paid in and to fix and determine and to vary the amount of the working capital of the Corporation, and to direct and determine the use and disposition of the working capital and of any surplus or net profits over and above the capital stock paid in.

The Board of Directors may from time to time establish, re-establish, amend, alter or repeal and may put into effect and carry out such a plan or plans as may from time to time be approved by it for the distribution among or sale to the officers and employees of the Corporation, or any of them, in addition to their regular salaries or wages, of any moneys or other property of the Corporation, or of any shares of stock of the Corporation, of any class, in consideration for or in recognition of the services rendered by such officers and employees.

The Board of Directors may remove at any time any officer elected or appointed by the Board of Directors, but only by the affirmative vote of a majority of the members of the Board then in office, and to remove any other officer or employee of the Corporation or to confer such power on any committee or officer. Any removal may be for cause or without cause.

The Board of Directors from time to time shall determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account, book or document of the Corporation except as conferred by the laws of the State of Delaware or as authorized by resolution of the Board of Directors or the stockholders.

In the absence of fraud, no contract or other transaction of the Corporation shall be affected or invalidated in any way by the fact that any of the directors of the Corporation are interested in or connected with any other party to or are themselves parties to such contract or transaction, provided that such interest shall be fully disclosed or otherwise known to the Board of Directors at the meeting of said Board at which such contract or transaction is authorized or confirmed and provided further that at such meeting there shall be present a quorum of directors not so interested or connected and that such contract or transaction shall be approved by a majority of such quorum. Any contract, transaction or act of the Corporation or of the Board of Directors or of any committee thereof which shall be ratified by a majority in interest of a quorum of the stockholders of the Corporation having voting power at any annual meeting or any special meeting called for such purpose shall be as valid and as binding as though ratified by every stockholder of the Corporation; provided, however, that any failure of the stockholders to approve or ratify such contract, transaction or act, shall not of itself be deemed in any way to render the same invalid, nor deprive the directors of their right to proceed with such contract, transaction or act. Any director of the Corporation may vote upon any contract or other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated corporation.

NINTH: The stockholders may hold their meetings, annual or special, within or without the State of Delaware as may be provided in the by-laws. The Corporation may have one or more offices and keep any of the books of the Corporation, subject to the provisions of the laws of the State of Delaware, within or without the State of Delaware.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Cer-

tificate of Incorporation in the manner now or hereafter prescribed by statute and all rights conferred upon the stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named, for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the Legislature of the State of Delaware entitled "An Act Providing the General Corporation Law" (approved March 10, 1899) and the acts amendatory thereof and supplemental thereto, DO MAKE AND FILE THIS CERTIFICATE hereby declaring and certifying that the facts herein stated are true, AND DO RESPECTIVELY AGREE to take the number of shares of stock hereinbefore set forth and accordingly do hereunto set our hands and seals this fifth day of December, A. D. one thousand nine hundred and thirteen.

In the presence of:

WILLIAM W. PUSEY, 2d.

CHARLES B. BISHOP, [SEAL]

S. E. ROBERSON, [SEAL]

HARRY W. DAVIS, [SEAL]

STATE OF DELAWARE,
COUNTY OF NEW CASTLE, } SS.:

BE IT REMEMBERED that upon this fifth day of December, A. D. 1913, personally came before me William W. Pusey, 2d., a Notary Public for the State of Delaware, Charles B. Bishop, S. E. Roberson and Harry W. Davis, the parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office on the day and year aforesaid.

WILLIAM W. PUSEY, 2d.,
Notary Public.

William W. Pusey, 2d.
Notary Public
Appointed Mch. 19 1912
State of Delaware
Term Four Years.

Exhibit D

Chemical Library
HJ
948
.U5
1916
A

U.S

FEDERAL TRADE COMMISSION

REPORT

ON THE

FERTILIZER INDUSTRY

AUGUST 19, 1916

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

Digitized by Google
Original from UNIVERSITY OF MICHIGAN

sentatives. It is claimed that several representatives, each pushing particular brands, secure more business than one representative handling all the brands of a company, and also that where sales are made through several representatives rather than through one, the credit risks are distributed. Another reason is that a company, prior to its acquisition by a large company, may have acquired a reputation which makes the use of its name very valuable. In some cases large sums have been paid for the brands and good will of acquired companies. A third reason which affects two or three of the largest companies is that the laws of some States require a qualifying tax based upon the total authorized capital stock, which is onerous for a corporation with a large capitalization unless it does an important business in the State. In States where such laws exist the general practice of a large concern is to qualify one of its small subsidiaries. For example, in Michigan the Virginia-Carolina Chemical Co. at one time qualified the Rasin-Monumental Co., of Baltimore, and in Ohio The American Agricultural Chemical Co. qualified its subsidiary, The American Agricultural Chemical Co. of Delaware, with a capitalization of $5,000.

A common form of subsidiary in the fertilizer industry is the selling company which has no plant, but sells goods put up for it by the controlling company. The American Agricultural Chemical Co. has 17 of these concerns; Virginia-Carolina Chemical Co., 6; International Agricultural Corporation, 3; Armour Fertilizer Works, 6; and F. S. Royster Guano Co., 4. Several of the smaller concerns also have one or more of them. The Read Phosphate Co., next in importance to the seven large companies, has 4, the Federal Chemical Co. has 3, The Jarecki Chemical Co. 3, and the Consolidated Rendering Co. 5.

Three of the large fertilizer companies—the Virginia-Carolina Chemical Co., Armour Fertilizer Works, and the International Agricultural Corporation—have followed the policy of acquiring an interest in a large number of small concerns operating dry-mixing plants. One purpose of acquiring such concerns has been to obtain an outlet for the surplus acid phosphate produced. Another reason has been to give them a local character, so that they might secure such business as the large companies could not get. The International Agricultural Corporation several years ago organized or acquired 40 such companies in order to dispose of its large surplus of acid phosphate which was produced to make use of the sulphuric acid purchased from the two Tennessee copper companies. The company also entered into profit-sharing contracts with a number of concerns for the same purpose.

The Virginia-Carolina Chemical Co. claims that the acquisition by the International Agricultural Corporation of these companies forced

Digitized by Google Original from UNIVERSITY OF MICHIGAN

TABLE 64.—NUMBER AND CHARACTER OF FERTILIZER PLANTS OPERATED BY THE AMERICAN AGRICULTURAL CHEMICAL CO. PROPER AND BY SUBSIDIARY COMPANIES, AND TOTALS, BY STATES, 1914.

State.	The American Agricultural Chemical Co. proper.			Subsidiary companies.			Total.		
	Complete.	Complete except acid chambers.	Dry mixers.	Complete.	Complete except acid chambers.	Dry mixers.	Complete.	Complete except acid chambers.	Dry mixers.
Maine			1			1			2
Massachusetts	1						1		
Connecticut					1			1	
New York	1		1				1		1
New Jersey	2			2			4		
Pennsylvania		1						1	
Maryland	1		1				1		1
Ohio				2			2		
Michigan	1						1		
Illinois					1			1	
Virginia				1	1		1	1	
North Carolina				1			1		
South Carolina	2	1				1	2	1	1
Georgia	1						1		
Florida				1	1		1	1	
Alabama	1						1		
California				1			1		
Total, United States	10	2	3	8	4	2	18	6	5
Cuba			1						1

The 30 plants of the company, including subsidiaries, are distributed over 17 States, extending from Maine to Florida and California. There are four each in New Jersey and South Carolina, two each in Maine, New York, Maryland, Ohio, Virginia, and Florida, one each in nine other States, and one in Cuba.

The fertilizer plants operated by the subsidiaries of the American Agricultural Chemical Co., as shown by the chart facing page 194, are as follows:

[1] The American Agricultural Chemical Co. of Delaware, four complete fertilizer plants located at Los Angeles, Cal.; Wilmington, N. C.; Rockport (near Cleveland) and St. Bernard (near Cincinnati), Ohio.

[1] The American Agricultural Chemical Co. of Florida, one complete plant at Pensacola, and the complete plant, except acid chambers, at Jacksonville, Fla.

[1] Alexandria Fertilizer & Chemical Co., one complete plant at Alexandria, Va.

[1] Bowker Fertilizer Co., one complete plant at Elizabeth, N. J.

The Coe-Mortimer Co., one complete plant, except acid chambers, at Belfast, Me.

[1] Empire Carbon Works, one complete plant, except acid chambers, at East St. Louis, Ill.

Listers' Agricultural Chemical Works of New Jersey, one complete plant at Newark, N. J.

Palmetto Guano Corporation, one dry-mixing plant at Columbia, S. C.

[1] The Pocomoke Guano Co., one complete plant, except acid chambers, at Norfolk, Va.

Sanderson Fertilizer & Chemical Co., one complete plant, except acid chambers, at West Haven, Conn.

[1] Operates under lease.

Digitized by Google Original from UNIVERSITY OF MICHIGAN

Selling companies.—As shown by the chart facing page 194, The American Agricultural Chemical Co. has 17 active subsidiary companies engaged exclusively in selling under their own name various brands of fertilizers which it puts up for them. Eight of these 17 selling companies operate from Baltimore where The American Agricultural Chemical Co. proper has but one complete plant and one dry mixer. Four operate from Norfolk, where there is only one plant owned by The American Agricultural Chemical Co. proper, which is operated by The Pocomoke Guano Co. under lease. Three operate from the Philadelphia office. In addition to the above selling companies several of the subsidiary companies manufacturing fertilizers are used as selling companies. Thus, The Coe-Mortimer Co. operates only one plant, that at Belfast, Me., yet it sells fertilizers, manufactured at other plants of The American Agricultural Chemical Co., in New York, Pennsylvania, Ohio, North Carolina, South Carolina, and Georgia. The Bowker Fertilizer Co. operates only one fertilizer-manufacturing plant, that at Elizabeth, N. J., yet it sells fertilizers, manufactured at other plants, in Ohio, North Carolina, and other distant States.

The company reports that all of these selling companies were formerly independent concerns. Several of them before being acquired were jobbers who sold under their own brand names fertilizers manufactured for them by The American Agricultural Chemical Co. They have continued to operate in the same manner since their acquisition. Several other selling companies were formerly subsidiaries of The Pocomoke Guano Co., of Norfolk. Their operation has been continued along with that of the manufacturing company since their acquisition. One company lost its plant by fire and sold its brands and good will to The American Agricultural Chemical Co., which has continued to supply its trade.

There are several other companies taken over by The American Agricultural Chemical Co. which apparently have been operated as active selling companies although reported as inactive. Thus, in South Carolina, the Bradley, Ashepoo, Dixie, Homestead, and Farmers' fertilizer companies, supposedly inactive American Agricultural Chemical Co. companies, registered brands under their own names as manufacturers in the 1912–13 and 1913–14 seasons. The total number of active and so-called inactive companies of The American Agricultural Chemical Co. thus registering brands in South Carolina in these years was 11, as follows:

The Coe-Mortimer Co., Charleston, S. C.
The Pocomoke Guano Co., Norfolk, Va.
The Hampton Guano Co., Norfolk, Va.
The Berkeley Chemical Co., Norfolk, Va.
The Norfolk Fertilizing Co. (Inc.), Norfolk, Va.
Bradley Fertilizer Co., Boston, Mass.

Digitized by Google Original from UNIVERSITY OF MICHIGAN

Ashepoo Fertilizer Co., Charleston, S. C.
The Imperial Co., Norfolk, Va.
Dixie Guano Branch, Spartanburg, S. C., 1913–14 season.
Homestead Fertilizer Branch, Spartanburg, S. C., 1913–14 season.
Farmers' Fertilizer Works, Spartanburg, S. C., 1913–14 season.

In New York State, which ranks fifth in order of importance as a consumer of fertilizers and first among the Northern States, with an estimated consumption of 460,000 tons in 1913, The American Agricultural Chemical Co. has only two fertilizer plants, a complete plant at Buffalo and a dry-mixing plant at Brooklyn. None of the subsidiary fertilizer manufacturing companies operates a plant within the State. Notwithstanding this fact the parent company and 12 subsidiary companies registered brands in 1913 with the New York Department of Agriculture, as follows:

Name.	Address.	Number of brands.
The American Agricultural Chemical Co.	New York	259
Bowker Fertilizer Co.	do	57
The Coe-Mortimer Co.	do	34
Listers' Agricultural Chemical Co.	Newark, N. J.	30
Sanderson Fertilizer & Chemical Co.	New Haven, Conn.	6
S. M. Hess & Bro.	Philadelphia, Pa.	20
Frederick Ludlam Co.	New York, N. Y.	10
Nassau Fertilizer Co.	do	11
National Fertilizer Co.	do	2
Patapsco Guano Co.	Baltimore, Md.	18
Schaal-Sheldon Fertilizer Co.	Buffalo, N. Y.	16
The J. E. Tygert Co.	Philadelphia, Pa.	6
W. E. Whann Co.	do	
Total		469

The first four of the subsidiary companies are reported to the Commission as manufacturers and the other eight as selling companies. The plant of The Coe-Mortimer Co., however, is located at Belfast, Me., and that of the Sanderson Fertilizer & Chemical Co., at West Haven, Conn. Two hundred and thirty of the 259 brands of The American Agricultural Chemical Co., shown above, were registered under the names of 19 of its acquired and constituent companies, which are reported as inactive, the remaining 29 brands being registered under its own name.[1]

The registration of the brands of these inactive companies was made in the name of The American Agricultural Chemical Co., as

[1] The following list shows the names and number of brands registered in New York in 1913 by The American Agricultural Chemical Co.:

The American Agricultural Chemical Co.	29	Northwestern brands	21
Acme brands	6	Pacific brands	2
Bradley brands	26	Packers' Union brands	7
Clark's Cove brands	2	Quinnipiac brands	8
Crocker brands	20	Read brands	19
Darling's brands	2	Reese brands	6
East India brands	26	Wheeler brands	10
Great Eastern brands	11	Williams & Clark brands	24
Lazaretto brands	9	Zell brands	9
Michigan Carbon works brands	6		
Milsom brands	16	Total	259

Digitized by Google Original from UNIVERSITY OF MICHIGAN

the annual reports of the Commissioner of Agriculture for New York State showed, and the bills of lading and contracts made with dealers also bore the same name, but on the advertising matter of some of these brands which was distributed to the farmers there was nothing to indicate that there was any connection between the companies and The American Agricultural Chemical Co. except the street number of the office. For instance, the address of the L. B. Darling Fertilizer Works was given as 92 State Street, Boston, Mass., and 2 Rector Street, New York, and that of the Williams & Clark Fertilizer Works as 2 Rector Street, New York; 92 State Street, Boston; 1015 Fidelity Building, Baltimore; Lewis and Lyman Streets, Buffalo; 897 Drexel Building, Philadelphia, Pa., which are also the addresses of the offices of The American Agricultural Chemical Co. The address of several of these companies was given as 60 Trinity Place, which is another entrance to the United States Express Co. Building at 2 Rector Street, New York, N. Y.

Hereafter these more or less inactive subsidiary companies will be identified in the same manner as the active subsidiaries (see p. 194) so that in every instance the name of The American Agricultural Chemical Co. will appear on the letterheads, advertising matter, contracts, bags, etc.

Phosphate properties and mining companies.—The American Agricultural Chemical Co. through subsidiaries owns real estate in Florida comprising over 108,000 acres, estimated to contain more than 75,000,000 tons of phosphate rock. Part of the above acreage does not contain any phosphate rock, and another part has not been prospected. The company also owns about 2,000 acres of unprospected lands in Tennessee.

The American Phosphate Mining Co., a Delaware corporation, has recently taken over all of the Florida rock properties formerly held by the Pebbledale Phosphate Co., Pierce Phosphate Co., and Peace River Phosphate Co.

The Palmetto Phosphate Co., another subsidiary corporation, owns upward of 23,000 acres (included in the 108,000 acres mentioned above) of phosphate-rock lands in Florida located along the lines of the Charlotte Harbor & Northern Railway Co., Atlantic Coast Line, and the Seaboard Air Line Railway Co., which land The American Agricultural Chemical Co. states contains approximately 24,000,000 tons of high-grade merchantable and minable phosphate rock. It also owns mining stations, washing and drying plants, and a steam railroad several miles in length. The capital stock of this company is $500,000 and bonded indebtedness $130,327. According to the listing statement of The American Agricultural Chemical Co., filed with the Stock Exchange December 19, 1911, $770,200 of its preferred stock and $1,115,300 of its common stock were issued

Digitized by Google Original from UNIVERSITY OF MICHIGAN

for the purpose of paying for 3,081 shares of the Palmetto Phosphate Co. The American Agricultural Chemical Co. now owns all but 20 shares.

Miscellaneous activities.—As shown by the chart facing page 194, The American Agricultural Chemical Co. operates directly two rendering establishments—one at Buffalo and the other at Brooklyn, N. Y. One of the subsidiaries manufacturing fertilizers, the Lister's Agricultural Chemical Works at Newark, N. J., is also engaged in rendering and manufacturing glue, grease, bone black, etc.

The company also has four subsidiaries engaged exclusively in rendering, etc., and four other subsidiaries engaged in collecting and dealing in bones, fat, abattoir refuse, etc. Other subsidiaries engaged in miscellaneous business are the G. C. Buquo Lime Co. and the Pownal Lime Co., which operate lime quarries at Hot Springs, N. C., and North Pownal, Vt., respectively; the Bowker Chemical Co., Elizabeth, N. J., which manufactures and sells phosphoric-acid products; Bowker Insecticide Co., Baltimore, Md., and Everett, Mass., which manufactures and sells insecticides, fungicides, and kindred products; and Aroostook Warehouse Co. and Knyvetta Dock & Warehouse Co., which conduct warehouses for potatoes, fertilizers, etc., in Maine.

The American By-Products Co. (Illinois) and The Coe-Mortimer Chemical Co., Newark, N. J., hold real estate in Illinois and New Jersey, respectively, but are not engaged in active business.

The American Agricultural Chemical Co. also owns the entire capital stock of the Charlotte Harbor & Northern Railway Co., incorporated March 26, 1906, in Florida, which extends from deep water at Charlotte Harbor, Fla., to the principal pebble phosphate-mining properties of the company. The length of the road is about 120 miles, the construction of which has been paid for by The American Agricultural Chemical Co. The road is capitalized at $2,000,000, consisting of $500,000 5 per cent preferred and $1,500,000 common.

Section 7. Armour Fertilizer Works.

Organization and capitalization.—The Armour Fertilizer Works was incorporated August 14, 1909, under the laws of New Jersey with a capital stock of $1,000,000, all owned by stockholders of Armour & Co., an Illinois corporation. There is no funded indebtedness. The Armour Fertilizer Works now ranks third in point of output of bagged goods. Its stockholders own all of the stock of 6 subsidiary fertilizer manufacturing companies and of 6 subsidiary selling companies and also $\frac{17}{25}$ of the stock of one affiliated fertilizer concern—the Boaz Fertilizer Co. In 1914 they also controlled through intermediaries 12 additional companies, 10 of which were located in Georgia. The subsidiaries of the Armour Fertilizer

Digitized by Google Original from UNIVERSITY OF MICHIGAN

Exhibit E

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

EXHIBIT A

AGREEMENT made this 21 day of June, 1929, by and between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a Connecticut corporation (hereinafter referred to as the "Seller"), party of the first part, and THE VAN IDERSTINE COMPANY, a Maine corporation (hereinafter referred to as the "Buyer"), party of the second part.

WHEREAS, the Seller is the owner of certain land and buildings used by it or in connection with the collecting and rendering business of Herman Brand (Inc.), G. Selner Co. and The Preston Works; and

WHEREAS, Herman Brand (Inc.) and G. Selner Co. are New York corporations, being wholly owned subsidiaries of the Seller; and

WHEREAS, The Preston Works is an operating department of the Seller; and

WHEREAS, the Seller desires to sell and the Buyer is desirous of acquiring the said collecting and rendering business and the land and buildings , machinery,equipment and other personal property used by or in connection with said business and represents that such business consists in part of a list of regular customers from whom it is collecting fat, bone, grease, etc., consisting of approximately 1,860 butcher shop customers, 59 provision houses, 4 slaughter houses and 8 delicatessen shops,

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

a list of whom will be made available to the Buyer forthwith;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The Seller hereby agrees to sell and convey or cause to be conveyed and the Buyer agrees to purchase all that lot or parcel of land with the buildings, plant and improvements thereon, together with all wharves, docks, piers, bulkheads, and all sidings, side track and freight agreements, privileges and facilities appurtenant thereto, situate in the Borough of Queens, City of New York (formerly City of Long Island City, Town of Newtown), Queens County and State of New York, more particularly described as follows:

The premises bounded easterly by said Railroad Avenue, westerly by the present bulkhead line of Newtown Creek as now established, and northerly and southerly by landsof The Van Iderstine Company; together with all gores and strips of land abutting upon or adjoining the said premises and together with all right, title and interest of the Seller in and to the land lying in the bed of said Railroad Avenue and all other roads, streets, ways and avenues to the center lines thereof, and together with all the riparian rights and privileges of the Seller in the waters of Newtown Creek, and all its right, title and interest in and to the land under the water in Newtown Creek in front of and adjoining said premises

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

upon the west; the specific description of said premises to be inserted in the deed thereof shall be in accordance with survey and description to be prepared and furnished by the Title Company examining the title thereto.

SUBJECT TO:

(1) Any state of facts an accurate survey would show;

(2) Building restrictions and regulations and amendments and additions thereto relating to said property;

(3) Easement granted to the City of New York on August 2, 1918 in, through and over Railroad Avenue, to lay and maintain water mains, pipes, hydrants, etc.

TOGETHER with all the machinery, equipment, furniture and fixtures therein or appurtenant thereto as well as the furniture, fixtures, collection equipment and sundry equipment now owned and used by Herman Brand (Inc.) and G. Selner Co., wherever located, for the sum of Four hundred twenty-five thousand Dollars ($425,000), payable One hundred thousand Dollars ($100,000) in cash on or before June 29, 1929 and the balance of Three hundred twenty-five thousand Dollars ($325,000.) on or before the delivery of the deed or deeds covering said real estate and such bill of sale as may be necessary as hereinafter provided, subject to the following terms and conditions:

1. The deed shall be a bargain and sale deed in proper statutory short form for record. It shall be duly

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

executed and acknowledged at the Seller's expense so as to convey the fee simple of the said premises, free from all encumbrances except as herein stated. The deed and bill of sale shall be delivered at the office of the Seller, No. 420 Lexington Avenue, New York City on June 29, 1929 at eleven o'clock a. m.

2. In the event that title to any or all of said premises shall be found to be unmarketable, the Buyer shall, nevertheless, accept a deed thereof and such condition shall not be deemed a valid reason for rejecting title to all or any part of said premises hereunder. Seller agrees that prior to the delivery of said deed it will commit no act affecting the title to said property. Seller further agrees that it will indemnify and hold the Buyer harmless from the expense of any litigation instituted against the Buyer affecting the title to said property up to Ten thousand Dollars ($10,000); such agreement shall survive the delivery of the deed.

2-A. If at the time of the delivery of the deed the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the Seller upon the delivery of the deed.

2-B. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House, Fire, Building, Labor, Health, or other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the Seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The Seller shall furnish the Buyer with an authorization to make the necessary searches therefor.

3. There shall be apportioned as of the close of business on June 22, 1929 rentals, real estate taxes and water rates as well as insurance premiums on existing policies, except liability and compensation insurance, on said premises, as well as license fees or taxes on automobiles and all personal property to be conveyed.

4. The Buyer further agrees that it will purchase and the Seller agrees that it will sell or cause to be sold the entire inventory of supplies, including coal, gasoline, oil, and miscellaneous factory supplies if new, and finished products including tallow, cracklings, bone meal, etc. and raw materials, including fats, bones, etc. relating to or

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

used in connection with said collecting and rendering business on hand at the close of business on June 22, 1929. The price of said raw materials and supplies shall be the cost thereof to the Seller or to its said subsidiaries as shown on its or their books of account, and the price of the finished product shall be the market price thereof prevailing at the close of business on June 22, 1929. Payment shall be made at the time of the delivery of the deed covering the real property to be conveyed.

5. The Seller further agrees to transfer or cause to be transferred to the Buyer as of June 22, 1929 the said collecting and rendering business, including the sole and exclusive right to use the name "Preston" in connection with said business and any trademarks or trade names owned by Herman Brand (Inc.), G. Selner Co. and The Preston Works, and the Seller warrants to the Buyer the business so transferred is a business regularly carried on with approximately the number of customers set forth above.

6. The Buyer will purchase and the Seller will sell or cause to be assigned to the Buyer such of the current accounts and notes receivable of Herman Brand (Inc.) and G. Selner Co. arising out of loans and/or advances by the said subsidiary companies to its or their collecting and rendering business customers, together with any and all existing security

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

therefor, and the Buyer will pay the Seller therefor a sum equal to the aggregate face value of such accounts and notes receivable as of the close of business on June 22, 1929, less the sum of $15,000, payment to be made at the time of the delivery of the deed to the aforesaid real property. It is understood that all accounts and notes receivable arising out of such advances or loans to customers which shall have been, previously to June ~~15~~ 22 ACH, 1929, charged off the books of the Seller, Herman Brand (Inc.) or G. Selner Co., shall not be sold or assigned to the Buyer, and all rights to such accounts shall be retained by the Seller and/or its subsidiary companies.

7. Possession of all of the property to be conveyed or transferred shall be given to the Buyer at the close of business on June 22, 1929.

8. The Seller will permit the Buyer to use and occupy the premises at 404 East 48th Street, New York City, now used by Herman Brand (Inc.) for office and garage purposes for a period of ninety days from the close of business on June 22, 1929 without charge, subject however to existing tenancies.

9. The Seller shall have the privilege, without cost to it, to use and occupy the record storage room in the premises to be conveyed, for a period of three months from June 22, 1929, all records and documents now therein to be and

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

remain the property of the Seller.

10. The Seller undertakes and agrees that it will liquidate or cause to be liquidated the affairs of Herman Brand (Inc.) and G. Selner Co. within a reasonable time after June 22, 1929 and at the completion of such liquidation, at which time the said subsidiary companies will have no assets and no liabilities other than a capital stock liability (excepting such liabilities as may be incurred by or through Buyer after June 22, 1929), transfer or cause to be transferred to the Seller all of the issued and outstanding full paid and non-assessable capital stock of said subsidiary companies at a price of $1.

11. It is further understood and agreed that all assets of Herman Brand (Inc.), G. Selner Co. and the Seller used for or in connection with the rendering business, other than those to be conveyed or assigned by virtue of this Agreement, and all liabilities pertaining to said Herman Brand (Inc.) and G. Selner Co. as of the close of business on June 22, 1929 shall be retained by or assumed and be for the account of the Seller and/or said subsidiaries; all liabilities thereafter if incurred by or through the Buyer to be for account of the Buyer.

12. The Seller hereby agrees to sell and assign or cause to be assigned to the Buyer all existing contracts set forth in Schedule A annexed hereto, between the Seller, or

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

its said subsidiary companies and others in connection with or arising out of said business, and the Buyer hereby agrees to assume all of the obligations in said contracts imposed upon the Seller and/or its said subsidiary companies and relieve them from any and all further liability as of the close of business on June 22, 1929. Said assignment and assumption are to be executed and delivered at the time the Buyer enters into possession of said properties.

13. Any and all damages which may be awarded under or by reason of the action now pending in the Supreme Court, New York County, The American Agricultural Chemical Company and Herman Brand vs Felsenthal and others, shall be for the benefit and account of the Seller.

14. The risk of loss or damage by fire to the said building and any or all personal property within the contemplation of this Agreement prior to the close of business on June 22, 1929 shall be assumed by the Seller, and thereafter shall be assumed by the Buyer, who shall notwithstanding any such loss, or damage, take title to said real and personal property and make payment therefor in accordance with the terms of this Agreement, but in the event of such loss or damage occurring prior to June 29, 1929, or the date of the delivery of the deed hereunder, the Seller shall, upon delivery of said deed, assign to the Buyer all fire insurance policies covering said premises and all claims for loss and damage and the monies,

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

if any, collected thereunder.

15. The Seller hereby agrees that neither it nor any of its subsidiary companies now in existence or which may hereafter be formed or acquired by it, nor any controlled corporations, will engage directly or indirectly in the business of collecting and rendering butchers' materials within a radius of seventy-five (75) miles of City Hall, New York City, for a period of twenty-five (25) years from the close of business on June 22, 1929, nor will it or they directly or indirectly solicit the trade of or engage in the business of collecting or buying or examining or selling fat, suet, bone, grease, hides and skins from any butcher shops, provision houses, slaughter houses or delicatessen shops within said territory for said period of years.

16. The Seller does hereby agree and undertake to hold the Buyer harmless from any and all claims or actions arising out of the acts or business of Herman Brand (Inc.) and G. Selner Co. prior to the transfer of their capital stock, including claims for additional income and profit taxes, excepting liabilities incurred by or through the Buyer.

17. It is understood and agreed that the covenants and agreements herein contained are mutual, and dependent one upon the other and that this Agreement shall enure to the benefit of the parties hereto and to their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

this agreement to be executed in their corporate names and their corporate seals to be hereunto affixed by their duly authorized officers the day and year first above mentioned.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By Ernest E. Hammersen
Vice-Pres.

Attest:

J. A. Starrett
Secretary

THE VAN IDERSTINE COMPANY

By A. M. Hayes
Vice-Prest.

Attest:

C. L. Haussermann
Secretary

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

SCHEDULE A

Annexed to and a part of the Agreement between The American Agricultural Chemical Company and The Van Iderstine Company, dated June 21, 1929.

Parties	Date of Contract
Preston Works and Fischer Brothers	January 1, 1929
Preston Works and American Hides & Leather Co.	August 1, 1927
Preston Works and Frank McIntyre	March 1, 1927
Preston Works and Long Island Railroad	January 22,1906
Herman Brand, Inc., Preston Works and Commercial Sales Corporation	February 27,1929
Preston Works and Rausch Company	Verbal - terminable at will
Herman Brand, Inc., Preston Works and Sundry Butcher Shops	A few written and verbal understandings covering the payment of "extras".

Exhibit F

of the second part their legal representatives heirs and assigns forever. AND the said parties of the first part covenants as follows: FIRST: That the parties of the first part are seized of the said premises in fee simple and have good right to convey the same. SECOND: That the parties of the second part shall quietly enjoy the premises. THIRD: That the said premises are free from incumbrances, except as hereinbefore mentioned. FOURTH: That the parties of the first part will execute or procure any further necessary assurance of the title to the said premises. FIFTH: That the said parties of the first part will forever warrant the title to the said premises. IN WITNESS WHEREOF, the parties of the first part have signed and sealed these presents the day and year first above written.

IN PRESENCE OF
- - - - - -

SAM GOLDEN (L.S.).

TILLIE GOLDEN (L.S.).

STATE OF NEW YORK, COUNTY OF QUEENS, SS.: On this 12th day of August, in the year nineteen hundred and thirty, before me the undersigned personally came SAMUEL GOLDEN AND TILLIE GOLDEN, his wife, to me personally known and known to me to be the individuals described in and who executed the foregoing instrument, and they acknowledged before me that they had executed the same. WALTER S. DAYTON, Notary Public, Queens Co. Clerk's No. 327, Queens Co.Reg. No. 5800, comm. expires 3-30-1931. The land affected by the within instrument lies in Section 40 inBlock 9815 on the land map of the county of Queens. Recorded August 15th, 1930, at 10:51 A. M. at the request of SAMUEL GOLDEN, 3452 Bell Ave. Bayside, L. I.

Stanson Reeves

3418-249

49127 ------ THIS INDENTURE, made the 30th day of June, 1930 between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation chartered under the laws of the State of Connecticut, with a principal office for the transaction of business at No. 420 Lexington Avenue Borough of Manhattan, City County and State of New York, party of the first part and THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of Delaware having a principal place for the transaction of business at No. 420 Lexington Avenue Borough of Manhattan, City County and State of New York, party of the second part, WITNESSETH, that the party of the first part in consideration of the sum of ONE DOLLAR ($ 1.00) dollars lawful money of the United States, and other valuable considerations paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever.

ALL those certain plots, pieces or parcels of land, situate lying and being in the Borough of Queens, in the City of New York, in the County of Queens, and State of New York, consisting of the easterly half part of that certain piece or parcel of land which was conveyed to Walter D. Douglas and George F. Piper, by the GUARANTY INDEMNITY COMPANY OF NEW YORK, by deed dated February 28th, 1905, and the location whereof is shown on a survey thereof by Peter Gilbert Mostrand, dated March 31st, 1905.

(1) BEGINNING at a point in the centre line of Review Avenue distant two hundred thirty eight feet and sixty eight one hundredths of a foot easterly from the easterly side of Second Street, or Spring Street, as shown on said survey and which point is equi distant between the easterly and westerly boundary lines of the premises conveyed to said Walter D. Douglas and George F. Piper by the deed above mentioned, thence running southwesterly in a straight line to a point in the centre line of the right of way of the Long Island Railroad Companyequi distant between a point also on the centre line of the said right of way on the westerly boundary line of said premises conveyed by the deed above mentioned as shown on said survey and a point also on the centre line of said right of way on the easterly boundary line of said premises as shown on said survey, thence continuing in a general southwesterly direction from said last mentioned point in a straight line to a point on the northeasterly side of Newton Creek equi distant along the bulkhead line from the easterly and westerly boundary line of said premises conveyed by the above mentioned deed and shown on said survey thence southeasterly along said northeasterly side of said Newton Creek Two hundred thirty eight feet and 68/100 of a foot to the easterly boundary line of the premises hereby conveyed being the boundary line between the said premises conveyed to the said WALTER D. DOUGLAS AND GEORGE F. PIPER by the deed above mentioned and the land to the east thereof conveyed by the New York Guaranty and Indemnity Company to Pratt Manufacturing Company by deed bearing date the 25th day of November, 1891, and now owned by Standard Oil Company of New York, as fixed by a certain boundary line agreement by and between WALTER D. DOUGLAS AND GEORGE F. PIPER and the said Standard Oil Company of New York, by agreement dated August 3rd, 1905, thence northerly along the said boundary line two hundred and thirty six feet and forty seven one hundredths of a foot to the edge of the meadows as formerly existing being the original high water line of Newtown Creek, thence northerly still along said boundary line six hundred eight feet and twenty seven hundredths of a foot to the centre line of Review Avenue and thence westerly along the said centre line of Review Avenue two hundred and four feet and fifty four one hundredths of a foot to the point or place of beginning, the said several distances and dimensions more or less. together with the right of the party of the first part to the land under the water of Newtown Creek in front of the said premises hereby conveyed,

AND also a right of way over a strip of land about twelve feet in width lying south of and adjoining the right of way of said Long Island Railroad Company, and forming a part of that portion of the property conveyed to the said Walter D. Douglas and George F. Piper by the deed first above mentioned which lies west of the premises hereby conveyed and which right of way is intended to be a continuation of the private road running across the premises hereby conveyed as the same is now in use, Subject however, to the rights if any of the Long Island Railroad, Company, to so much of the said premises above described as is now occupied by the said company; SUBJECT also to a right of way reserved to Walter D. Douglas and George F. Piper in a deed to the party of the first part

by said Walter W. Douglas and George F. Piper and wife, dated August 7th, 1905, and recorded in the office of the Clerk of the Queens County, in Liber 1363 page 423, of conveyances on August 15th, 1905.

(2) BEGINNING at a point in the northeasterly bulkhead line of Newton Creek where the same is intersected by the southeasterly line of premises now owned by the Van Iderstine Company and which were conveyed to it by deed from Charles A. Alling and wife, dated October, 1st, 1909, and recorded in the office of the Clerk of Queens County on January 10, 1910, and in Liber 1665, of deeds at page 230, being the parcel of land first described in said deed and which beginning point measured southeasterly along the said bulkhead line is 238.68 feet southeasterly as measured along the bulkhead from the centre line of a proposed street known as Preston Street, as said street is located in said deed above referred to and the survey thereto attached, and running thence northwesterly along the said bulkhead line two feet running thence north easterly in a straight line 164 feet to a point 1.75 feet northwesterly from the said southeasterly boundary line of said premises now owned by the Van Iderstine Company measured on a line at right angles with said boundary line, running thence northeasterly in a line forming with said last mentioned course an angle of 172° 22' 44", 13.19 feet to the said southeasterly line of premises now owned by the Van Iderstine Company as aforesaid, and running thence in a southwesterly direction along the said southeasterly line of premises owned by The Van Iderstine Company 177.07 feet more or less to the point or place of beginning. SUBJECT however to a perpetual right of easement to construct and maintain foundations piers and other sub structures below grade of said parcel last described for the purpose of supporting any building fence or other structure now or hereafter to be built upon an oining land of The Van Iderstine Company reserved by the deed of conveyance to the party of the first part hereinafter referred to. Being the same premises conveyed to the party of the first part by The Van Iderstine Company by deed dated August 18th, 1917, and recorded October 6th, 1917, in Liber No. 2146, page 69, of conveyances and indexed under Section 4, Book 771, in the office of the Clerk of the county of Queens.

There are excepted from the foregoing premises the following plots;

(a): BEGINNING at a point in the easterly line of land, of the Long Island Railroad Company where the same is intersected by Line dividing lands now or late of the Van Iderstine Company and land of the grantor herein which point is distant eight hundred and eighty two feet ten and three eighths inches southwardly from the southerly side of Greenpoint Avenue as widened, measured along the original easeterly, right of way line of the Long Island Railroad Company, and running thence eastwardly, along said division line, sixteen feet more or less to a point distant fifteen feet eastwardly from the easterly line of land of the Long Island Railroad Company, measured at right angles thereto, thence southwardly concentric with the said easterly line and distant fifteen feet eastwardly therefrom on a curve to the left with a radius of two thousand eight hundred and twenty four and ninety three one hundredths feet a distance of One hundred and eighty two feet more or less to the northerly line of land of the Standard Oil Company thence west wardly and along the said land, sixteen feet more or less to the easterly line of land of the Long Island Railroad Company and thence northwardly along the said land and on a curve to

the right with a radius of Two thousand eight hundred and thirty nine and ninety three one hundredths feet a distance of [illegible] hundred and eighty feet more or less to the point or place of beginning. Being the same premises conveyed by the grantor herein to the Long Island Railroad Company by deed dated December 22nd, 1920, and recorded in the office of the Clerk of the county of Queens.

(b) BEGINNING at a point in the centre line of the right of way of the Long Island Railroad where the same is intersected by the southeasterly line of premises now owned by the Van Iderstine Company and which were conveyed to it by deed from Charles A. Alling and wife, dated October 1st, 1909, and recorded in the office of the Clerk of Queens County on January 10th, 1910, in Liber 1665, of deeds at page 230, being the parcel of land first described in said deed and which point of beginning measured southeasterly along the said centre line of said railway is 179.24 feet southeasterly from a point where the same is intersected by the division line between land lately belonging to Helenah Kowenhoven and land lately belonging to the heirs of Agnes Pine, deceased, as located in said deed above referred to and the survey thereto attached, running thence southwesterly along the southeasterly line of said premises now owned by the Van Iderstine Company as aforesaid 336.75 feet more or less to premises conveyed by the Van Iderstine Company to the grantor herein, by deed dated August 18th, 1917, and running thence easterly in a line in prolongation of the northeasterly boundary line of the said premises so conveyed 15.07 feet to a point two feet southeasterly from the said last course measured on a line at right angles thereto, and running thence northeasterly on a line parallel to the first course and always two feet southeasterly therefrom 221.82 feet more or less to the said centre line of the right of way of the Long Island Railroad, and running thence northwesterly along the said centre line of the said railway two feet more or less to the point or place of beginning. TOGETHER with perpetual right of easement for support of buildings in maintenance of sub-structures granted to the Van Iderstine Company by deed of the grantor herein dated August 24th, 1917, and recorded in the office of the Clerk of the county of Queens.

(c) BEGINNING at a point on the centre line of Review Avenue, distant 238.08 feet southerly from the south[illegible] southerly direction 204.54 feet to a point thence turning an angle of 95° 04', and running in a general westerly direction along the lands of the Standard Oil Company 416.84 feet to the easterly side of the right of way of the Long Island Railroad Company, thence turning and running along the easterly side of said right of way in a general northerly direction on a curve with a radius of 2,824.93 feet and with an arc of 150.89 feet more or less to a point thence turning and running in a general easterly direction by the lands of Van Iderstine 414.68 feet to the point or place of beginning and containing lacre 36.883 square feet. This area includes 6.137 square feet in the bed of Review Avenue. Containing a net area of 1 acre, 30.746, square feet, more or less. Being premises reserved to the grantor herein. TOGETHER with the appurtenances and all the estate and rights of the parties of the first part in and to the said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part its successors and assigns forever, except as aforesaid. IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers the day and year first above written.

(CORPORATE SEAL) THE AMERICAN AGRICULTURAL CHEMICAL COMPANY
(Connecticut)
BY: R. A. POWERS
VICE PRESIDENT.

ATTEST:
J. A. STARRETT,
SECRETARY.

WITNESSES:
[illegible]
[illegible]

[illegible] YORK, COUNTY OF NEW YORK, SS.: On the 30th day of June, 1930, before me [illegible] to me known who being by me duly sworn, did depose and say that he resides in New London Conn, that he is the Vice President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY the corporation describedin and which executed the foregoing instrument, that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order. (L.S.). F. B. BOURNE, Notary Public, Westchester County, Cert Cleate filed in Westchester County, N.Y. Co.Clerk's No. 1507, Reg. No. 1A, term expires March 3 th, 1931.

STATE OF NEW YORK, COUNTY OF NEW YORK, SS.: I, DANIEL L. FINN, Clerk of the county of New York, and also Clerk of the Supreme Court in and for the said county, DO HEREBY CERTIFY, that said court of record, having by law a seal; that F. B. BOURNE, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC, acting in and for the said county, duly commissioned and sworn, and qualified to act as such, that he has filed in the Clerk s Office of the County of New York, a certified copy of his appointment and qualification as Notary Public, for the county of Westchester with his autograph signature, that as such Notary Public, he was duly authorized by the laws of the State of New York, to protest notes, to take and certify depositions to administer oaths and affirmations, to take affadvits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments to be read in evidence or recorded in this state and further that I am well acquainted with the handwriting of such Notary Public, and verily believe that his signature to such proof or acknowledgment is genuine. IN TESTIMONY WHEREOF, I have hereunto set my [illegible] of New York, in the county of New York, [illegible] instrument lies in Section 4 in Block 770 on the [illegible] August 15th, 1930, at 10:55 A. M. at the request of AM. AGRL. CHEM. CO. 420 Lexington Ave., New York.

8-15-1930

[illegible] day of August,

Exhibit G

"1915 YEAR BOOK"

ALPHABETICAL INDEX TO ADVERTISEMENTS—INSIDE BACK COVER

INDEX TO CONTENTS

The publisher of this work will gladly furnish the name, address and information respecting any concern connected with business of Fertilizer Manufacturing

	Page
Fertilizer Manufacturers	77-116
Alphabetical Direcotry Allied Trades	117-152
Classified Directory Allied Trades	153-180-A
Cotton Seed Oil Mills	180-B-180-H

Our Fifth "YEAR BOOK"—1915 23
A Little Review by Secretary Sadler 24
Preventing Industrial Waste 24
Chemical Control of Fertilizer Plant 25-31
The Soil Doctor 31-36
Creating Confidence to Displace Prejudice Against the Manufacturer 36
The Search for Potash Salts in the United States 37-40
Soil Analysis as a Guide to Fertilization 40-42
Contributions of the Chemists to the Fertilizer Industry 42-44
Phosphates in England 42
Importance of Fertilizers in Crop Production 45-47
Sulphuric Acid 48
Making Fertilizer from an Agricultural Editor's Viewpoint 49-50
Production of Phosphate Rock in Florida During 1914 50-51
Creating Confidence to Displace Prejudice Against the Manufacturer 52
The Western Ammoniate Market in 1914 and Effect of the War 53
The Fixation of Atmospheric Nitrogen 54-55
Germany's Lack of Phosphates 59
Radium as a Fertilizer 58
Radio-Active Ores and Plant Life 58
Radium as a Fertilizer 59
Five Years of Cyanamid in America 60-63
Potash and a Home Supply 63
Availability of Phosphatic Manures 63
A Remarkable Potash Prophecy 64
Chemistry Applied to the Economical Purchase of Coal 65-66
Nitrate Deposits in Chile 66
Contributions of the Chemist to the Cotton Seed Oil Industry 67
Production of Phosphate Rock in 1914 68
Common Method of Neutralizing Soil Acidity 70
Work of the Soil Improvement Committee 71

A "Year Book" Devoted Exclusively to the Interests of the Fertilizer Manufacturers and Allied Industries

PUBLISHED ONCE A YEAR

Mailed Free to Every Subscriber to "Commercial Fertilizer." The Price to others for Single Copies is $1.00

Walter W. Brown, Publisher - - 623-25-26 Hurt Building, Atlanta, Ga.

Digitized by Google Original from UNIVERSITY OF WISCONSIN

AUTHENTIC LIST

OF

Fertilizer Manufacturers

THE following pages contain a complete directory of all Fertilizer Manufacturers in the United States and Canada. No list of this kind can be kept absolutely correct, but for all practical purposes the following list is invaluable.

Every precaution has been taken to guarantee the accuracy of the information herein, and no firm's name appears which has not received at least two requests for full information. If, as is sometimes the case, errors or omissions have crept in, the editor must disclaim all responsibility. The fact that some names may be missing, and that some are not classified, must be attributed more to the unexplainable disinclination to answer letters on the part of some manufacturers than to any lack of effort on our part to secure this information.

Any of the firms that may have failed to furnish information for this directory, or any names that may have been inadvertently omitted in the following pages, would be appreciated for publication in the July issue, which would serve as a supplement to this Buyers' Directory.

The names in the following pages have been classified and each classification indicated as follows:

A—Acid Chambers—Complete Commercial Fertilizer Manufacturing Plant.

C—Complete Plant, except Acid Chamber.

D—Dry Mixing Plant. Buy all materials prepared for mixing.

S—Sell complete goods made under their brand name.

Alabama

ABBEVILLE.

Howard Fertilizer Co.

AKRON.

Akron Mill, Fertilizer and Gin Co.

ALBERTVILLE.

D— Butler-Kyser Oil and Fertilizer Co., J. C. Butler, Pres., New Hope, Ala.; A. H. Butler, Treas., Paint Rock, Ala.; W. D. Claybrooke, Sec.; C. W. Cummings, Mgr. Capacity, 3,000 tons.

ALEXANDER CITY.

D— Tallapoosa Chemical Co., W. D. Graves, Pres.; J. W. Wilbanks, Sec. and Treas.; G. G. Wilbanks, Mgr.

ALICEVILLE.

D— Aliceville Oil and Mfg. Co., A. Horton, Pres.; E. Cahn, Vice-Pres.; J. R. Sanders, Treas.; B. H. Somerville, Sec. Capacity, 40 tons.

ANDALUSIA.

Andalusia Fertilizer Co.

D— Southern Cotton Oil Co.

ANNISTON.

D— Anniston Fertilizer & Ice Company, C. G. Kershaw, Pres.; G. A. Mattison, Sec. and Treas.; G. A. Mattison, Mgr. Capacity, 2,000.

ARITON.

D— Ariton Fertilizer Co., W. C. Windham, Pres.; Fox Henderson, Vice-Pres.; W. C. Windham, Sec. and Treas. Capacity, 125 tons.

ASHLAND.

D— Ashland Oil Mill & Fertilizer Co., R. W. Henderson, Pres.; G. A. Mattison, Sec. and Treas. Capacity, 1,500 tons.

ATTALLA.

Attalla Oil & Fertilizer Co.

BAY MINETTE.

D— Peoples' Fertilizer Co., W. M. Stewart, Pres.; J. M. Valtz, Vice-Pres.; J. H. Hunt, Sec. and Treas. Capacity, 125 tons per day.

BESSEMER.

Bessemer Oil & Fertilizer Co., Judge J. C. B. Gwin, Pres.; J. R. Waldrop, Vice-Pres.; Wm. Waldrop, Treas. and Sec. Crush 20 tons seed daily.

BIRMINGHAM.

American Mining & Chemical Co.

A— Birmingham Fertilizer Co., Culpepper Exum, Pres.; S. D. Crenshaw, Vice-Pres.; Culpepper Exum, Treas.; S. N. Gore, Sec. Capacity, 35,000 tons. Branch Factories: Birmingham, Ala., and one at Jackson, Miss.

D— Butler-Kyser Oil & Fertilizer Co., J. C. Butler, Pres., New Hope, Ala.; A. H. Butler, Treas.; New Hope, Ala.; W. D. Claybrooke, Sec. and Gen'l Mgr., Albertville, Ala.; J. H. Duncan, Manager Birmingham plant.

Continental Oil & Guano Co.

A— The Grasselli Chemical Co. Capacity, 35,000 tons. Plant at Grasselli, Ala.

D— The Interstate Oil & Fertilizer Co., John G. Cooke, Pres.; C. O. Jaggars, Vice-Pres.; John G. Cooke, Treas.; Richard V. Evans, Secty. Capacity, 5,000 tons.

A— Jefferson Fertilizer Co., J. G. Whitfield, Pres.; J. W. Donnelly, First Vice-Pres.; Bertram Jacobs, Second Vice-Pres.; Geo. A. Blinn, Jr., Sec.-Treas.; K. A. Ivy, Asst. Sec.-Treas.; J. G. Bruce, Supt. Capacity, 40,000 tons. Branch factory, Selma, Ala.

Union Cotton Oil Co., J. A. Whitfield, Pres.; G. A. Blinn, Sec. and Treas.

BOAZ.

D— Boaz Fertilizer Co., G. A. Harrington, Pres.; E. H. Creel, Manager; C. J. Penrill, Asst. Sec. and Treas.; R. R. McClesky, Sec. Capacity, 4,000 tons.

BREWTON.

Brewton Oil & Fertilizer Co.

Brewton Oil and Manufacturing Co., W. J. Jernigan, Pres.; G. L. Sowell, Jr., Mgr.

D— Robbins & McGowin Co., J. E. Finlay, Pres.; W. A. Finlay, Jr., Vice-Pres.; W. W. Hinote, Sec. and Treas. Capacity, 20 tons per day.

BRUNDIGE.

D— Brundige Fertilizer Co., F. C. Bass, Pres.; J. F. Hightower, Sec. and Treas.; F. C. Bass, Mgr. Capacity, 5,000 tons.

CAMDEN.

S— Camden Cotton Oil Co., W. R. Alford, Pres.; R. C. Jones, Treas.; W. J. Primm, Sec. Capacity, 2,000 tons.

Digitized by Google Original from UNIVERSITY OF WISCONSIN

NEW JERSEY—Continued.

CAMDEN.
D— J. Wenderoth & Sons. Capacity, 300 tons.
CHROME.
A— Armour Fertilizer Works. Operated by Baltimore Division. Capacity, 75,000 tons. Sulphuric Acid Plant. Main Office, Chicago, Ill.
CEDARVILLE.
S— Wm. M. Brown.
FARMINGDALE.
C— Consumers' Fertilizer Co., M. E. Jenkins, Vice-Pres.; Chas. E. Cole, Sec. and Treas. Capacity, 35,000 tons.
Monmouth Chemical Fertilizer Co.
FREEHOLD.
D— Monmouth County Farmers' Exchange, H. V. M. Dennis, Pres.; G. C. McDowell, Vice-Pres.; J. N. Johnson, Sec. and Treas. Capacity, 6,000 tons. Factories: Freehold, N. J., Marlboro and Hightown, N. J.
GLASSBORO.
John Repp, Est.
HARRISON.
D— Swift & Company. Main Office, Chicago.
HIGHTSTOWN.
S— E. B. Chamberlin Co.
LITTLE SILVER.
D— Monmouth Chemical Co., Walter Lippincott, Pres.; C. G. Lippincott, Sec. Capacity, 1,500 tons.
MARLBORO.
D Jas. H. Baird & Son. Capacity, 2,000 tons.
MATTAWAN.
S— A. J. Vreeland.
MEDFORD.
S— J. H. Haines & Son.
MILLINGTON.
S— A. D. Runyon.
MOORESTOWN.
S— J. S. Collins & Son. Irving A. Collins, Pres. and Treas; Earl C. Kuhns, Sec.
MT. EPHRAIM.
S— C. C. Clark & Sons. Charles C. Clark, Pres.; C. Neal Clark, Treas. Capacity, 600 tons.
MULLICA HILL. ....
S— Heritage & Bro. J. O. Heritage and B. C. Heritage, owners.
S— S. L. Pancoast.

NEW JERSEY—Continued.

MT. HOLLY.
S— Burlington County Farmers' Exchange. E. E. Logan, Pres.; F. S. Herr, Sec.-Treas.; F. E. Embree, Mgr.
NEWARK.
Listers Agricultural Chemical Works.
S— J. F. Noll & Co., A. Forbes, Pres. and Treas.; F. E. Sellnow, Vice-Pres.; J. Forbes, Sec.
HARRISON STATION.
Swift & Company. Manufacturers of full line of complete finished fertilizers. RED STEER BRANDS.
NEW BRUNSWICK.
C— Samuel Lederer & Sons. Officers: Samuel Lederer and Max M. Lederer.
D— Ruckman Bros., James R. Ruckman, Martin L. Ruckman. Capacity, 1,500 tons. Plant at Livingston Park.
NORTHFIELD.
Fifield Fish Oil & Fertilizer Co., C. Fifield, Pres.; Elva T. Fifield, Gen. Mgr. and Treas.; Charles C. Corcoran, Sec. Capacity, 2,000 tons.
PLAINFIELD.
C— The Glaser Co. F. W. Hand, Pres.; J. B. Guttridge, Treas.; Theo. Glaser, Jr., Sec. and Supt. Capacity, 1,000 tons.
QUINTON.
Hires & Co.
S— Quinton Glass Co., N. S. Hires, Pres.; A. S. Hires, Vice-Pres.; J. M. Thomas, Sec.-Treas.
ROBINSVILLE.
D— Henderickson & Dilatush. Capacity, 4,000 tons.
SWEDESBORO.
S— Brewer & Locke.
TRENTON.
A— Trenton Bone Fertilizer Co., Wm. G. Howell, Pres.; E. C. Hutchinson, Sec. and Treas. Capacity, 10,000 tons.
Trenton Provision Co.
VINELAND.
D— Wm. Wilde. Capacity, 900 tons.
WOODSTOWN.
S— South Jersey Farmers' Exchange. Edwin Ridway, Pres.; C. B. Richman, Vice-Pres.; Frank Davis, Treas.; J. Omar Heritage, Sec.
WOODBURY.
D— The West Jersey Marl & Trans. Co., Richard F. Stevens, Pres.; John C. Voorhies, Sec.; James W. Trenchard, Treas.

New York

ALBANY.
C— L. Newhof & Son. Capacity, 150 tons.
BEACON.
D— B. Hammond. Capacity, 500 tons.
BALDWINSVILLE.
D— Burt L. Giddings. Capacity, 500 tons.
BROCKPORT.
S— P. E. Shafer Co.
BUFFALO.
Addressing Machine Co., R. E. Garrin, Pres.; Wm. Murphy, Vice-Pres.; R. E. Gavin, Treas.; M. R. Parker, Sec.
King Lime and Phosphate Co.
A— The American Agricultural Chemical Co. Crocker Fertilizer Works.
A— The American Agricultural Chemical Co. Milsom Works.
D— Jacob Dola Packing Co.
S— Bowker Fertilizer Co.
Buffalo Fertilizer Co.
D— A. H. Case & Co., 965 Williams St., A. E. Case, Pres.-Treas.; A. G. Bartholomend, Sec. Capacity, 2,000 tons.
C— International Agricultural Corporation. W. D. Huntington, Mgr. Capacity, 75,000 tons.
S— Schaal-Sheldon Fertilizer Co.
CARTHAGE.
The Pyrite Eng. Co., Inc., J. G. Jones, Pres.; F. L. Moore, Vice-Pres.; Wm. A. McKee, Treas. and H. L. Jones, Sec.
CLYDE.
D— Empire State Fertilizer Co., Geo. Brisbin, Pres.; E. J. Brisbin, Vice-Pres.; K. Moon, Sec. and Treas. Capacity, 5,000 tons.
DUNKIRK.
Cannadaway Fertilizer Co.
EAST WILLISTON.
S— B. J. Pine & Son. Capacity, 800 tons.
FILLMORE.
D— J. W. Stockwell Co.
FISHKILL-ON-HUDSON.
D— Benjamin Hammond. Capacity, 2,000 tons.
JOHNSONBURG.
S— Fred Daniels.
LONG ISLAND CITY.
The American Agricultural Chemical Co., Greenpoint, Warehouse.
NEWBURGH.
Newburgh Rendering Co.
NEW YORK.
D— Alphano Humus Co. Capacity, 30,000 tons.
The American Agricultural Chemical Co., 2 Rector St. Peter B. Bradley, Pres.; William Prescott, 1st Vice-Pres.; James M. Gifford, 2nd Vice-Pres.; W. W. Baker, 3rd Vice-Pres.; Thos. A. Doe, Treas.; Horance Bowker, Sec.
NEW YORK.
The American Agricultural Chemical Co., Williams & Clark Works.
The American Agricultural Chemical Co., Liebig Works.
Atlantic Fertilizer & Oil Co.
Bowker Fertilizer Co., 60 Trinity Place.
D— Bonora Chemical Co., Sidney Bernheimer, Pres.; Sidney Goether, Treas.
The Coe-Mortimer Co., 51 Chambers St.
C— Consumer's Chemical Corp.
Consumers Fertilizer Co., Longrace Building, Francis W. Holden, Pres. and Gen'l Mgr.; W. Earnest Jenkins,

Digitized by Google Original from UNIVERSITY OF WISCONSIN

Exhibit H

WAR DEPARTMENT
CORPS OF ENGINEERS, U. S. ARMY
AND
UNITED STATES SHIPPING BOARD

PORT SERIES No. 20

THE PORT OF NEW YORK

IN THREE PARTS

Part 2: PIERS, WHARVES, AND DOCKS
(Statistical Data)
(REVISED, 1932)

Prepared by
THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS
WAR DEPARTMENT
In cooperation with the
BUREAU OF OPERATIONS
UNITED STATES SHIPPING BOARD

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1932

For sale by the Superintendent of Documents, Washington, D.C. - - - - - - Price 70 cents

Digitized by Google
Original from
NORTHWESTERN UNIVERSITY

Reference number on map Name	117 (Map No. 48) Richfield Oil Corporation Bulkhead	119 (Map No. 48) Van Iderstine Co. Bulkhead	121 (Map No. 48) The American Agricultural Chemical Co. Bulkhead
Location on water front	South of Greenpoint Avenue, Newtown Creek, Long Island City, Long Island.	East of Greenpoint Avenue, Newtown Creek, Long Island City, Long Island.	East side Newtown Creek, south of Greenpoint Avenue, Long Island City, Long Island.
Owned by	Richfield Oil Corporation of New York	The Van Iderstine Co.	The American Agricultural Chemical Co.
Operated by	do	do	Do.
Purpose for which used	Receipt of petroleum and petroleum products.	Receipts of fats, bones, hides, skins, poultry feeds, glue.	Not in use.
Type of construction	Timber bulkhead, earth fill	Timber bulkhead, earth fill	Timber bulkhead, earth fill.
Description:	Bulkhead or shore wharf (feet):	Bulkhead or shore wharf (feet):	Bulkhead or shore wharf (feet):
Dimensions	440	500	240.
Depth of water, m. l. w.	10-15		18.
Berthing space available	440	500	240.
Deck above m. l. w.	10		10.
Lighted or unlighted		Unlighted	Unlighted.
Transit sheds on pier	None	None	None.
Mechanical handling facilities	None	1 steam derrick, 1-ton bucket, 55-foot boom	None.
Railway connections	Long Island R. R.	Private siding, Long Island R. R.	Property has Long Island Railroad siding.
Steamship lines using terminal	None	None	None.
Water supply	New York City	New York City	Connection to New York City water mains available.
Fire Protection	Emergency extinguishers, 4 sand barrels, 2 water hydrants.	New York City Fire Department, fire hose, and day and night watchmen.	New York City Fire Department.
Electric current	None	Own	Queensboro Gas & Electric Corporation.
Lighting		D. C., 220 volts	
Remarks		1-story frame storage shed, 130 by 115 feet, lighted.	

Digitized by Google
Original from NORTHWESTERN UNIVERSITY

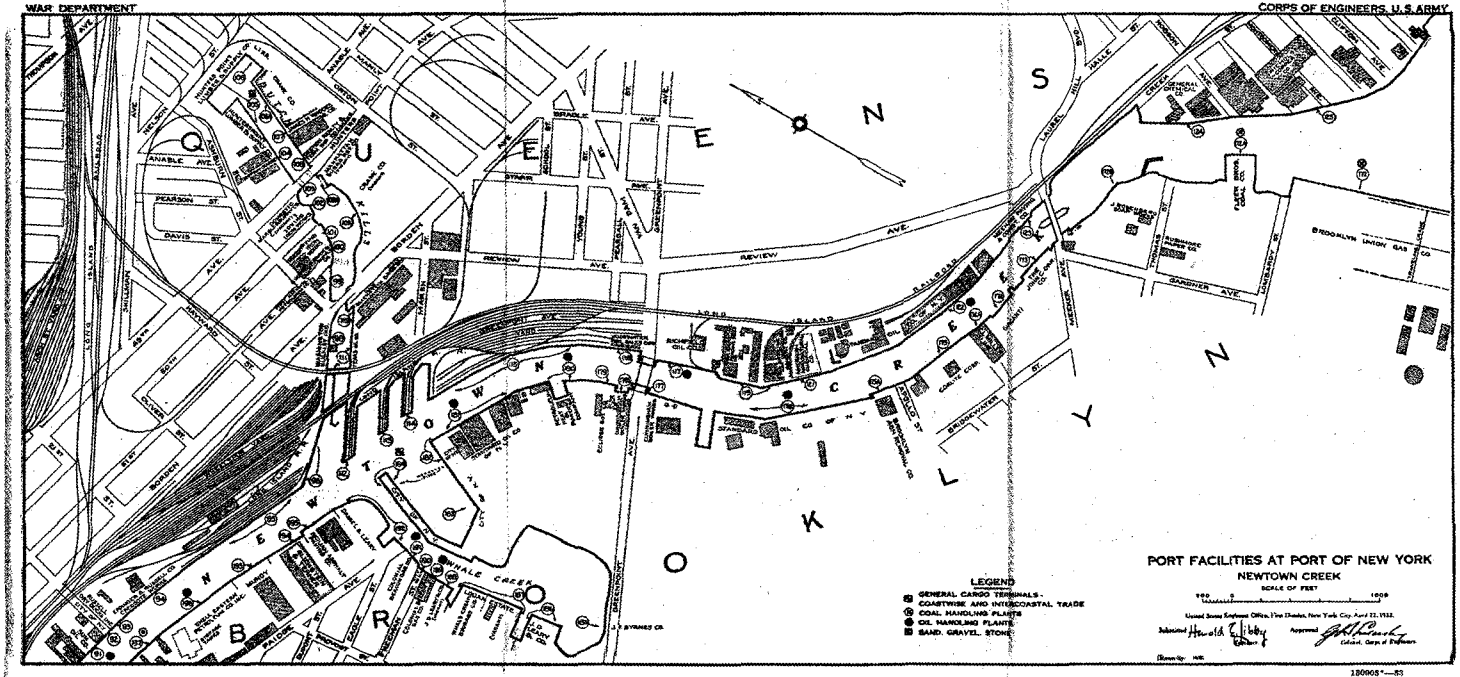
List of piers, wharves, and docks on map No. 48

Reference No.	Name	For description, see part 2, page No.
	Long Island R. R.:	
95	Bulkhead No. 11	500
96	Bulkhead No. 12	509
98	Washington-Bulkley (Inc.) bulkhead	510
99	First National Oil Corporation bulkhead	510
100	Anderson Brick & Supply Co. bulkhead	510
101	Irving Iron Works Co. bulkhead	511
102	do	511
103	Domestic Marble & Supply Co. property	511
104	Thompson Starrett Co. bulkhead	512
105	Hunters Point Lumber & Supply Co. Dock	512
106	Long Island R. R. bulkhead	513
106A	Crane Co. bulkhead	513
107	Rhode bulkhead	513
108	Dagnon bulkhead	513
108A	Manhattan Sugar Refining Co. Wharf	514
109	Crane Co. property	514
110	Glickstein Bros. & Co. bulkhead	514
111	Texas Co. bulkhead	515
	Long Island R. R.:	
112	Pier No. 13	515
113	Pier No. 14	515
114	Pier No. 15	516
115	Bulkhead	516
116	Tide Water Oil Sales Corporation bulkhead	516
117	Richfield Oil Corporation bulkhead	517
119	Van Iderstine Co. bulkhead	517
121	The American Agricultural Chemical Co. bulkhead	517
122	Pratt Works bulkhead	518
123	Meehan bulkhead	518
124	General Chemical Co. bulkhead	519
125	Nichols Copper Co. bulkhead	519
172A	Fleet Bros. Coal Co. bulkhead	535
172B	J. Rosenberg Soap Works Pier	536
173	John C. Orr Co. Wharf	536
174	Pier	536
174A	C. L. Miller Wharf	536
175	Corlite Corporation bulkhead	537
175A	Brooklyn Ash Removal Co. bulkhead	537
176	Standard Oil Co. of New York (Inc.) bulkhead and basin	537
	C. Cunningham Co.:	
177	Bulkhead	538
178	do	538
179	Kuhrse Box & Lumber Co. bulkhead	538
180	Petroleum Heat & Power Co. bulkhead and basin	539
181	Standard Oil Co. of New York (Inc.) bulkhead	539
	New York City:	
182	Bulkhead	539
183	do	540
184	Pier	540
185	Chesebro-Whitman Co. property	540
186	Leary bulkhead	541
187	Logan Estate bulkhead	541
188	T. D. Leavy & Co. bulkhead	541
189	Colonial Beacon Gas Co. Wharf	542
190	Freeman Street Wharf	542
191	Colonial Beacon Gas Co. bulkhead	542
192	Leary bulkhead	543
193	Stokes Asphalt Paving Co. bulkhead	543
194	Glickstein & Turner bulkhead	543
195	Mundy bulkhead	543

No. 48

WAR DEPARTMENT

CORPS OF ENGINEERS, U.S. ARMY



150905°—83

Exhibit I

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

(Organized under the laws of Connecticut on June 30, 1893)

CERTIFICATES OF DEPOSIT OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YOR AND LEE, HIGGINSON TRUST COMPANY, DEPOSITARIES, FOR PREFERRED STOCK ($100 PAR) AND FOR COMMON STOCK ($100 PAR)

(Certificates of Deposit are transferable in New York, N. Y., or Boston, Mass.)

	Shares of Preferred Stock	Shares of Common Stock
Authorized by charter	500,000	500,000
Amount outstanding and listed	284,552	333,221
Authorized to be listed	284,552	333,221
Certificates of Deposit applied for	284,552	333,221
Certificates of Deposit to be issued under Deposit Agreement dated	September 18, 1930	

No other authority required.

CAPITAL SECURITIES AS OF SEPTEMBER 10, 1930

STOCK	Par Value	Number of Shares: Authorized by Charter	Authorized for Issuance	Authorized to be Listed	Outstanding and Listed
Classes:					
Preferred	$100	500,000	284,552	284,552	284,552
Common	100	500,000	333,221	333,221	333,221

BONDS	Interest Rate	Amount Authorized	Authorized for Issuance	Authorized to be Listed	Outstanding
Title and Date of Maturity:					
First Refunding Mortgage 7½% 20-Year Sinking Fund Gold Bonds, Series A, due February 1, 1941.	7½%	Unlimited	$30,000,000	$30,000,000	$8,300,000

New York, N. Y., September 10, 1930.

Referring to previous applications, the most recent of which is A-5471, dated June 15, 1921, for the listing of the above-mentioned Bonds, application is hereby made by the undersigned Reorganization Committee for the listing on the New York Stock Exchange of Certificates of Deposit issued by The Chase National Bank of the City of New York, at New York, N. Y., and Lee, Higginson Trust Company, at Boston, Mass., as Depositaries, for shares of the capital stock of The American Agricultural Chemical Company (hereinafter called the "Connecticut Company") as follows:

284,552 shares of the par value of $100 each (total par value $28,455,200) of Preferred Stock, and

333,221 shares of the par value of $100 each (total par value $33,322,100) of Common Stock

on official notice of issuance in exchange for outstanding stock certificates.

All of said shares of Preferred Stock and Common Stock are listed on the New York Stock Exchange, pursuant to action on applications heretofore made, the most recent of which with respect to the Preferred Stock is application A-4965, dated March 7, 1919, and the most recent of which with respect to the Common Stock is application A-5413, dated March 23, 1921.

AUTHORITY FOR ISSUE

The Certificates of Deposit, for the listing of which application is hereby made, are to be issued under the Deposit Agreement, dated September 18, 1930, between Horace Bowker, John Foster Dulles, Charles Hayden and George C. Lee and their respective successors and substitutes, as a Reorganization Committee (hereinafter called the "Committee"), and such holders of shares of stock of the Connecticut Company as shall become parties thereto and the holders from time to time of Certificates of Deposit issued thereunder, under which The Chase National Bank of the City of New York and Lee, Higginson Trust Company have been designated Depositaries.

OPINION OF COUNSEL

The validity of the Certificates of Deposit to be issued will be passed upon by Mr. Edward H. Green of New York, N. Y.

THE PLAN OF READJUSTMENT

With regard to the Plan of Readjustment reference is made to the circular letter dated September 18, 1930 from the Committee to the stockholders of the Connecticut Company which reads in part as follows:

"In the Company's last annual report, recently mailed to stockholders, attention was called to the desirability of some corporate readjustment which would eliminate the present capital impairment. The June 30, 1930, balance sheet of the Company showed net assets of $21,939,920 applicable to the $61,777,326 par value of preferred and common stock, thus indicating a capital stock deficit of $39,837,406. So long as this deficit exists, no dividends can legally be paid and, on the assumption of a maintenance of present values and continuation of net earnings at the rate of last year (which is substantially above the last five-year average), it would be over twenty-six years from now before the

capital impairment, already existing since 1923, could be made good. Thus, under present conditions, all net earnings must, in effect, be impounded for a long period of time.

* * * * *

"Your Directors have accordingly for some time been considering plans for a capital readjustment which will eliminate the paralyzing effects of the existing large impairment of the capital stock.

"The recent annual report to stockholders referred to the fact that preliminary steps to this end had already been taken through the concentration of assets and business in The American Agricultural Chemical Company of Delaware, a wholly owned subsidiary company, with only one class of stock, *i.e.*, no par value common stock. A substantial part of your Company's properties is accordingly now vested in this Delaware subsidiary, and the balance is expected to be transferred before the plan for capital readjustment is declared operative. Furthermore, the Delaware Company has been substituted for the Connecticut Company as the obligor on the outstanding balance of 7½% Mortgage Bonds. A situation thus results wherein your Company, the Connecticut Company, has become a holding company which owns the common stock of the Delaware Company. The latter Company has assumed the bonds, conducts the business, makes the profits and, not having a capital impairment, is in a position to pay dividends out of profits.

* * * * *

"As a result of the foregoing considerations, your Directors have now formulated a plan of readjustment, under which, if the Plan is adopted, there will be issuable, in exchange for the present preferred and common stock of the Connecticut Company, 317,875 shares of no par value common stock of The American Agricultural Chemical Company of Delaware. 284,552 of these shares will be issuable for the present preferred stock of the Connecticut Company, on a share-for-share basis, and 33,323 shares will be issuable for the present Connecticut common stock, on the basis of one-tenth of a share of new Delaware stock issuable for each share of the present Connecticut common. On the assumption that the exchange is fully consummated, the present preferred stockholders as a class would thus own over 89% of the business and the common stockholders as a class would own slightly over 10% of the business. Your Directors believe that this adequately reflects such residual value as inheres in the present common stock and which, however problematical it may be, renders it inappropriate that the common stock should be wholly excluded from participation in a plan of voluntary reorganization.

"To the extent that the Connecticut Company stock is exchanged for stock of the Delaware Company, the exchanging stockholders will, through the medium of their holdings in the Delaware Company, own their percentage of the entire business and properties heretofore owned by the Connecticut Company with the advantage that they will be in a position to receive dividends paid out of the earnings. To the extent that stockholders of the Connecticut Company do not elect to exchange, there will be left with the Connecticut Company that amount of stock of the Delaware Company which represents a proper proportion of the assets, so that the position of any non-depositing stockholder will not have been legally impaired. If all of the Connecticut Company stock is exchanged, that Company will disappear."

DEPOSIT AGREEMENT

The Deposit Agreement is to be dated September 18, 1930. It refers to stock of the Connecticut Company as "Connecticut Common Stock" and "Connecticut Preferred Stock", as the case may be, and to stock of the Delaware Company as "Delaware Common Stock".

With Respect to the Issue and Terms of Certificates of Deposit and Scrip Certificates

Paragraphs 3 and 4 of the Deposit Agreement provide in part as follows:

"3. Each holder of Connecticut Preferred Stock or Connecticut Common Stock, upon the deposit thereof with one of the Depositaries (or with any designated agent thereof), shall be entitled to receive from such Depositary a transferable Certificate or Certificates of Deposit with respect thereto, in form and substance as prescribed by the Committee and approved by the Depositaries. Each such Certificate of Deposit shall be registered in the name of the Depositor or his nominee, as directed in writing by the Depositor, and shall be signed by the Depositary issuing the same, on behalf of the Committee, and registered by Bank of New York and Trust Company, as Registrar, in the case of Certificates of Deposit issued by The Chase National Bank of the City of New York, and by The First National Bank of Boston, as Registrar, in the case of Certificates of Deposit issued by Lee, Higginson Trust Company, or by such successor or other depositaries or registrars, if any, as may be appointed by the Committee hereunder.

"4. The Certificate of Deposit so to be issued shall entitle the holders thereof respectively, on such date as may be determined by the Committee and subject to the terms thereof and of this Agreement, upon the surrender of the Certificates of Deposit to the Depositary by whom issued, duly endorsed, for cancellation, to receive in lieu of deposited Connecticut Preferred Stock or Connecticut Common Stock, as the case may be, in case the Plan shall be consummated, shares of Delaware Common Stock, at the rate of one share of Delaware Common Stock for each such share of Connecticut Preferred Stock and one share of Delaware Common Stock for each ten such shares of Connecticut Common Stock.

"No Certificate for a fraction of one share of Delaware Common Stock shall be issued in connection with the exchange of Connecticut Common Stock, but any fractional interest in Delaware Common Stock shall be represented by Scrip Certificates which shall contain such provisions and be in such

form as may be determined by the Board of Directors of the Delaware Company and approved by the Committee, including provision permitting the exchange of such Scrip Certificates aggregating one or more full shares of Delaware Common Stock for certificates of Delaware Common Stock representing such number of full shares within such period (not less than six months from the date when the Plan shall have been declared operative) as shall be determined by the Board of Directors of the Delaware Company, and such Scrip Certificates may also contain provisions authorizing the sale by the Delaware Company of the number of shares of Delaware Common Stock represented by such Scrip Certificates for the benefit of the holders of such Scrip Certificates after the expiration of such period.

"In case the Plan shall be abandoned as provided in Paragraph 5 hereof, holders of Certificates of Deposit, upon surrender thereof to the Depositary by whom issued, for cancellation, duly endorsed and subject to the terms thereof and of this Agreement, shall be entitled to receive without cost a Certificate or Certificates for the same number of shares of Connecticut Preferred Stock or Connecticut Common Stock as then constituted, as the case may be, as are represented by the Certificates of Deposit so surrendered."

With Respect to the Duration of the Right of Deposit

Paragraph 5 of the Deposit Agreement provides as follows:

"5. The right of deposit shall continue until November 1, 1930, unless prior thereto the Committee shall elect to abandon the Plan, provided, however, that if on November 1, 1930, the Committee shall not have declared the Plan operative (and if the Plan shall not have been abandoned, on or prior to said date) the right of deposit *ipso facto* and without any declaration by the Committee, shall continue either (a) for such further period or extended periods (not, however, beyond September 30, 1931) as may be determined by the Committee, once or successively after November 1, 1930, by notice filed with the Depositaries, or, in case no such notice is so filed, (b) until September 30, 1931, subject always, however, to the right of the Committee, at any time after November 1, 1930, while this Agreement is in force, either to declare the Plan operative and/or terminate the right of deposit or to declare the Plan abandoned. Unless previously declared operative or abandoned, the Plan shall be deemed abandoned on September 30, 1931, without any declaration thereof by the Committee but in no event shall the Plan be deemed abandoned prior to September 30, 1931, except upon election by the Committee to abandon the Plan. The decision of the Committee either to declare the Plan operative or to abandon the Plan shall be made by notice from the Committee filed with the Depositaries. Election to abandon the Plan may, in the discretion of the Committee, be made after the Plan has been declared operative if the Committee shall for any reason determine thereafter that it is inexpedient or imposible to consummate the Plan."

With Respect to Title to the Deposited Stock

Paragraph 6 of the Deposit Agreement provides in part as follows:

"6. The Committee shall be entitled in its discretion at any time or from time to time to cause any or all certificates for Connecticut Preferred Stock or Connecticut Common Stock deposited hereunder to be registered in the name of the Committee or in the name of a nominee or nominees of the Committee. Title to the stock deposited hereunder shall pass only if and as determined by the Committee in the carrying out of the Plan, and unless and until title to such stock shall so pass no endorsement or assignment or transfer of any deposited stock shall be or become effective for the vesting of title thereto, and such deposited stock shall in the meantime be held irrevocably in escrow by the Committee subject to the provisions hereof."

With Respect to the Consummation of the Plan

Paragraph 7 of the Deposit Agreement provides in part as follows:

"7. The Committee shall be entitled to take or authorize to be taken any and all such action as it may deem necessary, expedient or desirable to accomplishment of the Plan. Without prejudice to the general powers herein granted the Committee is hereby authorized and empowered in its discretion to take or procure to be taken or approve on behalf of the Depositors all such action as it may deem advisable for vesting in the Delaware Company all or any part of the properties and business of the Connecticut Company, recapitalizing from time to time the Connecticut and Delaware Companies and effecting the exchanges of stock, as herein referred to; and to execute any and all documents which the Committee may deem necessary or expedient in furtherance of the Plan. The Plan will not be declared operative, unless, in the opinion of the Committee, sufficient amounts of stock are deposited hereunder to justify such declaration, but nothing herein contained shall in any way limit or affect the power and right of the Committee to declare the Plan operative, or to abandon the Plan for such reasons as it, in its absolute discretion, may deem proper and adequate.

"The Committee or its substitute or substitutes are authorized to attend any meeting of the stockholders of the Connecticut Company which may be held while shares of stock of the Connecticut Company are held on deposit hereunder and to vote all such shares with all the powers which each Depositor would possess if personally present at such meeting in favor of any corporate action which the Committee deems to be reasonably necessary or expedient for the accomplishment of the Plan and to attend any meeting of the stockholders of the Delaware Company which may be held while

shares of stock of the Delaware Company are held by or on behalf of the Committee (and pending the distribution of such shares to the Depositors) and to vote all shares of stock of the Delaware Company with all the powers which the Depositors would possess if such shares had been distributed to the Depositors and if such Depositors were personally present at such meeting, in favor of any corporate action by the Delaware Company which in the Committee's judgment is necessary or advisable in carrying out the Plan, and the foregoing authorization shall be construed as being coupled with an interest and irrevocable until the termination of this Agreement. No Depositor shall have the right to vote with respect to the deposited stock of the Connecticut Company at any stockholders' meeting of the Connecticut Company during the life of this Agreement nor to vote with respect to stock of the Delaware Company held by or on behalf of the Committee pending the delivery of such stock to the respective Depositors"

With Respect to Modifications of the Plan

Paragraph 7 of the Deposit Agreement provides in part as follows:

"The Committee is hereby authorized and empowered to construe and interpret and apply the Plan and this Agreement and to supply any defect or omission or reconcile any inconsistency therein, and also to modify the Plan in its discretion, provided that any such modification shall not in the judgment of the Committee involve material departures from the Plan adverse to the interest of the Depositors of stock of either class, as to which the judgment of the Committee shall be conclusive and binding. The Committee may also adopt and approve any modified Plan which in its judgment involves a material departure from the Plan adverse to the interest of the Depositors of stock of either class, but in such event the Committee as promptly as is reasonably practicable shall give notice of such modified Plan to the Depositors of the class or classes deemed adversely affected (such notice to be deemed sufficiently given if mailed postage prepaid to Depositors at their addresses as the same appear on the books of the respective Depositaries) and shall state in such notice that any Depositor of such class or classes is entitled at his election at any time within thirty (30) days from the date of the mailing of such notice to withdraw from this Agreement upon surrender to the Depositary of his Certificate of Deposit, as the case may be, duly endorsed, for cancellation, and any such Depositor of the class or classes deemed adversely affected, upon surrender of such certificate held by him, shall be entitled to receive, without cost, certificates for the same number of shares of deposited stock as are represented by the certificate so surrendered. Every such holder of a Certificate of Deposit not so surrendering the same and withdrawing within said thirty (30) day period, whether or not having actual notice of such right of withdrawal, shall continue to be a party to this Agreement and be bound hereby as fully and effectively as though such right of withdrawal had not existed."

FINANCIAL STATEMENTS

The following financial statements, certified by the Comptroller of the Connecticut Company, are given below:

(1) Consolidated profit and loss statements of the Connecticut Company and the Delaware Company and other subsidiary companies, for the fiscal years ended June 30, 1929 and June 30, 1930.

(2) Consolidated deficit account of the Connecticut Company and the Delaware Company and other subsidiary companies, for the fiscal year ended June 30, 1930.

(3) Consolidated balance sheet of the Connecticut Company and the Delaware Company and other subsidiary companies as of June 30, 1930.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (OF CONNECTICUT)
AND
THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (OF DELAWARE)
AND OTHER SUBSIDIARY COMPANIES

(1) CONSOLIDATED PROFIT AND LOSS STATEMENT FOR THE FISCAL YEARS ENDED JUNE 30, 1929 AND JUNE 30, 1930

	Fiscal year ended June 30, 1929		Fiscal year ended June 30, 1930	
Gross profit from operations (after deducting operating, selling and administrative expenses, and discounts and freights)		$3,169,413.89		$3,358,278.95
Deduct:				
Reserves for doubtful receivables	$513,878.14		$551,539.78	
Depreciation of plants and depletion of mines	1,148,586.11		1,077,864.41	
		1,662,459.25		1,629,404.19
Net profit from operations		$1,506,954.64		$1,728,874.76
Deduct:				
Interest paid and accrued on funded debt	$360,176.57		$721,508.56	
Premium paid on First Refunding Mortgage 7½% Gold Bonds retired prior to maturity	87,500.00		.....	
		447,676.57		721,508.56
Net income credited to deficit account		$916,278.07		$1,007,366.20

(2) CONSOLIDATED DEFICIT ACCOUNT

Deficit at July 1, 1929		$18,116,781.03
Add:		
General plant and properties reserves	$10,297,292.82	
Reserves for phosphate rock deposits	11,826,701.15	
Reserves for accounts and notes receivable	2,165,047.58	
Contingency reserve	1,500,000.00	
		25,228,041.55
		$41,344,772.63
Net income for the fiscal year ended June 30, 1930 transferred from profit and loss account		1,007,366.20
Deficit at June 30, 1930		$39,337,406.43

(3) CONSOLIDATED BALANCE SHEET AS OF JUNE 30, 1930

ASSETS

Current assets:		
Cash		$6,728,212.06
Accounts and notes receivable, less reserves		10,528,376.14
Inventories (manufactured products, materials and supplies) at cost, or market if lower		6,566,303.98
Total current assets		$23,822,892.18
Deferred charges:		
Unexpired insurance, prepaid taxes and other deferred charges to future operations		561,892.23
Sinking fund for redemption of Mortgage Bonds and trust funds		49,847.53
Capital assets:		
Land, buildings, machinery and equipment, less reserves	$36,102,017.75	
Phosphate rock deposits, less reserves	1,796,546.94	
Properties not required for operating purposes and sundry investments, less reserves	2,206,523.86	
Good will, brands and trade marks	1.00	
Total capital assets		10,105,189.55
Total assets		$34,539,821.29
Deficit		39,837,406.43
		$74,377,227.72

LIABILITIES

Current liabilities:		
Accounts payable and accrued liabilities		$911,503.65
Accrued interest on bonds		277,812.50
Total current liabilities		$1,189,316.15
Deferred credits		113,107.11
Reserves for contingencies and Federal taxes		2,625,978.46
Funded debt:		
First Refunding Mortgage 7½% 20-Year Sinking Fund Gold Bonds, Series A, due February 1, 1941	$8,890,000.00	
Less owned by the Company	223,500.00	
Total funded debt		8,666,500.00*
Total current liabilities, reserves and funded debt		$12,593,901.72
Capital Stock:		
Preferred Stock (dividends paid to April, 1921)	$28,455,200.00	
Common Stock	33,322,125.00	
		61,777,326.00
		$74,377,227.72

*$500,000 par value of First Refunding Mortgage 7½% Gold Bonds were retired on August 1, 1930.

AGREEMENTS

The undersigned Reorganization Committee agrees with the New York Stock Exchange as follows:

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, for the transfer of Certificates of Deposit; also a registry office or agency in the Borough of Manhattan, City of New York, where Certificates of Deposit shall be registered.

Not to make any change in the form of Certificates of Deposit or of a transfer agency, or of a registry office without the approval of the Committee on Stock List.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, securities, or of any other rights or benefits pertaining to ownership of the Certificates of Deposit, so as to afford the holders of Certificates of Deposit a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To publish promptly to holders of Certificates of Deposit any action in respect to dividends on the shares of stock represented by the Certificates of Deposit or allotments of rights for or subscription to securities applicable thereto, notices thereof to be sent to the Stock Exchange, and to give the Stock Exchange at least ten days' notice in advance of, (1) any extension or extensions of the period wherein stockholders are permitted to deposit their shares, (2) of closing stock transfer books for the Certificates of Deposit or the taking of a record of holders thereof for any purpose.

To have on hand at all times a sufficient supply of Certificates of Deposit to meet the demands for transfer.

GENERAL

Mailing address: Ernest E. Hammerson, Secretary; c/o The American Agricultural Chemical Company, 420 Lexington Avenue, New York City.

The Certificates of Deposit for both Preferred and Common Stock are to be issued by The Chase National Bank of the City of New York, New York, N. Y. and Lee, Higginson Trust Company, Boston, Mass., which will act as Transfer Agents thereof.

The Certificates of Deposit issued by The Chase National Bank of the City of New York are to be registered by Bank of New York and Trust Company, New York, N. Y., as Registrar, and those issued by Lee, Higginson Trust Company are to be registered by The First National Bank of Boston, Boston, Mass., as Registrar.

HORACE BOWKER,
JOHN FOSTER DULLES,
CHARLES HAYDEN,
GEORGE C. LEE,
Reorganization Committee under the Deposit Agreement, dated September 18, 1930.
By HORACE BOWKER, Chairman.

This Committee recommends that the above-described Certificates of Deposit for
284,552 shares of Preferred Stock ($100 Par Value), and
383,221 shares of Common Stock ($100 Par Value), be admitted to the list on official notice of issuance in exchange for outstanding certificates for Preferred and Common Stock in accordance with the terms of this application.

FRANK ALTSCHUL, CHAIRMAN.

Adopted by the Governing Committee, September 24, 1930.

ASHBEL GREEN, SECRETARY.

Exhibit J

THIRTY-FIRST
ANNUAL REPORT

of

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

FOR THE FISCAL YEAR
ENDED JUNE 30, 1930

GRAYBAR BUILDING · 420 LEXINGTON AVENUE
NEW YORK

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

Directors

J. HOWARD ARDREY . . *Vice President, Guaranty Trust Company, New York*
HORACE BOWKER . . . . . *President, New York*
ROBERT S. BRADLEY . . . . . *Boston, Mass.*
GEORGE B. BURTON . . . . . *Los Angeles, Cal.*
GEORGE C. CLARK . . . . . *Clark, Dodge & Co., New York*
JOHN FOSTER DULLES . . . . . *Sullivan & Cromwell, New York*
CHARLES HAYDEN . . . . . *Hayden, Stone & Co., New York*
GEORGE C. LEE . . . . . *Lee, Higginson & Co., Boston, Mass.*
GEORGE K. MORROW . . *Chairman, Gold Dust Corporation, New York*
PHILIP STOCKTON . . . *President, The First National Bank, Boston, Mass.*
CHARLES B. WHITTLESEY . . . . . *New London, Conn.*

Executive Committee

HORACE BOWKER
ROBERT S. BRADLEY
JOHN FOSTER DULLES
CHARLES HAYDEN
GEORGE C. LEE

Executive Officers

HORACE BOWKER . . . . . *President*
RALPH A. POWERS . . . . . *Executive Vice President*
ERNEST E. HAMMERSEN . . *Vice President and Comptroller*
LOUIS H. CARTER . . *Vice President in Charge of Manufacturing*
EDWARD F. DANIEL, JR. . . . . *Vice President*
ALBERT W. GOELLER . . . . . *Treasurer*
JAMES A. STARRETT . . . . . *Secretary*

General Counsel

SULLIVAN & CROMWELL, New York

Stock Transfer Agents

GUARANTY TRUST COMPANY
New York

OLD COLONY TRUST COMPANY
Boston, Mass.

Registrars of Stock

NATIONAL CITY BANK
New York

STATE STREET TRUST COMPANY
Boston, Mass.

EXECUTIVE OFFICES: GRAYBAR BUILDING, 420 LEXINGTON AVENUE, NEW YORK

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

GRAYBAR BUILDING · 420 LEXINGTON AVENUE

NEW YORK,

AUGUST 15, 1930.

TO THE STOCKHOLDERS OF

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY:

The Board of Directors submits herewith the Annual Report of the business of the Company for the fiscal year ended June 30, 1930.

Earnings:

Net Profits from operations after reserves for discounts, freights and receivables, and after deduction of depreciation and depletion, at the same rates as last year, amounted to $2,228,874.76. After providing for interest charges on funded debt, there remained a net income of $1,507,366.20, or $5.30 per share of Preferred stock, which is an improvement of $803,588.13, or $2.83 per share, over the fiscal year 1929.

Sales:

The year has been one of progress. Sales of fertilizers, phosphate rock and various chemical products showed a gratifying increase over 1929, to which substantially all of the Company's branches and subsidiaries have contributed. A readjustment of your Company's sales methods and the development of a comprehensive marketing and advertising program aided largely in this expansion in volume of sales. Competition continued to be acute and sales prices for practically all of the Company's products were below the levels of recent years.

The country's estimated total consumption of fertilizer showed only a slight increase over last year; the economic situation in agriculture, on the whole, continued unsettled and prices of several important farm products are now at, or near, the lowest point since the post-war deflation period. Your Company

endeavored to meet these adverse conditions by a reduction in its unit cost of production and distribution, with the result that there was an increase in earnings, as well as in sales.

The greater demand and repeat orders for "Agrico" brands of fertilizer and for the chemical products of the Bowker Chemical Co., a 100% owned subsidiary, have been particularly encouraging.

Inventories:

Inventories are lower than they have been in previous years and the turnover has been speeded up. In view of the declining commodity markets, a hand-to-mouth purchasing policy has been followed as far as possible. Inventory losses have, therefore, been negligible. Manufactured products, materials and supplies are carried on the Balance Sheet at cost or market, whichever is lower.

Credits and Collections:

Collections from sales of the fiscal year 1929 and prior years were reasonably satisfactory, with the exception of Cuba. The decline in sugar prices to a record low for all times has seriously interfered with the collections from colonos in Cuba. In view of the very uncertain outlook, credit sales of fertilizer through the Havana branch were substantially curtailed last season—this being the only branch showing a reduction in the tonnage of fertilizers sold.

The larger volume of domestic sales in 1930 has resulted in an increase in the gross amount of current fertilizer receivables, not due yet and payable from the proceeds of this year's crops. Great care has been exercised in the extension of credits and substantial reserves have been set aside out of the year's profits for possible losses in the liquidation of these receivables.

Technical and Commercial Research:

In line with the Management's modernization program, the Company's research departments are directing their efforts towards the development of improved processes for the manufacture of fertilizers, as well as to activities in related chemical lines. Several of the materials allied with the manufacture of fertilizers, such as phosphate rock (of which the Company owns large deposits in Florida) and its derivatives, have important present or potential sales outlets in the chemical industries. The policy of product diversification is based upon commercial research of markets and there already exists a profitable business in related lines which is expected to play an increasingly important part in the Company's growth.

The Company's fertilizer sales policy is grounded upon the fact that fertilizer is a basic necessity of steadily growing importance in the production of crops at a profit. Each year the nation's crops take out of the soil approximately seventeen billion pounds of nitrogen, phosphorus and potash—the principal elements essential to plant growth. Two and one-half billion pounds are returned to the soil in the form of commercial fertilizers. Only 60 per cent. of the remainder of this plant food taken out of the soil is restored by crop residues, rainfall and other means. This leaves a deficit of five and three-quarter billion pounds of plant food each year. This declining fertility is a vital factor in the present farm problem. It spells steadily increasing unit costs of crop production.

The essential fact of the present farm problem is that it costs most farmers too much to grow their crops. Only by increasing the yield from each acre placed under cultivation, and thereby reducing the unit cost of production, is it possible to increase farm profits. Fertilizer consumption must be increased if agriculture is to be placed upon a sound basis.

Your management's studies of the economics of agriculture clearly demonstrate that the basic problem of the fertilizer industry is under-consumption, not over-production. Your Company's sales policy actively recognizes this fact.

Property, Plants and Equipment:

A careful study of efficiency of equipment and production and location of plants is being made for the purpose of meeting problems of service, distribution and competition in the most effective manner.

Operating properties are maintained in good condition but without extravagance, the principle of thrift and close control being applied in all departments.

The more important additions to plant property were made in connection with the installation of equipment which will enable the Company to benefit from developments in the synthetic nitrogen field, and give it a more flexible position in the nitrogen market. Plant additions have also been made to meet the greater demand for the products of the Bowker Chemical Co.

Mining of phosphate rock has been extended to the Company's high grade phosphate rock deposits in Florida and is now, in part, carried on by dragline operations, instead of exclusively by the hydraulic method as heretofore. Results have been entirely satisfactory and additional dragline equipment is now being installed.

Further progress has been made in the disposal of properties no longer

required for the business. During the last year the Florida hotel properties of the Boca Grande Corporation, a wholly owned subsidiary, have been sold on satisfactory terms.

Financial:

Current assets at the close of the year amounted to $23,822,892.18, as against current liabilities of $1,189,316.15. Notwithstanding an increase in receivables from sales of the fiscal year 1930, cash on hand exceeded last year's figure by $529,391.33. The Board of Directors, in June of this year, authorized the calling, for August 1, 1930, of $500,000 par value of the First Refunding Mortgage 7½% Bonds. The Company's funded debt in the hands of the public is thus reduced to less than $8,166,500.00 and interest charges thereon to less than $613,000.00 per annum.

Balance Sheet:

The Balance Sheet gives effect to a revaluation of the Company's properties which your Directors have felt was required in order that the current Balance Sheet should fairly set forth the present value of the Company's assets.

It is well known that the fertilizer industry and conditions in agriculture have undergone profound changes during and after the war period, and your Company has had to carry burdens which were inherited from a dissimilar past; yet, it appeared unwise to proceed with a radical revaluation of the Company's assets during a period of uncertainty when the fertilizer and allied chemical industries were in a state of flux. The time has now come when definite changes in the character of the business should be reflected in a material reduction in the "value in use" of many of the Company's fertilizer plants and like fixed assets.

Heretofore the conventional method was followed of carrying operating plants at cost, less normal depreciation accrued annually at rates determined by independent engineers and based on the estimated length of life and wear and tear of the properties. This method would be proper to continue had conditions in the industry remained stable. However, a production capacity which at many points is beyond present demand is an economic factor constantly present and necessitates a revision of plant values. Many other factors have contributed to the present changed conditions, such as methods and cost of distribution and transportation, the cost of labor, and the shifting of crops grown in various localities. Some of your Company's plants heretofore enjoyed, within an economic freight radius, a profitable outlet for their production which is no longer available to them. The disappearance of farms from a whole section of Long Island,

formerly consuming a heavy tonnage of fertilizer, serves to illustrate changed conditions. The centers of fertilizer consumption are moving. Your Company is tied down by its past investments in plants of large capacity, located in sections which often do not prove to be the most advantageous in which to do business. Such investments are, for all practical purposes, worth no more and possibly less than a modern or competitive plant of low cost and moderate capacity which can be operated when profitable and from which operations can be moved to other territory when desirable.

Your Directors feel that your Company can best succeed by frankly recognizing the fact of economic obsolescence and revising asset values to meet new conditions. It will thereby free itself from the burden of carrying charges and depreciation rates, based on former values, now obsolete, and thus further regain the ability to produce economically and to meet, in kind, its more "light-footed" competition. It is for these reasons that a policy has been adopted of providing substantial plant and obsolescence reserves, in addition to normal depreciation, thus making it possible to retire promptly from service or liquidate properties which are uneconomical or no longer required. Accordingly, additional reserves aggregating $10,297,292.82 have been set up against capital assets, other than phosphate rock deposits, and their net book values have been correspondingly reduced.

During past years a substantial part of the Company's inoperative properties, real estate and similar investments, no longer required under changed business conditions, has been liquidated. The balance of all such assets has now been segregated and is shown as a separate item on the Balance Sheet at its estimated sales value, to be disposed of as soon as practicable.

The phosphate rock deposits in Florida, in so far as they are likely to be mined over the next thirty or forty years, have been taken up at a net figure, after reserves, which approximates the current market value applied to the minable tonnage of high grade and standard grade rock. The balance of the rock deposits represents rock which is not commercially workable at this time and is not likely to be mined for many years. It has no appreciable present market value and is, consequently, carried at the estimated sales value of the land. In the Annual Report for the fiscal year 1923 attention was drawn to the valuation of the Company's mining properties. The phosphate rock industry was then suffering from the consequences of the war, with a curtailment of both domestic and foreign demand, but it was the feeling of your Directors, as expressed at that time, that this situation might prove temporary and that a change in the book value of mining properties should be deferred. Since then the trend from the

lower grades to the higher grades of rock, and competition from foreign mines seem to have permanently affected the values of phosphate rock deposits. Under the circumstances, your Directors believe it proper, at this time, to make an adjustment in the book value of the phosphate rock deposits, reducing it to a net book value of $1,796,646.94.

An amount of $2,105,047.58 has been added to the reserves against accounts and notes receivable. In the fertilizer industry, where long-term credits must be extended, it becomes necessary, at times, to carry farmers and dealers through periods of abnormal depression resulting from crop failures or serious declines in prices of agricultural products, such as are now witnessed in the growing of sugar cane in Cuba. Substantial collections are made from such overdue receivables in subsequent years, after the farmers' financial position has been rehabilitated through the sale of a profitable crop. Yet, your Directors believe that under conservative management ample reserves should be carried at all times so that net current assets do not include an unduly large amount represented by items which are not of a liquid nature and the ultimate collection of which depends on the hazards of weather and crop prices. The extent to which the above mentioned additional reserve will be used to absorb losses will largely depend on developments in the Cuban sugar market.

An addition of $1,500,000 has been made to the contingency reserve.

The net results of these extraordinary changes in the Balance Sheet, after taking into consideration the year's income, is to increase the capital impairment to $39,837,406.43 on the basis of the Company's present capitalization of $61,777,326.00. The Stockholders' equity is thus valued at $21,939,919.57. As the Preferred stock has prior rights up to its par value, quite apart from the arrearage in dividends, the net value of the assets is, therefore, equivalent to about $77.00 for each share of Preferred stock now outstanding.

Readjustments of book values and the establishment of additional reserves do not, of course, operate to diminish in any way the actual assets which the Company owns. The Company possesses now precisely what it would have possessed had book values been left unchanged. If, however, book values, as determined in the traditional way, have permanently become out of line with the facts, the facts should be faced. That book values have become out of line is not only apparent from detailed analysis, but is confirmed by the test of earnings. In the current year, which shows a distinct improvement in many respects, earnings amounted to $5.30 for each share of Preferred stock. This rate of earnings is appreciably above the average for the last five years. Assuming asset values equal to $77.00 per share of Preferred stock, as indicated by the Balance Sheet

presented herewith, this represents a return of approximately 7% which is a moderate industrial return. On the basis of former book values of about $160.00 per share of Preferred stock, this $5.30 would represent a return at the rate of approximately 3¼% annually. Assets which, over a period of five years, can earn less than 3¼% per annum on their book value, are obviously over-valued.

Your Directors, convinced of this fact, have, in conjunction with the management, conscientiously and intimately studied the situation for some time past and they believe that the Balance Sheet, herewith presented, fairly reflects present values.

The technical position of the present Balance Sheet points to the necessity of some early corporate reorganization. With a capital impairment which has existed since 1923, no dividends can be paid even on the Preferred stock. Current earnings will be indefinitely impounded until released by some readjustment which will avoid the capital impairment and permit of current earnings being paid out.

In anticipation of and preparatory to such a step your Directors have, during the year, shifted more of the operating properties of your Company to The American Agricultural Chemical Company of Delaware, a company organized as a wholly owned subsidiary in 1913, with only one class of stock, i.e., Common stock, and which has been utilized for many years as the medium for doing business in certain States. The Delaware Company has now become the principal manufacturing and operating company and the Connecticut Company has assumed more the status of a holding company, whereof the principal asset is the Common stock of the Delaware Company. Furthermore, the Delaware Company has been substituted for the Connecticut Company as the obligor on the First Refunding Mortgage 7½% Bonds, pursuant to a supplemental indenture executed between the Delaware Company and the Trustee under the mortgage securing the bonds. The way is thus paved for the effectual elimination of the Connecticut Company and the substitution for its stock of the Common stock of the Delaware Company, whether through voluntary exchange or dissolution of the Connecticut Company. This would substitute the stock of the present principal operating company which is free from capital impairment and consequently able to pay dividends out of its profits.

Your Directors are studying plans for such an exchange which, when definitely formulated, will be submitted to the Stockholders.

By Order of the Board of Directors,

HORACE BOWKER,
President.

THE AMERICAN AGRICULTU
(of Connecticu
an
THE AMERICAN AGRICULTURAL CH
AND OTHER SU ID
CONSOLIDATED BA
AS OF JUNE 30,

ASSETS

CURRENT ASSETS		
Cash		$ 6,728,212.06
Accounts and Notes Receivable, less Reserves		10,528,376.14
Inventories (Manufactured Products, Materials and Supplies) at cost, or market if lower		6,566,303.98
Total Current Assets		$23,822,892.18
DEFERRED CHARGES		
Unexpired Insurance, Prepaid Taxes and Other Deferred Charges to Future Operations		561,892.23
SINKING FUND FOR REDEMPTION OF MORTGAGE BONDS AND TRUST FUNDS		49,847.33
CAPITAL ASSETS		
Land, Buildings, Machinery and Equipment, less Reserves	$6,102,017.75	
Phosphate Rock Deposits, less Reserves	1,796,646.94	
Properties not required for operating purposes and Sundry Investments, less Reserves	2,206,523.86	
Good Will, Brands and Trade Marks	1.00	
Total Capital Assts		10,105,189.55
Total Assets		$34,539,821.29
DEFICIT		39,837,406.43
		$74,377,227.72

RAL CHEMICAL COMPANY

cut)

HEMICAL COMPANY (of Delaware)
DIARY COMPANIES

ALANCE SHEET

o, 1930

LIABILITIES

CURRENT LIABILITIES		
Accounts Payable and Accrued Liabilities		$ 911,503.65
Accrued Interest on Bonds		277,812.50
Total Current Liabilities		$1,189,316.15
DEFERRED CREDITS		118,107.11
RESERVES FOR CONTINGENCIES AND FEDERAL TAXES		2,625,978.46
FUNDED DEBT		
First Refunding Mortgage 7½% 20-year Sinking Fund Gold Bonds, Series A, due February 1, 1941 . . .	$8,890,000.00	
Less owned by the Company	223,500.00	
Total Funded Debt		*8,666,500.00
Total Current Liabilities, Reserves and Funded Debt		$12,599,901.72
CAPITAL STOCK		
Preferred Stock . . . . . (Dividends Paid to April, 1921)	$28,455,200.00	
Common Stock	33,322,126.00	61,777,326.00
		$74,377,227.72

ERNEST E. HAMMERSEN,
Vice-President and Comptroller.

* $500,000 par value of First Refunding Mortgage 7½% Gold Bonds were retired on August 1, 1930.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY
(of Connecticut)
and
THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (of Delaware)
AND OTHER SUBSIDIARY COMPANIES

CONSOLIDATED PROFIT AND LOSS STATEMENT

FOR THE FISCAL YEAR ENDED JUNE 30, 1930

GROSS PROFIT FROM OPERATIONS (after deducting operating, selling and administrative expenses, and discounts and freights)		$ 3,858,278.95
Deduct:		
Reserves for Doubtful Receivables	$ 551,539.78	
Depreciation of Plants and Depletion of Mines . .	1,077,864.41	1,629,404.19
NET PROFIT FROM OPERATIONS		$ 2,228,874.76
Interest paid and accrued on Funded Debt		721,508.56
NET INCOME credited to Deficit Account		$ 1,507,366.20

DEFICIT ACCOUNT

DEFICIT at July 1, 1929		$16,116,731.08
Add:		
General Plant and Properties Reserves	$10,297,292.82	
Reserves for Phosphate Rock Deposits	11,325,701.15	
Reserves for Accounts and Notes Receivable . . .	2,105,047.58	
Contingency Reserve	1,500,000.00	25,228,041.55
		$41,344,772.63
NET INCOME for the Fiscal Year ended June 30, 1930 transferred from Profit and Loss Account		1,507,366.20
DEFICIT at June 30, 1930		$39,837,406.43

CERTIFICATE OF AUDITORS

NEW YORK,
AUGUST 14, 1930.

TO THE STOCKHOLDERS OF
THE AMERICAN AGRICULTURAL CHEMICAL COMPANY:

We have examined the books and accounts kept at the Head Office of The American Agricultural Chemical Company for the year ended June 30, 1930. The accounts and transactions of the Branch Offices and Subsidiary Companies, which have not been examined by us but have been certified as correct by responsible officials, are incorporated in the consolidated accounts submitted herewith and we certify that the attached Consolidated Balance Sheet has been correctly prepared therefrom and is in accordance therewith.

From information received from Branch Offices and Subsidiary Companies it is our opinion that proper provision has been made for losses and discounts in the liquidation of accounts and notes receivable. The inventories of manufactured products, materials and supplies, valued at cost, or market prices if lower, have been certified, both as to quantities and values, by officials of the Company. We verified the clerical accuracy thereof and satisfied ourselves that the valuations are on a fair and sound basis.

Operative properties, excepting Phosphate Rock Deposits, are stated in the Balance Sheet at cost, less depreciation, with a further deduction for obsolescence and General Plant Reserves as determined by the Company's officials and supported by the findings of independent engineers and appraisers. Phosphate Rock Deposits are stated at net values based on conservative estimates of market values and of the future utility of the properties made by the Company's officials and also supported by the findings of independent engineers and appraisers. Charges during the year to the plant and property accounts have been examined by us and, in our opinion, appear to be proper capital expenditures.

Properties not required for operating purposes and Sundry Investments are stated at their estimated realizable value.

Officials of the Company have certified to us and it appears that provision has been made for all liabilities incurred or accrued, and for possible additional assessments for Federal Taxes and other contingencies.

WE HEREBY CERTIFY, on the basis stated above, that the attached Consolidated Balance Sheet, in our opinion, fairly states the financial position of The American Agricultural Chemical Company as at June 30, 1930.

LINGLEY, BAIRD & DIXON.

Exhibit K

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

GRAYBAR BUILDING—420 LEXINGTON AVENUE

NEW YORK

DIRECTORS

J. HOWARD ARDREY
VICE PRESIDENT,
GUARANTY TRUST CO.,
NEW YORK

HORACE BOWKER
PRESIDENT, NEW YORK

ROBERT S. BRADLEY
BOSTON, MASS.

GEORGE C. CLARK
CLARK, DODGE & CO.,
NEW YORK

JOHN FOSTER DULLES
SULLIVAN & CROMWELL,
NEW YORK

CHARLES HAYDEN
HAYDEN, STONE & CO.,
NEW YORK

DIRECTORS

GEORGE C. LEE
LEE, HIGGINSON & CO.,
BOSTON, MASS.

GEORGE K. MORROW
CHAIRMAN,
GOLD DUST CORPORATION,
NEW YORK

RALPH A. POWERS
EXECUTIVE VICE PRESIDENT,
NEW YORK

PHILIP STOCKTON
PRESIDENT,
FIRST NATIONAL BANK,
BOSTON, MASS.

CHARLES B. WHITTLESEY
NEW LONDON, CONN.

SEPTEMBER 18, 1930.

TO THE STOCKHOLDERS OF

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY:

In the Company's last annual report, recently mailed to stockholders, attention was called to the desirability of some corporate readjustment which would eliminate the present capital impairment. The June 30, 1930, balance sheet of the Company showed net assets of $21,939,920 applicable to the $61,777,326 par value of preferred and common stock, thus indicating a capital stock deficit of $39,837,406. So long as this deficit exists, no dividends can legally be paid and, on the assumption of a maintenance of present values and continuation of net earnings at the rate of last year (which is substantially above the last five-year average), it would be over twenty-six years from now before the capital impairment, already existing since 1923, could be made good. Thus, under present conditions, all net earnings must, in effect, be impounded for a long period of time.

It is obviously contrary to the interest of the stockholders to perpetuate a situation where they must indefinitely forego dividends. Neither can it be ex-

pected to maintain a high morale within the Company if it is known in advance that earnings, which the organization is working to produce, can for many years serve no other purpose than to reduce an enormous book deficit. Furthermore, opportunities for expansion and development are seriously curtailed unless the Company has available stock which has dividend possibilities and which can be used as a basis for consolidations or acquisitions.

Your Directors have accordingly for some time been considering plans for a capital readjustment which will eliminate the paralyzing effects of the existing large impairment of the capital stock.

The recent annual report to stockholders referred to the fact that preliminary steps to this end had already been taken through the concentration of assets and business in The American Agricultural Chemical Company of Delaware, a wholly owned subsidiary company, with only one class of stock, *i.e.*, no par value common stock. A substantial part of your Company's properties is accordingly now vested in this Delaware subsidiary, and the balance is expected to be transferred before the plan for capital readjustment is declared operative. Furthermore, the Delaware Company has been substituted for the Connecticut Company as the obligor on the outstanding balance of the 7½% Mortgage Bonds. A situation thus results wherein your Company, the Connecticut Company, has become a holding company which owns the common stock of the Delaware Company. The latter Company has assumed the bonds, conducts the business, makes the profits and, not having a capital impairment, is in a position to pay dividends out of profits.

It is clearly in the interest of the stockholders of the Connecticut Company that they should have an opportunity to acquire directly the stock of the Delaware Company rather than leave this stock as the sole asset of the Connecticut Company. This latter course would have the result that such dividends as the Delaware Company might pay could not legally be passed on to the Connecticut Company stockholders, but would have to be held in the treasury of the Connecticut Company, due to its capital impairment.

Any such distribution of stock of the Delaware Company to Connecticut Company stockholders involves the problem of proper apportionment between the preferred and common stock of the Connecticut Company.

It is clear that the common stock has at the present time a position of very problematical value. The current annual dividend requirements on the outstanding preferred stock amount to $1,707,312 per annum and these dividends are cumulative. The accumulation of unpaid preferred dividends dates from April, 1921, and amounts to $16,219,464 as of October 1, 1930. On the assumption that average earnings hereafter would increase to as much as $2,000,000 per annum; and if these were applied first to making good the present capital impairment, and thereafter every dollar of such income paid out and applied to pay accumulated and current preferred dividends, it would be over 160 years before any profits could legally be paid as dividends on the common stock.

The preferred stock is likewise entitled to a preference in the assets on dissolution, and, in the event of a liquidation of the Company, it is highly unlikely that there could be realized even the preferential amounts due to the preferred stock. The common stock of the Delaware Company, which would constitute the sole asset of the Connecticut Company distributable on dissolution, has an asset value calculated at the equivalent of $77 per share of outstanding preferred stock of the Connecticut Company. This preferred stock has a capital preference of $100 per share, with accrued preferential dividends of $57 per share.

As a result of the foregoing considerations, your Directors have now formulated a plan of readjustment, under which, if the Plan is adopted, there will be issuable, in exchange for the present preferred and common stock of the Connecticut Company, 317,875 shares of no par value common stock of The American Agricultural Chemical Company of Delaware. 284,552 of these shares will be issuable for the present preferred stock of the Connecticut Company, on a share-for-share basis, and 33,323 shares will be issuable for the present Connecticut common stock, on the basis of one-tenth of a share of new Delaware stock issuable for each share of the present Connecticut common. On the assumption that the exchange is fully consummated, the present preferred stockholders as a class would thus own over 89% of the business and the common stockholders as a class would own slightly over 10% of the business. Your Directors believe that this adequately reflects such residual value as inheres in the present common stock and which, however problematical it may be, renders it inappropriate that the common stock should be wholly excluded from participation in a plan of voluntary reorganization.

To the extent that the Connecticut Company stock is exchanged for stock of the Delaware Company, the exchanging stockholders will, through the medium of their holdings in the Delaware Company, own their percentage of the entire business and properties heretofore owned by the Connecticut Company with the advantage that they will be in a position to receive dividends paid out of the earnings. To the extent that stockholders of the Connecticut Company do not elect to exchange, there will be left with the Connecticut Company that amount of stock of the Delaware Company which represents a proper proportion of the assets, so that the position of any non-depositing stockholder will not have been legally impaired. If all of the Connecticut Company stock is exchanged, that Company will disappear.

In order to effectuate the Plan, a Reorganization Committee, consisting of Horace Bowker, John Foster Dulles, Charles Hayden and George C. Lee, has been appointed and has entered into a Deposit Agreement designating The Chase National Bank of the City of New York, and Lee, Higginson Trust Company, Boston, Mass., as Depositaries. Copies of the Deposit Agreement and of the Charter and By-Laws of the Delaware Company may be obtained on application to either Depositary. The Balance Sheet of the Delaware Company as of June 30, 1930, after giving effect to the consummation of the Plan, is attached hereto. The Deposit Agreement sets out more fully the technical aspects of the Plan and gives the Reorganization Committee therein named power to vote the deposited stock. Stockholders desiring to make the exchange should arrange promptly to have their stock certificates endorsed in blank, witnessed and delivered to either Depositary, which will issue in exchange therefor its transferable Certificates of Deposit. Application will be made to list these Certificates of Deposit on the New York and Boston Stock Exchanges. Upon the Plan being declared operative, the stock of the Delaware Company will be issued against surrender of the Certificates of Deposit and application made to list the stock of the Delaware Company on the New York and Boston Stock Exchanges. It is provided in the Deposit Agreement, among other things, that the Plan will not be declared operative unless, in the opinion of the Committee therein named, deposits are sufficient to justify this course. If the Plan is not declared operative, the deposited stock will be returned without cost.

November 1, 1930, has been fixed as the time within which deposits of stock should be made.

Failure to effectuate a plan for substituting stock of the Delaware Company for that of the Connecticut Company, with a continuance of the present situation, means no prospect of stockholders of either class receiving any dividends for a great many years. Acceptance of the Plan will mean that the current earnings of the business may hereafter be legally paid out as dividends. Furthermore, the new capital set-up will permit of important additional advantages which, in the judgment of your Board, may substantially improve the future prospects and earning power of the business.

Stockholders desiring to deposit their stock pursuant to the Plan should send their certificates, duly endorsed, to either of the Depositaries as soon as possible, being careful to sign and return the enclosed letter of transmittal and to comply with the instructions set forth therein. There are enclosed herewith envelopes addressed to the Depositaries in New York and in Boston, to either of which the letters of transmittal and stock may be sent. Care should be taken to forward these letters by registered mail.

The Plan is unanimously approved by your Board of Directors, as being to the advantage of all of the stockholders, and you are urged to expedite its adoption by promptly depositing your stock.

Very truly yours,

Horace Bowker
John Foster Dulles
By DeLano Andrews
attorney-in-fact

Chandler Hovey
Upton C. Lee

Please address all communications to—
HORACE BOWKER,
420 LEXINGTON AVENUE
NEW YORK, N. Y.

Exhibit L

March 18, 1938

Mr. A. X. Johnson,
Chas. A. Day & Co., Inc.,
199 Washington Street,
Boston 8, Mass.

Dear Mr. Johnson:

We have received from your office the following Scrip Certificates:

The American Agricultural Chemical Company (Connecticut)
No. 748 - January 15, 1921 - - 2/100ths of a Share
No. 749 - " " " -- 8/100ths of a share
No.A970 - April 15, 1921 - - 2/100ths of a share
No.A971 - " " " - - 8/100ths of a share

The American Agricultural Chemical Company (Delaware)
No. B381 - January 2, 1931 - - 4/10ths of a share
No. B393 - " " " - - 1/10th of a share

Regarding the 4 scrip certificates of The American Agricultural Chemical Company (Connecticut), we advise - -

On May 22, 1935, The American Agricultural Chemical Company (Connecticut) was dissolved by resolution of its Board of Directors, which was duly ratified by its Stockholders at a special meeting called for that purpose. In accordance with Connecticut corporation law, the assets were thereupon liquidated and the net proceeds became available for distribution to the remaining Stockholders according to their respective rights. As, under the provisions of the certificate of incorporation, the Preferred stockholders of the Connecticut company were entitled to receive $100 per share, plus their accrued unpaid dividends, before any distribution could be made to holders of the Common stock, the entire proceeds of liquidations (amounting to $55.88 per share on the outstanding Preferred stock) were necessarily paid by the Trustees in Dissolution to the Preferred stockholders. The Common stock ~~(and Common scrip certificates)~~ thus have no equity and are of no value.

Mr. A. X. Johnson
Chas. A. Day & Co., Inc.
199 Washington Street
Boston 8, Mass.

Regarding the 2 scrip certificates of The American Agricultural Chemical Company (Delaware), as you will note from copy of letter enclosed, we are forwarding these to The Chase Manhattan Bank, Corporate Agency Department, 43 Exchange Place, New York, N. Y. for redemption and they will send you a check for the value of each, as established on June 15, 1931.

The 4 scrip certificates of The American Agricultural Chemical Company, which have no value, are returned to you herewith.

Very truly yours,

Hughes Mayo
Secretary and Treasurer

KCS
Encs

Exhibit M

TRUSTEES IN DISSOLUTION OF

The American Agricultural Chemical Company

(CONNECTICUT)

50 CHURCH STREET

NEW YORK. N. Y.

May 23, 1935.

To the Holders of Preferred Stock of

The American Agricultural Chemical Company (Conn.):

Action having been taken by the Board of Directors and by the Stockholders of the above named Company to terminate its corporate existence in the manner provided by law, the Company is now in process of dissolution.

The 15,403 shares of Capital Stock of The American Agricultural Chemical Company (Delaware) which, except for a small amount of cash, constituted the sole asset of the Company, have been sold at the price of $50.00 per share.

We have drawn a check to your order representing an initial liquidating dividend of $55.00 per share, on the Preferred Stock of the Connecticut Company, standing of record in your name on this date. This check will be delivered to you, or upon your order, against presentation of your Preferred Stock Certificate(s) to the Chase National Bank of the City of New York, Corporate Trust Department, at 11 Broad Street, New York, N. Y., for stamping of an appropriate endorsement thereon, evidencing the payment of such liquidating dividend.

After payment of the known debts of the Company and of this initial liquidating dividend, there will remain approximately $14,000.00 in cash. This has been reserved for the payment of any further valid claims of creditors and for expenses of the dissolution. If this sum should be in excess of the items for which it is reserved, such excess, will ultimately be available for the payment of a further and final liquidating dividend to holders of the Preferred Stock.

F. B. BOURNE

WALTER F. HARRIS

OTTO STEINHAUS

CHARLES L. SMIDDY

As Trustees in Dissolution of
The American Agricultural Chemical Company (Conn.)

Exhibit N

TRUSTEES IN DISSOLUTION OF

The American Agricultural Chemical Company

(CONNECTICUT)

50 CHURCH STREET

NEW YORK, N. Y.

NOTICE OF FINAL LIQUIDATING DIVIDEND

May 29, 1936.

To the Holders of Preferred Stock of
THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (CONN.):

Under date of May 23, 1935 you were advised of the dissolution of the above named Company and that an initial liquidating dividend of $55.00 per share had been declared and was available for immediate payment on the Preferred Stock of this Company standing of record in your name.

All known debts of the Company having now been paid and the time for filing claims having expired, the undersigned have declared a further and final liquidating dividend of Eighty-eight Cents ($.88) per share on the outstanding Preferred Stock of this Connecticut Company. A check in payment of this final liquidating dividend will be delivered to you, or upon your order, against presentation of your Preferred Stock certificate(s) to The Chase National Bank of the City of New York, Corporate Trust Department, at 11 Broad Street, New York, N. Y., for stamping with an appropriate endorsement evidencing the payment of such final dividend.

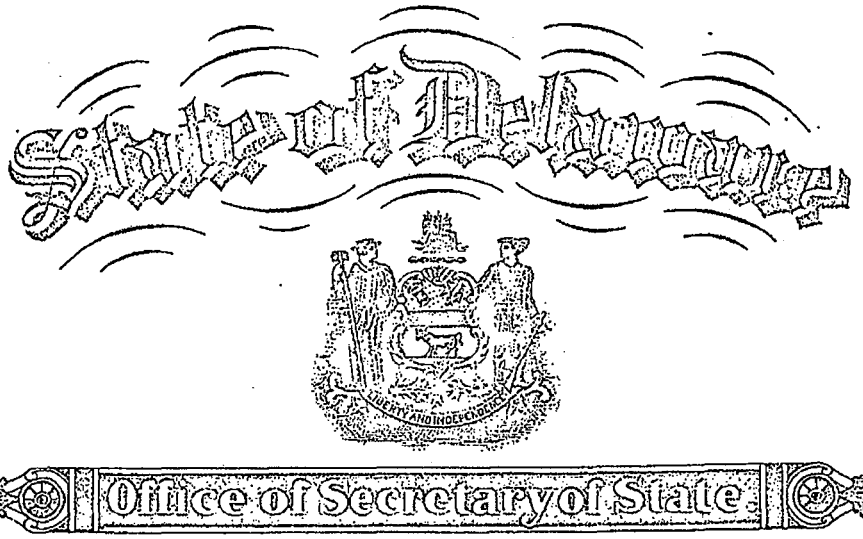
If you are one of those who have failed to call for the check representing the above mentioned initial dividend of $55.00 per share, you will be entitled to receive your share in this earlier distribution as well as the check for the final liquidating dividend, upon presentation of your Preferred Stock certificate(s) as aforesaid, for the stamping of appropriate endorsements thereon.

Please give this communication your immediate attention and present your stock certificate(s) without delay as there is no present expectation that further communications will be mailed to you for the purpose of reminding you.

Very truly yours,

F. B. BOURNE,
WALTER F. HARRIS,
OTTO STEINHAUS and
CHARLES L. SMIDDY,
As Trustees in Dissolution of
The American Agricultural
Chemical Company (Conn.)

Exhibit O



I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "FOS-KEM LIQUIDATION CORPORATION", as received and filed in this office the twelfth day of June, A.D. 1963, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this twelfth day of June in the year of our Lord one thousand nine hundred and sixty-three.

Elisha C. Dukes
Secretary of State

A. J. Davis
Ass't Secretary of State

FORM 121

State of Delaware
New Castle County } ss.

I, Leo J. Dugan, Jr., Recorder of Deeds for New Castle County, Delaware, do hereby certify that Certified Copy of

Certificate of Incorporation of the "FOS-KEM LIQUIDATION CORPORATION", as received and filed in the office of the Secretary of State on the twelfth day of June, A.D. 1963.

was received for record in this office on June 12, 1963

and the same appears of record in the Recorder's Office for said County.

Witness my hand and Official Seal, this twelfth day of June, A. D. 1963.

Leo J. Dugan Jr.
Recorder.

21

CERTIFICATE OF INCORPORATION

of

FOS-KEM LIQUIDATION CORPORATION
(a Delaware Corporation)

CERTIFICATE OF INCORPORATION

OF

FOS-KEM LIQUIDATION CORPORATION

* * * * *

FIRST. The name of the corporation is

FOS-KEM LIQUIDATION CORPORATION

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

(1) To manufacture, or otherwise produce, to buy, import, or otherwise procure, to mix, treat, or otherwise prepare for market, and to sell, distribute, transport, export and generally to deal in any and all manner of chemicals, chemical agents and material, acid, alkalies, bone black, gelatine, glue, fertilizers, phosphate rock, phosphate deposits, lime marl, bone and fertilizer and rendering material of every sort and description, and products of a similar, allied or different nature of every sort and description.

(2) To contract for, lease, purchase and otherwise acquire, to hold, own, maintain, improve, develop, work, mine, explore, exploit, operate, deal in and otherwise use, enjoy and turn to account, and to let, mortgage, exchange, sell, grant, transfer, convey and otherwise dispose of, any and all kinds of lands and real estate and any and all rights, privileges, options, leases, concessions, licenses, claims, patents, grants, franchises, easements, royalties, tenements, estates,

hereditaments and interests in and to property, real or personal, tangible or intangible, of every kind and description, including without limiting the generality of the foregoing, any and all property prospectively or actually productive of ores, minerals, metals, wood, coal, stone, peat, marl, clay, oil or gas or of chemicals or raw materials of any kind.

(3) To construct, lease, purchase or otherwise acquire, to hold, own, maintain, improve, operate or otherwise use, and to let, mortgage, sell, convey or otherwise dispose of or turn to account, any and all kinds of real and personal property and any and all rights and interests therein, useful or convenient in the conduct of the corporation's business, including, without limiting the generality of the foregoing:

(a) plants, refineries, mills, factories, laboratories, warehouses, storage tanks, offices, stores, residences and other buildings and structures;

(b) roadways, railways, bridges, tunnels, airports, reservoirs, dams, waterways, wharves, piers, docks, levers and other land or water installations and facilities;

(c) oil wells, gas wells, water wells, mines and quarries;

(d) pipelines and appurtenant pumps and pumping stations;

(e) drainage, irrigation, sewage, heat, light, power and communication systems;

(f) railroad rolling stock, automotive and other vehicles; tankers, boats, barges and other vessels; airplanes and other aircraft;

(g) machinery, tools, implements, appliances, equipment and apparatus of every kind and description.

(4) To manufacture, process, purchase, own, handle, sell, import, export and generally to trade and deal in and with substances, raw materials, goods, wares and merchandise of every kind, nature and description, and to engage or participate, as principal or agent, and either alone or jointly with others, in any mercantile, industrial or trading business of any kind or character whatsoever.

(5) To conduct, carry on and engage in any experimental or research work in chemical, engineering and any other scientific or technical fields, and to render to any person, firm, association or corporation services of an engineering, scientific, technical or business nature.

(6) To acquire all or any part of the business, good will, rights, assets and property of any person, firm, association or corporation, to pay for the same in whole or in part in cash or with the stock, bonds or debentures of the corporation or otherwise, and to assume all or any part of the obligations and liabilities of any such person, firm, association or corporation.

(7) To apply for, register, obtain, take leases, licenses and immunities in respect of, purchase or otherwise acquire, and to hold, own, introduce, use, enjoy, develop, manufacture and sell under, grant leases, licenses and immunities in respect of, mortgage, pledge, sell, assign, transfer or otherwise dispose of or turn to account, and in any manner deal with:

(a) inventions, devices, designs, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, copyrights, trade names, trade-marks and other distinctive words and symbols indicating origin or ownership, granted by or recognized under the laws of the United States of America or of any state or subdivision thereof, or of any foreign country or subdivision thereof;

(c) any and all rights, privileges, licenses, grants and concessions connected with or appertaining to the foregoing.

(8) To acquire by purchase, subscription or otherwise, to receive, own and hold for investment or otherwise, to mortgage, pledge, deposit, exchange, sell, assign, transfer or otherwise dispose of, and generally to deal in or with, any and all of the following (hereinafter sometimes referred to collectively as "securities") to wit: all kinds of shares, stocks, voting trust certificates, trust certificates, scrip, warrants, rights, bonds, mortgages, debentures, trust receipts, notes and other choses in action, obligations and evidences of indebtedness of any corporation, joint-stock company, trust, association, partnership, syndicate, person, or governmental or public agency or authority, domestic or foreign, and evidences of any interest therein

or with respect thereto; and while the owner or holder of any such securities, to exercise all the rights, powers and privileges of ownership or interest in respect thereof, including the right to vote and to give consents, and to do any and all acts or things deemed by the corporation to be necessary or advisable for the preservation, protection, improvement or enhancement of the value of such securities.

(9) To purchase, or otherwise acquire, hold, sell, pledge, transfer or otherwise dispose of, and to reissue or cancel, shares of the corporation's own capital stock and any other securities or obligations of the corporation in the manner and to the extent now or hereafter permitted by the laws of the State of Delaware; provided that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly.

(10) To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(11) To borrow or raise money for any of the purposes of the corporation; from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortgage upon, or pledge, conveyance or assignment in trust of, the whole or any part of the assets and property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such securities or other obligations of the corporation for its corporate purposes.

(12) To lend money to others, with or without collateral security; provided that no loans shall be made by the corporation to its officers and directors, and no loans shall be made by the corporation secured by shares of its own capital stock.

(13) To guarantee the payment of dividends on any stock, or the principal or interest or both of any bonds or other securities or obligations, and the performance of any contracts.

(14) To establish and maintain one or more offices, to conduct and carry on its business or operations or any part thereof, and to exercise any or all of its corporate rights, privileges and powers, in any or all of the states, districts, territories, colonies or dependencies of the United States of America and in any and all foreign countries and the territories, colonies or dependencies thereof.

(15) To conduct, carry on or engage in any other businesses, operations, or activities in connection with or incidental to those above mentioned, and to do everything necessary, proper, advisable or convenient for the attainment of any of the objects, the accomplishment of any of the purposes and the exercise of any of the powers hereinabove mentioned.

The objects and purposes specified in the foregoing clauses shall be construed as powers as well as objects and purposes, and the matters referred to in each clause shall, unless herein otherwise expressly provided, be in nowise limited by reference to or inference from the terms of any other clause (or any other matter within the same clause), but shall be regarded as independent objects, purposes and powers. The enumeration herein of objects, purposes and powers shall not be deemed to exclude by inference or otherwise any of the rights, privileges, powers, objects or purposes which this corporation is or may be entitled to exercise under the laws of the State of Delaware now or hereafter in effect or implied by reasonable construction of said laws.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is ten thousand (10,000) shares, all of which are to be without par value and of one class.

FIFTH. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000.00).

SIXTH. The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCES
C. Gorham Phillips	27 Warfield Street Upper Montclair, N.J.
Stanley Garrett	144 East 24th Street New York 10, N.Y.
Walter F. Diehl, Jr.	54-48 63rd Place Maspeth 78, N.Y.

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. The following provisions are inserted for the management of the business and for the conduct of the affairs of the corporation and for further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders:

(1) In furtherance and not in limitation of the powers conferred by statute, the board of directors of the corporation is expressly authorized:

(a) without the assent or vote of the stockholders, except where otherwise expressly provided in the by-laws, to make, alter, amend or repeal the by-laws of the corporation;

(b) to set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and to vary the amount of or abolish any such reserve in the manner in which it was created;

(c) to determine the use and disposition of any surplus or net profit of the corporation and to fix the times for the declaration and payment of dividends;

(d) to authorize and cause to be executed mortgages and liens upon any or all of the property and assets of the corporation;

(e) to determine from time to time whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation (other than the stock ledger), or any of them, shall be open to the inspection of stockholders;

(f) to exercise all such further powers and authority as may be lawfully conferred upon the directors in the by-laws of the corporation.

(2) The corporation may enter into contracts or transact business with one or more of its directors or officers, or with any corporation or firm of which one or more of its directors or officers are directors, officers or members, or in which they may have a pecuniary or other interest; and, in the absence of fraud, such contracts or transactions shall not be invalidated or in any wise affected by the fact that such directors or officers are so connected with or have any interest in any such corporation or firm even though the vote or action of such directors or officers may have been necessary to obligate the corporation upon such contracts or transactions, provided that the fact of such interest shall have been disclosed or shall have been known to all of the directors of the corporation. At any meeting of the board of directors of the corporation which shall authorize or ratify any such contract or transaction, any such director having such connection or interest may vote or act thereat with like force and effect as if he did not have such connection or interest, provided that in such case such connection or interest shall have been disclosed or shall have been known to all of the directors. No director or officer shall be disqualified from holding office as director or officer of the corporation by reason of any such connection or interest. In the absence of fraud, no director or officer having any such connection or interest shall be liable

(5) Meetings of the stockholders of the corporation may be held outside the State of Delaware, if the by-laws so provide.

(6) The books of the corporation may be kept (subject to any provisions contained in the statutes) outside the State of Delaware at such place or places as may from time to time be designated by the board of directors.

(7) Election of directors of the corporation need not be by ballot unless otherwise provided in the by-laws.

TENTH. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BE IT REMEMBERED that on this 10th day of June, A.D. 1963, personally came before me, ROBERT JOSEPH ALEXANDER, a Notary Public for the County of New York, C. GORHAM PHILLIPS, STANLEY GARRETT and WALTER F. DIEHL, JR., all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

/s/ Robert Joseph Alexander
Notary Public

[Notarial Seal]

ROBERT JOSEPH ALEXANDER
Notary Public - State of New York
No. 30-0039980
Qualified in Nassau County
Certificate filed with N.Y. County Clerk
Term Expires March 30, 1965

Exhibit P

[CONFORMED COPY]

14

AGREEMENT

BETWEEN

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

AND

CONTINENTAL OIL COMPANY

Dated July 11, 1963

THIS AGREEMENT dated July 11, 1963, between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a Delaware corporation (hereinafter called AAC), and CONTINENTAL OIL COMPANY, a Delaware corporation (hereinafter called Continental),-

WITNESSETH:

Continental desires to have a wholly-owned subsidiary (hereinafter called Continental's Subsidiary) acquire all of AAC's assets, business and goodwill in exchange for shares of Continental's $2 Cumulative Convertible Preferred Stock without par value (hereinafter called Preferred Stock) and for the assumption by Continental's Subsidiary of all of AAC's liabilities and obligations, subject to the further provisions of this Agreement.

AAC desires that all of AAC's properties be exchanged solely for shares of Preferred Stock and for the assumption by Continental's Subsidiary of such liabilities and obligations of AAC as aforesaid, whereupon AAC will dissolve and completely liquidate and distribute to the holders of its Common Stock, *pro rata,* all its right, title and interest in and to the shares of Preferred Stock to be received by AAC as aforesaid, all as hereinafter more fully provided, and for the purpose of carrying out a tax-free reorganization within the meaning of the Internal Revenue Code of 1954.

NOW, THEREFORE, in consideration of the premises and the respective agreements hereinafter set forth, AAC and Continental hereby agree as follows:

1. **Sale and Transfer of AAC's Assets and Certain Related Transactions.**

(a) *Sale and Transfer of Assets.* Subject to the terms and conditions of this Agreement, AAC will sell, convey, transfer and deliver to Continental's Subsidiary, and Continental will cause Continental's Subsidiary to acquire and accept, at the Closing, all of AAC's then existing assets and business as a going concern including, without limitation, the issued and outstanding capital stock owned by AAC in its subsidiary corporations (such corporations being listed in Section 5(b) and hereinafter called the Subsidiaries), AAC's 50% stock interest in North Carolina Phosphate Corporation, and all of AAC's goodwill and its right to the use of its name, but excluding such portion of the funds in the account referred to in subsection (e) of this Section 1 as is expended in accordance with the provisions of said subsection.

(b) *Consideration for Such Sale and Transfer.* At the Closing, subject to the terms and conditions of this Agreement, and in full consideration of the aforesaid sale, conveyance, transfer and delivery,

(i) Continental will deliver to AAC a certificate or certificates for 2,100,000 shares of Preferred Stock to be authorized, such shares to have the powers, preferences and rights and the qualifications, limitations or restrictions set forth in Exhibit A hereto, and such delivery to be made by Continental in such authorized full share denominations, and registered in such name or names, as AAC shall request in writing; and

(ii) Continental's Subsidiary will deliver to AAC an undertaking whereby Continental's Subsidiary assumes and agrees to pay, perform and discharge all debts, liabilities, obligations, taxes and contracts of AAC of any kind, character or description, whether accrued, absolute, contingent or otherwise (and whether or not reflected or reserved against in AAC's balance sheets, books of account and records), all as the same shall exist at the Closing Date. The assumption by Continental's Subsidiary of the debts, liabilities and obligations of AAC shall expressly exclude the following: any tax imposed upon AAC by reason of the sale and transfer of its assets and business, or upon any stockholder of AAC by reason of his receipt of any shares of Preferred Stock pursuant to this Agreement; any of the liabilities or expenses of AAC in entering into and carrying out its obligations under, or its dissolution and liquidation contemplated by, this Agreement; and any obligations or liabilities incurred by AAC for actions taken by AAC subsequent to the Closing Date. The foregoing assumption by Continental's Subsidiary of the debts, liabilities and obligations of AAC is expressly for the benefit of AAC and its stockholders, directors, officers and employees, may be enforced by any of them, and shall survive the Closing Date. Continental agrees that unless it obtains from the holders of AAC's 3¾% Promissory Notes due 1964-71 a general release of AAC, its directors, officers or stockholders, from any and all liability with respect to the payment of and

due performance of the obligations under said Notes, Continental shall guarantee such payment and due performance by Continental's Subsidiary.

(c) *Instruments of Conveyance and Transfer, Etc.* AAC will deliver to Continental's Subsidiary at the Closing

(i) such deeds, bills of sale, endorsements, assignments, and other good and sufficient instruments of conveyance and transfer, in form satisfactory to Continental's counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, as shall be effective to vest in Continental's Subsidiary all of AAC's title to and interest in the assets and business to be sold, conveyed, transferred and delivered hereunder, all as provided in this Agreement, and

(ii) all of AAC's contracts and commitments, books (except minute and stock books and any other records which AAC is, by law, required to retain in its possession), records and other data relating to its assets, business and operations, and, simultaneously with such delivery, will take such steps as may be requisite to put Continental's Subsidiary in actual possession and operating control of such assets and business and transfer to Continental's nominees any directors' qualifying shares of the Subsidiaries.

(d) *Further Assurances.* From time to time after the Closing and for a period of three years thereafter, at Continental's request and expense but without further consideration, AAC will

(i) execute and deliver such other instruments of conveyance and transfer and take such other action as Continental reasonably may require more effectively to vest in Continental's Subsidiary, and to put Continental's Subsidiary in possession of, any property to be sold hereunder, and,

(ii) in the case of contracts and rights which cannot be transferred effectively without the consent of third parties, use AAC's best efforts to assure to Continental's Subsidiary the benefits thereof.

(e) *AAC's Liquidation and Dissolution Expenses.* In order to provide for the payment of the liquidation and dissolution expenses of AAC and the expenses of AAC incurred in entering into and carrying out its obligations pursuant to this Agreement, on or prior to the Closing Date AAC will establish a special account in an amount not to exceed $1,000,000 with a commercial bank acceptable to Continental in New York City. The persons authorized to draw upon this account shall be agents designated by the Board of Directors of AAC; withdrawals shall be made, however, only for purposes and in amounts previously approved in writing by a representative of Continental designated for that purpose, who shall be a former executive officer of AAC. As promptly as practicable after the Closing Date, and from time to time thereafter, AAC shall ascertain, in its reasonable discretion, whether any amount in the account will not be required for the purpose of paying the expenses and payments described above. When and as AAC shall have made such determination, it shall promptly transfer and assign such amount not so required to Continental.

2. **Closing.** The closing of the transactions provided for in subsections (a), (b) and (c) of Section 1 (herein called the Closing) shall take place at the office of The Corporation Trust Company, 15 Exchange Place, Jersey City, New Jersey, at 10 A. M., on September 11, 1963, *provided* that either Continental or AAC, by written notice or notices to the other from time to time, shall be entitled to postpone the Closing to a date not later than 45 days after such date. If due to causes beyond the control of either Continental or AAC, the Closing is not consummated on such first mentioned date or within 45 days thereafter, this Agreement, unless mutually extended in writing authorized by the Boards of Directors or authorized committees of Continental and AAC, shall terminate without liability of any kind on the part of either Continental or AAC. The date of the Closing is referred to in this Agreement as the Closing Date.

3. **Approval by AAC's Stockholders; Liquidation and Dissolution of AAC.** AAC will duly convene a meeting of its stockholders, to be held prior to the Closing Date, for the purpose of voting upon the sale and transfer contemplated hereby and the change of name and liquidation and dissolution of AAC hereinafter provided for. At the Closing AAC will take such action as may be required to change its name to one which does not include the name "American Agricultural Chemical" or any variant thereof so that Continental's Subsidiary may adopt such name if it wishes to do so. Promptly after the Closing AAC will take such action as may be required to liquidate and distribute to its stockholders, *pro rata,* all its right, title and interest in and to the shares of Preferred Stock received by AAC under this Agreement upon

the surrender by such stockholders for cancellation of AAC's Common Stock, and to dissolve and terminate its corporate existence.

4. Authorization of Continental's New Stock. Continental hereby agrees that it will duly convene a meeting of its stockholders, to be held prior to the Closing Date, for the purpose of voting upon a proposal to amend Article FOURTH of its Certificate of Incorporation to read as set forth in Exhibit A.

5. Representations and Warranties by AAC. AAC hereby represents and warrants as follows:

(a) *AAC's Organization, Capitalization, Etc.* AAC is a corporation duly organized, validly existing and in good standing under the laws of Delaware and has corporate power to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in the States of Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin. AAC's authorized capital stock consists of 2,500,000 shares of Common Stock without par value, of which 2,100,000 shares are validly issued and outstanding, fully paid and non-assessable. There are no existing options, calls or commitments of any character relating to AAC's authorized and unissued stock. The copies of AAC's Certificate of Incorporation and By-Laws which have been delivered to Continental are complete and correct. The consummation of the transactions contemplated by this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, agreement, indenture or other instrument applicable to AAC or any of the Subsidiaries.

(b) *Subsidiaries' Organization, Capitalization, Etc.* AAC has three Subsidiaries and the following information with respect to them is correct:

Name	Jurisdiction of Incorporation	Authorized Shares of Capital Stock	Outstanding Shares of Capital Stock
The American Agricultural Chemical Company.....	Florida	250	25
The American Agricultural Chemical Company.....	New Jersey	4,000	4,000
Agricultural Chemicals Limited.....	Canada	2,500	2,500

In each case, the par value per share of stock is $100. All of the outstanding shares of stock of the Subsidiaries are validly issued, fully paid and non-assessable, and, except for directors' qualifying shares, are owned by AAC, free and clear of all liens, charges and encumbrances. Each of the Subsidiaries is a corporation duly organized and existing and in good standing under the laws of the jurisdiction of its incorporation and has corporate power to carry on its business as it is now being conducted. The Subsidiary incorporated in Florida conducts business in that State; the Subsidiary incorporated in New Jersey was formerly qualified to do business in Cuba but is now inactive; the Subsidiary incorporated in Canada is qualified to do business in the Provinces of Ontario and Quebec. There are no existing options, calls or commitments of any character relating to any of the Subsidiaries' authorized or issued stock. The copies of the Subsidiaries' charters and by-laws which have been delivered to Continental are complete and correct.

(c) *Authority.* The execution, delivery and performance of this Agreement by AAC, including, without limitation, the sale, conveyance, transfer, and delivery contemplated hereby, have been duly and effectively authorized and consented to by AAC's Board of Directors, subject to approval by the holders of two-thirds of the outstanding Common Stock of AAC.

(d) *Financial Statements and Other Data.* AAC has delivered to Continental copies of the following financial statements, all of which are true and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently followed (except as stated in the explanatory notes attached to such statements and, in the case of interim statements, except for year-end adjustments) throughout the periods covered by such statements, and present fairly the consolidated financial position of AAC and the Subsidiaries as at the dates, or the consolidated results of their operations for the periods, covered by such financial statements:

18

(1) The financial statements included in AAC's Annual Reports to the Securities and Exchange Commission on Form 10-K for the fiscal years ended June 30, 1959, 1960, 1961 and 1962, all certified by Price Waterhouse & Co., independent accountants;

(2) A consolidated balance sheet of AAC and its Subsidiaries as at March 31, 1963 (hereinafter referred to as AAC's Consolidated March 31, 1963 Balance Sheet) and a consolidated statement of their income and retained earnings for the nine months then ended (each certified by AAC's Comptroller);

(3) A balance sheet of Agricultural Chemicals Limited as at June 30, 1962 (certified by Price Waterhouse & Co.) and as at March 31, 1963 (certified by said Subsidiary's Vice-President); and

(4) A statement of said Subsidiary's income and retained earnings for each of the fiscal years ended June 30, 1959, 1960, 1961 and 1962 (all certified by Price Waterhouse & Co.) and for the nine months ended March 31, 1963 (certified by said Subsidiary's Vice-President).

AAC has also delivered to Continental the following documents, the information contained in each of which is accurate and, in view of the purposes for which it was given, complete in all material respects as of the dates for which such information was given:

(5) AAC's Prospectus dated May 6, 1959 and all Forms 8-K and 10-K filed by AAC with the SEC since May 1, 1959; and

(6) AAC's annual reports to stockholders for the fiscal years ended June 30, 1959, 1960, 1961 and 1962.

AAC has exhibited to Continental complete and correct copies of the Federal income tax and state income tax and franchise tax returns relative to the operations of AAC and the Subsidiaries for each of the five calendar years ended December 31, 1961, together with complete and correct copies of all reports of Federal and state tax authorities relating to examinations of such returns.

(e) *Absence of Undisclosed Liabilities.* Except as and to the extent reflected or reserved against in AAC's Consolidated March 31, 1963 Balance Sheet and except for intercompany notes and accounts receivable or payable eliminated upon consolidation, neither AAC nor any of its Subsidiaries as of March 31, 1963 had any material liabilities or obligations (whether accrued, absolute, contingent or otherwise), including, without limitation, any uninsured liabilities resulting from failure to comply with any law applicable to AAC or any of the Subsidiaries or to the conduct of the business of one or more of them, and any tax liabilities due or to become due and whether (i) incurred in respect of or measured by AAC's or the Subsidiaries' income for any period prior to the close of business on March 31, 1963, or (ii) arising out of transactions entered into, or any state of facts existing, prior thereto.

(f) *Absence of Certain Changes or Events.* Since March 31, 1963, there has not been:

(1) any material and adverse change in AAC's or the Subsidiaries' financial condition, assets, liabilities or business (other than changes in the ordinary course of business and changes consented to by Continental in writing);

(2) any declaration, setting aside or payment of any dividend or other distribution in respect of AAC's Common Stock except the payment in June 1963 of a cash dividend of 25 cents per share and except as permitted by Section 8(d);

(3) any increase in the regular rate of compensation payable by AAC or the Subsidiaries to any of their officers or employees whose current annual salary rate is $15,000 or more, or any increase over the amount thereof paid for the fiscal year ended June 30, 1962 in any bonus, incentive compensation, service award or like benefit (hereinafter encompassed in the term bonus) authorized, granted or accrued to any such officers or employees; *provided* that this representation does not apply to or prohibit any such increase or payment (i) consented to by Continental or (ii) reflected in, or made pursuant to plans or agreements attached to, the list furnished pursuant to subsection (k)(7) of this Section 5, or (iii) an increase not exceeding $50,000 for all such officers and employees (over and above increases or payments covered

by (i) and (ii)) in the aggregate bonuses payable to them for the fiscal year ended June 30, 1963 over the aggregate bonuses paid to them for the fiscal year ended June 30, 1962;

(4) any pension, retirement or similar benefit arrangement made or agreed to by AAC or the Subsidiaries other than pursuant to AAC's Retirement Benefit Plan and Pension Plan; *provided* that this representation does not apply to or prohibit any arrangement consented to by Continental or reflected in the list furnished pursuant to subsection (k)(8) of this Section 5; or

(5) any significant labor trouble, or any other event or condition of any character (whether or not covered by insurance) which has materially and adversely affected or will so affect the properties or results of operations of AAC and the Subsidiaries as a whole.

(g) *Tax Matters.* The provisions made for taxes on AAC's Consolidated March 31, 1963 Balance Sheet are sufficient for the payment of all accrued unpaid federal, dominion, state, provincial, county and local taxes of AAC and the Subsidiaries, whether or not disputed. AAC's and the Subsidiaries' federal income and excess profits tax returns have been audited by the Federal Internal Revenue Service for all years to and including the calendar year ended December 31, 1958. The results of such audits are properly reflected in the financial statements referred to in Section 5(d), all deficiencies proposed as a result of such audits having been paid and settled. There are no agreements by AAC or any of the Subsidiaries for the extension of the time for the assessment of any material amounts of tax, and all federal, dominion, state, provincial, county and local taxes due and payable by AAC or the Subsidiaries on or before the date of this Agreement have been paid.

(h) *Accounts and Notes Receivable.* The accounts and notes receivable of AAC and the Subsidiaries shown on AAC's Consolidated March 31, 1963 Balance Sheet, or thereafter acquired by them, have been collected or are current and collectible at the aggregate recorded amounts thereof less applicable reserves computed in accordance with AAC's past practice (which reserves are adequate).

(i) *Inventories.* The inventories of AAC and the Subsidiaries shown on AAC's Consolidated March 31, 1963 Balance Sheet, or thereafter acquired by them, consist of items of a quality and quantity usable or salable in the normal course of the respective businesses of AAC and the Subsidiaries; the value of all items of obsolete materials and of materials of below standard quality has been written down to realizable market value or adequate reserves provided therefor; and the values at which such inventories are carried reflect the normal inventory valuation policy of AAC and the Subsidiaries of stating the inventories at average cost or market, whichever is lower.

(j) *Title to Properties; Absence of Liens and Encumbrances, Etc.* AAC and the Subsidiaries, together, have good and marketable title to all their properties and assets, real and personal (including those reflected in AAC's Consolidated March 31, 1963 Balance Sheet, except as since sold or otherwise disposed of in the ordinary course of business or as consented to by Continental in writing and except as located in Cuba), free and clear of all liens and encumbrances, except the lien of current taxes not yet due and payable, and except such imperfections of title, easements and encumbrances, if any, as are not substantial in character, amount or extent, and do not materially detract from the value, or interfere with the present use, of the properties subject thereto or affected thereby, or otherwise materially impair business operations. Except for any lease with respect to property located in Cuba, all leases pursuant to which AAC or any Subsidiary leases real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default, or any event which with notice or lapse of time or both would constitute a default and in respect of which AAC has not taken adequate steps to prevent a default from occurring. Neither AAC nor any Subsidiary has received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or its owned or leased properties which has not been complied with.

(k) *Descriptions of Properties and Contracts and Personnel Data.* AAC has delivered to Continental accurate lists as of May 1, 1963 (except as otherwise specified in such lists) of the following:

(1) all real property owned or leased by AAC and the Subsidiaries, with maps identifying the principal facilities, buildings and structures located at any plant locations, and a description of all

phosphate properties owned or leased by AAC or any of the Subsidiaries (full existing geological data in respect of such phosphate properties having been made available to Continental by AAC);

(2) all major items of mining machinery and equipment owned or leased by AAC and the Subsidiaries;

(3) all material patents, patent applications, trademarks, trademark registrations and applications therefor, trade names, copyrights, and copyright registrations and applications therefor, presently owned, in whole or in part, by AAC or the Subsidiaries, all of which are in good standing, and any material patent, trademark or copyright licenses to which any one or more of them may be a party;

(4) by summary groupings, all automobiles, trucks, rolling stock or other conveyances owned by AAC or the Subsidiaries;

(5) all policies of insurance (including fidelity bonds covering officers and employees) in force with respect to AAC or the Subsidiaries and, without restricting the generality of the foregoing, those covering their respective properties, buildings, machinery, equipment, furniture, fixtures and operations;

(6) all agreements which in any case involve future payment by or to AAC and the Subsidiaries (i) of more than $100,000, or (ii) of more than $50,000 over a period which extends beyond December 31, 1963; and all incentive compensation, profit-sharing, retirement, pension or other "fringe benefit" plans or arrangements, with respect to all of which, except as indicated on the list, neither AAC nor the Subsidiaries are in default or know of any reason why any default in respect thereof will occur at any time hereafter;

(7) the names and current annual salary rates of all AAC's and the Subsidiaries' present officers and employees whose current annual regular salary rate is $15,000 or more, together with a summary of or copies of the plans establishing any bonuses paid or payable to such persons for the fiscal year ended June 30, 1962, and to the extent existing on the date of this Agreement, for the fiscal year ended June 30, 1963;

(8) the names and ages of all AAC's and the Subsidiaries' pensioned employees whose pensions are unfunded and their current annual or monthly unfunded pension rates; and

(9) the name of each bank in which AAC or any Subsidiary has an account or safe-deposit box and the names of all persons authorized to draw thereon or to have access thereto.

Complete and correct copies of the agreements, plans and arrangements referred to in the foregoing subdivision (6) have been delivered or made available to Continental. AAC and the Subsidiaries do not have outstanding any letters of credit or powers of attorney, except routine powers of attorney relating to representation before governmental agencies. AAC has delivered to Continental a memorandum dated April 8, 1963 containing an estimate of AAC's High Grade (minimum 73% Bone Phosphate of Lime or tricalcium phosphate) and Standard Grade (minimum 68% to and including 72.99% Bone Phosphate of Lime or tricalcium phosphate) minable phosphate reserves (measured in long tons of 2,240 lbs.) in Central Florida. For purposes of this Agreement the word "minable" shall mean recoverable from real property on an economic and competitive basis by the employment of conventional mining and separation methods now in general use in the phosphate mining area of Central Florida by AAC or other phosphate producing companies.

(l) *Litigation.* Except for suits, if any, of a character incident to the normal conduct of AAC's or the Subsidiaries' businesses and involving a potential recovery against AAC or the Subsidiaries of not more than $100,000 in the aggregate, suits involving liabilities adequately covered by insurance in force on the date of this Agreement, and suits described in the memorandum regarding litigation heretofore delivered to Continental by AAC, there is no litigation, proceeding or governmental investigation pending, or so far as known to the executive officers of AAC, in prospect or threatened, against or relating to AAC or any of the Subsidiaries, or their respective properties or businesses, or the transactions contemplated by this Agreement.

(m) *No Brokers.* All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by AAC or its counsel directly with Continental, without the intervention of any person as the result of any act of AAC (and, so far as known to AAC, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission, finder's fee or other like payment.

6. Representations and Warranties by Continental. Continental hereby represents and warrants as follows:

(a) *Continental's Organization.* Continental is a corporation duly organized, validly existing and in good standing under the laws of Delaware. The consummation of the transactions contemplated by this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, agreement, indenture or other instrument applicable to Continental.

(b) *Continental's Capitalization.* Continental's authorized capital stock consists of 24,000,000 shares (par value $5 per share), of which, on March 31, 1963, 21,436,296 shares were validly issued and outstanding, 112,979 shares were held in Continental's treasury (including 93,895 shares held in the treasury of a subsidiary, of which 70,273 shares were reserved for issuance upon the exercise of certain stock options and upon conversion of debentures issued by such subsidiary), and 377,525 shares were reserved for issuance (i) under Continental options now outstanding or (ii) under Continental options which may hereafter be granted pursuant to its Restricted Stock Option Plan for Officers and Other Key Employees; since March 31, 1963 no shares of its capital stock have been issued or acquired by Continental, directly or indirectly, and no contracts or commitments made for their issuance or acquisition, except for the issuance of shares of capital stock pursuant to options now or heretofore outstanding and the grant of options pursuant to the aforesaid Plan.

(c) *Financial Statements and Other Data.* Continental has delivered to AAC copies of the following financial statements, all of which are true and complete in all material respects, have been prepared in accordance with generally accepted accounting principles consistently followed (except as stated in the explanatory notes attached to such statements and, in the case of interim statements, except for year-end adjustments) throughout the periods covered by such statements, and present fairly the consolidated financial position of Continental and its subsidiaries as at the dates, or the consolidated results of their operations for the periods, covered by such financial statements:

(1) The financial statements included in Continental's Annual Reports to the Securities and Exchange Commission on Form 10-K for the years ended December 31, 1959, 1960, 1961 and 1962, all certified by independent accountants; and

(2) Unaudited interim financial statements included in Continental's quarterly report to stockholders for the first quarter of 1963.

Continental has also delivered to AAC the following documents, the information contained in which is accurate and, in view of the purposes for which it was given, complete in all material respects as of the dates for which such information was given:

(3) Continental's Prospectus dated May 2, 1961; and

(4) Continental's annual reports to stockholders for the years 1959, 1960, 1961 and 1962.

(d) *Authority.* The execution, delivery and performance of this Agreement by Continental have been duly and effectively authorized and consented to by Continental's Board of Directors, subject to approval by Continental's stockholders as required by law.

(e) *Regarding Continental's Shares.* The shares of Preferred Stock to be issued or transferred to AAC, pursuant to this Agreement, for distribution to its stockholders as provided in Section 3, will, when so issued or transferred, have the powers, preferences and rights, and the qualifications, limitations or restrictions, set forth in Exhibit A, and be validly issued and outstanding, fully paid and non-assessable. The shares of Continental's Common Stock issuable upon conversions of shares of the Preferred Stock will, when so issued, be validly issued and outstanding, fully paid and non-assessable.

(f) *No Brokers.* All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Continental directly with AAC or its counsel, without the intervention of any person as the result of any act of Continental (and, so far as known to Continental, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission, finder's fee or other like payment.

(g) *Litigation.* Except for suits, if any, of a character incident to the normal conduct of the business of Continental and its subsidiaries and involving a potential recovery against Continental or its subsidiaries of

not more than $2,000,000 in the aggregate, suits involving liabilities adequately covered by insurance in force on the date of this Agreement, and suits described in the memorandum regarding litigation heretofore delivered to AAC by Continental, there is no litigation, proceeding or governmental investigation pending, or so far as known to the executive officers of Continental, in prospect or threatened, against or relating to Continental or any of its subsidiaries, or their respective properties or businesses, or the transactions contemplated by this Agreement.

7. Access to and Information Concerning Properties and Records, Etc. AAC will give to Continental and to Continental's accountants, engineers, counsel and other representatives full access, during normal business hours throughout the period prior to the Closing, to all of AAC's and the Subsidiaries' properties, books, contracts, commitments and records. AAC will furnish Continental during such period with all such information concerning AAC's and the Subsidiaries' affairs as Continental reasonably may request. AAC and Continental will cooperate in furnishing each other with all information necessary or appropriate for inclusion in the proxy statements to be used in connection with the meetings of stockholders referred to in Sections 3 and 4. Unless and until the Closing has been consummated Continental and its representatives will hold in strict confidence all data and information obtained in confidence from AAC and if the transactions herein provided for are not consummated as contemplated herein, Continental will return to AAC all such data as AAC may reasonably request. After the Closing, Continental and Continental's Subsidiary shall make available to AAC at any reasonable time during business hours for any proper purpose any books, records and other data delivered by AAC.

8. Conduct of Business Pending the Closing. AAC hereby agrees that, pending the Closing and except as otherwise permitted by this Agreement or as consented to by Continental in writing:

(a) AAC's and the Subsidiaries' businesses shall be conducted only in ordinary course, which (without limitation) shall include the maintenance in force of the insurance policies and fidelity bonds referred to in Section 5(k)(5) or policies or bonds providing substantially the same coverage.

(b) No change shall be made in the Certificate of Incorporation or Charter or By-Laws of AAC or any of the Subsidiaries, except that AAC may amend its By-Laws to change the date of its annual meeting of stockholders.

(c) No change shall be made in AAC's authorized and unissued stock, or in, or in the ownership by AAC of, the Subsidiaries' issued and outstanding capital stocks, nor shall any option or commitment be granted or made relating to AAC's or the Subsidiaries' authorized capital stocks or their issued capital stocks owned by AAC. In addition, no change shall be made in the ownership by AAC of shares of the capital stock of North Carolina Phosphate Corporation, nor shall any option or commitment be granted or made with respect thereto or any vote or consent given by AAC with respect to any change in the outstanding stock of said corporation.

(d) No dividend or other distribution or payment shall be made or paid in respect of AAC's Common Stock except the payment in September 1963 of a cash dividend not exceeding 25 cents per share, and, if the Closing is postponed beyond November 30, 1963, being the last day of the contemplated Preferred Stock quarter-yearly dividend period beginning September 1, 1963, or beyond the last day of any subsequent contemplated Preferred Stock quarter-yearly dividend period, AAC may declare and pay cash dividends not exceeding 25 cents per share for each such contemplated Preferred Stock quarter-yearly dividend period subsequent to September 1, 1963 and prior to the Closing.

(e) No increase shall be made in the regular rate of compensation payable by AAC or any of the Subsidiaries to any officer or employee if in any case after such increase the total annual salary rate payable by AAC and/or the Subsidiaries would exceed $15,000; no bonus in excess of the bonus paid to any such officer or employee for the fiscal year ended June 30, 1962 shall be paid by AAC or any of the Subsidiaries unless such increased bonus is permitted by the proviso in Section 5(f)(3); and no pension, retirement or similar benefits shall accrue or be paid to any officer or employee of AAC or the Subsidiaries except pursuant to the arrangements described in lists furnished pursuant to Section 5(k)(6) and (8).

(f) No borrowing shall be made by AAC or any of the Subsidiaries except short-term borrowing in the ordinary course of business for normal seasonal requirements.

(g) No change shall be made in the banking and safe deposit arrangements reflected in the list referred to in Section 5(k)(9) without prior written notice to Continental giving the details of such change.

(h) AAC will use its best efforts, consistent with conducting its business in accordance with its own business judgment, to preserve its business organization and that of each Subsidiary intact; to keep available to Continental the services of AAC's and each Subsidiary's present officers and employees; and to preserve for Continental the goodwill of AAC's and the Subsidiaries' suppliers, customers and others having business relations with any of them.

9. Conditions Precedent to Continental's Obligations Hereunder. All obligations of Continental under this Agreement are subject to the fulfillment (or waiver in writing by Continental), prior to or at the Closing, of each of the following conditions:

(a) Continental shall not have discovered any error, misstatement or omission in the representations and warranties made in Section 5 by AAC (i) which alone is, or in the aggregate are, materially adverse to Continental, (ii) of which Continental promptly gave notice to AAC upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of Continental so that Continental incurs no detriment therefrom.

(b) AAC's representations and warranties contained in this Agreement shall be deemed to have been made again at and as of the time of the Closing and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; AAC shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Continental shall have been furnished with a certificate of appropriate officers of AAC, dated the Closing Date, certifying in such detail as Continental may request to the fulfillment of the foregoing conditions.

(c) The sale of all of the property and assets of AAC to Continental's Subsidiary in exchange for shares of Preferred Stock, the change of AAC's name and its dissolution, in accordance with the provisions of this Agreement, shall have been authorized and approved by the holders of not less than two-thirds of AAC's outstanding Common Stock.

(d) The proposal to authorize and issue 2,100,000 shares of Preferred Stock as contemplated hereby shall have been authorized and approved by the holders of not less than a majority of Continental's outstanding capital stock.

(e) Continental shall have received a signed copy of an opinion of Price Waterhouse & Co., dated the Closing Date and addressed to AAC, in form and substance satisfactory to Continental, to the effect that in their opinion the provision for income taxes made in the consolidated balance sheet of AAC and the Subsidiaries as at June 30, 1963 is adequate to provide for payment of all then accrued and unpaid federal and dominion income taxes of AAC and the Subsidiaries, whether or not disputed, for the fiscal year ended June 30, 1963 and for all fiscal years prior thereto.

(f) Continental shall have been furnished with an opinion, dated the Closing Date, of counsel for AAC, Messrs. Sullivan & Cromwell, to the effect that

(1) AAC is a corporation duly organized and existing and in good standing under the laws of Delaware and has corporate power to carry on its business as it is then being conducted;

(2) AAC's authorized capital stock consists of 2,500,000 shares of Common Stock without par value, of which 2,100,000 shares are issued and outstanding;

(3) the execution, delivery and performance of this Agreement by AAC have been duly authorized and approved by all requisite action of AAC's Board of Directors and stockholders, and this Agreement has been duly executed and delivered by AAC and constitutes a valid and binding obligation of AAC in accordance with its terms;

(4) all other actions and proceedings required by law or this Agreement to be taken by AAC, at or prior to the Closing, in connection with this Agreement and the transactions provided for herein, have been duly and validly taken; and

(5) except as may be specified by such counsel, they do not know of any litigation, proceeding or governmental investigation pending or in prospect or threatened against or relating to AAC or any of the Subsidiaries, its or their properties or businesses, or the transactions contemplated by this Agreement other than litigation of the type and in the amounts referred to in Section 5(l) hereof or in the memorandum referred to therein.

Such opinion shall also cover such other matters incident to the transactions herein contemplated as Continental and its counsel may reasonably request. In rendering their opinion, Messrs. Sullivan & Cromwell may rely on certificates of officers of AAC, opinions of other counsel and such other evidence as they may deem necessary or desirable. The provisions of the preceding sentence are applicable to all other opinions of counsel to be delivered hereunder.

(g) Continental shall have been furnished with an opinion, dated the Closing Date, of Messrs. Osler, Hoskins and Harcourt of Montreal, Canada, in form and substance satisfactory to Continental, to the effect that Agricultural Chemicals Limited is a corporation duly organized and existing and in good standing under the laws of Canada; that said Subsidiary has corporate power to carry on its business as then being conducted; that said Subsidiary is duly qualified to do business and is in good standing in the Provinces of Ontario and Quebec; that the capitalization and ownership of the shares of said Subsidiary are as set forth in Section 5(b); and that all of the outstanding shares of stock of said Subsidiary are validly issued, fully paid and non-assessable.

(h) Continental in the exercise of due diligence shall have been able to obtain, to the extent it deems it desirable to do so, legal opinions or other evidence in form and substance satisfactory to Continental, to the effect (i) that AAC and/or the Subsidiaries, at the time of the Closing, had good and marketable title to the real property reflected in AAC's Consolidated March 31, 1963 Balance Sheet, free and clear of all liens and encumbrances as stated in Section 5(j), subject only to the exceptions mentioned in Section 5(j), (ii) that except for any lease with respect to property located in Cuba, all leases pursuant to which AAC or any Subsidiary leases real property are in good standing, valid and effective in accordance with their respective terms and, to the best knowledge of counsel, there is no material existing default under any thereof, and (iii) that the instruments of conveyance and transfer executed and delivered by AAC at the Closing are valid in accordance with their terms and effectively vest in Continental's Subsidiary (A) good and marketable title, of the character stated in subdivision (i) above, to all the real property referred to in such subdivision which is not owned by a Subsidiary, and (B) all right, title and interest of AAC in and to all leases to which it or any Subsidiary is a party and AAC's other assets and its business and goodwill, as contemplated by this Agreement.

(i) Continental's Subsidiary, to the extent it deems it desirable and upon due application therefor, shall have received policies of title insurance (or commitments for such policies) in jurisdictions where such insurance is available in form satisfactory to Continental's counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, insuring, in amounts deemed adequate by Continental, fee simple interests in the real properties reflected in AAC's Consolidated March 31, 1963 Balance Sheet, any exceptions or defects specified in such policies (and any exceptions, defects or violations relating to such properties or to the operations of AAC and the Subsidiaries, respectively, otherwise reported to such counsel) to be subject (if not of the nature specified in Section 5(j)) to the approval of such counsel.

(j) Continental shall have received an opinion, dated the Closing Date, of its counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, (i) to the effect set forth in subdivision (3) of the foregoing paragraph (f), (ii) stating that the form of the instruments of conveyance and transfer referred to in Section 1(c) is in compliance with this Agreement, and (iii) to the effect that the shares of Preferred Stock to be issued and delivered to AAC as provided in Section 1(b)(i), and the shares of Continental's Common Stock issuable upon conversions of such shares of Preferred Stock, are not required to be registered under the Securities Act of 1933, as amended to the Closing Date.

(k) The shares of Preferred Stock to be delivered to AAC under this Agreement for distribution to its stockholders as provided in Section 3, and the shares of Continental's Common Stock issuable upon conversions of such shares of Preferred Stock, shall have been duly authorized for listing on the New York Stock

Exchange upon official notice of issuance, Continental hereby undertaking to take all appropriate action available to it to obtain such authorization. Further all Blue Sky findings and permits required to carry out the transactions contemplated hereunder shall have been made and received.

(l) A firm of independent geologists or an independent geologist selected by Continental shall have delivered to Continental a written report certifying that the geological data referred to in Section 5(k)(1) is substantially accurate and that, based upon AAC's method of prospecting, in areas designated as minable by AAC the amounts of AAC's High Grade (minimum 73% Bone Phosphate of Lime or tricalcium phosphate) and Standard Grade (minimum 68% to and including 72.99% Bone Phosphate of Lime or tricalcium phosphate) minable phosphate rock reserves in Central Florida are as of June 30, 1963 not less than 30,000,000 long tons and 110,000,000 long tons, respectively.

(m) AAC shall have obtained all necessary consents in writing, in form satisfactory to Continental, to AAC's assignment to Continental's Subsidiary of (i) any contracts or commitments of AAC which Continental may reasonably deem material to the operation of AAC's business, (ii) AAC's 50% stock interest in North Carolina Phosphate Corporation, and (iii) any contracts or commitments of AAC with respect to such stock interest.

(n) AAC shall have delivered to Continental appropriate certificates of good standing with respect to AAC from all jurisdictions in which AAC is qualified to do business and with respect to Agricultural Chemicals Limited from all provinces in which it is qualified to do business.

(o) The Securities and Exchange Commission and the New York Stock Exchange shall not object to Continental's treatment of the transactions contemplated by Section 1 as a pooling of interests for accounting purposes.

(p) No action or proceeding against Continental or the consummation of this Agreement shall have been instituted or any investigation undertaken that might eventuate in any such action or proceeding or order of any court entered on or before the Closing Date which, in the opinion of Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, renders it impossible or inadvisable for Continental to consummate this Agreement.

(q) The written tax ruling or rulings referred to in Section 10(f) shall have been received.

(r) AAC's proxy statement for the meeting of its stockholders referred to in Section 3 shall not have disclosed any materially adverse change in the properties or results of operations of AAC and the Subsidiaries not disclosed in this Agreement or in the information furnished to Continental prior to the execution hereof and referred to herein.

10. Conditions Precedent to the Obligations of AAC Hereunder. All obligations of AAC under this Agreement are subject to the fulfillment (or, except for the conditions set forth in Section 10(f), waiver in writing by AAC), prior to or at the Closing, of each of the following conditions:

(a) AAC shall not have discovered any error, misstatement or omission in the representations and warranties made in Section 6 by Continental (i) which alone is, or in the aggregate are, materially adverse to AAC, (ii) of which AAC promptly gave notice to Continental upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of AAC so that AAC incurs no detriment therefrom.

(b) Continental's representations and warranties contained in this Agreement shall be deemed to have been made at and as of the time of the Closing and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; Continental shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and AAC shall have been furnished with a certificate of one of Continental's Vice Presidents, dated the Closing Date, certifying in such detail as AAC may request to the fulfillment of the foregoing conditions.

(c) Continental shall have delivered to AAC an opinion, dated the Closing Date, of Continental's counsel, Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, to the effect that

(1) both Continental and Continental's Subsidiary are corporations duly organized and existing and in good standing under the laws of Delaware;

(2) the execution, delivery and performance of this Agreement by Continental have been duly authorized and approved by all requisite action of Continental's Board of Directors, and this Agreement has been duly executed and delivered by Continental and constitutes a valid and binding obligation of Continental in accordance with its terms;

(3) the shares of Preferred Stock delivered to AAC under this Agreement for distribution to its stockholders as provided in Section 3, (i) have been duly authorized and validly issued, (ii) are fully paid and non-assessable, and (iii) have been duly authorized for listing on the New York Stock Exchange upon official notice of issuance;

(4) the shares of Continental's Common Stock issuable upon conversions of shares of Preferred Stock delivered to AAC (i) have been duly authorized, (ii) will be fully paid and non-assessable when so issued upon such conversions, (iii) have been duly reserved for issuance, and (iv) have been duly authorized for listing on the New York Stock Exchange upon official notice of issuance;

(5) the undertaking provided for in Section 1(b)(ii) and the guaranty referred to in Section 10(l), if such guaranty be delivered pursuant thereto, have been duly executed and delivered and are binding and effective in accordance with their terms; and

(6) the shares of Preferred Stock to be issued and delivered to AAC as provided in Section 1(b)(i), and the shares of Continental's Common Stock issuable upon conversions of such shares of Preferred Stock, are not required to be registered under the Securities Act of 1933, as amended to the Closing Date.

(d) Continental since the date of this Agreement shall not have granted any options on its capital stock except for the grant of options pursuant to its Restricted Stock Option Plan for Officers and Other Key Employees as now in effect.

(e) Continental since the date of this Agreement shall not have declared or paid or made any dividend or distribution on any shares of its capital stock which would be excessive in the light of Continental's past dividend policies.

(f) There shall have been received a written ruling or rulings of the Internal Revenue Service satisfactory to Messrs. Sullivan & Cromwell and Messrs. Dewey, Ballantine, Bushby, Palmer & Wood to the effect that for Federal income tax purposes (i) no gain or loss will be recognized to AAC upon consummation of the sale of its assets and business as provided in this Agreement, (ii) no gain or loss will be recognized to the holders of AAC's Common Stock upon distribution to them in liquidation, upon surrender of such stock, of shares of Preferred Stock, as contemplated hereby, (iii) the Preferred Stock is not classed as section 306 stock or, in the alternative, the disposition of the Preferred Stock will not be subject to the taxing provisions of section 306(a) of the Internal Revenue Code, and (iv) the assets acquired by Continental's Subsidiary will have a basis to it not less than the basis such assets had to AAC at the Closing Date; *provided* that if any such ruling shall contain any condition or provision as to any of the foregoing, such condition or provision shall have been met, and *provided further* that if a timely ruling to the effect provided in clause (iii) shall not have been received, AAC shall promptly request an opinion from Messrs. Sullivan & Cromwell to the effect that the Preferred Stock is not classed as section 306 stock, and AAC shall be obligated to consummate this Agreement unless it shall have failed to receive such opinion prior to or at the Closing. AAC shall promptly take all appropriate action available to it to obtain such ruling or rulings and, in furtherance thereof, to work in cooperation with Continental's counsel named above. Continental agrees, for the benefit of AAC, its officers, directors and stockholders, that Continental will not, before or after the Closing, take or permit any of its subsidiaries to take any action with respect to the shares of Preferred Stock distributed by AAC in accordance with this Agreement in respect of shares of AAC Common Stock held by Continental or any of its subsidiaries, which would be inconsistent with the representations made to the Internal Revenue Service as a basis for such ruling or rulings and which would make such ruling or rulings inapplicable, *provided* that Continental shall have no liability by reason of its foregoing agreement to any person against whom a liability is asserted on the basis that such ruling or rulings have been made inapplicable by reason of a breach by Continental of the foregoing agreement unless such person affords Continental the opportunity, at Continental's expense, to participate in all negotiations concerning, and to conduct and control litigation (which may at the option of Continental

be conducted in the Tax Court of the United States) in respect of, any such asserted liabilities and cooperates with Continental in the defense against such asserted liabilities.

(g) The sale of all of the property and assets of AAC to Continental's Subsidiary in exchange for shares of Preferred Stock, the change of AAC's name and its dissolution, in accordance with the provisions of this Agreement, shall have been authorized and approved by the holders of not less than two-thirds of AAC's outstanding Common Stock.

(h) The proposal to authorize and issue 2,100,000 shares of Preferred Stock as contemplated hereby shall have been authorized and approved by the holders of not less than a majority of Continental's outstanding capital stock.

(i) No action or proceeding against AAC or the consummation of this Agreement shall have been instituted or any investigation undertaken that might eventuate in any such action or proceeding or order of any court entered on or before the Closing Date which, in the opinion of Messrs. Sullivan & Cromwell, renders it impossible or inadvisable for AAC to consummate this Agreement.

(j) The shares of Preferred Stock to be delivered to AAC under this Agreement for distribution to its stockholders as provided in Section 3, and the shares of Continental's Common Stock issuable upon conversions of such shares of Preferred Stock, shall have been duly authorized for listing on the New York Stock Exchange upon official notice of issuance.

(k) There shall not have been since the date hereof any material adverse change in the financial condition or results of operations of Continental and its Subsidiaries, taken as a whole, and Continental and its Subsidiaries shall not have sustained any loss of or damages to any of their properties, whether or not insured, which alone is, or in the aggregate are, material to their business, taken as a whole.

(l) Continental shall have guaranteed the payment and due performance of the obligations of Continental's Subsidiary under AAC's 3¾% Promissory Notes due 1964-71 or, alternatively, shall have obtained from the holders thereof their general release of AAC, its directors, officers and stockholders from any and all liability with respect to such payment and performance.

11. **Employee Benefit Plans.** Continental presently intends, and agrees to cause Continental's Subsidiary, to continue in effect AAC's Retirement Benefit Plan and Employee Pension Plan as they exist on the date of this Agreement, subject to the provisions in such Plans for amendment or termination. If Continental or Continental's Subsidiary decides to terminate said Employee Pension Plan, the assets in the Trust Fund under said Pension Plan will be distributed as provided in said Pension Plan.

12. **Bulk Sales Law.** Continental hereby waives compliance by AAC with the provisions of the Bulk Sales Law of any State.

13. **Termination of Representations and Warranties and Certain Agreements.** The respective representations and warranties of AAC and Continental contained in Sections 5 and 6 (other than those of Continental set forth in Section 6(e)) and those provided for in the first clauses of Sections 9(b) and 10(b) shall expire with, and be terminated and extinguished by, the Closing under this Agreement on the Closing Date, and neither AAC nor Continental shall be under any liability whatsoever with respect to any such representation or warranty, it being intended that the sole remedy of either party for a breach of any such representation or warranty shall be to elect not to proceed with the Closing if such breach has resulted in a condition to such party's obligations hereunder not being satisfied. This Section shall have no effect upon any other obligation of Continental or AAC in this Agreement, whether to be performed before or after the Closing, *provided* that Continental's sole remedy for a breach of AAC's agreements in subsection (a) and the last sentence of subsection (c) of Section 8 shall be to elect not to proceed with the Closing.

14. **Notices, Etc.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class postage prepaid,

(a) if to AAC, to Mr. C. M. Powell, President, The American Agricultural Chemical Company, 100 Church Street, New York, New York, or

(b) if to Continental, to Mr. L. F. McCollum, President, Continental Oil Company, Suite 4618, 30 Rockefeller Plaza, New York, New York.

15. Amendments and Termination. Continental and AAC, by mutual consent of their respective Boards of Directors or authorized committees or officers, may amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by AAC and Continental; *provided* that no such amendment or modification shall change the number of shares of Continental to be issued pursuant to this Agreement or the conditions to AAC's obligations set forth in Section 10(f), and *provided further* that no such amendment or modification shall change the provisions with respect to the transfer of AAC's assets to, and assumption of its liabilities by, Continental's Subsidiary, and the distribution to AAC's stockholders of shares of Continental's stock upon the surrender by the stockholders of AAC, for cancellation, of all of AAC's outstanding Common Stock, in any manner which would materially and adversely affect the rights of AAC's stockholders. Continental and AAC, by mutual consent of their Boards of Directors, may terminate this Agreement at any time prior to the Closing and, unless otherwise specifically provided in such consent, any such termination shall be without liability of any kind on the part of either Continental or AAC.

16. General. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, *provided* that no stockholder of AAC shall have any liability as such hereunder to Continental, Continental's Subsidiary or any other person; nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of New York.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement in Newark, New Jersey the date first above written.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By C. M. POWELL
President

[CORPORATE SEAL]

Attest:

HUGHES MAYO
Secretary

CONTINENTAL OIL COMPANY

By L. F. MCCOLLUM
President

[CORPORATE SEAL]

Attest:

P. J. DOMINIC
Secretary

STATE OF NEW JERSEY
COUNTY OF ESSEX } ss.:

On the 11th day of July, 1963, before me personally came C. M. POWELL, to me known, who, being by me duly sworn, did depose and say: That he resides at 616 Embree Crescent, Westfield, New Jersey; that he is the President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

FRANCES M. RYAN
Notary Public

[NOTARIAL SEAL]

FRANCES M. RYAN
Notary Public of New Jersey
My commission expires Feb. 19, 1968

STATE OF NEW JERSEY
COUNTY OF ESSEX } ss.:

On the 11th day of July, 1963, before me personally came L. F. MCCOLLUM, to me known, who, being by me duly sworn, did depose and say: That he resides at 3620 Inverness Drive, Houston, Texas; that he is the President of CONTINENTAL OIL COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

FRANCES M. RYAN
Notary Public

[NOTARIAL SEAL]

FRANCES M. RYAN
Notary Public of New Jersey
My commission expires Feb. 19, 1968

Exhibit Q

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

Fos-Kem Liquidation Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of Fos-Kem Liquidation Corporation, a resolution was duly adopted setting forth a proposed amendment to the Certificate of Incorporation of said corporation, and declaring said amendment advisable. The resolution setting forth the proposed amendment is as follows:

> RESOLVED, that the Board of Directors hereby proposes and declares it advisable that Article FIRST of the Certificate of Incorporation of this corporation be amended to read as follows:
>
> "FIRST. The name of the corporation is AMERICAN AGRICULTURAL CHEMICAL COMPANY."

SECOND: That the amendment has been consented to by the holder of all the issued and outstanding stock of this corporation entitled to vote, by a written consent given in accordance with the provisions of Section 228 of

the General Corporation Law of the State of Delaware, and filed with this corporation.

THIRD: That said amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of this corporation will not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, Fos-Kem Liquidation Corporation has caused its corporate seal to be hereunto affixed and this certificate to be signed by C. Gorham Phillips, its President, and Walter F. Diehl, Jr., its Secretary, this 15th day of October, 1963.

FOS-KEM LIQUIDATION CORPORATION

By C. Gorham Phillips
President

By Walter F. Diehl, Jr.
Secretary

FOS-KEM LIQUIDATION CORPORATION
CORPORATE SEAL
1963
DELAWARE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BE IT REMEMBERED that on this 15th day of October, A.D. 1963, personally came before me, Robert Joseph Alexander, a Notary Public in and for the County and State aforesaid, C. Gorham Phillips, President of Fos-Kem Liquidation Corporation, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said C. Gorham Phillips as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Secretary of said corporation to said foregoing certificate are in the handwriting of the said President and Secretary of said corporation respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Robert Joseph Alexander
Notary Public

ROBERT JOSEPH ALEXANDER
NOTARY PUBLIC
STATE OF NEW YORK

ROBERT JOSEPH ALEXANDER
Notary Public - State of New York
No. 30-0039980
Qualified in Nassau County
Certificate filed with N. Y. County Clerk
Term Expires March 30, 1965

Exhibit R

CERTIFICATE OF INCORPORATION

OF

AGRICO CHEMICAL COMPANY

* * * * *

FIRST. The name of the corporation is

AGRICO CHEMICAL COMPANY

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

(1) To produce, manufacture, refine, extract, mine, treat and otherwise process, to purchase or otherwise acquire, to store, transport or otherwise handle, and to deal in, distribute, market, sell or otherwise dispose of or turn to account, any or all of the substances hereinafter mentioned and any or all ingredients or compositions thereof, of any state, form, nature, mixture or description, and any and all derivatives, products or by-products of any or all of said substances, to wit:

(a) organic and inorganic chemicals and fertilizers;

(b) oil, gas and other hydrocarbons;

(c) metallic and non-metallic minerals.

(2) To construct, lease, purchase or otherwise acquire, to hold, own, maintain, improve, operate or otherwise use, and to let, mortgage, sell, convey or otherwise dispose of or turn to account, any and all kinds of real and personal property and any and all rights and interests therein, useful or convenient in the conduct of the Corporation's business, including, without limiting the generality of the foregoing:

(a) plants, mills, factories, refineries, laboratories, warehouses, storage tanks, offices, stores, residences and other buildings and structures;

(b) roadways, railways, bridges, tunnels, airports, reservoirs, dams, waterways, wharves, piers, docks, levees and other land or water installations and facilities;

(c) oil wells, gas wells, water wells, mines and quarries;

(d) pipelines and appurtenant pumps, pumping stations and electrical powerlines;

(e) drainage, irrigation, sewage, heat, light, power and communication systems;

(f) agricultural equipment; railroad, rolling stock, automotive and other vehicles; tankers, boats, barges and other vessels; airplanes and other aircraft;

(g) machinery, tools, implements, appliances, equipment and apparatus of every kind and description.

(3) To contract for, lease, purchase and otherwise acquire, to hold, own, maintain, improve, develop, work, explore, exploit, operate, deal in and otherwise use, enjoy and turn to account, and to let, mortgage, exchange, sell, grant, transfer, convey and otherwise dispose of, any and all kinds of lands and real estate and any and all rights,

privileges, options, leases, concessions, licenses, claims, patents, grants, franchises, easements, royalties, tenements, estates, hereditaments, and interests in and to property, real or personal, tangible or intangible, of every kind and description.

(4) To manufacture, process, purchase, own, mine, handle, sell, import, export and generally to trade and deal in and with substances, raw materials, goods, wares and merchandise of every kind, nature and description, and to engage or participate, as principal or agent, and either alone or jointly with others, in any mercantile, industrial or trading business of any kind or character whatsoever.

(5) To conduct, carry on and engage in any experimental or research work in agricultural, chemical, engineering and any other scientific or technical fields, and to render to any person, firm, association or corporation services of an engineering, scientific, technical or business nature.

(6) To acquire all or any part of the business, good will, rights, assets and property of any person, firm, association or corporation, to pay for the same in whole or in part in cash or with the stock, bonds or debentures of the Corporation or otherwise, and to assume all or any part of the obligations and liabilities of any such person, firm, association or corporation.

(7) To apply for, register, obtain, take leases, licenses and immunities in respect of, purchase or otherwise acquire, and to hold, own, introduce, use, enjoy, develop, manufacture and sell under, grant leases, licenses and immunities in respect of, mortgage, pledge, sell, assign, transfer or otherwise dispose of or turn to account, and in any manner deal with:

(a) inventions, devices, designs, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, copyrights, trade-names, trade-marks and other distinctive words and symbols indicating origin or ownership granted by or recognized under the laws of the United States of America or of any state or subdivision thereof or of any foreign country or subdivision thereof;

(c) any and all rights, privileges, licenses grants and concessions connected with or appertaining to the foregoing.

(8) To acquire by purchase, subscriptions or otherwise, to receive, own and hold for investment or otherwise, to mortgage, pledge, deposit, exchange, sell, assign, transfer or otherwise dispose of, and generally to deal in or with, any and all of the following (hereinafter sometimes referred to collectively as "securities") to wit: all kinds of shares, stocks, voting trust certificates, trust certificates, scrip, warrants, rights, bonds, mortgages, debentures, trust receipts, notes and other choses in action, obligations and evidences of indebtedness of any corporation, joint-stock company, trust, association, partnership, syndicate, person, or governmental or public agency or authority, domestic or foreign, and evidences of any interest therein or with respect thereto; and while the owner or holder of any such securities, to exercise all the rights, powers and privileges of ownership or interest in respect thereof, including the right to vote and to give consents, and to do any and all acts or things deemed by the Corporation to be necessary or advisable for the preservation, protection, improvement or enhancement of the value of such securities.

(9) To purchase, or otherwise acquire, hold, sell, pledge, transfer or otherwise dispose of, and to reissue or cancel, shares of the Corporation's own capital stock and any other securities or obligations of the Corporation in

the manner and to the extent now or hereafter permitted by the laws of the State of Delaware; provided that shares of its own capital stock belonging to the Corporation shall not be voted upon directly or indirectly.

(10) To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(11) To borrow or raise money for any of the purposes of the Corporation; from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortgage upon, or pledge, conveyance or assignment in trust of, the whole or any part of the assets and property of the Corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such securities or other obligations of the Corporation for its corporate purposes.

(12) To lend money to others, with or without collateral security; provided that no loans shall be made by the Corporation to its officers and directors, and no loans shall be made by the Corporation secured by shares of its own capital stock.

(13) To guarantee the payment of dividends on any stock, or the principal or interest or both of any bonds or other securities or obligations, and the performance of any contracts.

(14) To establish and maintain one or more offices, to conduct and carry on its business or operations or any

part thereof,and to exercise any or all of its corporate rights, privileges and powers, in any or all of the states, districts, territories, colonies or dependencies of the United States of America and in any and all foreign countries and the territories, colonies or dependencies thereof.

(15) To conduct, carry on or engage in any other businesses, operations or activities in connection with or incidental to those above mentioned, and to do everything necessary, proper, advisable or convenient for the attainment of any of the objects, the accomplishment of any of the purposes and the exercise of any of the powers hereinabove mentioned.

The objects and purposes specified in the foregoing clauses shall be construed as powers as well as objects and purposes, and the matters referred to in each clause shall, unless herein otherwise expressly provided, be in nowise limited by reference to or inference from the terms of any other clause, but shall be regarded as independent objects, purposes and powers. The enumeration herein of objects, purposes and powers shall not be deemed to exclude by inference or otherwise any of the rights, privileges, powers, objects or purposes which this Corporation is or may be entitled to exercise under laws of the State of Delaware now or hereafter in effect or implied by reasonable construction of said laws.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is two hundred (200); all of such shares shall be without par value.

FIFTH. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000.00).

SIXTH. The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCES
S. H. Livesay	Wilmington, Delaware
F. J. Obara, Jr.	Wilmington, Delaware
A. D. Grier	Wilmington, Delaware

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or in

the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

TENTH. Meetings of stockholders may be held outside the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

ELEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this day of January, A. D. 1966.

S. H. LIVESAY (SEAL)

F. J. O'HARA, JR. (SEAL)

A. D. GREA (SEAL)

STATE OF DELAWARE }
COUNTY OF NEW CASTLE } ss:

BE IT REMEMBERED that on this day of January, A. D. 1966, personally came before me, a Notary Public for the State of Delaware, S. H. Livesay, F. J. Obara, Jr. and A. D. Grier all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

A. DANA ATWELL Notary Public

A. DANA ATWELL
NOTARY PUBLIC
APPOINTED OCT. 29, 1965
STATE OF DELAWARE
TERM TWO YEARS

State of Delaware

Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "AGRICO CHEMICAL COMPANY", as received and filed in this office the twenty-seventh day of January, A.D. 1966, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this fourth day of February in the year of our Lord one thousand nine hundred and sixty-six.

Elisha C Dukes

Secretary of State

A F Adams

Ass't Secretary of State

FORM 120

14879

Re-

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 11 1972
Arlen S. Erdahl
Secretary of State

CERTIFICATE OF INCORPORATION

OF

AGRICO CHEMICAL COMPANY

12639

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 2[illegible] 1966
[illegible]
Secretary of State

Cert 12686

Exhibit S

Continental Oil Company Annual Report 1965

tinued. In the past four years, Continental's programs to increase marketing efficiency and replace below-standard marketing properties have led to a 34% increase in average sales volume per "CONOCO" station.

Expansion of "CONOCO" brand marketing along interstate highway systems will be continued in 1966. It is estimated that within the next decade, over a quarter of the country's motor traffic will move on this network of superhighways.

The Company's sales of LPG through Company-owned retail outlets and to other retail dealers increased 13% in 1965, reflecting continuing emphasis on this sales channel.

Plant Foods

Plant foods sales in 1965 reached $130 million, an increase of 18% over sales in the previous year. Costs for purchased anhydrous ammonia and other materials increased, however, and sales prices were lower due to a late selling season caused by adverse weather conditions.

Several significant steps were taken in 1965 to strengthen Continental's position in the plant foods industry. Construction of a 347,000-ton a year anhydrous ammonia plant near Blytheville, Arkansas, commenced in June and was completed in February 1966. Production from this new plant will reduce the Company's requirements for outside purchases of anhydrous ammonia and is expected to result in cost savings in 1966 and additional savings in 1967. Ammonia storage terminals at Wilder, Kentucky, and Mount Vernon, Indiana, were completed during 1965 and provide additional storage for the Blytheville plant's output.

In August, an expansion of the new phosphate products manufacturing complex near Pierce, Florida, was completed. This doubled the capacity of the complex to produce sulfuric and phosphoric acids, which are used in the preparation of high-analysis fertilizers. Raw material cost savings were not fully realized in 1965 because of plant start-up expenses and less than a full year of operations.

An expansion of the Company's phosphate fertilizer complex at Pierce, Florida, was completed in August.

A new phosphate mine was completed in the Payne Creek area, near Pierce, doubling the Company's capacity to produce phosphate rock from three million to six million tons annually.

In 1965, the Company extended distribution of plant foods into North Dakota, South Dakota, and Nebraska. The Company also added new distribution outlets to meet the farmer's growing demand for bulk mixed fertilizer and direct application materials.

In January 1966, the Agrico Chemical Company was established as a division to conduct Continental's domestic plant foods business. Headquartered in Memphis, Tennessee, Agrico will coordinate the operations of the Mid-South Chemical Company Division and American Agricultural Chemical Company.

Demand for plant foods in the United States in 1965 rose over 9% from 1964, as the use of fertilizer continued to be the most economical way for farmers to increase crop yields. Demand increased 12% for nitrogen, 7% for phosphate, and 8% for potash.

Worldwide demand has also accelerated dramatically. The world population growth, which is outstripping increases in food production, is the basic force behind the rising demand for plant foods.

Chemicals and Plastics

Continental produces in its own plants and through affiliates a variety of chemical and plastics products, most of which are petroleum based. Sales of chemicals, carbon blacks, and plastics were $132 million in 1965.

Continental's plastics operations were expanded with the opening in April of a new polyvinyl chloride resins plant at Assonet, Massachusetts. This plant doubled the

Exhibit T

UNITED STATES OF AMERICA.

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, Arlen I. Erdahl, Secretary of State of the State of Minnesota, keeper of the Great Seal thereof, and the records pertaining to foreign corporations, do hereby certify:

That a certified copy of Agreement of Merger between Agrico Chemical Company, a corporation organized under the laws of the State of Delaware, and Willchemco, Inc., a corporation organized under the laws of the State of Delaware, as received and filed in the office of the Secretary of State of Delaware on the 30th day of June, A.D., 1972, at 10 o'clock A.M., setting forth that Willchemco, Inc. shall be the surviving corporation, whose name was thereby changed to Agrico Chemical Company, was filed for record in this office on the 11th day of August, A.D., 1972.

Now, Therefore, I, Arlen I. Erdahl, Secretary of State of the State of Minnesota, by virtue of the powers and duties vested in me by law, do hereby certify that Agrico Chemical Company has duly complied with the provisions of the Minnesota Foreign Corporation Act and is authorized to do business herein with all the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto.

WITNESS my official signature hereunto subscribed and the Great Seal of the State of Minnesota hereunto affixed this eleventh day of August, A.D., 1972.

Arlen I Erdahl

Secretary of State

Hennepin

Merger

Agrico Chemical Company, formerly Willchemco, Inc., survivor in merger with Agrico Chemical Company

Frank L. Ungerott, C T Corporation System, 314 North Broadway, St. Louis, Missouri 63102

$2.-V.

14879

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 11 1972
Arlen I. Erdahl
Secretary of State

(Conformed Copy of Agreement of Merger as executed)

AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER, dated this 23rd day of June, 1972, made by and between AGRICO CHEMICAL COMPANY, a Delaware corporation, hereinafter sometimes called "Agrico", with its principal office in the State of Delaware, at 100 West Tenth Street, Wilmington, Delaware, and WILLCHEMCO, INC., a Delaware corporation, hereinafter sometimes called "Willchemco", with its principal offices in the State of Delaware at 100 West Tenth Street, Wilmington, Delaware, such corporations being hereinafter sometimes collectively called "the Constituent Corporations",

W I T N E S S E T H T H A T:

WHEREAS, Agrico is a corporation duly organized and existing under the laws of the State of Delaware having been incorporated on January 27, 1966, and having an authorized capital stock consisting of 200 shares, all of which are of one class with no par value, of which shares 10 shares are issued and outstanding; and

WHEREAS, Willchemco is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on February 26, 1971, and having an authorized capital stock consisting of 10,000 shares, all of which are of one class with a par value of $1.00 a share, of which shares 10,000 shares are issued and outstanding; and

WHEREAS, the respective Boards of Directors of each of the Constituent Corporations deem it advisable and generally to the welfare and advantage of each of the Constituent Corporations that Agrico be merged into Willchemco and they have duly approved and authorized the form of this Agreement of Merger; and

WHEREAS, the laws of the State of Delaware permit such a merger, and the Constituent Corporations desire to merge under and pursuant to the provisions of the laws of the State of Delaware;

NOW THEREFORE, in consideration of the premises and of the mutual agreements and covenants herein contained, it is agreed that Agrico shall be and it hereby is merged into Willchemco, which shall be the surviving corporation, hereinafter sometimes referred to as the Surviving Corporation, pursuant to Section 251 of General Corporation Law of the State of Delaware, and the terms and conditions of such merger and the mode of carrying it into effect are and shall be as follows:

1. Certificate of Incorporation of Surviving Corporation.

The Certificate of Incorporation of the Surviving Corporation shall be the Amended Certificate of Incorporation of Willchemco as in effect on the date hereof, except that upon the effective date of the merger the First Article thereof shall be and is by this Agreement of Merger amended to read as follows:

"FIRST. The name of the Corporation is AGRICO CHEMICAL COMPANY"

and the Fifth Article thereof shall be and is by this Agreement of Merger amended to read as follows:

> "FIFTH. The total number of shares of stock which the corporation shall have authority to issue is 20,000 shares of common stock, par value $1.00 per share, amounting in the aggregate to $20,000.00."

The Amended Certificate of Incorporation of Willchemco, as hereinabove amended, shall constitute the composite Certificate of Incorporation of the Surviving Corporation unless and until further amended in the manner provided by law, and is hereby incorporated in and made a part of this Agreement of Merger with the same force and effect as if set forth in full herein.

2. Bylaws of Surviving Corporation.

The Bylaws of Willchemco, as they shall exist upon the effective date of the merger, shall be and remain and continue to be the Bylaws of the Surviving Corporation until they shall be altered, amended, or repealed in accordance with law, the Certificate of Incorporation or such Bylaws.

3. Directors and Officers.

(a) Persons who are Directors of Willchemco on the effective date of the merger shall be and remain and continue to be Directors of the Surviving Corporation; such Directors shall hold office until the first annual meeting of the stockholders of the

Surviving Corporation after the effective date of the merger and until their respective successors are elected or appointed in the manner provided by the Bylaws thereof. If on the effective date of the merger a vacancy shall exist in the Board of Directors of the Surviving Corporation for any reason whatsoever, such vacancy may be filled by the Board of Directors of the Surviving Corporation as provided in the Bylaws of the Surviving Corporation.

(b) The first annual meeting of the stockholders of the Surviving Corporation after the effective date of the merger shall be the annual meeting provided for by the Bylaws thereof for the year 1973.

(c) All persons who, upon the effective date of the merger, shall be executive or administrative officers of Willchemco shall be and remain and continue to be the officers of the Surviving Corporation, subject to the provisions of the Bylaws of the Surviving Corporation. The Board of Directors or the Chairman of the Board of Directors of the Surviving Corporation may elect or appoint such additional officers as they may determine, subject to the provisions of the Bylaws of the Surviving Corporation.

(d) The first regular meeting of the Board of Directors of the Surviving Corporation after the effective date of the merger shall be held as soon as practicable thereafter.

4. Effective date of merger.

(a) This Agreement of Merger and the merger herein provided for shall become effective and the separate existence of Agrico, except insofar as it may be continued by statute, shall cease at the close of business on June 30, 1972, provided that on or before such date: This Agreement of Merger shall have been adopted, approved, signed, and acknowledged in accordance with the laws of the State of Delaware and certificates of its adoption and approval shall have been executed in accordance with such laws; and this Agreement of Merger and such certificates shall have been filed in the office of the Secretary of State of the State of Delaware and recorded in the Office of the Recorder of New Castle County, Delaware.

(b) The corporate identity, existence, purposes, powers, objects, franchises, rights, and immunities of Willchemco shall continue unaffected and unimpaired by the merger hereby provided for; and the corporate identities, existences, purposes, powers, objects, franchises, rights, and immunities of Agrico shall be continued in and merged into Willchemco and Willchemco shall be fully vested therewith.

5. Conversion of shares.

The manner of converting the shares of the Constituent Corporations into shares of the Surviving Corporation shall be as set forth in this paragraph:

(a) Immediately upon the effective date of the merger, each share of stock of Agrico issued and outstanding ipso facto, without any action on the part of the holder thereof, shall automatically become and be converted into common stock of the Surviving Corporation, at the rate of 1,900 shares of the common stock of the Surviving Corporation for such one share of the common stock of Agrico; and each outstanding certificate representing shares of common stock of Agrico shall thereupon be deemed for all corporate purposes to evidence the ownership of the number of fully paid, nonassessable shares of common stock of the Surviving Corporation into which such shares of common stock of Agrico shall have been so converted.

(b) Immediately upon the effective date of the merger, each share of stock of Willchemco issued and outstanding (other than shares thereof held by Agrico), ipso facto, without any action on the part of the holder thereof, shall automatically become and be converted into common stock of the Surviving Corporation at the rate of one share of the common stock of the Surviving Corporation for each one share of the stock of Willchemco;

and each outstanding certificate representing shares of stock of Willchemco shall thereupon be deemed for all corporate purposes to evidence the ownership of the number of fully paid, nonassessable shares of common stock of the Surviving Corporation into which such shares of common stock shall have been so converted.

(c) Immediately upon the effective date of the merger, the shares of stock of Willchemco issued and outstanding in the name of Agrico shall cease to exist and shall be deemed cancelled, retired, and eliminated, and no shares of common stock of the Surviving Corporation shall be issued in respect thereof.

(d) After the effective date of the merger and on or after the date fixed for such purpose by the Board of Directors of the Surviving Corporation, or by the Executive Committee of such Board of Directors, each holder of an outstanding certificate, or certificates theretofore representing stock of Agrico, or Willchemco shall surrender the same to the Surviving Corporation, and such holder shall thereupon be entitled to receive in exchange a certificate or certificates representing the number of shares of common stock of the Surviving Corporation into which the shares of stock represented by the certificate or certificates so surrendered shall have been converted. If the holder of such an outstanding certificate or certificates shall not have surrendered the same, no dividends payable to the holders of record

of common stock of the Surviving Corporation as of any date subsequent to the effective date of the merger shall be paid to such holder with respect to the number of shares of common stock of the Surviving Corporation represented by such outstanding certificate or certificates; but, upon surrender of such outstanding certificate or certificates, there shall be paid to the record holder of the certificate or certificates for common stock of the Surviving Corporation issued in exchange therefor the amount of dividends which theretofore have become payable with respect to the number of shares of common stock of the Surivivng Corporation represented by the certificate or certificates issued in the exchange.

6. Effect of merger.

Upon this merger becoming effective:

(a) The Surviving Corporation shall possess all the rights, privileges, powers, and franchises as well of a public as of a private nature, and shall be subject to all the restrictions, disabilities, obligations, and duties of each of the Constituent Corporations, except as otherwise herein provided, and except as otherwise provided by law;

(b) The Surviving Corporation shall be vested with all property, real, personal, or mixed, and all debts due to the Constituent Corporations on whatever account as well as all other things in action or belonging to the Constituent Corporations; and

(c) All property, rights, privileges, powers, and franchises of the Constituent Corporations shall be thereafter as effectually the property of the Surviving Corporation as they were of the Constituent Corporations, but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the effective date of the merger; and all debts, liabilities, obligations, and duties of the Constituent Corporations shall thenceforth attach to, and are hereby assumed by, the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities, obligations, and duties had been incurred or contracted by it.

7. Delivery of Deeds and instruments.

From time to time as and when requested by the Surviving Corporation or by its successors or assigns, each of the Constituent Corporations shall execute and deliver or cause to be executed and delivered, all deeds and other instruments and shall take, or cause to be taken, all such other and further actions as the Surviving Corporation may deem necessary and desirable in order more fully to vest in and confirm to the Surviving Corporation title to and possession of all the property, rights, privileges, powers and franchises referred to in paragraph 6 hereof

and otherwise to carry out the intent and purposes of this Agreement of Merger. For the convenience of the parties and to facilitate the filing and recording of this Agreement of Merger, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed to be an original instrument.

8. Expenses of merger.

The Surviving Corporation shall pay all expenses of carrying this Agreement of Merger into effect and of accomplishing the merger.

9. Abandonment of merger.

This Agreement of Merger shall be submitted to the stockholders of the Constituent Corporations as provided by the applicable laws of the State of Delaware, and upon approval and adoption thereof, in the manner provided by such laws, by the holders of the outstanding shares of capital stock of each of the Constituent Corporations, shall be deemed and taken to be the Agreement of Merger and act of merger of the Constituent Corporations; provided, however, that anything herein or elsewhere to the contrary notwithstanding, this Agreement of Merger may be terminated or abandoned before it becomes effective without further action or approval by the stockholders of any of the Constituent Corporations:

(a) By mutual consent of the Boards of Directors of the Constituent Corporations; or

(b) By the Board of Directors of any one of the Constituent Corporations in the event of failure or inability to obtain necessary authorizations and approvals of any governmental agencies; or

(c) By the Board of Directors of any one of the Constituent Corporations if any material litigation or claims shall be pending or threatened against or substantially affecting any of the Constituent Corporations or the Surviving Corporation or any of their respective assets, or the merger, which, in the judgment of such Board, renders it inadvisable to proceed with the merger.

10. Plan of Reorganization.

This Agreement of Merger constitutes a Plan of Reorganization to be carried out in the manner, on the terms, and subject to the conditions herein set forth.

IN WITNESS WHEREOF, Agrico Chemical Company and Willchemco, Inc., have caused this Agreement of Merger to be duly executed in their respective names and on their respective behalves by their respective duly authorized officers, and their respective corporate

seals to be hereunto affixed and attested, all as of the day and year first above written.

AGRICO CHEMICAL COMPANY

(Corporate Seal)

By /s/ John F. Babbitt, Jr.
President

ATTEST:

/s/ E. V. Friedrich
Assistant Secretary

WILLCHEMCO, INC.

(Corporate Seal)

By /s/ Kenneth F. Lundberg
Chairman of the Board

ATTEST:

/s/ Major O. Brunner
Secretary

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Be it remembered that on this 23rd day of June, 1972, personally came before me Peggy Pongratz, a Notary Public in and for the State aforesaid, John F. Babbitt, Jr., President of AGRICO CHEMICAL COMPANY, a corporation of the State of Delaware, and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such, and he, the said John F. Babbitt, Jr. as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said AGRICO CHEMICAL COMPANY, that the signatures of the said President and the Assistant Secretary of said corporation to said foregoing Agreement of Merger are in the handwriting of said President and Assistant Secretary of said AGRICO CHEMICAL COMPANY, and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

/s/ Peggy Pongratz
Notary Public

(Notarial Seal)

My Commission Expires:

October 7, 1975

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Be it remembered that on this 23rd day of June, 1972, personally came before me Peggy Pongratz, a Notary Public in and for the State aforesaid, Chairman of the Board of Directors of WILLCHEMCO, INC., a corporation of the State of Delaware, and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such, and he, the said Kenneth F. Lundberg, as such Chairman of the Board of Directors, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said WILLCHEMCO, INC., that the signatures of the said Chairman of the Board of Directors and the Secretary of said corporation to said foregoing Agreement of Merger are in the handwriting of said Chairman of the Board of Directors and Secretary of said WILLCHEMCO, INC., and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

/s/ Peggy Pongratz
Notary Public

(Notarial Seal)

My Commission Expires:

October 7, 1975

C E R T I F I C A T E

I, E. V. Friedrich, an Assistant Secretary of AGRICO CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Assistant Secretary and under the seal of the said corporation, that the Agreement of Merger to which this Certificate is attached, after having been first duly approved by Resolution of the Board of Directors of said corporation and by Resolution of the Board of Directors of WILLCHEMCO, INC., a Delaware corporation, the other corporate party, was duly submitted to the stockholders of said AGRICO CHEMICAL COMPANY at a special meeting of said stockholders called and held separately from the meeting of stockholders of any other corporation, upon waiver of notice, signed by all the stockholders, for the purpose of considering and taking action upon said Agreement of Merger, that ten (10) shares of stock of said corporation were on said date issued and outstanding, that the holders of ten (10) shares voted in favor of approval and that the holders of None (0) shares voted against approval, that the proposed Agreement of Merger was therefore approved by the affirmative vote of the holders of at least a majority of the voting power of the stockholders of said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said AGRICO CHEMICAL COMPANY, and the duly adopted agreement of the said corporation.

WITNESS my hand and the seal of said AGRICO CHEMICAL COMPANY on this 23rd day of June, 1972.

/s/ E. V. Friedrich
Assistant Secretary

(Corporate Seal)

C E R T I F I C A T E

I, Major G. Brunner, Secretary of WILLCHEMCO, INC., a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Secretary and under the seal of the said corporation, that the Agreement of Merger to which this Certificate is attached, after having been first duly approved by Resolution of the Board of Directors of said corporation and by Resolution of the Board of Directors of AGRICO CHEMICAL COMPANY, a Delaware corporation, the other corporate party, was duly submitted to the stockholders of said WILLCHEMCO, INC. at a special meeting of said stockholders called and held separately from the meeting of stockholders of any other corporation, upon waiver of notice, signed by all the stockholders, for the purpose of considering and taking action upon said Agreement of Merger, that ten thousand (10,000) shares of stock of said corporation were on said date issued and outstanding, that the holders of ten thousand (10,000) shares voted in favor of approval and that the holders of None (0) shares voted against approval, that the proposed Agreement of Merger was therefore approved by the affirmative vote of the holders of at least a majority of the voting power of the stockholders of said corporation, and that thereby the Agreement of Merger was at said meeting duly

adopted as the act of the stockholders of said WILLCHEMCO, INC., and the duly adopted agreement of the said corporation.

WITNESS my hand and the seal of said WILLCHEMCO, INC. on this 23rd day of June, 1972.

/s/ Major O. Brunner
Secretary

(Corporate Seal)

THE ABOVE AGREEMENT OF MERGER, having been executed on behalf of each corporate party thereto, and having been adopted separately by each corporate party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware, and that fact having been certified on said Agreement of Merger by the Assistant Secretary of AGRICO CHEMICAL COMPANY and by the Secretary of WILLCHEMCO, INC., the President of AGRICO CHEMICAL COMPANY and the Chairman of the Board of WILLCHEMCO, INC. do now hereby execute the said Agreement of Merger and the Assistant Secretary of AGRICO CHEMICAL COMPANY and the Secretary of WILLCHEMCO, INC. do now hereby attest the said Agreement of Merger as the respective act, deed and agreement of each of said corporations, on this 23rd day of June, 1972.

AGRICO CHEMICAL COMPANY

(Corporate Seal)

By /s/ John F. Babbitt, Jr.
President

ATTEST:

/s/ E. V. Friedrich
Assistant Secretary

WILLCHEMCO, INC.

(Corporate Seal)

By /s/ Kenneth F. Lundberg
Chairman of the Board

ATTEST:

/s/ Major O. Brunner
Secretary

dh

State of Delaware

Office of Secretary of State

I, Walton H. Simpson, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Agreement of Merger of the "AGRICO CHEMICAL COMPANY", merging with and into the "WILLCHEMCO, INC.", under the name of "AGRICO CHEMICAL COMPANY", as received and filed in this office the thirtieth day of June, A.D. 1972, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this twelfth day of July in the year of our Lord one thousand nine hundred and seventy-two.

Walton H Simpson

Secretary of State

K N Caldwell

Ass't Secretary of State

FORM 121

CERTIFIED COPY

CERTIFICATE OF AGREEMENT OF MERGER
OF

AGRICO CHEMICAL COMPANY

14879

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 11 1972
Arlen I. Erdahl
Secretary of State

Exhibit U

Briefly Told
Los Angeles Times (1923-Current File); Feb 3, 1972;
ProQuest Historical Newspapers: Los Angeles Times (1881-1987)
pg. D9

Briefly Told

The $425-million issue of Federal Land Banks 41-month bonds will be offered today at 5.7% interest, through a nationwide group of security dealers and banks . . . **International Chemical & Nuclear Corp.**, Pasadena, answering a query from the Big Board, said scientists at its nucleic acid research institute at Irvine have developed a compound called Virazole which has given encouraging results as a potential broad-spectrum antiviral agent, but "it would be most premature to make any conclusions" about it . . . **National Airlines** flew 470 million revenue passenger miles in January, up 17% from a year ago . . . The Amex imposed 100% initial margin requirements on **Anthony Industries, Combustion Equipment, Servotronics** and **Vintage Enterprises** . . . **Allegheny-Ludlum** raised prices of specialty steel products 5% to 7% . . . **Williams Companies** completed the purchase of the **Agrico Chemical** division of **Continental Oil** for about $100 million cash.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

Exhibit V

« Back to Search Results

Business Record Details »

File Amendment or Renewal (/Business/Amendments?filingGuid=3dc16a89-b3d4-e011-a886-001ec94ffe7f)

Order Copies

Order a Certificate (/Business/Certificates?businessMasterGuid=3dc16a89-b3d4-e011-a886-001ec94ffe7f&route=filing&productId=0c3dd338-fad3-e011-a886-001ec94ffe7f&originalFilingGuid=9e5a95d2-25d5-e011-a886-001ec94ffe7f)

Minnesota Business Name
Agrico Chemical Company

Business Type
Business Corporation (Foreign)

File Number
14879

Filing Date
05/03/1971

Renewal Due Date:
12/31/2013

Registered Agent(s)
C T Corporation System Inc

Chief Executive Officer
James T Prokopanko
3033 Campus Drive, Suite E490
Plymouth MN 55441 2651
USA

MN Statute
303

Home Jurisdiction
Delaware

Status
Active / In Good Standing

Registered Office Address
100 S 5th Str #1075
Mpls MN 55402
USA

Home Office Address
1209 Orange Str
Wilmington DE 19801
USA

Filing History | Renewal History

Filing History

05/03/1971	Original Filing - Business Corporation (Foreign)
05/03/1971	Business Corporation (Foreign) Business Name
07/30/1971	Business Corporation (Foreign) Business Name
08/11/1972	Merger - Business Corporation (Foreign)
08/11/1972	Business Corporation (Foreign) Business Name
11/17/2003	Registered Office and/or Agent - Business Corporation (Foreign)
02/17/2005	Revocation - Business Corporation (Foreign)
12/01/2005	Reinstatement - Business Corporation (Foreign)

12/01/2005	Registered Office and/or Agent - Business Corporation (Foreign)
04/10/2007	Registered Office and/or Agent (Global) - Business Corporation (Foreign)

Office of the MN Secretary of State Home Page (http://www.sos.state.mn.us)

System Requirements

The MBLS application works with the following web browsers:

- Microsoft Internet Explorer (version 7+)
- Mozilla Firefox (version 3.5+)
- Apple Safari (version 3+)
- Google Chrome

Additional MBLS Information

Terms & Conditions (http://www.sos.state.mn.us/index.aspx?page=1667)
Contact Us (http://www.sos.state.mn.us/index.aspx?page=42)
Frequently Asked Questions (FAQ) (http://www.sos.state.mn.us/index.aspx?page=12)

Copyright 2011 | Secretary of State of Minnesota | All rights reserved

APPLICATION OF FOREIGN CORPORATION FOR A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN MINNESOTA

TO THE SECRETARY OF STATE,
State of Minnesota, St. Paul, Minn.

WillChem COMPANY, a corporation incorporated and existing under the laws of the State of Delaware, in compliance with Section 303.06 of the Minnesota Foreign Corporation Act, does hereby certify and set forth with respect to said corporation:

(1) Its name is WillChem COMPANY and the (state) (country) of organization is Delaware.

(2) It agrees to add _____ to its name for use in the State of Minnesota so that the name of this corporation which it will use in the State of Minnesota is _____. (See instructions below.)

(3) The date of its incorporation was February 26, 1971, and the period of its duration is perpetual.

(4) The address of its principal office in the state or country of organization is 100 West Tenth Street, Wilmington, Delaware. (See instructions below.)

(5) The address of its proposed registered office in the State of Minnesota is c/o C T CORPORATION SYSTEM INC., 405 SECOND AVENUE, SOUTH, MINNEAPOLIS, MINN. 55401 (See instructions below); and the name of its proposed resident agent in the State of Minnesota is C T CORPORATION SYSTEM INC., whose address is identical with that of its proposed registered office above set forth.

(6) It irrevocably consents to service of process upon it as set forth in section 303.13 of the Minnesota Foreign Corporation Act or any amendment thereto.

(7) The names and respective addresses of its officers and directors are as follows:

NAME	ADDRESS (See instructions below)	OFFICE
Kenneth F. Lundberg	825 NBT Bldg., Tulsa, Okla.	Pres. & Dir.
Robert W. Shower	825 NBT Bldg., Tulsa, Okla.	V.P.
Eugene V. Friedrich	825 NBT Bldg., Tulsa, Okla.	V.P.
Major O. Brunner	825 NBT Bldg., Tulsa, Okla.	Secretary
Richard Brawn	825 NBT Bldg., Tulsa, Okla.	Treasurer
Joseph H. Williams	825 NBT Bldg., Tulsa, Okla.	Director
D. W. Calvert	825 NBT Bldg., Tulsa, Okla.	Director
John H. Williams	825 NBT Bldg., Tulsa, Okla.	Director

(MINN. - 144 - 3/3/69)

INSTRUCTIONS

Submit with this application, a copy of the articles of incorporation and amendments thereto, if any, duly authenticated by the proper officer of the state under the laws of which the corporation is organized.

Item (2)—If the name of the corporation ends with the word "Corporation" or the word "Incorporated" or the abbreviation "Inc." or contains the word "Company" or the abbreviation "Co." not immediately preceded by the word "and" or the character "&", this item may be disregarded by the applicant corporation; otherwise, the first blank in Item (2) must be filled in with the word "Incorporated" or the abbreviation "Inc." and the second blank must be filled in with the name of the applicant corporation with the added word or abbreviation which it agrees to use in the State of Minnesota. See Section 303.06, Subdivision 1 (2) of Minnesota Foreign Corporation Act.

Items (4), (5) and (7)—The addresses given must include the name of the post office, street and number, if any, or name of building and room or office number therein when customarily used as part of a mailing address.

Fees—Initial License Fee $100.00 (Sec. 303.07).

For filing application and issuing certificate $15.00 (Sec. 303.21 Subd. 2 (a).)

For remittance with certificate of authority to the register of deeds of county of registered office in Minnesota $1.00 (Sec. 303.21, Subd. 1)—of Minnesota Foreign Corporation Act, Chapter 303 Minnesota Statutes.

FOR RECORD BY THE SECRETARY OF STATE OF THE STATE OF MINNESOTA.

All fees and charges paid on 5-3-71

Certificate issued and recorded, No. 14432

Certificate transmitted with fee of $1.00 to register of deeds Henn.

County, on 5-11-71

Vel Clerk.

FOREIGN CORPORATION

FILE NUMBER 14879

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 3 1971
Arlen I. Erdahl
Secretary of State

(MINN. - 144)

ANNUAL REPORT BY FOREIGN CORPORATION HOLDING A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN MINNESOTA

PART ONE

TO THE SECRETARY OF STATE,
State of Minnesota, St. Paul, Minn.

Pursuant to the Minnesota Foreign Corporation Act, Chapter 303, Minnesota Statutes, the following corporation does hereby make and file with the Secretary of State its annual report for the year 19 73.

(1) Name of Corporation: AGRICO CHEMICAL COMPANY (FORMERLY WILLCHEMCO INC.)

State or Country of Organization: DELAWARE

(2) The name which this corporation uses in Minnesota: _____

(to be completed only if corporation was required to add "Inc." or "Incorporated" to its name as prescribed by M. S. 303.06 (2).)

(3) Date of Incorporation: FEBRUARY 26, 1971. The period of corporate duration (is perpetual) (~~will expire on the day of~~).

(4) Address of principal office in State or Country of organization: 100 WEST TENTH STREET, WILMINGTON DELAWARE 19899
(include post office, street and number, if any, or building and office number)

(5) Registered Office in the State of Minnesota: 405 SECOND AVENUE SOUTH, C/O CT CORPORATION SYSTEM INC, MINNEAPOLIS, MINNESOTA 55401
(Include post office, street and number, or building and office number)

The name of its registered agent in the State of Minnesota is CT CORPORATION SYSTEM INC. whose address is identical with that of its registered office set forth above. (Note: If Registered Office or Registered Agent has been changed, notice of such change must be given by filing a statement as prescribed by Section 303.10, Minnesota Statues. Forms for change of registered office or agent are furnished by the Secretary of State upon request.)

(6) The names and respective addresses of its officers and directors are as follows:

NAME	ADDRESS (See instructions below.)	OFFICE
LIST ATTACHED		

(7) On December 31, 19 72, the aggregate number of its authorized shares having par value was 20,000, of the par value of $ 1.00 per share and the aggregate number of its authorized shares without par value was NONE, which authorized shares are itemized by classes and series as follows:

COMMON STOCK, 20,000 SHARES, $1.00 PAR VALUE

AGRICO CHEMICAL COMPANY

AS OF

JANUARY 1, 1973

DIRECTORS:

John H. Williams
Joseph H. Williams
D. W. Calvert
Kenneth F. Lundberg
W. J. Turbeville, Jr.
John F. Babbitt, Jr.

OFFICERS:

Kenneth F. Lundberg	Chairman of the Board and Chief Executive Officer
John F. Babbitt, Jr.	President and Chief Operating Officer
E. V. Friedrich	Senior Vice President
D. C. Wise	Group Vice President--Operations
R. C. Braun	Vice President--Finance and Treasurer
B. W. Theodoras	Controller
John R. Arend	Vice President--Export Sales
C. R. Allen	Vice President--Engineering
L. S. Hilinski	Vice President--Manufacturing
F. J. Gruberth	Vice President--Economic Analysis and Planning
C. M. Grau	Vice President--Supply and Distribution
W. L. Beales	Vice President--Sales
R. R. Johnson	Vice President--Marketing
T. A. Bayley	Vice President--Turf and Garden Sales
Major O. Brunner	Secretary
Paul J. Beggs	Assistant Treasurer
W. T. Barnthouse	Assistant Secretary

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 3 01973
Secretary of State

All Vice Presidents are also Assistant Secretaries.

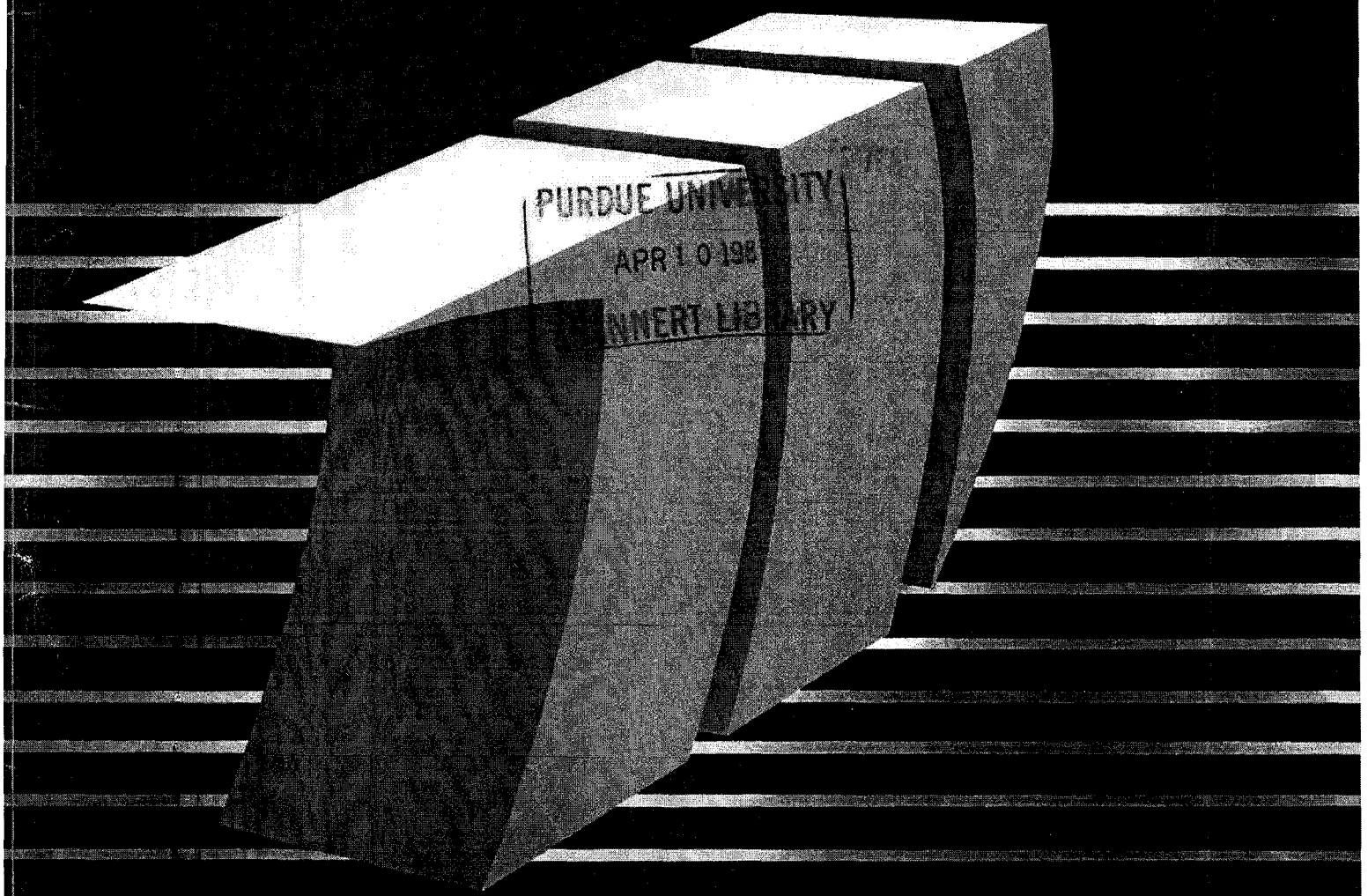
Address of all of the above is:

National Bank of Tulsa Building
Tulsa, Oklahoma 74103

Exhibit W

THE WILLIAMS COMPANIES

1986



PURDUE UNIVERSITY
APR 10 198
WIERT LIBRARY

ANNUAL REPORT

In recent months your Company has virtually completed a landmark financial restructuring program which, while necessitating substantial non-cash charges to earnings in 1986, clearly establishes us with a much improved outlook for future stability and growth in earnings.

The investment and financial community's favorable reception of these actions has been evident through a notable increase in the value of the Company's common shares, which rose significantly from the time our restructuring program was announced last fall, and through rating agencies' upgrading of the Company's outstanding debt issues.

With our stronger balance sheet, and with "slimmed down" operations in businesses that combine greater consistency of earnings power with an exciting long-range growth opportunity, we are particularly well positioned to deal effectively with the uncertainties which continue on the economic horizon.

Both our restructuring actions and the ongoing, Company-wide austerity program which has been in effect throughout the past year were made necessary by exceptionally difficult circumstances in the economy which clouded several areas of our operations during the past several years.

The decisions to exit various businesses which continued to offer positive long-range potential but which faced constraints on profitability for the shorter term were difficult. In divesting the oil and gas operations of Williams Exploration Company and the chemical fertilizer operations of Agrico Chemical Company and committing to withdraw from the commercial real estate operations of Williams Realty Corp., we have parted with both attractive businesses and talented organizations which, under other circumstances, we would have wished to retain.

Similarly, the sale of our interest in Peabody Holding Company, Inc., was undertaken with a continued high regard for that company and for its sound value which was evident in the favorable price we received for it.

The sale and leaseback, and additional sale and leaseback planned, of portions of Williams Telecommunications Company's (WilTel's) fiber optic digital telecommunications system is another very productive component of our restructuring. While we are actively engaged in building this highly promising business, the unprecedented efficiencies and economies which WilTel achieved in construction of its system made these actions both feasible and financially attractive.

We were also pleased with the recognition accorded WilTel's system construction by the National Society of Professional Engineers, which cited our project as one of seven "Outstanding Engineering Achievements of 1986."

A major consideration throughout our restructuring activity has been the realization of full value for each of the operations divested, and the results to date have more than met our expectations in this regard.

The $250 million of proceeds received from the sale of Williams Exploration and the first WilTel sale and leaseback were applied to reduce outstanding debt prior to the end of 1986. An additional $320 million in proceeds, from the sale of the Peabody investment, has been applied to debt reduction during the first quarter of 1987.

Cash proceeds from the sale of Agrico to Freeport-McMoRan Resource Partners, Limited Partnership are now expected to become available before the end of the first quarter and proceeds from the additional WilTel sale and leaseback should become available in the second quarter. These amounts, which include the $250 million initial cash payment for Agrico, will also be applied to reduction of debt. These actions will produce a significantly improved balance sheet, and our debt to debt-plus-equity ratio should record a substantial decline from 1986 year-end when they are completed.

The Agrico sale will also have a future benefit as we realize the deferred portion of the proceeds, amounting to at least $100 million and possibly exceeding $250 million, based on performance, to be paid within five years.

A 15 percent interest in Texasgulf Inc., which Agrico had obtained at the time that privately-held company acquired Agrico's North Carolina phosphate properties in 1985, is being retained by The Williams Companies. A writedown of its carrying value was included in the charges to 1986 earnings to reflect a nearer term evaluation of this investment. However, this retained interest does represent an excellent additional opportunity to participate in the eventual recovery of the fertilizer industry with little negative exposure and we have no current plan to dispose of our interest.

The writedown of the Texasgulf investment and the provisions for loss on Agrico and Williams Realty accounted for a non-cash reduction in 1986 net income of approximately $250 million, or $7.27 per share.

Your Company's ongoing core pipeline businesses generally performed well in 1986 despite a turbulent regulatory atmosphere which especially affected our two large, interstate natural

Exhibit X

Real Estate Research & Information
NETROnline.com

2055 East Rio Salado Parkway, Suite 201
Tempe, Arizona 85281
Phone: (480) 967-6752
Fax Number: (480) 966-9422
Web Site: www.netronline.com

HISTORICAL CHAIN OF TITLE REPORT

REVISED 11-12-2013
RAILROAD AVENUE
LONG ISLAND CITY, NEW YORK

Submitted to:

PHILLIPS 66 COMPANY
1232 Park Street
Paso Robles, California 93446

Attention: Leigh Ormonde

Project No. N13-02219

Wednesday, October 23, 2013

NETR - Real Estate Research & Information hereby submits the following ASTM historical chain-of-title to the land described below, subject to the leases/miscellaneous shown in Section 2. Title to the estate or interest covered by this report appears to be vested in:

ING-NAN HWANG AND FENG-CHIU HWANG

The following is the current property legal description:

Lot 272, Block 312, also commonly known as 37-90 Newtown Creek, situated and lying in the City of Long Island City, Queens County, State of New York

Assessor's Parcel Number(s): Block 312 Lot 272

1. HISTORICAL CHAIN OF TITLE

1. DEED
   - RECORDED: 12/31/1850
   - GRANTOR: Samuel D. Babcock, as Assignee of the New York Kerosene Oil Company
   - GRANTEE: New York Guaranty and Indemnity Company
   - INSTRUMENT: N/A
   - COMMENTS: Copy of document was not found of record

2. DOCUMENT
   - RECORDED: 05/16/1867
   - GRANTOR: New York Kerosene Oil Company
   - GRANTEE: New York Guaranty and Indemnity Company
   - INSTRUMENT: Book 255, Page 435

3. DEED
   - RECORDED: 08/07/1905
   - GRANTOR: Guaranty Trust Company of New York, under the corporate name of New York Guaranty and Indemnity Company
   - GRANTEE: George F. Piper and Walter D. Douglas
   - INSTRUMENT: Book 1382, Page 419

4. DEED
   - RECORDED: 07/03/1907
   - GRANTOR: George F. Piper & Grace B. Piper, husband and wife; and Walter D. Douglas & Mahala Douglas, husband and wife
   - GRANTEE: Darling & Company
   - INSTRUMENT: Book 1516, Page 36

5. DEED
   - RECORDED: 10/15/1909
   - GRANTOR: Darling & Company
   - GRANTEE: Charles A. Alling
   - INSTRUMENT: Book 1651, Page 10

6. DEED
   - RECORDED: 01/10/1910
   - GRANTOR: Charles A. Alling & Sara A. Alling
   - GRANTEE: The Van Iderstine Company
   - INSTRUMENT: Book 1665, Page 230

7. BARGAIN AND SALE DEED

RECORDED:	04/18/1979
GRANTOR:	Darling-Delaware Company, Inc., successor by merger with The Van Iderstein Company
GRANTEE:	Carl A. Capasso
INSTRUMENT:	Book 1155, Page 1030

8. BARGAIN AND SALE DEED

RECORDED:	06/26/1980
GRANTOR:	Carl A. Capasso
GRANTEE:	Hope Resource Recovery, Inc.
INSTRUMENT:	Book 1267, Page 372

9. BARGAIN AND SALE DEED

RECORDED:	01/06/1998
GRANTOR:	Hope Resource Recovery, Inc.
GRANTEE:	Prince Plastic & Metal Co., Inc.
INSTRUMENT:	Book 4770, Page 1097

10. DEED

RECORDED:	06/21/2000
GRANTOR:	Prince Plastic & Metal Co., Inc.
GRANTEE:	Ing-Nan Hwang
INSTRUMENT:	Book 5612, Page 1717

11. DEED

RECORDED:	03/05/2002
GRANTOR:	Ing-Nan Hwang
GRANTEE:	Ing-Nan Hwang and Feng-Chiu Hwang
INSTRUMENT:	Book 6243, Page 1250

12. DEED

RECORDED:	02/25/2011
GRANTOR:	Ing-Nan Hwang and Feng-Chiu Hwang
GRANTEE:	Mazu, LLC
INSTRUMENT:	2011000069593

13. DEED

RECORDED:	11/02/2012
GRANTOR:	Mazu, LLC
GRANTEE:	Ing-Nan Hwang and Feng-Chiu Hwang
INSTRUMENT:	2012000433562

2. LEASES AND MISCELLANEOUS

1. No leases were found of record

LIMITATION

This report was prepared for the use of Phillips 66 Company, exclusively. This report is neither a guarantee of title, a commitment to insure, or a policy of title insurance. NETR- Real Estate Research & Information does not guarantee nor include any warranty of any kind whether expressed or implied, about the validity of all information included in this report since this information is retrieved as it is recorded from the various agencies that make it available. The total liability is limited to the fee paid for this report.

Justice of the Peace ANN E. PAYNTAR L.S.

State of New York

County of Queens ss On the eleventh day of February in the year one thousand eight hundred and sixty seven before me personally came JOHN W. PAYNTAR and ANN E. his wife to me known to be the individuals described in and who executed the within conveyance and severally acknowledged that they executed the same And the said Ann E at a private examination seperate and apart from her husband acknowledged to me that she executed the said conveyance freely and with out any fear or compulsion of her husband.

George Parsells

Justice of the Peace

Entered and compared the foregoing with the original on the 16th day of May 1867 at 10 o'clock A.M.

Examined By Jonah T. Hegeman Clerk

255-435

WE the undersigned Stockholders in the amounts set opposite our names respectively in the New York Kerosene Oil Company a Manufacturing Company formed under the act entitled An act to authorize the formation of corporations for Manufacturig Mining Mechanical or Chemical purposes passed February 17, 1848 and the several acts amendatory thereof owning more than two thirds of the capital stock of said corporation do hereby assent to the mortgaging by said Company of all its real estate situated in the County of Queens to the New York Guarrantee and Indemnity Company in the sum of One Hundred Thousand Dollars with interest thereon to secure the payment of debts contracted or to be contracted in the business for which said New York Kerosene Oil Company was incorporated.

Dated New York April 27th 1867

Names of Stockholders	number of Shares	Amount
Abraham M. Cozzing	Four thousand nine hundred & thirty eight shares	$ 493,800

State of New York

City and County of New York ss On this twenty seventh day of April in the year eighteen hundred and sixty seven before me personally came ABRAHAM M. COZZENS to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

T.L. Ogden, Notary Public,
New York County

Five cents Int Rev Cancelled

State of New York City and
County of New York ss I William C. Conner, Clerk of the City and County of New York and also Clerk of the Supreme Court for the said City and County the same being a court of record Do Hereby Certify that T. L. Ogden whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Notary Public in and for the City and County of New York dwelling in the said City Commissioned and sworn and duly authorized to take the same and further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine I further certify that said instrument is executed and acknowledged according to the laws of the State of New York

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 14 day of May 1867.

Wm C. Conner Clerk L.S.

Entered and compared the foregoing with the original on the 16th day of May 1867 at 2 o'clock P.M.

Examined By Jonah T. Hegeman Clerk

Five cents Int Rev Cancelled

In consideration of the sum of ONE DOLLAR to me in hand paid and of the good and valuable considerations I John Ruland of Manhasset Queens County New York do hereby covenant and agree with STEPHEN TABER of Roslyn County aforesaid to pay to the said Stephen Taber the [illegible] Dollars with interest at seven per cent per annum from date the said

Third;- That the said premises are free from incumbrances Except as aforesaid

Fourth;- That the parties of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth;- That the said parties of the first part will forever warrant the title to said premises.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

In the presence of

Louis J. Halbert Jr.

ADAM GEIER. (L. S.)

EVA GEIER. (L. S.)

JOSEPH FREY. (L. S.)

City and State of New York,

County of Kings,s.s.

On this 2 nd day of August in the year One thousand nine hundred and five before me personally came Adam Geier and Eva Geier his wife and Joseph Frey (Widower) to me known and known to me to be the individuals described in and who executed the foregoing instrument and they thereupon severally acknowledged to me that they executed the same. and the said Josep Frey acknowledged to me that he was unmarried man.

Louis J. Halbert Jr.

Commissioner of Deeds City of N. Y.

Entered and Compared the foregoing with the original. August 7. 1905. 12. 40 P. M.

Examined By

Clerk.

1382-419

THIS INDENTURE, made the 28 th day of February in the year One thousand nine hundred and three.(A. D. 1903).

Between GUARANTY TRUST COMPANY OF NEW YORK (A Corporation organized and existing under and by virtue of the Laws of the State of New York, under the Corporate name of New York Guarantee and Indemnity Company, which name has been duly changed in accordance with said laws and on January 2, 1896 between Guaranty Trust Company of New York) party of the first part and GEORGE F. PIPER, of Minneapolis, Minnesota, and WALTER D. DOUGLAS of Cedar Rapids Iowa parties of the second part.

Witnesseth, that the said party of the first part in consideration of the sum of ONE DOLLAR, lawful money of the United States and Other Good and Valuable Considerations paid by the part- of the second part does hereby grant and release unto the said part- of the second part —, heirs and executors, administrators and assigns forever.

ALL those certain pieces or parcels of land lying together situate in the Town of Newtown, County of Queens, and State of New York, which taken together are bounded and described as follows that is to say;-

Beginning at a stake at the intersection of the division line between land lately belonging to Helenah Kowenhoven, and land lately belonging to the heirs of Agnes Pine, deceased with the centre line of a Street, One hundred feet wide, laid out or to be laid out which centre line of such Street measured on such division line is distant Six hundred and sixty seven feet Easterly from the edge of the meadow on Newtown Creek, as such meadow formerly was, and running thence Southeastwardly along the centre line of such Street, laid out or to be laid out, four hundred and twenty one feet and two inches more or less, to the Northerly line of land now or late of Orsamus Bushnell, formerly of Paul Rapelye; thence Southwesterly along such last mentioned land, six hundred and five feet, three inches, to the edge of the meadows as formerly existing, thence continuing on the same course to the Newtown Creek; thence Northwardly along Newtown Creek three hundred and twenty seven feet and nine inches more or less, to the division line between the land late of Helenah Kowenhoven and land of the heirs of Agnes Pine, deceased; and thence Northeastwardly along such division line Eight hundred and sixty feet, more or less to the place of beginning.

Together with the right to the land under water in Newtown Creek, in front of the above described premises, and all the water right and privileges to the said premises belonging or in anywise appertaining and also all that triangular piece of land situated at Dutch Kills in Newtown, Queens County and State of New York, and bounded as follows;-

Beginning at a point on the Easterly side of Newtown Creek, adjoining land here [illegible] conveyed by Neziah Bliss and Samuel Sneden and their respective wives to Erastus W. [illegible], and late of the North American Kerosene Gas Light Company; running thence Northeast- [illegible] the said land late of the said Company to a point where the same is intersected [illegible] centre line of First Street as said Street is laid down on a certain map filed [illegible] Office entitled "Map of the farm of Francis and Eve Duryea, situated on the [illegible] Dutch Kills Creeks in Newtown, Queens County as surveyed and a portion thereof [illegible] into lots for Neziah Bliss and Samuel Sneden, by Van Alst and Meserole City Sur- [illegible] May 1856 thence Westerly along the centre line of said Street to the Easterly side of [illegible] Creek, and thence Southerly along Newtown Creek to the place of beginning.

Together with the right to the land under the waters of Newtown Creek in front [illegible] described premises.

Excepting however ALL that certain piece or parcel of land situated in the

Town of Newtown, County of Queens, and State of New York, which is bounded and described as follows;-

Beginning at the point of intersection with the middle line of Review Avenue of the Northern boundary line of lands late of Orsamus Bushnell and now of the said Pratt Manufacturing Company and running thence along the said boundary line South fifty seven degrees forty one minutes West Six Hundred and five feet three inches to the edge of the meadow as formerly existing being the original high water line of Newtown Creek, thence along the said boundary line South fifty five degrees thirty minutes West Two hundred and thirty eight feet to Newtown Creek, thence Northwardly along said creek twelve feet; thence North fifty five degrees thirty minutes East Two hundred and thirty Six feet to the edge of the meadows as formerly existing being the original High water line of Newtown Creek; thence North fifty seven degrees forty one minutes East Six hundred and eight feet four inches to intersect the aforesaid middle line of Review Avenue; and thence Southeastwardly along the said middle line of Review Avenue twelve feet and one half inch to the place of beginning.

Containing thirty seven and one eighth square rods be the same more or less.

The parcel of land hereinbefore lastly described having been conveyed by said New York Guaranty and Indemnity Company to Pratt Manufacturing Company, by deed bearing date the 25 th day of November 1891 the premises hereby intended to be conveyed being a part of the same premises which were conveyed to said New York Guaranty and Indemnity Company by Samuel D. Babcock as Assignee of the New York Kerosene Oil Company Bankrupt by deed bearing date the 31-st day of December 1850.

Together with the appurtenances and all the estate and rights of the said party of the first part in and to said premises.

To have And To Hold, the above granted premises unto the said parties of the second part and to their heirs and assigns forever, Subject however to the rights if any of the Long Island Railroad Company to so much of the premises hereby conveyed as is now occupied by said Company.

And the said party of the first part hereby covenants with the said parties of the second part that the party of the first part has not done or suffered any thing whereby the said premises have been incumbered in any way whatever.

In Witness Whereof said Guaranty Trust Company of New York, the party of the first part has caused these presents to be signed in its Corporate name by its President and has caused its Corporate seal to be hereto affixed and attested by its ——— the day and year first above written.

GUARANTY TRUST COMPANY OF NEW YORK.

BY W. J. OAKMAN, PRESIDENT.

(L. S.)

ATTEST W. C. SAMUELS.

State of New York.

County of New York.s.s.

On this 28 th day of February in the year One thousand nine hundred and three before me personally came W. G. Oakman to me known? who, being by me duly sworn, did Depose and say that he resided in Borough of Manhattan, City of New York, that he is the President of Guaranty Trust Company of New York, the Corporatio described in and which execut ed the above instrument; that he knew the seal of said Corporation; that the seal affixed to said instrument was such Corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

That said Guaranty Trust Company of New York was formerly known as New York Guaranty and Indemnity Company and is the grantor named in the foregoing instrument and that its corporate seal was, pursuant to the laws of the State of new York, duly changed to Guaranty Trust Company of New York, which change of name went into effect on the 2 nd day of January 1896.

P. J. Sutton.

Notary Public No 301 N. Y. County.

Commission expires March 30 th 1904.

State of New York,

County of New York.s.s.

I, Thomas L. Hamilton Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of record Do Hereby Certify that P. J. Sutton whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a Notary Public in and for the County of New York, dwelling in the said County duly sworn and duly authorized to take the same.

And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said County the 8 th day of August 1903.

Thos L. Hamilton. Clerk.

Compared the foregoing With theoriginal, August 7. 1903. 1. 10 P. M.

Clerk.

S. L. Van Arsdale

Fred Heinrich WOODSIDE HEIGHTS LAND CORPORATION Dec.

By, John W. Paris Secy

State of New York

City and County of New York

Borough of Manhattan ss

On the 27th day of May in the year one thousand nine hundred and seven before me personally came John W. Paris to me known who being by me duly sworn did depose and say that he resided in Queens Bo that he is the Secretary of the Woodside Heights Land Corp the corporation described in and which executed the above instrument that he knew the seal of said corporation that the seal affixed to said instrument was such corporate seal that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Fred Heinrich Commissioner of Deeds

of the City of New York

Entered and compared the foregoing with the original July 3, 1907 2.40 P.M.

Examined By Clerk.

John Nicholson

1516-36

1516

16037 THIS INDENTURE made the 29th day of June in the year one thousand nine hundred and seven BETWEEN WALTER D. DOUGLAS of Cedar Rapids in the State of Iowa and MAHALA D. DOUGLAS his wife and GEORGE F. PIPER of the City of Minneapolis State of Minnesota and GRACE B. PIPER his wife parties of the first part A N D DARLING & COMPANY a corporation organized and existing under and by virtue of the laws of the State of Illinois party of the second part.

WITNESSETH That the said parties of the first part in consideration of ONe Dollar and other good and valuable considerations dollars lawful money of the United States paid by the party of the second part do hereby grant and release unto the said party of the second part its successors and assigns forever.

ALL that certain plot piece or parcel of land situate lying and being in the Borough of Queens of the City of New York in the County of Queens and State of New York consisting of the westerly half part of that certain piece or parcel of land which was conveyed to Walter D. Douglas and George F. Piper two of the parties of the first part by the Guaranty Trust Company of New York by deed dated February twenty eighth 1903 and the location whereof is shown on a survey thereof made by Peter Elbert Nostrand dated March twenty first 1903 which survey or a copy thereof is hereto annexed and made part of this indenure and which westerly half of said premises is more particularly bounded and described as follows,

Beginning at the intersection of the division line between land lately belonging to Helenah Kowenhoven and land lately belonging to the heirs of Agnes Pine deceased with the centre line of Review Avenue which point is distant on said centre line of Review Avenue thirty four feet and fourteen one hundredths of a foot easterly from the easterly side of Second Street or Spring Street as shown on said survey running thence southwesterly along said division line four hundred and eighty five feet and sixty three one hundredths of a foot to the centre line of First Street as laid down on a certain map filed in the office of the Clerk of Queens County entitled map of the farm of Francis and Eve Duryea situated on the Newtown and Dutch Kills Creek in Newtown Queens County as surveyed and a portion thereof laid out into ——— lots for Meziah Bliss and Samuel Sheden by Van Alst and Meserole City Surveyors May 1856 thence southwesterly along the centre line of said street four hundred and one feet and eighty seven one hundredths of a foot to the northeasterly side of Newtown Creek thence southeasterly along said northeasterly side of Newtown Creek as the same runs two hundred and thirty eight feet and sixty eight one hundredths of a foot to a point on said northeasterly side of said Creek equi. distant along the bulk head line from the easterly and westerly boundary lines of the premises conveyed by the deed above mentioned and shown on said survey thence running in a general northeasterly direction in a straight line to a point in the centre line of the right of way of the Long Island Railroad Company equi-distant between the easterly and westerly boundary lines of said premises conveyed by the deed above mentioned and shown on said survey thence continuing northwardly from said last mentioned point in a straight line to the centre line of Review Avenue at a point therein distant two hundred and four feet and fifty four one hundredths of a foot easterly from the point or place of beginning and thence westerly along said centre line of Review Avenue two hundred and four feet and fifty four one hundredths of a foot to the point or place of beginning be the said several distances and dimensions more or less.

Together with the right of the parties of the first part to the land under the waters of Newtown Creek in front of the premises hereby conveyed And also a right of [illegible] over a strip of land about twelve feet in width lying south of and adjoining the right of way of said Long Island Railroad Company and forming a part of that portion of the property conveyed to the said Walter D. Douglas and George F. Piper by the deed above [illegible]

which lies east of the premises hereby conveyed and which right of way is intended to be a continuation of a private road running across the premises hereby conveyed as the same is now in use. Subject however to the right if any of the Long Island Railroad Company to so much of said premises above described as is now occupied by said Company and also subject to a right of way which is hereby reserved to the parties of the first part their heirs and assigns over a strip of land part of the premises hereby conveyed about twelve feet in width and now used as a private road lying south of and immediately adjoining the right of way of said Long Island Railroad Company as said private road is now in use for access by parties of the first part their heirs and assigns to and from that portion of the property conveyed by the deed above mentioned and shown on said survey lying east of the premises hereby conveyed Also subject to the use as a public street or highway of so much of the premises above described and hereby conveyed as lies within the bed of Review Avenue.

TOGETHER with the appurtenances and all the estate and rights of the parties of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part its successors and assigns forever.

Subject as aforesaid.

AND the said Walter D. Douglas and George F. Piper two of the parties of the first part do covenant with said party of the second part as follows,

FIRST That the said Walter D. Douglas and George F. Piper are seized of the said premises in fee simple and have good right to convey the same.

SECOND That the party of the second part shall quietly enjoy said premises.

THIRD That the said premises are free from incumbrances except as aforesaid.

FOURTH That the parties of the first part will execute or procure any further necessary assurance of the title to said premises.

FIFTH That the said Walter D. Douglas and George F. Piper will forever warrant the title to said premises.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered in the Presence of
Interlineation in 4th line made before signing
Albert Calcoff as to all
John O.P. Wheelwright

WALTER D. DOUGLAS L.S.

MAHALA D. DOUGLAS L.S.

GEORGE F. PIPER L.S.

GRACE B. PIPER L.S.

State of Minnesota

County of Hennepin ss

On this 29th day of June in the year one thousand nine hundred and seven before me personally came Walter D. Douglas and Mahala D. Douglas his wife and George F. Piper and Grace B. Piper his wife to me known and known to me to be the individuals described in and who executed the foregoing instrument and severally duly acknowledged that they executed the same.

Sara H. Clough Notary Public County of Hennepin Minnesota My commission expires ?Mar 26 1910 L.S

State of Minnesota

County of Hennepin ss

I A.E. Allen Clerk of the County of Hennepin and also clerk of the District Court for the said County the same bang a Court of record Do Hereby certify that Sara H. Clough whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Notary Public in and for said County residing therein duly commissioned and sworn and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land tenements or hereditements in said State to be recorded therein And further that I am well acquainted with the handwriting of such Notary Public and verily beleive that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 29 day of June 1907

A.E. Allen Clerk

By R.S. Wrygan Deputy

Entered and compared the foregoing with the original July 3, 1907 2.40 P.M.

Examined By Clerk.

John Nicholson

16039 THIS INDENTURE made the 23rd day of November in the year one thousand nine hundred and five BETWEEN MARY FRANCES VAN BLARCOM sole acting executrix under the last will and testament of JOHN A. VAN BLARCOM deceased of Omaha in the State of Nebraska party of the first part A N D JOHN M. CRAGEN of Ward Two Borough and County of Queens City

Residing in Borough of Queens.

Entered and compared the foregoing with the original October 15, 1909 at 9 A.M.

Examined by John Niederstein Clerk.

1651-10

([illegible])

THIS INDENTURE, made the first day of October, in the year [illegible] Nineteen hundred and nine.

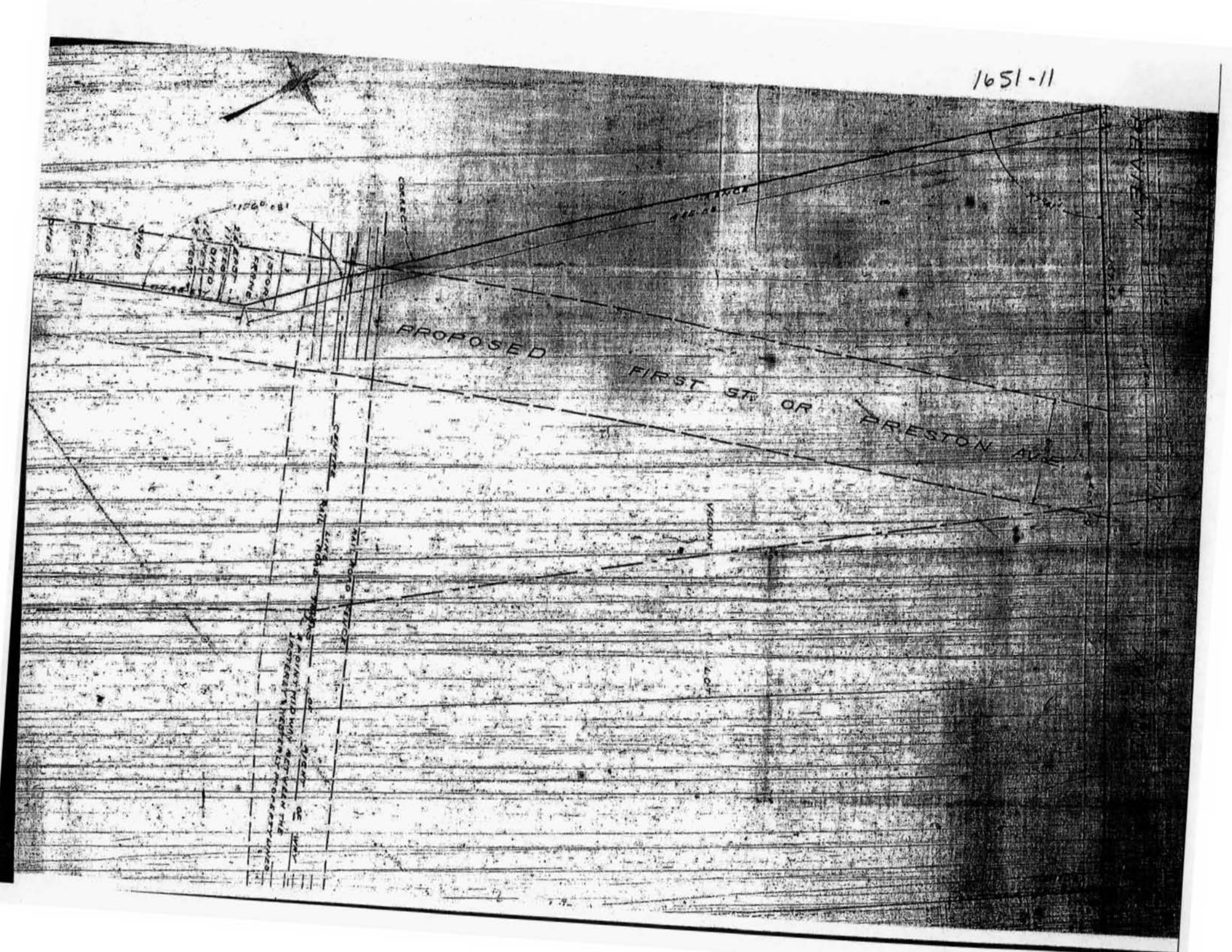
BETWEEN DARLING & COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and doing business in the City of Long Island City, in the State of New York, party of the first part and CHARLES A. ALLING, of the City of Chicago, County of Cook and State of Illinois, party of the second part;

WITNESSETH, that the said party of the first part in consideration of the sum of ONE ($1.00) DOLLAR, lawful money of the United States, and other valuable considerations, paid by the party of the second part, does hereby grant and release unto the said party of the second part, his heirs and assigns forever.

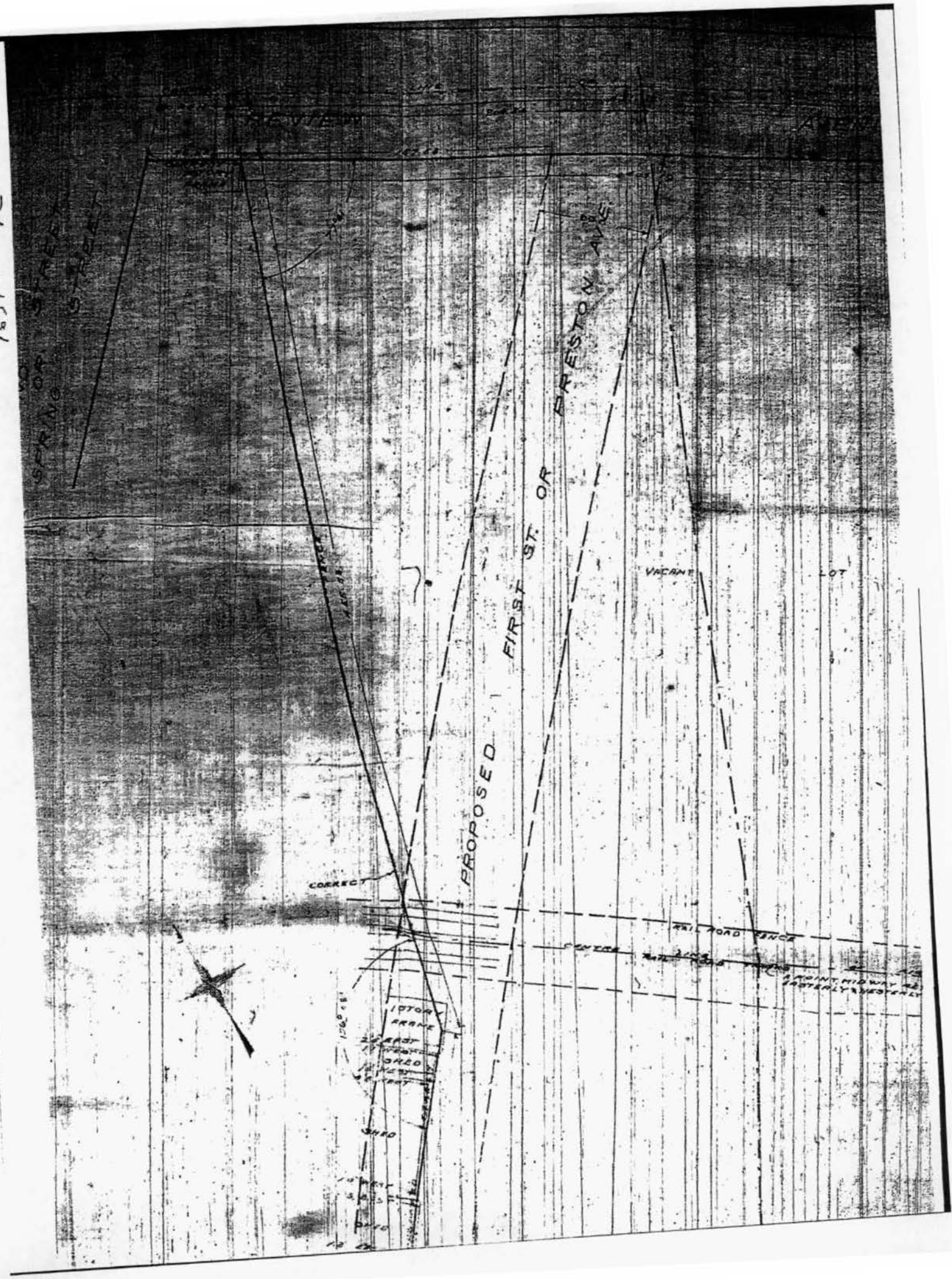
ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Queens, of the City of New York, in the County of Queens and State of New York, consisting of the westerly half part of that certain piece or parcel of land which was conveyed to Walter D. Douglas and George F. Piper two of the parties of the first part by the Guaranty Trust Company of New York, by deed dated February twenty-eighth, 1903 and the location whereof is shown on a survey thereof, made by PeterElbert Nostrand, dated March twenty-first, 1903 which survey or a copy thereof is hereto annexed and made part of this indenture, and which westerly half of said premises is more particularly bounded and described as follows:-

BEGINNING at the intersection of the division line between land late belonging to Helenah [illegible] and land lately belonging to theheirs of [illegible] [illegible] the centre line of Review avenue which point is distant on said [illegible] [illegible] thirty four [illegible] and fourteen one-hundredths of a feet easterly [illegible] [illegible] of Second Street [illegible] Street as shown on said survey; running thence [illegible] [illegible] division line [illegible] hundred [illegible] five feet and [illegible]

1651-11

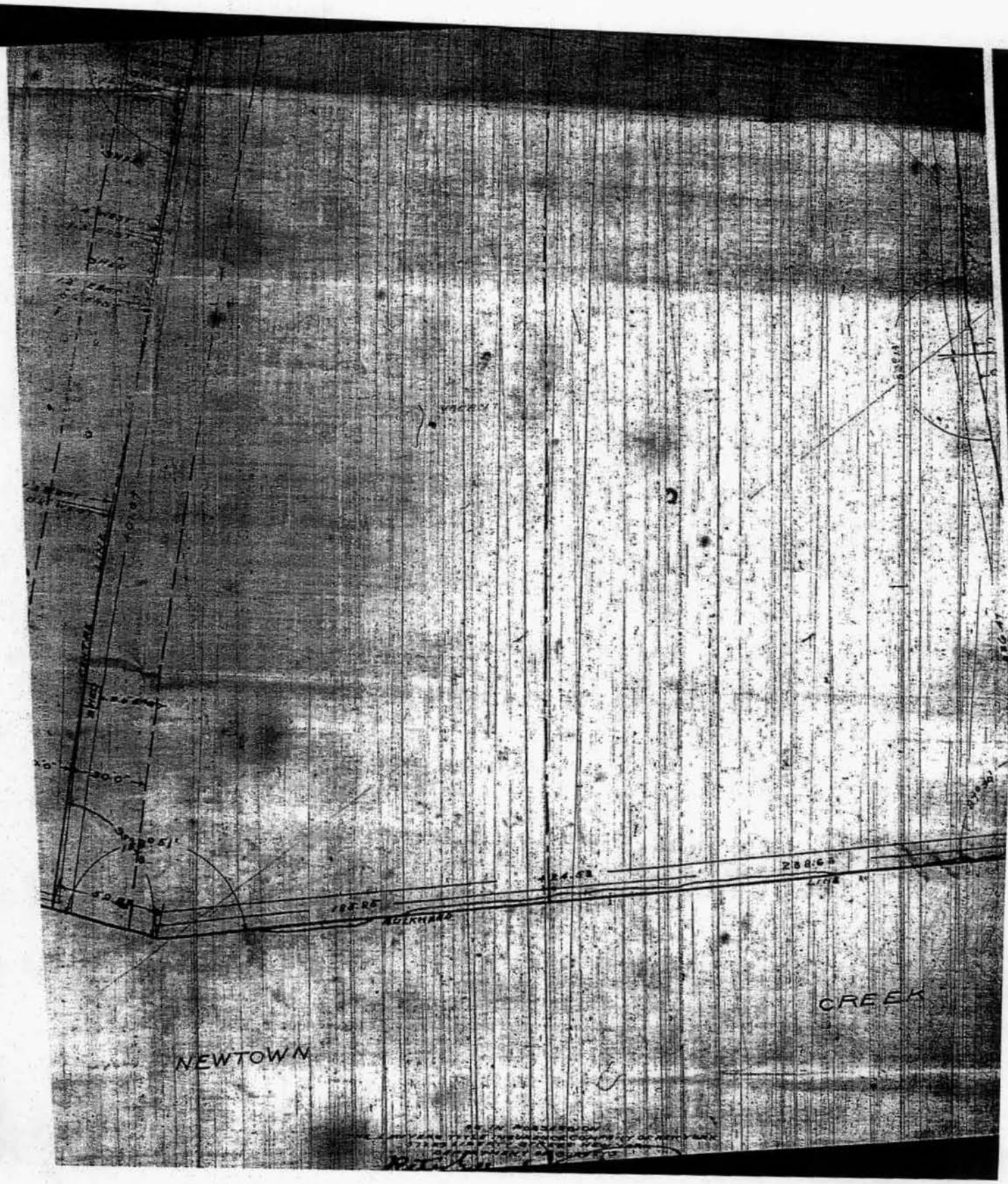

PROPOSED FIRST ST. OR PRESTON AVE.
CORRECT
VACANT LOT
CENTRE RAIL ROAD LINE
RAIL ROAD LINE
SHED
1 STORY FRAME
2 EAST
1 FEST
SHED
1 WEST
SHED
SHED
A POINT MIDWAY BETWEEN THE EASTERLY & WESTERLY PROPERTY LINES
OF RIGHT OF WAY
REVIEW

1651 - 12



SPRING OR STREET
PROPOSED FIRST ST. OR PRESTON AVE.
VACANT LOT
CORRECT
RAIL ROAD FENCE
CENTRE LINE
A POINT MIDWAY
EASTERLY & WESTERLY
STORY FRAME
SHED

1651-1



rather at a right to the centre line of First Street as laid down on a certain map filed in the office of the Clerk of Queens County, entitled "Map of the farm of Francis and Eve Dyckes, situated on the Newtown and Dutch Kills Creek in Newtown, Queens County, as surveyed and a portion thereof laid out into lots for Meziah Bliss and Samuel Braden, by Van Alst and Meserole City Surveyors, May, 1836" thence southwesterly along the centre line of said street four hundred and one feet and eighty seven one-hundredths of a foot to the northeasterly side of Newtown Creek; thence southeasterly along said northeasterly side of Newtown Creek as the same runs two hundred and thirty eight feet and sixty eight one-hundredths of a foot to a point on said northeasterly side of said creek equi-distant along the bulk-head line from the easterly and westerly boundary lines of the premises conveyed by the deed above mentioned and shown on said survey; thence running in a general northeasterly direction in a straight line to a point in the center line of the right-of-way of the Long Island Railroad Company equi-distant between the easterly and westerly boundary lines of said premises conveyed by the deed above mentioned and shown on said survey; thence continuing northwardly from said last mentioned point in a straight line to the centre line of Review avenue at a point therein distant two hundred and four feet and fifty four one-hundredths of a foot easterly from the point or place of beginning, and thence westerly along said centre line of Review avenue two hundred and four feet and fifty four one-hundredths of a foot to the point or place of beginning. be the said several distances and dimensions more or less.

Together with the right of the parties of the first part to the land under the waters of Newtown Creek in front of the premises hereby conveyed And also a right of way over a strip of land about twelve feet in width lying south of and adjoining the right of way of said Long Island Railroad Company and forming a part of that portion of the property conveyed to the said Walter D. Douglas and George F. Piper by the deed above mentioned, which lies east of the premises hereby conveyed and which right of way is intended to be a continuation of a private road running across the premises hereby conveyed as the same is now in use Subject, however to the right, if any of the Long Island Railroad Company to so much of said premises above described as is now occupied by said Company, And also subject to a right of way which is hereby reserved to the parties of the first part their heirs and assigns over a strip of land part of the premises hereby conveyed about twelve feet in width and now used as a private road lying south of and immediately adjoining the right of way of said Long Island Railroad Company as said private road is now in use, for access by parties of the first part, their heirs and assigns to and from that portion of the property conveyed by the deed above mentioned and shown on said survey lying east of the premises hereby conveyed, Also subject to the use of a public street or highway of so much of the premises above described and hereby conveyed as lies within the bed of Review Avenue

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part doth covenant with the

15

First,- that the said Darling & Company party of the first part is seized of the said premises in fee simple and has good right to convey the same.

Second,- that the party of the second part shall quietly enjoy said premises.

Third,- that the said premises are free from incumbrances.

Fourth,- that the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth,- that the party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said Darling & Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its — this first day of October in the year one thousand nine hundred and nine.

In the presence of

M. R. McCLURE,

DARLING & COMPANY (LS)

By Charles E. Davis its President

Charles A. Alling, its Secretary.

STATE OF ILLINOIS,

COUNTY OF COOK, SS.:

On this first day of October, in the year one thousand nine hundred and nine before me personally came Charles E. Davis to me known who being by me duly sworn, did depose and say that he resided in City of Chicago, Cook County, Illinois; that he is the president of Darling & Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of the said corporation; that the seal affixedvto the said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation and that he signed his name thereto as its president by the like order.

(LS) NORMAN S. COLLINS,

Notary Public in & for Cook County, Illinois.

STATE OF ILLINOIS

COUNTY OF COOK , SS.:

On this first day of October, in the year one thousand nine hundred and nine before me personally came Charles A. Alling to me known who being by me duly sworn, did depose and say that he resided in the City of Chicago, Cook County, Illinois; that he is the Secretary of Darling & Company the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation and that he signed his name thereto as its secretary by the like order.

(LS) NORMAN S. COLLINS,

Notary Public,

in & for Cook County, Illinois.

STATE OF ILLINOIS,

COOK COUNTY, SS.:

I, JOSEPH F. MAAS, County Clerk of the County of Cook, do hereby certify, that I am the lawful custodian of the official records of Notaries Public of said County, and as such officer am duly authorized to issue certificates of magistracy that Norman G. Collins, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a Notary Public in and for Cook County duly commissioned, sowrn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said State of Illinois, and to administer oaths, all of which appears from the records and files in my office; that I am well acquainted with the hand writing of said Notary and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County, this 7-day of October 1909.

(SEAL) JOSEPH F. MAAS, County Clerk.

Entered and compared the foregoing with the original October 15, 1909 at 9-25 A.M.

Examined by Clerk.

(24490)

THIS INDENTURE, made the first day of October, in the year nineteen hundred and nine.

BETWEEN CHARLES A. VAN IDERSTINE and MARY E. VAN IDERSTINE, his wife, and EMMA E. VAN IDERSTINE, a spinster, of Suffolk County, New York, parties of the first part and CHARLES A. ALLING, of the City of Chicago, County of Cook and State of Illinois, of the second part:

WITNESSETH, that the said parties of the first part in consideration of the sum of ONE ($1.00) DOLLAR, lawful money of the United States and other valuable considerations, paid by the party of the second part, do hereby grant and release unto the said party of the second part his heirs and assigns forever.

ALL that certain piece of land situated in the town of Newtown, Queens County and State of New York, bounded and described as follows, to-wit:-

BEGINNING on the westerly side of a street sixty (60) feet wide the central part whereof is now used and occupied by the Flushing Railroad Company at the north east corner of the said on the northerly side of the bone factory of Henry Preston, which point is distant five hundred and eighty eight (588) feet and one and a half inches (1-1/2)

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written

In the presence of

HENRY RAMKE

GUSTAV HEINRICH (LS)

STATE OF NEW YORK,

COUNTY OF QUEENS,

CITY OF NEW YORK, SS.:

On this tenth day of January in the year one thousand nine hundred and ten before me personally came Gustav Heinrich to me known and known to me to be the individual described in and who executed the foregoing instrument and he thereupon acknowledged to me that he executed the same.

HENRY RAMKE

Notary Public Queens Co. N.Y.

Entered and compared the foregoing with the original January 10, 1910 at 2-30 P.M.

Examined by Martin Mager Clerk.

1665-230

(703)

THIS INDENTURE, made the first day of October, in the year Nineteen hundred and nine.

BETWEEN CHARLES A. ALLING and SARA A. ALLING, his wife, of the City of Chicago, County of Cook and State of Illinois, parties of the first part and THE VAN IDERSTINE COMPANY, a corporation organized under the laws of the State of Maine, party of the second part:

WITNESSETH, that the said parties of the first part in consideration of the sum of ONE DOLLAR ($1.00) lawful money of the United States, and other valuable considerations, paid by the party of the second part, do hereby grant and release unto the said party of the second part, its successors and assigns forever.

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Queens of the City of New York, in the County of Queens and State of New York, consisting of the westerly half-part of that certain piece or parcel of land which

was conveyed to Walter D. Douglas and George F. Piper two of the parties of the first part by the Guaranty Trust Company of New York, by deed dated February twenty-eighth, 1903 and the location whereof is shown on a survey thereof made by Peter Elbert Nostrand, dated March twenty first, 1907 which survey or a copy thereof is hereto annexed and made part of this indenture, and which westerly half of said premises is more particularly bounded and described as follows:-

B E G I N N I N G at the intersection of the division line between land lately belonging to Helenah Kowenhoven and land lately belonging to the heirs of Agnes Pine, deceased with the centre line of Review Avenue which point is distant on said centre line of Review Avenue thirty four feet and fourteen one-hundredths of a foot easterly from the easterly side of Second Street or Spring Street as shown on the said survey; running thence southwesterly along said division line four hundred and eighty five feet and sixty three one-hundredths of a foot to the centre line of First Street as laid down on a certain map filed in the office of the Clerk of Queens County, entitled "Map of the farm of Francis and Eve Duryea situated in the Newtown and Dutch Kills Creek in Newtown, Queens County, as surveyed and a portion thereof laid out into lots for Meziah Bliss and Samuel Sneden by Van Alst and Meserole, City Surveyors, May 1856"; thence southwesterly along the centre line of said street four hundred and one feet and eighty seven one-hundredths of a foot to the northeasterly side of Newtown Creek; thence southeasterly along said northeasterly side of Newtown Creek as the same runs two hundred and thirty eight feet and sixty eight one hundredths of a foot to a point on said northeasterly side of said creek equi-distant along the bulkhead line from the easterly and westerly boundary lines of the premises conveyed by the deed above mentioned and shown on said survey, thence running in a general northeasterly direction in a straight line to a point in the center line of the right of way of the Long Island Railroad Company equi-distant between the easterly and westerly boundary lines of said premises conveyed by the deed above mentioned and shown on said survey; thence continuing northwardly from said last mentioned point in a straight line to the centre line of Review Avenue at a point therein distant two hundred and four feet and fifty four one hundredths of a foot easterly from the point or place of beginning, and thence westerly along said centre line of Review Avenue two hundred and four feet and fifty four onehundredths of a foot to the point or place of beginning. be the said several distances and dimensions more or less.

Together with the right of the parties of the first part to the land under the waters of Newtown Creek in front of the premises hereby conveyed, and also a right of way over a strip of land about twelve feet in width lying south of and adjoining the right of way of said Long Island Railroad Company and forming a part of that portion of the property conveyed to the said Walter D. Douglas and George F. Piper by the deed above mentioned which lies east of the premises hereby conveyed and which right of way is intended to be a continuation of a private road running across the premises hereby conveyed as the same is

Subject, however, to the right, if any of the Long Island Railroad Company to so much of said premises above described as is now occupied by said Company and also subject to a right of way which is hereby reserved to the parties of the first part their heirs and assigns over a strip of land part of the premises hereby conveyed, about twelve feet in width and now used as a private road lying south of and immediately adjoining the right of way of said Long Island Railroad Company as said private road is now in use for access by parties of the first part their heirs and assigns to and from that portion of the property conveyed by the deed above mentioned and shown on said survey, lying east of the premises hereby conveyed, Also subject to the use as a public street or highway of so much of the premises above described and hereby conveyed as lies within the bed of Review Avenue.

AND ALSO ALL that certain piece of land situate in the town of Newtown, Queens County and State of New York, bounded and described as follows to-wit:- Beginning on the westerly side of a street sixty (60) feet wide the central part thereof is now used and occupied by the Flushing Railroad Company at the northeast corner of the shed on the northerly side of the bone factoryof Henry Preston, which point is distant five hundred and eight-eight (588) feet and one and a half inches (1-1/2) southerly from the southerly side of the Greenpoint and Flushing Plank Road and which point is also ninety eight (98) feet and one and a half (1-1/2) inches distant southerly from the centre line of an intended street sixty (60) feet wide to be laid out from the said Railroad Street to Newtown Creek; thence westerly along the northerly side of said shed one hundred and sixty one (161) feet and eleven (11) inches to northwest corner of said shed being a point southerly perpendicular distance of which from the said centre line of an intended streetis one hundred and five (105) feet and ten and one half (10-1/2) inches; thence southerly along the westerly side or end of said shed and in prolongation of said perpendicular distance twenty four (24) feet and one and one half (1-1/2) inches to the point midway between the northerly and southerly boundary lines of the land granted to said Henry Preston by George H. Moller and others by deed dated November 1, 1862; thence westerly and parallel with said centre line of an intended street to Newtown Creek; thence northerly along said creek sixty five (65) feet and two and three quarter (2-3/4) inches more or less to land conveyed by Henry Preston to James Buchan and others ; thence easterly along the southernmost boundary line of said land of said Buchan and others, which boundary is sixty five (65) feet distant from said centre line and is parallel therewith to the end of said southernmost boundary line; thence northerly at right angles to said southernmost boundary line and still along the said land of said Buchan and others twelve (12) feet and three quarters of an inch (3/4); thence easterly and still along the said land of said Buchan and others one hundred and sixty two (162) feet and one half (1/2) of an inch to the westerly side of said Railroad Street; thence southerly along the westerly side of said Railroad Street forty nine (49) feet and three quarters (3/4) of an inch to the pointof beginning.

And also all the right, title and interest of the parties of the first part in and to the land now or formerly under water in front of the above described premises and

lying between lines made by producing the northern and southern parallel boundaries of the above described premises.

And also all the interest and estate of the parties of the first part in the land comprising said Railroad Street in front of said premises to the centre of said street subject to the use of said Railroad Street by the public generally as a public street until closed or altered by proper authority and subject also to the rights of said Railroad Company over said Railroad Street.

AND ALSO ALL that certain lot, piece or parcel of land situate and lying in Long Island City, County of Queens and State of New York, bounded and described as follows

B E G I N N I N G on the westerly side of a street sixty feet wide the central part whereof is now used and occupied by the Flushing Railroad Company or its successor at a point distant four hundred and ninety feet southerly from the southerly side of Greenpoint and Flushing Plank Road which is also in the centre line of an intended street sixty feet wide to be laid out from the said Railroad Street to Newtown Creek; running thence southerly along the westerly side of the said Railroad Street forty nine and three fourths of an inch; thence westerly one hundred and sixty two feet and one half of an inch to a point, the southerly perpendicular distance of which from the said centre line of an intended street is fifty two feet eleven and one fourth inches; thence southerly and in prolongation of said perpendicular distance twelve feet and three fourths of an inch; thence westerly and parallel with said centre line of an intended street to Newtown Creek; thence northerly along said Creek sixty five feet and four inches more or less to said centre line of an intended street and thence easterly along said last mentioned line to the point of beginning.

Also all the land now or formerly under water in front of the above described premises and lying between lines made by producing the northern and southern parallel boundaries of the above described premises.

Also all the land comprising said Railroad Street in front of said premises to the centre of said street subject to the use of the said Railroad Street and the said intended street by the public generally as public streets until closed or altered by proper authority; and subject also to the rights of the said Railroad Company over the said Railroad street.

T O G E T H E R with the appurtenances and all the estate and rights of the said parties of the first part in and to said premises

T O H A V E A N D T O H O L D the above granted premises unto the said party of the second part, its successors and assigns forever.

And the said parties of the first part do covenant with the said party of the second part as follows:-

First,- that the said parties of the first part are seized of the said premises in fee simple and has good right to convey the same.

Second,- that the party of the second part shall quietly enjoy the said premises.

Third,- that the said premises are free from incumbrances.

Fourth,- that the parties of the first part will execute or procure any further necessary assurance of the title to said premises

Fifth,- that the parties of the first part will forever warrent the title to said premises

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written

In the presence of

M. R. McCLURE

CHARLES A. ALLING (LS)

SARA A. ALLING (LS)

STATE OF ILLINOIS

COUNTY OF COOK, SS.:

On this first day of October, in the year nineteen hundred and nine, before me personally came Charles A. Alling and Sara A. Alling, his wife, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they thereupon severally acknowledged to me that they executed the same.

(LS) NORMAN G. COLLINS,

Notary Public in & for Cook County, Ill

STATE OF ILLINOIS,

COOK COUNTY, SS.:

I, JOSEPH F. HAAG, County Clerk of the County of Cook, do hereby certify that I am the keeper of the official record of Notaries Public of said County, and as such officer am duly authorized to issue certificates of magistracy that Norman G. Collins, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a Notary Public in and for Cook County, duly commissioned sworn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments in said State of Illinois, and to administer oaths; all of which appears from the records and files in my office; that I am well acquainted with the hand writing of said Notary and verily believe that the signature to the said proof of acknowledgment is genuine, and further that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County, this 7 day of October, 1909.

(LS) JOSEPH F. HAAG, County Clerk.

Entered and compared the foregoing with the original January 10, 1910 at 9:25 A.M

Examined by Clerk.

Standard N. Y. B. T. U. Form 8007 • 5-72 20M —Bargain and Sale Deed, with Covenant against Grantor's Acts—Individual or Corporation.

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

#605-00
NY State
Deed 3x

THIS INDENTURE, made the 12th day of April , nineteen hundred and Seventy-Nine

BETWEEN

DARLING-DELAWARE COMPANY, INC., a Delaware corporation, with offices at 825 Wilson Avenue, Newark, New Jersey, successor by merger with THE VAN IDERSTINE COMPANY,

REEL 1155 PAGE 1030

party of the first part, and

CARL A. CAPASSO, residing at
1 Tredwell Drive, Old Westbury, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of
ONE DOLLAR and other valuable consideration

lawful money of the United States, to it paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Long Island City, in the Borough and County of Queens, City and State of New York, bounded and described as follows:

312
272
280

BEGINNING at a point on the southwesterly line of right of way of the Long Island Railroad Company, where is is intersected by the division line between the herein described premises and lands now or formerly of The Standard Oil Company of New York, said division line being defined in a boundary line agreement dated August 3, 1905 between George F. Piper, Walter D. Douglas and the Standard Oil Company of New York, recorded in the office of the Clerk (now register) of the County of Queens in Liber 1383 page 418 of conveyances on August 15, 1905, which beginning point is also 458.22 feet southwesterly from a point in a line which intersects the southwesterly side of Review Avenue, 80 feet wide at point therein distant 925.03 feet southeasterly from the corner formed by the intersection of the southeasterly side of Greenpoint Avenue 140 feet wide, with the southwesterly side of Review Avenue, when measured along said southwesterly side of Review Avenue;

THENCE along said division line as defined in above mentioned agreement south 18 degrees 25 minutes 31 seconds west 119.93 feet to an angle point;

THENCE still along said division line as defined in said agreement south 15 degrees 12 minutes 31 seconds west 239.74 feet to the northeasterly U.S. Pierhead and Bulkhead Line of Newtown Creek as approved by the Secretary of War on July 22, 1916;

THENCE along the said northeasterly U.S. Pierhead and Bulkhead Line of Newtown Creek the following two courses and distances:

1. North 72 degrees 16 minutes 28.2 seconds west 430.09 feet.
2. North 50 degrees 28 minutes 54.2 seconds west 143.09 feet.

Thence north 35 degrees 02 minutes 18 seconds east 357.09 feet;

Thence north 32 degrees 42 minutes 56 seconds east 59.24 feet;

THENCE southeasterly along the southwesterly line of the right of way of the Long Island Railroad Company and along the arc of a circle having a radius of 2889.93 feet bearing to the left, a distance of 442.37 feet to the point or place of BEGINNING.

(CONTINUED)

Together with and subject to an easement of Right of Way for ingress and egress as defined and limited in Reel 416 p 54.

Rec. 1155 1031

BEING all of the premises conveyed to the party of the first part by deed from Pocahontas Coal Corporation to The Van Iderstine Company dated September 28, 1955 and recorded on October 6, 1955 in Liber 6814 cp 260 and also being part of the premises conveyed to the party of the first part by various deeds and grants from Charles A. Alling and Sara A. Alling, his wife to The Van Iderstine Company dated October 1, 1909 and recorded on January 10, 1910 in Liber 1665 cp 230; from the American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917 and recorded September 1, 1917 in Liber 2142 cp 106; from the American Agricultural Chemical Company to The Van Iderstine Company dated June 28, 1929 and recorded June 29, 1929 in Liber 3312 cp 300; and Letters Patent granted by the People of the State of New York to The Van Iderstine Company dated July 20, 1939 and recorded on August 8, 1939 in Liber 4072 cp 173.

Together with and subject to terms and conditions contained in the Letters Patent granted by the People of the State of New York to The Van Iderstine Co., dated July 20, 1939 recorded August 8, 1939 in Liber 4072 cp 173.

Together with and subject to a perpetual easement contained in deed from the American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917 recorded September 1, 1917 in Liber 2142 cp 106.

Together with and subject to rights of the Long Island Railroad Company to maintain the Railway siding or spur as the same now exists over, upon and across the premises.

Subject to such state of facts as shown on survey of Montrose Surveying Co., City and Land Surveyors dated September 6, 1978.

Together with and subject to the terms and conditions contained in Letters Patent granted by the People of the State of New York to the New York Kerosine Oil Company dated December 30, 1863 and recorded in Book of Patents Number 39, Page 145, Department of State, Albany, New York

Together with all of its rights to use the dock pier and/or bulkhead and water front abutting the premises along Newtown Creek.

TOGETHER with the benefits and subject to the burdens of any, if any easement of right of way for purposes of maintaining, repairing, replacing and using sewer and electric power lines presently existing under the parcel which is bounded and described as follows:

BEGINNING at a point on the southwesterly side of Review Avenue, 80 feet wide, distant 686.61 feet southeasterly from the corner formed by the intersection of the southeasterly side of Greenpoint Avenue, 140 feet wide, with the southwesterly side of Review Avenue, and from said beginning point, the following courses and distances;

THENCE south 18 degrees 31 minutes 47.7 seconds west 320.95 feet;
THENCE south 73 degrees 31 minutes 40.9 seconds east 7.03 feet;
THENCE south 16 degrees 28 minutes 19.1 seconds west 21.72 feet;
THENCE north 73 degrees 31 minutes 40.9 seconds west 7.81 feet;
THENCE south 18 degrees 31 minutes 47.7 seconds west 18.09 feet;
THENCE south 28 degrees 59 minutes 35.9 seconds east 15.08 feet;
THENCE south 31 degrees 50 minutes 56.9 seconds west 5.12 feet;
to the northeasterly line of the Long Island Railroad Right of Way;
THENCE southeasterly along said Railroad Right of Way 15.01 feet;
THENCE north 31 degrees 50 minutes 56.9 seconds east 12.35 feet;
THENCE north 14 degrees 47 minutes 30.4 seconds east 1.39 feet;
THENCE north 28 degrees 59 minutes 35.9 seconds west 15.97 feet;
THENCE north 74 degrees 44 minutes 29.8 seconds west 2.94 feet;
THENCE north 14 degrees 52 minutes 13.8 seconds east 31.64 feet;
THENCE south 75 degrees 07 minutes 46.2 seconds east 4.34 feet;
THENCE north 18 degrees 31 minutes 47.7 seconds east 321.75 feet to the southwesterly side of Review Avenue;
THENCE along said southwesterly side of Review Avenue north 66 degrees 30 minutes 29 seconds west 15.06 feet to the point or place of BEGINNING.

Together with the right to use, enter, maintain and repair the two buildings adjacent to said easement, said buildings being presently used as control and power buildings and shown on survey of Montrose Surveying Co., City and Land Surveyors, dated January 22, 1979, subject to the obligation and duty of party of the second part, its successors and assigns to pay for all costs of maintaining, repairing and using said buildings, including expenses of any kind such as but not limited to real estate taxes, assessments, repairs and curing violations for as long as the easement for power and sewer lines is in existence. The easement herein contained is independent of the easement in the prior paragraph above.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

Liber 1153 Page 1032

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Donald K. Gregan
DONALD K. GREGAN, Asst. Secy.

DARLING-DELAWARE COMPANY, INC.

By: W. J. Alcock, Jr.
WARREN J. ALCOCK, JR., Vice President

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

On the 12th day of April, 19 79, before me personally came WARREN J. ALCOCK, JR. to me known, who, being by me duly sworn, did depose and say that he resides at No. 825 Wilson Avenue, Newark, New Jersey ; that he is the Vice President of Darling-Delaware Co., Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed he name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No. ; that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

HOWARD W. SEGAL
Notary Public ... New York
Qualified ... County
Commission expires March 30, 1981

REEL 1155 PAGE 1033

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS
TITLE NO. 2218816

DARLING-DELAWARE COMPANY, INC.

TO

CARL A. CAPASSO

SECTION 2
BLOCK 312
LOT 272 and 280
COUNTY OR TOWN Queens

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:

IRA L. HYAMS P.C.
375 NORTH BROADWAY
JERICHO NY 11753
Zip No.

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
THE TITLE GUARANTEE COMPANY

12970

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

OFFICE ... CITY REGISTER

RECEIVED $ 66500 REAL ESTATE APR 1 3 1979 TRANSFER TAX QUEENS COUNTY

16010

REC. # 6031
SST #
RPT # 6031
RECORDED BY TAX PAID
T. G. & T. CO.

Standard N.Y.B.T.U. Form 8007-10M Bargain and Sale Deed, with Covenant against Grantor's Acts—Individual or Corporation.

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

NO STAMPS. EXISTING MTGE EXCEEDS SALES PRICE

THIS INDENTURE, made the 23rd day of June, nineteen hundred and eighty

BETWEEN

CARL A. CAPASSO, residing at One Tredwell Drive, Old Westbury, New York

REEL 1267 PAGE 372

party of the first part, and

HOPE RESOURCE RECOVERY, INC., having an office at 16 Howard Street, Hicksville, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

TEN ($10.00) dollars,

lawful money of the United States, paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

312
P/O 272

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly line of a Long Island Railroad Right of Way, which point is the following three courses and distances from the corner formed by the intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue (140 feet wide):

1. RUNNING THENCE southeasterly from said corner and along the southerly side of Review Avenue 925.03 feet to a point;
2. THENCE south 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of a Long Island Railroad Right of Way;
3. THENCE northwesterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of BEGINNING.

Continuing northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point;

THENCE south 32 degrees 42 minutes 56 seconds west 59.24 feet to a point;

THENCE south 35 degrees 02 minutes 18 seconds west 80.76 feet to a point;

THENCE south 58 degrees 16 minutes 14 seconds east 234.84 feet to a point;

THENCE north 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of BEGINNING.

TOGETHER with any existing right, if any, which the party of the first part has to any easement or right of way from the above-described premises over Railroad Avenue to Greenpoint Avenue, which right shall be non-exclusive; reserving to the party of the first part, his successors and assigns any existing right of way or easement for the benefit of the remaining property of the party of the first part. Being part of the premises conveyed to the party of the first part by Darling-Delaware Company, Inc. by deed dated April 12, 1979 and recorded April 18, 1979 in Reel 1155, P. 1030.

TOGETHER with an easement in common with others for the purpose of maintaining, repairing and replacing sanitary sewer lines in that strip of land 6 ft. wide running from the northeast corner of the premises above described easterly along the northerly boundary of other abutting land of the party of the first part to the southerly terminus of the license given by the Long Island Railroad Co. to The Van Iderstine Co. to construct and maintain a 12 inch pipe with wires under the tracks of the Long Island Railroad Co. pursuant to agreement dated April 21, 1958. The easement created herein shall be conditioned upon the owner of the above-described premises paying its proportionate share of maintaining, repairing and replacing the sewer line and pumping station that carries the effluent from the point where the easement intersects the sewer line at the southerly terminus of the license from the Long Island Railroad Co. to Review Avenue. Upon failure to make such payment when due this easement shall terminate. The proportionate share shall be based upon the square footage of the various buildings that connect to and our serviced by the sewer line running to Review Avenue. The party of the first part or the then owner of the land through which this easement runs shall have the right at his own cost and expense, to relocate this easement and the owner of the above-described property agrees that it will join in any declarations which are necessary to be executed and recorded to indicate the new location of the easement.

REEL 1207 PAGE 373

RESERVING to the party of the second part its heirs, successors and assigns an easement from the southerly terminus of the four licenses granted by the Long Island Railroad Co. to The Van Iderstine Co. dated May 15, 1964, July 1, 1949, April 21, 1958 and July 1, 1949 to the northeasterly corner of the above-described property. The width of the easement along the one story concrete block and brick building presently existing on the premises described above shall be the distance between the northerly line of said building and the northerly line of the property described above. The width of the easement from the easterly line of said building to the northeasterly corner of the property described above shall be 6 feet. The easement shall be for the purpose of installing, maintaining, repairing and replacing the pipes, wires and other facilities that pass within the license areas.

RESERVING to the party of the first part, his heirs, successors and assigns an easement along the southerly side of the railroad siding which enters the property described above from its northeast corner and runs in a southwesterly direction for the purpose of loading and unloading railroad cars. Said easement shall run along the southerly side of the railroad tracks from the point where the southerly side of the railroad tracks enter the property described above a distance of 90 running feet and shall be 45 feet in width. This easement shall be revokable by the party of the second part, its successors or assigns upon the giving of thirty (30) days written notice to the party of the first part, his heirs, successors or assigns.

SUBJECT TO:

1. Any state of facts an accurate survey may show;
2. Rights of way, easements, Letters Patent, boundary line agreements and rights of record;
3. Mortgage made by Carl A. Capasso to Darling-Delaware Company, Inc. in the principal sum of $450,000.00 recorded in Reel 1155, P.1034 and now reduced to the principal sum of $377,606.95 and interest;
4. Rights and easements of others and abutting owners on the east side and west side of A Street also known as Railroad Road Avenue or Street
5. Rights, easements, use and occupation of the Long Island Railroad Co. in A Street also known as Railroad Avenue or Street and to maintain the railway siding or spur over, above and across the above-described premises.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

REEL 1267 PAGE 374

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Carl A. Capasso

STATE OF NEW YORK, COUNTY OF NASSAU SS:

On the 23rd day of June 1980, before me personally came Carl A. Capasso

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

JOSEPH V. IMPARA
NOTARY PUBLIC, State of New York
No. 30-7033575
Qualified in Nassau County
Term Expires March 30, 1982

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19, before me personally came

REEL 1267 PAGE 375

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19, before me personally came
to me known, who, being by me duly sworn, did depose and say that he resides at No. ;

that he is the
of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19, before me personally came
the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. ;

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed h name as witness thereto.

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS
TITLE NO. 2221467

CARL A. CAPASSO
TO
HOPE RESOURCE RECOVERY, INC.

SECTION 2
BLOCK 312
LOT PT\272
COUNTY OR TOWN Queens

Recorded at Request of
CHICAGO TITLE INSURANCE COMPANY

Return by Mail to

Eugene Moramarco Esq.
1551 Kellum Place,
Mineola N.Y.
Zip No. 11501

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
CHICAGO TITLE INSURANCE COMPANY

20612

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

1980 JUN 26 PM 12 30

OFFICE OF CITY REGISTER
Queens County
RECORDED
Witness my hand
and official seal
John J. Lagattuta
CITY REGISTER

RECEIVED
REAL ESTATE
JUN 26 1980
TRANSFER TAX
QUEENS
COUNTY
20329

C. FEE

9730

RPT #

RECORDED BY
U. G. & T. CO

REEL 4770 PG 1097

Standard N.Y.B.T.U. Form 8002–2014 —Bargain and Sale Deed, with Covenants against Grantor's Acts—Individual or Corporation. (single sheet)

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 30 day of December , nineteen hundred and ninety-seven

BETWEEN HOPE RESOURCE RECOVERY, INC., 16 Howard Street, Hicksville, New York

party of the first part, and

PRINCE PLASTIC & METAL CO., INC., 111-49 41st Avenue, Corona, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as set forth in Schedule A annexed hereto.

Premises Known As: 37-90 Newtown Creek
Long Island City, NY

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

Blk. 312
Lot 272

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Hope Resource Recovery, Inc.

By Martin Dellacona, Jr. Pres.
Martin Dellacona, Jr., President

SCHEDULE A

BEGINNING at a point on the southwesterly line of a Long Island Railroad Right of Way, which point is the following three courses and distances from the corner formed by the intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue (140 feet wide);

1. RUNNING THENCE Southeasterly from said corner and along the southerly side of Review Avenue 925.03 feet to a point;

2. THENCE South 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of a Long Island Railroad Right of Way;

3. THENCE Northwesterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of BEGINNING.

Continuing northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point;

THENCE South 32 degrees 42 minutes 56 seconds west 59.24 feet to a point;

THENCE South 35 degrees 02 minutes 18 seconds west 80.76 feet to a point;

THENCE South 58 degrees 16 minutes 14 seconds east 234.84 feet to a point;

THENCE North 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of BEGINNING.

TOGETHER with all of Grantor's right, title and interest in and to an Easement of Right of Way for ingress and egress over a strip of land 12 feet in width as such easement is recited in agreement in Liber 1383 cp 423.

BEING PREMISES KNOWN AS 3790 Railroad Avenue (aka 37-90 Newton Creek), Long Island City, New York

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF Nassau SS:

On the 30 day of December 1997, before me personally came Martin Dellacona, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at No. 16 HOWARD ST HICKSVILLE, NY ; that he is the President of Hope Resource Recovery, Inc. ; the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h is name thereto by like order

SO IN ORIGINAL

Notary Public

SC IN CRIGINAL

KENNETH WARD
Notary Public, State of New York
No. 01WA5022230
Qualified in Suffolk County
Term Expires January 3, 199

STATE OF NEW YORK, COUNTY OF SS:

On the day of 19 , before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. ; that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed h name as witness thereto.

REEL 1770 PG 1096

Bargain and Sale Deed

WITH COVENANT AGAINST GRANTOR'S ACTS

TITLE NO. BAC-12.045-B

Hope Resource Recovery, Inc.

TO

Prince Plastic & Metal Co., Inc.

COOKE ABSTRACT CORP

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS

Distributed by

CHICAGO TITLE INSURANCE COMPANY

SECTION

BLOCK 312

LOT 272

COUNTY ~~XXXYXXXW~~ Queens

Recorded at Request of
CHICAGO TITLE INSURANCE COMPANY

Return by Mail to

Lung-Fong Chen, Esq.
41-46 Main Street
Flushing, New York 11355

Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

CITY REGISTER RECORDING AND ENDORSEMENT PAGE

- QUEENS COUNTY -

(This page forms part of the instrument)

Block(s) 312

Lot(s) 272

37-90 Newtown Creek, Long Island City

Record & Return to: Lung-Fong Chen, Esq. 41-46 Main Street, Flushing, NY 11355

Title/Agent Company name: COOKE ABSTRACT CORP

Title Company number: CAC-2,045-Q

OFFICE USE ONLY - DO NOT WRITE BELOW THIS LINE

THE FOREGOING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

Examined by (a): 1-5-98

62.
1500.
5343.75

REEL 4770 PG 1100

Mtge Tax Serial No.	
Mtge Amount	$
Taxable Amount	$
Exemption (✓) YES ☐ NO ☐	
Type: [339EE] [255] [OTHER ____]	
Dwelling Type: [1 to 2] [3] [4 to 6] [OVER 6]	

TAX RECEIVED ON ABOVE MORTGAGE

County (basic)	$
City (Addt'l)	$
Spec Addt'l	$
TASF	$
MTA	$
NYCTA	$
TOTAL TAX	$

Apportionment Mortgage (✓) YES ☐ NO ☐

Joy A. Bobrow, City Register

City Register Serial Number ➡ 000990

Indexed By (a): ____ Verified By (a): C.B

Block(s) and Lot(s) verified by (✓): BS

Address ☑ Tax Map ☑

Extra Block(s) ____ Lot(s) ____

Recording Fee A	$37
Affidavit Fee (C)	$
TP-584/582 Fee (Y)	$
RPTT Fee (R)	$25
HPD-A ☑	HPD-C ☐

New York State Real Estate Transfer Tax ▼

$ 1500

Serial Number ➡ 012701

New York City Real Property Transfer Tax Serial Number ➡ 000293

New York State Gains Tax Serial Number ➡

RECORDED IN QUEENS COUNTY
OFFICE OF THE CITY REGISTER

1998 JAN -6 A 10:20

Witness My Hand and Official Seal

J. J. Bobrow CITY REGISTER

CRGFM890.BPG 1/93

REEL 5612 PG 1717

DEED

THIS INDENTURE, *made this* 3 *day of* March *: two thousand*

BETWEEN ***PRINCE PLASTIC & METAL CO., INC.***

having an address at 37-90 Railroad Avenue, L.I.C., N.Y. 11101

SO IN ORIGINAL

party of the first part, and ***ING-NAN HWANG***

having an address at ***111-49 41st Avenue, Corona, NY***

party of the second part,

WITNESSETH, *that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,*

ALL *that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:*

BEGINNING *at a point on the southerly line of a Long Island Railroad Right of Way, which point is the following three courses and distances from the corner formed by the intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue (140 feet wide);*

1. RUNNING THENCE Southeasterly from said corner and along the southerly side of Review Avenue, 925.03 feet to a point;

2. THENCE South 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of a Long Island Railroad Right of Way;

3. THENCE Northeasterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of BEGINNING.

Continuing northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point;

THENCE South 32 degrees 42 minutes 56 seconds west 59.24 feet to a point;

THENCE South 35 degrees 02 minutes 18 seconds west 80.76 feet to a point;

THENCE South 58 degrees 16 minutes 14 seconds east 234.84 feet to a point;

25×IE

THENCE North 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of BEGINNING;

TOGETHER with all of Grantor's right, title and interest in and to an Easement of Right of Way for ingress and egress over a strip of land 12 feet in width as such easement is recited in agreement in Liber 1383 cp 423.

BEING PREMISES KNOWN AS 3790 Railroad Avenue (aka 37-90 Newton Creek), Long Island City, N.Y.

***TOGETHER** with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.*

***AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.*

***AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.*

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

***IN WITNESS WHEREOF,** the party of the first part has duly executed this deed the day and year first above written.*

IN PRESENCE OF:

PRINCE PLASTIC & METAL CO., INC.,

By: ING-NAN HWANG
President & Sole Shareholder

***STATE OF NEW YORK**)ss.:*
***COUNTY OF QUEENS**)*

On this 3 day of ~~February~~ March, in the year 2000, before me the undersigned, personally appeared ING-NAN HWANG, the Sole Shareholder of PRINCE PLASTIC & METAL CO., INC., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

THOMAS E. BERGNER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN QUEENS COUNTY
2B6480163
COMMISSION EXPIRES 6/30/2001

Notary Public

~~NOTARY PUBLIC, STATE OF NEW YORK~~
~~QUALIFIED IN QUEENS COUNTY~~
~~# 2B6480163~~
~~COMMISSION EXPIRES 6/30/2001~~

SO IS ORIGINAL

25×1

REEL 5612 PG 1719

BARGAIN AND SALE DEED
WITH COVENANT AGAINST GRANTOR'S ACT

Title No.:

PRINCE PLASTIC &
METAL CO., INC.,

TO

ING-*NAN HWANG*

Section
Block 312
Lot 272
City or Town New York
County Queens

RETURN BY MAIL TO:

Thomas E. Berinato, ESQ.
123-40 83rd Avenue, Ste. 1D
Kew Gardens, NY 11415

25×1

REEL 5612 PG 1720

CITY REGISTER RECORDING AND ENDORSEMENT PAGE

COUNTY OF ▶ Queens

THIS PAGE FORMS PART OF THE INSTRUMENT

TOTAL NUMBER OF PAGES IN DOCUMENT INCLUDING THIS PAGE ▶

Block ▼	Lots – ONLY IF ENTIRE LOT ▼	Partial Lots ▼ P/O
312	272	

Premises ▼ 37-90 Railroad Ave A/K/A 37-90 Newtown Crk

Title/Agent Company Name ▼

Title Company Number ▼

RECORD & RETURN TO

NAME ▼ Thomas E. Bernstein

ADDRESS ▼ 123-40 83rd Ave #10

CITY ▼ Kew Gardens N.Y. STATE ▼ ZIP ▼ 11415

NAME & ADDRESS

PARTY 1 ▶ Prince Plastic & Metal, Inc.

ADDITIONAL PARTY 1 ▶

PARTY 2 ▶ Ing Nam Kuang

ADDITIONAL PARTY 2 ▶

FOLD

CHECK THIS BOX IF THERE ARE MORE THAN 2 OF EITHER PARTY ☐

CITY REGISTER'S USE ONLY — DO NOT WRITE BELOW THIS LINE

Examined by (✓): B

063486

City Register Serial Number ▶

Indexed By (✓): SW

Verified By (✓): AC

Mtge Tax Serial No.

Mtge Amount $

Taxable Amount $

Exemption (✓) YES ☐ NO ☐

Type: [3 SIDES] [2 SIDES] [OTHER ____]

Dwelling Type: [1 to 2] [3] [4 to 6] [OVER 6]

TAX RECEIVED ON ABOVE MORTGAGE ▼

County (basic) $

City (Addt'l) $

Spec Addt'l $

TASF $

MTA $

NYCTA $

TOTAL TAX $

Apportionment Mortgage (✓) YES ☐ NO ☐

Block(s) and Lot(s) verified by (✓):

Address ☑ Tax Map ☐

Extra Block(s) ____ Lot(s) ____

Recording Fee A $ 37

Affidavit Fee (C) $

RPTT Fee (R) $ 25

HPD-A ☑ HPD-C ☐

New York State Real Estate Transfer Tax ▼

$ 6

Serial Number ▶ 026186

New York City Real Property Transfer Tax Serial Number ▶ 014281

DEED 0292 37.00

LO/TL	CSHR	RECPT	DATE	TIME
4-1	2	95814	Jun 21-00	10:31

FOLD

RECORDED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK

2000 JUN 21 P 12:14

[signature]

CRGFM8NLBFG 04/00

25 × 10

REEL 6 2 4 3 PG 1 2 5 0

CITY REGISTER RECORDING AND ENDORSEMENT PAGE

COUNTY OF ► Queens

THIS PAGE FORMS PART OF THE INSTRUMENT

TOTAL NUMBER OF PAGES IN DOCUMENT INCLUDING THIS PAGE ► 1

SO IN ORIGINAL

Block ▼	Lots - ONLY IF ENTIRE LOT ▼	Partial Lots ▼
312	272	P/O

Premises ▼ 3790 Railroad Avenue

Title/Agent Company Name ▼

Title Company Number ▼

RECORD & RETURN TO:

NAME ▼ Thomas E. Berinato

ADDRESS ▼ 123-40 83rd Ave, Suite 1D

CITY ▼ Kew Gardens, N.Y. STATE ▼ ZIP ▼ 11415

NAME & ADDRESS

PARTY 1 ► ING-NAN HWANG, 111-49 41st Ave, Corona, N.Y.

ADDITIONAL PARTY 1 ►

PARTY 2 ► ING-NAN HWANG & FENG-CHIU HWANG, 111-49 41st Ave, Corona, N.Y.

ADDITIONAL PARTY 2 ►

FOLD

CHECK THIS BOX IF THERE ARE MORE THAN 2 OF EITHER PARTY ☐

CITY REGISTER'S USE ONLY - DO NOT WRITE BELOW THIS LINE

Examined by (✓):

Mtge Tax Serial No.	
Mtge Amount	$
Taxable Amount	$
Exemption (✓)	YES ☐ NO ☐
Type: [339EE] [255] [OTHER]	
Dwelling Type: [1 to 2] [3] [4 to 6] [OVER 6]	

TAX RECEIVED ON ABOVE MORTGAGE ▼

County (basic)	$
City (Addt'l)	$
Spec Addt'l	$
TASF	$
MTA	$
NYCTA	$
TOTAL TAX	$
Apportionment Mortgage (✓)	YES ☐ NO ☐

City Register Serial Number ► 027571

Indexed By (✓): ✓ Verified By (✓):

Block(s) and Lot(s) verified by (✓):

Address ☑ Tax Map ☐

Extra Block(s) Lot(s)

Recording Fee A	$ 37
Affidavit Fee (C)	$
RPTT Fee (R)	$ 25
HPD-A ☑	HPD-C ☐

New York State Real Estate Transfer Tax ▼ $

Serial Number ► 016732

New York City Real Property Transfer Tax Serial Number ► 004947

FOLD

RECORDED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK

2002 MAR -5 A 9:02

CRGFM89N.BPG - 04/00

25 x 17

REEL 6243 PG 1251

DEED

THIS INDENTURE, made this 1 *day of* Nov. , *Two Thousand One*

BETWEEN	ING-NAN HWANG
having an address at	111-49 41st Avenue, Corona, NY
party of the first part, and	ING-NAN HWANG and FENG-CHIU HWANG
having an address at	111-49 41st Avenue, Corona, NY

party of the second part,

WITNESSETH, *that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,*

ALL THAT CERTAIN *plot, piece or parcel of land with the buildings and improvements thereon, erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:*

BEGINNING *at a point on the southerly line of Long Island Railroad Right of Way, which point is the following three courses and distances from the corner formed by the intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue. (140 feet wide)*

1. ***RUNNING THENCE*** *Southeasterly from said corner and along the southerly side of Review Avenue, 925.03 feet to a point;*

2. ***THENCE*** *South 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of Long Island Railroad Right of Way;*

3. ***THENCE*** *Northeasterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of* ***BEGINNING.***

Continuing northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point:

THENCE *South 32 degrees 42 minutes 56 seconds west 59.24 feet to a point:*

THENCE *South 35 degrees 02 Minutes 18 seconds west 80.76 feet to a point:*

THENCE *South 58 degrees 16 minutes 14 seconds east 234.84 feet to a point:*

THENCE *North 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of* ***BEGINNING.***

25 x 11

***TOGETHER** with all of Grantor's right, title and interest in and to an Easement of Right of Way for ingress and egress over a strip of land 12 feet in width as such easement is recited in agreement in Liber 1383 cp 423.*

***BEING PREMISES KNOWN AS** 3790 Railroad Avenue (aka 37-90 Newton Creek), Long Island City, N.Y.*

***TOGETHER** with all right, title and interest, if any, of the party of the first party in and to any streets and roads abutting the above described premises to the center lines thereof;*
***TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises: **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part, forever.*

***AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.*

***AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.*

The word "party" shall be construed as it read "parties" whenever the sense of this indenture so requires.

***IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.*

IN PRESENCE OF:

ING-NAN HWANG

***STATE OF NEW YORK**)ss.:*
***COUNTY OF QUEENS**)*

*On this 1 day of Nov., in the year 2001, before me the undersigned, personally appeared **ING-NAN HWANG,***

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

QUEENS COUNTY
2BE4801G3

REEL 6243PG 1253

BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR'S ACT

Title No.:

ING-NAN HWANG

TO

ING-NAN HWANG & FENG-CHIU HWANG

Section
Block 312
Lot 272
City or Town New York
County Queens

RETURN BY MAIL TO:

Thomas E. Berinato, ESQ.
123-40 83rd Avenue, Ste. 1D
Kew Gardens, NY 11415

25×10

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2010111300093001001E0838

RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 6**

Document ID: 2010111300093001 Document Date: 11-13-2010 Preparation Date: 11-13-2010
Document Type: DEED
Document Page Count: 4

PRESENTER:	**RETURN TO:**
THOMAS BERINATO	THOMAS BERINATO
123-40 83RD AVE SUITE 1D	123-40 83RD AVE SUITE 1D
KEW GARDENS, NY 11415	KEW GARDENS, NY 11415
718-575-3400	718-575-3400
tberinato@verizon.net	tberinato@verizon.net

PROPERTY DATA

Borough	Block	Lot	Unit	Address
QUEENS	312	272	Entire Lot	37-90 NEWTOWN CREEK

Property Type: INDUSTRIAL BUILDING

CROSS REFERENCE DATA

CRFN_____ *or* Document ID_____ *or* _____ Year____ Reel ___ Page____ *or* File Number_____

PARTIES

GRANTOR/SELLER:	**GRANTEE/BUYER:**
ING-NAN HWANG	MAZU, LLC
37-90 RAILROAD AVENUE	37-90 RAILROAD AVENUE
LIC, NY 11101	LIC, NY 11101

x Additional Parties Listed on Continuation Page

FEES AND TAXES

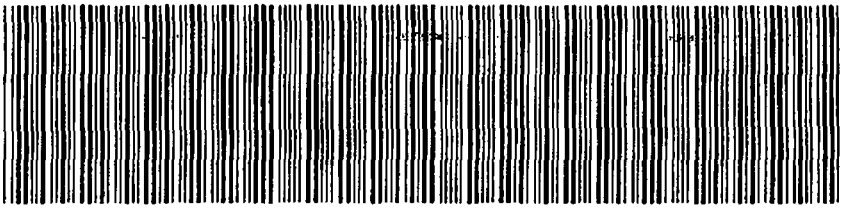
Mortgage		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	57.00
Affidavit Fee:	$	0.00

Filing Fee:	
$	250.00
NYC Real Property Transfer Tax:	
$	0.00
NYS Real Estate Transfer Tax:	
$	0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 02-25-2011 13:41
City Register File No.(CRFN):
2011000069593

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2010111300093001001C0AB8

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) **PAGE 2 OF 6**

Document ID: 2010111300093001 Document Date: 11-13-2010 Preparation Date: 11-13-2010
Document Type: DEED

PARTIES
GRANTOR/SELLER:
FENG CHIU HWANG
37-90 RAILROAD AVENUE
LIC, NY 11101

D E E D

THIS INDENTURE, *made this 13th day of November, Two Thousand Ten*

BETWEEN ***ING-NAN HWANG and FENG-CHIU HWANG***

having an address at ***37-90 Railroad Avenue, L.I.C., NY 11101***

party of the first part, and ***MAZU, LLC***

having an address at ***37-90 Railroad Avenue, L.I.C., NY 11101***

party of the second part,

WITNESSETH, *that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part.*

ALL THAT CERTAIN *plot, piece or parcel of land with the buildings and improvements thereon, erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:*

See Attached Schedule "A"

SAID PREMISES KNOWN AS: ***37-90 Railroad Avenue, L.I.C., NY 11101***
A/K/A 37-90 Newtown Creek, LIC, NY 11101

BEING and intended to be the same premises conveyed by deed dated Nov. 1 2001 and recorded on March 5, 2002 in Reel 6243 page 1250.

A Power of Attorney dated 9/16/2008 made by Ing-Nan Hwang as Principal to Chin-Win Hwang, as agent is hereby recorded simultaneously herewith.

TOGETHER *with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the centerlines thereof;*

TOGETHER *with the appurtenances and all the estate and rights of the party of the first part in and to said premises:*

TO HAVE AND TO HOLD *the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part, forever.*

AND *the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.*

AND *the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.*

The word "party" shall be construed as it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

ING-NAN HWANG
by CHIN-WIN HWANG, his attorney in fact

FENG-CHIU HWANG

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

On this 13TH day of November, in the year 2010, before me the undersigned, personally appeared ***FENG-CHIU HWANG and CHIN-WIN HWANG,*** *personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.*

Notary Public

THOMAS E. BERINATO
Notary Public, State of New York
No. 02BE4830163
Qualified in Queens County
Commission Expires June 30, 20 11

SEAL

SCHEDULE "A"

ALL THAT CERTAIN plot, piece or parcel of land with the buildings and improvements thereon, erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly line of Long Island Railroad Right of Way, which point is the following three courses and distances from the corner formed by the intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue. (140 feet wide)

1. RUNNING THENCE Southeasterly from said corner and along the southerly side of Review Avenue, 925.03 feet to a point;

2. THENCE South 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of Long Island Railroad Right of Way;

3. THENCE Northeasterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of BEGINNING.

Continuing northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point:

THENCE South 32 degrees 42 minutes 56 seconds west 59.24 feet to a point:

THENCE South 35 degrees 02 Minutes 18 seconds west 80.76 feet to a point:

THENCE South 58 degrees 16 minutes 14 seconds east 234.84 feet to a point:

THENCE North 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of BEGINNING.

BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR'S ACT

Title No.:_____

_____

ING-NAN HWANG
& FENG-CHIU HWANG

TO

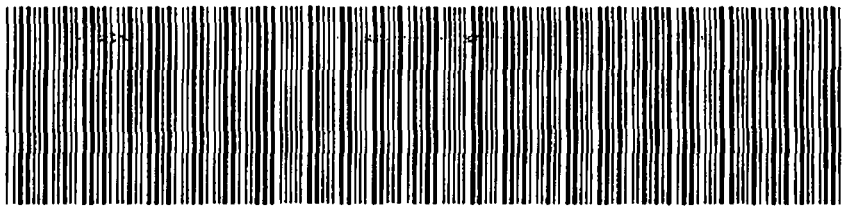
MAZU, LLC.

Section	_____
Block	312
Lot	272
City or Town	L.I.C
County	Queens

RETURN BY MAIL TO:

THOMAS E. BERINATO
Attorney At Law
123-40 83rd Avenue
Suite 1D
Kew Gardens, NY 11415

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2010111300093001001SC6B9

SUPPORTING DOCUMENT COVER PAGE **PAGE 1 OF 1**

Document ID: 2010111300093001 Document Date: 11-13-2010 Preparation Date: 11-13-2010
Document Type: DEED

ASSOCIATED TAX FORM ID: 2010111300011

SUPPORTING DOCUMENTS SUBMITTED:

	Page Count
RP - 5217 REAL PROPERTY TRANSFER REPORT	1
SMOKE DETECTOR AFFIDAVIT	1

FOR CITY USE ONLY

C1. County Code | | C2. Date Deed Recorded | | / | / | (Month / Day / Year)

C3. Book OR C5. CRFN | | C4. Page | |

REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

(Rev 11/2002)

PROPERTY INFORMATION

1. Property Location: 37-90 (STREET NUMBER) | NEWTOWN CREEK (STREET NAME) | QUEENS (BOROUGH) | 11101 (ZIP CODE)

2. Buyer Name: MAZU, LLC (LAST NAME / COMPANY) | (FIRST NAME)

(LAST NAME / COMPANY) | (FIRST NAME)

3. Tax Billing Address: Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form) (LAST NAME / COMPANY) | (FIRST NAME)

(STREET NUMBER AND STREET NAME) | (CITY OR TOWN) | (STATE) | (ZIP CODE)

4. Indicate the number of Assessment Roll parcels transferred on the deed: 1 # of Parcels OR ☐ Part of a Parcel

4A. Planning Board Approval - N/A for NYC

4B. Agricultural District Notice - N/A for NYC

5. Deed Property Size: (FRONT FEET) X (DEPTH) OR (ACRES)

Check the boxes below as they apply:

6. Ownership Type is Condominium ☐

7. New Construction on Vacant Land ☐

8. Seller Name: HWANG (LAST NAME / COMPANY) | ING-NAN (FIRST NAME)

HWANG (LAST NAME / COMPANY) | FENG CHIU (FIRST NAME)

9. Check the box below which most accurately describes the use of the property at the time of sale:

A ☐ One Family Residential
B ☐ 2 or 3 Family Residential
C ☐ Residential Vacant Land
D ☐ Non-Residential Vacant Land
E ☐ Commercial
F ☐ Apartment
G ☐ Entertainment / Amusement
H ☐ Community Service
I ☑ Industrial
J ☐ Public Service

SALE INFORMATION

10. Sale Contract Date: 11 / 13 / 2010 (Month / Day / Year)

11. Date of Sale / Transfer: 11 / 13 / 2010 (Month / Day / Year)

12. Full Sale Price: $ 0

(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) *Please round to the nearest whole dollar amount.*

13. Indicate the value of personal property included in the sale:

14. Check one or more of these conditions as applicable to transfer:

A ☐ Sale Between Relatives or Former Relatives
B ☐ Sale Between Related Companies or Partners in Business
C ☐ One of the Buyers is also a Seller
D ☐ Buyer or Seller is Government Agency or Lending Institution
E ☐ Deed Type not Warranty or Bargain and Sale (Specify Below)
F ☐ Sale of Fractional or Less than Fee Interest (Specify Below)
G ☐ Significant Change in Property Between Taxable Status and Sale Dates
H ☐ Sale of Business is Included in Sale Price
I ☐ Other Unusual Factors Affecting Sale Price (Specify Below)
J ☑ None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class: F 9

16. Total Assessed Value (of all parcels in transfer):

17. Borough, Block and Lot / Roll Identifier(s) (If more than three, attach sheet with additional identifier(s))

QUEENS 312 272

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER

BUYER SIGNATURE | DATE

STREET NUMBER | STREET NAME (AFTER SALE)

CITY OR TOWN | STATE | ZIP CODE

BUYER'S ATTORNEY

LAST NAME | FIRST NAME

AREA CODE | TELEPHONE NUMBER

SELLER

SELLER SIGNATURE | DATE

2010111300011201

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER

BUYER SIGNATURE | DATE

STREET NUMBER | STREET NAME (AFTER SALE)

CITY OR TOWN | STATE | ZIP CODE

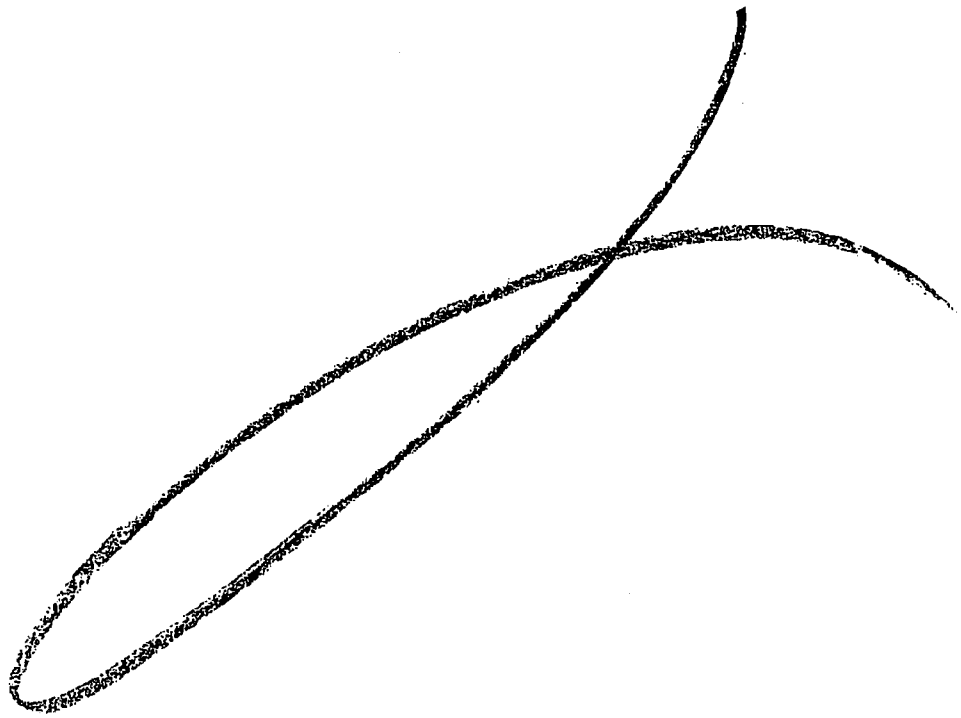
BUYER'S ATTORNEY

LAST NAME | FIRST NAME

AREA CODE | TELEPHONE NUMBER

SELLER

SELLER SIGNATURE | DATE



AFFIDAVIT OF COMPLIANCE WITH SMOKE DETECTOR REQUIREMENT FOR ONE- AND TWO-FAMILY DWELLINGS

State of New York)
) SS.:
County of)

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

37-90 NEWTOWN CREEK , ,
Street Address Unit/Apt.

QUEENS New York, 312 272 (the "Premises");
Borough Block Lot

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

Name of Grantor (Type or Print)

Signature of Grantor

Sworn to before me this 12 date of Nov 2010

THOMAS E. BERINATO
Notary Public, State of New York
No. 02BE4830163
Qualified in Queens County
Commission Expires June 30, 2011

SEAL

Name of Grantee (Type or Print)

Signature of Grantee

Sworn to before me this 12 date of Nov 2010

THOMAS E. BERINATO
Notary Public, State of New York
No. 02BE4830163
Qualified in Queens County
Commission Expires June 30, 2011

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.

SMOKE DETECTOR AND CARBON MONOXIDE DETECTOR REQUIREMENT FOR ONE- AND TWO-FAMILY DWELLINGS

STATE OF NEW YORK)
)SS.:
COUNTY OF QUEENS)

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at ***37-90 Railroad Avenue, L.I.C., NY (a/k/a 37-90 Newtown Creek, L.I.C., NY) Block 312, Lot 272****, The "Premises");*

That the premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one-or two-family dwelling, and that installed in the Premises is (i) an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices; and (ii) an approved and operational carbon monoxide detecting device in compliance with the provisions of Section 378 5-a of the Executive Law of the State of New York concerning carbon monoxide detector devices.

That they make this affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

ING-NAN HWANG

ING-NAN HWANG BY CHEN-WEN HWANG HIS ATTORNEY IN FACT

Signature of Grantor

Sworn to before me this
13th day of November, 2010

THOMAS E. BERINATO
Notary Public, State of New York
No. 02BE4830163
Qualified In Queens County
Commission Expires June 30, 2011

Notary Public

MAZU, LLC

Signature of Grantee

Sworn to before me this
13th day of November, 2010

THOMAS E. BERINATO
Notary Public, State of New York
No. 02BE4830163
Qualified In Queens County
Commission Expires June 30, 2011

Notary Public

SEAL

SEAL

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

WITH RESPECT TO SMOKE DETECTOR DEVICES NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6TH, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE-OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.

WITH RESPECT TO CARBON MONOXIDE DEVICES NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER NOVEMBER 27, 2002, WITH RESPECT TO THE CONVEYANCE OF A ONE-OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE-OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.

The City of New York
Department of Environmental Protection
Bureau of Customer Services
59-17 Junction Boulevard
Flushing, NY 11373-5108

Customer Registration Form for Water and Sewer Billing

Property and Owner Information:

(1) Property receiving service: BOROUGH: QUEENS BLOCK: 312 LOT: 272

(2) Property Address: 37-90 NEWTOWN CREEK, QUEENS, NY 11101

(3) Owner's Name: MAZU, LLC

Additional Name:

Affirmation:

☑ Your water & sewer bills will be sent to the property address shown above.

Customer Billing Information:

Please Note:

A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.

B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit www.nyc.gov/dep to provide us with the other party's information.

Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

Signature: _____ Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable:

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2012102200748001001E13F1

RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 27**

Document ID: 2012102200748001 Document Date: 10-13-2012 Preparation Date: 10-22-2012
Document Type: DEED
Document Page Count: 25

PRESENTER:	**RETURN TO:**
DANIEL WING-YU NG, PLLC 2 EAST BROADWAY, SUITE 301 NEW YORK, NY 10038 347-261-1067 danngpllc@gmail.com	DANIEL WING-YU NG, PLLC 2 EAST BROADWAY, SUITE 301 NEW YORK, NY 10038 347-261-1067 danngpllc@gmail.com

PROPERTY DATA

Borough	Block	Lot	Unit	Address
QUEENS	312	272	Entire Lot	37-90 NEWTOWN CREEK

Property Type: INDUSTRIAL BUILDING

CROSS REFERENCE DATA

CRFN_____ *or* Document ID_____ *or* _____ Year____ Reel ___ Page____ *or* File Number_____

PARTIES

GRANTOR/SELLER:	**GRANTEE/BUYER:**
MAZU, LLC 37-90 RAILROAD AVENUE LONG ISLAND CITY, NY 11101	ING-NAN HWANG 37-90 RAILROAD AVENUE LONG ISLAND CITY, NY 11101

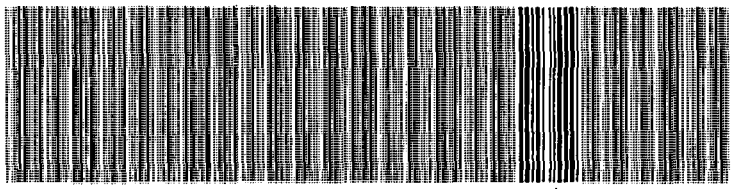
x Additional Parties Listed on Continuation Page

FEES AND TAXES

Mortgage			Filing Fee:		
Mortgage Amount:	$	0.00		$	250.00
Taxable Mortgage Amount:	$	0.00	NYC Real Property Transfer Tax:		
Exemption:				$	0.00
TAXES: County (Basic):	$	0.00	NYS Real Estate Transfer Tax:		
City (Additional):	$	0.00		$	0.00
Spec (Additional):	$	0.00			
TASF:	$	0.00			
MTA:	$	0.00			
NYCTA:	$	0.00			
Additional MRT:	$	0.00			
TOTAL:	$	0.00			
Recording Fee:	$	162.00			
Affidavit Fee:	$	0.00			

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 11-02-2012 11:53
City Register File No.(CRFN):
2012000433562

City Register Official Signature

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER	 2012102200748001001C1171

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) **PAGE 2 OF 27**

Document ID: 2012102200748001 Document Date: 10-13-2012 Preparation Date: 10-22-2012
Document Type: DEED

PARTIES
GRANTEE/BUYER:
FENG-CHIU HWANG
37-90 RAILROAD AVENUE
LONG ISLAND CITY, NY 11101

DEED

THIS INDENTURE made the 13th day of October, 2012, between MAZU, LLC, with address at 37-90 Railroad Avenue, L.I.C., NY 11101, party of the first part, and ING-NAN HWANG, with address at 37-90 Railroad Avenue, L.I.C., NY 11101, FENG-CHIU HWANG, with address at 37-90 Railroad Avenue, L.I.C., NY 11101, as JOINT TENANTS, party of the second part.

WITNESSTH

That the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Queens, County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the southerly line of Long Island Railroad Right of Way, which point is the fallowing three courses and distances from the corner formed by the Intersection of the southerly side of Review Avenue with the easterly side of Greenpoint Avenue. (140 feet wide)

1. RUNNING THENCE Southeasterly from said corner and along the southerly side of Review Avenue. 925.03 feet to a point;
2. THENCE South 18 degrees 25 minutes 31 seconds west 458.22 feet to the southwesterly side of Long Island Railroad Right of Way;
3. THENCE Northeasterly and along the southwesterly side of said Railroad Right of Way as it curves to the right and having a radius of 2889.93 feet, 205.06 feet to the point of BEGINNING.

Continuing Northwesterly along the southwesterly side of said Railroad Right of Way 237.31 feet to a point:
THENCE South 32 degrees 42 minutes 56 seconds west 59.24 feet to a point;
THENCE South 35 degrees 02 Minutes 18 seconds west 80.76 feet to a point;
THENCE South 58 degrees 16 minutes 14 seconds east 234.84 feet to a point;
THENCE North 35 degrees 02 minutes 18 seconds east 140 feet to the point or place of BEGINNING.

Said premises known as: **37-90 Railroad Avenue, L.I.C., NY 11101**
A/K/A 37-90 Newtown Creek, LIC, NY 11101

Said premises being also known as Block 312, Lot 272.

Being the same premises conveyed to the party of the first part by Deed dated November 13, 2010 and recorded on February 25, 2011 in the Office of the City Register, County of Queens, City Register File No. (CRFN): 2011000069593.

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the above-described premises to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

In Presence of: Ng Wing Yu

By: X
ING-NAN HWANG, Fifty Percent Shareholder of MAZU, LLC

By: X Fengchiu Hwang
FENG-CHIU HWANG, Fifty Percent Shareholder of MAZU, LLC

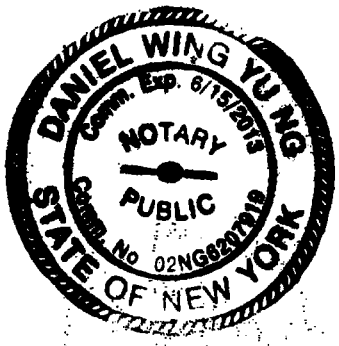
DANIEL WING YU NG
Comm. Exp. 6/15/2013
NOTARY PUBLIC
Comm. No. 02NG6207919
STATE OF NEW YORK

SEAL

ACKNOWLEDGEMENT

State of New York)
) SS:
County of Queens)

On this 13th day of October, in the year 2012, before me, a Notary Public in and for the State of New York, personally came FENG-CHIU HWANG and ING-NAN HWANG, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.



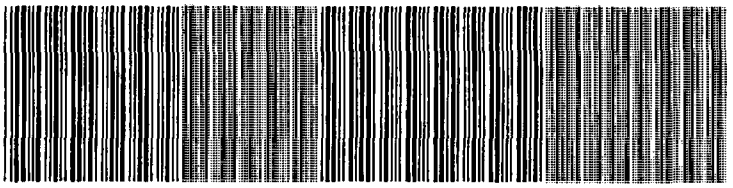
Notary Public

SEAL

Party of the First Part·
MAZU, LLC, EIN:

Party of the Second Part:
ING-NAN HWANG, D.O.B.: 1-27-1944
FENG-CHIU HWANG, D.O.B.: 3-1-1950

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2012102200748001001SDD70

SUPPORTING DOCUMENT COVER PAGE **PAGE 1 OF 1**

Document ID: 2012102200748001 Document Date: 10-13-2012 Preparation Date: 10-22-2012
Document Type: DEED

ASSOCIATED TAX FORM ID: 2012101500293

SUPPORTING DOCUMENTS SUBMITTED:

	Page Count
DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING	1
MISCELLANEOUS	20
RP - 5217 REAL PROPERTY TRANSFER REPORT	3
SMOKE DETECTOR AFFIDAVIT	1

FOR CITY USE ONLY

C1. County Code | C2. Date Deed Recorded (Month / Day / Year)

C3. Book OR C4. Page

C5. CRFN

REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

PROPERTY INFORMATION

1. Property Location: 37-90 (STREET NUMBER) | NEWTOWN CREEK (STREET NAME) | QUEENS (BOROUGH) | 11101 (ZIP CODE)

2. Buyer Name: HWANG (LAST NAME / COMPANY) | ING-NAN (FIRST NAME)
HWANG (LAST NAME / COMPANY) | FENG-CHIU (FIRST NAME)

3. Tax Billing Address: Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)
(LAST NAME / COMPANY) | (FIRST NAME)
(STREET NUMBER AND STREET NAME) | (CITY OR TOWN) | (STATE) | (ZIP CODE)

4. Indicate the number of Assessment Roll parcels transferred on the deed: 1 # of Parcels OR ☐ Part of a Parcel

4A. Planning Board Approval - N/A for NYC
4B. Agricultural District Notice - N/A for NYC

5. Deed Property Size: (FRONT FEET) X (DEPTH) OR (ACRES)

Check the boxes below as they apply:
6. Ownership Type is Condominium ☐
7. New Construction on Vacant Land ☐

8. Seller Name: MAZU, LLC (LAST NAME / COMPANY) | (FIRST NAME)
(LAST NAME / COMPANY) | (FIRST NAME)

9. Check the box below which most accurately describes the use of the property at the time of sale:

A ☐	One Family Residential	C ☐	Residential Vacant Land	E ☐	Commercial	G ☐	Entertainment / Amusement	I ☑	Industrial
B ☐	2 or 3 Family Residential	D ☐	Non-Residential Vacant Land	F ☐	Apartment	H ☐	Community Service	J ☐	Public Service

SALE INFORMATION

10. Sale Contract Date: 10 / 13 / 2012 (Month / Day / Year)

11. Date of Sale / Transfer: 10 / 13 / 2012 (Month / Day / Year)

12. Full Sale Price $ 0

(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) *Please round to the nearest whole dollar amount.*

13. *Indicate the value of personal property included in the sale*

14. Check one or more of these conditions as applicable to transfer:

A ☐	Sale Between Relatives or Former Relatives
B ☐	Sale Between Related Companies or Partners in Business
C ☐	One of the Buyers is also a Seller
D ☐	Buyer or Seller is Government Agency or Lending Institution
E ☐	Deed Type not Warranty or Bargain and Sale (Specify Below)
F ☐	Sale of Fractional or Less than Fee Interest (Specify Below)
G ☐	Significant Change in Property Between Taxable Status and Sale Dates
H ☐	Sale of Business is Included in Sale Price
I ☑	Other Unusual Factors Affecting Sale Price (Specify Below)
J ☐	None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class: F 9

16. Total Assessed Value (of all parcels in transfer): 218700

17. Borough, Block and Lot / Roll Identifier(s) (If more than three, attach sheet with additional identifier(s))

QUEENS 312 272

20121015002932O102

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYER

X _____ 10/20/2012

BUYER SIGNATURE — DATE

37-90 RAILROAD AVENUE

STREET NUMBER — STREET NAME (AFTER SALE)

LONG ISLAND CITY | NY | 11101

CITY OR TOWN — STATE — ZIP CODE

BUYER'S ATTORNEY

DANIEL WING-YU NG

LAST NAME — FIRST NAME

347 | 261-1067

AREA CODE — TELEPHONE NUMBER

SELLER

X _____ 10/20/2012

SELLER SIGNATURE — DATE

Mazzl, LLC
by: Ing-Nan Hwang,
Feng-Chin Hwang

2012101500293201

Form RP-5217 NYC ATTACHMENT

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

BUYERS		SELLERS	
X Yengchin Hsiung	10/20/2012	X Yengchin Hsiung	10/20/2012
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date
Buyer Signature	Date	Seller Signature	Date

2012101500293201

AFFIDAVIT OF COMPLIANCE WITH SMOKE DETECTOR REQUIREMENT FOR ONE- AND TWO-FAMILY DWELLINGS

State of New York)
) SS.:
County of Queens)

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

37-90 NEWTOWN CREEK , ,
Street Address Unit/Apt.

QUEENS New York, 312 272 (the "Premises");
Borough Block Lot

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

MAZ, LLC by Ing-Nan Hwang & Feng-Chin Hwang
Name of Grantor (Type or Print)

X Fengchin Hwang
Signature of Grantor

Sworn to before me
this 20th date of October 2012

DANIEL WING YUNG
Comm. Exp. 6/18/2013
NOTARY PUBLIC
STATE OF NEW YORK

Ing-Nan Hwang & Feng-Chin Hwang
Name of Grantee (Type or Print)

X Fengchin Hwang
Signature of Grantee

Sworn to before me
this 20th date of October 2012

DANIEL WING YUNG
Comm. Exp. 6/18/2013
NOTARY PUBLIC
STATE OF NEW YORK

SEAL

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as perjury under Section 210 of the Penal Law.

NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 1, 1990 WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.

The City of New York
Department of Environmental Protection
Bureau of Customer Services
59-17 Junction Boulevard
Flushing, NY 11373-5108

Customer Registration Form for Water and Sewer Billing

Property and Owner Information:

(1) **Property receiving service: BOROUGH: QUEENS** **BLOCK: 312** **LOT: 272**

(2) **Property Address: 37-90 NEWTOWN CREEK, QUEENS, NY 11101**

(3) **Owner's Name:** **HWANG , ING-NAN**

Additional Name: **HWANG , FENG-CHIU**

Affirmation:

☑ Your water & sewer bills will be sent to the property address shown above.

Customer Billing Information:

Please Note:

A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.

B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address.** DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit www.nyc.gov/dep to provide us with the other party's information.

Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner: Ing-Nan Hwang Feng-Chiu Hwang

Signature: X Fengchiu Hwang Date (mm/dd/yyyy) 10/20/2012

Name and Title of Person Signing for Owner, if applicable:

Exhibit Y

#4

1239-21

$49.00 U. S. I. R.

Stamp cancelled.

T H I S I N D E N T U R E, made the Fifteenth day of May, in the year One thousand nine hundred.

B E T W E E N PRESTON FERTILIZER COMPANY, a corporation organized under the Laws of the State of New York, party of the first part and and THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation chartered by the State of Connecticut, party of the second part:

W I T N E S S E T H, that the said party of the first part, for and in consideration of the sum of ONE DOLLAR and other valuable considerations, lawful money of the United States, paid by the said party of the second part, does hereby grant and release, unto the said party of the second part, its successors and assigns forever.

A L L that certain piece or parcel of land, with the buildings thereon erected, situate in the Borough of Queens, City of New York, (formerly City of Long Island City, Town of Newtown), Queens County and State of New York, more particularly described as follows:-

B E G I N N I N G at a point on the westerly side of a street sixty feet wide, the central part whereof is now (or was formerly) used and occupied by the Flushing Rail Road Company at the North-east corner of the Shed on the Northerly side of the Bone factory on said premises, which point is five hundred and eight-three (583) feet, one and one-half (1-1/2) inches Southerly from the Southerly side of the Greenpoint and Flushing Plank Road, and also ninety-eight (98) feet, one and one-half (1-1/2) inches South of the centre line of an intended street sixty feet wide, to be laid out from the said rail Road Street to Newtown Creek; running westerly along the Northerly side of said shed, one hundred and sixty-one feet eleven inches to the North-west corner of said shed, which corner is distant one hundred and five feet (105 ft.) ten and one half (10-1/2) inches southerly from the centre line of said intended Street, measured on a line drawn perpendicular thereto; thence southerly along the westerly side or end of said shed, twenty-four feet one and one-half inches; thence westerly parallel with the centre line of said intended street, and everywhere distant one hundred and thirty feet northerly therefrom to Newtown Creek, thence southerly along said Creek one hundred and thirty two feet, more or less, to the centre line of an intended street sixty feet wide, to be laid out from the said Rail Road Street to Newtown Creek; thence easterly along said centre line parallel with the centre line of first mentioned

intended street, and distant two hundred and sixty (260) feet Southerly therefrom, two hundred (200) feet, more or less, to land heretofore conveyed by Nezian Bliss and Mary Ann, his wife, and Samuel Sneddon and Susan J. his wife, to Erastus W. Smith; thence North-easterly along said Smith's land thirteen (13) feet, more or less, to the westerly line of said Rail Road Street, and thence Northerly along the westerly line of said Rail Road Street, one hundred and fifty-one feet, ten and one-half inches, more or less, to the place of beginning, said premises being bounded easterly by the said Rail Road Street, northerly by land of Peter Van Pierstine, southerly by the secondly described intended Street, and said land conveyed by Bliss and Sneddon to Erastus W. Smith, and westerly by Newtown Creek.

T O G E T H E R with the appurtenances and all the estate and rights of the party of the first part, in and to the said premises.

TO HAVE AND TO HOLD the above granted premises, unto the said party of the second part, its successors and assigns forever.

A N D the said party of the first part covenants with the said party of the second part as follows:-

FIRST,- that the said party of the first part is seized of the said premises in fee simple and has good right to convey the same.

SECOND,- that the party of the second part shall quietly enjoy the said premises.

THIRD,- that the said premises are free from incumbrances.

FOURTH,- that the said party of the first part will execute or procure any further necessary assurance of the title to said premises.

FIFTH,- that the said party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the party of the first part hath caused these presents to be signed by its President, sealed with its corporate seal, and attested by its Secretary, the day and year first above written.

(LS) PRESTON FERTILIZER COMPANY,

By, CHARLES W. PRESTON, President,

Attest:

JOHN F. KEHOE, Secretary.

STATE OF NEW YORK,

COUNTY OF KINGS, SS.:

On the 10th day of May, one thousand nine [illegible] to be known, who being by me [illegible] depose and say; that he resides in the Borough of Brooklyn, City of [illegible] is the President of Preston Fertilizer Company, the corporation des- [illegible] the [illegible] knows the corporate seal

Intended Street, [illegible] the [illegible] one hundred (100) feet [illegible] thereof, [illegible] hundred (200) feet, more or less, to land heretofore [illegible] by [illegible] Bliss and [illegible] Ann, his wife, and [illegible] Snedden and [illegible] Smith; thence North-easterly along said Smith's land thirteen (13) feet, more or less, to the [illegible] line of said Rail Road Street, and thence [illegible] Rail Road Street, one hundred and [illegible]-one feet, [illegible] to the place of beginning, said premises being [illegible] Street, northerly by land of [illegible], [illegible] by the [illegible] Intended Street, and said land conveyed by Bliss and Snedden to [illegible], [illegible] westerly by Newtown Creek.

TOGETHER with the appurtenances [illegible] of the party of the first part, [illegible] said premises.

TO HAVE AND HOLD the above granted premises [illegible] the second part, its successors and assigns forever.

AND the said party of the first part covenants [illegible] of the second part as follows:

FIRST:- that the said party of the first part [illegible] premises in fee simple [illegible] to convey the same.

SECOND:- that the party of the second part shall quietly enjoy the premises.

THIRD:- that the said premises are free from incumbrances.

FOURTH:- that the said party of the first part will execute or procure any further necessary assurance of the title to said premises.

FIFTH:- that the said party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the party of the first part hath caused these presents to be signed by its President, sealed with its corporate seal, and attested by its Secretary, the day and year first above written.

[illegible] PRESTON FERTILIZER COMPANY,

By, [illegible], President.

Attest:

JOHN F. MENGE, Secretary.

STATE OF NEW YORK,

COUNTY OF KINGS, ss.:

On the 15th day of May, one thousand nine hundred, before me personally came [illegible] to me known, who being by me duly sworn, did depose and say; that he resides in the Borough of Brooklyn, City of New York; that he is the President of Preston Fertilizer Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is [illegible]

that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(LS) E. H. ROWLANDSON,

Notary Public, Kings County.

10cts U. S. I. R.

stamp cancelled

STATE OF NEW YORK,

COUNTY OF KINGS, SS.:

I, PETER P. HUDERTY, Clerk of the County of Kings and also Clerk of the Supreme Court for said County, (said Court being a Court of record) do hereby certify, that Mr. E. H. ROWLANDSON whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public of the State of New York, in and for the County of Kings, dwelling in said County, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary and verily believe the signature to the said Certificate is genuine, and that the said instrument is executed and acknowledged according to the Laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County and Court this 21 day of July, 1900.

(LS) PETER P. HUDERTY, Clerk.

Entered and compared the foregoing with the original July 23, 1900 at 9 A.M.

Examined by Clerk.

$1.50 U. S. I. R.

stamp cancelled.

THIS INDENTURE, made the Twentieth day of July in the year nineteen hundred

BETWEEN WILLIAM KIRCHNER and MATILDA KIRCHNER, his wife, of the Borough and County of Queens, City and State of New York, parties of the first part, and PETER JOHN YOUNG and CARRIE YOUNG, his wife, of the same place, parties of

Exhibit Z

THE

AMERICAN AGRICULTURAL CHEMICAL COMPANY

---oooOOO COST OF OOOooo---

PROPERTY PURCHASED

July 30th, 1903.

---ooo000 PRESTON PURCHASE 000ooo---

April 27, 1899

L A N D

Between Newtown Creek and street and Long Island R.R. ,130ft on Newtown Creek,-415 feet to Street and Long Island R.R. ,valued at		34,500.00

B U I L D I N G S

Phosphate, Glue and Rendering Works	14,415.00	
Power Plant	1,360.00	
Scale House & Shop	465.00	
Brick Stable	2,640.00	
Office	1,700.00	
	20,480.00	
Less depreciation	2,262.20	
		18,217.80

M A C H I N E R Y

Phosphate, Glue and Rendering Works	34,140.30	
Power Plant	5,625.00	
	39,765.30	
Less depreciation	5,037.90	
		34,727.40

E Q U I P M E N T

Miscel material, Hoisting Apparatus, shop machinery, tools, scales & Mill outfit	3,365.00	
Stable outfit	3,050.00	
Office Fixtures	475.00	
	6,890.00	
Less depreciation	1,278.00	
		5,612.00
Docks	6,500.00	
Less depreciation	800.00	
		5,700.00
Total appraisement		$98,757.20

BOOK ACCOUNTS

Accounts Receivable		53,342 .79	
Bills Receivable		5 788.31	
Inventory		25,936.19	
Cash		3,766.83	
Barges		3,124.81	
Long Island City Bond		500.00	
Loan a/c		630.00	
Henry Preston		610.95	
Baynes Garbage Co.		300.00	
		93,999.88	
Less Bills & Accounts	48,464.89		
" Salaries	40,224.84		
" Bad debts	24,456.41	113,146.14	19,146.26
Total Purchase			$79,610 94

PURCHASE AGREEMENT

Preferred stock	80 000.00
Common Stock	100,000.00

Interim Certificates Issued

Ctf.No		P.S.	C.S.
1803	Charles W. Prescott	152	256
1804	"	52	
1805	Alfred J. Preston	264	440
1806	"	88	
1807	T. A. Disbrow	73	122
1808	"	24	
1809	J. Pell Disbrow	3	5
1810	"	1	
1811	J. E. Disbrow	76	127
1812	"	25	
		758	950
Edward H. Hobbs - Com.		40	50
	Total Shares	798	1,000

Cost of Purchase -	Preferred stock	79 800.00
" " "	Cash	364.16
		80,164.16
Less Guaranteed Bills and accounts Receivable- shortage		10,600.00
		$69,564.16
Additional payment in consideration of conveyances in fee simple of assets and Bill of Sale on file		76,603.32
	Total Cost	$146,167.48
Common stock at par		$100,000.00

Exhibit AA

HD
9483
.U5
1923.

948
.U5
192

196

REPORT

OF THE

U.S. FEDERAL TRADE COMMISSION

ON THE

FERTILIZER INDUSTRY

MARCH 3, 1923

WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

Digitized by Google

Original from
UNIVERSITY OF MICHIGAN

have prevailed the past two years, a large number of the small mixers which flourished, especially in war times, have been eliminated.

In the former report of the commission it was stated that the seven largest companies with their subsidiaries controlled more than 58 per cent of the total output of mixed fertilizer. This percentage of control has increased during recent years, and in 1921 it was estimated that these companies sold 65 per cent of the fertilizer used. The six largest companies in the industry sold about 60 per cent of the total and in the trade are often referred to as the "Big Six." They are as follows:

The American Agricultural Chemical Co., with main office in New York City, was incorporated under the laws of Connecticut, June 30, 1893. Its authorized capitalization is $100,000,000—$50,000,000 preferred stock, $50,000,000 common, $28,455,200 of the preferred stock being issued and $33,322,100 of the common stock being issued. The company also has a bonded indebtedness of $36,247,000, $30,000,000 of which are first refunding mortgage gold bonds, issued February 1, 1921. It has 21 wet mixing plants, 11 dry mixing plants, and 14 by-product plants. The following is a list of its subsidiaries, including both producing and selling companies:

Bigbee Fertilizer Co.
Evergreen Milling Co. (Inc.).
American Agricultural Chemical Co. of Connecticut.
National Fertilizer Co.
Pebbledale Phosphate Co.
Quinnpiac Co.
American Agricultural Chemical Co. of Delaware.
American Phosphate Mining Co.
Coe-Mortimer Co.
American Agricultural Chemical Co. of Florida.
Boca Grande Land Co.
Boca Grande Terminal Co.
Charlotte Harbor & Northern Railway Co.
Florida Townsite Co.
Florida Wood Preserving Co.
Goulding Fertilizer Co.
Palmetto Phosphate Co.
Pensacola Fertilizer Co.
Export Railway Co.
Independent Fertilizer Co.
Greensboro Fertilizer Co.
Peace River Phosphate Mining Co.
Royal Guano Co.
Old Dominion Guano Co.
American By-Products Co.
Empire Carbon Works.
Northwestern Fertilizer Co.
Packers' Fertilizer Association.
American Phosphate Mining Co.
Aroostook Warehouse Co.
Clarks Cove Fertilizer Co.
Cumberland Bone Phosphate Co.
Knzetta Dock & Warehouse Co.
Pacific Guano Co.
Poultry & Farm Supply Co.
Lewis Wharf Co.
Chemical Co. of Canton, The.
Detrick Fertilizer & Chemical Co., The.
Lazaretto Guano Co.
Maryland Fertilizer & Manufacturing Co.
Pollock Fertilizer Co.
Susquehanna Fertilizer Co.
Zell Guano Co.
American Agricultural Chemical Co. of Massachusetts.
Bradley Fertilizer Co.
Eastern Oil & Rendering Co.
Furbush & Co. (Inc.).
Michigan Carbon Works.
Millenbach Bros. Co.
National Hide & Leather Co.
Schulte Soap Co.
Bowker Chemical Co.
Bowker Fertilizer Co.
Bowker Insecticide Co.
Josiah Cope & Co.
Essex Rendering Co.
S. M. Hess & Bro. (Inc.).
Liebig Manufacturing Co.
Listers Manufacturing Co.
Listers Agricultural Chemical Works.
Moro Phillips Fertilizer Co.
New Jersey Rendering Co.
Read Fertilizer Co.
Sanderson Fertilizer & Chemical Co.
Sharpless & Carpenter.
Tygert-Allen Fertilizer Co.
Williams & Clark Fertilizer Co.
Brown Co. (Inc.).
Herman Brand.
Buffalo Rendering Co.
Chicopee Guano Co.
Crocker Fertilizer & Chemical Co.
Long Island Agricultural Chemical Co.
Frederick Sudlan Co.

Digitized by Google Original from UNIVERSITY OF MICHIGAN

Milsom Rendering & Fertilizer Co.
Nassau Fertilizer Co.
Patapsco Guano Co.
Pierce Phosphate Co.
Preston Fertilizer Co.
G. Selner Co.
Suffolk Fertilizer Co.
Acme Fertilizer Co.
G. C. Buquo Lime Co.
Cleveland Dryn Co.
N. Rassel Son's Co.
C. Masek Ghee & Reduction Co.
Schaal-Sheldon Fertilizer Co.
Union Fertilizer Co.
W. E. Whann Co.
Arthur Gore Co.
L. B. Darling Fertilizer Co.
Dixie Guano Co.
Farmers' Fertilizer Co.
Ashepoo Fertilizer Co.
Clinton Oil Mill.
Pownal Lime Co.
Alexandria Fertilizer & Chemical Co.
Berkley Chemical Co.
Hampton Guano Co.
Imperial Co.
Norfolk Fertilizer Co. (Inc.).
Palmetto Guano Corporation.
Pocomoke Guano Co.
J. E. Tygert Co.
Robert A. Woolridge Co.

The Virginia-Carolina Chemical Co., with main offices at Richmond, Va., was organized September 12, 1895, under the laws of the State of New Jersey. Its total authorized capital stock is $68,000,000, of which $30,000,000 is preferred and $38,000,000 common. The amount of stock outstanding is $21,984,400 preferred and $27,984,400 common. It also has a bonded indebtedness of $25,401,000. The company also owns the entire outstanding capital stock of the Southern Cotton Oil Co., amounting to $10,000,000. In addition, the company owns the entire capital stock of the following concerns:

Florida Fertilizer Co.
Mount Pleasant Fertilizer Co.
Rasin-Monumental Co.
Bryant Fertilizer Co.
American Fertilizing Co.
Union Guano Co.
Navassa Guano Co.
Craven Chemical Co.
Georgia Chemical Works.
Coweta Fertilizer Co.
Birmingham Fertilizer Co.
Peruvian Guano Corporation.
Consumers Chemical Corporation.

And owns the controlling interest in the following companies:

Washington, Alexander & Cooke Co.
Macmurphy Co.
Dothan Guano Co.
Bragaw Fertilizer Co.
Blackstone Guano Co.
Rock Hill Fertilizer Co.
Independent Guano Co.
Central Georgia Guano Co.
Moultrie Fertilizer & Manufacturing Co.
South Georgia Fertilizer Co.
Thomasville Fertilizer Co.
Commerce Fertilizer Co.
Maysville Guano Co.
Fidelity Chemical Corporation.

There are 21 branch sales offices in the main organization, and in addition the Southern Cotton Oil Co. has 9 branch offices.

The International Agricultural Corporation, with main offices in New York City, was incorporated June 14, 1909, under the laws of the State of New York. Its authorized capitalization is $18,000,000 preferred stock and $18,000,000 common stock, of which $13,055,500 preferred is now outstanding and $7,260,600 common. In addition to the outstanding stock there is a bonded indebtedness of $8,638,900. This company at present owns and operates 5 wet-mixing and 3 dry-mixing plants in Georgia, 2 wet-mixing plants in Alabama, 1 wet-mixing plant in Ohio, 1 wet-mixing and 1 dry-mixing plant in South Carolina, 1 wet-mixing plant in New York, 1 dry-mixing plant in Virginia, 1 dry-mixing plant in Maine, and 1 dry-mixing plant in Massachusetts. Since the publication of the former report by the commission in 1916 there have been numerous changes in the subsidiary companies owned by this concern. The Agricultural Invest-

Digitized by Google Original from UNIVERSITY OF MICHIGAN

Exhibit BB

3798 Railroad Ave
3798 Railroad Ave
Long Island City, NY 11101

Inquiry Number: 3773212.1
October 31, 2013

Certified Sanborn® Map Report

EDR® Environmental Data Resources Inc

440 Wheelers Farms Road
Milford, CT 06461
800.352.0050
www.edrnet.com

Certified Sanborn® Map Report

10/31/13

Site Name:
3798 Railroad Ave
3798 Railroad Ave
Long Island City, NY 11101

Client Name:
Phillips 66 Co.
1232 Park Street
Paso Robles, CA 93446

EDR Inquiry # 3773212.1

Contact: Leigh Ormonde

EDR® Environmental Data Resources Inc

The complete Sanborn Library collection has been searched by EDR, and fire insurance maps covering the target property location provided by Phillips 66 Co. were identified for the years listed below. The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by Sanborn Library LLC, the copyright holder for the collection.

Certified Sanborn Results:

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, State, Zip: Long Island City, NY 11101
Cross Street:
P.O. # NA
Project: NA
Certification # B1F0-4924-833D

Maps Provided:

2006	1999	1991	1980	1936
2005	1996	1990	1979	1928
2004	1995	1989	1977	1915
2003	1994	1988	1970	1898
2002	1993	1986	1950	
2001	1992	1985	1947	

Sanborn® Library search results
Certification # B1F0-4924-833D

The Sanborn Library includes more than 1.2 million Sanborn fire insurance maps, which track historical property usage in approximately 12,000 American cities and towns. Collections searched:

- ✓ Library of Congress
- ✓ University Publications of America
- ✓ EDR Private Collection

The Sanborn Library LLC Since 1866™

Limited Permission To Make Copies

Phillips 66 Co. (the client) is permitted to make up to THREE photocopies of this Sanborn Map transmittal and each fire insurance map accompanying this report solely for the limited use of its customer. No one other than the client is authorized to make copies. Upon request made directly to an EDR Account Executive, the client may be permitted to make a limited number of additional photocopies. This permission is conditioned upon compliance by the client, its customer and their agents with EDR's copyright policy; a copy of which is available upon request.

Disclaimer - Copyright and Trademark notice

This Report contains certain information obtained from a variety of public and other sources reasonably available to Environmental Data Resources, Inc. It cannot be concluded from this Report that coverage information for the target and surrounding properties does not exist from other sources. NO WARRANTY EXPRESSED OR IMPLIED, IS MADE WHATSOEVER IN CONNECTION WITH THIS REPORT. ENVIRONMENTAL DATA RESOURCES, INC. SPECIFICALLY DISCLAIMS THE MAKING OF ANY SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. ALL RISK IS ASSUMED BY THE USER. IN NO EVENT SHALL ENVIRONMENTAL DATA RESOURCES, INC. BE LIABLE TO ANYONE, WHETHER ARISING OUT OF ERRORS OR OMISSIONS, NEGLIGENCE, ACCIDENT OR ANY OTHER CAUSE, FOR ANY LOSS OF DAMAGE, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL CONSEQUENTIAL, OR EXEMPLARY DAMAGES. ANY LIABILITY ON THE PART OF ENVIRONMENTAL DATA RESOURCES, INC. IS STRICTLY LIMITED TO A REFUND OF THE AMOUNT PAID FOR THIS REPORT. Purchaser accepts this Report "AS IS". Any analyses, estimates, ratings, environmental risk levels or risk codes provided in this Report are provided for illustrative purposes only, and are not intended to provide, nor should they be interpreted as providing any facts regarding, or prediction or forecast of, any environmental risk for any property. Only a Phase I Environmental Site Assessment performed by an environmental professional can provide information regarding the environmental risk for any property. Additionally, the information provided in this Report is not to be construed as legal advice.

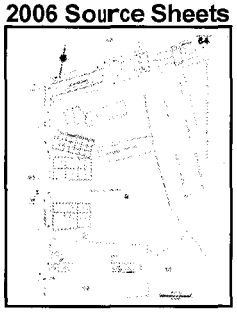
Copyright 2013 by Environmental Data Resources, Inc. All rights reserved. Reproduction in any media or format, in whole or in part, of any report or map of Environmental Data Resources, Inc., or its affiliates, is prohibited without prior written permission.

EDR and its logos (including Sanborn and Sanborn Map) are trademarks of Environmental Data Resources, Inc. or its affiliates. All other trademarks used herein are the property of their respective owners.

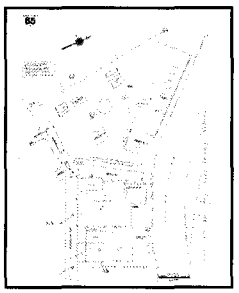
Sanborn Sheet Thumbnails

This Certified Sanborn Map Report is based upon the following Sanborn Fire Insurance map sheets.

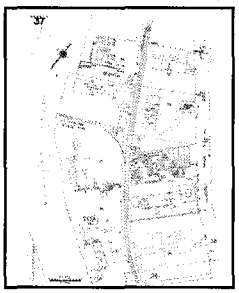
2006 Source Sheets



Volume 4, Sheet 64



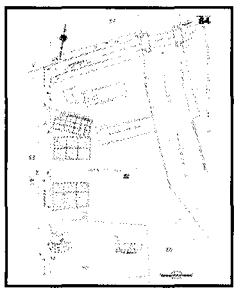
Volume 4, Sheet 65



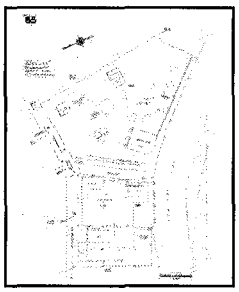
Volume 1, Sheet 37

2005 Source Sheets

Volume 1, Sheet 37

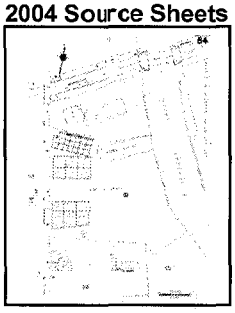


Volume 4, Sheet 64

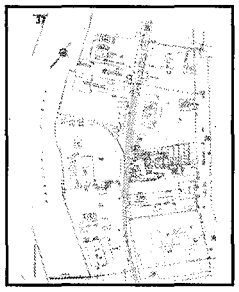


Volume 4, Sheet 65

2004 Source Sheets

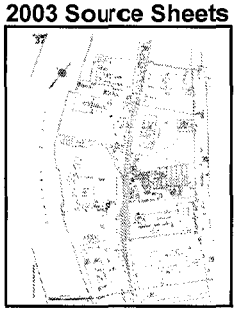


Volume 4, Sheet 64

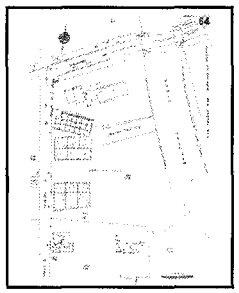


Volume 1, Sheet 37

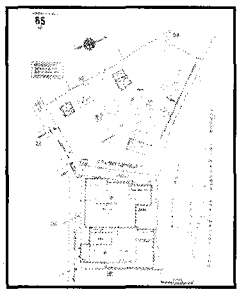
2003 Source Sheets



Volume 1, Sheet 37

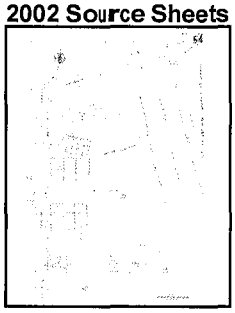


Volume 4, Sheet 64

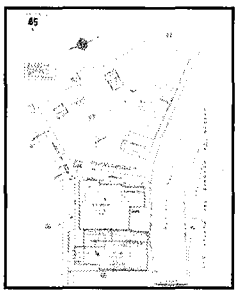


Volume 4, Sheet 65

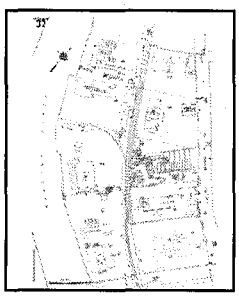
2002 Source Sheets



Volume 4, Sheet 64

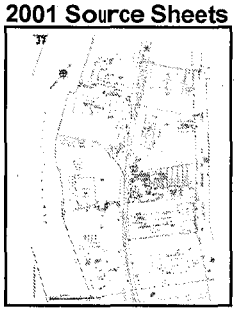


Volume 4, Sheet 65

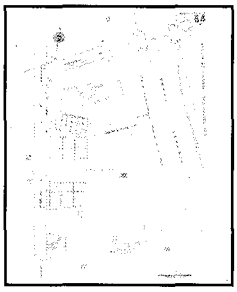


Volume 1, Sheet 37

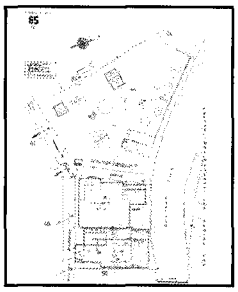
2001 Source Sheets



Volume 1, Sheet 37

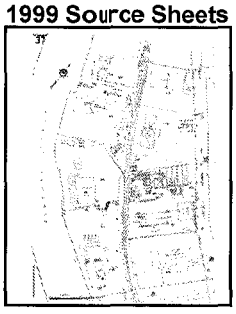


Volume 4, Sheet 64



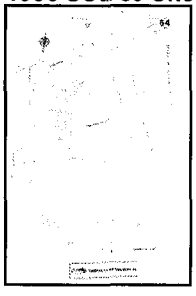
Volume 4, Sheet 65

1999 Source Sheets



Volume 1, Sheet 37

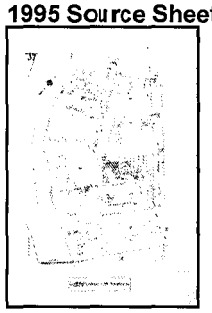
1996 Source Sheets



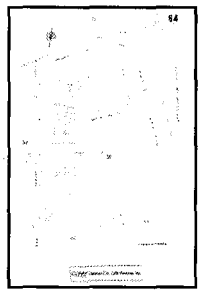
Volume 4, Sheet 64

Volume 1, Sheet 37

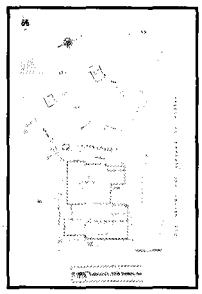
1995 Source Sheets



Volume 1, Sheet 37

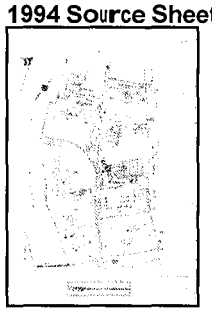


Volume 4, Sheet 64



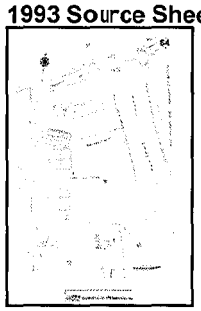
Volume 4, Sheet 65

1994 Source Sheets

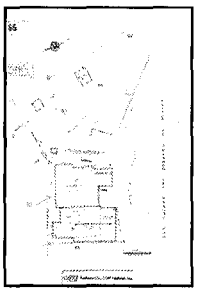


Volume 1, Sheet 37

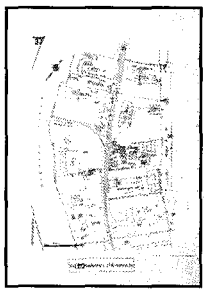
1993 Source Sheets



Volume 4, Sheet 64

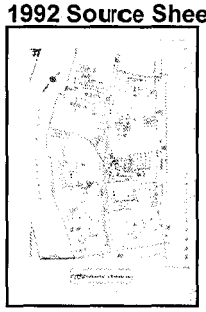


Volume 4, Sheet 65

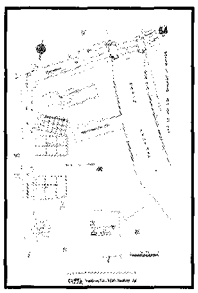


Volume 1, Sheet 37

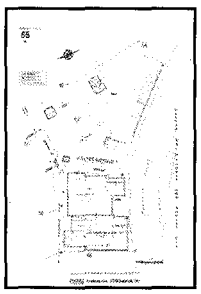
1992 Source Sheets



Volume 1, Sheet 37

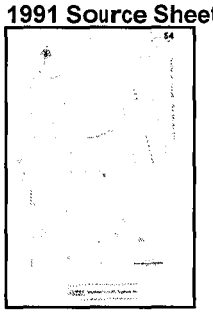


Volume 4, Sheet 64

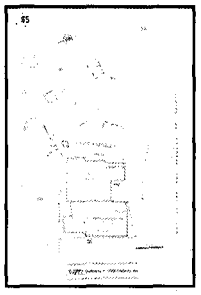


Volume 4, Sheet 65

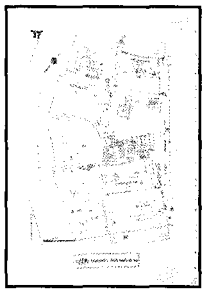
1991 Source Sheets



Volume 4, Sheet 64

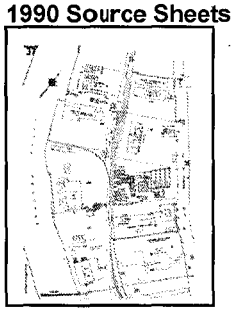


Volume 4, Sheet 65



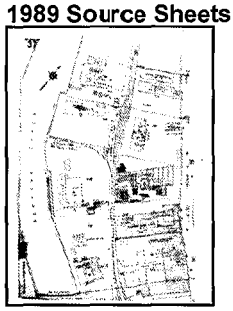
Volume 1, Sheet 37

1990 Source Sheets

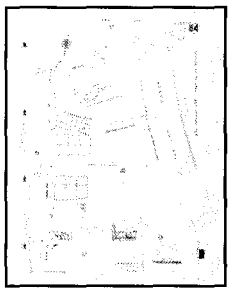


Volume 1, Sheet 37

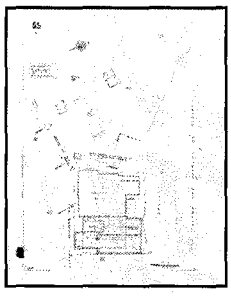
1989 Source Sheets



Volume 1, Sheet 37

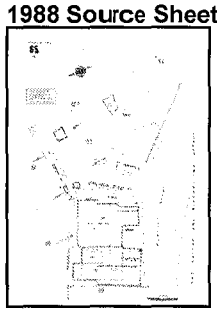


Volume 4, Sheet 64

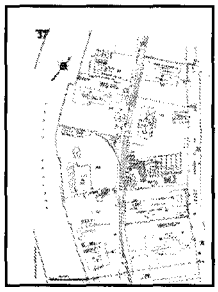


Volume 4, Sheet 65

1988 Source Sheets

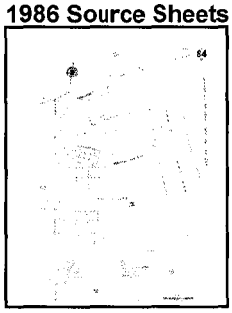


Volume 4, Sheet 65

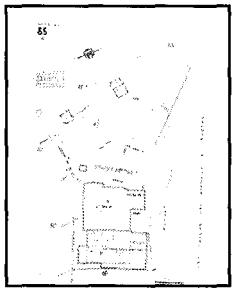


Volume 1, Sheet 37

1986 Source Sheets



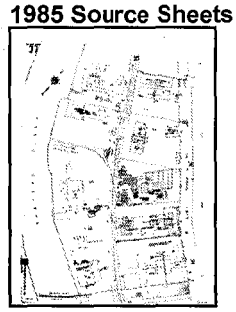
Volume 4, Sheet 64



Volume 4, Sheet 65

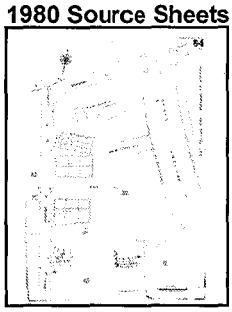
Volume 1, Sheet 37

1985 Source Sheets

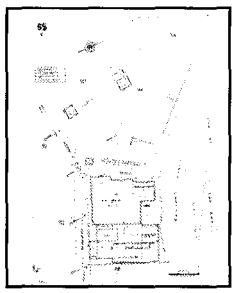


Volume 1, Sheet 37

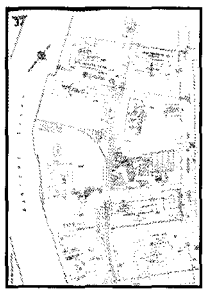
1980 Source Sheets



Volume 4, Sheet 64

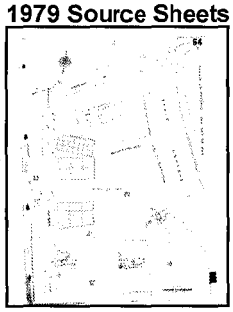


Volume 4, Sheet 65

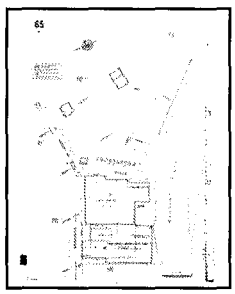


Volume 1, Sheet 37

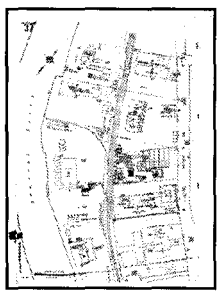
1979 Source Sheets



Volume 4, Sheet 64



Volume 4, Sheet 65

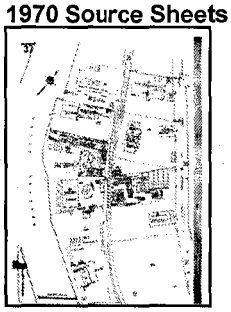


Volume 1, Sheet 37

1977 Source Sheets

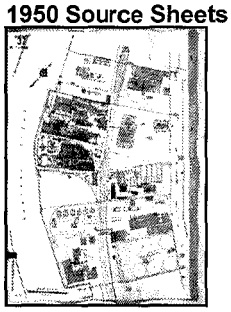
Volume 1, Sheet 37

1970 Source Sheets



Volume 1, Sheet 37

1950 Source Sheets



Volume 1, Sheet 37

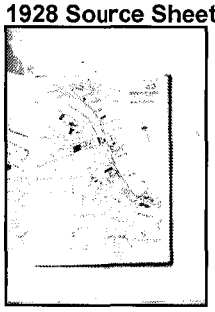
1947 Source Sheets

Volume 1, Sheet 37

1936 Source Sheets

Volume 1, Sheet 37

1928 Source Sheets

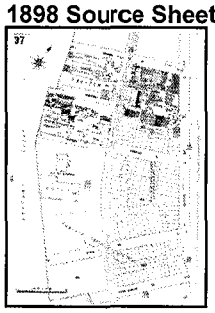


Volume Pier Maps, Sheet 40

1915 Source Sheets

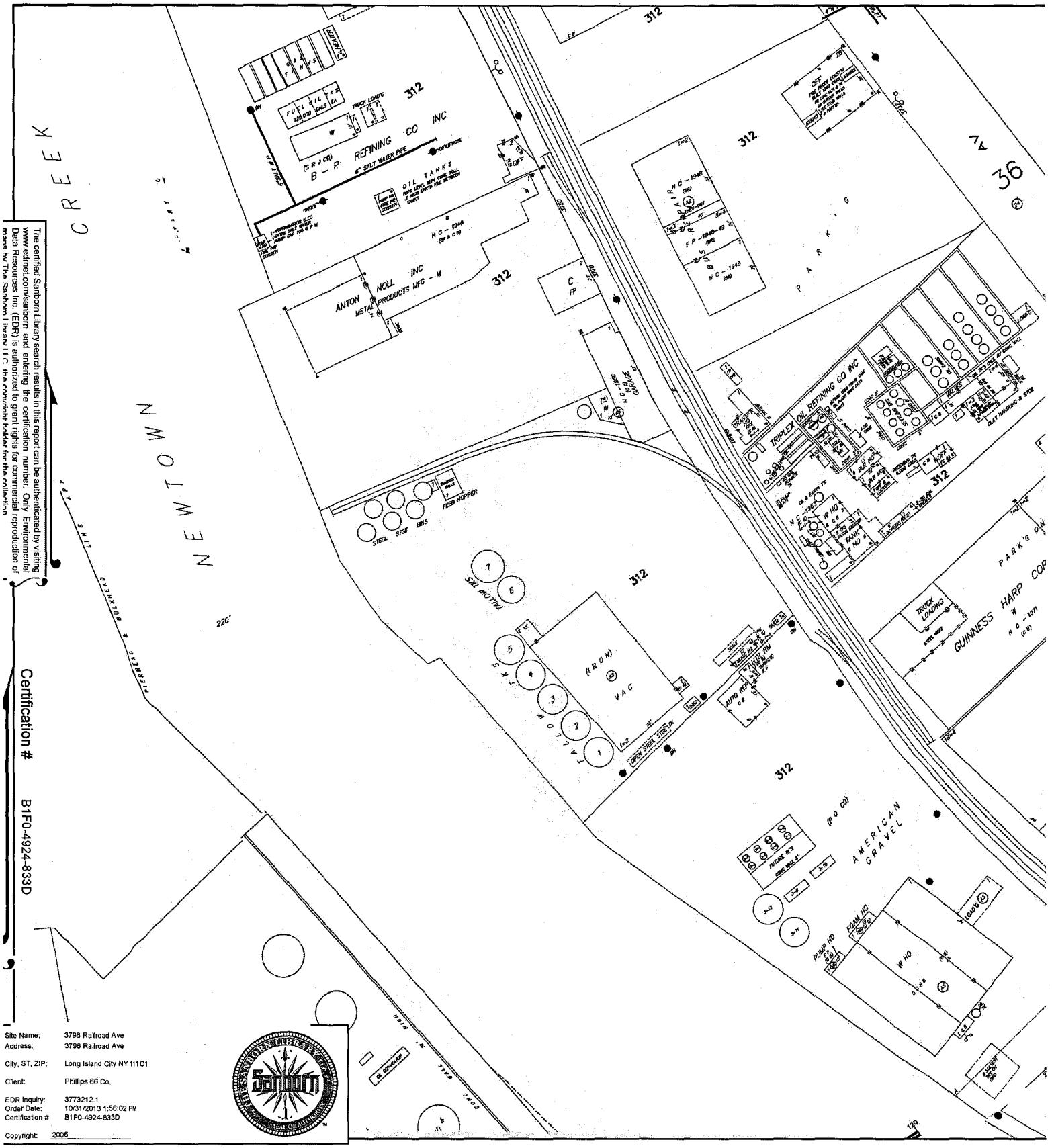
Volume 1, Sheet 37

1898 Source Sheets



Volume 1, Sheet 37

2006 Certified Sanborn Map

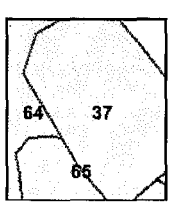


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification #: B1F0-4924-833D
Copyright: 2006

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

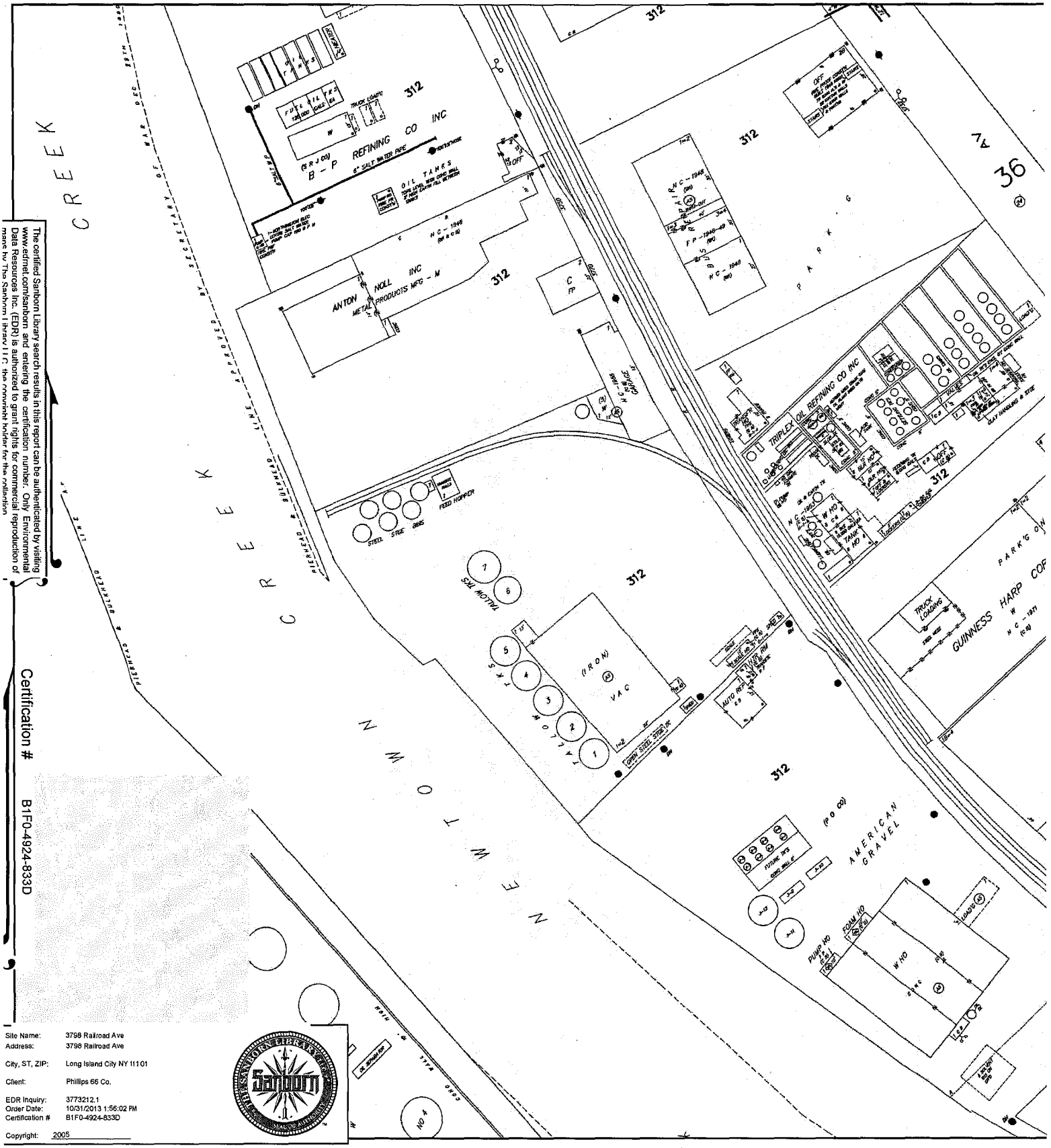


Volume 4, Sheet 64
Volume 4, Sheet 65
Volume 1, Sheet 37

0 Feet 150 300 600

N

2005 Certified Sanborn Map

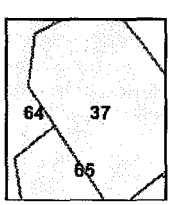


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for this collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 2005

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

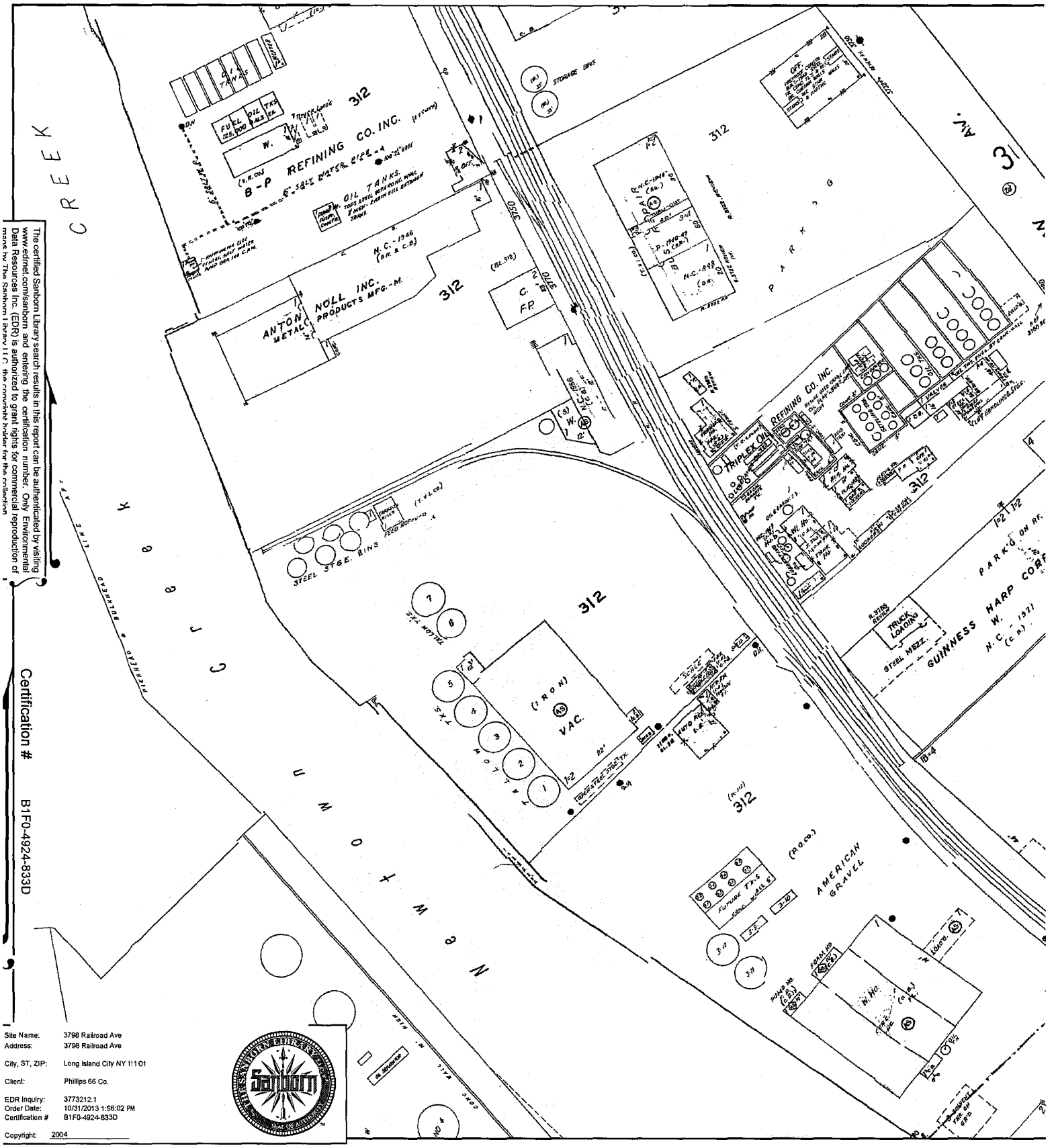


Volume 1, Sheet 37
Volume 4, Sheet 64
Volume 4, Sheet 65

0 Feet 150 300 600

N

2004 Certified Sanborn Map

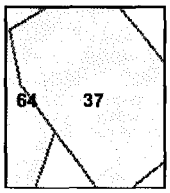


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 2004

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

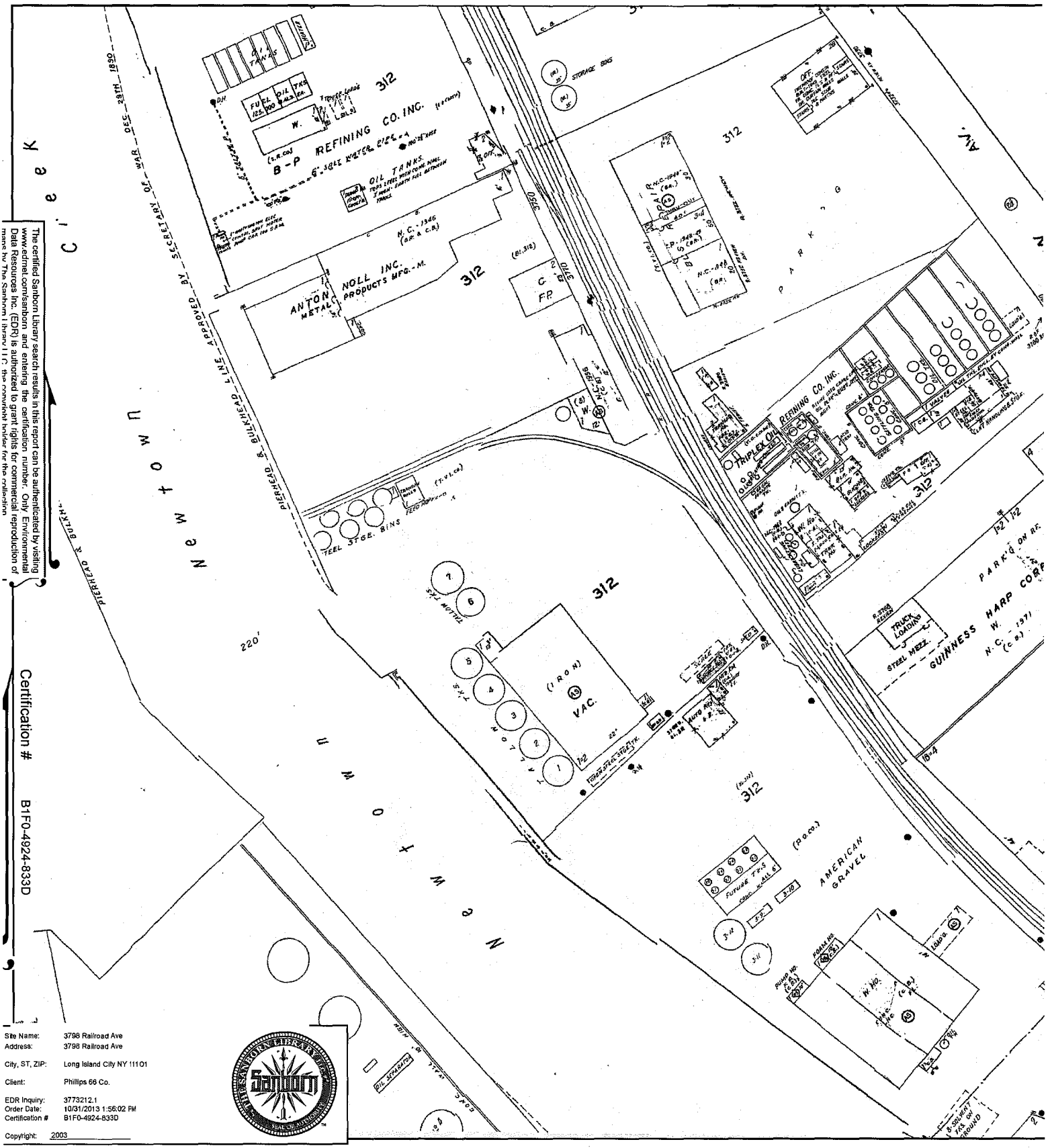


Volume 4, Sheet 64
Volume 1, Sheet 37

0 Feet 150 300 600

N

2003 Certified Sanborn Map

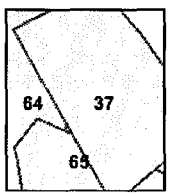


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the ownership holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 2003

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

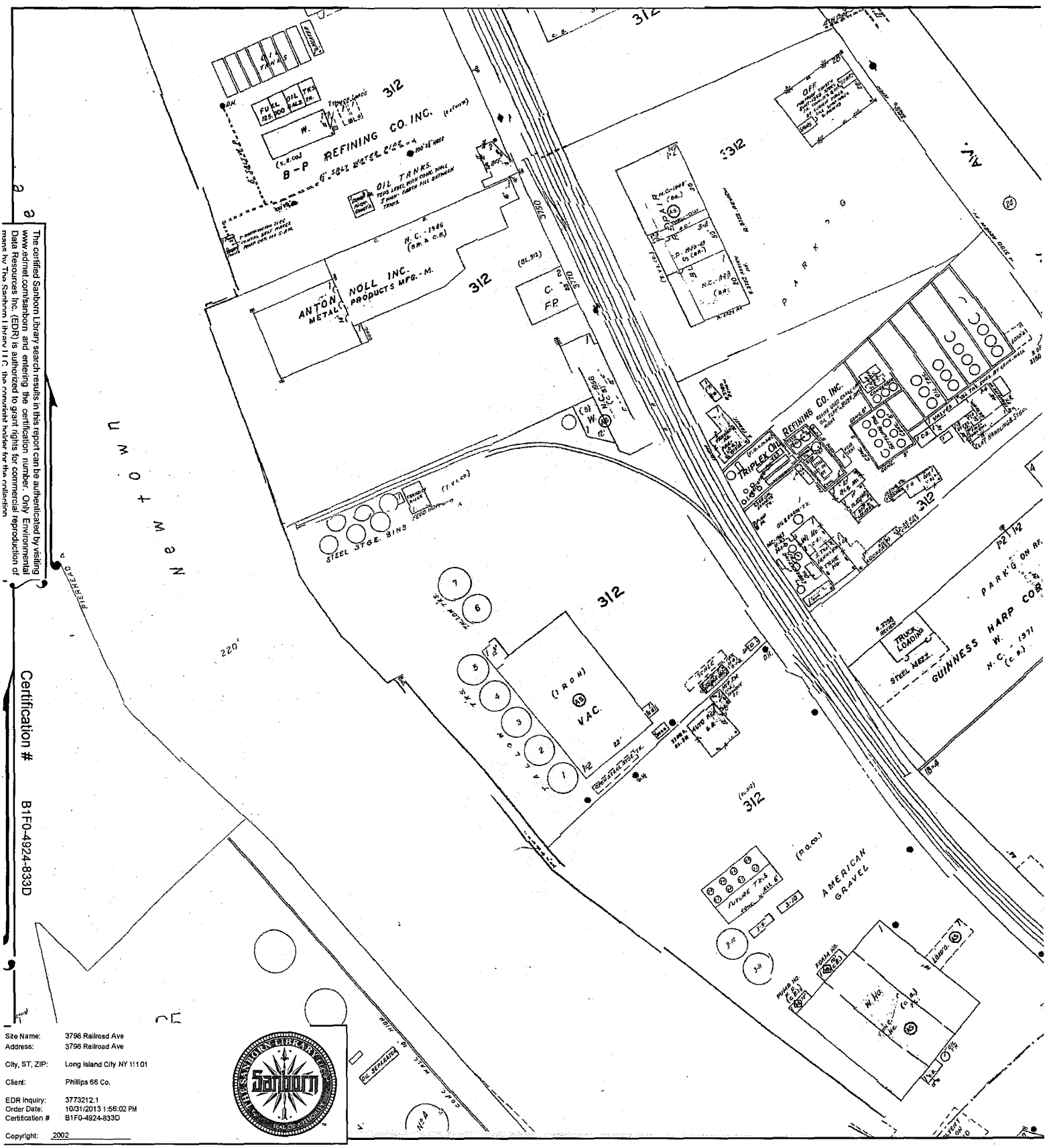


Volume 1, Sheet 37
Volume 4, Sheet 64
Volume 4, Sheet 65

0 Feet 150 300 600

N

2002 Certified Sanborn Map

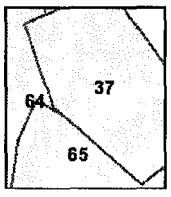


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the ownership holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 2002

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

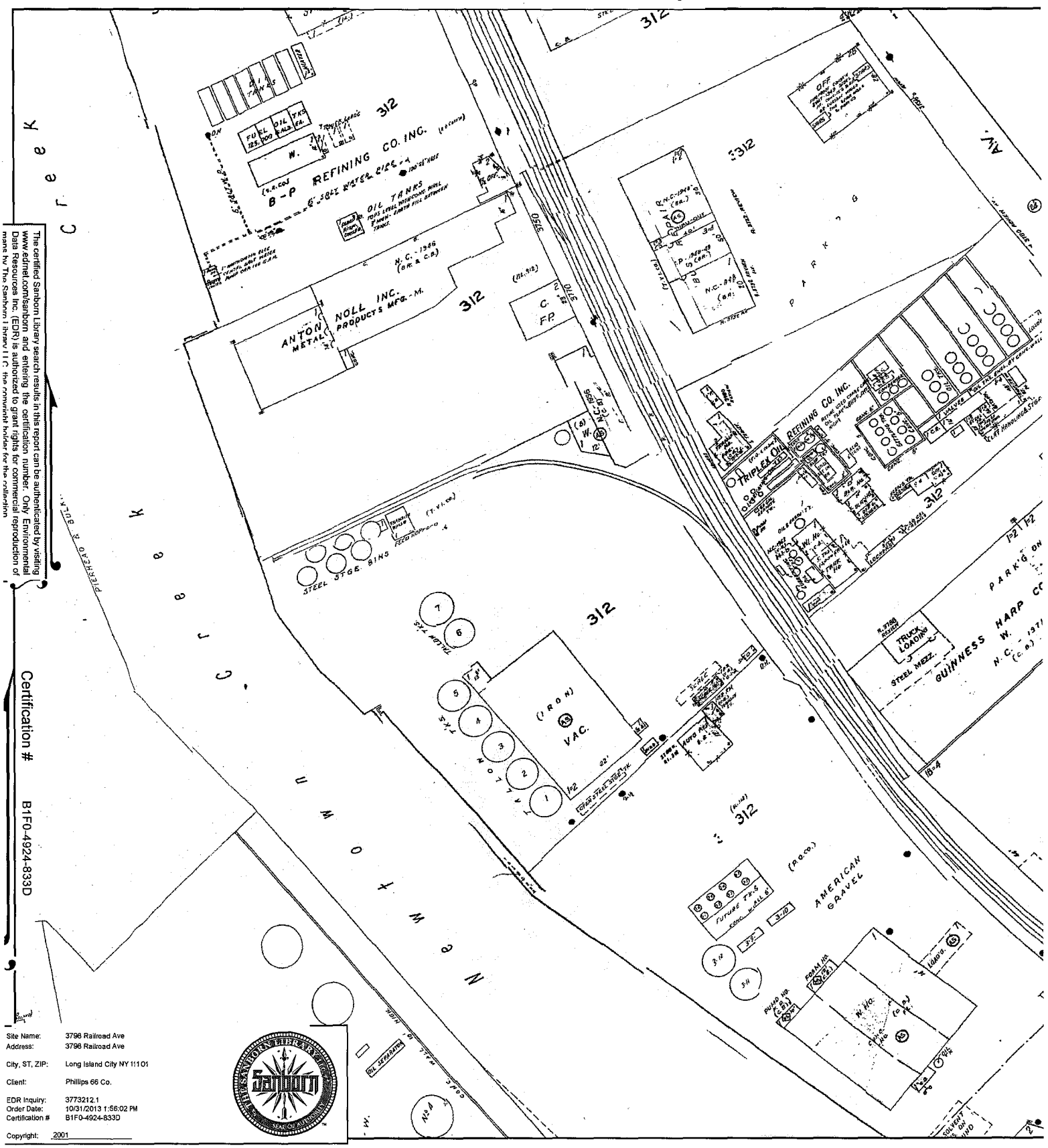


Volume 4, Sheet 64
Volume 4, Sheet 65
Volume 1, Sheet 37

0 Feet 150 300 600

N

2001 Certified Sanborn Map

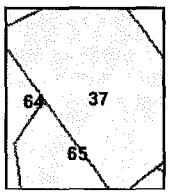


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the nationwide holder of the collection.

Certification # B1F0-4924-833D

Site Name: 3796 Railroad Ave
Address: 3796 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 2001

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

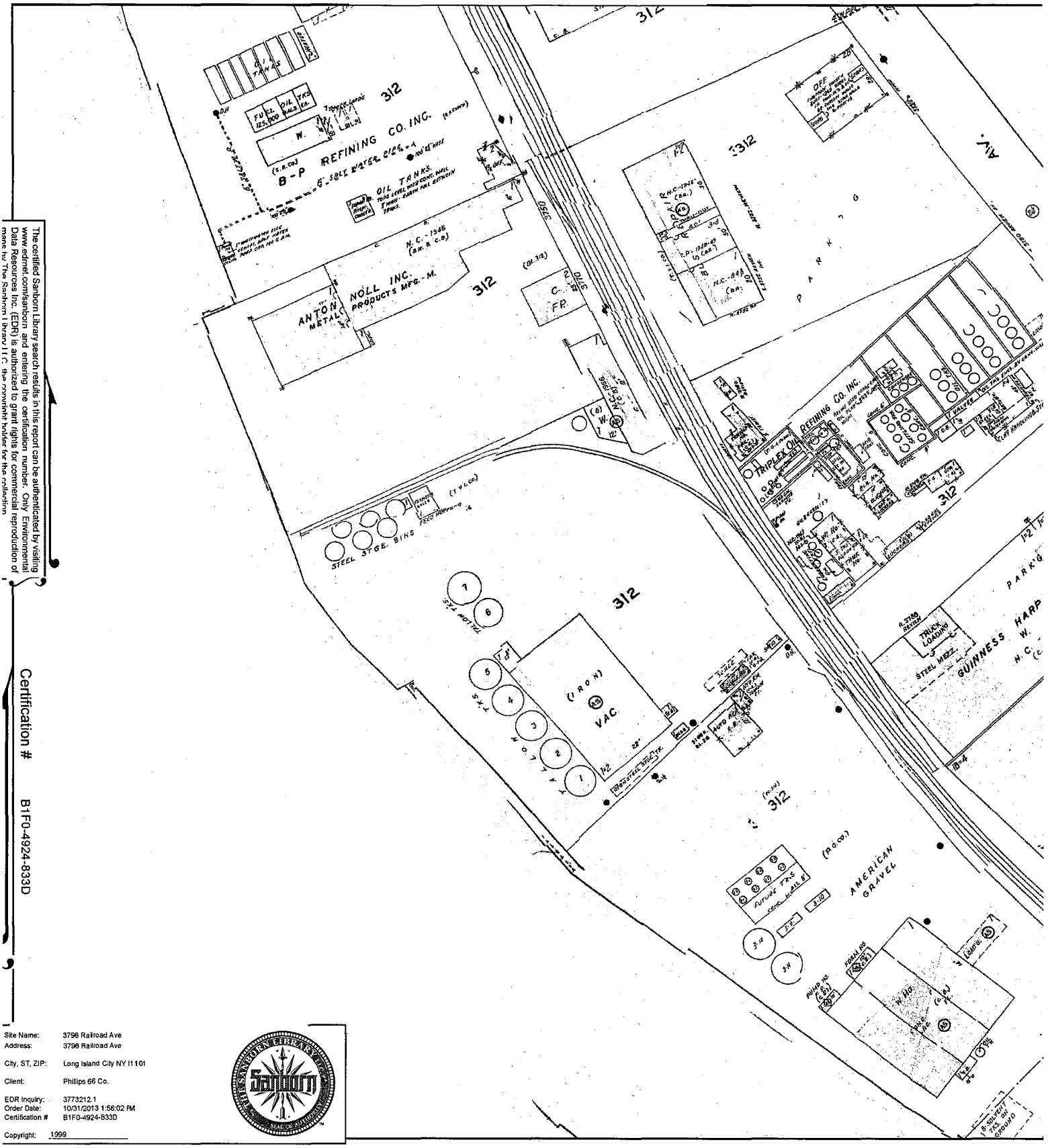


Volume 1, Sheet 37
Volume 4, Sheet 64
Volume 4, Sheet 65

0 Feet 150 300 600

N

1999 Certified Sanborn Map



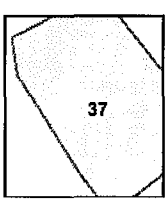
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3796 Railroad Ave
Address: 3796 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1999

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

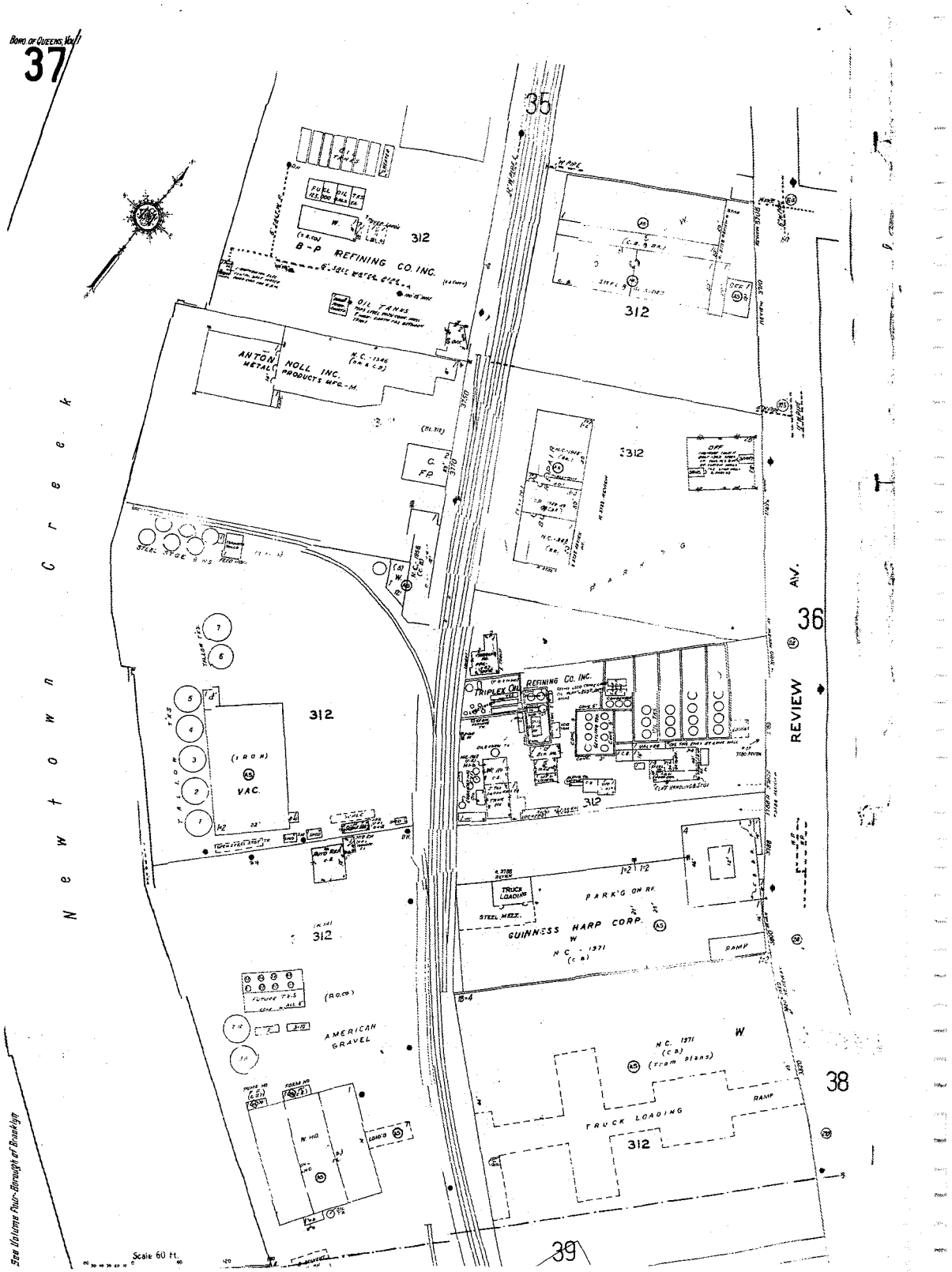
0 Feet 150 300 600



Volume 1, Sheet 37

N

1996 Certified Sanborn Map



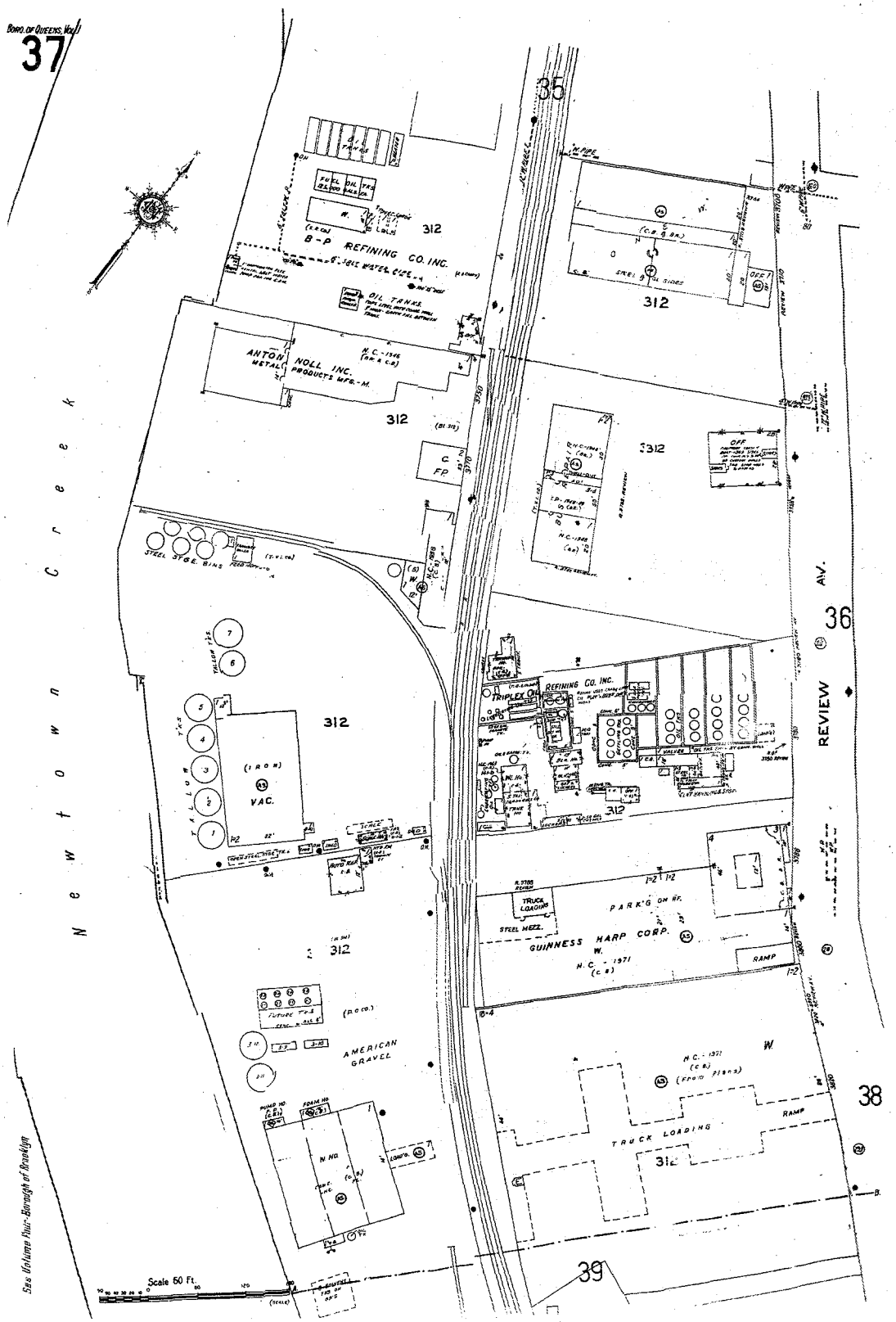
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

© 1996 Sanborn Co., EDR Sanborn, Inc.

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1996

1995 Certified Sanborn Map



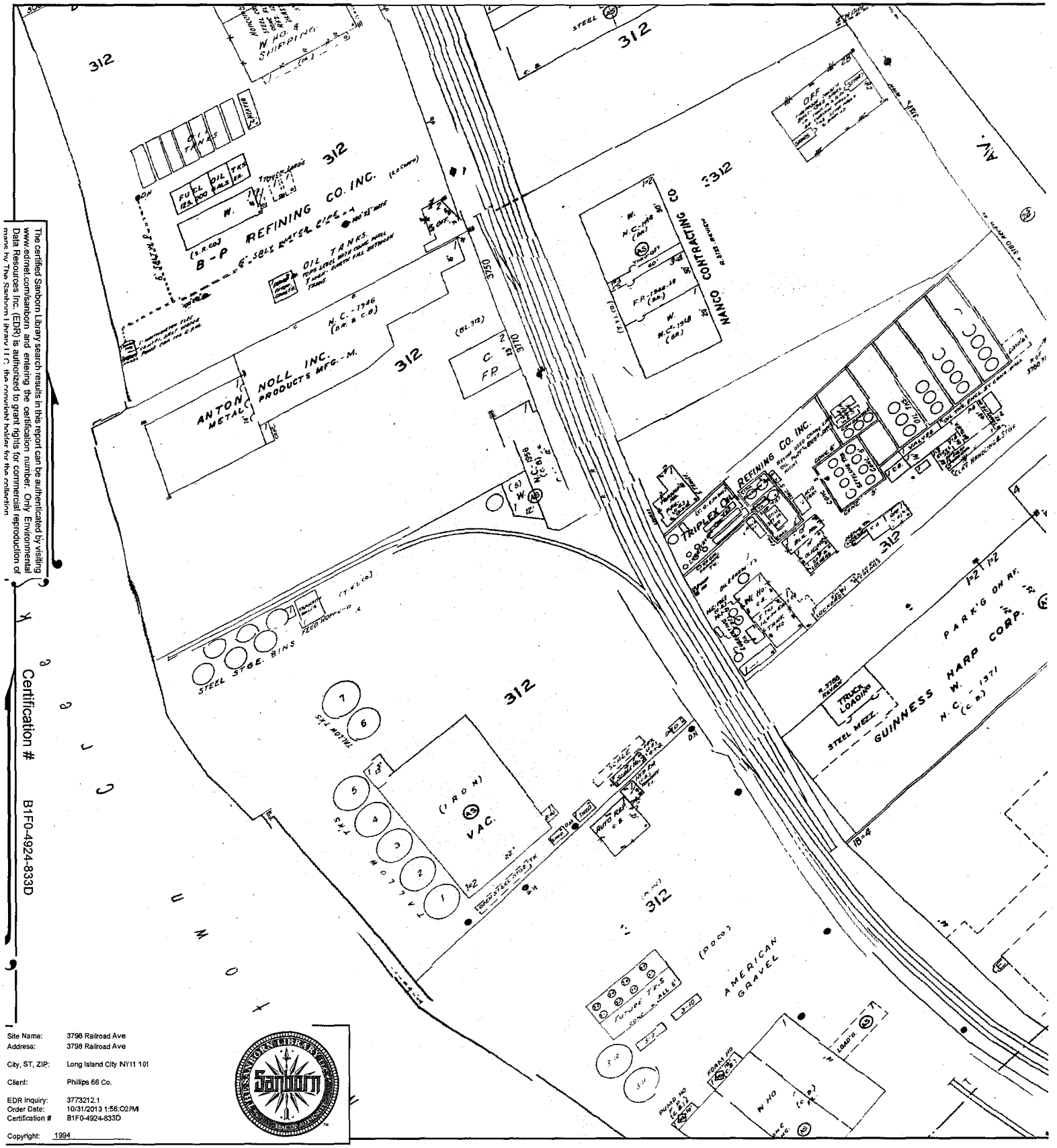
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1995

©1995 Sanborn Co., EDR Sanborn, Inc.

1994 Certified Sanborn Map

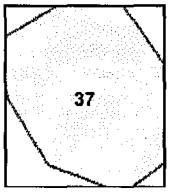


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the nonexclusive holder of the collection.

Certification # B1F0-4924-833D

Site Name:	3798 Railroad Ave
Address:	3798 Railroad Ave
City, ST, ZIP:	Long Island City NY 11 101
Client:	Phillips 66 Co.
EDR Inquiry:	3773212.1
Order Date:	10/31/2013 1:56:02PM
Certification #	B1F0-4924-833D
Copyright:	1994

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

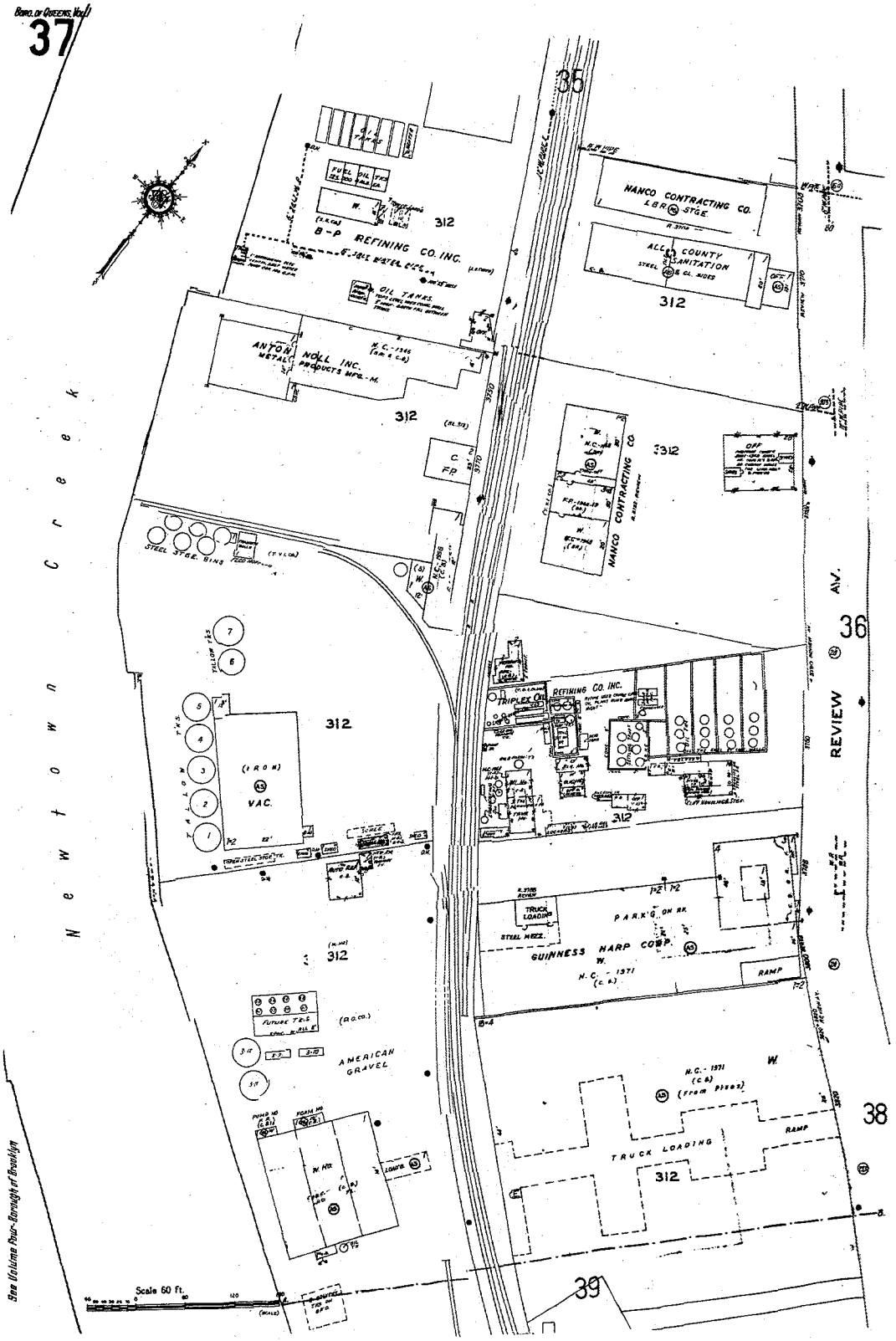


Volume 1, Sheet 37

0 Feet 150 300 600

N

1993 Certified Sanborn Map



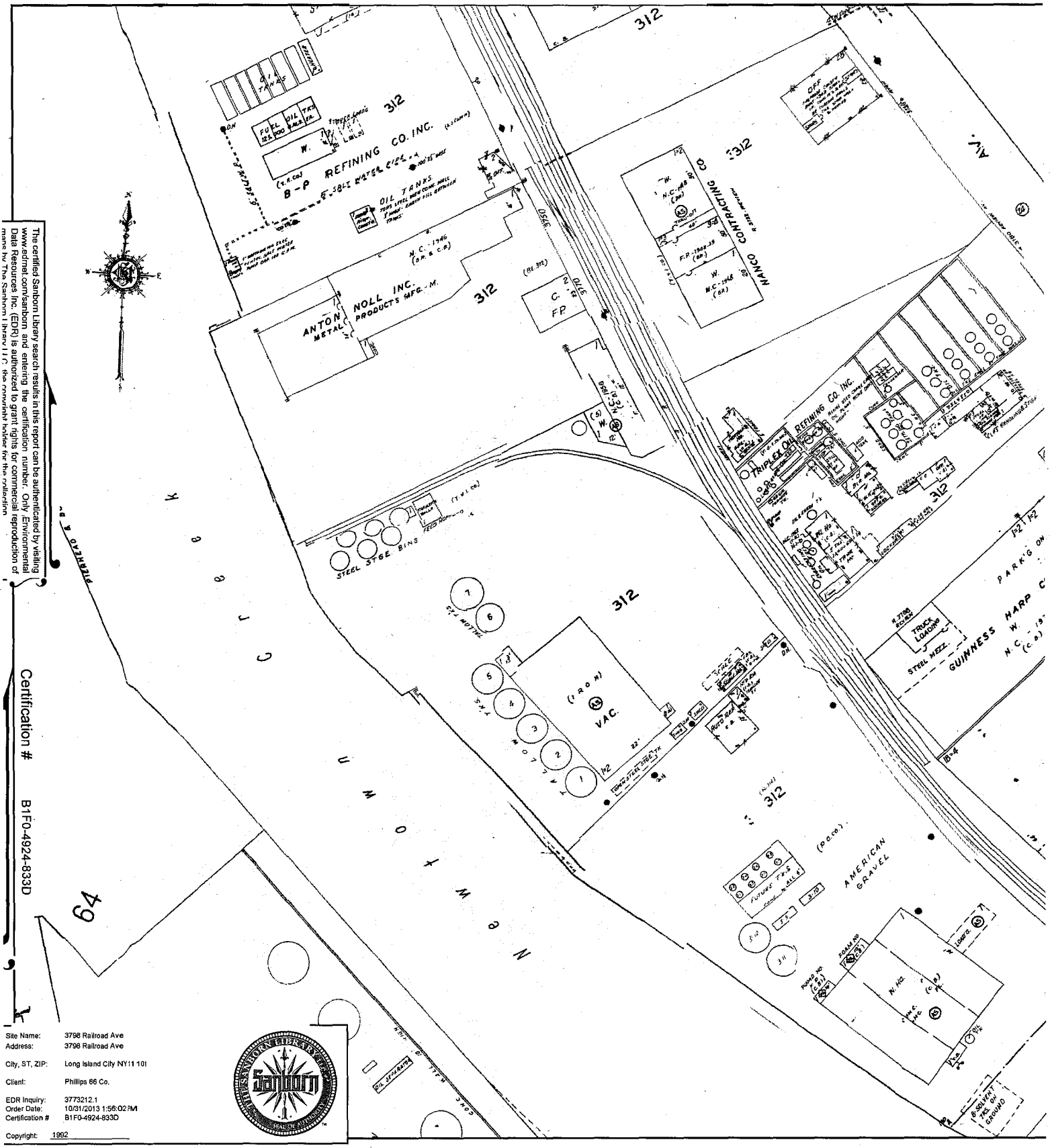
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1993

© 1993 Sanborn Co., EDR Sanborn, Inc.

1992 Certified Sanborn Map



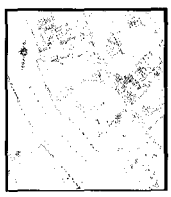
The certified Sanborn Library search results in this report can be authenticated by visiting www.sdrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the exclusive licensee of the Sanborn Library.

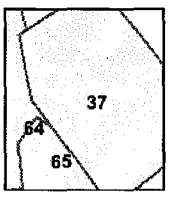
Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D

Copyright: 1992

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.



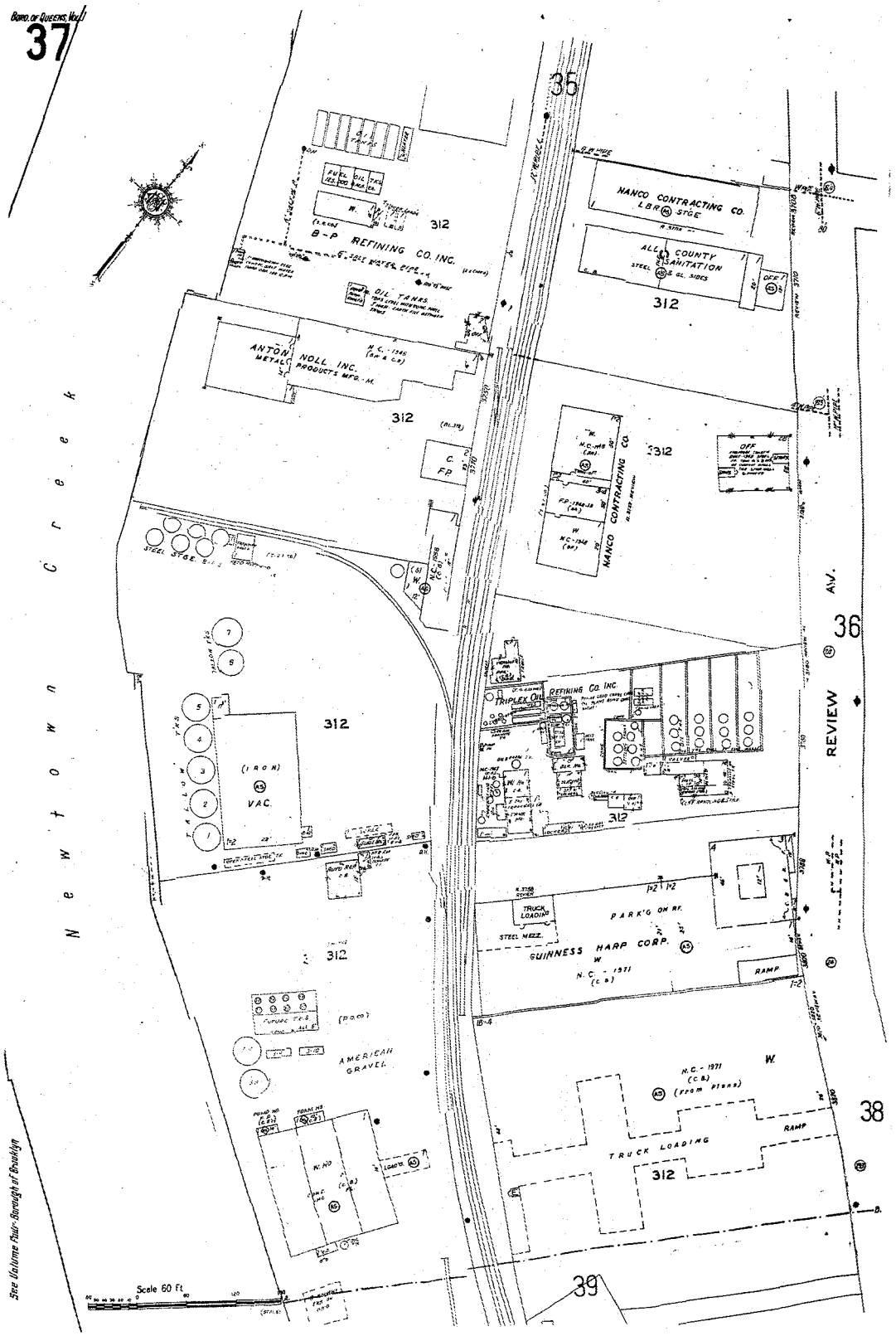


Volume 1, Sheet 37
Volume 4, Sheet 64
Volume 4, Sheet 65

0 Feet 150 300 600

N

1991 Certified Sanborn Map



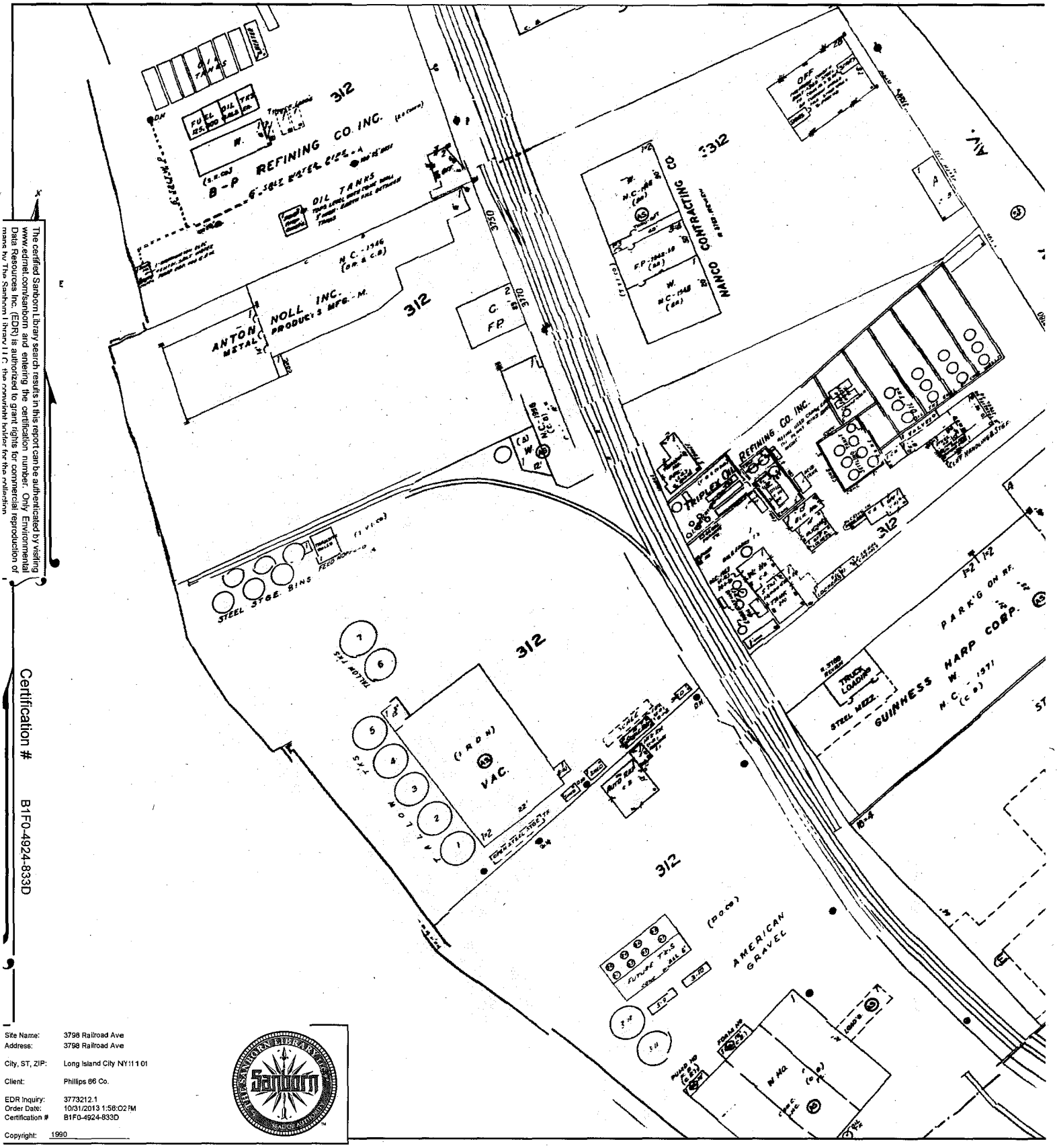
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1991

©1991 Sanborn Co., EDR Sanborn, Inc.

1990 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

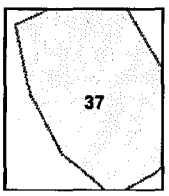
Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D

Copyright: 1990

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

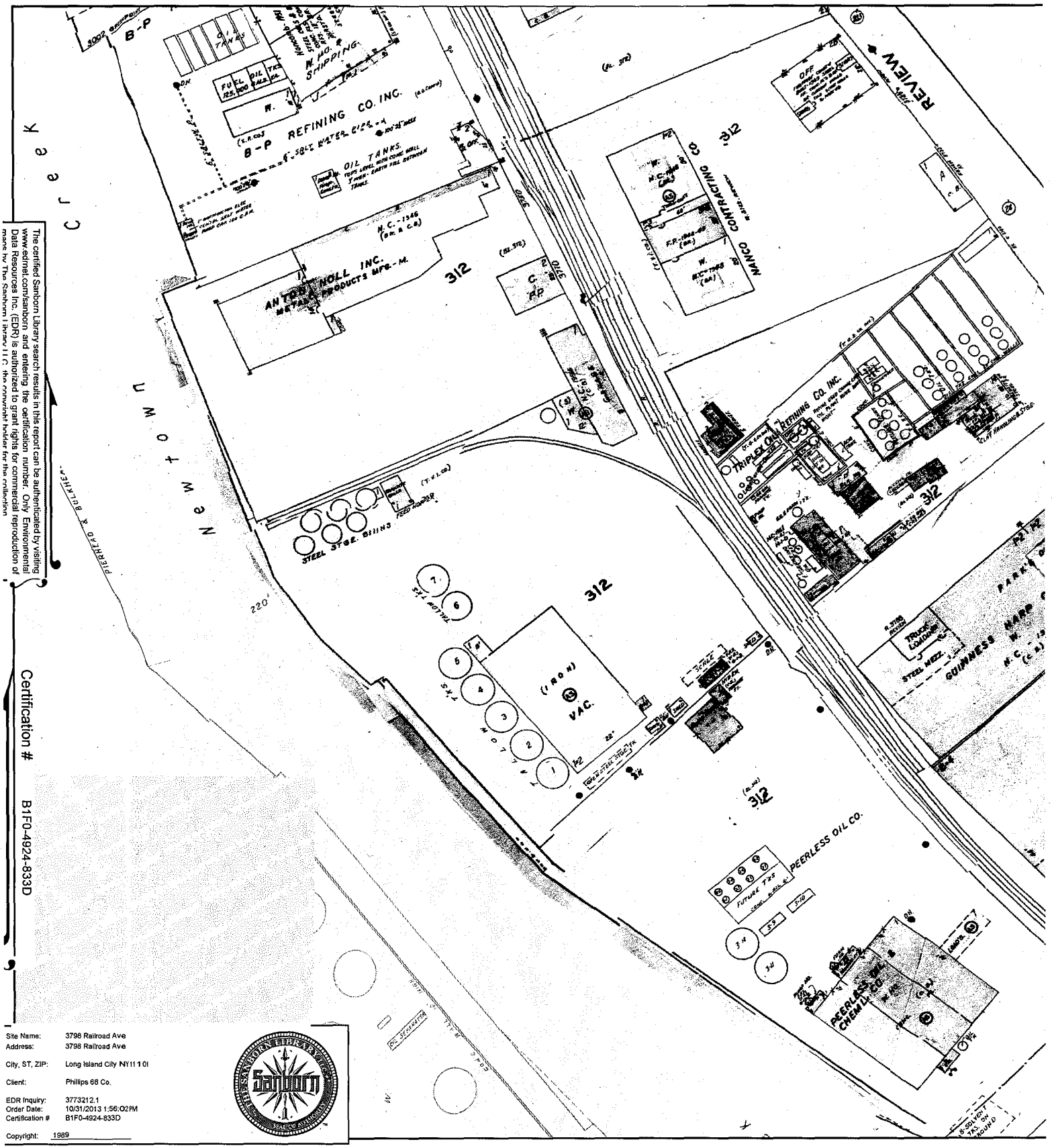
0 Feet 150 300 600



Volume 1, Sheet 37

N

1989 Certified Sanborn Map

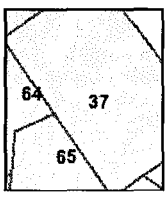


This certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the ownership holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02PM
Certification # B1F0-4924-833D
Copyright: 1989

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

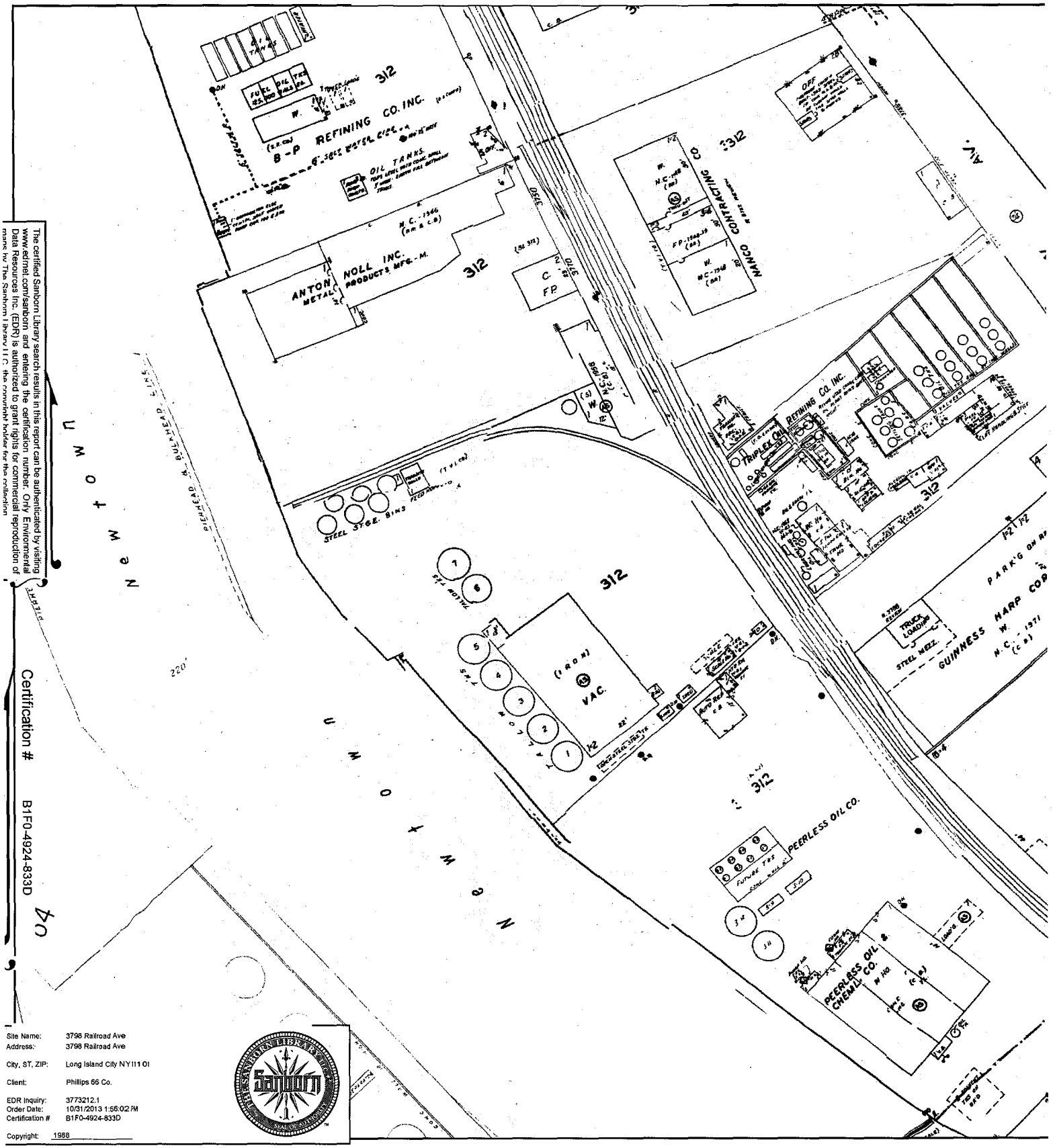


Volume 1, Sheet 37
Volume 4, Sheet 64
Volume 4, Sheet 65

0 Feet 150 300 600

N

1988 Certified Sanborn Map



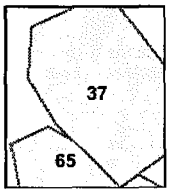
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1988

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

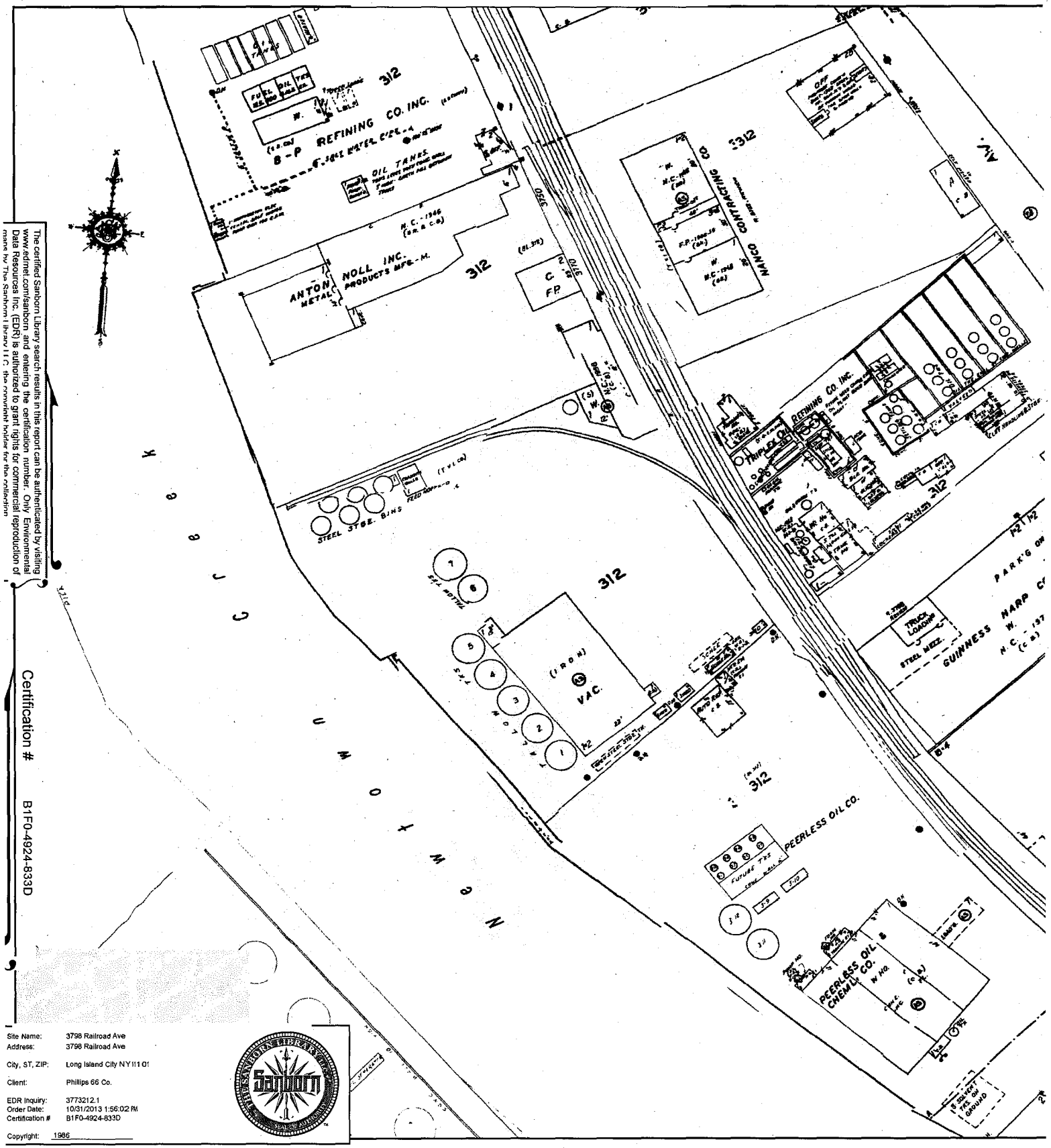
0 Feet 150 300 600



Volume 4, Sheet 65
Volume 1, Sheet 37

N

1986 Certified Sanborn Map



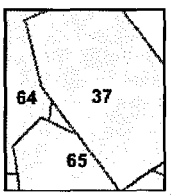
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the nonexhibit holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D

Copyright: 1986

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

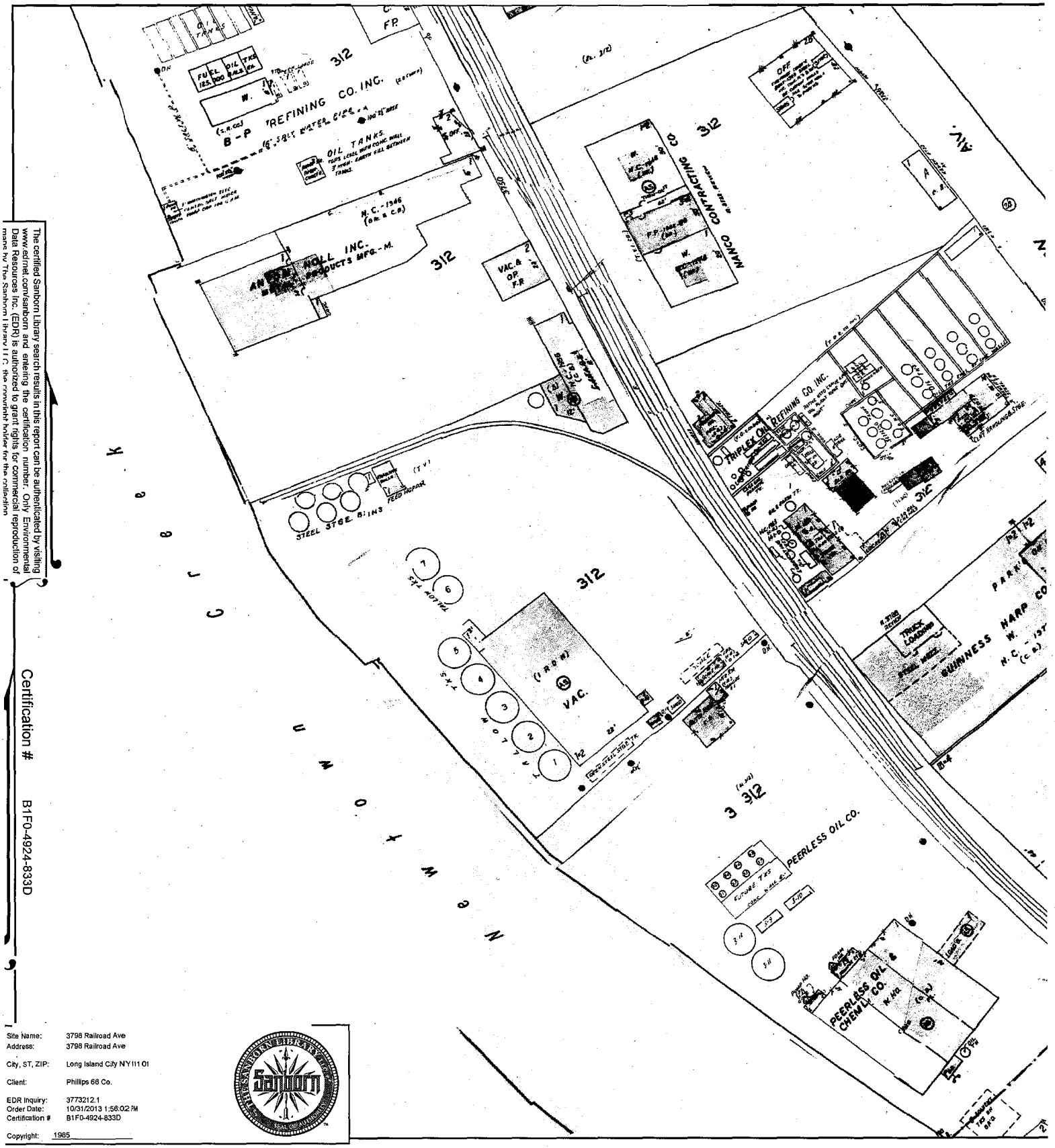


Volume 4, Sheet 64
Volume 4, Sheet 65
Volume 1, Sheet 37

0 Feet 150 300 600

N

1985 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

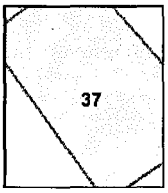
Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D

Copyright: 1985

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

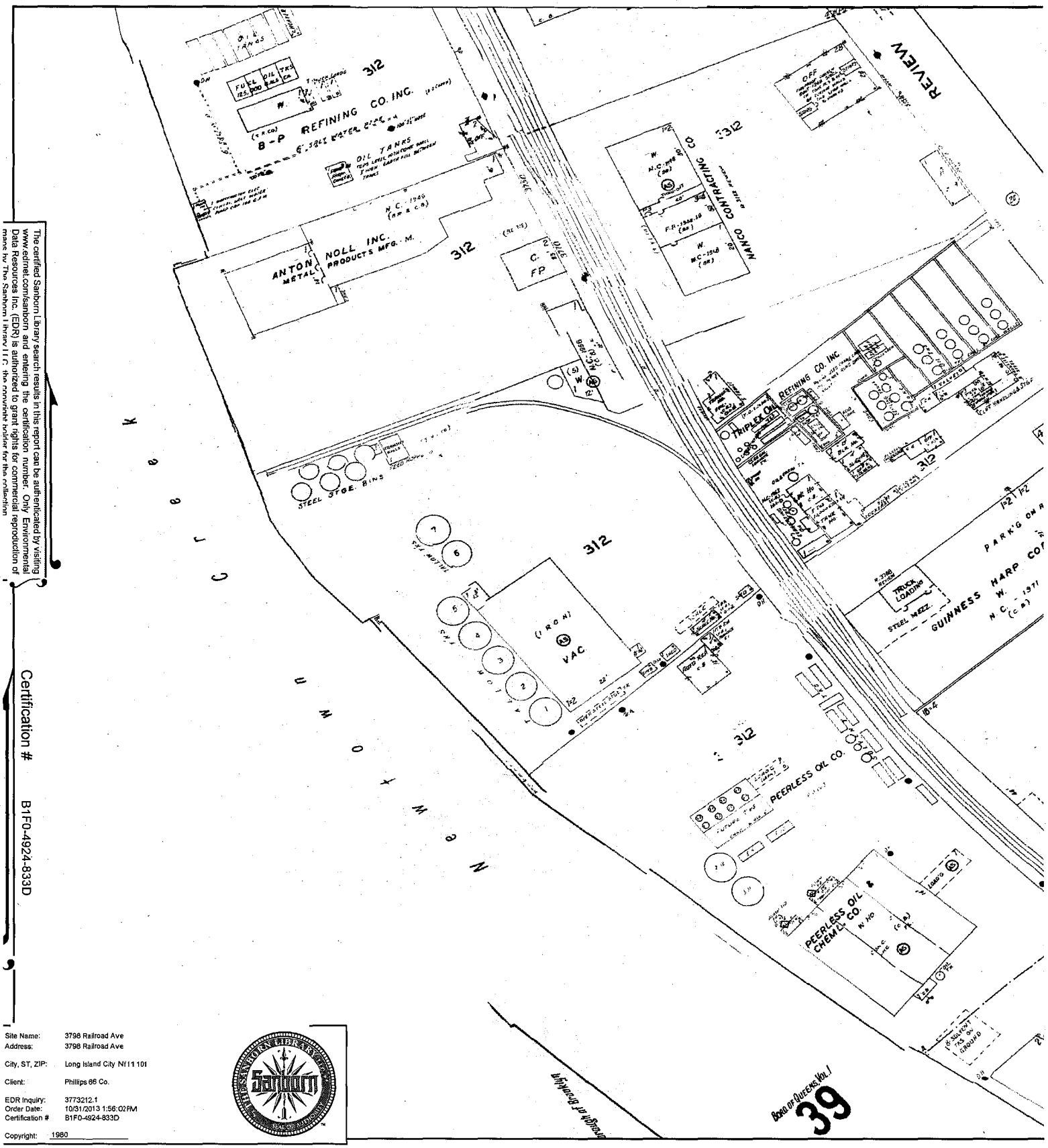
0 Feet 150 300 600



Volume 1, Sheet 37

N

1980 Certified Sanborn Map

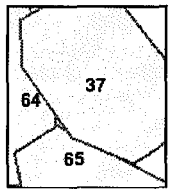


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02PM
Certification # B1F0-4924-833D
Copyright: 1980

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

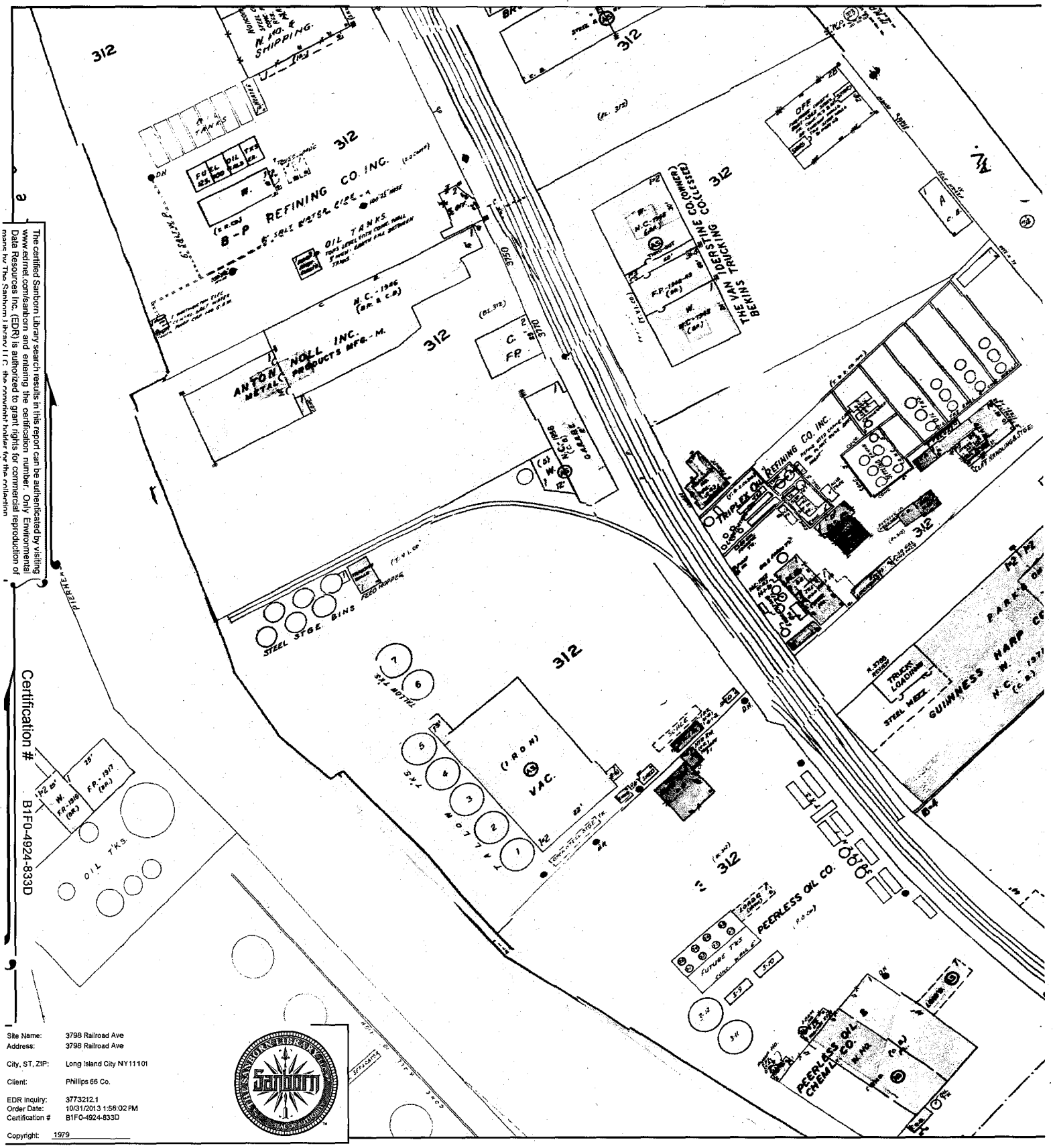


Volume 4, Sheet 64
Volume 4, Sheet 65
Volume 1, Sheet 37

0 Feet 150 300 600

N

1979 Certified Sanborn Map

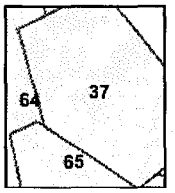


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1979

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

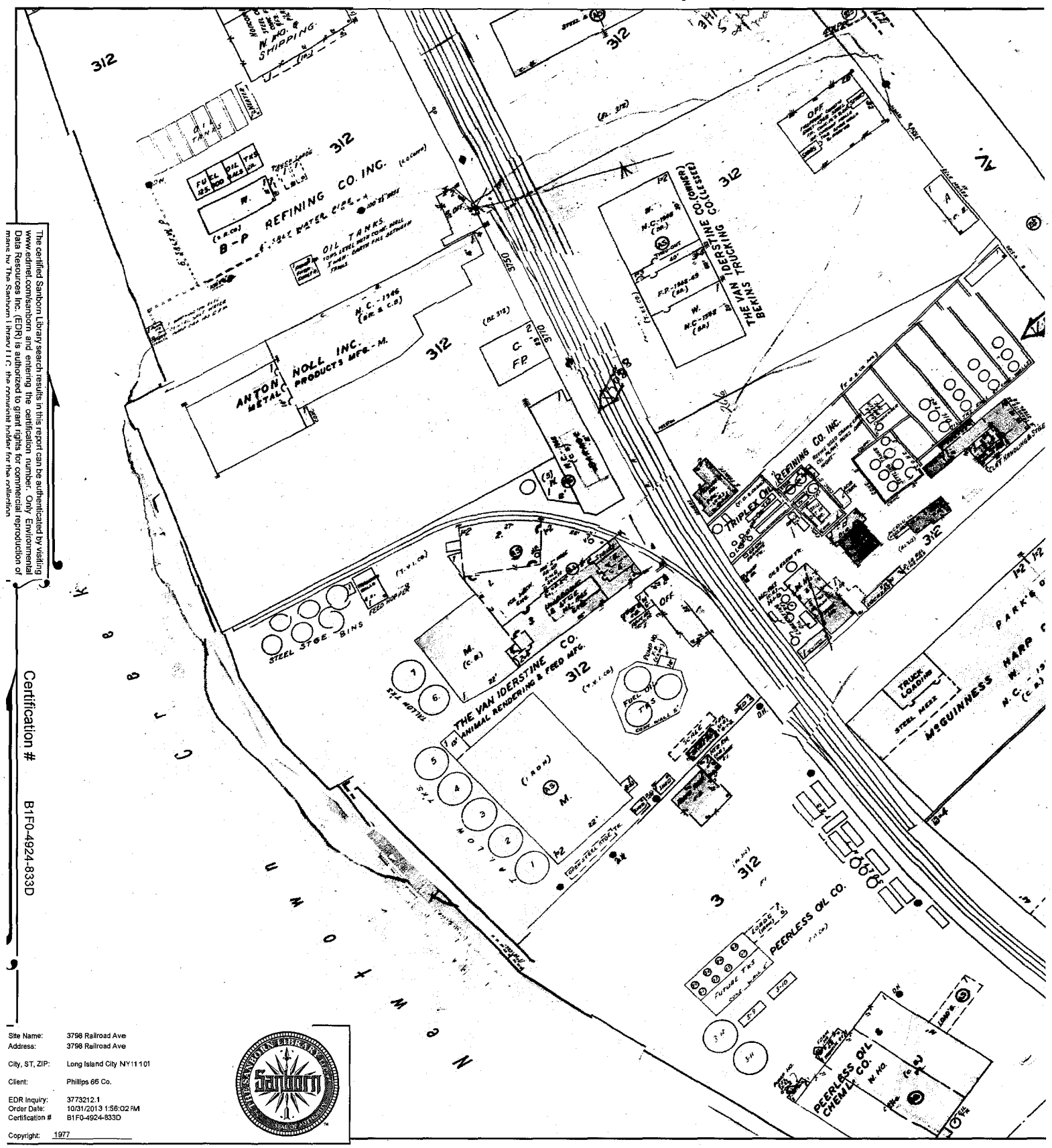


Volume 4, Sheet 64
Volume 4, Sheet 65
Volume 1, Sheet 37

0 Feet 150 300 600

N

1977 Certified Sanborn Map



The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the ownership holder for the collection.

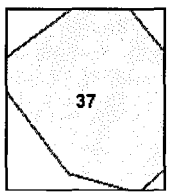
Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D

Copyright: 1977

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

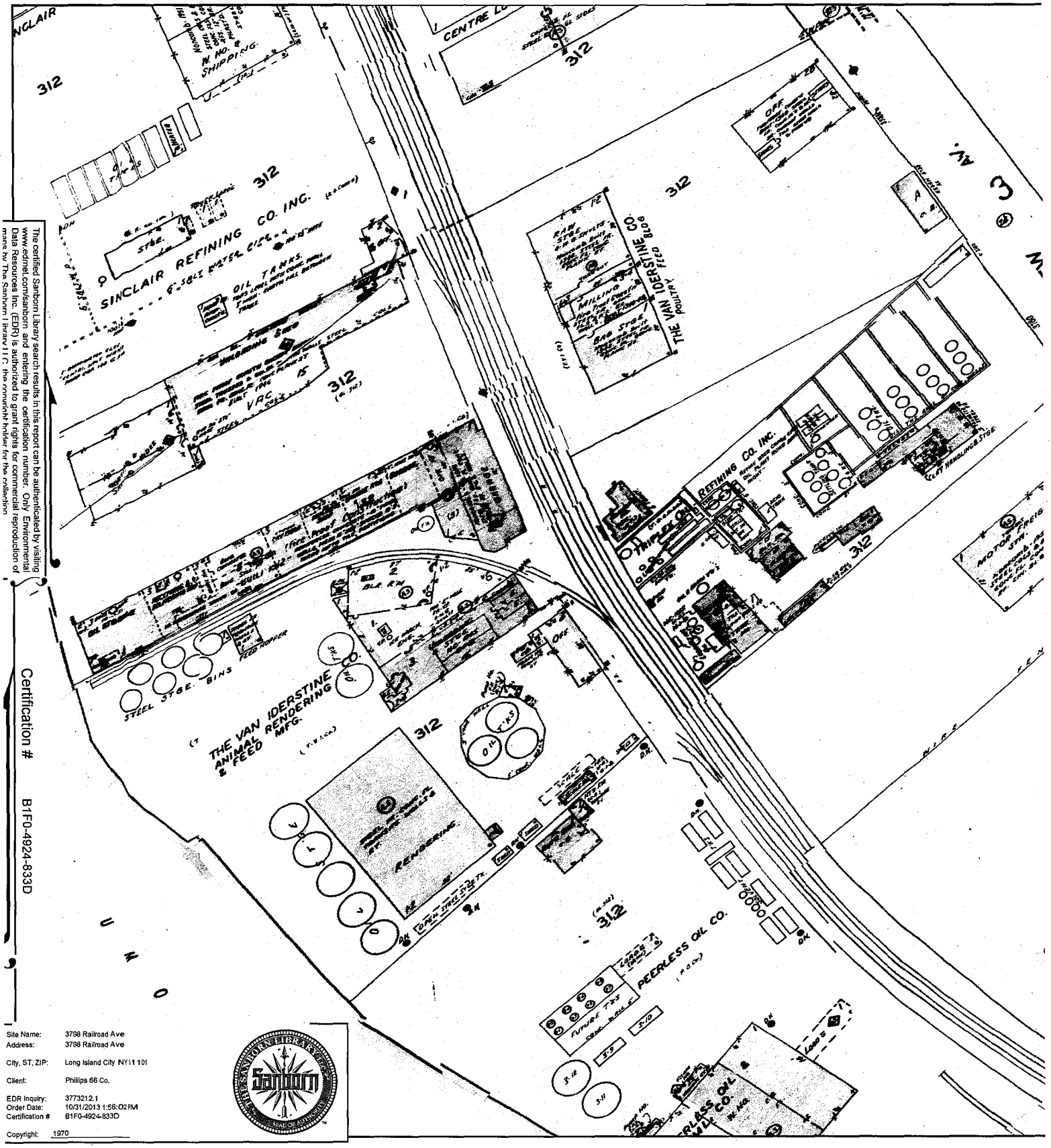
0 Feet 150 300 600



Volume 1, Sheet 37

N

1970 Certified Sanborn Map

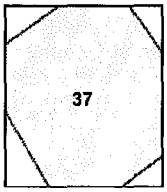


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1970

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

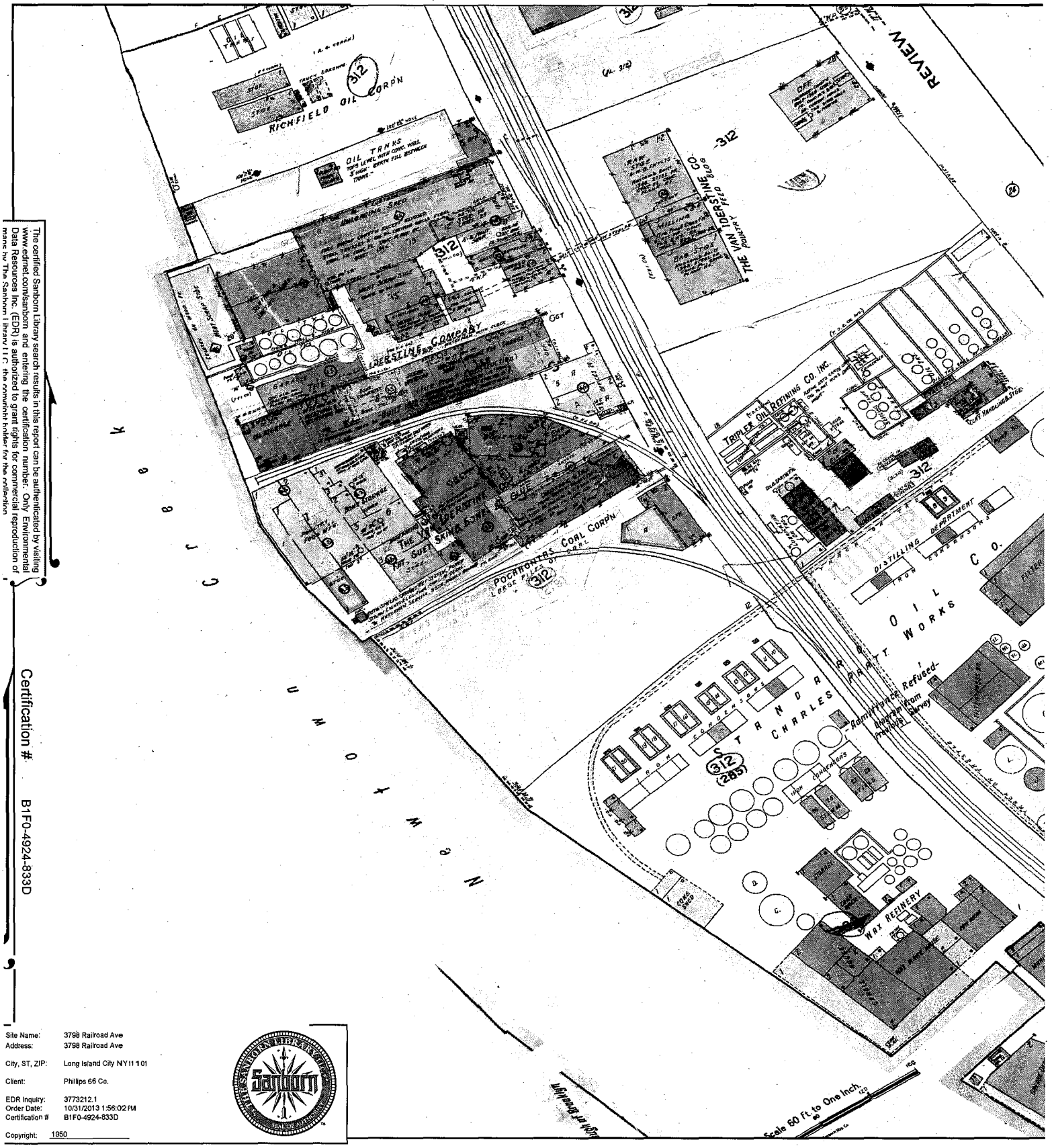


Volume 1, Sheet 37

0 Feet 150 300 600

N

1950 Certified Sanborn Map

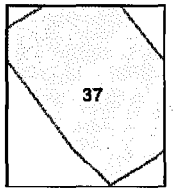


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1950

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

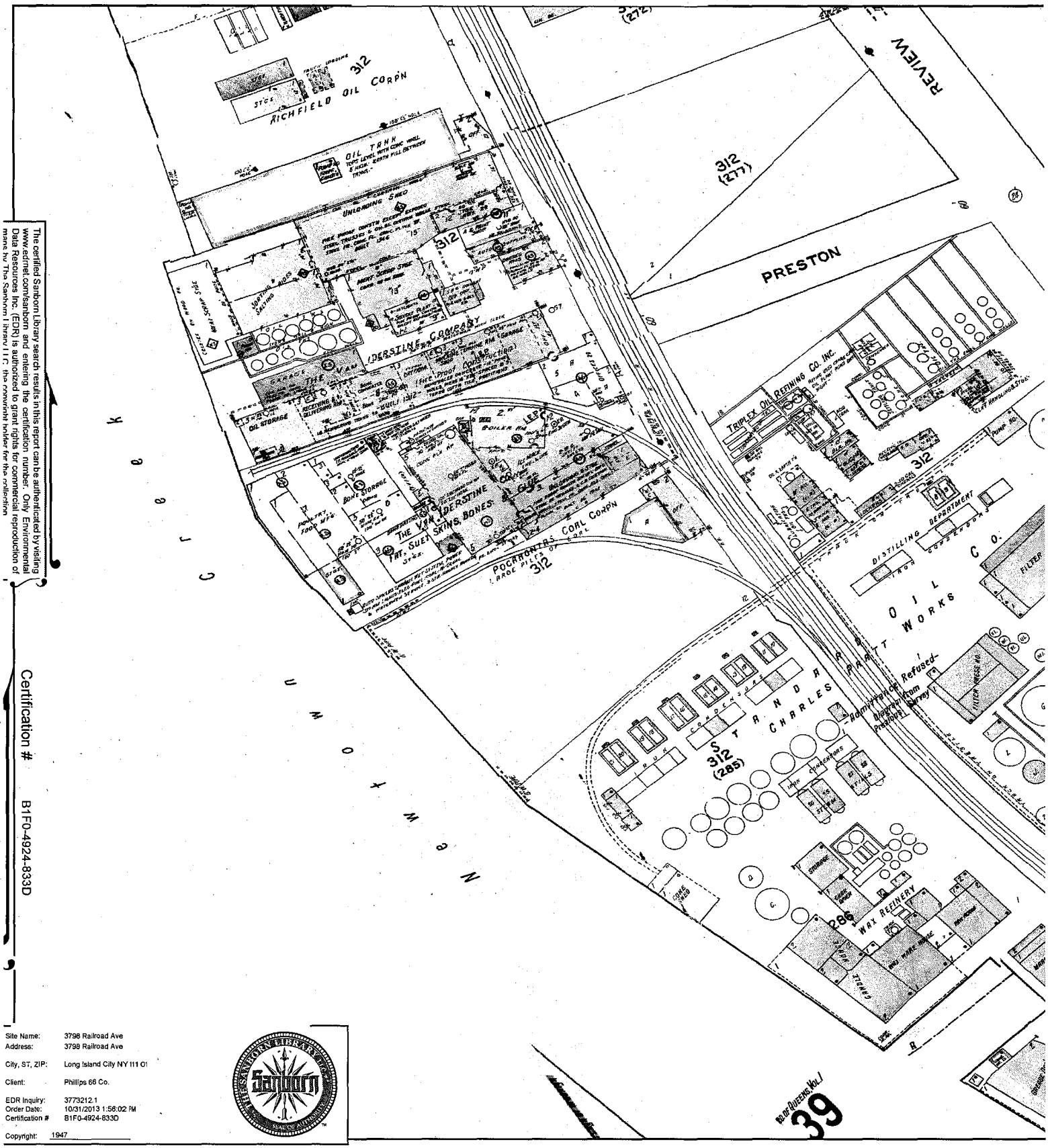


Volume 1, Sheet 37

0 Feet 150 300 600

N

1947 Certified Sanborn Map

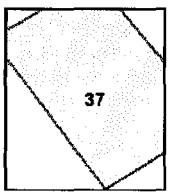


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 111 01
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1947

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

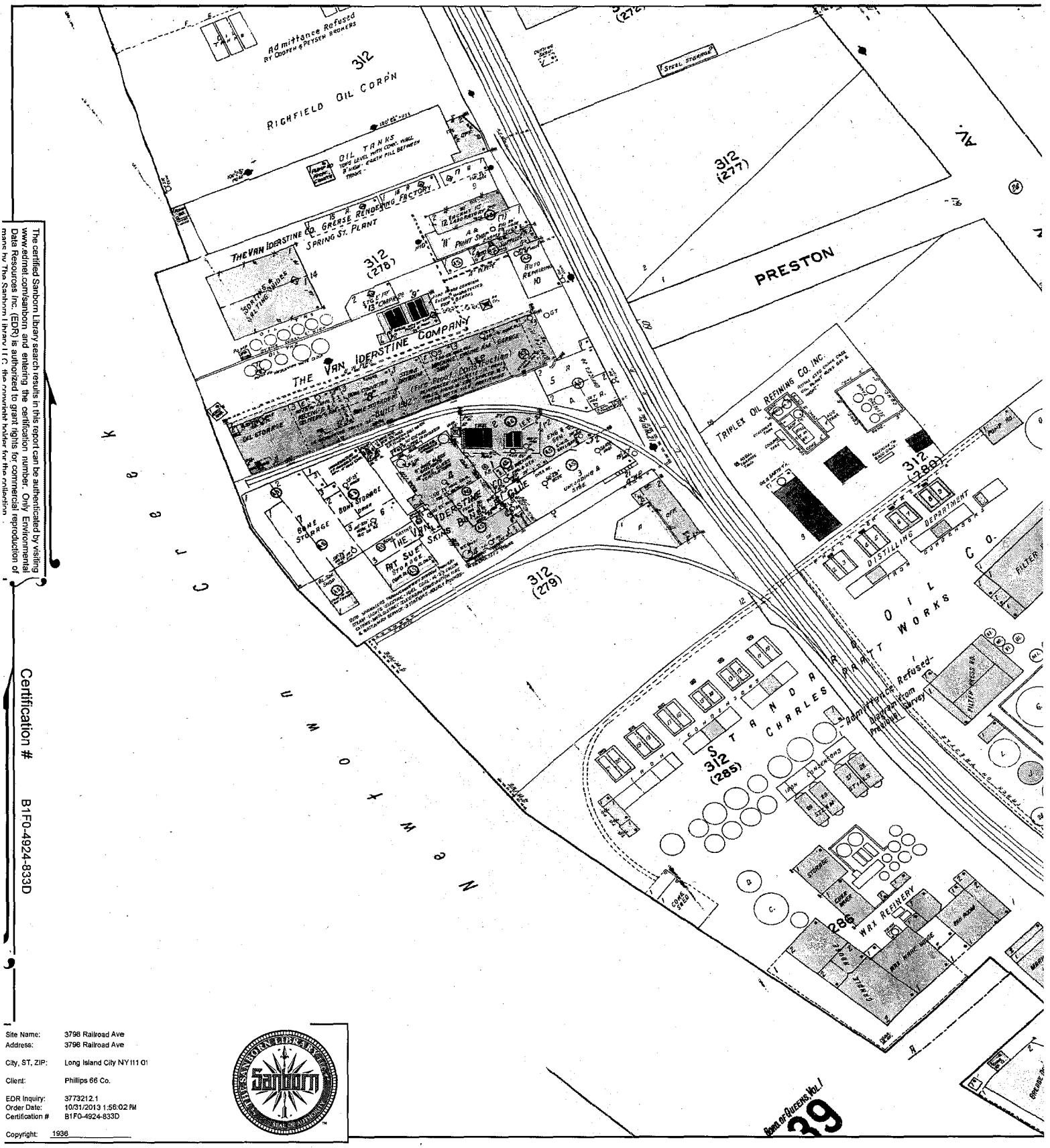


Volume 1, Sheet 37

0 Feet 150 300 600

N

1936 Certified Sanborn Map

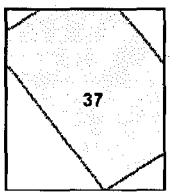


The certified Sanborn Library search results in this report can be authenticated by visiting www.sdmet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1936

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

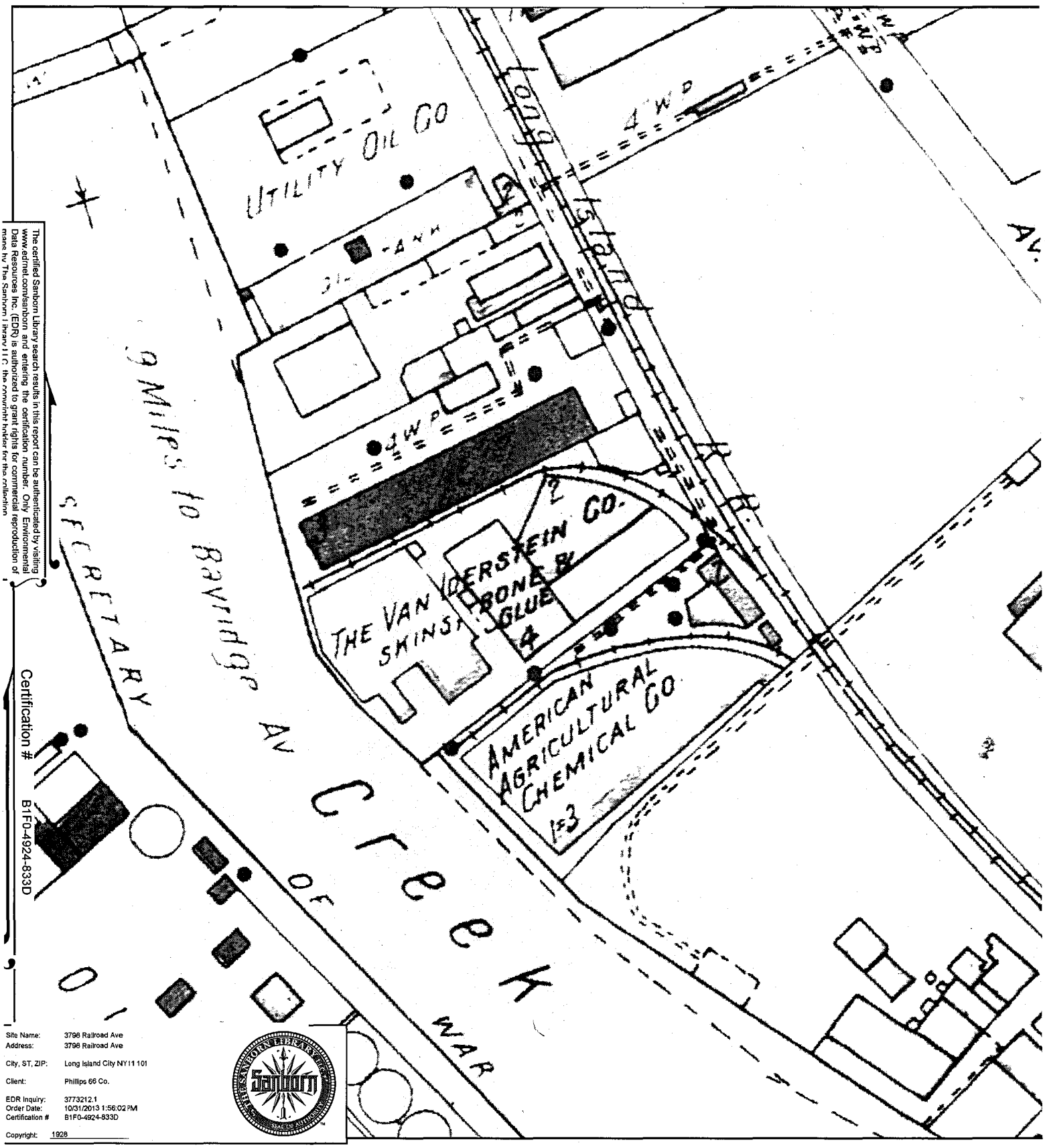


Volume 1, Sheet 37

0 Feet 150 300 600

N

1928 Certified Sanborn Map



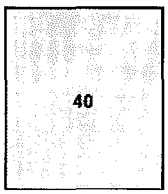
The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the ownership holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3796 Railroad Ave
Address: 3796 Railroad Ave
City, ST, ZIP: Long Island City NY11 101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1928

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

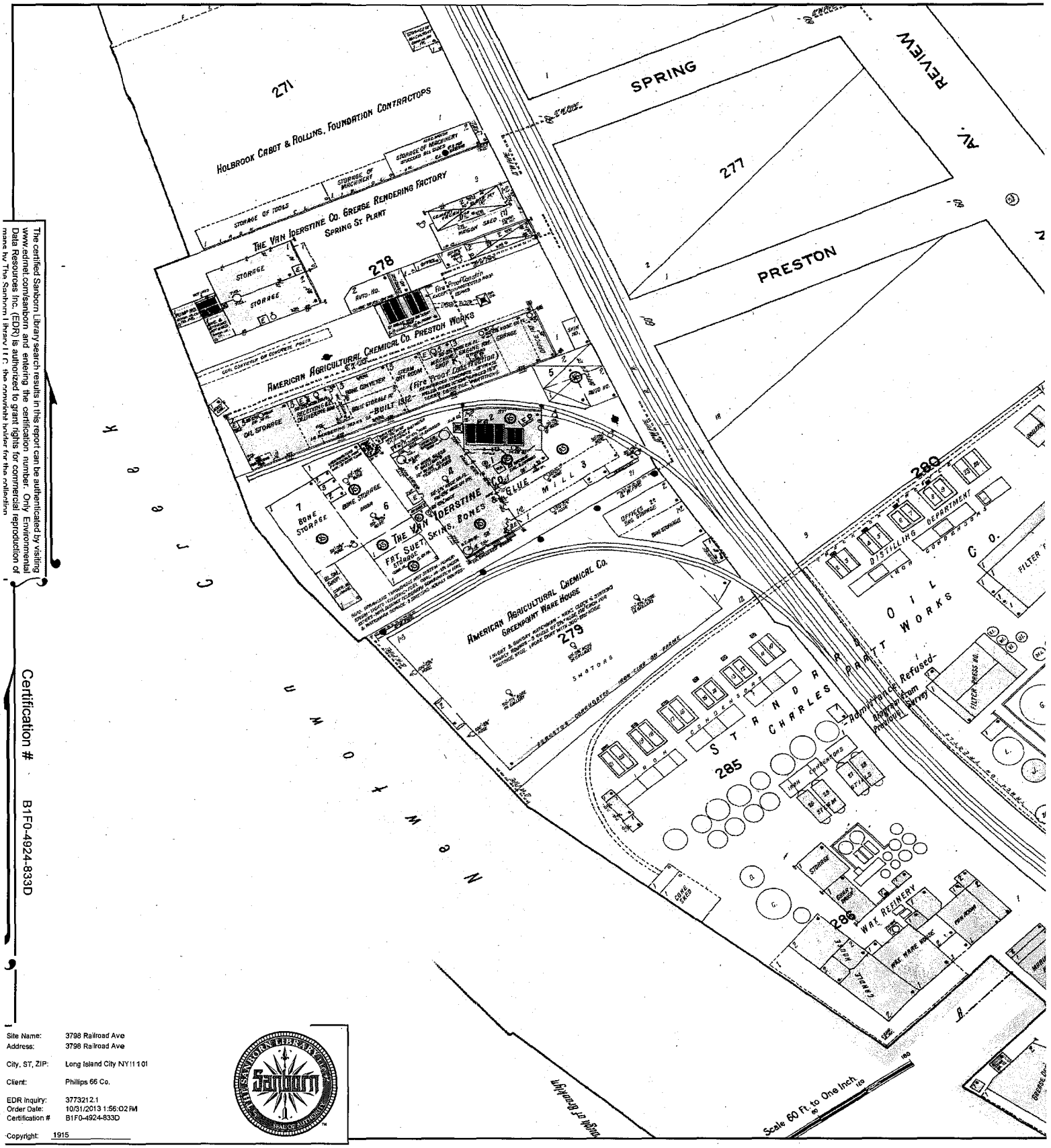
0 Feet 150 300 600



Volume Pier Maps, Sheet 40

N

1915 Certified Sanborn Map

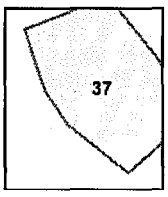


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification #: B1F0-4924-833D
Copyright: 1915

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.

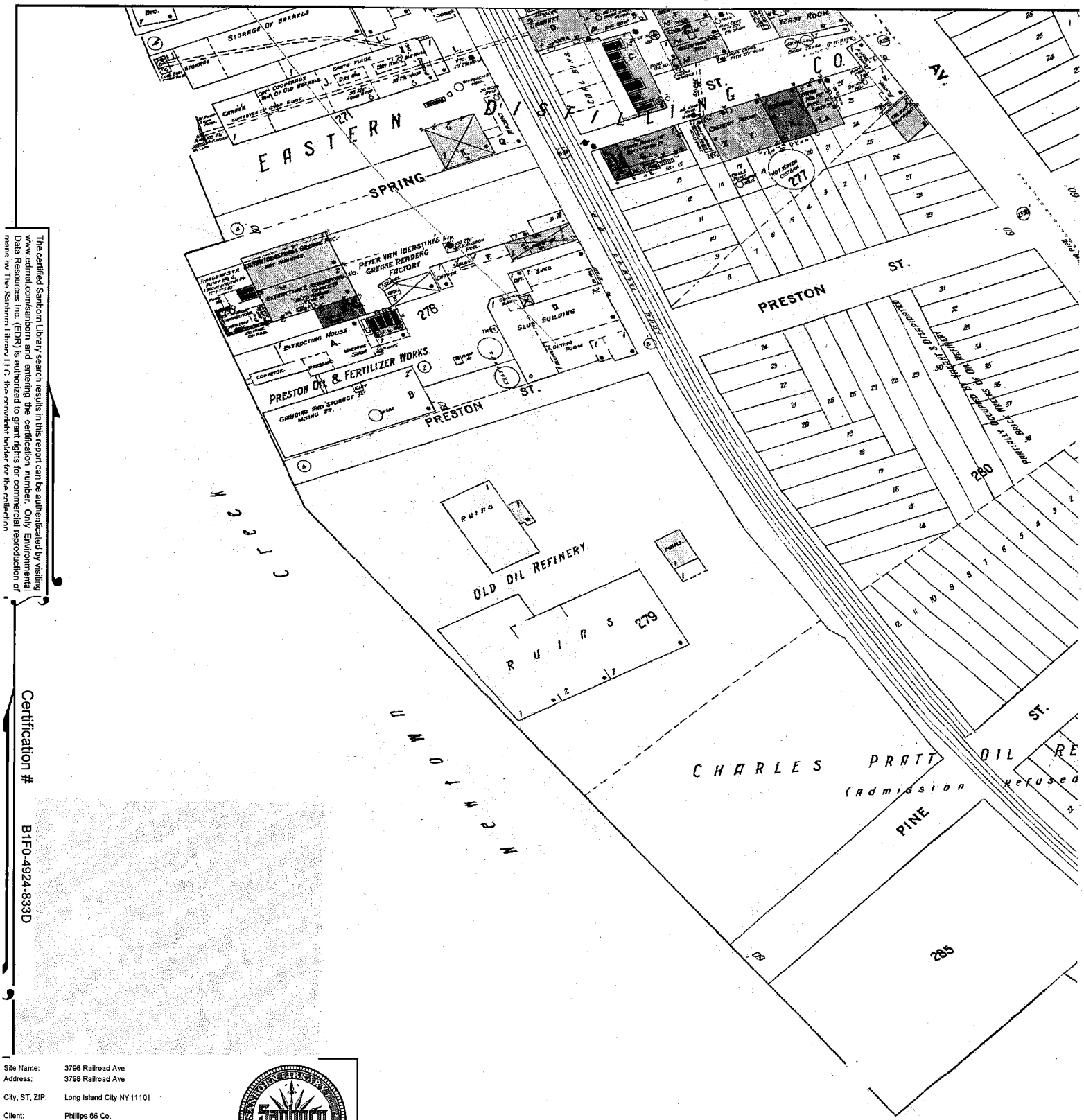


Volume 1, Sheet 37

0 Feet 150 300 600

N

1898 Certified Sanborn Map

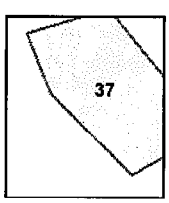


The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by The Sanborn Library LLC, the copyright holder for the collection.

Certification # B1F0-4924-833D

Site Name: 3798 Railroad Ave
Address: 3798 Railroad Ave
City, ST, ZIP: Long Island City NY 11101
Client: Phillips 66 Co.
EDR Inquiry: 3773212.1
Order Date: 10/31/2013 1:56:02 PM
Certification # B1F0-4924-833D
Copyright: 1898

This Certified Sanborn Map combines the following sheets.
Outlined areas indicate map sheets within the collection.



Volume 1, Sheet 37

0 Feet 150 300 600

N

Exhibit CC

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

COPY FOR

THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

Before J. VIPOND DAVIES, Arbitrator.

New York, March 3, 1931.

In the Matter of the Arbitration
between
THE VAN IDERSTINE COMPANY,
Long Island City, N.Y.
and
THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

STENOGRAPHER'S MINUTES

INDEX

Testimony of	Direct Examination	Cross Examination
Opening Statement of Mr.Williamson,	20	
Opening Statement of Mr. Miller,	26	
Harrison Daiber,	47	55
Milton Rosenberg,	61	64
Joseph W. Devorss,	71	75
Charles L. Haussermann,	84	88
Theodore Arnholtz,	110	116
Louis Solomon,	124	131

Adams & Chambers, Stenographers United States District Court,
Rooms 823-4, Park Row Building, New York.
Telephone, Barclay 8792 Notary Public

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

In the Matter of the Arbitration

between

THE VAN IDERSTINE COMPANY,
Long Island City, N.Y.

and

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY.

New York, March 3, 1931.

Before
J. VIPOND DAVIES, Arbitrator.

P r e s e n t:

CHARLES L. BERNHEIMER, Chairman of the Committee on Arbitration of the Chamber of Commerce.

J. D. TAMBLYN, Secretary of the Chamber of Commerce.

B. C. DAVIS, Secterary of the Committee on Arbitration of the Chamber of Commerce.

BREED, ABBOT & MORGAN, Attorneys for The Van Iderstine Company,
By HUGH S. WILLIAMSON, Counsel.

SULLIVAN & CROMWELL, Attorneys for The American Agricultural Chemical Company,
By PHILIP L. MILLER, Counsel.

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

The Arbitrator subscribed to the following oath:

STATE OF NEW YORK :
:ss:
COUNTY OF NEW YORK :

I, J. VIPOND DAVIES, appointed arbitrator in arbitration between The Van Iderstine Company and The American Agricultural Chemical Company, do swear that I will faithfully and fairly herein examine the matters in controversy between the before-named parties, and will make a just award there, according to the best of my understanding.

(Signed) J. VIPOND DAVIES.

Subscribed to and sworn to before
me this 3rd day of March, 1931.

J. D. TAMBLYN,
Notary Public, Richmond County
(Seal) Certificate filed in N.Y. County No. 306
New York County Register's No. 2T209

A R T H U R M. H A Y E S

C H A R L E S L. H A U S S E R M A N N

H A R R I S O N D A I B E R

T H E O D O R E A R N H O L T Z

M I L T O N R O S E N B E R G and

A R T H U R M A Y O, Jr., then subscribed to the following oath:

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

You do swear in the presence of the everliving God that in the proceedings now pending between The Van Iderstine Company and The American Agricultural Chemical Company, you will tell the truth, the whole truth, and nothing but the truth, so help you God.

THE ARBITRATOR: I have before me a submission duly executed.

(The Submission with Contract attached is copied into the record and reads as follows):

THE COMMITTEE ON ARBITRATION OF
THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK

THE VAN IDERSTINE COMPANY -and- THE AMERICAN AGRICULTURAL CHEMICAL COMPANY	SUBMISSION

A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject matter the nature of which, briefly stated, is as follows:

Under date of June 21, 1929, the parties hereto entered into a contract under which The American Agricultural Chemical Company, as Seller, sold to The Van

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

Iderstine Company, as Buyer, certain land, buildings and machinery, together with the Seller's collecting and rendering business in New York State including current accounts and notes receivable arising out of loans and/or advances made to customers. A copy of that contract is annexed hereto and marked "Exhibit A".

The dispute between the parties involves the following two questions:

1. What number of accounts was Seller required to turn over to Buyer under the contract and what, if any, deficiency existed between the number of accounts turned over to the Buyer and the number so required and what damages, if any, is Buyer entitled to by reason of such deficiency, if any?

2. Was the account and/or note of the Solomon Meat Supply Company in the sum of $10,373.02 and which was turned over to the Buyer in whole or in part a current account and/or a note receivable under the contract, and, if not, to what extent is the Buyer entitled to a refund of the amount paid therefor?

We do hereby voluntarily submit the same and all matters concerning the same to Mr. J. Vipond Davies as Arbitrator, selected by the Chairman of the Committee on Arbitration of the Chamber of Commerce of the State

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

of New York, from the List of Official Arbitrators compiled and established by the Committee on Arbitration of the said Chamber of Commerce, for hearing and decision pursuant to the by-laws of the Chamber of Commerce of the State of New York and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to the Arbitration Law of the State of New York and Article 84 of the Civil Practice Act and other statutes of the State of New York and amendment thereto governing arbitration, and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State of New York thereon.

Dated, New York, January 19, 1931.

THE VAN IDERSTINE COMPANY

(Signed) By A. M. HAYES, Vice P. (Seal)

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

(Signed) By R. A. POWERS (Seal)

Vice President

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

STATE OF NEW YORK, :
:ss:
COUNTY OF QUEENS :

On this 19th day of January, 1931, before me personally came A. M. Hayes, to me known, who, being by me duly sworn, did depose and say that he resides in the Boro. of Queens; that he is the Vice-President of THE VAN IDERSTINE COMPANY, one of the corporations described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of the said corporation, and that he signed his name thereto by like order.

ARTHUR G. KLINE,

(Seal) Notary Public, Queens County, County Clerk No. 2149, Register No. 163, Commission expires March 30, 1932.

STATE OF NEW YORK, :
:ss:
COUNTY OF NEW YORK, :

On this 24th day of January, 1931, before me personally came R. A. Powers, to me known, who, being by me duly sworn, did depose and say that he resides in New Canaan, Conn.; that he is the Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, one of the corporations described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of the said corporation, and that he signed his name thereto by like order.

F. B. BOURNE,
Notary Public, Westchester County,
Certificate filed in Westchester County,
(Seal) N.Y.Co.Clk's No.1507, Reg. No. 1-B-4A,
Term Expires March 30, 1931.

EXHIBIT A

AGREEMENT made this 21 day of June, 1929, by and between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a Connecticut corporation (hereinafter referred to as the "Seller"), party of the first part, and THE VAN IDERSTINE COMPANY, a Maine corporation (hereinafter referred to as the "Buyer"), party of the second part.

WHEREAS, the Seller is the owner of certain land and buildings used by it or in connection with the collecting and rendering business of Herman Brand (Inc.), G.Selner Co. and The Preston Works; and

WHEREAS, Herman Brand (Inc.) and G. Selner Co. are New York corporations, being wholly owned subsidiaries of the Seller; and

WHEREAS, The Preston Works is an operating depart-

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

ment of the Seller; and

WHEREAS, the Seller desires to sell and the Buyer is desirous of acquiring the said collecting and rendering business and the land and buildings, machinery, equipment and other personal property used by or in connection with said business and represents that such business consists in part of a list of regular customers from whom it is collecting fat, bone, grease, etc., consisting of approximately 1,860 butcher shop customers, 59 provision houses, 4 slaughter houses and 8 delicatessen shops, a list of whom will be made available to the Buyer forthwith;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The Seller hereby agrees to sell and convey or cause to be conveyed and the Buyer agrees to purchase all that lot or parcel of land with the buildings, plant and improvements thereon, together with all wharves, docks, piers, bulkheads, and all sidings, side track and freight agreements, privileges and facilities appurtenant thereto, situated in the Borough of Queens, City of New York (formerly City of Long Island City, Town of Newtown), Queens County and State of New York, more particularly described as follows:

The premises bounded easterly by said Railroad Avenue, westerly by the present bulkhead line of

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

Newtown Creek as now established, and northerly and southerly by lands of The Van Iderstine Company; together with all gores and strips of land abutting upon or adjoining the said premises and together with all right, title and interest of the Seller in and to the land lying in the bed of said Railroad Avenue and all other roads, streets, ways and avenues to the center lines thereof, and together with all the riparian rights and privileges of the Seller in the waters of Newtown Creek, and all its right, title and interest in and to the land under the water in Newtown Creek in front of and adjoining said premises upon the west; the specific description of said premises to be inserted in the deed thereof shall be in accordance with survey and description to be prepared and furnished by the Title Company examining the title thereto.

SUBJECT TO:

(1) Any state of facts an accurate survey would show;

(2) Building restrictions and regulations and amendments and additions thereto relating to said property;

(3) Easement granted to the City of New York on August 2, 1918 in, through and over Railroad Avenue, to

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

lay and maintain water mains, pipes, hydrants, etc.

TOGETHER with all the machinery, equipment, furniture and fixtures therein or appurtenant thereto as well as the furniture, fixtures, collection equipment and sundry equipment now owned and used by Herman Brand (Inc.) and G. Selner Co., wherever located, for the sum of Four hundred twenty-five thousand Dollars ($425,000), payable One hundred thousand Dollars ($100,000) in cash on or before June 29, 1929 and the balance of Three hundred twenty-five thousand Dollars ($325,000.) on or before the delivery of the deed or deeds covering said real estate and such bill of sale as may be necessary as hereinafter provided, subject to the following terms and conditions:

1. The deed shall be a bargain and sale deed in proper statutory short form for record. It shall be duly executed and acknowledged at the Seller's expense so as to convey the fee simple of the said premises, free from all encumbrances except as herein stated. The deed and bill of sale shall be delivered at the office of the Seller, No. 420 Lexington Avenue, New York City on June 29, 1929 at eleven o'clock a. m.

2. In the event that title to any or all of said premises shall be found to be unmarketable, the Buyer shall, nevertheless, accept a deed thereof and such condition shall not be deemed a valid reason for rejecting title to all or any

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

part of said premises hereunder. Seller agrees that prior to the delivery of said deed it will commit no act affecting the title to said property. Seller further agrees that it will indemnify and hold the Buyer harmless from the expense of any litigation instituted against the Buyer affecting the title to said property up to Ten thousand Dollars ($10,000); such agreement shall survive the delivery of the deed.

2-A. If at the time of the delivery of the deed the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the Seller upon the delivery of the deed.

2-B. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House, Fire, Building, Labor, Health, or other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

be complied with by the Seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The Seller shall furnish the Buyer with an authorization to make the necessary searches therefor.

3. There shall be apportioned as of the close of business on June 22, 1929 rentals, real estate taxes and water rates as well as insurance premiums on existing policies, except liability and compensation insurance, on said premises, as well as license fees or taxes on automobiles and all personal property to be conveyed.

4. The Buyer further agrees that it will purchase and the Seller agrees that it will sell or cause to be sold the entire inventory of supplies, including coal, gasoline, oil, and miscellaneous factory supplies if new, and finished products including tallow, cracklings, bone meal, etc. and raw materials, including fats, bones, etc. relating to or used in connection with said collecting and rendering business on hand at the close of business on June 22, 1929. The price of said raw materials and supplies shall be the cost thereof to the Seller or to its said subsidiaries as shown on its or their books of account, and the price of the finished product shall be the market price thereof prevailing at the close of business on June 22, 1929. Payment

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

shall be made at the time of the delivery of the deed covering the real property to be conveyed.

5. The Seller further agrees to transfer or cause to be transferred to the Buyer as of June 22, 1929 the said collecting and rendering business, including the sole and exclusive right to use the name "Preston" in connection with said business and any trademarks or trade names owned by Herman Brand (Inc.), G. Selner Co. and The Preston Works, and the Seller warrants to the Buyer the business so transferred is a business regularly carried on with approximately the number of customers set forth above.

6. The Buyer will purchase and the Seller will sell or cause to be assigned to the Buyer such of the current accounts and notes receivable of Herman Brand (Inc.) and G. Selner Co. arising out of loans and/or advances by the said subsidiary companies to its or their collecting and rendering business customers, together with any and all existing security therefor, and the Buyer will pay the Seller therefor a sum equal to the aggregate face value of such accounts and notes receivable as of the close of business on June 22, 1929, less the sum of $15,000, payment to be made at the time of the delivery of the deed to the aforesaid real property. It is understood that all accounts and notes receivable arising out of such advances or loans

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. COD

to customers which shall have been, previously to June 22, 1929, charged off the books of the Seller, Herman Brand (Ind.) or G. Selner Co., shall not be sold or assigned to the Buyer, and all rights to such accounts shall be retained by the Seller and/or its subsidiary companies.

7. Possession of all of the property to be conveyed or transferred shall be given to the Buyer at the close of business on June 22, 1929.

8. The Seller will permit the Buyer to use and occupy the premises at 404 East 48th Street, New York City, now used by Herman Brand (Inc.) for office and garage purposes for a period of ninety days from the close of business on June 22, 1929 without charge, subject however to existing tenancies.

9. The Seller shall have the privilege, without cost to it, to use and occupy the record storage room in the premises to be conveyed, for a period of three months from June 22, 1929, all records and documents now therein to be and remain the property of the Seller.

10. The Seller undertakes and agrees that it will liquidate or cause to be liquidated the affairs of Herman Brand (Inc.) and G. Selner Co. within a reasonable time after June 22, 1929 and at the completion of such liquidation, at which time the said subsidiary companies will have no assets and no liabilities other than a capital stock liability (excepting such liabilities as may be incurred by or through Buyer after June 22, 1929), transfer

THIS IS A COPY OF ORIGINAL MATERIAL
IN THE COLUMBIA UNIVERSITY RARE BOOK AND
MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE
PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. C

or cause to be transferred to the Seller all of the issued and outstanding full paid and non-assessable capital stock of said subsidiary companies at a price of $1.

11. It is further understood and agreed that all assets of Herman Brand (Inc.), G. Selner Co. and the Seller used for or in connection with the rendering business, other than those to be conveyed or assigned by virtue of this Agreement, and all liabilities pertaining to said Herman Brand (Inc.) and G. Selner Co. as of the close of business on June 22, 1929 shall be retained by or assumed and be for the account of the Seller and/or said subsidiaries; all liabilities thereafter if incurred by or through the Buyer to be for account of the Buyer.

12. The Seller hereby agrees to sell and assign or cause to be assigned to the Buyer all existing contracts set forth in Schedule A annexed hereto, between the Seller, or its said subsidiary companies and others in connection with or arising out of said business, and the Buyer hereby agrees to assume all of the obligations in said contracts imposed upon the Seller and/or its said subsidiary companies and relieve them from any and all further liability as of the close of business on June 22, 1929. Said assignment and assumption are to be executed and delivered at the time the Buyer enters into possession of said properties.

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. COD

13. Any and all damages which may be awarded under or by reason of the action now pending in the Supreme Court, New York County, The American Agricultural Chemical Company and Herman Brand vs. Felsenthal and others, shall be for the benefit and account of the Seller.

14. The risk of loss or damage by fire to the said building and any or all personal property within the contemplation of the Agreement prior to the close of business on June 22, 1929 shall be assumed by the Seller, and thereafter shall be assumed by the Buyer, who shall notwithstanding any such loss, or damage, take title to said real and personal property and make payment therefor in accordance with the terms of this Agreement, but in the event of such loss or damage occurring prior to June 29, 1929, or the date of the delivery of the deed hereunder, the Seller shall, upon delivery of said deed, assign to the Buyer all fire insurance policies covering said premises and all claims for loss and damage and the monies, if any, collected thereunder.

15. The Seller hereby agrees that neither it nor any of its subsidiary companies now in existence or which may hereafter be formed or acquired by it, nor any controlled corporations, will engage directly or indirectly in the business of collecting and rendering butchers' materials within a radius of seventy-five (75) miles of City Hall, New York

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND

City, for a period of twenty-five (25) years from the close of business on June 22, 1929, nor will it or they directly or indirectly solicit the trade of or engage in the business of collecting or buying or examining or selling fat, suet, bone, grease, hides and skins from any butcher shops, provision houses, slaughter houses or delicatessen shops within said territory for said period of years.

16. The Seller does hereby agree and undertake to hold the Buyer harmless from any and all claims or actions arising out of the acts or business of Herman Brand (Inc.) and G. Selner Co. prior to the transfer of their capital stock, including claims for additional income and profit taxes, excepting liabilities incurred by or through the Buyer.

17. It is understood and agreed that the covenants and agreements herein contained are mutual, and dependent one upon the other and that this Agreement shall enure to the benefit of the parties hereto and to their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in their corporate names and their corporate seals to be hereunto affixed by their duly authorized officers the day and year first above mentioned.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By Ernest E. Hammersen Vice-Pres.

THIS IS A COPY OF ORIGINAL MATERIAL
IN THE COLUMBIA UNIVERSITY RARE BOOK AND
MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE

Attest:

J. A. Starrett

Secretary

THE VAN IDERSTINE COMPANY

By A. H. Hayes

Vice-Prest.

Attest:

C. L. Haussermann

Secretary

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE

SCHEDULE A

Annexed to and a part of the Agreement between The American Agricultural Chemical Company and The Van Iderstine Company, dated June 21, 1929.

Parties	Date of Contract
Preston Works and Fischer Brothers	January 1, 1929
Preston Works and American Hides & Leather Co.	August 1, 1927
Preston Works and Frank McIntyre	March 1, 1927
Preston Works and Long Island Railroad	January 22, 1906
Herman Brand, Inc., Preston Works and Commercial Sales Corporation	February 27,1929
Preston Works and Rausch Company	Verbal-terminable at will
Herman Brand, Inc., Preston Works and Sundry Butcher Shops	A few written and verbal understandings covering the payment of "extras".

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

la

MR. WILLIAMSON: If it please the Arbitrator, I think it would perhaps be a short cut if we would make a brief preliminary statement of what we propose to lay before you as our case. Is that agreeable to you, Mr. Miller?

MR. MILLER: Yes.

THE ARBITRATOR: Then The Van Iderstine Company will open the case that they wish to present.

MR. WILLIAMSON: The contract is conceded. The questions that have arisen under it are two.

THE ARBITRATOR: The contract being marked Exhibit A?

MR. WILLIAMSON: Yes, that is conceded; that was executed. That is the contract existing between the parties.

THE ARBITRATOR: And it is bound up with the submission?

MR. WILLIAMSON: Yes; the only two questions raised by The Van Iderstine Company are as to the number of so-called accounts purchased under the contract, but we say not delivered in whole by theseller, with a shortage of some 137.

The second question is what a current account is, especially as to one account taken over by The Van Ider-

2a

stine Company.

The business is that of collecting bones and fats and hides, by people who thereafter make various by-products from that scrap; and this seller, The American Agricultural Chemical Company, was the seller to The Van Indestine Company of a business which they represented in part, and the first page of the contract states that it consisted in part of a number of regular customers, from whom it is collecting fat, bones, grease, etc., consisting of approximately 1860 butcher-shop customers, 59 provision houses, 4 slaughter houses and 8 delicatessen shops, a list of whom will be made available to the buyer forthwith.

Our position on that is that it represented the only items that we were really interested in; that the real estate, a certain building and plant equipment, were of no interest of moment to us; but that the valuable item and the really important item that we purchased was these accounts, represented to us as the regular customers of this seller, from whom we could expect to get the fat and bones that we depend upon to carry on our business.

We claim in connection with it, that those accounts have a market value; that for a great many years past people in this line of business have been selling to and actually

3a

have paid large sums of money to obtain such accounts; and we propose to offer here the testimony of people in this line of business as to the value of such an account.

We did not inspect the books before we went into these negotiations. We did not look at anything in connection with evidence of the number of accounts. We relied solely on the representations made.

After going on, we were furnished with a list of loadings for the month previous to the date of the contract, the month before June, 1929, by one of the American Agricultural Chemical Company's employees, which showed a shortage of approximately 140 customers over those represented as being regular customers in this contract. Our own loadings from their customers was done with their same men, the same wagons, and all the same machinery as that regularly employed by them before we went in. We adopted no new method, and took on no new employees, or equipment, but simply carried the business on in exactly the same manner, and actually loaded 1794 accounts, whereas the contract represented regular customers that The American Agricultural Chemical Company is loading, or is collecting fat from, of 1931.

So we are here claiming that we are entitled to the market value of such butcher-shop accounts as we were

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CO

not delivered, and which were not even possessed by The American Agricultural Chemical Company on June 21, when they represented to us that they had 1961 such accounts. They could not turn them over, because they did not have them; although their books would have told them in a moment, if they cared to examine them, exactly how many they did have. That was extremely important, and the only thing that we were interested in obtaining.

On page 5 of the contract, we have the provision which covered our second dispute, as follows:

"The buyer will purchase and the seller will sell or cause to be assigned to the Buyer such of the current accounts and notes receivable of Herman Brand (Inc.) and G. Selner Co. arising out of loans and/or advances by the said subsidiary companies to its or their collecting and rendering business customers, together with any and all existing security therefor, and the Buyer will pay the Seller therefor a sum equal to the aggregate face value of such accounts and notes receivable as of the close of business on June 22, 1929."

Now, I am told, and I believe our evidence will show that it is very common practice for people in the same line of business that these two parties were, to make loans to butchers from time to time. If a butcher needs certain items for a shop, they will advance money to pay for it, and then credit the value of the material collected against the indebtedness. That is just something to aid the butcher, and is of mutual interest, so that he would have what he needs. We paid cash for

THIS IS A COPY OF ORIGINAL MATERIAL

3a

have paid large sums of money to obtain such accounts; and we propose to offer here the testimony of people in this line of business as to the value of such an account.

We did not inspect the books before we went into these negotiations. We did not look at anything in connection with evidence of the number of accounts. We relied solely on the representations made.

After going on, we were furnished with a list of loadings for the month previous to the date of the contract, the month before June, 1929, by one of the American Agricultural Chemical Company's employees, which showed a shortage of approximately 140 customers over those represented as being regular customers in this contract. Our own loadings from their customers was done with their same men, the same wagons, and all the same machinery as that regularly employed by them before we went in. We adopted no new method, and took on no new employees, or equipment, but simply carried the business on in exactly the same manner, and actually loaded 1794 accounts, whereas the contract represented regular customers that The American Agricultural Chemical Company is loading, or is collecting fat from, of 1931.

So we are here claiming that we are entitled to the market value of such butcher-shop accounts as we were

We say the prior debt and the note given when in bankruptcy was simply the clean-up of a bad debt, a settlement of a bad debt, and was in no sense a current liability; that the $2,000 loan was not justified and could not be called a current liability under this contract; and we will not certainly assume the individual liability of Louis Solomon for some $8,450. That was borrowed three years before this contract, and it was a loan from the corporation, and they have collected in small amounts hardly enough to meet the interest charges on his total loan.

He is now out of business altogether, and his security has never earned a substantial amount of interest, and it is in no sense a current account that we should have paid for. We have paid the cash for it, and we ask to have that $8,415 cash returned, with interest from the date we paid it, and we will assume the $2,000 loan to the corporation made in May from the accounts which we purchased.

Those are the two issues. We are ready, of course, to present our proof; and I would ask that I be allowed to present it somewhat out of order. I have experts here who are very busy men, in this same line of business, and I would like to put them on first, as to the market

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. COD

7a

value of accounts, such as stated in the contract, so that they may then be excused, and we will after that go on with the other subject matter of the case, - if you would permit that.

THE ARBITRATOR: Yes, any way that would be most convenient.

MR. MILLER: I think that it may perhaps assist you if I make my statement of our case now, so as to outline what our answers and defenses are.

THE ARBITRATOR: Yes.

MR. MILLER: First as to the alleged shortage of the accounts; on page 1 of the contract, there was this representation of the business, which consists of a list of regular customers from whom it is collecting fat, and so on, consisting of approximately a certain number of butcher shops, provision houses, slaughter houses, delicatessen shops, etc., the total aggregating 1931.

Mr. Williamson did not mention that on page 5, in addition to this representation, there was a warranty by the seller, the American Agricultural Chemical Company, that it is a business regularly carried on with approximately the number of customers set forth above; and the arbitrator will note that the contract nowhere attempts to define what a regular customer of the seller

THIS IS A COPY OF ORIGINAL MATERIAL

8a

is; it nowhere attempts to define what is meant by "business regularly carried on."

In the second place, there is nothing in the contract from which any indication is given as to how much latitude or leeway is to be allowed by this word "approximately". Of course, the wond would not have been used unless some latitude or leeway had been anticipated by the parties.

So that in order to determine, in the first place, what is meant by "regular customers", and in the second place how much latitude or leeway is to be permissible under the word "approximately", you have got to consider the nature of the business, what both parties knew the nature of the business was, the way it was conducted; and in that connection, it is also important on the question of damages, which I will come to later; and also the negotiations between the parties that preceded the making of the contract.

All those matters are material, and from our point of view, very, very important in determining whether or not this representation and warranty as to this approximate number of regular customers has been breached; because we think that when all the evidence is in, we will show, and we will be able to make it plain that

THIS IS A COPY OF ORIGINAL MATERIAL

if there were not quite as many customers as were represented or warranted at the time this business was turned over, it certainly was within this "approximately". The shortage claimed would be covered by the word "approximately". In addition, if there was a shortage, the damages which they claim here of $25,000 was certainly excessive.

In that connection, I desire to call attention to the phrasing, which I think is rather unfortunate in this submission. The submission says something about the question of this shortage of customers, as to whether the total number that The American Agricultural Chemical Company turned over --

THE ARBITRATOR (Interposing): Which page is that, Mr. Miller?

MR. WILLIAMSON: The second page.

MR. MILLER: The second page, "turned over to Van Iderstine." I think the words "turned over" are the words used.

MR. WILLIAMSON: That is correct.

MR. MILLER: Turned over this number of customers, etc. Now, I think Mr. Williamson will agree with me that there is nothing whatever in the contract by which The American Agricultural Chemical Company agreed or war-

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. COD

ranted in any way that the customers which it had, and which it represented that it had when the business was sold, should continue to be the customers, should continue to do business with the Van Idenstine Company.

In other words, I think that Mr. Williamson will probably agree with me that the words "turned over" in this submission do not mean anything except we warranted at the time we sold our business, that at that time this number of customers was the number of customers we had; but that we did not warrant that any of those customers would remain with Van Iderstine after we sold. In other words, that there was no breach of this agreement if we did at the time that we turned the business over, have this number of customers; that we could not be charged with any breach of the contract if we had that number of customers at the time we turned the business over, and if any of those customers after that failed or refused to continue to do business with the purchaser, Van Iderstine. I do not think that there is any question about that.

MR. WILLIAMSON: There will be no question at all about that. We are resting on the number actually had at the time you turned over the business.

MR. MILLER: I think I ought to call attention to the

THIS IS A COPY OF ORIGINAL MATERIAL

phraseology of the submission. It seems to me possibly that it is a little misleading.

Now, this contract had been preceded by negotiations between the parties, which extended I think over a couple of months. The contract itself was not signed until June 21, 1929. The facts are that the business, apart from the real estate and the plant and the tangible assets, - that the business which was sold was the business of two subsidiary companies of The American Agricultural Chemical Company. I think one company was the Brand Company. I have forgotten just the exact name.

THE ARBITRATOR: Do you mean Brand, Incorporated?

MR. MILLER: Yes, Brand, Incorporated; and the other was the G. Selner Company. Those were both wholly owned subsidiaries of The American Agricultural Chemical Company. As I understand it, the shortage was claimed that the in/ customers turned over referred only to the shortage of the Brand customers. In other words, when they checked the customers of the Brand Company up, they found that the number of customers, Brand customers, whom we had claimed to have, was a shortage as to the Brand customers.

This Brand business had been acquired by the American Agricultural Chemical Company some years before. It had

THIS IS A COPY OF ORIGINAL MATERIAL

been built up by a man by the name of Brand. He had left the Brand Company about a year before this contract was signed, and he and another man, Felsenthal, associated with him in the business, had engaged after leaving the Brand Company, - had engaged in a competitive line of business of their own, and this competition has been very serious during the year; and that resulted in the old Brand Company losing a large number of its customers. Those facts were undoubtedly, as I think we will be able to show, - were undoubtedly known by the Van Iderstine Company, when they were negotiating this sale of the Brand business. They knew that they had been suffering losses, had been losing customers at that time very rapidly for the past year, due mainly to the competition of this business set up by Felsenthal and Brand, as his partner, after they had retired from the Brand Company.

The evidence will also show that while the negotiations were under way, quite contrary to what Mr. Williamson has stated, the Van Iderstine people said no, this price which you are putting, - the price at which we had first offered to sell, - which you are putting on this business is altogether too high, because the item of goodwill which appears in this statement that you have furnish-

ed us, - I think the item of good-will amounted to something like $900,000, is altogether too high, for the very reason that your business has become disorganized by reason of the defection of Brand and his associate in setting up in competition; and for that reason your item of $900,000 representing good-will is altogether too high.

The evidence is going to show that the price finally agreed on was substantially the price at which we had valued our plant, and our fixed assets, etc.; it was only after this controversy arose that we heard anything about good-will. Then they discovered, or thought that they discovered that there was a large shortage in the number of customers which we had at the time the business was turned over, and then they began to talk about good-will; but up to the time the contract was signed, they were pooh-poohing good-will all the time, and telling us "You have grossly estimated the value of good-will."

In addition to that, the evidence will show that while these negotiations were taking place, and after the parties, although they had not signed any binding agreement at that time, after the parties had come to a substantial agreement as to the amount to be paid, and as

THIS IS A COPY OF ORIGINAL MATERIAL

to the terms of the sale, we asked them, knowing at that time that the Brand customers were falling off, we asked them, what shall we do, because it will be some time before the contract, the formal contract was actually signed; what shall we do about keeping up the Brand business? Shall we go ahead? We can do it easily by granting more loans to these butchers who are delivering meat, fat and bones to us; shall we go ahead and build up the business, or shall we not, and pursue our policy of cutting out loans that look rather unsafe, to these butchers, and so possibly continue to lose business? Shall we continue that policy, or shall we try, until the time you will take this business over from us, - shall we try to build it up?

We were told by Van Iderstine & Company, no, don't change your policy; go on as you have been going on.

The way these butcher accounts are secured, most of them, is by making advances to the butchers who deliver this fat, bone, grease, and so on, to us, either as general advances or to help them instal fixtures in their place; and it was on account of the fierce competition in the business, - it always would have been possible for us to have increased, or at all events maintain the number of our March customers, up to June, by

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE

granting new loans to the butchers, or by not calling old loans, or by offering them more for their product than our competitors were offering. We could have done that.

I think the evidence will show that without any difficulty whatever we could have turned over to them the same number of accounts in June, when the mutual contract was signed; that we could have had the same number of accounts on our books as we had in March; but if we had done that, the only result would have been that they would have had to pay us more on the contract; because under the contract, not only did they pay us this fixed amount of $425,000, but they paid us for a part of the amount of the loans outstanding, accounts from butchers; so that if we had gone ahead, as we said that we were willing to do, and kept the number of customers up, we could have given them the very figures used in this contract, giving this aggregate of 1931, that could have been obtained by us in this way. They were the figures which were supposed to represent the number of butchers, - we will call them all butchers, although some of them are produce houses, and in the delicatessen business, but we will refer to them as butchers; the number of butchers who have made deliveries of their fat,

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. COD

etc., to us, during the month of March.

In other words, that was the list of customers, this aggregate of 1931, was the list of customers who have delivered to The American Agricultural Chemical Company, or rather to Brand and Selner, during March, that loans were made to in the regular course of the company's business.

THE CHAIRMAN: In March of 1929?

MR. MILLER: Yes, March of 1929; and as Mr. Williamson pointed out, the contract is dated June 21; and this representation, it is perfectly true, was in the singular case ; it says that distinctly, that we had at the time namely, on June 21, not in March; it is in the single tense; and this list was furnished at their request during these negotiations, and this as a matter of fact was a list of the butchers who have made delivered to us in March.

For a number of years the company had regularly, as part of its business, every month made up a list of butchers or customers who had made deliveries to us during that month; and this list was made up in the regular course of the company's business, by certain employees of the company who have simply been told to give the results of their count, as it was called in the business, but didnt

know the purpose for which this list was made; and the result of the count was given to the Van Iderstine people.

After the result of that count, which made an aggregate of 1931 customers, - after that was given to Van Iderstine, they asked for further details; they wanted the total distributed among butcher shops, customers, provision houses, and slaughter houses, which we gave them, and we also furnished them with the figures which showed the total amount in pounds or tons, - I forget which; it is I think, pounds, the total amount in pounds which those 1931 customers had delivered during that month.

No further list was submitted to them. They accepted that list, and it was that March list which was inserted in the contract which was signed in June.

The evidence will show that although the formal contract was not signed until June, there was a letter written by them to us, and accepted by them through us, which really was a binding contract, on the 28th of May, in which this particular count was used.

Therefore, so far as the question of what is meant by a "regular customer" is concerned, our evidence will show that so far as The American Agricultural Chemical

Company is concerned, we have always consider as a "regular customer" a customer who had at any time delivered during that month. That made this monthly account regular.

The evidence will show that undoubtedly there was a falling off in the number of customers between the end of March and June 21, when the contract was signed. How they have arrived at their count of customers, I don't know; whether their count of customers is a count of the customers who have delivered to them say one month before the end of June, one month before June 21, or from June 1st or June 21st, I don't know. I think they knew, or the proof which we will show, the proof which we will offer will clearly show that they knew that what we meant by a "regular customer" was any customer who had made deliveries to us during the calendar month.

The evidence also in this case will show that part of the decrease or shrinkage in customers from the end of March until the contract was signed, was undoubtedly due to the same causes that I have already mentioned, the competition, losing business to successors; and it will also show that there is, commencing about the end of the spring, there is during every summer in every

year in this city a seasonal falling off in deliveries of this sort, due I think to the fact that a great many of the butcher shops, or at least some of the butcher shops in New York close about that time, and then open up at Coney Island and other shore resorts; and that part of the decline from the end of March until June 21st, I think was undoubtedly due to this seasonal falling off.

But so far as the falling off of the business as a whole is concerned, we are going to show that although the number of customers did fall off between the end of March and the time that the contract was signed, and although it is a fact that all that the contract mentions is the number of customers, the aggregate amount of tonnage delivered by those customers during that period did not fall off, but if anything it increased.

However, in terms of tonnage, the business which we turned over to them in June was at least as great if not greater than the business which we were carrying on in March.

Now, whether that technically is competent on the question as to whether we breached this representation or warranty, I am not sure; there may be some doubt about that; but this is certainly very important on the question of damages, because we are going to be able to show that

the customers which we did lose during that period were customers whose deliveries to us were very far below the average of our deliveries of all our customers; in other words, the customers which we did lose, assuming that there was some technical breach of this representation or warranty, were small customers; and we shall show plainly that this claim of damages in the sum of $25,000 for dropping of a very few small customers is an immensely exaggerated claim.

The proof is also going to show, by a letter written by one of the officers of the Van Iderstine Company, that what they were really complaining about, when they first discovered this shortage, was not that the number of customers had shrunk between March and June, but because at that time that our March account was all wrong. We have a letter from one of their officers in which he complained, not because he had lost customers between March and June, but because our March account is wrong. Subsequently Van Iderstine made a count of the number of March customers, and their count is only about 25 short of our own count; even if their original claim of a shortage in customers is taken into consideration, - I think it was 137, - that would only be a shortage of about 7 per cent of the total amount, almost exactly 7 per cent; and we

think in view of all the facts and circumstances which we expect to prove, that ought to be included in the leeway allowed by the word "approximately" under the contract.

As to this claim of $25,000, it is very interesting to note that this is the exact amount of the increase in the purchase price of our properties between May 28, when they offered to buy of us for $400,000, and the contract as finally signed, which was $425,000.

Sometimes between those two dates, after negotiations, the contract price was raised from $400,000 to $425,000; so after the contract was signed, I think it is rather interesting to note that when they discovered this apparent shortage in the number of customers, they made their claim for damages in the sum of exactly this $25,000, which is the amount over our original offer, which they finally agreed to pay for the plant.

So much for the claim on the shortage of customers. I think the claim as to the Solomon account can be disposed of, so far as I am concerned, much more briefly. The facts, as stated by Mr. Williamson with regard to the Solomon account, are substantially correct. Solomon for a number of years prior to June, 1926, either got a loan, or possibly his brother had some interest in it, -

I am not sure. They conducted two butcher shops under different trade names, and the company had loaned money to him, and in June or thereabouts of 1928, he owed them about $10,000. He got into financial difficulties at that time, and went into bankruptcy. I think it was voluntary bankruptcy, was it not?

MR. WILLIAMSON: Yes, voluntary bankruptcy.

MR. MILLER: He went into voluntary bankruptcy. It was agreed between him and Brand, that Brand's claim against him should not be scheduled, but that he will continue in business,and set up a new business in some part of town, and continue in business, and pay it off when he could. There was nothing whatever illegal or fraudulent about the transaction. It was perfectly competent for the parties to make the arrangement. Brand at first had his doubts of whether or not to schedule his claim in bankruptcy, and take whatever dividend would be declared, or whether to withdraw it from bankruptcy and collect it later if he could. Brand agreed that it should not be scheduled, and Solomon agreed that he would pay it off when he could. He went ahead. Deliveries to him continued every month during the summer of 1926, and I think some time in the autumn,-I think it was September,- though I am not sure, of 1926, he incor-

porated his business.

It was a one-man corporation; he had all the stock, prior to incorporating, and I think he had given a note to Brand for the exact amount of this indebtedness. That was a valid note. There is no question about it, no question whatever, - that a note given for a debt is a note given for good consideration.

They continued to do business with him. Then he organized this new company, which as I say, was a one-man corporation, and took all the stock in it, and it was part of his agreement that the company had assumed his obligation to Brand. The new company continued to do business with Brand right down to the date of this transfer, and made deliveries to Brand regularly. There was some slight reduction in the way of amounts paid on this note; and it continued that way. The arrangement was a perfectly legal and valid one, and not tainted with fraud, and one perfectly competent for the parties to make; and they continued doing business together right straight down to the date when the American Agricultural Chemical Company sold its plant to Van Iderstine; the only thing being that in November, 1928, instead of the business being conducted by this one-man corporation, it was done by the corporation instead of by Solomon.

In May, 1929, shortly before the sale to Van Iderstine, they advanced him another $2,000. It was an ordinary advance, such as they make to all butchers. Whether or not it was good judgment to make it or bad judgment, is entirely beside the question. The only question in this case is whether that Brand account was under the terms of this contract a current account. We say it was just as much a current account as any other account they had with any other butcher shop which had been running, as many of them had, for years and years; and apparently the only thing to distinguish this Solomon account from any other of these butcher accounts is the fact that it had originally been an account of Solomon personally, and then later, when he incorporated this one-man corporation, it became an obligation of the Solomon Corporation, whatever its proper name was.

I may be wrong, Mr. Williamson, but I have information from a letter that you wrote one of our people, that the only part of that Brand account you were questioning was the amount representing the old debt.

MR. WILLIAMSON: You mean the Solomon account?

MR. MILLER: Yes; you do not question the $2,000?

MR. WILLIAMSON: Our objection here only goes to the amount carried over from 1926, being called a current ac-

count here, for which we should pay you cash.

MR. MILLER: That is what I tried to find out.

MR. WILLIAMSON: That is correct.

MR. MILLER: The question here is on the part of the account turned over to represent the old debt?

MR. WILLIAMSON: Yes.

MR. MILLER: Then I think we can agree on the figures of about $8,000.

MR. WILLIAMSON: I think that we can agree on those facts almost as you have stated them.

MR. MILLER: If you will concede that I have made an accurate statement of the facts, I don't know but that we can dispense with that part of the Solomon account.

MR. WILLIAMSON: You have a transcript of the account in there; you have the accurate figures before you?

MR. MILLER: Yes, we have a transcript of the account.

MR. WILLIAMSON: I can look over your statement, and stipulate as to the dates and amounts. I will be very glad to expedite this as much as possible.

THE CHAIRMAN: The item of $10,373.03, originally $10,000 plus charges or interest, or what is included?

MR. MILLER: That includes the $3,000.

THE CHAIRMAN: That is the original amount of $8,000, plus $3,000 additional?

MR. MILLER: Yes; if there is anything that is not quite accurate in those figures, Mr. Williamson and I can stipulate as to the real amount. The amount mentioned in the submission includes the $2,000; the sum mentioned in the submission includes $2,000, which as I understand is really not in issue here.

THE CHAIRMAN: That is correct; then that leaves a balance of $8,443.23?

MR. WILLIAMSON: Yes, the balance we say we should not be bound to pay is $8,443.23, carried over from the 1926 transaction; and the May, 1929 item of $2,000 we are willing to assume; in other words, the item that has already been paid for in cash.

MR. MILLER: I want to make one correction; I said something about the good-will having been valued at $900,000. I should have said $190,000. That was the value which we put on our good-will on this statement that we furnished to Van Iderstine earlier in the negotiations.

THE CHAIRMAN: How much?

MR. MILLER: $190,000. I think that is all I have to say at present, sir.

MR. WILLIAMSON: I would like to say about two words; of course, it is apparent that the $190,000 mentioned as good-will, just referred to, never became any part of the

contract; nor is there any allocation of values to any of the properties turned over individually. There may have been some figure mentioned in the preliminary negotiations.

As to this definition of a customer, if a so-called regular customer had delivered something during the month, never having delivered after that month, he would not be a customer in our use of the word at all. If he were a person delivering goods not less than once a month, and continuing each month, that would be the definition of a customer as understood by us.

Now, the inference has been made, I think, that we have complained of the account as of March, that it was not as it should have been, that it was not 1931. Thinking in terms of March, I wish to assure you our proof will show quite to the contrary; and if we had no contract at all--though the contract speaks of that, -- I understand that Mr. Miller agrees with me, that the difference is in the number of customers from whom we have collected, but we maintain they should have kept the March count of 1931, which we claim they never had in any event, in March or at any other time after March.

In spending money, and I think this is very significant, - spending money in the form of loans or

otherwise, then we would have had to pay out more, in order to receive the number of customers stated in the contract; and they say by so doing we would have had something substantially more valuable, if we had; and that is exactly our claim; and why we should be penalized by finding a discrepancy after we had signed the contract in which they agreed to give us so many customers, I cannot understand. That is, we should have spent more money, and made this thing more valuable; but we stand on the contract, and that calls for 1931 customers, and that has a very substantial value.

Now, the use of the March list is a very interesting thing, in the light of the statement that they had a monthly list. They made the contract with us in June, and it was for cash; and why they should use a March list, I don't understand. We never accepted a March list as controlling.

I would like to call Mr. Daiber as my first witness.

H A R R I S O N D A I B E R then took the stand.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q What is your business, Mr. Daiber? A Collector of grease and fat.

Q How long have you been engaged in that business?

A For twenty-five years.

Q In connection with what corporation? A John T. Stanley Company.

Q And are they doing business in the vicinity of Greater New York? A Yes.

Q And have you been familiar with that type of business in the City of Greater New York through these twenty-five years? A I have been in here for about fifteen years.

Q Here in the Greater City of New York? A Yes.

Q Mr. Daiber, the business of your corporation has been the collection of fats, among other things, for use in making by-products from those fats? A Yes.

Q And collecting them from butcher shops, among others? A Yes.

Q And from slaughter houses? A Yes.

Q And from delicatessen stores? A Yes.

Q And places of that sort? A Yes.

Q Now, do such accounts have a regular market value to such a collector? A They have.

Q Have they had, over any period of time? A As long as I have been with the business they have.

MR. MILLER: I don't exactly know about making objections. Of course, in any court, the question whether such

an account has a market value would be objectionable. There cannot be any such thing as a market value.

Q I am asking the witness, whether such accounts are bought and sold regularly in the Greater City of New York? A We have bought and sold accounts.

Q Over a period of years? A Yes.

Q And during the year 1929, to your own personal knowledge were such accounts bought and sold in the City of New York? A Yes.

Q Were you familiar with the prices paid for such accounts by such collectors as your corporation? A I was.

Q For the year 1929? A Yes.

Q Will you state what was paid at that time for such accounts? A Anywheres from $50 up, - that is, from my own personal experience?

Q Yes. A Anywheres from $50 up to $1500.

Q Assume, if you will, it is an average butcher shop operating in the City of New York, what if you know was the average price paid for such a shop during 1929? A That I don't know, Mr. Williamson; at that time?

Q At that time, that is right. A Ranging in price from $100 to $200 in the period of 1929, I should say.

Q Is there any such thing as a seasonable falling

off in the amount of scrap delivered by butcher shops to collectors of that scrap? A In the summer time there is a tendency for the fat to fall off, due to the fact that people don't eat as much meat in the summer time.

Q What do you mean when you use the words "in the summer time"? What months would you refer to? A Well, from I would say, during any time in July, August and the middle of September.

Q And you would not include March, April or May? A No, I would not.

Q Are you familiar with the number of accounts that your corporation had of this character during 1929? A Yes.

Q And do you know approximately what falling off if any there was in the number of those accounts between the period of March, 1929, and June, of 1929? A Less than one per cent.

Q You say it was less than one per cent? A Yes.

Q Are you familiar with the way your business has gone as to the number of customers during these other years, in your experience, approximately? A I would still say one percent.

Q That is your personal experience? A My personal experience of our business; our fluctuation is not more

than one percent.

Q Now, is it a common practice in business for collectors such as your corporation, to make loans to butcher shops? A It is.

Q Have you had any personal connection with the making of loans by your company? A Considerable.

Q For a period of time? A Yes, sir; I have handled them.

Q For how long, Mr. Daiber, has that been true?

A Ten years.

Q Has your company ever loaned as much as $10,000 to a butcher shop without security?

MR. MILLER: Is that competent on any question in this case?

MR. WILLIAMSON: The purpose is, that I want to show that it is a most unusually large sum to give a butcher shop for any purpose.

THE WITNESS: I will have to differentiate with provision company houses.

Q No, to a butcher shop, I am speaking with reference to a butcher shop? A Not as high as $10,000.

Q Well, what would you consider a current account, as between a collector, such as your own company, and a butcher shop, what kind of a butcher shop would be a current account

with you? A One that gave us business at least twice a week; that is, we were collecting at once or twice a week over a period of months, would be a current account.

Q So that for a loan to a butcher to be a current loan, it would follow I suppose that he would have to be delivering once or twice a week? A He would have to deliver more than that, to get $10,000 out of us.

Q Now, assume if you will that people in your line of business were talking to approximately 1931 accounts as of a given date, what would you consider the term "approximately 1931" to mean?

MR. MILLER: I think I will have to object to that, on the ground that it is not for any witness in this case, except the parties to the case, to testify as to what "approximately" means in this contract. I do not want to make objection to Mr. Williamson's questions on any technicalities, but I am simply calling attention to the fact that I think the questions are entirely beside the mark, and irrelevant and immaterial. I do not think that it is a case where an outsider has any business to testify as to what this word "approximately" in this contract means. I would just as soon raise that particular question on a memorandum to be submitted afterwards.

THE ARBITRATOR: I think it is proper to take in al-

most anything that comes. As I understand it, in these arbitrations we are not technically bound.

MR. MILLER: No.

THE ARBITRATOR: There may be nothing of value in the testimony, but I think it would be very much better to take in what is offered, and decide what to weed out afterward.

MR. BERNHEIMER: Just to help clarify the situation, we have made it a practice here, when objections are offered, to advise the arbitrator to take the testimony, and note the objection.

MR. MILLER: May I note an objection, and hereafter I won't object?

MR. BERNHEIMER: The arbitrator will note your objection.

MR. MILLER: I think it is quite all right.

Q Do you recall my question ? A Yes, what was meant by "approximately".

Q What do you understand to be meant, if you were discussing the number of accounts that a collector of these materials had in the City of New York, and it was suggested that your company, for instance, or another in the same line of business, had "approximately 1931" of such accounts, - what would you understand the word "approximately" to mean?

A My personal impression of "approximately" would be 1931 accounts, inasmuch as I have had experience with the word "approximately" in purchasing and assigning in a previous enterprise; that is, which we took over, and which we finally settled here by arbitration, and when the word "approximately" came up, and it stood fifty-fifty; that is, what was meant by "approximately" as it was defined by myself and others. They guaranteed "approximately fifty accounts", and the question came up, "What do you mean by approximately fifty accounts?" and I said, "Fifty accounts." That was my definition of "approximately". In other words, if I was giving fifty accounts, I was giving fifty accounts.

MR. BERNHEIMER: There is reference to a previous arbitration, and I would like it to appear on record that previous arbitrations do not create precedents.

THE ARBITRATOR: I understand that; I am making a note of that.

Q In connection with your company's business, have you any method of determining how many accounts you are collecting from as of a given date? A We go back to the first approximate account.

Q Can you determine in any way in your own business how many accounts? A Yes, I could determine, but not offhand

right now.

Q I don't mean now; is your business regularly conducted in such a manner that you can tell how many accounts you collect from? A Yes, surely, we keep a record of it.

MR. WILLIAMSON: That is all.

CROSS EXAMINATION BY MR. MILLER:

Q Mr. Daiber, is your company in competition or was it ever in competition with either the Brand Company or the Selner Company in 1929? A Prior to 1929 or in 1929?

Q Well, either? A Yes.

Q In what sense was it in competition? A In this sense, that we were in the same line of business, we are competitors.

Q Were deliveries to your company in a different part of the city from the deliveries to Brand and Selner? Did you compete with them directly? A We probably took in a greater area than the Brand Company or the Selner Company.

Q Did you make collections from the same localities, from butchers in the same localities that they made collections from? A We did.

Q About what was your number of customers at that time, very roughly, in the spring of 1929? A Being at peace with the world, I say hardly any, if any, probably a

slight increase, if any.

Q About how many customers did your business have at that time? A 4000.

Q Were you at that time actively trying to get away any of the Brand customers, either by offering them better terms in the way of loans or by offering better prices for their products? A We were not.

Q You were not actively competing with them in that sense? A We were not actively competing with them.

Q You say you bought and sold these butcher accounts? A Yes.

Q There is no such thing, is there, except as a purely arbitrative figure, as an average value of butchers' accounts? What I mean by that is that in buying or selling the account of any butcher, he would have to consider that particular butcher? A That particular butcher, yes.

Q And in the case of a butcher who is delivering only a few pounds of fat and scrap a week, his account is not worth as much as the account of a butcher, who is delivering thousands of pounds? A That is right.

Q And in the same way in regard to the loans which you may have been extending to him, if they were rather higher, you would not pay as much for his account for that reason; and when you give an average, - I mean to say, if

you were asked to buy, or if somebody offered to sell you fifty accounts, you would not possibly venture to say that the average of each of the fifty accounts was so much, but you would investigate each one of those fifty accounts, would you not? A No, I don't know as I would do that. I would find out the amount of tonnage that the aggregate amount amounted to, and average my price; I would naturally come to an average of some sort.

Q Unless you knew something about the aggregate tonnage of these fifty accounts, we will say, which they offered to you, you would not have the slightest idea of what to offer for those accounts? A No.

Q Aren't your customers largely in the hotel and restaurant business? A The majority are.

Q How many butcher accounts? A Less than 200.

Q I am talking now about 1929? A Less than 200.

Q Now, so far as the account being what you would consider a current account is concerned, a current account as I understand it is an account which is going on regularly, isn't it? A Yes.

Q And it is a current account in that sense, regardless of how much has been loaned to the butcher, is it not? A Yes.

Q It does not become a non-current account by the

fact that there is a large loan against it? A No.

Q Have you read this particular contract here?

A Only what I have heard you state.

Q You have heard what I said about it? A Yes.

Q On the facts as I stated them, and assuming that those facts are true, would you say that the question as to what the parties in this particular contract, - the parties to this particular contract meant by the word "approximately" would depend very largely or might depend very much on negotiations which had preceded the contract, and on the talks the parties had had about it? A I would not make a purchase on that basis.

Q That was not quite my question. My question is whether, so far as concerns this particular contract, wouldn't it be your opinion that in order to make up your mind what the parties meant by the word "approximately", you would want to know what the facts and circumstances were concerning the business which was being sold, and the negotiations and talks that the parties had had with each other, is that true? A Yes.

MR. MILLER: I think that is all.

RE-DIRECT EXAMINATION BY MR. WILLIAMSON:

Q Assuming, Mr. Daiber, - just assume, if you will, that you had been offered "approximately 1931" butcher

shop accounts at an agreed price, and had accepted; how many butcher shop accounts would you expect to be turned over to you? A 1931.

Q Are you competing, or is your company competing with The Van Iderstine Company at the present time? A Not directly.

Q But in the same sense, are they competing with The American Agricultural Chemical Company? A Yes.

Q And were they so competing in 1929? A Yes, sir.

MR. WILLIAMSON: That is all.

THE ARBITRATOR: I would like to ask a question: How do you collect this scrap or fat? Is the scrap delivered to you at some point?

THE WITNESS: We collect it; we do all the work. We send around with our wagons.

THE ARBITRATOR: And how do you take the weights, to account to each customer?

THE WITNESS: Our drivers weigh it all.

THE ARBITRATOR: When it is delivered, they weigh it?

THE WITNESS: Yes.

THE ARBITRATOR: That is customary in your trade, is it not?

THE WITNESS: It is.

BY MR. MILLER:

Q Your business is not a rendering business, is it?

A It is.

Q Do you dispose of the produce which you buy in the same way that the American Agricultural Chemical Company and the Van Iderstine Company disposed of it? A We do.

MR. MILLER: That is all.

MR. WILLIAMSON: That is all. Thank you.

THE ARBITRATOR: The witness is excused.

M I L T O N R O S E N B E R G then took the stand.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q What is your line of business, Mr. Rosenberg? A Fat rendering.

Q And you are on the collecting end of it, is that correct? A We render, too.

Q And render, too? A Yes.

Q And do you do business with The Van Iderstine Company? A Yes.

Q And you also did business with The American Agricultural Chemical Company when it was in existence? A Yes.

Q And are you a competitor of The Van Iderstine Company at the present time? A Yes.

Q And were you in 1929? A Yes, sir.

Q And what connection have you with your corporation? A One of the owners; it is a partnership.

Q What is the partnership name? A Joseph Rosenberg Sons.

Q How long have they been doing business in the City of New York? A About sixty years.

Q How long have you been connected with it? A About thirty-seven years.

Q And were you active in the business during the year

1929? A Yes, sir.

Q During that year were butcher shop accounts bought and sold in the course of business as between collectors, such as yourselves, and the butcher shop people of the city? A I bought some. I haven't sold any.

Q You have bought some? A Yes.

Q Over what period of time have you had personal knowledge of the purchases of such accounts? A Over a good many years; I could not say exactly.

Q Were you familiar with the prices paid for such accounts by collectors during 1929? A Only by myself.

Q How many accounts would you estimate that you had personal knowledge of? A I bought quite a few, and I offered for quite a few which I did not get.

Q Was that true in 1929? A Yes, sir.

Q Now, assume an average butcher account, how much was that account worth to a collector such as yourself during about June, 1929, if you know?

MR. MILLER: I make an objection on the ground that there is no such thing as an average butcher shop account.

Q I am asking the witness if there is such a thing as an average butcher shop account, in your opinion.

A I can only go by my own purchases.

Q Do you have an idea of the average butcher account

in New York City? A Only my own.

Q Do you have an idea of your own? A Yes.

Q Are you familiar with the value of that account, of that butcher shop account to a collector such as yourself during June, 1929? A My average would be about $153 to $154, according to the figures on my own books.

Q About how much? A About $153 to $154 or $155.

Q That would be about the average in 1929? A Yes.

Q Assuming that as a collector of this scrap, you had made a contract with another collector for the purchase of certain accounts, and assuming further that the seller stated to you that he would deliver approximately 1931 such accounts for a given price, how many accounts would you expect to receive? A About 1931, with only a variation of one or two customers, which might be because of a mistake in the books, in figuring.

Q You would not expect any variation from that number, other than from a small mistake? A I would not expect any except by a mistake from the books.

Q And in your business, do you regularly keep a record of the number of customers from whom you are collecting? A Yes.

Q What would you consider a regular customer?

A One who is loading a couple of times a week over a

period of months.

Q Is there a seasonable falling off in the number of customers? A Not to amount to anything.

Q Would you say there is no seasonable falling off in customers? A Not to amount to anything; if you mean a seasonable falling off of customers in the city business, yes.

Q What season would you expect the falling off to occur? A From about the 15th of June until September.

Q Would you include the months of March, April and May? A No.

Q Do you know in your own business for the year 1929, just how many customers you lost if any from March to June? A Yes, sir.

Q How many? A Thirty-seven one hundredths of one per cent.

MR. WILLIAMSON: That is all.

CROSS EXAMINATION BY MR. MILLER:

Q In what part of the city were most of your customers located? A All over Greater New York and Long Island.

Q Weren't they as a matter of fact, speaking generally, located in different parts of the city from the Brand customers? A I don't believe so; only we travel out on Long Island further than he did. Outside of that, I be-

lieve the deliveries are practically the same.

Q You have a good many customers on Long Island, have you not? A Some; I would not exactly say a good many.

Q About what proportion of your customers? A Maybe ten per cent.

Q When you talk about buying accounts, just what do you mean? Buying an account from some competitor, is that it? A No; I have made offers but did not get them; but these were actual figures that we have paid to butchers.

Q To whom do you pay? Do you pay a competitor to get his butcher accounts? A I haven't got them. I have made the offer, but did not get them; these are butchers we have collected from, buying up the butchers' accounts individually.

Q You mean establishing a new account? A That is right.

Q With the butcher? A Yes.

Q By paying him so much money? A Yes.

Q By way of a loan? A No, bonus.

Q In talking about buying these accounts, you mean paying to the butcher whose account you want? A To get the business.

Q And whom you have not had theretofore, paying him

an amount in cash? A Yes.

Q To get his business? A Yes.

Q It is not a loan? A It is not a loan, no, sir.

Q And it is not supposed to be a loan by him? A Never loaned.

Q How many of these accounts have you bought; a great many? A I don't know what period you mean.

Q I am talking now about how many accounts have you bought in the spring months of 1929? A Possibly 50.

Q You bought as many as that? A Yes, in three or four months.

Q In three or four months that many? A Yes.

Q I am talking now of the spring of 1929? A That would be possibly three or four months.

Q You bought as many accounts as that? A Yes.

Q The amount you pay to a butcher for his account, in other words, to get his business, will depend of course in the first place on the quantity of deliveries which you think you can expect from him in the future? A You can only expect, because it is a new account, and you don't know.

Q You would not pay $150 for an account from which you expected only a few pounds a month, would you? A Sometimes we do, and do not get it.

Q Just a minute, listen to my question; you would not pay $150 for an account naturally from which you expected only a few pounds a month? A No, but we sometimes do.

Q How many pounds a month would you expect to get from an account for which you were willing to pay $150? A Between 1,000 and 1,200 pounds.

Q The amount you would be willing to pay for an account also would depend a good deal, would it not, on whether you thought that man's credit was good? A No, that would not have anything to do with it.

Q That would not have anything to do with it? A No, sir.

Q Don't you make a custom of loaning? A We do.

Q To your butcher? A Yes.

Q You would not pay as much for an account to a man who you thought might not be able to repay any loans that you might make him? A A bonus would not be a loan.

Q I know it; but wouldn't your opinion as to the man's ability to repay you a loan have a great deal of influence on the price that you would be willing to pay him for his account? A I do not get you there; if we make a bonus, or when we give a bonus, we do not make a loan.

Q But would you be able and willing to pay $150 for

an account where you thought that it was a risk, that it would be a risky account? A I do not get that, either, because I have nothing to do with a man's financial condition, when we give him a present.

Q Suppose that you have two butchers, both of whom come to you and say "We would like to have you offer us something for our business", and you investigate it, and you find one of them seemingly sound financially, and the other not, what is your attitude then? A We do not investigate the financial soundness when we are making a bonus.

Q You do not make any investigation at all? A No, we merely look at the shop, and see what we think it is worth to us, without the man's financial ability being taken into consideration.

Q You make a good many loans -- A Yes, we do.

Q You make a good many loans, don't you, to instal fixtures in these shops? A Yes, sir.

Q You would not make as much, you would not pay as much for an account where you thought you would be called on to help them along and instal fixtures, as you would for an account where a man had his own fixtures, in good condition? A Where we make a loan, we do not make a bonus.

Q What? A Where we make a loan, we would not give him a bonus.

Q You mean that you only pay these bonuses --

A (Interposing) Where we make no loans, yes.

Q For accounts where you do not expect that there will be loans? A That is right.

Q So that you are willing to pay this $150, or whatever it may be, for an account only where you think it is an account of a butcher who is not going to ask you for loans? A Yes.

MR. MILLER: That is all.

MR. WILLIAMSON: That is all.

THE ARBITRATOR: I would like to get clear this loan question; how frequently do you pay bonuses of that sort? That is, do you do it periodically, or just once?

THE WITNESS: Just as it comes along, according to the customer; some customers want to get loans, without the bonuses; other customers want bonuses without the loans. It is up to the different butchers.

THE ARBITRATOR: After you pay the bonus, you pay a scheduled rate for the stuff delivered to you?

THE WITNESS: Yes.

THE ARBITRATOR: For the scrap?

THE WITNESS: Yes.

THE ARBITRATOR: And it is received?

THE WITNESS: Yes.

THE ARBITRATOR: And that is on an agreement?

THE WITNESS: Yes.

THE ARBITRATOR: Is it an oral or written agreement to pay certain rates for the material?

THE WITNESS: Yes; some are oral and some are written.

THE ARBITRATOR: This is simply a cash bonus to get his good-will in trade?

THE WITNESS: Yes.

THE ARBITRATOR: Do you repeat that at the end of a period, or is that just once?

THE WITNESS: Sometimes it has to be repeated.

THE ARBITRATOR: But you determine what the value of the business is before you repeat?

THE WITNESS: Yes.

THE ARBITRATOR: The witness is excused.

J O S E P H W. D E V O R S S then subscribed to the following oath:

You do swear in the presence of the everliving God that in the proceedings now pending between The Van Iderstine Company and The American Agricultural Chemical Company, you will tell the truth, the whole truth, and nothing but the truth, so help you God.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q What is your business? A Manager of Swift & Company's plant in Kearney, New Jersey.

Q In what line of business do they engage at that place? A Among others, we have the rendering business in that district.

Q Are you familiar with that business? A Yes, sir.

Q For how long have you been familiar with that business? A Twelve years.

Q And in what capacity? A Manager of the plant.

Q Among other things, are you familiar with the collection of scrap from butcher shops, for use in making various by-products? A Yes, sir.

Q Such as scrap and bones and fat? A Yes.

Q And were you familiar with that business in 1929? A Yes, sir.

Q And at that time did collectors, such as Swift &

Company, in this line of business of which you speak, ever purchase such accounts? A Not during 1929, no, sir; we have purchased accounts previous to that.

Q How long prior to that time? A I don't know as I could tell you exactly. I know we tried to buy up a business, but the negotiations were not completed.

Q Was it the business of another collector? A Yes, sir.

Q Did you try to buy it? A Yes, sir.

Q Does your company ever buy individual accounts directly from the butcher? A We do.

Q Did they in 1929? A Yes, sir.

Q How frequently? A Well, every month.

Q To your own knowledge, is it or not a regular practice in the collector's trade to pay for such accounts? A It is a regular practice in the business, in this district, to pay a bonus for new butcher shops.

Q And was that true in 1929? A Yes.

Q And were you familiar with the prices paid for such accounts? A I know what we paid during that period.

Q Will you state what amount you paid for that period, on or about the first half of the year? A It would run from $100 to $150 a shop.

Q Now, prior to 1929, did Swift & Company to your knowledge buy a group of shops from another collector?

A Yes, sir.

Q And do you know or are you familiar with the price paid for that group of shops? A I am told, - let me think, maybe I can tell you; I think somewhere between $170 and $1800; I would not be certain as to the exact amount.

Q Would you say that a group of shops was worth more or less per shop than if you were buying the individual shop from a butcher? A I would say an established business is worth more, because there is not the custom of paying a bonus to an individual new shop opening up.

Q And by an established business, you mean the established business of a collector of such materials? A Yes, the established business of a butcher.

Q But assuming that you were to purchase a group of shops from a collector who had been collecting scrap from a number of shops regularly, would you consider the group of shops worth more per shop than though you bought and acquired single shops amounting to the same number? A I would consider them worth more than a new shop, if I was trying to buy from the individual butcher.

Q Assuming, if you will, that another collector of scrap offered you at a given price approximately 1931

butcher shop accounts, how many such accounts would you expect him to turn over to you? A I would expect him to deliver 1931.

Q Is there such a thing in the trade as a seasonable falling off in the number of shops? A Not in the number of butcher shops, no, not as seasonable, there is hardly any seasonable business.

Q Would there be a seasonable dropping off in the amount of scrap collected from a given number of shops? A Somewhat, yes.

Q What part of the year would that include? A From about the 1st of June on to the middle of September.

Q Would you expect it to fall off in March, April and May? A No, I would not in March or April; there is a possibility that it would start in May.

Q Are you familiar with the falling off, if any, in the number of customers of Swift & Company for the months of March, April and May of 1929? A Yes, as I remember, I don't think we had a falling off in 1929, for that year; I could not state exactly, for that particular period; but all our shops, during 1929, I think showed a small increase in the number we had loaded.

Q Is your company a competitor of the Van Iderstine Company? A Yes, sir.

Q And was it in 1929? A Yes, sir.

MR. WILLIAMSON: That is all.

CROSS EXAMINATION BY MR. MILLER:

Q Was your company a competitor of the Brand and the Selner Company in 1929? A Yes, sir.

Q Do you collect chiefly from butchers or from other concerns? A From retail butchers.

Q In New York City? A Yes, sir.

Q And Manhattan? A Yes, sir.

Q Do you know whether or not your routes are more or less the same as the Brand route ? A I think that we cover the same territory that the Brand and Selner business do. We have business not in Brooklyn, but in Manhattan.

Q About how many shops did you collect from during the spring months of 1929, very roughly? A You mean what was our number of accounts?

Q Yes. A I don't think that is a necessary question here, is it?

Q I would like to know; I don't want it exactly; I want to know whether it was hundreds or thousands? A I think we are probably the second largest collector in the territory, if that will answer the question.

MR. WILLIAMSON: May I state here, Mr. Miller, that

obviously it is rather embarrassing to have a witness to competitors in the field, to reveal unnecessary details, as to the amount of business they have done.

MR. MILLER: I want to know whether it is a very large concern or a small concern.

THE WITNESS: Have I answered your question?

Q No, I want to know a little more than that; for instance, if Van Iderstine Company had a list of 1931 customers in March, would your March list be larger or smaller? A We have more than that.

Q You were an active competitor of Brand, were you not? A Yes.

Q During that period? A Yes.

Q Were you buying any accounts during the spring of 1929 in the sense that the last witness was talking about, namely, giving butchers a bonus to get them to give you their business? A Yes, sir.

Q About how many of those accounts did you buy? A I cannot tell you exactly the number.

Q Was it a large or a small number, or just one or two? A It is a large number; you try to get in that kind of business, and you might run ten a month, or it might run twenty, or thirty a month, that we pay bonuses to.

Q And did you get any of the Brand customers away

from them during this period that you were offering the bonuses? A Not that I know of, no, sir.

Q Now, you say that you would pay from $100 to $150 for these accounts by way of a bonus? A Yes.

Q About how much deliveries, monthly deliveries, would you expect to get for which you were willing to pay $100 to $150? A You mean in the total volume?

Q Yes, from the shop, or just shop fat, whatever it is? A Shop fat.

Q Shop fat is the most valuable? A Yes, it is the most valuable part of the butchers' material.

Q All right. A Just about 800 pounds per month.

Q How much would you pay for an account which you felt reasonably sure would deliver from 600 to 800 pounds per month? A We would pay anywhere between $100 and $150 for it.

Q Now, when Mr. Williamson was asking you about a group of shops bought from a collector, you understood him to refer, not to buying the account direct from the butcher, but for being a collector for his business? A Yes, sir.

Q Just as Van Iderstine paid the American Agricultural Chemical Company? A Yes, sir.

Q For its business? A Yes, sir.

Q And before you knew, or made up your mind how much

you would pay another collector for his business, namely, his good-will, you would want to know something about the total volume of that business, wouldn't you? A Yes.

Q And then you would want to know something about the tonnage? A Yes, sir.

Q That would be given consideration, wouldn't it? A Yes, we would want to know the tonnage and the number of customers; one is as important as the other.

Q You would rather have the same amount of tonnage, we will say 10,000 pounds a month, from 10 customers than from 20 or 50 customers, wouldn't you? A If I get your question right, no.

Q Why not? A Because I would rather have the medium accounts, not the larger accounts.

Q Why? A Because they are too hard to keep; and when you lose one, you have lost a lot.

Q But assuming that you may be assured of keeping them, it would cost much less to collect from a small number of customers than from a large number, would it not? A Yes, it does.

Q Now, apparently you are of the opinion that this word "approximately" in this contract means nothing whatever? A No, I don't say that.

Q Mr. Williamson asked you -- A (Interposing) Mr.

Williamson asked me what I would expect.

Q Yes. A I would expect to get the number that I bought.

Q Well, you would think that that word "approximately" meant something in that contract, wouldn't you? A Yes, but I would think it would mean less than one per cent.

Q You would think it would mean less than one per cent? A Yes.

Q You would want some definition of that word where you agreed to it in a contract of that sort, wouldn't you? A The only way I can answer that, is that the way we buy a business, we would have a definite leeway, one way or the other, on the number of shops that would be delivered.

Q That is the kind of a contract that you would insist on? A Yes.

Q That you could get? A Yes.

Q So that if there were no definite "more or less" clause in the contract, so many per cent, more or less, you would think that the question as to the word "approximately" would depend a great deal on what the parties to the contract had said in the negotiations which had preceded the contract, wouldn't you? A I should say that the word "approximately" would have an important bearing.

Q In other words, you think the construction of the word "approximately" in a contract of this sort, might depend a good deal on the negotiations between the parties?
A Yes, sir.

BY MR. WILLIAMSON:

Q You don't know anything about any of the conversations that may have occurred before this contract was signed, do you? A No.

Q Just assuming now that in your purchase of a business said to consist of "approximately 1931 shops", and there had been no conversation about the meaning of the word "approximately", do you have any reason to change your previous answer with respect to the 1931 shops?
A No, I would not change my previous answer.

Q That is, if there were such a contract as this, and there had been no talks between yourself and the seller as to what was meant by the word "approximately", you would expect, except for bookkeeping errors of one or two, to get 1931 shops, is that correct? A Yes, with the exception that I don't think I would kick very hard if there was less than one per cent leeway one way or the other.

Q What would you say if there was a discrepancy of 137 shops? A I would say that is entirely too great;

that is all per cent, or 10 1/2 per cent.

MR. WILLIAMSON: That is all.

RE-CROSS EXAMINATION BY MR. MILLER:

Q When you speak of expecting to get from 600 to 800 pounds in deliveries in a month for an account for which you were willing to pay $100 to $150, you would expect the 600 to 800 pounds of fat, wouldn't you? A Yes.

Q In addition to that there would be other materials delivered, would there not? A Yes, sir.

Q The real test of value of an account is not so much the number of pounds delivered as the value of the total material, isn't that it? A No, we look at the value of a shop from the volume or the total number of pounds of shop fat we get from it.

Q Why don't you take the other materials into consideration? A Because they are not as valuable as the suet is, and that is always a small percentage of your total.

Q How about waste? A Waste was the valuable part of the butcher shop from our standpoint.

Q What in your opinion would have been, at prices which were current in the spring of 1929, the monthly value of an account which delivered from about 600 to 800 pounds of shop fat? A Maybe I can answer the question in this way:

during the summer time of 1929, we offered the collector $190 per shop for his business, and the average tonnage of his shop ran a little better than 700 pounds of shop fat. Does that answer your question?

Q No, I am trying to reduce to pounds the shop fat, in dollars and cents; about how much would that represent, about how much would you say at 1929 prices for 600 or 800 pounds or whatever it was of fat? A You mean for the butcher shop material?

Q Yes. A In 1929?

Q Yes. A That is about two years ago?

Q Yes. A The average price --

Q Give it as nearly as you can. A I would say $18 to $22 per month would be the value of the shop fat.

Q $18 to $22 for 600 to 800 pounds of shop fat? A Yes, sir.

Q That is to your recollection the market price in 1929? A Yes, sir.

Q In the spring of 1929? A Yes.

Q When you bought an account direct from a butcher in this way, by giving him a bonus, you of course had no assurance of keeping that account, had you? A No, sir, nothing except the butcher's word; we never had.

Q And if somebody else came along the next month and

offered him $200 for his account, he probably would give it to him, wouldn't he? A We have had that happen, yes, sir.

MR. MILLER: That is all.

MR. WILLIAMSON: That is all, thank you.

THE ARBITRATOR: The witness is excused; we will take a recess until two-fifteen o'clock this afternoon.

R e c e s s.

AFTERNOON SESSION.

2:15 o'clock P.M.

C H A R L E S L. H A U S S E R M A N N, then took the stand.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q What is your business, Mr. Haussermann? A I have charge of the outside end, the soliciting end of the Van Iderstine Company, buying the materials.

Q Were you engaged in that business in 1929? A I was.

Q And in or about June 22, 1929, were you active in the business of taking over The American Agricultural Chemical Company's business by Van Iderstine? A I was.

Q Do you know Mr. Caton? A I do.

Q Do you know in what capacity, if any, he served the American Agricultural Chemical Company, immediately prior to this business testified to as passing to Van Iderstine & Company? A Office manager.

Q Did you make any inquiry of Mr. Caton at or about June 22, 1929, as to the number of accounts from whom The American Agricultural Chemical Company had collected materials the week prior to June 22, 1929? A I did; I communicated with him on June 24.

Q What did he say to you and what did you say to him? A The moment we took the businessbver, during that day, or it may have been the next day, I asked him to get an account of the customers, and the changes, if any, because we wanted to show the number of customers loaded, or the customers we lost, and therefore the accounts during the coming week.

Q Did he furnish you with such a statement at any later time? A He did, the week ending the 28th.

Q I hand you this piece of paper, and ask you if you know what that is (handing paper to witness)? A I do.

Q What is it? A It is a record showing the customers; it is a record showing the customers we started with and the customers we gained or lost during the week.

Q And what week, do you know? A The week ending June 28, 1929.

Q And was that statement given you by Mr. Caton? A It was.

MR. WILLIAMSON: I ask that it be marked in evidence.

(Paper received in evidence and marked Van Iderstine Exhibit No. 1.)

MR. BERNHEIMER: Does the other side object?

MR. MILLER: No, I am not objecting. I understand this is the statement that Mr. Caton gave to you?

THE WITNESS: Yes.

Q Does that statement cover or include a statement of all of the customers, both of the Brand and Selner business? A No, sir, the Brand business.

Q The Brand business? A Yes, sir.

Q Did you discuss this statement with Mr. Caton at all? A Not otherwise, I showed him how we wanted it run, and to get it out each week.

Q After he had furnished you or given you Exhibit 1, did you discuss that paper with him at all, as to what the figures stood for, or did you in any other way discuss it with him? A No.

Q Do you know how many customers' materials were collected from during the first week after the business was turned over to Van Iderstine? A According to their records, there were 1396 customers, of Brand, of course.

Q That is for the week previous to Van Iderstine taking the business over? A Yes, sir.

Q Can you tell us how many customers you collected from the first week after Van Iderstine took the business over?

MR. MILLER: I object to that as wholly outside the issue, because it is admitted that the number of customers they collected from after they took the business over was not in issue here, simply the number of customers which we had

at the time we turned the business over.

MR. WILLIAMSON: I am at a total loss to know who made any such admission. Certainly I have never intended to make the admission that the number of customers from whom we actually collected immediately after taking over the business, would not be pertinent to the number of customers you had, since we used your same wagons and your same drivers and same records.

MR. MILLER: The contract merely contains a representation as to the number of customers that we had. As I stated in my opening statement, I understood Mr. Williamson agreed with me, that there was no promise, guarantee or anything of that sort on our part that exactly the same number of people who were our regular customers when the contract was signed, would be delivered to them in the sense that we guaranteed that they would continue as customers of theirs. If we had for instance X number of customers when we turned the business over, and for one reason and another not a single one of those customers consented to continue in business with The Van Iderstine Company after we turned the business over, there would be no breach of this contract. I have supposed that that was admitted. I cannot see how the number of customers that they did business with after the contract was signed, has

the slightest bearing on any question in this arbitration. They are complaining simply and solely because we made a misrepresentation of the number of customers which we had; and the contract can be searched in vain for any agreement or guarantee on our part that the customer we had would remain their customers.

THE ARBITRATOR: We will admit it, with Mr. Miller's objection noted.

Q Do you recall my question? A No.

MR. MILLER: I renew my objection.

THE ARBITRATOR: Your objection will be noted.

Q Do you know the number of Brand customers from whom materials were collected during the week that Van Iderstine & Company took the business over? A We have the record here showing that amount, in that report.

Q Do you have any personal recollection of what that shows to have been, in collections? If you don't remember, it is all right. A No, I don't remember.

MR. WILLIAMSON: That is all, Mr. Haussermann.

CROSS EXAMINATION BY MR. MILLER:

Q What is your position with Van Iderstine & Company? A I am in charge of their outside department, purchasing their raw materials, in charge of their outside department.

Q That is, with the meat scrap collections?

A From butcher shops, yes.

Q And have had for some time? A Yes, sir.

Q Had you had anything to do with the negotiations which led up to the making of this contract? A I did not.

Q And you know nothing whatever about what was said by the parties who negotiated this contract? A I do not.

Q Now, Mr. Caton had worked for Brand, or the Brand Company, before you people took it over? A Yes, sir.

Q And he continued for some time to work for Van Iderstine? A Yes, sir, about six weeks I think.

Q About six weeks? A Yes, maybe longer, I don't remember just exactly.

Q This statement which is marked Van Iderstine's Exhibit 1 is a statement which Mr. Caton gave you at your request? A Yes, sir.

Q It is a form of statement regularly used by Van Iderstine, is it not? A It is.

Q Made up according to the Van Iderstine method of counting its customers? A Yes, sir.

Q The form of the statement, apart from the numbers of customers, and so on, is a form which you suggested to Mr. Caton? A Yes, sir.

Q Now, under this column entitled "Loading", there are certain numbers for each of these routes; what do those numbers represent? A Customers' loading.

Q Customers' loading during what period? A That week.

Q What week? A The week of the 28th.

Q The week ending the 28th beginning? A Ending the 28th; they started off in that statement by giving the number of customers that we started with at the beginning of the week, and the amount we have at the end of the week, and then it shows the loss or gain, if any.

Q Now, never mind the gains or losses for the present; what does 74 against route 1 mean? A That means 77 butchers loading.

Q 77 butchers loading during what week? A The week ending the 28th, or beginning the 22nd, that 77 is.

Q It is 74 here. A Have you got the sheet?

Q It is 74. A 74 on what route? Is it 74 there?

Q Yes. A I thought it was 77.

Q There is no 77 on here. A We had lost three customers? I have a list here which I think is a memoranda of the customers that he gave me first, which shows a few accounts at the beginning of the week.

Q At present I am testing your memory. A Yes, sir.

Q Under the column loading against route 1, there is the number 74; what does that 74 mean? A 77 active.

Q It is 74. A 74 active accounts loading.

Q During what week? A The week ending the 28th.

Q During the week ending the 28th? A Yes.

Q What day of the week was the 28th? A I think it was Saturday.

Q Would any customer who loaded during that week ending June 28 be counted among those 74 in this column? A Yes, sir.

Q Would a cash customer be counted? A It should be. That is the way his instructions are, active accounts.

Q And you mean by an active account, any customer who had loaded during that past week? A Yes, sir, and that are still loading at the end of the week.

Q What do you mean? A We consider if we lose a customer during the week, that is a lost customer that we haven't got anymore, and he goes off in the lost and gain column.

Q How do you know that you have lost a customer? A By the records, and the drivers' tickets. We check them all.

Q As I understand it, in these routes that you have, you send your several wagons to customers at regular

intervals? A Yes.

Q Suppose that you had a customer who loaded on Monday. A Yes.

Q How would you know, if he loaded on Monday, if he was a lost customer, before the driver went around there? A The driver will have a check on the customer.

Q I am assuming that your driver went around to this customer and loaded. A Yes.

Q How would he know that that customer would become a lost customer until the next time your driver went around? A We would not know the week ending the 28th, on the report.

Q I understood you to say that you may have loaded some customers during this week who would not be on this column? A No, any new customers added shows on that column; the customers lost would explain themselves there.

Q It does not explain itself; that is the difficulty; all it says is lost. A It says gain in the column.

MR. WILLIAMSON: I might suggest that we call Mr. Solomon; because this statement was not prepared by this witness.

MR. MILLER: I know it.

MR. WILLIAMSON: It was taken from the books.

MR. MILLER: It wastaken under his instructions, and

I want very much to know just what Van Iderstine's theory of active customers was.

Q Do I understand you to say, then, that any customer who loaded at any time during that week would be in this loading column? A Yes, sir.

Q Then I understood you to say if a customer loaded during the week, and for some reason or other gave you notice during the week that he was not going to load any more, nevertheless he would be in that column? A Yes; at the end of the week, if he was not loading, we charged him off in the lost account.

Q I am asking you whether he would be in this column, if you loaded him during the week? A He will be in the list as a new customer.

Q Answer the question; would he appear among others in this column, would he be one of the 74? A Let me explain.

Q I want a direct answer to the question; suppose you went around to a customer on Monday, the first day of the week. A Yes.

Q And loaded for him. A Yes.

Q And on Tuesday or Wednesday he called you up.

A You are talking about a new customer?

Q I am talking about the customer that might have

loaded before. A Yes, sir.

Q You went around and loaded for him on Monday? A Yes.

Q On Wednesday he called you up and said "I don't want to make any more deliveries to Van Iderstine"? A Yes, sir.

Q Would he be in this column, or wouldn't he? A He would be in that column, yes.

Q He would be? A Yes.

Q Would he be in that column if he had not been what you call a regular customer? A He was not on our regular list.

Q Would he be in this column? A I cannot tell you what this man put in that column.

Q Would this statement have been prepared in accordance with your instructions if he had been put in that column? A You are getting away from the report; I would like to explain the report.

Q I am trying to ask you what you intended to have this report represent. A I will answer that.

Q I will put a specific question. A Yes.

Q Suppose that some customer loaded during this week ending June 28. A Yes, sir.

Q He had not loaded before that. A Yes.

Q He was a new customer. A Yes.

Q And that was his first loading. A Yes.

Q Ought he to be in this column? Ought he to be one of this 74? A No, he would be in the new column to be added to the list next week.

Q He ought to be in the gain? A If he is a new customer, yes, sir.

Q Why would you put him in the next week column if he loaded that week? A He would be in the gain column at the end of the week; we would add the gain customers, customers we loaded the previous week, and we would deduct the customers we lost, and we would have then the total number of customers we were loading at the end of the week.

Q So the figures under the loading column do not then necessarily represent the customers you loaded that week? A The customers under the loading column should have been the customers we loaded at the last of the previous week, and the start of our count.

Q The last of the previous week? A Yes, sir.

Q You mean the last -- A (Interposing) That report was intended to be for the customers loaded on the 22nd, the week ending the 22nd. To those customers we add the gain, and subtract the loss, giving us our total number of customers that we are loading at the end of the week of

the week of the 28th.

Q Then I entirely misunderstood you. I understood you to say that this number under this loading column was the number of customers whom you had loaded during the week ending June 28th; now I understand you to say that that is the number of customers who had loaded during the week ending June 21; which is right? A That should be the previous week.

Q In other words, if you did say before, and I think you did before, that this loading column represented the customers who had loaded during the week ending June 28th you were wrong? A Let me see --

Q (Interposing) Isn't it perfectly simple? All I am trying to find out is whether this loading column is supposed to represent the customers who loaded during the week ending June 21, or is supposed to represent the customers who loaded during the week ending June 28; which is right? A The first column should be the customers that were loaded at the end of the 22nd. To those we add all the new customers and we subtract all lost customers, and that will give us the total as ending the week of the 28th.

Q So any customer who loaded during the week ending June 21 is supposed to be in this column? A Yes, sir.

Q I would like to get it on the record as to what day of the week June 21st was.

THE ARBITRATOR: Have you a 1929 calendar?

THE WITNESS: I think Saturday was the 22nd, and Sunday was the 23rd, and Monday was the 24th.

THE ARBITRATOR: June 22nd was Saturday.

Q Saturday was June 22nd? A Yes, sir.

Q That is, of 1929? A Yes, sir.

MR. DAVIS: June 28 was Friday.

THE ARBITRATOR: Give that to Mr. Miller.

MR. WILLIAMSON: Then the 22nd would be Saturday.

Q Suppose that a customer had loaded once during the week ending June 21, but he had not loaded the week before that, would he be in this column headed "Loading"? A Is he a regular customer?

Q I am just asking you the question; suppose that a customer had loaded for the first time during the week ending June 21, not June 28, would he be included in this loading column? A Yes, sir.

Q He would? A Yes, sir.

Q Suppose that he had loaded during that week, but had not loaded for a month or two before, but had loaded previous to that time, would he be in that column? A No, he should not be; he would be in the new column.

Q I thought you said that gain column showed the customers who were gained for next week after June 21? A No, during the week, during the week he would be in the gain column, if he had loaded the 22nd, and loaded the next week, he would be in the new column; if we lost him the 22nd, he would be a lost customer on the 22nd. As soon as the customer stops, we call him a lost customer; and if we get him back, we call him a new customer.

Q As I understand it, if a customer loaded for the very first time, and is an entirely new customer during the week ending June 21, he would be in this column? A Yes, sir, he would be in the column for the next week.

Q He would be in this column? A What do you mean by "this column"?

Q Whenever I speak of "this column", I mean this column entitled "Loading"? A That column represented or should represent the customers loading at the end of the week ending the 22nd.

Q "At the end" does not mean anything; you do not mean the customers who simply loaded on the last day of the week? A No, the customers who loaded during the week.

Q Any customer who loaded during that week ought to be in this loading column? A Yes, sir, that is right.

Q Even if it was the first time that customer had ever

loaded? A Yes, sir.

Q I want to see if I get the same answer to this question that I got before; suppose a customer loaded during the week, but was not an entirely new customer, but was an old customer who had come back after a lapse of four or five weeks or a month or two; would he be in this loading column? A He should, yes, sir.

Q In other words, the loading column is supposed to include each and every customer who loaded during the week ending June22? A That is correct.

Q Whether he was an old customer, or a new customer, or a regular customer, or an irregular customer? A That is right.

Q Now, the next column is entitled "Gain"? A Yes, sir.

Q And under that column there are just three figure ones; what do those three figure ones represent? A They are new customers loaded during the week.

Q During the week after the week to which the loading column pertains? A Yes, sir.

Q In other words, to put a concrete case, here you have route No. 3. A Yes, sir.

Q And under the loading column against route No. 3 you have 131? A Yes, sir.

Q In the gain column, against the same route, is one? A Yes.

Q That means that in the week ending June 21, you loaded 132? A Yes, sir.

Q Customers? A Yes, sir.

Q Against route No. 1, you have under the lost column the figure 3? A Yes.

Q And under the loading column 78? A Yes.

Q That means that during the week ending June 21 you loaded 74 customers? A Yes.

Q And during the week ending June 28 you loaded 71 customers? A Yes, sir.

Q That was all clearly explained to Mr. Caton, was it, by you? A Yes.

Q Did you give him a skeleton form of this kind of report? A Yes, sir.

Q For him merely to take and fill the figures in? A Yes; I think I gave him a copy of a report we had made up.

Q You gave him a copy on one of your sample reports? A Yes.

Q You used to make out in your own business reports of this sort once a week, is that it? A Yes, we made them out once a week.

Q Now, you say those 1371 was the total customers of Brand and Selner or only Brand? A That is the Brand customers.

Q Only Brand? A Yes; Mr. Caton had nothing to do with the Selner Company.

Q Now, this tabulation, as I understand you, shows that during the week after Van Iderstine took this business over, you gained three customers and lost twelve, making a net loss of nine? A I believe that is a correct, yes.

Q And I want to be perfectly clear that that loss of nine refers to a loss of customers after Van Iderstine took the business over? A Yes, sir; I had no records before that.

Q This loading column only refers to loadings for one week? A The total amount of customers, active customers loaded.

Q The actual number of customers who loaded during one week, and during one week only, is that right? A Yes, sir.

Q So that if there were other customers not included in this loading list, who loaded earlier in June, but did not load in the week ending June 21, they would not appear in that loading column? A No.

Q Now, here you have a column entitled "How Gained;

Extra". What does extra mean? A Paid an extra price.

Q That would be gained by paying one of these bonuses about which the witnesses were talking this morning? A No, that would be by paying half a cent over the market.

Q Paying him more for his fat, or whatever it was? A Yes, sir.

Q That is what "extra" means? A Yes.

Q Here are two letters, "M. and P.", what does that mean? A Market present of bonus.

Q One of the bonuses to which the witness testified this morning? A Yes.

Q That was one method of acquiring a customer? A Yes, sir.

Q Under that is the word "loan". A Customers gained by loaning him money.

Q Under the word loan is the word "price". What does that mean? A The price is the extra price on material.

Q How does that differ from extra? A I don't know why it was used. It is the same, it has the same meaning, though.

Q Under the word price is the word "none". What does that mean? A Getting the customer at the market price.

Q Getting the customer just by saying "We would like to have you as a customer"? A It might be a friend of

yours.

Q You do not have to give him any bonus or make him any loan? A No, just give him the market price for his fat.

Q Now, the total of customers under that "How Gained" is six? A Yes, sir.

Q Whereas the total customers under the gain column is three? A Yes.

Q How do you reconcile those two figures? A We don't reconcile them.

Q You don't know how to reconcile them? A No.

Q You have no explanation? A No, sir.

Q Then there is a column entitled "How Lost". A Yes.

Q And under that there is the word "closed". What does that mean? A Closed shop, closed up.

Q Shop closed up? A Yes.

Q During that week? A Yes.

Q Under that is the word "lost". What does that mean? A It refers to a loan.

Q He asked for a loan? A Yes.

Q And you refused it? A Yes.

Q So you lost him? A Yes.

Q Why? A Because we would not pay the price he asked.

Q You would not pay the price he wanted for his fat? A Yes, he asked an exorbitant price for his fat.

Q Under that was "M - P". What does that mean? A The fellow wanted a market present, and we would not give him any.

Q Under that is the word "picking". What does that mean? A The fellow would not allow you to sort his fat. He wanted to sell his waste as fat, and would not take it as that.

Q Under that is "M - P". What does that mean? A Market price.

Q That is, he wanted a present and you would not give it to him? A Yes.

Q This column shows that there were eleven customers lost, one closed shop, one because you would not give him the price he asked, and three because you would not give him the present he asked for? A Yes.

Q Making a total of fifteen? A Yes.

Q How do you reconcile that with the total of nine under the lost column? A I don't, but the net total is nine, just the same, isn't it, that we claim lost?

Q That is correct. A That is careless bookkeeping.

Q Had you ever noticed that discrepancy before? A No.

Q You never asked Mr. Caton about it before? A No, sir.

Q Then there is a column entitled "Solicitors". A Showing solicitors, what solicitors got the account.

Q And the words are the names of solicitors in that column filled in in ink, instead of by typewriter. Whose handwriting is that? Is that Mr. Caton's or yours or somebody else's? A It is not mine.

MR. MILLER: Do you mind my asking Mr. Caton?

MR. WILLIAMSON: Not at all.

MR. MILLER: Is that your handwriting, Mr. Caton?

MR. CATON: No, it is not mine.

THE WITNESS: It was done in the Brand office.

MR. MILLER: Mr. Caton, by the way, has not been sworn.

MR. BERNHEIMER: Is Mr. Caton going to testify?

MR. MILLER: Yes. Suppose we have all the other witnesses sworn now.

W I L L I A M J. C A T O N,
E R N E S T E. H A M M E R S E N, and
A L B E R T C. H O R N B E R G E R then subscribed to the following oath:

You do swear in the presence of the everliving God

that in the proceedings now pending between The Van Iderstine Company and The American Agricultural Chemical Company, you will tell the truth, the whole truth, and nothing but the truth, so help you God.

MR. MILLER: Do you mind my asking Mr. Caton a couple of questions, Mr. Williamson, now?

MR. WILLIAMSON: Not at all.

MR. MILLER: Mr. Caton, were those names of solicitors in the solicitors' column, and the numbers against them on this memorandum when you handed it to the witness?

MR. CATON: I don't remember.

MR. MILLER: You don't remember?

MR. CATON: No.

MR. MILLER: I notice this memorandum is signed by Mr. Caton apparently.

MR. CATON: Yes, sir.

MR. MILLER: Now, there are some figures and calculations in pencil.

MR. WILLIAMSON: Those are mine, Mr. Miller. I am sorry to say I wrote them there. I would be glad to erase them.

MR. MILLER: Those were put on?

MR. WILLIAMSON: Yes. I should have limited the

offer; those were put on yesterday. As a matter of fact, I used it for scratch paper.

MR. MILLER: It is understood those pencil memoranda are yours?

MR. WILLIAMSON: That is correct.

MR. MILLER: Are we agreed that this shortage in customers that you claim is entirely restricted to the Brand account?

MR. WILLIAMSON: Yes; yes; which would mean of course we would not go into the other at all. We are willing to stand on the shortage where the substantial discrepancy occurs.

Q Now, I suppose you know from what books and records of the company the entries on this sheet were made or should have been made? A I know where they should have been made.

Q What are the books and recordsof the Van Iderstine Company on which appear the names of the customers loaded during any week? A On the statements.

Q What statements? A The statements rendered to the butcher.

Q By whom? A By The Van Iderstine Company.

Q What are they, weekly statements? A Monthly statements.

Q They are monthly statements? A Yes, sir.

Q And those are the records of The Van Iderstine Company from which can be obtained, if you wish, a check of the correctness of these figures, and from which can be obtained the data appearing on this memorandum? A It should, yes, sir.

Q Can all of the data appearing on this memorandum be obtained from those monthly statements? A It should.

Q Can the facts stated on this memorandum with reference to how these accounts were gained or how they were lost be obtained from those monthly statements? A You are talking about Van Iderstine all through?

Q I am talking about Brand? A I don't know.

Q You don't know? A No.

Q Are the gains and losses on this statement, the gains and losses for the week after the business, the first week after the business was turned over? A Yes; I had nothing to do before that.

Q What are The Van Iderstine books and records from which can be obtained the facts as to how the accounts gained and lost during the first week after Van Iderstine took the business over, - from which those facts can be obtained? A You are talking of the Brand Company now?

Q I am talking about the Brand Company turned over by Van Iderstine. A The Brand Company was running its business under the Brand system.

Q So you don't know? A No.

Q Are all those Brand books and records in the possession of Van Iderstine & Company? A Yes.

Q As a matter of fact, all the old Brand records are in possession of Van Iderstine? A I don't know that; that is not in my end.

Q Are you sure that Van Iderstine counted as customers, customers who paid in cash? A We did, yes, sir. We have very few that do pay cash.

Q Whenever they do pay cash, you count them as customers? A Absolutely.

Q There are just two other things I would like to have you explain, if you can; here we have gains and we have losses? A Yes, sir.

Q And we have under there the words "Other fat men", and also lost? A Yes.

Q What does that mean? A That means customers lost to competitors, taken away from us. We try to keep a correct record of just where our trade goes.

MR. MILLER: That will be all. I wonder if I can have a copy of this?

MR. WILLIAMSON: Yes. I will prepare you an exact copy.

THE ARBITRATOR: The witness is excused.

T H E O D O R E A R N H O L T Z then took the stand.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q Mr. Arnholtz, what is your business, please?

A Office Manager for The Van Iderstine Company.

Q How long have you held that position? A Twenty-one years.

Q And were you in and about your duties as office manager of The Van Iderstine Company in the month of June, 1929? A I was.

Q And at the time the business of The American Agricultural Chemical Company was taken over by them? A Yes, sir.

Q And have you since made a count from the books of the Brand Corporation of the number of customers loaded by them for the month of June, 1929? A I have.

Q And do you recall what number of customers their records showed they could have loaded during that month? Just answer by yes or no, do you recall the number?

A Not exactly.

Q Do you have records here from which you could determine that? A Oh, yes.

Q Let it go for the moment; are the records of the Brand Company from which you made such a count here in this room? A They are.

Q Did you within the last two or three weeks have any conversation with anyone purporting to be an accountant for The American Agricultural Chemical Company? A I did, yes.

Q Who was that person? A Mr. Mayo.

Q Is he in the room now? A He is.

Q And did you give him access to the books of the Brand Company? A We did.

Q And what books would that include, what records? A The statements and ledger sheets.

Q Statements and ledger sheets for the period of March, April and May and June, of 1929? A Yes.

Q Was he in and about your office examining those records to your knowledge? A He was.

Q For what period of time, do you know? A From March until June.

Q For what period of time? You mean that he examined the records covering the period from March until June of 1929, is that right? A Yes.

Q For what period of time was he in and about your office examining those records, if you know? A About one week.

Q And what week, do you know? That is, was it this year or last year or when? A Last week.

Q Last week? A Yes.

Q Did you also make a count from the Selner Company's books of the customersloaded by them during the month of June, 1929? A I did.

Q And were those records available to Mr. Mayo at the time last week when he made his inspection? A They were.

Q Did you have anything to do with keeping those records for the period of from March to June, 1929? A No.

Q Do you know who did keep them? A Yes.

Q Who was it? A The personnel in the Brand office.

Q Will you get such records as you may have with you this morning, from which you could refresh your recollection as to the count of customers in both the Selner and Brand businesses for the month of June, 1929? A Yes.

Q Will you get those records, please? A Yes.

Q Will you tell us what records you used, from which you obtained those figures? A The statements.

Q What do you mean by statements? A When the tickets

come in, we have them posted to statements.

Q What do you mean by tickets? A The tickets made up by the drivers.

Q Do you know how the driver makes those tickets up? A Not what other drivers do; I know our own drivers.

Q Have you seen any of the tickets that the Brand drivers make up? A No.

Q Have you seen any of the statements made up from the tickets by the Brand personnel? A Yes, sir.

Q And it is all those monthly statements for the month of June that you used to count? A That is right.

Q The number of customers for that particular month? A Yes.

Q Would your count include a customer even though they had loaded but once during the entire month? A Yes.

Q Would your count indicate whether they had loaded more than once during the month? A No.

Q It would then include any one and every one that had delivered any material to a Brand driver during the month of June, although he might have delivered but once; is that correct? A Yes.

Q What number of customers of that sort did you have from the statement for the month of June, 1929? A 1417.

Q What number did you find from the books of the Selner Company or the statement of the Selner Company for the same month? A 397.

Q And in the case of the Selner Company, did you have records from which to determine the count? A Yes.

Q Or the statements? A They had one of the statements.

Q That is the system that the Brand Company and the Selner Company used originally, is that correct? A No, they were different.

Q They were different? A Yes.

Q What records of the Selner Company did you really use in making the count of the customers they had during the month of June, 1929? A The statements called ledger sheets, contained in bound books.

Q And were those statements and/or ledger sheets made up from the drivers' tickets, so far as you know? A Yes.

Q And would your count for the Selner Company include a customer even though he might have loaded but once during the month of June? A Yes.

Q And the total is what? A 397.

Q You have the records here in the corner? A That

is correct.

Q Did you see that they were prepared and ready to be brought down here, and brought here? A Yes.

Q And they include the records of the Brand and Selner Company? A Yes.

Q That record of the deliveries of the customers, is that correct? A Yes.

Q For the month of June, 1929? A That is correct.

Q Do those records cover other periods of time? A Yes.

Q What periods? A March, April and May.

Q Of what year? A 1929.

Q And they include the statements and ledger sheets of both companies, is that right? A Not the ledger sheets, only the statements.

Q Are there any ledger sheets for either company? A Yes.

Q All these records you have here, they do include then such ledger sheets and/or statements as existed so far as you know at the time the business was turned over? A Not all the ledger sheets.

Q For this period? A No, there are more in the office.

Q More ledger sheets of the Brand Company? A Yes.

Q For this period? A Yes.

Q What do those ledger sheets cover, do you know? A They cover the same period; the postings were made from the statements to the ledger.

Q And in your count you relied on the statements alone? A Yes.

Q Without going into the secondary ledger entry? A Yes.

Q Those statements are here? A Yes.

Q For the Brand Company? A Yes.

Q And for the Selner Company? A No, sir.

Q Are the sheets here from which you got these 398? A Yes.

CROSS EXAMINATION BY MR. MILLER:

Q Did you make this count personally? A I did.

MR. MILLER: Then I am not going to ask you to offer these records in evidence, if we agree that we may check them over to ascertain the correctness of the testimony of these witnesses.

MR. WILLIAMSON: I think it is only fair to indicate, Mr. Miller, that they have always been open to you for your inspection, and you have not availed yourself of that opportunity; and they will always be open to you for further inspection; you are always welcome.

MR. MILLER: You have been very courteous in the matter. I just want it understood that they will be available to us for inspection and examination.

THE ARBITRATOR: That is understood.

Q You yourself, have you brought the books and records, to which you have testified as to this count of the June customers of the Brand Company? A I did.

Q And the number of customers you included in that count were all the customers who delivered at any time during June, whether they delivered only once or more than once? A With one exception, the statements marked "cash" were not included.

Q The statements marked "cash" were not included? A No.

Q Do you know why you did not include cash statements? A We did not consider that they were customers.

Q Why not? A Well, they were not loaded frequently.

Q Is there any reason why you should distinguish between cash customers and customers who did not pay in cash? A Yes; you may have a customer that you may simply load once in six months perhaps.

Q You paidno attention to that question in counting the customers who did not pay in cash, did you? A No.

Q Why did you do it in the case of a cash customer?

A We have hardly any customers we pay cash to; at that time I suppose there were odd purchases made.

Q Didn't you as a matter of fact know that three of these cash customers who delivered to you in June, were customers who had been delivering to you fairly regularly before that time? A No.

Q You did not know that? A No.

Q Did you make any investigation, when you came across those cash accounts, to find out what prior deliveries they had made ? A No.

Q You just took it for granted that because they were cash customers, they could be counted out, is that right? A Yes.

Q Is that right, you say? A Yes.

Q Was this count made for the entire month of June? A It was.

Q Or only for the part of the month of June which preceded the taking of the business by Van Iderstine? A For the entire part of the month.

Q For the entire month of June? A Yes.

Q The entire part of the month of June? A Yes.

Q What do you mean by the entire part of the month? A The statement showed during the month of June.

Q I just want to get it clear; you show then from

June 1st through to June 30th, do you? A That is correct.

Q Including then the period in June after which Van Iderstine took the business over? A That is correct.

Q Did you make any count for the month preceding June 21, when Van Iderstine took the business over? A No.

Q In other words, you don't know what the total number of customers of the Brand Company for the month preceding the delivery of its business to Van Iderstine was? A No, not for the three weeks of June; we had the count they made all the way back.

Q I beg your pardon. A We had their account for March, April and May.

Q You had the count for March, April and May? A Yes.

Q Did you make a count commencing with May 21 and ending with June 21? A No.

Q Confining myself now to the Brand customers, you say in May you made a count of the Brand customers for March? A That is correct.

Q What was the total of that?

MR. WILLIAMSON: Just a moment; of course I must object, after it was repeatedly stated to me this was as

of June 22, and there is no reason to elicit proof of accounts as of March. The contract speaks of the 22nd of June. My adversary has repeatedly stated at this hearing that that was the basis, so that to go back four months is of no moment to Van Iderstine. They were doing the business as of June 22, and are not interested in anything else; nor are they interested in what they had in March, because we are considering June 22nd, as you so well stated.

MR. MILLER: I thought I had made it perfectly clear in my opening statement that we were going to contend that in view of the negotiations which led up to the making of this contract, and in view of what the Van Iderstine people know about the business, and how it was being carried on, and in particular in view of their own request to us for these March figures, and what they told us as to how to conduct the business until the time that the business could be turned over, we could rely on these March figures as substantially accurate; and that even if technically under the contract the question as to what the actual number of customers was in June, or during the week preceding ~~xhe~~ June 21, even if technically under the contract that bears on the question of whether there was a breach, nevertheless from the point of view of

damages in this case, and from the point of view of showing what customers were actually lost and therefore what their damages are, it is essential to prove that we were correct, or substantially correct in our statements as to the number of March customers; and this will ultimately appear.

THE ARBITRATOR: I think I understand your position. Can we go on with the cross examination of this witness?

MR. MILLER: Yes, I will be glad to.

Q You did not make a count of the customers that delivered in March? A I did.

Q What was your count? A 1500, Brand customers only.

Q I am always speaking of the Brand customers; what was the count of the May Brand customers, your account? A 1444.

Q And what was the account for April? A 1471.

Q Did you in your investigation of these customers counts for March, April, May and June, pay any attention to the tonnage delivered during those months? A No.

Q You did not make a record of them or investigate the total tonnage delivered to customers during any of

those months? A No.

Q Or the tonnage delivered to individual customers? A No.

Q Did you make any attempt from the books and records of the Brand Company, to determine which of the March customers of Brand were customers who had dropped out before June 21? A No.

Q So you don't know whether they were large customers or small customers? A No.

Q You don't know, in other words, assuming your counts are right, and that between March and June the Brand Company lost a certain number of customers, you don't know what tonnage was lost? A No, I do not.

Q And have made no attempt to ascertain ? A No.

THE ARBITRATOR: Are you through with the witness?

MR. MILLER: Just one or two more questions:

Q Now, Mr. Mayo of the American Agricultural Chemical Company has been working on your books for about a week? A I think so; a little more than that.

Q And I understand from him that you have let him see everything that you have over there? A Yes, sir.

Q But isn't it the fact that until yesterday, when I think you called him up and told him that you finally located certain ledger sheets, you have not been able to

locate certain ledger sheets which would show certain of these things that he is trying to find out? A That is the fact.

Q It would take anybody who was going to analyze these accounts of yours for the purpose of ascertaining, not only the total number of customers during every month or during any week, but also for the purpose of ascertaining the tonnages of those customers, and analyzing the accounts for the purpose of ascertaining which of the March customers had been or had not been lost, - it would take a great deal more than a week to get all those facts out? A I think it would, yes.

MR. WILLIAMSON: I would like the record to show that the arbitration was agreed upon thirteen months ago, and during those thirteen months those records have been available for your examination; and this arbitration itself has two or three times been adjourned for the convenience of counsel on the other side.

MR. MILLER: You are not going to object to letting Mr. Mayo examine further?

MR. WILLIAMSON: No, but I don't want any misunderstanding.

MR. MILLER: I do not mean by my question to criticize you or your company. They have been most courteous

to us.

MR. WILLIAMSON: It is an indirect request for more time, which I do not believe you are fairly entitled to. I want you to have all the time in the world, but there are nights and mornings for it.

MR. MILLER: I think that is all.

L O U I S S O L O M O N then subscribed to the following oath:

You do swear in the presence of the everliving God that in the proceedings now pending between The Van Iderstine Company and The American Agricultural Chemical Company, you will tell the truth, the whole truth, and nothing but the truth, so help you God.

DIRECT EXAMINATION BY MR. WILLIAMSON:

Q Mr. Solomon, you have been in the butcher business under the trade name of Eastern Meat Supply Company, is that correct? A Yes.

Q And as such, you did business with the Brand Company, did you not? A Yes.

Q Selling them your scrap? A Yes, sir.

Q And in or about the summer of 1926, you had made various loans, had you not, or borrowed certain moneys from the Brand Company in connection with your business?

A Yes.

Q And those loans had aggregated approximately $10,000, is that correct, in the summer of 1926? A Yes.

Q And you had given a promissory note to the Brand Company yourself individually covering the indebtedness? A Yes.

Q And then in the summer of 1926 you filed a petition in voluntary bankruptcy? A Yes, sir.

Q And you were adjudicated a bankrupt, and later discharged as such? A Yes.

Q And shortly after being adjudicated a bankrupt you executed a promissory note dated November 1, 1926, in the sum of $9,654.45, did you not (handing paper to witness)? A No, I did not; I am the endorser on this note.

Q That is your endorsement on that piece of paper? A Yes.

Q Do you know who made the note, who is the maker of it? A Solomon Meat Supply Company.

Q That was the trade name? A Yes.

Q The Solomon Meat Supply Company? A Yes.

Q Incorporated? A Yes.

Q Subsequent to your bankruptcy, in the summer of 1926, did you cause a corporation by that name to be in-

corporated? A I believe I did.

Q And that is the name of the corporation under which you did business after your bankruptcy, is that right? A No.

Q What was the name of the corporation? A This business was not incorporated, I do not believe, in that year, but it was the following year.

Q That then was the trade name in 1926? A I believe so.

Q What is the date of that note? A November 1st.

Q But that note of which you are the endorser, and of which the trade name under which you did business is the maker, was given for an indebtedness of yours personally to the Brand Corporation or Company which was incurred prior to your bankruptcy, is that correct? A Let me get that straight again.

Q You are giving a note for something? A Yes.

Q You got something for the note? A Yes.

Q It was cash you got or credit? A Yes; we always got loans, and if we needed more money, we would get an additional loan, and sometimes take it out in trade and fats.

Q Isn't it correct to say that note represented such loans to you? A Yes.

Q You know that it does? A Yes.

Q And that indebtedness was incurred by you individually prior to your bankruptcy, is that correct, in connection with your meat business? A Yes.

Q As a retail butcher? A Yes.

Q That had nothing to do with any funds advanced to you after the bankruptcy, - that note, did it? A I don't understand.

Q I will put it this way; at the time of the bankruptcy, or at the time of your bankruptcy in the summer of 1926, you owed all of that and some more, didn't you, for moneys borrowed from Brand, prior to your bankruptcy? A Yes.

MR. WILLIAMSON: I ask that that note be marked in evidence as Van Iderstine Exhibit No. 2.

(Marked Van Iderstine Exhibit No. 2.)

Q I now show you this paper and ask you if you know what that is? A Shall I read it?

Q No, do you know what it is? A I do know.

Q Tell us what it is, if you know? A Well, it was an arrangement that I had made with the Brand Company.

Q The paper itself is a letter that you received from The American Agricultural Chemical Company, is that correct? A Yes.

Q And you received it in the regular course of the

mail? A I cannot say whether I have received it through the mail; I believe I had it with me when it was executed.

Q That is, you were present when it was signed, were you? A Yes, I was.

Q And it accurately describes in any event your arrangement with them as to your indebtedness at about that date, doesn't it? A Yes.

Q Do you know who the man was who signed it? A I know the gentleman's name; he is here.

Q What is his name? He is here? A Yes.

Q What is the gentleman's name? A Mr. Hornberger.

Q And you did business with him, did you? A No.

Q Did he act for the Brand Company? A With Mr. Brand.

MR. WILLIAMSON: I ask to have that marked Van Iderstine Exhibit No. 3.

(Paper marked Van Iderstine Exhibit No. 3.)

Q Now, sometime after 1926, you organized a corporation under which you did business in the retail meat trade? A Yes.

Q You are no longer in business, are you, Mr. Solomon? A No, sir.

Q And on or about May 21, 1929, you obtained a loan of $2,000 from the Brand Company, did you not? A Yes, sir.

Q And you gave them a note? A Yes, sir.

Q Is that the note? A Yes.

MR. WILLIAMSON: I ask to have that marked in evidence.

(Marked Van Iderstine Exhibit No. 4.)

Q Whose signature appears there as president of the corporation and as maker of the note? A J. W. Solomon.

Q Is that your brother? A Yes.

Q And is the note endorsed? A No, sir.

Q Does your signature appear anywhere on it? A No, sir.

Q Has the corporation for whom your brother acted as the president in the making of that note, got any capital stock? A I think they have.

Q And you owned all of it, is that correct? A Yes,- no.

Q How much of it did you own? A I didn't own any at the time, I don't believe.

Q I hand you this piece of paper, and ask you what that is if you know (handing paper to witness)? A That was the time this $2,000 was given to us.

Q And that piece of paper was your agreement, as you understand it, with the Brand Company? A Yes.

Q About the repayment of that money? A Yes.

Q And also the repayment of the other money borrowed by you individually prior to 1926? A Yes, sir.

MR. WILLIAMSON: I offer that in evidence.

(Paper marked Van Iderstine Exhibit No. 5.)

Q Does that paper bear your signature? A Yes.

Q And what is the signature appearing under the Solomon Meat Supply Company, Inc.? A J. W. Solomon.

Q And the other one is your brother? A Yes.

Q You do not have an independent recollection now of how much you owed the Brand Corporation? A I do not.

Q On June 22, 1926, do you? A No, I have not.

Q Did you talk to anyone connected with Brand Company about whether or not they should list their claim against you in the bankruptcy proceedings? A I talked with Mr. Brand.

Q You had a talk with him? A Yes.

Q And was a claim for your indebtedness filed in the bankruptcy proceedings? A No, sir.

Q Tell us what you said to Mr. Brand? A We have done business right along, and they have been fair with us, and I just thought so long as we were going to remain in business somewhere, regardless of what I would do, they would get the fat anyway, and we would take it out. In

those days things were a great deal different.

Q I just want what you said to him; in substance you said after you failed that you would give him this note and it will be perfectly good, representing this indebtedness? A Yes.

Q Is that right? A Yes.

MR. WILLIAMSON: That is all.

CROSS EXAMINATION BY MR. MILLER:

Q Mr. Solomon, before your bankruptcy in 1926 you had owned two meat markets as proprietor, one on Amsterdam Avenue and one on Columbus Avenue? A Yes.

Q And you had regularly been delivering to Brand before that time? A Yes, sir.

Q And like most butchers who delivered to Brand, they made you advances? A Yes, sir.

Q Which you were supposed to pay off from time to time? A Yes, sir.

Q From these deliveries which you made? A Which we always did.

Q And although you of course do not remember the exact figures at or about the time you went into voluntary bankruptcy in 1926, you owed Brand on that account somewhere in the neighborhood of $10,000? A More, about $14,000.

Q I have a copy of the account here, which shows $11,839 on May 31; that was the highest? A There was an additional loan for this new venture on Amsterdam Avenue. I don't remember the figures.

Q Then you went into bankruptcy? A Yes, sir.

Q It was voluntary bankruptcy? A Yes, sir.

Q And either at or shortly after the bankruptcy, you made certain arrangements with someone representing the Brand Company whereby that debt of yours was not to be scheduled? A Yes, it was to continue.

Q But you were to continue that debt along, and keep in business and pay it off when you could? A I did.

Q And as a matter of fact you did continue in the butcher business? A Yes, sir.

Q Right through after the bankruptcy? A Yes, sir.

Q You acquired new premises, did you not, and opened up a new shop at about that time? A Yes.

Q In another part of town? A Yes.

Q And the old business being closed up, was in bankruptcy? A Yes, sir.

Q But you went right along this new business in another part of town? A Yes, sir.

Q And our records so indicate? A Yes.

Q And right through the year 1926, after your bank-

ruptcy, - which was in June, wasn't it? A Yes, sir.

Q You continued to make deliveries to the Brand Company? A Yes, sir.

Q And those deliveries were applied against your then indebtedness? A Yes, sir.

Q And then sometime around about in November or late of autumn of 1926 you incorporated this new business under the name of the Solomon Supply Company, is that correct? A Why, I presume so; yes, that was the firm name; we traded under that name.

Q Then you organized a corporation, did you, later? A My brother did; it was sort of a hard thing to continue in business, and James died, who is my brother; we sort of worked together; that was all under the trade name.

Q I am talking now about the corporation which you organized. A Yes.

Q That was substantially a one-man corporation, wasn't it? A Yes.

Q That was substantially the same business, simply under the corporate name that you had been carrying on before that time? A Yes; we did the same butcher business.

Q And it took over the assets of your old butcher business, and assumed its liabilities? A I am sorry to say

there were not any assets; there were liabilities to take over.

Q Whatever the assets were, it took them over, you did have that butcher business then? A Yes.

Q The assets might have been nothing much but good-will; whatever the assets were, they took over the assets and assumed the liabilities? A Yes.

Q And except for the fact that you were doing business as a corporation after the organization of the company, it was the same old business? A Yes, sir.

Q And after the corporation was organized, in compliance with its obligation to assume the debts of your old business, it gave this note? A Yes.

Q To the Brand Company? A Yes, sir.

Q Which represented the then indebtedness? A Yes.

Q Of the old business to the Brand Company? A Yes, sir.

Q And after that the corporation continued doing business with the Brand Company? A Yes, sir.

Q Regularly? A Yes, sir.

Q And made deliveries every week? A Yes.

Q Right down to the time that the Van Iderstine people took the business over? A Yes, sir; if I am allowed to say, the business of course has dwindled down;

when the Van Iderstine people took this business over, there was not much there, and we were in bad shape, because at the time we did business with the Brand people, our offal, which was fat and bones, were big, and we made certain cuts and certain tests, and this fat was valuable, and we simply used this money that we borrowed, and it was easy paying itback at the rate of $500 or $1,000 each month, whatever it may have been, and that enabled us to go on; but when merchandise got high, and creditors were very strict, we were compelled to pay almost always cash for this merchandise, and it was very hard to be taking this new stuff and paying old debts with; so if we bought merchandise, we would simply leave part of the stuff and take credit for it on the merchandise as it came in.

Q In other words, you have been losing money? A Yes.

MR. MILLER: Now, you offered this note of May, 1929, in evidence, and the letter in connection with it; but if I understood you correctly this morning, your claim here is merely for the amount of the Solomon indebtedness when the Brand business was turned over, which represents the old indebtedness. I do not quite see the relevancy of the note.

MR. WILLIAMSON: Well, it is merely that all the

facts may be before the arbitrator.

MR. MILLER: Since I understand you do not claim a reduction on this $2,000, I am not going to offer any evidence about it.

MR. WILLIAMSON: No, we do not. I did think it a good idea to have the evidence here before the arbitrator, so that there would be no confusion. We claim only for the old indebtedness settled by this note during bankruptcy.

THE ARBITRATOR: Then is the amount of $10,000 odd reduced on account of the $2,000 item?

MR. WILLIAMSON: Yes.

THE ARBITRATOR: Then the claim is really reduced to $8,000?

MR. WILLIAMSON: Yes; it is reduced by our consent to $8,443.23, the amount due during the bankruptcy.

MR. MILLER: May I have that Brand account? I don't know how these figures check with yours; these sheets indicate that the balance of the Solomon account on June 22 is $10,373.29.

MR. WILLIAMSON: On June 22?

MR. MILLER: Yes; so if that is the balance which was turned over, I should suppose your claim would be for $2,000 less than that.

MR. WILLIAMSON: What was the total figure again, because I think there is a difference in our figures.

MR. MILLER: This statement shows the balance of the Solomon account on June 22, 1929, to be $10,373.29.

MR. WILLIAMSON: Then there is a discrepancy, because our sheets show $10,443.23.

MR. MILLER: That is the total amount of the account.

MR. WILLIAMSON: That is on the date,-- pardon me, yes; you were giving me the balance of June 22?

MR. MILLER: Yes.

MR. WILLIAMSON: Which was decreased by about $100?

MR. MILLER: Yes; it had decreased sometime between May, the date in May when this note was given, and June 22, when the balance was turned over.

MR. WILLIAMSON: And we are saying we do not include the $2,000 you loaned at the end of May, for the purpose of this arbitration, but do quarrel with that balance of $8,443 as of May 21, which was an indebtedness incurred years before.

MR. MILLER: Then can we stipulate to this effect, that if this item is decided in your favor, the judgment will be in the sum of $8,443.23?

MR. WILLIAMSON: On this item, yes.

MR. MILLER: There are some reductions after May.

We had better see if we can work out the exact amount of this now.

MR. WILLIAMSON: That is the exact amount on May 22.

MR. MILLER: That is the exact amount on May 22, but the difficulty is there are some items between the time of this loan in May and the time the business was turned over, and if we deduct $2,000 from the amount of the account on June 22, when the account was turned over, we get $8,373.29.

THE ARBITRATOR: Is there any question of the date, on any interest claim?

MR. WILLIAMSON: We would be claiming interest as of the date we paid cash for this Solomon item.

THE ARBITRATOR: As I understand it, you paid cash in settlement?

MR. WILLIAMSON: Yes.

THE ARBITRATOR: And then do you claim interest?

MR. WILLIAMSON: Yes, we would like interest on the cash paid out to the extent of $8,443.

THE ARBITRATOR: The interest running from 1929 on to whenever it is settled?

MR. WILLIAMSON: Yes. Could we settle the date? The payment was made on June 28, 1929; is that agreeable?

MR. MILLER: If that is the fact.

MR. WILLIAMSON: And we would ask interest on that $8,443.23 from that date.

MR. MILLER: I would like to ask a few more questions of Mr. Solomon:

Q Then as I understand it, you continued making regular deliveries to Brand right up through May and June of 1929? A Yes.

Q And after Van Iderstine took the account over, how long did you continue making deliveries to Van Iderstine? A Regular.

Q How long; for how long? A Well, right up to the-- let me see, right up to about February I guess, or March.

MR. WILLIAMSON: Of what year?

THE WITNESS: Last year, or May perhaps, right up -- I don't just remember.

Q I do not suppose you can give me the exact date? A I can not.

Q But Van Iderstine took the business over in June, about June 22, 1929; how long after June 22, 1929, did you continue to make deliveries? A What little there was, right up to June, I would say, 1930.

Q For about a year? A Or in May, - something like that; they have the records; I believe.

Q The reason I am asking you is because I have not

the records; and then you went into bankruptcy again, is that it? A No, sir, I could not continue any longer.

Q And you closed? A I just closed; I just went out; and the market men got together and formed a sort of a little corporation, and we went to the Commissioner of Markets, and told him the condition of the whole thing, and he granted them a permit, which was a very valuable permit, and they formed a company called the Washington Cut Meat Center, and I was to be employed there; but they just didn't want me to live, I guess; I did not like their proposition, and I simply dropped out.

MR. MILLER: I think that is all.

BY MR. WILLIAMSON:

Q The business did not amount to much by the time Van Iderstine came into it, did it? A It was about through; at the time things were bad.

Q Conditions were very bad with you along about May or June of 1929, were they not? A Yes.

MR. WILLIAMSON: That is all. That closes the Van Iderstine case; subject to rebuttal, of course.

(Informal discussion off the record which the stenographer was directed not to take.)

THE ARBITRATOR: We will take an adjournment until 10:30 o'clock tomorrow morning.

Whereupon, at 4:30 o'clock P.M., the hearing adjourned until Wednedsay, March 4, 1931, at 10:30 o'clock A.M.

Exhibit DD

THE VAN IDERSTINE COMPANY and
THE AMERICAN AGRICULTURAL CHEMICAL CO.

New York, March 4, 1931.

I n d e x

Witnesses:	Direct	Cross
Motion to Dismiss,	141	
Albert C. Hornberger,	151	167

ADAMS & CHAMBERS
15 Park Row
New York, N. Y.

1 THE VAN IDERSTINE COMPANY
and AMERICAN AGRICULTURAL CHEMICAL COMPANY

65 Liberty Street,
New York City.
March 4, 1931 - 10:30 A. M.

B E F O R E :

MR. J. VIPOND DAVIES,

Arbitrator.

A P P E A R A N C E S :

MR. WILLIAMSON, for the Van Iderstine Company.

MR. MILLER, for the American Agricultural Chemical Company.

MR. BERNHEIMER, Chairman of the Committee on Arbitration.

MR. DAVIS, Secretary to the Committee.

* * *

The hearing before the Arbitrator resumed pursuant to adjournment.

MR. MILLER: Before offering the evidence on behalf of the defendant, as I will call the American Agricultural Chemical Company, and in order to preserve my rights, I want to make what, in a law suit, would be a motion to dismiss at the close of the plaintiff's evidence. I move for an award in favor of the de-

2 fendant on both of the matters in controversy on this arbitration on the ground that the evidence of the plaintiff in support of its claims and each of them is insufficient in law to establish either of them. My reasons I will state briefly.

In the first place, as to the alleged shortage of customers. Of course, at this stage of the case, the contract has to be taken literally, and it is a question as to the number of customers in June, and we cannot at present rely on the March count. Nevertheless, I submit that there is no sufficient evidence on the part of the plaintiff that there was any shortage of customers in June nor on June 21st, the date of the execution of the contract. The only evidence that there were fewer customers than were represented by the contract is based on a count of the customers for one week preceding the execution of the contract and the turning over of the business. I submit that it is perfectly obvious and it practically requires no argument that the fact that during the last week of the conduct of the business by the defendant there were deliveries from fewer customers than the number reported or warranted in the contract, is no evidence of a shortage of regular customers; that no matter how

else the contract is to be construed, you can't possibly construe it so that no customer who has not delivered within the last week of that contract cannot be regarded as a regular customer. That is the first point.

The second point with respect to the customers is this, that even if I am wrong on the first point that I made, that there is sufficient prima facie evidence at least of the shortage of customers, there is no evidence whatever which is sufficient in law for any award of damages based on any technical shortage that might be found. In a case of this sort, of course, it is impossible to determine damages with absolute accuracy and precision. There has got to be some leeway. But in any case, of course this is not a case where the damages are liquidated. But in any case where the claimant is claiming damages, he has got to submit some reasonable basis from which damages can reasonably be calculated, and I submit that no such basis has been presented. The only evidence in support of the claim for damages on account of shortage of customers submitted by the plaintiff, is the evidence of a number of witnesses to the effect that it was more or less customary in the trade from

time to time to get new customers by paying them bonuses, certain amounts. Now, in the first place I submit that that is not the proper measure of damages in a case of this sort. If, as a matter of fact, this warranty was breached and the defendant did not have the number of customers that it represented and warranted by the contract that it had, the damages clearly are the difference between the value of the business as it would have been with the number of customers represented, or rather the difference between the contract price of the business and the price that it would have been had the lesser number of customers been represented, and you can't in a case of this sort measure damages on the price that they would have had to pay for new customers. But even if that is wrong, there is no sufficient evidence here from which any reasonable estimate of damages could be made, for this reason: all they have proven by these witnesses is that it was more or less customary from time to time in this business to buy new customers by giving them bonuses. In other words, they would go to a customer and say, "if you will give us your business, make your deliveries to us, we will give you a certain amount of money." But how much money? The witnesses say that --

one of the witnesses said that he would give a hundred to a hundred and fifty dollars for an account which would probably bring in from six hundred to eight hundred pounds, wasn't it, a month? Another said, as I remember, that he would expect about a thousand pounds a month for an account for which he paid that amount of money. Well, assume that that is all true, how does that help us in this case? We are not dealing in this case with accounts in the abstract, with what you might call a hypothetical case. We are dealing with concrete accounts. It doesn't do us any good to know that you could go out and buy an account which would bring in deliveries of six hundred, eight hundred or a thousand pounds a month for $150 or $100 unless we know whether or not these particular accounts were accounts of that sort. All we know in this case is, assuming we take the evidence of these witnesses as sufficient so far as the facts to which they have testified, but not that an account of a certain number of pounds a month or a week can be bought for a certain number of dollars, but the question in this case, assuming this is the proper measure of damages to them, for the purposes of the present argument, we don't know in this case in any event, there isn't a scintilla of evi-

dence in this case as to the particular accounts in question. The witness has said that he has not made any investigation whatever either of the actual accounts -- the actual old accounts -- of the individual actual old accounts of Brand & Company or of the aggregate total during any month. So it is giving no information whatsoever by evidence that you could buy an eight hundred pound account for $100 until we know at least what the average of the old accounts were, until we know at least what the total tonnage, we will say, for a month, is, so that we can divide that by the total number of accounts during a certain month. Then we might know whether or not these accounts of the Brand Company were accounts which ran in that neighborhood. But these Brand accounts might have been accounts which averaged only 100 pounds a month. They might have been, conceivably, accounts which averaged two or three thousand pounds a month. Until we know those facts about the accounts, the evidence of these witnesses is utterly valueless. How, for instance, assuming that you decide now that there had been a breach of this warranty to the extent, let us say, of fifteen counts, you can't assume, without some evidence, that these lost accounts, these accounts which dropped out,

were accounts for which the Van Iderstine Company would have to pay $100 or $150 or any other amount.

Counsel for the plaintiff yesterday laid great stress on the fact that this contract, and that is part of the case, this contract does not say anything about tonnage, it simply mentions customers. He says, "we are not interested in tonnage, we are only interested in customers." Well, I will take that statement at its face value, and see just where it will get us if we proceed on that theory. If they are not, as a matter of fact, interested in customers, we shall show in our evidence that they were very much interested in tonnage. If they are not, as a matter of fact, interested in tonnage, it is perfectly obvious that in order to maintain the March number of customers and keep that number of customers up right down to June 24th, when the contract was turned over, we could have gone out and bought for obviously, a great many times less than a hundred or a hundred and fifty dollars all sorts of small accounts to fill our contract on his own theory, by buying whatever the shortage was, say fifty, by buying fifty very small accounts, if, as a matter of fact, we can take his statement at the face value that they were not interested in tonnage but only interested

8 in accounts. And/so for that reason I submit there is no evidence that in this case, even if it should be held that there has been a breach of the warranty, there was no evidence whatever in this case sufficient to form the basis for the estimation of any damages with respect to the lost customers.

Now, so far as the claim on account of the Solomon account is concerned, the facts there are substantially, I think I might say absolutely undisputed. I will just read a pertinent provision of the contract. I think it has not been read in full:

"The buyer (that is Van Iderstine) is to buy and the seller is to sell and assign such of the current accounts and notes receivable of Herman Brand Inc., and G. Selner Company arising out of the loans and/or advances by said subsidiary companies to its or their collecting and rendering business customers, together with all existing securities therefor."

Now, the evidence is perfectly undisputed that this Solomon account first, as an account of Solomon individually, had been running for many years; that he went into bankruptcy; that there was an agreement by/which the claim on the account at that time should not be scheduled; thereafter he organized a one man corporation which took

9 over his assets and assumed his liabilities and which gave a note for the amount of the account at that time. It seems to me without any definition we all know what current account means. If that is not a current account, an account which runs right along, if that is not a note receivable given by reason of loans or advances by Brand & Company, I don't know what it is. So it seems to me that on the undisputed facts I can't imagine myself what the theory is by which this can be said either not to be an account receivable or not to be a loan arising out of advances made by these companies, because it is perfectly evident of course, and we will submit authorities to that effect, it is perfectly evident that in spite of the bankruptcy that a note given even if the debt is discharged, a note given for a debt which would be discharged in bankruptcy, is given for good consideration. There was nothing dishonest, nothing fraudulent about this understanding that this claim was scheduled. If the Brand Company at that time wanted to take, instead of taking a very small dividend, possibly not more than two or three cents on the dollars on this claim, wanted to give this fellow another chance to go on and continue his deliveries, it had a perfect right to

take the chance that it would collect the note. The evidence shows that there was no break whatever in the business, that right down through the bankruptcy and all that summer and fall following the bankruptcy, he continued to make the usual deliveries, and was credited with the amount of those on his indebtedness, and he organized this one man corporation which gave a note for the exact amount and the business was continued in that way right straight on down to the time when the Van Iderstine Company took the business over, and that is not a current account, and if that is not a note given for advances made by Brand & Company, I don't know what language means, and for that reason I submit that there should be an award in favor of the defendant on account of this Brand claim.

MR. WILLIAMSON: If I may say one word, but I assume you would be willing to let us submit a memorandum containing our conclusions in review of the evidence at a later date?

THE ARBITRATOR: Oh, I think undoubtedly so.

MR. WILLIAMSON: If that will be true, I shall not attempt to write my memorandum now.

THE ARBITRATOR: You will have a chance to put it in shape. I suppose we might take the motion and then

go on with the evidence.

MR. MILLER: I think the motion ought to be held under advisement.

THE ARBITRATOR: All right.

MR. MILLER: I mean because, of course, we are going to submit a memorandum too.

THE ARBITRATOR: Yes.

MR. BERNHEIMER: May I interject, Mr. Davies. You merely have noted what Mr. Miller said.

A L B E R T C. H O R N B E R G E R, a witness called by the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MILLER:

Q What position to you occupy, Mr. Hornberger, with the Company? A Manager of the Rendering Department.

Q How long have you occupied that position? A Eight years.

Q And what, generally, are your duties as manager of the Rendering Department? A To supervise the operations of the various departments of the work in manufacturing, sales and so forth.

Q Did that include the business of the former subsidiary of the A.A.C. of the Brand Company? A Yes sir.

12 Q Do you know when this Brand Company which, as I understand -- was that a wholly owned subsidiary of the A.A.C.? A Yes sir.

Q Do you remember when it was acquired by the defendant? A About 1911.

Q And at the time it was acquired was there a man by the name of Brand connected with it? A Yes sir.

Q And another man by the name of Felsenthal connected with it? A Yes sir.

Q Who were Brand and Felsenthal? A Well, Herman Brand started the business with his brother-in-law, Julius Felsenthal, and I understand they had been in the business a great many years prior to the time we acquired it.

Q Do you know whether that was a corporation or -- of course it was a corporation, but do you know whether they practically controlled it when you acquired it from them? A Yes, they did control it.

Q How long did they stay with the Company? A Until June 1928.

Q And what did either Felsenthal or Brand do after leaving the Company in the way of setting up in new business? A Well, Felsenthal put his son into the business of collecting fats and suets and so forth.

Q And did that new business compete with the A.A.C.?

13 A Yes sir, very disastrously so.

Q What was the result of this competition of this new business of Felsenthal on the number of customers of the Brand business? A I do not recall the exact number, but from about July 1928 to about June 1929, they made a raid on some of the better customers of ours and we lost a great many of them.

Q Are you familiar with the general methods used in this business for obtaining new customers and retaining old customers when old customers started to leave you? A Yes sir.

Q What are the usual methods employed, if there is more than one method? A Well, in order to acquire a new customer usually one of three things is done: either a bonus is paid, a cash bonus or a cash loan is made in the form of cash or fixtures, or both, or an extra over the market price is paid for the material.

Q These cash bonuses you speak of are the same kind of bonuses that the witnesses for the plaintiff were testifying to yesterday? A Yes sir.

Q What is the usual method or what are the usual methods employed to retain old customers when you have reason to believe that they may leave you and go to someone else? A Well, usually an old customer, if he owes you money for some cash

previously given him, it is not so easy for him to get away, but an old customer who does not owe you any money, he might be persuaded to remain with you by either loaning him an amount of money or by paying a bonus or by paying an extra over the market price of the material.

Q Do you know which of those three methods of retaining old or obtaining new customers is the commoner in the business? A I think the commoner method on the part of the larger renderers was to advance loans either in the form of fixtures or in cash.

Q What advantages, if any, are there in using that method over the method of giving a cash bonus? A Well, if a cash bonus is given, particularly to a new shop, it is impossible to tell whether or not he is going to make a sufficient amount of material to justify any bonus that you might pay him. There is no assurance that he will continue to give you the material. He may give it to you for a month or two and then decide to give it to some one else for a consideration.

Q The bonus is simply a gift? A It is merely a gift.

Q You have no strings tied to him if he goes to another concern? A Well, there usually is an agreement to the effect that the butcher will give you the materials for a year,

15 but those agreements are not considered very seriously by the butchers as a rule.

Q Of those three methods which was the method most often used by the Brand Company? A The loaning of money.

Q While you were in control of the business? A Loaning money in the form of cash or fixtures.

Q What has been the policy with respect to obtaining new customers or retaining old customers by giving bonuses? A Well, the Company was opposed to the paying of bonuses, and I know that Brand and Felsenthal were likewise opposed to the paying of bonuses, but we did upon a few occasions, comparatively few, pay bonuses.

Q That was the exceptional rather than the usual method? A Yes sir.

Q Do you know whether or not at some time before this contract was executed there was made for the Brand Company account of the customers who delivered to it during the month of March 1929? A Yes sir.

Q Do you know whether the results of that count were given to Van Iderstine? A Yes sir they were.

Q Do you know about when that was done? A During the early part of May 1929.

Q Do you knowwhether or not the first figures given to Van Iderstine were figures simply as to the total number

16 of March customers? A The first figures given were the total of both the Brand and Selner routes.

Q After those figures were given to the Van Iderstine Company, did you have any talk with any one connected with the Van Iderstine Company about further facts that they wanted? A Yes, and I gave Mr. Hays the total number of customers and he sent a memorandum asking me to insert on that the number of customers by various classifications, as butcher shops and so forth, and likewise asked me for the tonnage of that particular month of March 1929.

Q Mr. Hois is the Mr. Hays who is in the room now? A Yes sir.

MR. MILLER: Mark this Defendant's Exhibit A for identification.

(Paper marked Defendant's Exhibit A for identification.)

Q Will you look at that paper marked Defendant's Exhibit A for identification and tell me what it is? A It is a copy of a form handed to me by Mr. Hois, either handed or sent through the mail, on which he tabulated information which he would like to have me give him respecting the tonnage, customers, etcetera.

Q In order that it may be clear, state whether that form was prepared by you or prepared by Mr. Hois? A It

was prepared by Mr. Hays.

Q And with the exception of the pencil marks on that Exhibit, was that the paper that you got from Mr. Hois?

A Yes sir.

Q Or a copy of it? A Or a copy of it.

Q Now tell me about the pencil marks on the pencil and what they are. A Well, we show here the tonnage collected from the various routes, provision houses, slaughter houses, hotels, etcetera, and gave the total tonnage figure there representing the March 1929 tonnage. Under that we segregated that material, showing the pounds of fat, edible suet, inedible suet, breast fat, and below that we gave the classification of the number of customers.

Q That is a combined form for both Brand and Selner; it doesnot show how many of those are Brand and how many Selner's?

A No sir; that is combined for both routes.

Q These figures of tonnage opposite the words routes, provision houses, slaughter houses, hotels etcetera, are those weekly or monthly? A Those are monthly tonnages, monthly figures.

Q Is there any doubt in your mind that Van Iderstine knew that thisrepresented monthly or not?

MR. WILLIAMSON: Well, it would not be important whether he had a doubt what they understood, Mr. Miller.

18 The witness is asked whether he had a doubt whether some one else understood something. Now, I submit we are getting clear out of the realm of reason.

MR. MILLER: I will withdraw the question.

Q You say those figures were put on there by you at Mr. Hays's request? A Yes sir.

Q Did he ask for the amount of the weekly tonnage? A No.

Q A week in March, or did he ask for the total March tonnage? A He asked for the total March 1929 tonnage.

Q And those are the figures? A Yes sir.

Q Of the total March tonnage? A Yes sir.

Q What is that that looks like B. P. there? A That is a combined total of Brand and Preston.

Q What is Preston? A Well, the Preston Works, the name of the works at Long Island City which we sold to the Van Iderstine Company. It is the factory.

Q Did you give a copy of that statement with those same figures on it to Mr. Hays? A Yes sir.

Q Is there anything in pencil on that Exhibit which was not on the paper you gave Mr. Hays? A Yes, I think there is. There is a memorandum here of --

Q (Interrupting) That is the memorandum at the bottom? A Well, just before that bottom memorandum there is a -- Mr.

19 Hays 'phoned me and asked me for the dimensions of the property and the length and width of the building, and I made a note of it on this particular sheet and 'phoned that information to him. And below that the words, "the above tonnage includes Rousch & Company's deliveries of 40,480 pounds". That represents --

Q (Interrupting) Not what it represents. Do you remember whether that penciled memorandum was on the copy you gave Mr. Hois? A I am not certain it was.

Q Now you can tell what that refers to. A That refers to a tonnage collected by a peddler in Brooklyn and delivered to the Preston Works, which tonnage is included in the March tonnage shown above, and which was included as a customer when we sold this business to the Van Iderstine Company. It is something that if they kept it up, why, we know nothing about it.

MR. WILLIAMSON: May we have that item marked so that later there won't be confusion as to what it is? I see there are a large number of items on it.

MR. MILLER: Well, let's put it down this way, and see if I am correct: Mr. Hornberger states he does not include here the pencil notation on Exhibit A, "the above tonnage includes Rousch & Co. deliveries of 40,480 pounds" was on the paper which he gave to Mr. Hois.

Now I offer that Exhibit in evidence.

20

MR. WILLIAMSON: I do not object at all to the Exhibit as a paper delivered to Mr. Hays or as a representation of the A.A.C. Company to the Van Iderstine Company during the course of negotiations. We do not, of course, concede the truth of anything stated thereon or that the paper itself is proper evidence of the truth of anything recited on the paper, it being perfectly clear it is taken by some one, some unknown person from some record or elsewhere, perhaps from his recollection, and he is not here produced for cross examination, so that the truth of the statement or this paper as evidence of the truth of the statements is in no way conceded when I say I concede that paper was delivered to Mr. Hays.

MR. MILLER: You are not objecting on the ground this is a copy of the paper at all?

MR. WILLIAMSON: Not at all.

MR. MILLER: I am not offering it as evidence of the truth of anything stated.

THE ARBITRATOR: No. It is admitted for what it shows.

MR. MILLER: I am offering it as a statement made to Mr. Hois.

MR. WILLIAMSON: Very well.

(Defendant's Exhibit A received in evidence the words

"for identification" being stricken.)

MR. WILLIAMSON: I would like the record also to show that our position is on this paper and any other oral or written evidence of transactions prior to the execution of the contract, that they are entirely incompetent, irrelevant and immaterial unless and until they bear directly on conversations or writings purporting to define or interpret occurring as, say, in Paragraph 5 of the contract as used in "Notes Receivable" or the word "approximately" as used in Page 1 in relation to the number of accounts to be turned over. No other questions are involved here. Certainly all negotiations are merged in that contract. That is why you have contracts, is to express what the parties mean, and you do not come back to them to get into a quarrel about what you said on Tuesday and what the other fellow said on Wednesday, because you resolve it all to writing that there may be eliminated all controversy about that detail that was reduced to writing.

BY MR. MILLER:

Q Now, this Exhibit A is undated. Do you remember about when that was given to Mr. Hays? A About the time or just after I received that data from the Brand and Preston Works, the early part of May, I believe.

22 Q After you gave this paper to Mr. Hays did you have any conversation with Mr. Hays or any other person connected with Van Iderstine about the Brand customers? A In connection with their taking over the business, do you mean?

Q Yes, in connection with their taking over the business, either or/after or before? A Well, in the early part of the negotiations Mr. Hois telephoned me from the Biltmore Hotel and asked me to come over there and talk with him and Mr. Alling, who was there from Chicago about the business.

Q Mr. Alling is the Mr. Alling, Senior? A Mr. Alling, Sr., and, I believe, Mr. Alling, Jr. was there likewise.

Q Mr. Alling Sr. is what officer of that Company? A I believe he is the President of the Van Iderstine Company.

MR. WILLIAMSON: He was the President.

Q Did you meet them? A Yes.

MR. WILLIAMSON: Just before you go into that, I don't want to interrupt constantly, and I assume the Arbitrator is going to take everything for what it is worth, I don't know, but I submit again that general conversations between these parties resulting in a written contract is not pertinent here, it is not fair to allow it in, it prolongs this inquiry, it is irrelevant, it is expensive and in no way binding on us.

We signed a contract just so we would not have to sit down another day and determine whether somebody said something or what somebody else said and then write another contract. We are here to interpret an existing contract and not write a new one, and if you have any testimony that bears on interpretation of the language of the contract, very well, put it in, but general conversations bearing on the contract has no place here.

MR. MILLER: Well, we will take the conversation.

MR. WILLIAMSON: Well, confine the question to conversation relating to some phrase in the contract.

MR. MILLER: I want to ask him what the conversation was.

MR. WILLIAMSON: Then I note an objection.

Q You say they called you up and asked you to come to the Biltmore? A Yes sir.

Q And did you go there? A Yes sir.

Q Did you see them? A Yes sir.

Q Who was there? A Mr. Alling, Sr. and Mr. Alling, Jr. and Mr. Hayis.

Q If you can, I would like to have you fix the date of that, if you have any memorandum from which you can fix the date of that. A The first of May, 1929.

24 Q Now will you state what the conversation was?

MR. WILLIAMSON: I have the same objection.

THE ARBITRATOR: I will take it for what it is worth.

A The conversation was with reference to their probable purchase of the Brand and Preston routes and works, and during the course of that conversation I asked them just what policy we might pursue in the conduct of that business, that obviously we could go out and increase a number of customers by advancing money in the form of loans and payment of extras and build up that business or we could simply continue as we had been continuing the business, and that was the method that they suggested that we continue and which we finally adopted.

Q Did you explain to them the method you were then using in the conduct of the business? A I don't suppose that I explained to them the method we were carrying on at that time. It was pretty much the same method as all renderers were carrying on. There was quite a lot of competition at that time, not only on the part of Felsenthal but other smaller renderers. One other point mentioned at that meeting was this, that it was absolutely important that no one know anything about the proceedings, that if they took over the business no one in the trade was supposed to know a thing about it until the very last minute, and the result of that was

that we did not mention a word of this to any of our Brand or Preston employees until the day upon which the transfer was made.

Q Well, I was going to ask you that. That is another matter. Was there anything more in this conversation at the Biltmore on May 1st, which you remember with reference to the method of conducting the business? A I do not remember anything further.

Q Now, do you know what notice of this sale to Van Iderstine was given to the customers of Brand and Selner either before or at or shortly after the date of the contract, which was June 21st? A Yes sir.

Q Now, state what was done with reference to giving their customers notice of the sale. A Well, just prior to June 22nd, a number of Van Iderstine envelopes were handed to us and were addressed by our Advertising Department with the use of the addressograph plates which we have of the names and addresses of the Brand and Preston customers.

Q May I interrupt there a minute. You speak of Preston. Is that more or less the same thing as Selner? A The same as Selner, yes. These envelopes were given to our Advertising Department and addressed to the customers of Brand and Selner routes and they were held in the New York office until the day of transfer. On June 22nd, the day of transfer,

these envelopes were delivered to Mr. Hays or to the Van Iderstine Company, along with a letter written by Herman Brand Incorporated to the customers and by Selner Company to their customers advising them of the sale of the business, the respective businesses, to the Van Iderstine Company, and I understand at the same time, in the same envelope, a letter was written by the Van Iderstine Company to these various customers of the Brand and Selner routes, soliciting the continuation of their business.

Q Do you know whether or not there was usually a falling off, a seasonal falling off, of customers during either the spring or the summer of the year? A We did experience that seasonal falling off, yes sir.

Q About when did it usually begin, to your knowledge? A Oh, along toward say the middle of May, right through the summer months.

Q What was the cause of that falling off? A I think in our case it was largely due to some of the Metropolitan, of the New York shops, closing and just remaining closed for the summer or some of those fellows opening up at shore resorts where we did not collect the materials.

Q Did Brand collect outside of Manhattan? A Yes, he collected in Brooklyn and in a small part of Long Island.

MR. MILLER: That is all.

27 CROSS EXAMINATION BY MR. WILLIAMSON:

Q Can you name one buteher shop that was closed for the summer that had previously been delivering materials through Brand? A I can't name one, no, but I could find out very readily by referring to the records.

Q I know, but you say that your recollection is that Brand lost business because butcher shops in New York City closed down for the summer and went to the shore. Can you name one such account that was lost by Brand in May or June of 1929? A In my position I would not be able to do that, because I dealt with none of our customers.

Q You cannot? A No.

Q In your position can you say that any customers were lost in that manner? A Yes.

Q During that period? A Yes.

Q And in your position can you state approximately how many butchers closed down during that period of time? A Well, approximately.

Q Very well, if you will tell us approximately how many? A There might be as many as twenty to forty shops.

Q Well, is that a guess or is that your recollection of approximately how many did close down? A Well, that is my recollection of how many would close down.

28 Q But you cannot now recall the name or even the location of a single one of the twenty or forty? A I never knew it, so I can't recall it.

Q So you don't know now that twenty to forty did close down? A Only from my records.

Q Well, are you testifying from your recollection or your records? A I am testifying from my recollection.

Q Very well. Now, from your recollection twenty to forty shops did close down in that period, and I ask you from your recollection can you name as much as a single shop, or can you even locate it approximately, any one of the forty? A I never had a list of them, consequently I can't mention any one, but we could very easily obtain that information by referring to the records which are now in the Court room here.

Q Well, will you go and get those records of the twenty to forty shops, please, that we may see which ones they were? A I would not be able to find that. I am not familiar with the books. I never looked at those books.

Q Well, all I want to get at is, isn't it a pure guess on your part that shops closed down just for the reason they were going to the shore for the summer? A No.

Q It is not pure guess? A No.

Q But you haven't the slightest idea who they were? A No, I would not be interested.

29 Q In any event, the number of shops that you owned and that you were going to sell, that was a very important question so far as you know, wasn't it? A Yes, I expect it was.

Q That is, you understood at all times that no one would pay as much for a thousand shops as they would for fifteen hundred, isn't that true? A That is reasonable, yes.

Q And as you increase the number, you increase the value that is being turned over, always, don't you? A Yes.

Q And Brand did not make a practice of collecting fats or scraps from any shops where they lost money steadily in doing it, did he? A No.

Q That is, so long as a butcher shop account remained one of the Brand Company, it was profitable? A I won't say that, no. There were unprofitable accounts as well as profitable ones.

Q Was it your business to determine whether or not a shop would be continued as an account for Brand and for Selner? A No, it was not.

Q Did you have anything to do with deciding that question? A Individual shops were not put up to me at all. We dealt in total volume of tonnage and numbers of customers.

Q Do you know who did pass on the question of whether an account should be discontinued because it was unprofitable? A Well, if an individual account were called to my attention

and found to be unprofitable, I would pass on that.

Q Do you know any one else who had authority to pass on that question? A Well, about the time or after Brand and Felsenthal, Mr. Capalan had authority.

Q And that is 1928? A That is 1928 to 1929.

Q And from that time down to the time this contract was signed in June 1929, you had nothing to do at all in determining whether or not an account was profitable and should be carried? A Indirectly, yes. If it were called to my attention I would pass on it, and if it were not called to my attention, obviously, I would not have anything to do with it.

Q And you had some one under you, did you, to pass on that in your place? A Yes.

Q And that is the gentleman you referred to? A That is the person in charge of Herman Brand, Incorporated.

Q So that he really had general charge of that office and the work in that period? A Yes.

Q You were out of touch with whether customers were being dropped or whether new customers were being obtained except as it might come to your attention in an unusual case, is that correct? A Oh no, I knew all the time just how many customers were taken on or lost, as the case might be.

Q Did you know the occasion for taking on or losing them? A Yes, we always had a reason for losing a customer or maintaining them, as it might be.

Q Do you know a customer that Brand carried in 1929 that was carried at a loss and had been carried at a loss for some period? A I don't know. There probably were some customers, but I don't know the names.

Q Again wouldn't that be a sheer guess on your part this morning, you cannot name a single customer carried at a loss? A No; I would not know the names of those customers.

Q Then you would not know that they were carrying one at a loss, would you? A I can't say that they were.

Q Well, it is a simple thing to tell us whether or not as a broad business policy the Brand Company expected to and did make a profit on any accounts that they carried. Did they? A On every account that they carried?

Q No; I say as a broad general business policy, isn't it true that the Brand Company carried accounts as long as they were profitable, and where possible to determine the question dropped them when they became very unprofitable? A No. Along in 1929 it was altogether likely that we did carry customers on whom we knew we were losing money, because we were paying too darn much for the material.

32 Q Well now, what proportion of your customers represented a loss, would you say? A Well, I can't say. That would be merely a guess if I did give it.

Q Well, will you give it as best you can, because even so it would be better than any of us could do. A I would say 25%.

Q Now, did you tell either Mr. Hays or Mr. Alling at that May conference that you were carrying 25% of your customers at a loss? A Not in so many words, no.

Q All right. Did you tell them in substance, and if so what did you say? A I do not recall, except this, that we talked over general competitive conditions.

Q I want you to tell us whether or not you told them in words.

MR. MILLER: Please don't interrupt the witness. He was trying to give a fair answer.

MR. WILLIAMSON: Well, were you through?

THE WITNESS: I think so.

Q I ask you to tell us in words or substance anything you said to Mr. Hays or Mr. Alling about carrying 25% of your customers at a loss at the May conference at the Biltmore Hotel in New York? A Well, the discussion was not along that particular line. I can't give you a direct answer to that question. We did not discuss it along that

general line.

Q And isn't it a fact that neither at that time nor at any other time did you say anything directly or indirectly about carrying 25% of your customers at a loss? A It is a difficult question to answer. Discussing competitive conditions and the prices then obtaining for raw materials, it is obvious to almost any one who knows the rendering business that a profit could not be realized at that time.

Q Well, please. Did you ever say anything on that subject of 25% of your customers being carried at a loss? A No.

Q Never at any time in your life have you told any one connected with Van Iderstine that that was a fact until this moment, have you? A You asked me the question, and I told you.

Q Well, answer my last question, please. A No.

Q Assuming that you were offered a price of $425,000, wouldn't it be very important to you to know whether or not 25% of that business was carried on at a loss? A Yes.

Q So that item was well known to you in May 1929, was it not, that you were carrying on 25% of your business at a loss? A Yes.

Q And at that time you knew the gentlemen to whom you were talking were contemplating paying approximately $400,000

34 for that business, didn't you? A Yes.

Q And at that time you made no mention of this 25% of the business carried at a loss? A No.

Q In May and June of 1929 did you or did you not think that a butcher shop account was worth dollars and cents to a collector? A Yes, they are worth dollars and cents.

Q And they were then, were they not? A Yes.

Q And at that time, to your own knowledge your Company paid cash for such accounts, did they not? A To a comparatively few, yes.

Q What do you mean by "a comparatively few"? A I don't suppose that in any month we had more than four or five bonuses paid to customers.

Q Well, would you say that your recollection is that you paid cash for approximately four or five customers on the average per month during 1929, up to the time of turning over the business? A I doubt it would average that much.

Q Well, tell us what it would average, please, for the months down to and including June 22nd, 1929? A I cannot answer that definitely.

Q Can you approximate it, please? A Two or three.

Q Two or three. Now, what average price did you pay for them? A You are not talking about bonuses now?

35 Q I am talking about the money you gave a butcher for his agreement to give you his scrap for a year? A Well, the majority of our new customers were obtained by loaning money.

Q You have said there were two or three at least, to your best recollection, to whom you paid cash for that agreement. I want to know what the amount of cash was that you paid those customers? A Well, we paid $50 to as high as $200.

Q Never paid more than $200? A Yes, in one case we paid a lot more than that.

Q When was that? A I do not recall, but I think we bought a truck for a butcher at one time.

Q And in what year was that? A Oh, it seems to me that was in 1926 or 1927.

Q And in 1929, up to the time of turning over the business, do you recall of ever paying more than $200 for such an account? A No.

Q Do you recall ever paying as little as $50? A Yes.

Q What case? A I can't give you the specific case, but we can find that out.

Q Well, you do definitely recollect there was such a case where you paid less than $50? A All bonuses were submitted to us for approval before they were paid.

36 Q And you have a definite recollection now that you bought one shop for less than $50? A More than one shop.

Q During 1929? A Well, I won't say during 1929, but along about that time.

Q Would you class March as a summer month? A No.

Q Would you class April as a summer month? A No.

Q Would you class all of May as a summer month? A Not all of it, no.

Q Do you know of any shore resorts that open during May every year? A Well, they open up the end of May.

Q Do you know of any butcher who closed his shop in New York and went to the shore in May 1929, and whose account had been with the Brand Company? A No sir.

Q The Brand Company collected scrap from shore places, in any event, did they not, in 1929? A Yes, I said they collected part of Long Island.

Q And was there any reason why they should lose the business of a butcher merely because he moved his location? A No.

Q But you are confident they did lose some of that business? A Yes.

Q Between May 15th and June 22nd? A Yes.

Q And during that time you were being advised if and when such business was lost, is that correct? A No, during that

37 period I was not being advised.

Q Well, who would have known that? A The man then in charge of that business.

Q And who was he? A Mr. Capalan.

Q And how long had it been prior to that period that you ceased to know anything about when you lost an account? A Several months prior to that.

Q So that in March you had no idea how many customers Brand had, did you? A No.

Q And in May? A Yes, in May we got the information showing how many they had in March.

Q And isn't it true that your company regularly kept monthly statements from which it could be determined precisely how many customers they loaded that month? A Yes.

Q And that was true in March 1929? A Yes. I did not have that in April.

Q Did you have records for March? A Yes, but I got them in May.

Q Well, is it or is it not true, to your own knowledge, that the Brand Company in the regular course of business kept monthly records in the month of April 1929 of the number of customers loaded by them that month? A I think they did, yes.

Q Well, haven't they always, since you have been connecte

38 with them? A Well, I know that I always got the reports up to that time.

Q How long have you been connected with the Brand Company? A Eight years.

Q Throughout that period isn't it true that in the regular course of their business they made up monthly statements for every customer loaded by them? A Yes.

Q And anyone in the organization, by referring to those monthly statements, could have told precisely how many customers they had for that month? A Yes.

Q And that is true for the whole eight years? A Yes.

Q And that would include April of 1929? A Well, it just so happened that that one month differed, because I did not get the reports for that time.

Q You mean you did not keep them? A I did not get the reports.

Q Aside from the question of whether you got the reports, don't you know of your own knowledge that the Company kept and made those statements? A I don't know whether they did or not, but there is a witness here that can tell that.

Q Except then for the month of April 1929, all during that period of eight years of your connection, they did have such statements, didn't they? A Yes.

39 Q And in May did they have such statements, in May?
A I don't know.

Q You mean to say that you have never looked at the statements for May, of Brand & Company for May 1929?
A Never did.

Q And never for June? A Never have.

Q And never for April? A No.

Q But you have for March? A I did not look at the statements. I got the report from the office of the number of customers.

Q Do you have any doubt in your mind this morning that on May 1st, a proper person, properly qualified person, could have taken the statements of the Brand Company and have determined within one or two precisely how many customers were loaded by Brand for the month of April? A Yes, that could have been determined.

Q You have no doubt about that at all, have you?
A No.

Q And that could have been determined for May 1929, and for June, down to and including June 22, 1929? A Yes.

Q Just a simple matter of counting pages of paper?
A Yes.

Q You never said anything, did you, to Mr. Hays, about the fact that you were losing about seven or eight per cent.

of your customers per month during March, April and May of 1929? A No.

Q Would you count that a normal loss, let us say, for the month of March, 1929? A No, that was over a normal loss.

Q That would be an abnormal loss, wouldn't it? A Yes.

Q You could not have stayed in business very long if you kept losing customers at that rate, could you, as a matter of mathematics? A No.

Q March was not a summer month? A No.

Q And the Brand Company was losing about seven or eight per cent., or did lose, rather, better put it that way, seven or eight per cent. of its customers that month, did it not? A I don't know what the percentage was, but they did lose customers.

Q Well, they lost more than a normal amount of customers, didn't they? A Yes.

Q And when did you first know that fact? A I think I got my records for May and June some time in July.

Q After the contract was signed? A Yes.

Q Well, weren't you a little surprised then to see that you had been losing seven or eight per cent. of your

41 business steadily each month for March, April, May and June 1929? A Well, we had been losing prior to that time.

Q Well, I say weren't you a little surprised to find how much you had been losing for those months?

A Yes.

MR. MILLER: Seven or eight per cent. each month?

MR. WILLIAMSON: Well, that is what I am suggesting, but the witness can always tell me whether the facts are the other way or not, if he knows. I don't know, and neither do you.

Q Do you know any other collector of scrap who, in the year 1929 or any part of it, lost any such proportion of his business as the Brand Company lost between March and June 1929? A No, I do not.

Q Would you pay as much for 1794 butcher shop accounts as a collector, as for 1931? A No.

Q Would you pay as much for 1794 butcher shop accounts with a given total as of June 22, 1929, as you would pay for those shops with that same total and, in addition, 137 other shops? A No.

Q How much do you say 137 regular customers are worth to a collector of scrap? A Are you talking about buying the route or the routes and customers alone,

42 or buying it along with the plant and business?

Q I am talking for the moment about a man who came to you with 137 butcher shop accounts from which he had been regularly collecting scrap at the rate of once or twice a week, and he said to you I want to sell this route, this group of butcher shop accounts to you as a collector, how much would you give me for it? What would your answer be? A I don't know.

Q They would have a value? A Yes.

Q A substantial value? A Yes.

Q And those 137 accounts would have a value regardless of the gross tonnage, wouldn't they? I don't ask you how much, I say regardless of the gross tonnage, that number of regularly maintained butcher shops in New York City, delivering all their scrap to you as a collector, would have a substantial value? A Yes.

Q Now, as a collector and from your experience, what number of shops would you understand to be meant by the language, "regular customers from whom it is collecting fat, bone, grease and so forth, consisting of approximately 1,860 butcher shops." That language used to you as a collector would indicate to you how many shops? A Well, approximately 1,860.

Q And by approximately what would you mean, had you

43 written those words? A Why, considering the nature of the business and the competition prevailing at that time, approximately would, to my mind, mean that somewhere within three or four per cent. of that number one way or the other would cover.

Q That is, seven per cent. would certainly be outside of "approximately", wouldn't it? A I think that is a little more than I would expect.

Q It is as much more as three or four is different from seven, isn't it? A I think so.

Q And as a matter of fact, if that business were conducted as you say too that the Brand people conducted their business, the man who made that statement could look at papers and by merely counting them tell you exactly how many it made, couldn't he? A Yes.

Q And if he could do that and told you he had approximately so many shops, would you still expect that it could vary as much as three or four per cent. from that number? A Well, that depends upon the particular -- the date upon which that number was taken.

Q Well yes, but you take 4% of 1800, roughly that would be eighteen fours, that is 72 shops. Now, if a man came to you as a collector and represented that he had 1860 shops and he could tell exactly from counting

slips of paper how many he did have, would you expect him to offer to turn over 72 less than that number? A That depends on whether I am buying the route itself or the business along with it, the plant and so forth.

Q Well, I want you to assume now that you are buying the route itself. A Will you ask the question again, please?

The question was read by the stenographer as follows: "Q. Well yes, but you take 4% of 1800, roughly that would be eighteen fours, that is 72 shops. Now, if a man came to you as a collector and represented that he had 1,860 shops and he could tell exactly from counting slips of paper how many he did have, would you expect him to offer to turn over 72 less than that number? "

A No.

Q How much leeway would you give a man as a collector, where that man could by a simple process of counting slips of paper tell you the exact number, and where he had used the phrase "approximately" a given number, what leeway would you give him? A If I were going to buy a route I would have that count made as of the date of purchase and have no "approximately" in the contract.

Q Well, assuming that he represented to you that that

was the count as of the date of purchase and he said "approximately" that number of shops, how much leeway would you expect to give him? A I would not give him any leeway.

Q That is, you would expect him to turn over precisely the number represented except for a possible clerical error in counting? A That is a contract not using the word "approximately".

Q No, I want you to assume the word "approximately" is there and you are dealing with a man that all he has to do is to simply count some slips of paper and can tell you exactly how many he has, and he represents he has a given number and says he will turn over approximately that number, how much leeway would you give him?

MR. MILLER: I submit this is not a fair question, because any contract that contains the word "approximately", the meaning of that word "approximately" has got to be judged by the circumstances under which that particular contract is made. You cannot ask a witness just in the abstract how much leeway he would assume is given by the word "approximately" in a contract which says "so and so many approximately" without any reference whatever to the circumstances under which

such a contract is made.

THE ARBITRATOR: It occurs to me as a perfectly fair question, considering the position in which the witness is held and the business engaged in. I do not see any reason why it should not be answered.

MR. MILLER: If talking about this contract I think, of course, it is fair, but I do not think he can put an abstract question like that, and there can't be any hard and fast rule.

THE ARBITRATOR: I suppose we all have our ideas of what "approximately" means.

MR. WILLIAMSON: The question is asked under these circumstances because these words were used by collectors. Here is an experienced collector, one of the parties, and I ask him for his expert opinion of what collectors would mean when that language was used, and what he would expect a man to have meant when he used that language in connection with the sale of shops. I think it is quite important and material. Will you read the question?

The question was read by the stenographer as follows: "Q. No, I want you to assume the word

"approximately" is there and you are dealing with a man that all he has to do is to simply count some slips of paper and can tell you exactly how many he has, and he represents he has a given number and says he will turn over approximately that number, how much leeway would you give him?"

A Well, if the word "approximately" is used, I don't know just what I would say, but if I were buying a route and counted the ledger sheets and was given the list of customers and I bought a certain number of customers, I would expect that number of customers.

Q You would not expect any to be turned over to you that were closed shops, would you? A No.

Q And you certainly would not expect to accept anybody as a customer that had not loaded more than about once every other month, would you? A No.

Q How often would you assume a man would load before you would define him a regular customer? A I would say a regular customer would be one who delivered material during that current month during which I bought it.

Q So that if he turned over 1800 shops and none of them delivered oftener than once a month, you would be satisfied? A I would not say once a month, no;

48 once a week.

Q That is a regular customer in the sense understood by collectors, is a fellow that delivers at least once a week, isn't it? A Yes.

Q So that if you were going to test whether or not he had turned over a given number of customers, you would look to see if they had loaded at least once a week? A Yes.

Q And you would charge them off if they only were loading once a month? You would not pay him money, would you, for someboy who only loaded once a month? A Well, if he is just one of a list of customers I think he might be thrown in with the rest.

Q Well, how long would you carry him as a regular customer if he only loaded with you once a month? A How long would I carry him?

Q Yes? A I would continue to carry and collect from him.

Q And that would mean to you he was giving most of his business to some one else, wouldn't it? A Not necessarily, no.

Q Would it mean that is all the scrap he had? A Yes, it might.

Q And do you know of any butcher shop, in your ex-

perience, that only had scrap to deliver once a month?

A No.

Q And there aren't any, so far as you know, are there?

A No, if they are regular butchers and if they are operating.

Q I want you to assume they are butchers with their places open every day somewhere in the City of New York. You never heard one that had scrap to deliver only once a month, did you? A No.

Q So in any definition of the word, a regular customer must deliver at least once a week, isn't that right?

A Yes.

Q And you are familiar with the making of loans to butchers? A Yes.

Q You have had considerable experience with taking promissory notes as evidence of those loans? A Chattel mortgages and so forth.

Q And sometimes just a promissory note without security at all, isn't that true? A Yes.

Q And you are familiar with this Solomon account, are you not? A Yes.

Q Now, if you were to pay cash to this person selling you 1800 butcher shop accounts and all loans he had made to butchers, secured or unsecured, would you count a loan a

current loan that had been made some three or four years prior to that purchase? A If he is continuing to deliver materials to me I would.

Q And if he is continuing to deliver materials to you, although the receivable, the note, is in evidence of a debt incurred three or four years before and the note itself was given three or four years before, you would count that a current receivable? A Yes sir.

Q And that is in accord with your notions of good accounting? A Yes sir.

Q So that a current receivable hasn't any relation to when the receivable came into your possession? A So long as the man is delivering materials to you regularly, a regular account.

Q So that if he were delivering materials regularly, it would not matter to you at all that the note he had given you for $10,000 was to cover an indebtedness that occurred ten years before, would it? A Not so long as he is a good customer delivering materials.

Q No. You would count that note a current receivable? A Yes.

Q And that would be true irrespective of the size of that note compared to his business? A Right.

Q And therefore, if Solomon was delivering approximately

51 enough material to meet the interest payment on his note, the note nevertheless is a current receivable? A Well, that was not the case.

Q I did not ask you what the case was. I asked you to assume that now, if you will, that if Solomon delivered scrap of a monied value equivalent to the interest on the indebtedness, would that in your mind then make the note he had given a current receivable? A So long as he continues to deliver materials, yes.

Q Now, were you familiar with the accounts that were purchased for cash by the Van Iderstine Company? A Just what accounts do you mean?

Q All of the accounts for which the $277,000 were paid? A Yes.

Q You were familiar with those, were you not? A Yes.

Q Now, on the Solomon matter it is correct to say, is it not, that the note given in 1926 covered his personal indebtedness to Brand? A To the Brand Company.

Q Yes; and it is true to say, is it not, that in May 1929, the note that was given for the additional loan of $2,000 was the note of his Corporation and covering the indebtedness of a corporation? A Yes.

Q And you knew then that he had been through bankruptcy? A Yes.

52 Q And you knew that toward the latter part of May 1929, he was in very very poor financial condition? A In May 1929, no.

Q You did not know then that at that time he was delivering about 20% or less of his normal amount of scrap to the Brand Company? A He was delivering less material at that time.

Q Do you know how much less? A I know, yes, because we have a statement of that.

Q Well, tell us how much less he was delivering. A I do not recall the figures off hand. I can get the statement.

Q Well, you know roughly. Half as much or a third as much or a fourth as much or a tenth as much? A I would say about one-third.

Q Your recollection now is that it was one-third? A Yes.

Q But if the records would show it was otherwise, you would not have any quarrel with those records of the Brand Company, would you? A No.

Q The Solomon account was paid for in cash? A Yes.

Q And you thought that was a good risk when Mr. Solomon was here the other day, that $10,000? A Yes.

Q Entirely fair and proper that Van Iderstine should pay cash for it? A I think so.

53 Q And although you know it never was collected?
A I know it subsequently was not collected.

Q And you know that between 1926 and 1929 he was not able to reduce the principal of $10,000 by more than $1,500 do you not? A Well, he produced enough material to have reduced it.

Q You credited him those materials against his indebtedness all though that period, didn't you? A Yes, but we did not give him credit for the whole value of his materials.

Q Well, what was the reason for that? A Well, because Solomon -- we were helping him along, carrying him along in business.

Q You were paying him cash for the material? A If he made $300 of material in a month, we might pay him $200 and credit his account for $100.

Q And it was essential to his continuing in business that you do that, wasn't it? A Well, he had shown a disposition to go along with us and he had been a good customer for many years, and we figured he would continue to be.

Q I want your opinion as a credit man here as to whether or not it was essential for his continuing in business, for you to hand him out these little doles of

54 $50 or $100 right along during 1926, 1927 and 1928? A Was it necessary?

Q Yes; could he have gone just as well without them? A Oh no; he required them.

Q He needed that hundred dollars a month, didn't he? A Yes.

Q And he owed you $10,000? A Yes.

Q And he was a good rish for $2,000 more in your opinion as a credit man, on a note made just before you turned the business over? A We considered he was.

Q You considered he was, didn't you? A Yes, I was party to it.

Q Now, name one other man, butcher shop account, during those years, to whom you ever loaned as much as $10,000?

MR. MILLER: How can this have any bearing whatever on the question as to whether or not this is a current account or current note within the meaning of this contract?

MR. WILLIAMSON: It seems to me it has every bearing.

MR. MILLER: He is trying to get this witness to admit that was bad business judgment in advancing this man $2,000. That is not in the claim.

MR. WILLIAMSON: I am trying to see why we should pay

55 cash for an indebtedness that everyone knew was not worth a cent when the contract says that all such obligations shall be charged off before turning over this property to us.

MR. MILLER: That was not your claim.

MR. WILLIAMSON: It is my claim.

MR. MILLER: Your claim was simply and solely that that is not a current account.

MR. WILLIAMSON: Well, that may be at this point, but there is another provision here about charging off these accounts that are bad, and if there was a bad one to the knowledge of this witness, why, then, it should be charged off, and I don't know how any one could solemnly declare that we should go to our bank and get $10,000 and pay dollar for dollar in equity and good faith, for such an account.

MR. MILLER: The contract itself provides they should have $15,000 off for accounts that are bad.

THE ARBITRATOR: Well, you examined this witness on the Solomon account, Mr. Miller, didn't you?

MR. MILLER: I beg pardon?

THE ARBITRATOR: You examined this witness on the Solomon account, did you not?

MR. MILLER: Yes, I asked him a few questions

56 about it.

THE ARBITRATOR: Oh I think that cross examination to get all possible facts in relation to it is perfectly proper.

MR. MILLER: The point is, I don't see how the question whether the Company used good judgment or not in making this loan in 1929 of $2,000 could have any bearing whatever on the only question in this arbitration, which is whether this was a current account.

THE ARBITRATOR: I think we ought to get all the facts we can to illuminate the subject.

MR. WILLIAMSON: My position is that I do not see how the A.A.C. Company could demand that any one should be required to give them $10,000 for a bad debt and call it a current account. Will you read the question?

The question was read by the stenographer as follows: "Q. Now, name one other man, butcher shop account, during those years, to whom you ever loaned as much as $10,000?"

A I don't know.

Q In all of your experience did you ever know of one?

A No, I do not recall one.

57 Q Now, does your signature appear about the middle of that page (handing)? A No, that is not my signature.

Q Do you know whose signature it is? A Mr. Hamerson.

Q Who is Mr. Hamerson? A He is our Vice-President and Comptroller.

Q He was your Vice-President and Comptroller? A Yes sir.

Q He is now? A Yes sir.

Q And he was, was he not, in 1929? A Yes sir.

Q You recognize that signature? A Yes sir.

Q Is that the usual letter head used by the A. A. C. Company about the date that paper bears? A Yes sir.

Q Were you familiar with the G. Sherry account as of 1929? A No, I am not.

Q Were you familiar with the Mocera account? A No sir.

Q You don't know then whether or not that account was taken up by the A.A.C. Company? A No, I do not.

Q Do you know anything about the I. Abramowitz account? A No.

Q Do you know anything about any of the accounts that were turned over to Van Iderstine? A No I do not.

Q And you don't know anything about the accounts, then, that the A.A.C.Company had drawn to their attention and did take up? A All I know that there were accounts drawn to

58 their attention, I don't know the nature of them and know nothing about the disposition of them.

Q You don't know, then, in any case, where the A.A.C. Company did recognize that they were not current accounts and did pay for them a refund? A I don't know what the details were. I know there were some accounts of that nature.

Q Well, could you refresh your recollection from any record here as to any of those particular accounts? A No, because I had nothing to do with the adjustment of those accounts.

Q Well, were you familiar with the records covering those accounts? A No.

Q You still consider the 1926 note made by Mr. Solomon a current account in the sense that the Van Iderstine Company should have paid cash for it? A I do.

Q You yourself would have been willing to have taken it at approximately its face value, would you not? A Yes I would, if I had bought the business.

Q Well, will you give fifty cents on the dollar for it today? A Well, things have happened since then that make it worth practically nothing.

Q Yes, but in May 1929, it wasyour personal opinion that that Solomon note of 1926, was worth approximately its face

59 value? A I think it was.

MR. WILLIAMSON: That is all.

RE-DIRECT EXAMINATION BY MR. MILLER:

Q Will you state on just what part of Long Island Brand took deliveries, if you know? A I can't state definitely, but I believe Mr. Keating can or Mr. Capalan.

Q In obtaining an account by the method of giving a bonus for it, is there any manner of telling how much you are willing to give for that account unless you have some idea of the amount of tonnage that is going to be delivered by the man after you have bought it? A I think that is pretty largely determined by the kind of store and the neighborhood and so forth, and you have some idea from that what possible amount of merchandise he would normally be expected to deliver from that shop or store in that neighborhood.

Q Until you know that, you have no means of telling how much you would buy an account for? A Oh no.

Q If you were buying, say, one hundred accounts, or were buying a route containing one hundred accounts, would it make any difference in particular to you -- or rather, if you were buying one hundred accounts, what would be the important thing in the gross sum that you would pay for them, would it be the tonnage or would it be something else?

A I think it would be the volume or tonnage that those hun-

60 dred shops would produce.

Q Would you be willing to give approximately the same amount for a certain gross amount of tonnage regardless of how many customers it was distributed amongst? A I think I would.

Q This talk of yours at the Biltmore with Messrs. Alling and Hays, you assumed in that talk, I take it, that they were familiar with the rendering business? A Yes.

Q And that they knew the competitive conditions existing at that time? A Yes.

MR. WILLIAMSON: I don't want what he assumed.

MR. MILLER: I know you may not.

MR. WILLIAMSON: And no one else does.

MR. MILLER: Well, I do.

MR. WILLIAMSON: I object to any assumptions he had in his mind that were not conveyed to us.

MR. MILLER: Perfectly proper, because it has been intimated that he improperly concealed at that conference certain facts, and I have a perfect right to show what was the general information of the parties.

MR. WILLIAMSON: You are trying to show what was in his mind, and I object.

Q Did you assume that Messrs. Alling and Hays were familiar with the competitive conditions existing at that time?

61 MR. WILLIAMSON: Same objection.

A Yes, sir.

Q Did you assume that they knew of this competition with Felsenthal? A Yes.

Q Did you assume that they knew you had been losing business on account of that competition? A Yes; I think it was generally known in the trade.

Q Perfectly common knowledge, wasn't it? A Common knowledge.

Q This statement that Mr. Hays sent you that you filled out, Defendant's Exhibit A, that "March 1929" was put on there by Mr. Hays, wasn't it? A Yes sir.

Q Did Mr. Hays or anybody else connected with Van Iderstine ever ask you for any statement for any other month? A Not for any later month, but they did ask for a later statement of detailed information concerning the classification of bones and so forth.

Q Did they ever make any objection to this statement which was given them early in May, on the ground that it was not a statement for April? A Oh no.

Q Did they ever make any objection to this statement on the ground that the number of customers here was based on a count for the whole month and not for the last week in the month or anything of that sort? A No sir.

62 Q Did you have on your books, in addition to this Solomon account, other accounts which have run back for as many years as this Solomon account had run back for? A Yes sir.

Q And on which the butcher was continually in your debt? A Yes sir.

Q And was the ratio between the amount of this loan and the amount of the deliveries which Solomon was giving you during this period anything out of the ordinary? A Well, we had loans on our books that would require just as long to liquidate at the rate of acquiring the value of the raw material deliveries monthly to the credit of that account as in the case of the Solomon account.

Q Taking into consideration the amount of the Solomon deliveries during these three years from 1926 to 1929, was the amount of advances to him out of proportion to the amount which you advanced to other butchers? A I don't believe so.

Q Do you know who it was that passed on this loan to Solomon in May 1929 when you decided to give it to him? A /It was passed on by our General Credit Manager and I believe Mr. Hamerson and I all approved it. I think

Q Did you all have something to do with it? A Yes.

Q What were the considerations that induced you to pass

63 on the loan favorably?

MR. WILLIAMSON: Please. How can we possibly be bound by what that group of executives determined up in that office when we had nothing to do with them at all?

MR. MILLER: Because apparently it is your theory that the Company used bad judgment in giving him this amount in May 1929, and that this was not a current account, and I am perfectly entitled to show why they gave that amount.

MR. WILLIAMSON: Then you have not understood my position at all.

MR. MILLER: I never have understood your position.

MR. WILLIAMSON: I don't care that you should, particularly, but to make it clear for the record and for the Arbitrator, I would say that we are not attacking your business judgment at all. You perhaps did what you thought was the best thing to do. We are attacking your good faith in trying to pass on that old debt settlement you made in 1926 as a current account for which we should pay you cash when no one in New York City would give you ten cents on the dollar for it. That is our position. We are not attacking your judgment, we are attacking your good faith.

64 MR. MILLER: Precisely, and I am trying to find out from this witness just why it was they determined to advance that money if that account was not worth ten cents on the dollar.

THE ARBITRATOR: Go ahead, Mr. Miller.

Q Please answer my question. A What is the question?

The question was read by the stenographer as follows:"Q. What were the considerations that induced you to pass on the loan favorably?"

A We knew Solomon to be a first class butcher, always produced large volumes of raw material, had a select trade and well thought of in the business, and we considered well worth while to advance him that $2,000. Now, I think our General Credit Manager had further information concerning him from a credit risk standpoint, but from a business standpoint I approved the loan.

Q What was your General Credit Manager's name? A Mr. Lafferty.

Q Where is he now? A I think he is at the office uptown.

Q Is he still up at your office? A Yes.

MR. MILLER: I think that is all.

65 RE-CROSS EXAMINATION BY MR. WILLIAMSON:

Q Did you know at the time you approved that loan that he had just been through bankruptcy or had been through bankruptcy in 1926, listing approximately $62,000 of liabilities and no assets? A When we approved this loan in 1929?

Q Yes? A Oh yes.

Q You knew that? A Yes.

Q Yet you thought Solomon was well thought of in business? A Yes. We knew all about the reason for his having gone into bankruptcy.

Q I didn't ask you about reason. I asked you if you knew that he had there in that proceeding scheduled approximately $62,000 for liabilities and no assets and finally paid out a five per cent. dividend. Did you know that? A I did not know the exact figure.

Q No; approximately? A I knew that he had gone through bankruptcy and that he had practically no assets at the time.

Q And had large indebtednesses? A Yes.

Q And yours was not among them? A No.

Q And you knew, did you not, that about the time you made the May loan he was not delivering enough scrap that you could credit against his account to even carry the interest

66 charges on the money he owed you? A I believe he was delivering more than that.

Q Well then, tell us what he was delivering? A Could I refer to a statement?

Q Surely.

MR. MILLER: We have the Solomon statement here, if you want it.

Q Surely; refer to anything you like. A (Examining paper) We made this loan along in May 1929, of $2,000.

Q To be exact, it was May 22nd, exactly one month before the business was turned over, isn't that right? A Well, my statement does not show the date, but that is approximately correct.

Q Yes. A Prior to that time he had delivered materials which, in five months --

Q (Interrupting) What months, please? A January, February, March, April and May 1st to 20th, 1929, say four and two-thirds months, which had averaged somewhere between $180 to $200 worth of raw materials per month.

Q For which you paid him the market price? A For which we paid him the market price.

Q And did you pay him that in cash? A No, we did not pay him cash.

Q How much was his indebtedness reduced in that period

67 of time? A From December 31, 1928, to May 20, 1929, only about $322.

Q That is, the principal and interest was reduced -- that is, interest was carried, was it? A We charged him no interest at that time.

Q Did you ever charge him interest? A Yes.

Q For how long a period of time did you charge him interest on that loan? A We charged him interest up to June 30th, 1927.

Q Do you know the reason for waiving interest after June of 1927? A Yes.

Q What was it? A Prior to that time Mr. Solomon was getting a premium over the market for his raw material because he made a class of material that was really worth more than the market price.

Q And was he paying you interest, too? A He was paying us interest, yes, at the time we were paying him a premium.

Q Yes. A And after that we gradually got that down to the point where we paid him the market price for raw materials.

Q So from 1927 down to May 1929, you paid him the fair market value for everything that he gave you, and in addition waived interest on that indebtedness, isn't that correct?

68 A Yes sir.

Q And he was able to reduce the principal during those months of January 1st to May 20th, 1929, but $300, approximately? A That is all the statement shows.

Q Well, do you know of any other moneys you got from him? A No. The thought is this. If we had given him full credit for the merchandise throughout the period there it would merely have been, we would have been willing to and would have advanced more cash.

Q In other words, if you had not paid him cash for his by-product, his scrap, you would have put him out of business, wouldn't you? A No, I don't say we would have put him out of business by any means.

Q Well then, what do you mean by saying --
A (Interrupting) I mean this, that according to my recollection from 1925 to the time that we sold the business to the Van Iderstine Company, he produced approximately $28,000 worth of raw material, and during that period we loaned him about $24,000.

Q So you had loaned him practically as much as he had ever sold to you and paid him the market value for all he sold you in addition? A That is about the way it worked out.

Q It would soon put anyone out of business, wouldn't

69 it, to do that? If you had very many accounts like that you could not stay in business very long, could you?

A Well, this account during the time we had it was a pretty good account and we would like a lot more of them.

Q Let us see. You got $28,000 worth of material, approximately, for which you paid him, in many instances, a bonus price, and, in all instances at least the fair market value, and during that same period of time you loaned him $24,000, isn't that right? A Yes.

Q And you say you would like a lot of accounts like that? A That is good business. We made money on that account. That was a profitable customer.

Q Yes, that is profitable except you lost $10,000 in cash in addition to the bonus, isn't that right, on the customer? A We never lost $10,000 on the account.

Q Well, you were out $10,800 in June 1926, weren't you? A Yes.

Q And you never lost anything because Van Iderstine paid you cash for it, and that is the only reason, isn't it? A During that period he had reduced his account down to about $8,400.

Q Yes, he had reduced $1,500 in four years, and you counted that good business -- years during which he had no interest to pay at all? A During that period

70 business was very bad, the depression was on.

Q His was particularly bad? A No, not worse than any other butchers.

Q During that time what do you think would have happened to Solomon in 1929 if you had not loaned him $2,000? A I have no reason to think anything serious would happen.

Q He really did not need the money then? A By all means. They all need money when they come to borrow.

Q And you think his account would have gone right along with you and he would have been a customer on June 22, 1929, of the Brand Company even though they had refused him the loan of $2,000? A By all means, yes.

Q You would have gotten his scrap and he would have gone some where else for the money? A I don't think he would. He would have gone right along with us and probably have made other plans for his credit for meat and so on.

Q Do you know anyone else that loaned him any money from 1925 to 1929, except Brand? A I think our credit reports indicate that banks loaned him quite a bit of money.

Q You don't know anything about that? A Our Credit Manager does.

MR. MILLER: I suppose if he had lost the business

71 not by/making this loan to him, we would be charged with one account short.

MR. WILLIAMSON: Indeed you would, and you would not be delivering $40 worth of scrap and saying June 22nd, the note was a receivable account.

Q Would you say from your experience that a scrap collector could have possibly hit upon an accurate idea of an average butcher shop account? Is there no such concept in your business as an average butcher shop account? A Oh yes, there is an average butcher shop account.

Q If you had 1,800 butcher shop accounts, wouldn't you expect them to sort of average out -- there would be some bad ones and some awful good ones and some common ones, and when you got all through with the 1,800 you could safely say they had an average worth of so much? A I would not average them that way, average worth. I thought you were giving us average raw materials delivered by each customer.

Q I understood you to say that was what determined how much it was worth; if I could tell you the tonnage of an average butcher shop, you could tell me what it is worth, is that correct? A I could tell you not what it is worth, but I could tell you how much money I would lend that man.

Q Couldn't you tell me what it would be worth in

72 cash to get a binding agreement to get his scrap for a year? A Knowing what I do about those binding agreements, if I were giving a bonus, I would not pay much.

Q So you could not tell me the value of that account if I could tell you the tonnage, if you had to pay cash? A If I have to pay cash or what I have to pay cash doesn't necessarily say that that store is worth that much to me; that is what I have to pay for it.

Q Ordinarily we figure things worth what we have to pay to get them, don't we? A I would not say so.

Q Apart from that, if I gave you the tonnage of a butcher shop, you can't tell me what your business judgment as a collector tells you that it is worth? A You know what it is worth from the amount of raw material it may make a year.

Q Can't you answer the question? Assuming a given tonnage for a butcher shop, you can't say what value that has to a collector? A No, I cannot.

Q You don't have any idea on that? A I cannot place a value on a customer on that basis.

Q If I told you I had 1,800 butcher shop accounts with a certain tonnage, then you would not know how much those would be worth? A No, I could not tell you.

Q You would not have any interest then even in en-

73 gaging in negotiations for the purchase of such a chai n of shops? They would be of no value to you that you could arrive at? A They would be of some value, but I am not in a position to say just what value they would have. I would want to know all about the individual stores, good bad and indifferent stores.

Q You could not then, from your experience, estimate about the average tonnage or poundage from 1800 shops, could you? A You are talking about poundage. Yes, we would arrive at the average poundage from each shop and total the poundage and divide that by total customers.

Q Summing up from your experience, you would not expect out of a total of 1,800 to find a general average production from a butcher shop account? A There would be a general average production, yes.

Q That production, the amount of it, determines the worth, does it not, of that account to you? If that average doesn't tell us, what average does tell you the worth of an account? A Yes, we would be guided by that.

Q So that in 1800 butcher shop accounts in question, you could arrive at the average value, just as you arrive at the average poundage, which gives you the value, couldn't you? A Well, if I know that 100 shops cost me so much

74 money, I would know that the average is so much.

Q I want now to see if knowing, from your experience, what the average production would be, you can say from your experience what the average worth of a shop would be when we are considering approximately 1,800 shops. A I would not place an average worth on a shop.

Q But you would place an average production on it? A Well yes, we do that in the business.

Q Give me the factors other than average production of scrap that tell you how much the account is worth? A Well, the quality of material that is produced by the particular shop.

Q Anything else? A And the amount of material.

Q Well, we will eliminate the amount of material now. What other factors than the amount tell you how much it is worth -- the quality? A Well, the kind of shop that it is.

Q Well, what kind of shop is worth more than another kind of shop? A Well, a kosher shop is not worth very much as a rule.

Q Well, but doesn't that depend on how much they produce and the quality? A Sometimes, but you do not make much money on those shops.

Q But if we get quality and quantity, as with every-

75 thing, do we need to know whether or not it is a kosher shop or grocer store or a bank? Do we need anything else? A I think we could arrive at some kind of a value from that.

Q From 1,800 butcher shop accounts couldn't you from your experience tell about what the average quality of products would be? A Approximately so.

Q Yes, just as you could say approximately what the quantity would be, can't you? A Yes.

Q So that of 1,800 shops, then, you can say what the average quality and quantity is from your experience, and those are the only factors you need to know to know the worth. So can't you tell us what the average value would be? A It depends largely whether I am buying a business of collecting and routes, or buying the plant and business.

Q I want you to assume you are buying a chain of butcher shop accounts, that you may have their scrap as a collector to make by-products from it, and you have hit upon an average quantity and average quality from your experience, what does your experience tell you is the average value? A We bought a great many routes, or several routes in different cites, and bought them on a very low basis.

Q Any in New York City? A I do not recall any in New York City.

Q Well, what do you say they are worth? A You are

76 talking about 1931 shops?

Q No indeed; we are talking about 1929 values.

A Talking about how many?

Q I say the average worth of a butcher shop account in about June 1929, in the City of New York? A I don't know, I am sure.

Q You haven't any idea? A Oh, perhaps $75.00.

Q Now, are a group of shops like that worth less per shop or more, to buy them singly? A Per shop?

Q Yes? A I think you could buy them for a lot less.

Q I did not ask you that; I asked you if they were worth more or less. A Well, a group, from the tonnage standpoint, would be worth more as a group than singly.

Q Isn't it a fact when you go out to buy a single account you have overhead and have to make trips and go there and see the people and have to offer special inducements to a new man, whereas if you buy an established business it is already going smoothly and they are delivering every week and good will is established, and therefore the large group is worth very much more than to have to go around and buy that many individual shops. Isn't that a fact? A Not entirely so.

Q Well, to what extent is it true? A It depends al-

77 together upon the circumstances surrounding the building up of that route.

Q I asked you to what extent it is true that a group of shops are not worth as much as the equivalent number of individual units? A The extent to which it is not true is that if that is built up by a concern that is selling out and going into a competing business with you, why, obviously the worth is considerably less than if they agreed to remain out of the business for twenty-five years.

Q Well now, Brand & Company agreed to remain out of business for twenty-five years, so that this group of stores we are talking about here is worth more, so that that factor does not help us, does it? A No, it does not.

Q So that this group would be worth more. Can you think of any other reason why this group would not be worth more than the same number purchased individually? A No.

Q So that it is your opinion that these 1800 we are talking about here were worth more as a group than if you had to go out and buy them individually? A Yes.

Q What do you estimate to be the average production of a butcher shop when you said they would be worth $75?

A An average butcher that would produce somewhere around $30 worth of material per month.

Q You might translate that to pounds, please, at the

78 prevailing rates in 1929? A Oh, about six to eight hundred pounds of fat and about that quantity of bone and possibly a few calf skins.

Q That, then, is the quantity and quality of a shop you have in mind? A Yes.

Q Can you name one shop in 1929 of that quality and quantity of production that you were able to purchase for $75.? A No, I cannot.

Q Did you buy any? A Yes, we made some bonuses.

Q You spoke of paying $50 to $200, and even more than $200 in one case. Will you tell me one shop that you ever bought for a hundred dollars that produced six hundred to eight hundred pounds of fat a month and some bone and some calf skins? A I can't without referring to records. I don't recall any.

Q Will you refer to such records as you have at some time and give us that data? A I think that can be dug out.

Q Well, today, and looking back to your knowledge of conditions in 1929, is it your judgment that shops could have been purchased generally and frequently in the City of New York for $75.? Have you ever heard of it being done? A Oh, I imagine it has been done, yes.

Q Well, do you think that is in rare instances, or do

79 you think that is a general market value for such a shop? A You don't know, when you are buying a shop of that kind and give a bonus, what the man is going to make. It may be good and it may be a lemon.

Q I want you to assume that in 1929 you had confidence that the man would produce from six hundred to eight hundred pounds, in fact the man would guarantee that per month, would you say it is your experience that it could be purchased for $75? A No, I would not say from my experience that it could be.

Q Then you don't know of anyone ever succeeding in getting such a shop for $75, do you? A Well, as a rule they are not taken in that way.

Q But in such cases as you have knowledge of where they were taken in that way, you know of no shop of that character that was ever purchased for $75, do you? A No, I am not familiar with the names of shops, and so I can't answer.

Q Well, I don't mean names; any shop. A Well, any shop I can't tell you.

Q Well, is it your opinion that you would rather have the tonnage equivalent of 1800 shops produced by, let's say, 500 markets then, than by 1800, if you were the collector? A No, I prefer the 1800.

80 Q And you prefer the 1800 to having the same tonnage delivered to you by a hundred shops, wouldn't you? A I prefer the 1800 to the one hundred.

Q That is to say, you prefer to have 1800 delivering to you, say, 18,000 pounds of fat, than to have, let's say, 800 shops producing that same tonnage? A Yes.

Q So that there is nothing in this theory, is there, about 1,794 shops giving you the same tonnage as 1,931, therefore the one group is just as valuable as the other? A Well, the difference in number of customers is not sufficient to make an awful lot of difference.

Q Well, just how much difference is an awful lot when applied to 137 customers, in dollars and cents? Can you tell us that? The Arbitrator must decide that. Give him some light from your experience. A Well, it is almost impossible to say what 137 shops are worth, for this reason, that if you are going out to get 137 shops you would not go out and pay a cash bonus to get 137 shops at one or two or whatever hundred dollars you might feel like paying for it; you can get that material and that number of shops for a great deal less cost to you by lending the money.

Q Yes, but when the A.A.C. Company were dealing with the Van Iderstine Company they were not talking about loans to butchers, were they? They were accepting cash for

81 customers, isn't that your understanding? A We are talking about getting 137 shops.

Q Now I have asked a new question. You knew full well, did you not, that the Van Iderstine Company were paying that cash for customers among other things, isn't that right? A If the accounts receivable, the balance due on those accounts.

Q The accounts receivable were another item. You got cash for them too, didn't you? A Yes.

Q And you knew part of the property you were selling were these customers accounts when the A.A.C. Company were selling to Van Iderstine, didn't you? A No; my impression was that they paid nothing for the customers and gave us the money for the plant.

Q So it is your opinion this purchase price should have been paid and kept and reclaimed even though the A.A.C. Company did not turn over any butcher shop accounts, is that right? A Not any, no.

Q Well, they had to turn over a few, then? A Approximately 1931.

Q And except as they did turn over that many, they were not entitled to the money they were being paid, isn't that true. You knew that, didn't you? A No, I did not.

Q You thought, then, this was just a sale of physical

82 equipment? A Very largely so, yes.

Q And to a minor extent it did include a few odd butcher shop accounts, perhaps? A It included all we had; every customer we had.

Q Yes. A That was necessary.

Q That was a very important item, wasn't it? A It would be in the buying of a business, yes, but the --

Q (Interrupting) Without customers there was nothing to buy, was there? A There are a great many other considerations that prompted that purchase.

Q Don't tell me what the Van Iderstine Company had as reasons for purchasing. All I want to get from you is if it is not the fact that the transferring of these customers was the big item of property that the Van Iderstine Company were buying and the A.A.C. Company were turning over.

MR. MILLER: Well then, I object unless you want him to tell what prompted the Van Iderstine Company, which you just asked him.

MR. WILLIAMSON: I will withdraw it.

Q Assuming you were making this purchase instead of the Van Iderstine Company, would it or would it not be of major importance to know how many customers you were going to get? A Oh yes, I would want to know.

Q Now, you say it was common knowledge in the trade

83 that Brand & Company were losing customers, is that correct? A Yes.

Q Do you know any other company of collectors about whom it was generally know that they were losing a great many customers? A Other collectors?

Q Yes, in New York City. Was that condition true of any other of the competitors of the Brand Company? A I do not recall any other company who had lost business about that time.

Q If the Brand Company lost them, somebody else had to gain them, didn't they? A Yes.

Q So that this disastrous competition you speak of was disastrous only to the Brand Company, so far as you know, wasn't it? A Well, obviously we know more about our own business than others, but it was disastrous to us.

Q And so far as you know, not disastrous to anybody else, isn't that correct? A I know the competitive conditions were such that there was bad competition, and the way each one of them won any trade was merely by paying the price the other fellow offered to hold their trade.

Q Yes, but so far as your knowledge goes, this competition you speak of being so disastrous in 1929, was not disastrous for anybody but the Brand Company, was it? A I think it was.

84 Q What other company was it disastrous for? A I don't know. I don't know anything about the results of their operations, but I do not believe anybody was making a great deal of money in 1929, or during that period.

Q Do you know whether or not others were losing customers at the rate the Brand Company was losing them? A No, I do not.

Q During March, April, May and down to June 22nd, 1929, you personally knew that you were losing a disastrous number of customers, didn't you? A I knew up to the end of March, as I explained before. I did not have the records subsequent to that.

Q And the fact is down to March the Brand business had lost customers at a disastrous rate? A For that year, yes, for a year.

Q What year? A From about July 1928, to my knowledge, to March 1930.

Q You never at any time said, in words or in substance, to anyone connected with the Van Iderstine Company, that the Brand Company was losing customers at a disastrous rate, did you? A No.

Q There would be a great difference, would there not, between taking money and going out and buying new customers between March and June 1929, and merely retaining those which

85 you thought you had in March? A There would be a great difference in what respect?

Q Assuming that in March you had 1931 customers, continuing the Brand business in such a manner that you should have 1931 as of June 22nd, 1929, would be vastly different from going out to buy and acquire new customers in addition to those you had in March, wouldn't it? A It would be a different procedure, sure.

Q That is, it would involve one thing to hold what you had as of March and quite another thing to add to it, wouldn't it? A Not quite another thing, no. We could add to them, we could add to the number which we had at March merely by going out and lending as much money as competitors would be willing to lend to a certain shop and get that shop.

Q But I want you to assume you had 1931 customers in March. A Yes.

Q And holding those customers through the months would not involve this expense you speak of, that would be connected with buying additional customers, would it? A Well, there would be expense, yes, because to hold and to satisfy customers who wanted a loan which was beyond all reason or wanted more for his raw material than it was worth, would cost something, and if we saw fit to let that customer go to the fellow whom he claimed would pay more for that material, we

86 lost that shop.

Q. Well, that is a general business condition that always obtains, doesn't it? A It is worse at some times than at others, surely.

Q Yes, but in the kind of business Brand was engaged in, those factors vary whether wespeak of 1929 or any other year, don't they? A To some extent.

Q And this loss of customers had nothing to do with the situation; it was something in addition to that? A It was primarily the Felsenthal competition that was disastrous.

Q Because previous executives of that Company were out competing with you; that is the disaster, is it? A That is it.

RE-REDIRECT EXAMINATION BY MR. MILLER:

Q The Brand Company was losing these accounts to Felsenthal because Felsenthal was getting his old customers back, isn't that it? A Yes.

Q And that is the reason the Brand Company was particularly hit by this new competition? A Yes.

Q By old Brand people? A Yes sir.

RE-RECROSS EXAMINATION BY MR. WILLIAMSON:

Q Did you ever tell Mr. Hayes that? A I do not recall telling him in so many words. I think Mr. Hayes knew about that.

87 Q Aside from what you think somebody knew, and aside from telling me the exact language, will you state anything that you ever said to Mr. Hayes on that subject?

MR. MILLER: Well, let me finish my examination.

MR. WILLIAMSON: I beg your pardon, I thought you were through.

MR. MILLER: No, not nearly through.

RE-REDIRECT EXAMINATION BY MR. MILLER:

Q If a man came to you and said "I have got a route with 100 customers, how much will you give me for it", would you think of making him any offer until he told you something more than that? A No sir.

Q If he came and simply said, "I have a route with 100 customers and they aggregate monthly at least so much", would you make him any offer at all on that statement? A No, I would want to know more about it.

Q In other words, it is practically impossible to make any estimate of either what single shop or a route of shops is worth until you knew at least what the aggregate monthly deliveries of those can be expected to be? A Yes.

Q And something more? A Yes.

Q Would you want to know about loans, the amount of loans that you would be expected to make to those shops? A I would want to know what the outstanding loan was and what

88 kind of loans were made.

Q Would it have been possible for the Brand Company to maintain the number of its March customers right down through June if it had wanted to do so? A Yes, it would have been possible.

Q How would it have done that? A Well, by paying perhaps more for the raw material for those customers who wanted to leave us and claim they could get a higher price from some other renderer. If we had met that competition, we would have held the customer. Or if we had lost a customer we could have gone out and got new customers by lending money or may have paid a bonus or paid extra for the fat.

Q Well, if you had acquired new shops by making loans, what would have been the result with respect to the amount the Van Iderstine Company would have had to pay you?

MR. WILLIAMSON: I object to that. It calls for a conclusion. It does not assume any facts at all and ask that this man interpret an entire contract, and it is perfectly obvious that that contract is not questioned.

MR. MILLER: The contract provides in so many words the Van Iderstine people are going to pay them cash for the amount of their outstanding loans at the

89 time the business was turned over. Therefore if they had maintained, had gone out and kept their number of customers up to their March level by advancing loans they simply would have had so many more loans on June 21st for the Van Iderstine people to pay and simply increase the purchase price.

MR. WILLIAMSON: It is perfectly clear in the contract. Why ask this witness the question?

MR. MILLER: I will ask the witness.

MR. WILLIAMSON: I object to it as incompetent, irrelevant and immaterial.

Q Suppose you had either retained old customers or obtained new customers to replace lost customers during those three months by making them loans, under the provisions of the contract what would the Van Iderstine Company do with respect to those new loans? A The amount would be reimbursed by the Van Iderstine Company.

Q And if you had obtained new customers or retained old customers by paying them more for their scrap, what would have been the result of that on Van Iderstine?

A If the customer passed on to Van Iderstine, they would be buying the material at that price.

Q Have you any doubt whatever that if you had tried to keep up their customers to the March level through June, you

90 could have done so? A We could have done so, yes.

Q How would you have done it? A By either holding on to the customers, preventing them from leaving us by paying higher prices or by advancing money or by getting new customers to take the places of those whom we could not hold.

Q And how would you have obtained the new customers? A Well, we would amost confine our securing of new customers to the loaning of money or selling of fixtures, as the case might be, because we were opposed to the paying of bonuses, unsound practice.

Q You would never think of buying either a single shop, assuming now you are paying for it one of these cash bonuses, buying either a single shop or a route of shops simply on some hypothetical average of what butcher shops in New York are worth? A No.

Q You would want to know the facts, wouldn't you? A I would want to know the facts, yes.

Q And the facts that you would want particularly to know would be, if it is the case of a single shop, the monthly deliveries which you can expect from that shop? A Yes.

Q If it is the case of a route, at least the aggregate deliveries? A Yes sir.

Q Now, so far as this particular Brand business is con-

91 cerned, would you say that the value of the Brand business, assuming that the June deliveries were equal to the March deliveries but with a fewer number of customers, would you say that that business was worth in June about what it was worth in March? A I would, yes.

Q And assuming that the total June deliveries were approximately equal to the total March deliveries, would the value of the Brand business in June be substantially less than its value in March because of the fact that although its total deliveries had not fallen off, about one hundred and thirty customers had dropped off? A I think not.

MR. MILLER: Mark this paper Exhibit B for identification.

(Paper marked Defendant's Exhibit B for identification.)

Q Looking at Defendant's Exhibit B for identification, tell me what it is, if you know? A It is a memorandum made up by our Credit Manager for the credit file with reference to the Solomon Meat Supply, Inc.

Q What is his name? A Our Credit Manager?

Q Yes? A E. J. Lafferty.

Q Are those his initials at the bottom? A Yes.

Q Did you see that credit memorandum at the time the two thousand dollar loan to Solomon was passed on? A I saw this, but I don't know just whether this was dictated be-

92 fore or after the loan was made. You said the loan was May 22nd. This is dated May 24th and probably dictated on that day, but I saw this and had the information from Mr. Lafferty, yes.

MR. MILLER: Well, I will offer that Exhibit in evidence.

MR. WILLIAMSON: Pure hearsay, altogether incompetent, irrelevant and immaterial, don't even have the man here who prepared it that we may cross examine him as to how these statements were prepared, and has no pertinency whatever.

MR. MILLER: If you want us to produce the man who made the Exhibit, we will produce him later, but it is not pure hearsay because it states the facts on which I understand your men exercised your judgment?

THE WITNESS: Yes.

MR. WILLIAMSON: But it is made after the event and the stenographer and the man who dictated it are not here, and it is perfectly obvious it is incompetent, irrelevant and immaterial.

MR. MILLER: You mean to say you are making a technical objection to this that the man who dicated this is not here?

MR. WILLIAMSON: Yes, and the most substantial

93 objection that in no event, could some secret conference up in your office in May be binding upon us without any --

MR. MILLER (Interrupting): I am asking you if you are objecting to this on the technical ground the man who dictated this is not here?

MR. WILLIAMSON: Every ground. I don't know myself whether he ever saw it after it was dictated, and we were not in the office.

Q You had see this? A Yes.

Q And you assumed these facts to be true in passing on this loan? A Yes.

MR. WILLIAMSON: What he assumed is not of any moment.

MR. MILLER: Just a little while ago you were telling me that your objection is to the payment of this Solomon account was because the defendant did not act in good faith in turning that account over to you.

MR. WILLIAMSON: That hasn't anything to do with that memorandum.

MR. MILLER: Here I have an officer of this Company on the stand who states this memorandum states the facts on which he advanced that loan, and I offer it in evidence.

MR. WILLIAMSON: Well, you can examine him and I will cross examine him.

94 MR. MILLER: You can cross examine him after I get through. I offer it.

MR. WILLIAMSON: I object to it on all the grounds.

(Defendant's Exhibit B for identification received in evidence, the words "for identification" being stricken.)

MR. MILLER: Mark this as Defendant's Exhibit C.

(Paper marked Defendant's Exhibit C for identification.)

MR. WILLIAMSON: And may I say further that that memorandum, as I understand it, relates to the May item of $2,000, which I think we took up and which you have assumed to pay, so it is not an issue here what he acted on.

MR. MILLER: If you will withdraw every bit of evidence which you have with regard to that May 22nd note for $2,000 and every statement you have made to the Arbitrator concerning it, I will withdraw this paper.

MR. WILLIAMSON: That paper isn't going to do you any particular good.

MR. MILLER: Well, will you withdraw it?

MR. WILLIAMSON: No sir.

MR. MILLER: Well then, I won't, and your remark is entirely improper, and I will ask you to look at this, Mr. Witness, and tell me what this Exhibit C for identifi-

95 cation is?

A That is a financial statement of the Solomon Meat Supply Company as of April 30th, 1929.

Q Who is that signed by? A By J. W. Solomon, President.

MR. MILLER: I offer that in evidence, unless you object to it, on the ground that we have not proven Solomon's signature?

MR. WILLIAMSON: You haven't proved anything.

MR. MILLER: Are you objecting on the ground we have not proved Solomon's signature?

MR. WILLIAMSON: Yes, and every other reason; incompetent, irrelevant and immaterial and not the subject of any issue and not binding on us and pure hearsay.

MR. MILLER: Well, I offer this exhibit subject to proof later, as long as Mr. Williamson is making this technical objection that we have not proved that it was signed by Solomon.

MR. WILLIAMSON: I am quite sure of this --

MR. MILLER (Interrupting): Your other objections are no good. That is.

MR. WILLIAMSON: Well, I am sorry you are the Judge of this proceeding.

MR. MILLER: I mean it is so perfectly obvious, Mr.

96 Williamson, that your other objections are no good.

Q Was that one of the papers on which you acted in passing on this loan? A Yes sir.

Q By the way, do you happen to know Solomon's signature? A Yes sir.

Q Well, is that his signature? A I would say it is, yes.

BY THE ARBITRATOR:

Q Which Solomon? A Mr. J. W. Solomon.

Q There was a brother, too, you know. A The brother was here yesterday.

Q This is the one who was here yesterday? A No, this is the brother.

MR. WILLIAMSON: And here is his statement, Mr. Arbitrator. The man is not here, is not produced, but there is an effort to bind us in some way by something, I can't imagine how.

THE ARBITRATOR: I will accept that for consideration in due course. Record Mr. Williamson's objections.

MR. MILLER: We are offering these obviously merely to prove that this loan was made on statements contained in this Exhibit, and obviously not for the purpose of proving any of the statements in it are true.

Q Did I ask you whether that was one of the papers on

97 which you acted in passing on this loan to Soloman? A Yes, you did. Yes.

Q At the time you submitted Mr. Hayes this paper, Defendant's Exhibit A, which is a statement of the March customers and March tonnage, had you been supplied with the statements of the number of April customers and the amount of the April tonnage? A No sir.

Q Do you know, generally speaking, how long it takes after the end of the month, to get up one of these usual monthly statements of the Company with respect to its customers? A About twenty days.

Q And this was submitted to Hayes, you testified, early in May? A Early in May.

Q And Hayes never -- and Van Iderstine never asked you for any later statement? A There was a statement giving a further detail of this, of course.

Q Yes, but I mean any statement for any later month either as to number of customers or amount of tonnage of any month later on? A No sir.

RE-RECROSS EXAMINATION BY MR. WILLIAMSON:

Q Those statements were regularly made and approximately within twenty days after the end of the month, is that right? A Statements of the sort from which I would get this information, yes.

98 Q And that information would include, among other things, the number of customers loaded in the previous month? A No; tonnage figures.

Q Wouldn't it indicate how many people had supplied the tonnage? A No sir.

Q Doesn't this Exhibit to which reference has been made indicate that? A That statement does, yes.

Q So that in the regular course of business the Brand Company never knew how many customers it was loading? A Yes, it did.

Q And it knew that within twenty days of the end of the month, didn't it? A The number of customers, yes.

Q So that in the regular course of business, within twenty days of the end of every month, the Brand Company, or its executive officers knew exactly how many people had loaded and how much tonnage they had loaded, did they not? A Up to March 30th, as I explained before.

Q Well, did the course of business change after March 30th as to monthly statements? A It did so far as monthly statements and reports to me were concerned.

Q I am not at all interested, I may say, in what was delivered to you; I want to know about the course of business? A Yes, it changed, it did change as far as my record was concerned, yes.

99 Q To your own personal knowledge, isn't it a fact that these regular statements made within twenty days of the end of the month were made up after March by Brand employees, just as they had done it for years? A I don't know. Mr. Caton will have to answer that.

Q Is Mr. Caton here this morning?

MR. MILLER: Yes.

MR. WILLIAMSON: Is that true, Mr. Caton?

MR. MILLER: Wait a minute.

MR. WILLIAMSON: He is here and sworn. Why can't he tell us?

MR. MILLER: He is, and I will put him on the stand in due course.

Q Well, do you accept his statement, then, that they were made? A I believe they were.

Q So that some time before June 22nd, 1929, they could have told Van Iderstine precisely how many customers had been loaded in May preceding? A I told you, he knew nothing about our negotiation with Van Iderstine.

Q Who didn't know anything? the A The Brand organization and the Preston organization.

Q Who are these people that negotiated? Who is Mr. Burton, if you know?b A Former President of this particular company.

100 Q Was he President in May and June of 1929? A Yes sir.

Q Mr. Hammersen, do you know who he was? A Yes.

Q And what office did he hold in the Brand Company in 1929? A In the A.A.C. Company Vice-President and Comptroller

Q Well then, he was Vice-President and Comptroller of Brand, the subsidiary, too, wasn't he? A No.

Q Wasn't it a wholly owned subsidiary? A Yes.

Q Wasn't its office work supervised by the general office? A Yes.

Q Now, your firm's business practice was to hold old accounts and acquire new accounts by means of making loans, is that correct? A Our business practice was, yes, to continue business.

Q And you did use that method almost to the exclusion of all other methods, isn't that true? A To hold accounts, you say?

Q Yes, and to acquire new ones; you did not believe in bonuses? A Right.

Q So you did use loans? A Yes.

Q And you did sell them fixtures and take chattel mortgages on them? A Yes.

Q That wasyour fixed policy both for holding your old accounts and acquiring new accounts, was it not? A Pretty

largely.

Q Well, almost exclusively, wasn't it? A No, not exclusively, by any means.

Q To what extent did you pay cash for customers in 1929? A I paid very little cash.

Q Well, what other methods are there except loans, fixtures and cash? A Pay a premium for raw materials.

Q And that is the same thing as paying cash, isn't it? You are paying some money in addition to the market value of scrap as for their account, are you not? A Yes.

Q Can you in your mind distinguish between that and handing them a bonus? A Yes, a great deal different. I would rather pay a man a quarter of a cent a pound extra on actual material delivered than to pay him fifty or a hundred or a hundred and fifty dollars for something you don't know whether you will get the material or not.

Q Yes, but assuming that you will get the material? A Well, I can't.

Q I ask you to assume that; then the net result in cash is the same thing? A It is cash paid out, yes.

Q During March, April, May and June you dealt with the butchers almost exclusively, then, on this loan basis or fixture basis, didn't you? A Yes.

Q And you never made a loan of money or fixtures where

102 you did not honestly believe you would be paid the money, did you? A I imagine we did, yes.

Q I want to know what you did. Did you at any time during these months actually advance money to a butcher for opening up an account with the honest opinion you would never see the money again? A With the opinion we would never see the money again?

Q Yes? A No, never.

Q No; so you always believed you would be paid in full for those loans, is that right? A Yes.

Q And that is the only theory on which you could ask anybody to pay you cash for them -- wouldn't that be the only honest theory? A Yes.

Q So that you could have maintained your business from March to June, could you not? A Yes.

Q And you would have done it in accordance with your firm policy of making loans, would you not? A Yes.

Q And you would have honestly expected those loans all to be repaid? A Yes.

Q So that when June 22nd arrived when you had the same number of customers you had in March, you would not have done a thing except to advance moneys, thereby holding that number, and you would have expected all those moneys to be repaid? A Yes.

103 Q And that could have been done in this instance?

A Yes.

Q And if those moneys had been repaid Van Iderstine would have suffered no loss at all, and would have received the number you agreed to give them, isn't that correct?

A They would have received the number of customers and paid us more money for the accounts outstanding.

Q And in paying you for accounts, they were paying you for current receivables that were collectable, isn't that right?

A Yes.

Q And interest charges were made against many of those loans, were they not? A Not very many!

Q Well, some of them, then? A Some, yes.

Q And it would merely have meant the loss of interest on additional loans between March and June, at the outside, for you to have held those customers until June 22nd, wouldn't it? A That is right.

Q Have you any idea how much it would have cost just for that? A Do you mean how much it would have cost in loans?

Q Can't you sit here now and go back to those four months and tell us what it would cost you in dollars and cents to have held those accounts by making additional loans which would be repaid? A Well, the cost is not the loans you would be repaid, but the lossess you would incur on the loans, and

104 in our case the loss is very small. In other words, I would take one and one-half percent. of the total amount loaned would be a big loss on outstanding loans to the butchers.

Q So that the most that could have been, if you had retained those accounts at the number you had agreed to deliver would have been that loss of one and one-half percent. on the loans, isn't that true? A Yes.

MR. WILLIAMSON: That is all.

RE-REREDIRECT EXAMINATION BY MR. MILLER:

Q And the net result of that, insofar as Van Iderstine is concerned if you had retained this number of customers by advancing loans, would have been that on June 22nd Van Iderstine would have had to pay on account of this contract the initial amount of those loans as part of the purchase price? A Yes sir.

Q And those loans were supposed, in a general way, to represent the value of those accounts, I suppose? A Well, you baseyour loan pretty largely on what you expect that shop to produce.

MR. MILLER: That is all.

FURTHER HEARING THEREUPON ADJOURNED UNTIL

FRIDAY, MARCH 6, 1931, AT 11:00 A.M.

* * * * * * *

Exhibit EE

such lender.

IN WITNESS WHEREOF said corporation has caused its corporate seal to be hereunto affixed and said President and said Secretary have hereunto subscribed their names this the 5 th day of October, nineteen hundred and seventeen.

In presence of ;
Chas. C. Johnson.

(CORPORATE SEAL) MATHEWS BUILDING COMPANY,
By Ernest Mathews, President
attest John T. Kreeger, Secretary.

STATE OF NEW YORK; CITY OF NEW YORK; COUNTY OF KINGS;SS On this 5 th day of October 1917 before me personally came and appeared ERNEST MATHEWS and JOHN T. KREEGER, both to me known and known to me to be the individuals described in and who executed the foregoing instrument and severally duly acknowledged that they executed the same, and they being then by me severally duly sworn, did each for himself depose and say:- that said Ernest Mathews resides in the Borough of Queens, City of New York: that he is the President of Mathews Building Company, the corporation described in and which executed the foregoing instrument: that said John T. Kreeger resides in the Borough of Queens, City of New York: that he is the Secretary of said corporation: that they know the corporate seal of said corporation: that the seal affixed to such instrument is such corporate seal: that it was so affixed by order of the Board of Directors of such corporation, and that they signed their names thereto by the like order.

CHARLES C. JOHNSON,
Commissioner of Deeds for the City of New York, Residing in the Borough of Brooklyn, Kings County Register's No. 8022
Kings County Clerk's No. 28x Queens County Clerk's No. 210
Term expires November 14, 1918.

2146-69

Entered and compared the foregoing with the original October 6, 1917, at 10.17 A. M. and indexed under Section 5 Block 1042 on the Land Map of the County of Queens.

COMPARED

Examined by Clerk.
Recorded at the request of A. Meeker, 217 Havemeyer St., Borrklyn, N. Y.

No. 22012.

THIS INDENTURE, made the eighteenth day of August, nineteen hundred and seventeen, between the VAN IDERSTINE COMPANY, a corporation organized and existing under the laws of the State of Maine and having an office for the transaction of business in the Borough of Queens, City of New York, at Railroad and Greenpoint Avenues, there being no street number, party of the first part, and THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of Connecticut having an office for the transaction of business at No. 2 Rector Street, Borough of Manhattan, City of New York, party of the second part, WITNESSETH that the said party of the first part, in consideration of the sum of ONE HUNDRED ($100) Dollars, lawful money of the United States, and other valuable considerations paid by the party of the second part does hereby grant and release unto the party of the second part, its successors and assigns forever.

ALL that certain strip, piece or parcel of land, situate, lying and being in the Borough of Queens, in the City and State of New York, fronting on the

northeasterly side of Newtown Creek, and being more particularly bounded and described as follows:- BEGINNING at a point in the northeasterly bulkhead line of Newtown Creek where the same is intersected by the southeasterly line of premises now owned by the party of the first part and which were conveyed to it by deed from Charles A. Alling and wife, dated October 1, 1909, and recorded in the office of the Clerk of Queens County on January 10, 1910, in Liber 1665 of Deeds, at page 230, being the parcel of land first described in said deed and which beginning point measured southeasterly along said bulkhead line is 258. 68 feet southeasterly, as measured along the bulkhead from the centre line of a proposed street known as Preston Street, as said street is located in said deed above referred to and the survey thereon attached: and running thence northwesterly along said bulkhead line two feet: running thence northeasterly in a straight line 164 feet to a point 1.75 feet northwesterly from the said southeasterly boundary line of said premises now owned by part of the first part measured on a line at right angles with said boundary line: running thence northeasterly in a line forming with said last mentioned course an angle of 172° 22 ' 44 ", 13.19 feet to the said southeasterly line of premises now owned by the party of the first part as aforesaid: and running thence in a southwesterly direction along the said southeasterly line of premises owned by the party of the first part 177.07 feet more or less to the point or place of beginning. TOGETHER with the right of the party of the first part in and to the land under the waters of Newtown Creek in front of the premises hereby conveyed, between lines extending at right angles to the bulkhead line. Reserving, however, to the party of the first part and its successors and assigns, forever, in premises above described, a perpetual right, privilege and easement, to construct and maintain thereon foundations, piers or other substructures below grade, for the purpose of supporting any building, fence or other structure now or hereafter to be built upon land of party of the first part adjoining. Such right, privilege and easement to be exercised and such foundation to be constructed in such manner as not to interfere with the use of the railroad siding now on the property of the party of the second part or the buildings now erected thereon. TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns forever. AND the party of the first part covenants that it has not done or suffered anything whereby the said premises [redacted] same.

IN WITNESS [redacted] the corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(CORPORATE SEAL) THE VAN IDERSTINE COMPANY,
By C. A. Alling, Pres't

Attest:
A. M. Hayes, Sec'y.

STATE OF ILLINOIS; COUNTY OF COOK ;ss On the 19 th day of August, nineteen hundred and seventeen, before me came C. A. ALLING, to me known, who, being by me duly sworn, did depose and say that he resides in Chicago, Illinois; that he is the President of the VAN IDERSTINE COMPANY, the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

(N. S.) RICHARD A. HALE,
Notary Public, Cook County.

STATE OF ILLINOIS; COOK COUNTY: SS I, ROBERT M. SWITZER, County Clerk of the County of Cook, DO HEREBY CERTIFY that I am the lawful custodian of the official records of Notaries Public of said county and as such officer, am duly authorized to issue certificates of magistracy that Richard A. Hale, whose name is subscribed to the annexed Jurat, was, at the time of signing the same, a Notary Public in Cook County, duly commissioned, sworn and acting as such, and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments in said State of Illinois, all of which appears from the records and files in my office: that I am well acquainted with the handwriting of said Notary, and verily believe that the signature to the said Jurat is genuine. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago in the said County, this 21 st day of August 1917.

(L. S.) ROBERT M. SWITZER, County Clerk.

Entered and compared the foregoing with the original October 6, 1917, at 10.20 A. M. and indexed under Section 4 Block 771 on the Land Map of the County of Queens.

Examined by [illegible] Clerk. COMPARED

Recorded at the request of Gifford, Hobbs & Heard, 60 B'way, N. Y. C.

22013. THIS INDENTURE, made the Twenty-first day of September in the year One thousand nine hundred seventeen, BETWEEN JACOB SCHMITT, of the Borough of Queens, County of Queens, City and State of New York, party of the first part, and ELIZABETH SCHMITT, his wife, residing at 1233 Atfield Avenue, Richmond Hill, New York, party of the second part. WITNESSETH, That the said party of the first part, in consideration of the sum of ONE ($1.00) dollar, lawful money of the United States, paid by the party of the second part, does hereby grant, bargain, sell, and release unto the said party of the second part, her heirs and assigns forever.

ALL those certain lots, pieces or parcels of land, situate, lying and being in the former Town of Jamaica, now the Fourth Ward of the Borough and County of Queens, City and State of New York, known and designated on a certain map entitled " Map of Dunton Park containing 911 lots, in the Town of Jamaica, Queens County, New York, surveyed and drawn November, 1890 by James F. Deehan, surveyor, successor to Martin C. Mohnson, and filed in the office of the Clerk of the County of Queens as and by the lots Numbers Two hundred and forty-three (243) & Two hundred forty-four (244) in Block Seven (7) which taken together are bounded and described, with reference to said map as follows :-

BEGINNING at a point on the westerly side of Frost Avenue, distant Two hundred and fifty

[redacted]

Avenue, formerly Broadway, and the westerly side of Frost Avenue, and running thence southerly along the westerly side of Frost Avenue Fifty (50) feet: thence westerly at right angles to Frost Avenue One hundred (100) feet: thence northerly parallel with Frost Avenue Fifty (50) feet: thence easterly again at right angles to Frost Avenue one hundred (100) feet to the westerly side of Frost Avenue, at the point or place of beginning. TOGETHER with all the right, title and interest of the party of the first part of, in and to Frost Avenue, in front of and adjoining said premises to the centre line thereof. T O G E T H E R with the appurtenances and all the estate and rights of the said party of thefirst part, in and to the said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, her heirs and assigns forever. T H E P U R C H A S E R, under this conveyance resides as follows:- 1233 Atfield Avenue, Richmond Hill, Borough of Queens, City of New York.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Exhibit FF

declaration of [illegible]

Queens County on the 17th day of August, 1927, in liber [illegible], page 165 of conveyances. The said declaration being an easement binding upon the owners, occupants, and mortgagees, their heirs, successors in interest, legal representatives and assigns in regard to garage erection on said premises and on the premises immediately on the east, as well as all other terms and conditions contained in said easement dated August 3rd, 1927, together with the appurtenances and all the estate and rights of the party of the first part in and to said premises, TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, her heirs and assigns forever, SUBJECT to a first mortgage in the sum of $3500, and interest, now a lien on said premises. SUBJECT to a purchase money second mortgage in the sum of $500.00 and interest, bearing even date and recorded or intended to be recorded simultaneously herewith. AND the party of the first part covenants as follows: First. That the party of the first part is seized of the said premises in fee simple, andhas good right to convey the same; Second. That the party of the second part shall quietly enjoy the said premises; Third. That the said premises are free from encumbered except as aforesaid. Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises. Fifth. That the party of the first part will forever warrant the title to the said premises. IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(CORPORATE SEAL) MILLERKINS BUILDING CORPORATION
BY ANDREW N. MILLER, PRESIDENT

STATE OF NEW YORK: COUNTY OF QUEENS: SS: On the 28th day of June, nineteen hundred and twenty-nine, before me came ANDREW N. MILLER, to me known, who, being by me duly sworn, did depose and say that he resides in Borough of Queens; that he is the President of Millerkins Building Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order. JOSEPH GINSBERG, Commissioner of Deeds, N. Y. C., Queens Co. Register's No. 125, Term expires 2/5/31. The land affected by the within instrument lies in Section 36 in Block 8757 on the land map of the county of Queens. Recorded June 29,1929at10.15 AM, at the request of Lawyers Title & Guaranty Co., 16111 Jamaica Avenue, Jamaica, N. Y.

Maher & Murray

3312-300

49414

THIS INDENTURE, made the 28th day of June, nineteen hundred and twenty-nine, between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized

under the laws of the State of Connecticut, party of the first part, and THE VAN IDERSTINE COMPANY, a Maine Corporation, having its principal place of business in New York at Railroad Avenue, Long Island City, said premises having no street number, party of the second part, WITNESSETH, that the party of the first part, in consideration of ONE HUNDRED and more, dollars lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever.

ALL that certain parcel of land together with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, in the City and State of New York, bounded and described as follows: BEGINNING at a point on the westerly side of a Street sixty (60) feet wide, the central part of which is now or was formerly used and occupied by the Flushing Railroad Company, which point is distant Five hundred eighty-eight and twelve one hundredths (588.12) feet southerly from the southerly side of Greenpoint Avenue as said Greenpoint Avenue is shown and laid out on a certain map entitled "Map of the Farm of Francis and and Eve Duryea, situated on the Newtown and Dutch Hills Creeks in Newtown, Queens County as surveyed and a portion thereof laid out into lots for Meziah Bliss and Samuel Sneden by Van Alst and Meserole, City Surveyors, May 1856", and filed in the office of the Clerk, (now Register) of the County of Queens, March 29, 1860 as map number 51, said point being also distant ninety eight, and twelve one-hundred ths (98.1[illegible]) feet southerly from the centre line of Spring Street as shown on said map; said point also being the southeast corner of land conveyed by Charles A. Alling and Sarah A., his wife, to The Van Iderstine Company, by Deed dated October 1, 1909, and recorded in the Office of the Clerk (now Register of the County of Queens January 10, 1910, in Liber [illegible] of Conveyances, at page 230; running thence westerly along said land so conveyed to The Van Iderstine Company, One hundred sixty-one and ninety-two one-hundredths (161.92) feet to a point distant one hundred five and ninety-six one-hundredths (10[illegible].96) feet southerly from the centre line of said Spring Street measured on a line drawn at right angles thereto; running thence southerly along said land conveyed to The Van Iderstine Company, Twenty-four and nine one-hundredths (2[illegible].09) feet; thence westerly along said land conveyed to The Van Iderstine Company and parallel with said Spring Street and distant, one hundred thirty and eleven one-hundredths (130.11) feet southerly therefrom, Two hundred forty-five and twenty-one one-hundredths (24[illegible].21) feet to the present bulkhead as now established; thence southerly along said bulkhead, one hundred thirty and fifty one-hundredths (130.50) feet to the centre line of Preston Street (formerly known as First Street as shown on said map, said point being the northwest corner of land conveyed to Darling & Company by Walter D. Douglas and Mahaha D. Douglas, his wife, and George A. Piper and Grace A. Piper, his wife, by Deed recorded in the Office of the Clerk (now Register) of the county of Queens in Liber 1513 CP 34; thence easterly along the centre line of said Preston Street and parallel with centre line of Spring Street and distant two hundred sixty (260) feet southerly therefrom and along said land conveyed to Darling Company as above recited, Four hundred two and eleven one-hundredths (4[illegible].11) feet; thence continuing along said land so conveyed to Darling & Company, twenty and eighty-three one-hundredths (20.83) feet to the westerly side of said sixty (60) foot street the central part of which was so occupied or formerly occupied by the Flushing Railroad Company; thence northerly along the westerly side of said sixty (60) foot street, one hundred fifty-three and sixty one-hundredths (153.60) feet to the point or place of beginning. TOGETHER with all right, title and interest of the party of the first part, of, in and to the street abutting the above described premises on the east, to the centre line thereof, in front of and adjoining said premises. TOGETHER with all right, title and

of the premises hereby conveyed, together with all its reparian rights therein and appurtenances thereto. TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the premises herein grantedunto the party of the second part, its successors and assigns forever. IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(CORPORATE SEAL) THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

BY: ERNST E. HAMMERSTEIN, VICE PRESIDENT

ATTEST:
C. A. STARRETT

STATE OF NEW YORK: COUNTY OF QUEENS: ss: On the 29th day of June, nineteen hundred and twenty nine before me came ERNST E. HAMMERSTEIN, to me known, who, being by me duly sworn, did depose and say that he resides in Westchester County, that he is the Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order. J. [illegible] AMAN, Notary Public Queens Co. No. 170, Queens County Register's no. 47, Certificate filed in Nassau County, Certificate filed in Suffolk County. The land affected by the within instrument lies in Section 4 in Block 770 on the land map of the county of Queens. Recorded June 29, 1929 at 10.15 A.M. at the request of Lawyers Title & Guaranty Co., 16111 Jamaica Ave., Jamaica, N. Y.

COMPARED

49413 THIS INDENTURE, made the 26th day of June, nineteen hundred and twenty-nine, between ISABEL ALBANO and [illegible] ALBANO, both of the Borough of Queens, County of Queens, City and State of New York, parties of the first part, and JULIA NICOLAS MURPHY of 44 West 30th Street, Borough of Manhattan, County of New York, City and State of New York, party of the second part, WITNESSETH, that the parties of the first part, in consideration of One ($1.00) Dollars, lawful money of the United States, and other good and valuable considerations paid by the party of the second art, do hereby grant and release unto the party of the second part, his heirs and assigns forever,

ALL those three certain lots of land, with the buildings and improvements thereon, situate, lying and being at Springfield, in Ward Four of the Borough of Queens County of New York, and in the County of Queens and State of New York, known and designated on a certain map entitled "Map of Springfield Estates, situated at Springfield, Queens County, N.Y., surveyed April 1916, by Evans Bros., Jamaica, N. Y.," and filed in the Queens County Clerk's Office as Map No. 330 on [illegible]

Exhibit GG

Darling-Delaware

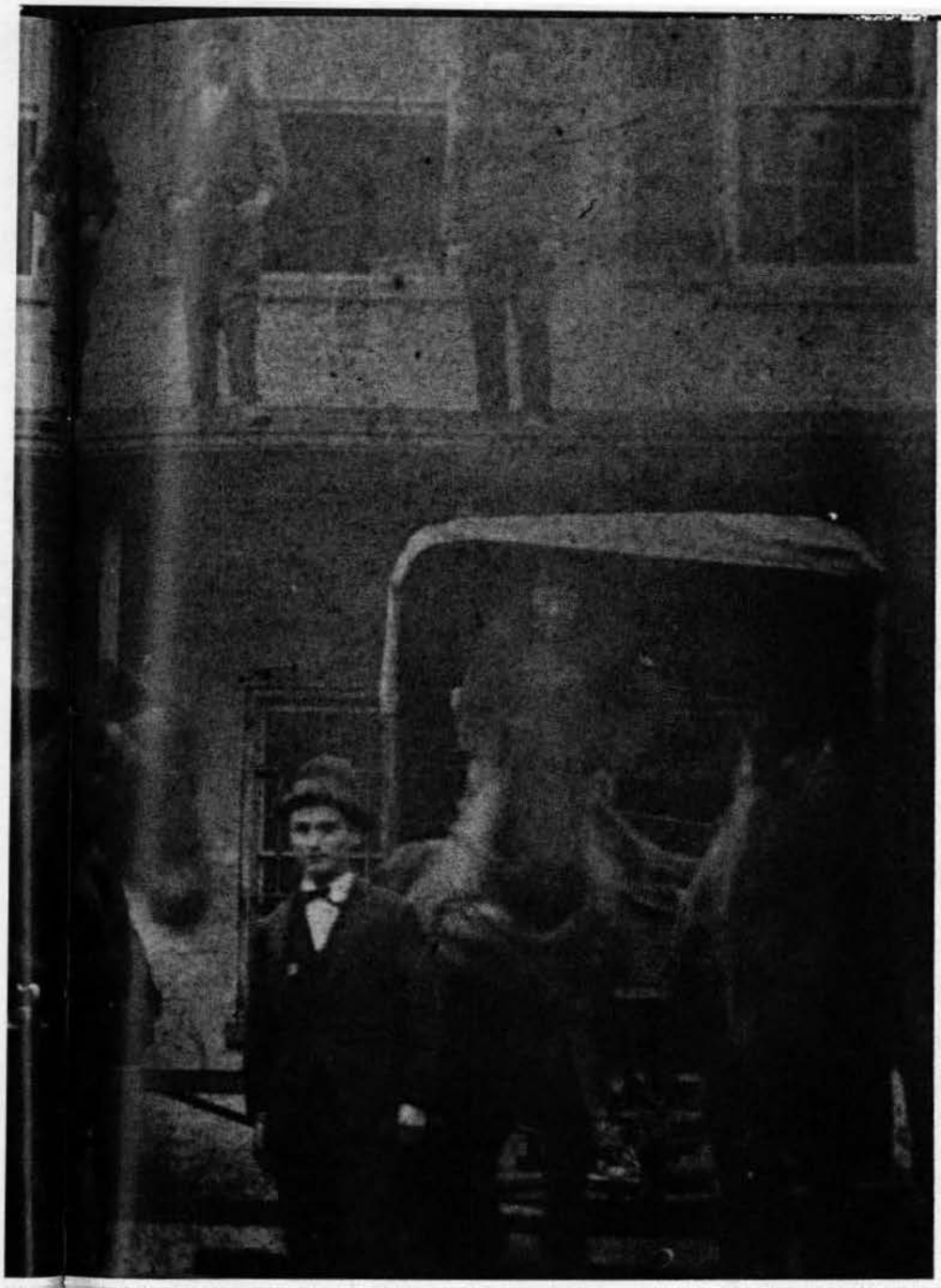
Centenary

1882-1982

DARLING-DELAWARE COMPANY, INC.

Chicago, Illinois

Copyright © 1981



A family portrait of the Van Iderstine plant at 522 Tenth Avenue — between 39th and 40th streets — in New York City. Top hats and horse drawn wagons were the order of the day. This photo was referred to as the old stand, established in 1855, a dealer in hides and fat.

(continued from page 74)

Darling to buy them out — which they did.

"Several years later both Adler and Oberdorf died, leaving three sons between them in the business. The two families couldn't work together and joined in approaching us to buy them out — which we did in about 1916.

"In 1929 I [C.A. Alling] was a personal friend of Mr. Burton who was president of the American Agricultural Chemical Company. The company was chiefly in the fertilizer business and Burton decided to clean out a number of sidelines, one of which was the rendering business.

"In 1929 The Van Iderstine Company bought the A.A.C. plant and rendering business in Long Island City which was

(continued on next page)

the trade at the great markets. He has for a quarter of a century been a great factor in the export cattle trade, as well as affording in his packinghouse a market for such classes as were not suited to the foreign trade. His liberality as a buyer on bad markets has been well known. Every cattle raiser may well feel the death of Nelson Morris as a serious personal loss. He was the last of the old-time packers and it is not too much to say the 'noblest Roman of them all.'"

Nelson Morris was the friend of the packer as well as the cattle raiser. Following his death the PROVISIONER recorded in its editorial columns that "he did not build at the expense of rivals; he helped his competitors, gave a friendly hand and sometimes a saving hand where it was most needed. He was one of those men who have made the packinghouse business one of the most honestly-conducted as well as the greatest of modern industries."

sandwiched between Van Iderstine's two plants. In 1931 Darling bought out the other four A.A.C. rendering plants located in Buffalo, Toledo, Cleveland and Detroit. Over a period of ten years Darling changed the operations of these four plants to the Darling name.

"The Detroit operations covered routes in Windsor, Canada, on fat and bone but the Canadian government prohibited bringing dead animals across the border. Accordingly in 1937 Darling started a rendering plant at Chatham, Ontario, in which it handled the Canadian fat and bone as well as dead animals.

"Back in the early twenties Joslyn and Schmidt of Cincinnati approached us to buy them out, but we could not get together on price. Later both Joslyn and Schmidt died and Hoelscher took over the business. In 1945 his health was very bad and he came to us wanting to sell out. At this time we went through with the deal.

"At our Cleveland plant there developed a lot of trouble with odor problems from nearby neighbors and we accordingly approached the Stadler Company to see if they would be interested in selling us their plant and business. They were also in the fertilizer business and seemed very happy to sell us their rendering plant and business but wanted to concentrate on their fertilizer business.

"During this period of operation over seventy years, Darling bought out a number of other very small renderers and peddlers, in practically all of which cases the individuals were usually getting old or wanting to get into some other line of work. Darling & Company has really been a godsend to those in the rendering business who wanted to get their money out of their businesses for one reason or another.

"In Chicago in 1920 a group of butchers formed a co-operative rendering business and bought out a small plant, under the name of the Chicago Butchers Calfskin Association. Over the period of the last thirty years they have developed a good sized and profitable business.

"Also in Chicago a skin peddler by the name of Nick Buecher put some rendering equipment in an old cold storage building and went into the rendering business and over the past fifteen years has developed a good sized and profitable business.

"During the last twenty years several of Darling's drivers in the Chicago area left and went into business for themselves and now operate three small independent rendering plants, one near Kankakee, another outside of Aurora and the third outside of Elgin. All of them seem to have developed and operated profitably.

"When Darling went into the glue business the steam bone residue was sold as fertilizer and this was used for a base for developing in the commercial fertilizer field. A small plant was built in Chicago and in 1920 a large plant was built in East St. Louis and which plant has been added to during the last period of years.

"In 1920 the company decided to go into the tallow and grease cracking business and accordingly built a distillation plant in Chicago which business has developed during the last thirty years.

"In the late forties the Cincinnati operations were handicapped by having a number of competitors in both the dead animal and shop fat businesses, and in order to be on an equal competitive basis small dead animal plants were purchased in Taylorsville, Kentucky, and Marysville, Ohio, and which plants have continued operating strictly on dead animal tonnage.

"In Grand Rapids, Michigan, we bought out a small renderer in 1931 but immediately an ex-employee built another rendering plant which he operated for a period of fifteen years at which time he had made money and wanted to get out of business and Darling bought him out.

"Soon after this The Valley Chemical from Mount Pleasant, Michigan, started operating in the Grand Rapids territory and purchased a small renderer in Muskegon.

"At Toledo, after a number of years of operating a plant, it was decided to close the rendering operations and ship the material to the Detroit plant. Since taking over the Toledo plant the Wayne Soap Company of Detroit bought out the Toledo Tallow Company and eventually closed that plant and since have been transferring their material to the Detroit plant.

"Back in the twenties Darling was offered the Wachtel business at Indianapolis, Indiana, at which time they operated twelve trucks. We were unable to get together on an agreed price and over a period of the last fifteen years Darling has had several further contacts with reference to their selling out. Since

(continued on page 93)

Exhibit HH

$2000 00/100 Van Ext 2/3/21 New York, May 21, 1929

On demand after date we promise to pay

to the order of Herman Brand Inc.

Two Thousand 00/100 Dollars

Payable at 7 & 8 West Washington Mkt, N.Y.C.

Value received

SOLOMON MEAT SUPPLY, Inc.

No. Due

U.S. Bond.

J. Solomon Pres.

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

Van Ex S.
5/3/21
cm

The Solomon Meat Supply Co. Inc. #7-8 West Washington Market, New York City, all of the capital stock of which is owned by Louis Solomon and Joseph W. Solomon, hereby agrees as an inducement to Herman Brand, Inc, to make it a loan in the sum of $2000.00, to be repaid in cash or in such merchandise as Herman Brand, Inc. deals in, to deliver all such merchandise made by it to Herman Brand, Inc., same to be paid for by Herman Brand, Inc. on a monthly basis in the following manner: $100.00 per month to be applied in reduction of the individual indebtedness now owing by Louis Solomon, to Herman Brand, Inc. and the balances due for such monthly deliveries to be applied in reduction of this loan.

ATTEST_____ THE SOLOMON MEAT SUPPLY COMPANY, INC.

Dated, New York City, May 22nd, 1929. ~~President.~~

Trus

Pres.

THIS IS A COPY OF ORIGINAL MATERIAL IN THE COLUMBIA UNIVERSITY RARE BOOK AND MANUSCRIPT LIBRARY. THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17 U.S. CODE).

Exhibit II

40-13-143

The People of the State of New York [illegible]

Free and Independent.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, That pursuant to a resolution of the Board of Commissioners of the Land Office, adopted May 9, 1939, in consideration of the sum of eighteen thousand dollars ($18,000.00), lawful money of the United States, paid by The Van Iderstine Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, having its principal office on Railroad Avenue and Vernon Avenue, Long Island City, Borough of Queens, in the City of New York and State of New York, and upon the conditions hereinafter expressed, we have given and granted and by these presents do give and grant unto the said THE VAN IDERSTINE COMPANY, the owner of the lands adjacent to the lands hereinafter described, its grantees or successors in interest, (hereinafter referred to as the grantee), the following described lands under water, to wit:

All that parcel of land, now or formerly under the waters of Newtown Creek, in the County of Queens, City and State of New York, bounded and described as follows:

Beginning at the point of intersection of the high water line of Newtown Creek with the boundary line between the property of Municipal Service Real Estate Company Inc. and the property of The Van Iderstine Company, said point being the northeasterly corner of a grant of land under water to Municipal Service Real Estate Company Inc., May 7, 1929, south fifteen degrees, thirteen minutes west, six hundred ninety-two and eighty-six one-hundredths feet from Borough of Queens Monument No. 5891, located on the northeasterly corner of Thirty-Seventh Street and Review Avenue; thence along said high water line the following bearings and distances: south fifty-two degrees, thirteen minutes east, one hundred eighty-[illegible] and south seventy-two degrees, forty-seven minutes east, [illegible] seven and twenty-five one-hundredths feet to the northeasterly corner of a grant of land under water to the New York Terminal Oil Company, December 30, 1863; thence into the waters of Newtown Creek along the northwesterly boundary line of said grant south thirty-five degrees, two minutes west, one hundred twenty-four and fifty-two one-hundredths feet to an intersection with the bulkhead and

along said bulkhead and pier line on a curve to the left of one thousand two hundred twenty feet radius, the long chord of which bears south sixty-five degrees, one minute east, two hundred twenty-two and forty-seven one-hundredths feet to an intersection with the boundary line between the property of The Van Iderstine Company and the property of American Agricultural Chemical Company; thence south twenty-five degrees, thirty-one minutes west, sixty-eight feet to an intersection with the pierhead and bulkhead line approved by the Secretary of War, July 22, 1916; thence along said pierhead and bulkhead line the following bearings and distances: north seventy-two degrees, fifteen minutes, twenty-eight and two-tenths seconds west, one hundred twenty and seventeen one-hundredths feet; north fifty degrees, twenty-eight minutes, fifty-four and two-tenths seconds west, two hundred ninety-one and ninety-three one-hundredths feet; and north forty-nine degrees, two minutes, forty-eight and two-tenths seconds west, eighteen and thirty-two one-hundredths feet to the southeasterly corner of said grant to Municipal Service Realty Company; thence along the southeasterly boundary line of said grant north thirty-five degrees, two minutes, twenty seconds east, one hundred sixty-one and ninety-eight one-hundredths feet to the point of beginning; containing sixty-three thousand twelve square feet more or less.

All bearings are referred to the North Avenue meridian.

Quit-claim deeds are issued, however, and this grant is made and accepted upon the express condition that if the State of New York shall at any time hereafter acquire said premises and improvements, or any part or portion thereof, by appropriation or otherwise, the liability of the State shall be limited to the amount paid by said patentee to the State for this patent, or a proportionate part thereof, together with the expenses necessarily incurred by the patentee for the acquiring of this patent, which are hereby fixed at the sum of $350, and, also, the value of the improvements on said premises, or the proportionate part thereof which may be so acquired. The value of such improvements if all are so acquired, or such proportionate part of the amount paid by said patentee for this patent and of the value of such improvements on a portion of such lands which may be so acquired by the State, and all damages, if any, to the remainder of such improvements which may not be so acquired, to be paid by the State of New York, shall be determined

This grant is made and accepted upon the express covenants and conditions that The City of New York may at any time hereafter acquire the interest in the premises herein described, which the patentee may have acquired under or by virtue of this patent, upon paying to the patentee, its successors or assigns the amount paid by said patentee to the State for the said interest in said premises, together with the expenses necessarily incurred by the patentee for the acquiring of such patent, which are hereby fixed at the sum of $350, and, also, the value of the improvements on said premises; or may acquire the interest acquired under this patent to a part or a portion of said premises upon paying to the patentee, its successors or assigns the proportionate share of the amount paid by such patentee to the State for such interest in part or portion and a proportionate part of the said expenses, together with the value of the improvements on the portion thereof acquired at the time The City of New York shall acquire title to such interest, and also all damages, if any there be, to the improvements upon such part of the premises herein described not acquired by The City of New York as shall be occasioned by the division of the herein described premises. And that the patentee, its successors or assigns shall not demand, claim or be entitled to receive any further, other or greater compensation for any interest it may have acquired under or by virtue of this patent in or to said premises or in or to the part or parcel thereof so taken by The City of New York.

In Testimony Whereof, *We have caused these our Letters to be made Patent, and the Great Seal of our said State to be hereunto affixed.*

Witness, MICHAEL F. WALSH,

Secretary of State of our said State at our City of Albany, the twentieth day of July, in the year of our Lord one thousand nine hundred thirty-nine.

Michael F. Walsh

Passed the Secretary's Office the twentieth day of July, 1939.

Approved as to form:
John J. Burnett, Jr.
Attorney-General
By Warren H. Silman
Assistant.

Peter J. Byrne
Deputy Secretary of State

[illegible] said bulkhead and pier line on a curve to the left of one thousand two hundred twenty feet radius, the long chord of which bears south sixty-five degrees, one minute east, two hundred twenty-two and forty-seven one-hundredths feet to an intersection with the boundary line between the property of The Van Iderstine Company and the property of American Agricultural Chemical Company; thence south twenty-five degrees, thirty-one minutes west, sixty-eight feet to an intersection with the pierhead and bulkhead line approved by the Secretary of War, July 22, 1915; thence along said pierhead and bulkhead line the following bearings and distances: north seventy-two degrees, nineteen minutes, twenty-eight and two-tenths seconds west, one hundred [illegible] and [illegible] one-hundredths feet; north fifty degrees, twenty-eight minutes, fifty-four and two-tenths seconds west, two hundred sixty-one and ninety-three one-hundredths feet; and north forty-six degrees, two minutes, forty-eight and two-tenths seconds west, eighteen and thirty-two one-hundredths feet to the southeasterly bounds of said grant to Municipal Service Realty Company; thence along the southeasterly boundary line of said grant north thirty-five degrees, two minutes, twenty seconds east, one hundred sixty-one and ninety-eight one-hundredths feet to the point of beginning; containing sixty-three thousand twelve square feet more or less.

All bearings are referred to the Tenth Avenue meridian.

Letters-patent are issued, however, and this grant is made and accepted upon the express condition that if the State of New York shall at any time hereafter acquire said premises and improvements, or a part or portion thereof, by appropriation or otherwise, the liability of the State shall be limited to the amount paid by said patentee to the State for this patent, or a proportionate part thereof, together with the expenses necessarily incurred by the patentee for the acquiring of this patent, which are hereby fixed at the sum of $550, and, also, the value of the improvements on said premises, or the proportionate part thereof which may be so acquired. The value of such improvements if all are so acquired, or such proportionate part of the amount paid by said patentee for this patent and of the value of such improvements on a portion of such lands which may be so acquired by the State, and all damages, if any, to the remainder of such improvements which may not be so acquired, to be paid by the State of New York, shall be determined

STATE OF NEW YORK, } ss.:
Department of State }

I hereby certify that the foregoing patent is issued pursuant to a resolution of the Board of Commissioners of the Land Office, adopted ——— 19 32.

Witness my hand and the Official Seal of the Department of State, at the City of Albany this twentieth day of July 1939.

Deputy Secretary of State

Recorded in the Office of the Register of the County of Queens, in Liber No. 4072 Page 175 of Conveyances on August 8, 1939 at 1:28 PM and Indexed under Section 27 Block ——— on the Land Map of the County of Queens.

Register

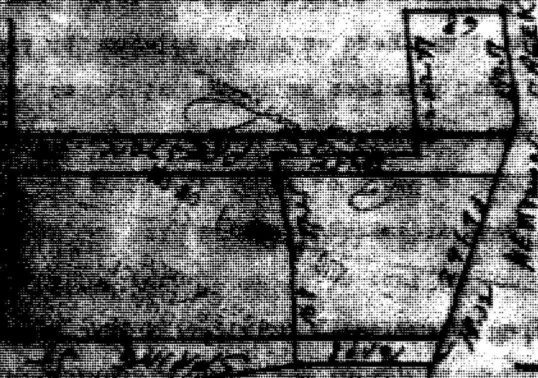


Exhibit JJ

Standard N. Y. B. T. U. Form 8007 • 5-72 5061 —Bargain and Sale Deed, with Covenant against Grantor's Acts—Individual or Corporation.

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

#605.00
NY State
Deed Tax

THIS INDENTURE, made the 12th day of April , nineteen hundred and Seventy-Nine

BETWEEN

DARLING-DELAWARE COMPANY, INC., a Delaware corporation, with offices at 825 Wilson Avenue, Newark, New Jersey, successor by merger with THE VAN IDERSTINE COMPANY,

REEL 1155 PG 1030

party of the first part, and

CARL A. CAPASSO, residing at
1 Tredwell Drive, Old Westbury, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of
ONE DOLLAR and other valuable consideration

xxxxxxx

lawful money of the United States, to it paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being ~~loobe~~ at Long Island City, in the Borough and County of Queens, City and State of New York, bounded and described as follows:

312
272
280

BEGINNING at a point on the southwesterly line of right of way of the Long Island Railroad Company, where is is intersected by the division line between the herein described premises and lands now or formerly of The Standard Oil Company of New York, said division line being defined in a boundary line agreement dated August 3, 1905 between George F. Piper, Walter D. Douglas and the Standard Oil Company of New York, recorded in the office of the Clerk (now register) of the County of Queens in Liber 1383 page 418 of conveyances on August 15, 1905, which beginning point is also 458.22 feet southwesterly from a point in a line which intersects the southwesterly side of Review Avenue, 80 feet wide at point therein distant 925.03 feet southeasterly from the corner formed by the intersection of the southeasterly side of Greenpoint Avenue 140 feet wide, with the southwesterly side of Review Avenue, when measured along said southwesterly side of Review Avenue;

THENCE along said division line as defined in above mentioned agreement south 18 degrees 25 minutes 31 seconds west 119.93 feet to an angle point;

THENCE still along said division line as defined in said agreement south 15 degrees 12 minutes 31 seconds west 239.74 feet to the northeasterly U.S. Pierhead and Bulkhead Line of Newtown Creek as approved by the Secretary of War on July 22, 1916;

THENCE along the said northeasterly U.S. Pierhead and Bulkhead Line of Newtown Creek the following two courses and distances:

1. North 72 degrees 16 minutes 28.2 seconds west 430.09 feet.
2. North 50 degrees 28 minutes 54.2 seconds west 143.09 feet.

Thence north 35 degrees 02 minutes 18 seconds east 357.09 feet;

Thence north 32 degrees 42 minutes 56 seconds east 59.24 feet;

THENCE southeasterly along the southwesterly line of the right of way of the Long Island Railroad Company and along the arc of a circle having a radius of 2889.93 feet bearing to the left, a distance of 442.37 feet to the point or place of BEGINNING.

(CONTINUED)

Together with and subject to an easement of Right of Way for ingress and egress as defined and limited in Reel 416 p 54.

Rt. 1155 - 1031

BEING all of the premises conveyed to the party of the first part by deed from Pocahontas Coal Corporation to The Van Iderstine Company dated September 28, 1955 and recorded on October 6, 1955 in Liber 6814 cp 260 and also being part of the premises conveyed to the party of the first part by various deeds and grants from Charles A. Alling and Sara A. Alling, his wife to The Van Iderstine Company dated October 1, 1909 and recorded on January 10, 1910 in Liber 1665 cp 230; from the American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917 and recorded September 1, 1917 in Liber 2142 cp 106; from the American Agricultural Chemical Company to The Van Iderstine Company dated June 28, 1929 and recorded June 29, 1929 in Liber 3312 cp 300; and Letters Patent granted by the People of the State of New York to The Van Iderstine Company dated July 20, 1939 and recorded on August 8, 1939 in Liber 4072 cp 173.

Together with and subject to terms and conditions contained in the Letters Patent granted by the People of the State of New York to The Van Idarstine Co., dated July 20, 1939 recorded August 8, 1939 in Liber 4072 cp 173.

Together with and subject to a perpetual easement contained in deed from the American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917 recorded September 1, 1917 in Liber 2142 cp 106.

Together with and subject to rights of the Long Island Railroad Company to maintain the Railway siding or spur as the same now exists over, upon and across the premises.

Subject to such state of facts as shown on survey of Montrose Surveying Co., City and Land Surveyors dated September 6, 1978.

Together with and subject to the terms and conditions contained in Letters Patent granted by the People of the State of New York to the New York Kerosine Oil Company dated December 30, 1863 and recorded in Book of Patents Number 39, Page 145, Department of State, Albany, New York

Together with all of its rights to use the dock pier and/or bulkhead and water front abutting the premises along Newtown Creek.

TOGETHER with the benefits and subject to the burdens of any easement of right of way for purposes of maintaining, repairing and using sewer and electric power lines presently existing under the parcel which is bounded and described as follows:

BEGINNING at a point on the southwesterly side of Review Avenue, 80 feet wide, distant 686.61 feet southeasterly from the corner formed by the intersection of the southeasterly side of Greenpoint Avenue, 140 feet wide, with the southwesterly side of Review Avenue, and from said beginning point, the following courses and distances;

THENCE south 18 degrees 31 minutes 47.7 seconds west 320.95 feet;
THENCE south 73 degrees 31 minutes 40.9 seconds east 7.03 feet;
THENCE south 16 degrees 28 minutes 19.1 seconds west 21.72 feet;
THENCE north 73 degrees 31 minutes 40.9 seconds west 7.81 feet;
THENCE south 18 degrees 31 minutes 47.7 seconds west 18.09 feet;
THENCE south 28 degrees 59 minutes 35.9 seconds east 15.08 feet;
THENCE south 31 degrees 50 minutes 56.9 seconds west 5.12 feet;
to the northeasterly line of the Long Island Railroad Right of Way;
THENCE southeasterly along said Railroad Right of Way 15.01 feet;
THENCE north 31 degrees 50 minutes 56.9 seconds east 12.35 feet;
THENCE north 14 degrees 47 minutes 30.4 seconds east 1.39 feet;
THENCE north 29 degrees 59 minutes 35.9 seconds west 15.97 feet;
THENCE north 74 degrees 44 minutes 29.8 seconds west 2.94 feet;
THENCE north 14 degrees 52 minutes 13.8 seconds east 31.64 feet;
THENCE south 75 degrees 07 minutes 46.2 seconds east 4.34 feet;
THENCE north 18 degrees 31 minutes 47.7 seconds east 321.75 feet to the southwesterly side of Review Avenue;
THENCE along said southwesterly side of Review Avenue north 66 degrees 30 minutes 29 seconds west 15.06 feet to the point or place of BEGINNING.

Together with the right to use, maintain and repair the two buildings adjacent to said easement, said buildings being presently used as control and power buildings and shown on survey of Montrose Surveying Co., City and Land Surveyors, dated January 22, 1979, subject to the obligation and duty of party of the second part, its successors and assigns to pay for all costs of maintaining, repairing and using said buildings, including expenses of any kind such as but not limited to real estate taxes, assessments, repairs and curing violations for as long as the easement for power and sewer lines is in existence. The easement herein contained is independent of the easement in the prior paragraph above.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

REL 1155 1032

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Donald K. Gregan

DONALD K. GREGAN, Asst. Secy.

DARLING-DELAWARE COMPANY, INC.

By: [signature]

WARREN J. ALCOCK, Jr., Vice President

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

On the 12th day of April, 19 79, before me personally came WARREN J. ALCOCK, JR. to me known, who, being by me duly sworn, did depose and say that he resides at No. 825 Wilson Avenue, Newark, New Jersey ; that he is the Vice President of Darling-Delaware Co., Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed he name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No. ; that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

HOWARD W. SEGAL
Notary Public ... New York
Qual... County
Commission Expires March 30, 1981

REEL 1155 PAGE 1033

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS
TITLE NO. 88188316

DARLING-DELAWARE COMPANY, INC.

TO

CARL A. CAPASSO

SECTION 2
BLOCK 312
LOT 272 and 280
COUNTY OR TOWN Queens

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:

IRA L. HYAMS P.C.
375 NORTH BROADWAY
JERICHO NY 11753
Zip No.

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
THE TITLE GUARANTEE COMPANY

12970

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

OFFICE

CITY REGISTER

RECEIVED
$ 605.00
REAL ESTATE
APR 1 1979
TRANSFER TAX
QUEENS
COUNTY

REC. 6031
SST #
RPT #
RECORDED BY TAX PAID
T. G. & T. CO.

Exhibit KK

THIS INDENTURE, made the second day of August in the year [illegible] and five.

BETWEEN WALTER D. DOUGLAS, unmarried of Cedar Rapids, in the State of [illegible] GEORGE F. PIPER, of the City of Minneapolis, State of Minnesota, and GRACE B. PIPER, [illegible] parties of the first part and THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a cor- [illegible] organized under and pursuant to the laws of the State of Connecticut, party of the [illegible] part:

WITNESSETH, that the said parties of the first part in consideration [illegible] good and valuable considerations, lawful money of the United States, [illegible] the party of the second part, do hereby grant and release unto the said party of the [illegible] part its successors and assigns forever.

ALL that certain plot, piece or parcel of land situate lying and being in [illegible] of Queens, of the City of New York, in the County of Queens and State of New York consisting of the easterly half of that certain piece or parcel of land which was conveyed to Walter D. Douglas and George F. Piper two of the parties of the first part, by the Guaranty Trust Company of New York, by deed dated February twenty-eighth, 1903 and the location whereof [illegible] shown on a survey thereof made by Peter Elbert Nostrand, dated March twenty-first, 1903 which [illegible] or a copy thereof is hereto annexed and made a part of this indenture and which easterly half of said premises is more particularly bounded and described as follows:-

BEGINNING at a point in the centre line of Review Avenue distant two [illegible] and thirty-eight feet and sixty-eight one-hundredths of a foot easterly from the easterly side of Second Street or Spring Street as shown on said survey, and which point is [illegible] distant between the easterly and westerly boundary lines of the premises conveyed to said [illegible] Douglas and George F. Piper by the deed above mentioned; thence running southwesterly [illegible] straight line to a point in the centre line of the right of way of the Long Island Rail- [illegible] Company equi-distant between a point also on the centre line of said right-of-way on the [illegible] boundary line of said premises conveyed by the Deed above mentioned, as shown on said [illegible] and a point also on the centre line of said right of way on the easterly boundary line [illegible] as shown on said survey, thence continuing in a general southwesterly dir- [illegible] mentioned point in a straight line to a point on the northeasterly side [illegible] distant along the bulkhead line from the easterly and westerly boundary [illegible] said premises conveyed by the above mentioned deed and shown on said survey; thence [illegible] along said northeasterly side of Newtown Creek two hundred and thirty-eight feet [illegible] eight one-hundredths of a foot to the easterly boundary line of the premises hereby [illegible] being the boundary line between the said premises conveyed to said two of the parties [illegible] by the deed above mentioned and the land to the east thereof conveyed [illegible] and Indemnity Company to Pratt Manufacturing Company by deed bearing [illegible] day of November, 1891, and now owned by Standard Oil Company [illegible]

as fixed by a certain boundary line agreement by and between the said two of the parties of the first part hereto and the said Standard Oil Company of New York, by Agreement dated August third, 1905; thence northerly along said boundary line two hundred and thirty six feet and forty seven one-hundredths of a foot to the edge of the meadows as formerly existing, being the original high water line of Newtown Creek; thence northerly still along said boundary line six hundred and eight feet and twenty seven one-hundredths of a foot to the centre line of Review Avenue and thence westerly along said centre line of Review Avenue two hundred and four feet and fifty four one-hundredths of a foot to the point or place of beginning, be said several distances and dimensions more or less.

Together with the right of the parties of the first part to the land under the waters of Newtown Creek in front of said premises hereby conveyed.

And also a right-of-way over a strip of land about twelve feet in width lying south of and adjoining the right-of-way of said Long Island Railroad Company and forming a part of that portion of the property conveyed to the said Walter D. Douglas and George F. Piper by the deed first above mentioned, which lies west of the premises hereby conveyed and which right-of-way is intended to be a continuation of the private road running across the premises hereby conveyed as the same is now in use.

Subject, however, to the rights, if any, of the Long Island Railroad Company in the bed of said premises above described as is now occupied by said Company, and also Subject to a right-of-way which is hereby reserved to the parties of the first part, their heirs and assigns, over a strip of land, part of the premises hereby conveyed, about twelve feet wide and now used as a private road lying south of and immediately adjoining the right of way of said Long Island Railroad Company as said private road is now in use, for the use and benefit of the parties of the first part, their heirs and assigns, owners or occupants of that portion of the property conveyed to said Walter D. Douglas and George F. Piper two of the parties hereto of the part, by the deed first above mentioned and shown on said survey, lying west of the premises hereby conveyed, and also Subject to the use as a public street or highway of so much of the premises above described and hereby conveyed as lies within the bed of Review Avenue.

Subject, also, to that part of said boundary line agreement by and between the parties of the first part hereto and the Standard Oil Company of New York, dated August third, 1905, allowing the wall encroaching upon the premises hereby conveyed to remain as said wall shall stand.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part its successors and assigns forever subject as aforesaid.

And the said Walter D. Douglas and George F. Piper two of the parties of the

first part covenant with the said party of the second part as follows:-

First,- that Walter D. Douglas and George F. Piper two of the parties of the first part are seized of the said premises in fee simple and have good right to convey the same.

Second,- that the party of the second part shall quietly enjoy the said premises

Third,- that the said premises are free from incumbrances except as aforesaid

Fourth,- that the parties of the first part will execute or procure any further necessary assurance of the title to said premises

Fifth,- that Walter D. Douglas and George F. Piper two of the parties of the first part will forever warrant the title to said premises

In Witness Whereof, the said parties of the first part part have hereunto set their hands and seals the day and year first above written.

In presence of

C. A. Piper

Arthur F. Berghund

Walter D. Douglas, (LS)

By G. F. Piper, his attorney-in-fact

George F. Piper (LS)

Grace B. Piper (LS)

State of Minnesota,

County of Hennipen, SS.:

On this seventh day of August, in the year of our Lord one thousand nine hundred and five, before me personally came and appeared George F. Piper and Grace B. Piper his wife, to me personally known and known to me to be two of the individuals described in and who executed the within Conveyance, and duly acknowledged to me that they executed the same.

(LS) Arthur F. Berghund,

Notary Public,

In and for Hennipen County, Minnesota

My commission expires May 28th, 1910.

State of Minnesota

County of Hennipen, SS.:

On this seventh day of August, nineteen hundred and five, before me personally came George F. Piper to me known and known to me to be the attorney in fact of Walter D. Douglas, the individual described in and who by his said attorney in fact executed the foregoing instrument, and duly acknowledged before me that he executed the same as the act and deed of Walter D. Douglas therein described, and for the purposes therein mentioned, by virtue of a power of attorney duly executed by the said Walter D. Douglas, exhibited to me;

dated June nineteenth, 1905 and intended to be recorded in the office of the Register of the County of Queens, on — in Liber — of Powers of Attorney, page —

(LS) Arthur P. Berghund,

Notary Public,

In and for Hennipen County, Minnesota.

My commission expires May 28th, 1910.

State of Minnesota,

County of Hennepin, ss.:

I, A. B. Allen, Clerk of the District Court for the County of Hennepin, Fourth Judicial District of the State of Minnesota, the same being a Court of record and having ~~hereby certify that Arthur P. Berghund whose name is subscribed to the certificate~~ of proof or acknowledgment of the annexed instrument, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County, residing in said County, and duly ~~sworn~~ by the laws of said state to take and certify acknowledgments or proofs of deeds ~~to be~~ in said State, that I am well acquainted with the hand writing of the said Notary, ~~and believe~~ that the signature to the said certificate of proof or acknowledgment is

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said ~~Court at the City~~ of Minneapolis in said County, this 7th day of August A. D. 1905

(SEAL) A. B. Allen, Clerk

By H. A. Lexton, Deputy.

~~Compared the foregoing with the original~~ August 15, 1905 at 9-25 A.M.

Clerk.

THIS INDENTURE, made the twelfth day of August in the year One ~~Thousand~~ Nine Hundred and five.

~~BETWEEN~~ JOHAN HEINRICH HOEPP and MARIA HOEPP, his wife, of the Second ~~Ward~~ Borough and County of Queens, City and State of New York, parties of the first

Exhibit LL

SEARCHLIGHT FOR TITANIC TOO LATE: Owners Put Off Getting Needed ...
Chicago Daily Tribune (1872-1922); Apr 21, 1912;
ProQuest Historical Newspapers: Chicago Tribune (1849-1989)
pg. 3

SEARCHLIGHT FOR TITANIC TOO LATE

Owners Put Off Getting Needed Accessory Until Vessel Would Reach New York.

7 WOMEN RELATE STORIES

Mrs. Walter D. Douglas, the first of the Titanic's survivors to reach Chicago, arrived here yesterday afternoon at 2 o'clock. Mrs. Douglas is the widow of Walter D. Douglas of Minneapolis, who was one of the men who stayed behind when the Titanic's lifeboats were launched, and a cousin of James H. Douglas, 4830 Woodlawn avenue. Her husband was a director of the Quaker Oats company, and with her was prominent in Minneapolis society.

Mrs. Douglas told her brother-in-law, George O. Douglas of Cedar Rapids, Ia., a party of friends from Cedar Rapids, Minn., and St. Paul, and her Chicago relatives, that she was physically well, but still unable to stop thinking of the horrors of the disaster.

Blames Ismay for Wreck.

Mrs. Douglas was in the same lifeboat with Mrs. Arthur Ryerson of Philadelphia, formerly of Chicago, who also lost her husband. Mrs. Douglas expects to be called to testify before the senate investigating committee as to her knowledge of conditions on board the Titanic.

She thought J. Bruce Ismay was, in part, responsible for the disaster to the Titanic. She told her brother-in-law that Mr. Ismay had ordered the speed of the vessel increased when he learned it was in the neighborhood of ice bergs. Mrs. Douglas' brother-in-law related her story.

"Everybody knew we were near ice bergs because it grew so cold," she said. "The second officer told me later that we had struck what he called a 'growler,' a berg lying under the surface, but so close to the top that in perfectly clear weather it could be seen ahead.

Says He Increased Speed.

"On Sunday before the night of the wreck Mrs. Ryerson and I were walking on the upper deck. She told me she had met Mr. Ismay and that he had handed her a Marconigram which she had not read.

"'What does it show?' Mrs. Ryerson asked him."

"'I have just had word that we are in the ice bergs,' he answered.

"'Of course you are going to slow down?' Mrs. Ryerson said.

"'O, no,' Mr. Ismay said, 'we are going to put on two more boilers and get out of it.'

"The day before the wreck," Mrs. Douglas continued, "I was walking on the upper deck with Mr. Douglas. We saw one of the ship's crew letting down a bucket over the side and we stopped to watch him. We saw he was trying to get a bucketful of the ocean water in order to test the temperature. I leaned over to watch the little bucket at the end of the long line.

Test the Ocean Water.

"The bucket never reached the ocean. The man pulled it up empty. Then he took the bucket to the water pipe on deck, turned on the water there, and filled it with the ship's water. He put the thermometer in the bucket of ship's water to get the temperature. He never got the temperature of the ocean water.

"I asked Mr. Douglas if he had seen it and if we ought not to tell, but he said it didn't matter and nothing was said about it."

George Douglas, Mrs. Douglas' brother-in-law, said that she had told her story to Senators Smith and Newlands of the senate investigating committee. They told her that what she reported was important and she agreed to return and testify before the committee whenever she might be wanted.

Told to "Shut Up."

Mrs. Douglas said an officer in the lifeboat told her to "shut up" when she cried out, "The Titanic is sinking."

"The man was perfectly right," said Mrs. Douglas. "When I saw the boat go down, I cried out impulsively. The officer had provided himself with blue light torches and these brought the Carpathia to us first.

"I did not want to leave my husband. We stood on the opposite side to that on which the boat was settling. They were placing the people in the boats on the other side. I was told to get into one of the emergency boats. I did not want Walter to stay, but he said:

"'I must be a man,' and remained."

Mrs. Douglas was accompanied by Mr. and Mrs. John P. Snyder of Minneapolis. Mr. Snyder said when he and his wife were ordered into a lifeboat they supposed it a precautionary measure adopted by the ship's officers which they would have to obey, although it seemed unnecessary.

Duluth Woman Tells Story.

Miss Constance Willard of Duluth, Minn., who left the Titanic twenty minutes before the vessel sank, arrived in Chicago during the day over the Lake Shore limited.

"One subject talked of after we were on board the Carpathia," she said, "was the fact the Titanic had no searchlight. The crew said that it had been the intention of the owners to equip the vessel with a searchlight after its arrival in New York.

"When I reached the deck after the collision the crew were getting the boats ready to lower, and many of the women were running about looking for their husbands and children. The women were being placed in the boats, and two men took hold of me and almost pushed me into a boat. I did not appreciate the danger and I struggled until they released me.

"'Do not waste time; let her go if she will not get in,' an officer said. I hurried back to my cabin again and went from cabin to cabin looking for my friends, but could not find them. A little English girl about 15 years old ran up to me and threw her arms about me.

Hurries Aboard a Boat.

"'O, I am all alone,' she sobbed, 'won't you let me go with you?' I then began to realize the real danger and saw that all but two of the boats had been lowered. Some men called to us and we hurried to where they were loading a boat. All the women had been provided with life belts. As the men lifted us into the boat they smiled at us and told us to be brave. The night was cold and the men who were standing about, especially the steerage passengers, looked chilled, but the men who were helping the women into the boats seemed different. Even while they smiled at us great beads of perspiration stood out on their foreheads.

"I never will forget an incident that occurred just as we were about to be lowered into the water. I had just been lifted into the boat and was still standing, when a foreigner rushed up to the side of the vessel and holding out a bundle in his arms cried with tears running down his face:

Begs Her to Take Child.

"'O, please, kind lady, won't you save my little girl, my baby. For myself it is no difference, but please, please take the little one.' Of course, I took the child. Most women were compelled to stand in the boats because they all wore the lifebelts, which made it almost impossible to sit down.

"In our boat there were seven men, about twenty women, and several children. The night was dark. Twenty minutes after leaving the Titanic we heard an explosion and the vessel appeared to split in two and sank. Then a foreign woman in our boat began singing a hymn, and we all joined, although few knew the words. All around us we heard crying and sobbing for perhaps three minutes.

Left Husband on Boat.

Mrs. W. E. Minahan and daughter, Miss Daisy Minahan, of Green Bay, Wis., survivors of the Titanic disaster, passed through Chicago in the evening on their way home. They stopped at the Hotel La Salle for several hours.

Dr. W. E. Minahan, the husband and father, went down with the ship after placing his wife and daughter in a lifeboat and telling them he would follow on a later boat.

"It's simply too terrible even to think about, let alone speak of," she told friends who met her at the hotel, "and I will not attempt it. We believed the doctor would follow us and meet us and now he's gone forever with those other brave men."

They left on a late train for their home.

Some Chicagoans do not know yet whether their relatives were saved by the Carpathia or not. Edward Manion, who lives at 1848 Lincoln avenue, does not know whether his sister, Miss Margaret Manion, Castle Bar, Ireland, is on her way to Chicago or lying two miles deep off the New Foundland banks.

Miss Manion has been reported in both the list of survivors and the list of lost. Her brother telegraphed the New York offices of the White Star company on Friday to settle his fears, but he had no reply from them at a late hour yesterday.

"It is hard to sit here and wait, nearly a week after the Titanic went down and not know whether she is alive or dead," Mr. Manion said. "It may be she has wired me and the message failed to reach me."

Another Chicagoan Still Fears.

Another Chicagoan who can neither rejoice nor mourn, but must wait to know, is [illegible] avenue, South Chicago. She hopes that a Philip Senn who was reported saved is her nephew from Gesinger, Germany, but she has no word from New York.

Edward L. Ryerson Jr., 38 Banks street, a nephew of Mrs. Arthur Ryerson of Philadelphia, is expected to return to Chicago Monday or Tuesday. He is now with Mrs. Ryerson and her children in New York. It is not known whether Mrs. Ryerson will visit her former home in Chicago or go on to her residence in Philadelphia with the three children who lost their father.

Nana Harper, the 6 year old daughter of Dr. John Harper, who was on his way to Chicago to preach at the Moody church, will return to England without coming on to Chicago. She is in charge of Miss Jessie Leitch, who was rescued with her. The Rev. Ervine Wooley, assistant pastor of the Moody church, is with them at the Manhattan hotel in New York.

Tells Miss Leitch's Story.

A letter from Dr. Wooley to A. F. Gaylord, chairman of the executive committee of the Moody church, gives Miss Leitch's account of the night when Dr. Harper was lost. Dr. Wooley writes that Nana did not know her father was dead until she arrived in New York on the Carpathia.

"Miss Leitch," he writes, "had only the clothes she wore, had saved no money or valuables, and little Nana, taken as she had been from her berth at midnight, had only her little nightgown and blanket wrapper, around which Miss Leitch had wrapped her own cloak. A woman standing by insisted on throwing a heavy ulster over Miss Leitch which she had brought to the pier for that purpose. They had no stateroom on the Carpathia and had stayed night and day in a corner of the library."

The following is Miss Leitch's account in brief:

"About midnight Mr. Harper came to our stateroom and told us that the vessel had struck an iceberg. While I was dressing he went to learn further particulars, and returned to say that the order had been given to put on the life belts. We did so, and, picking up Nana in his arms, he took her up to the deck. There the women were ordered to the upper deck. I had to climb a vertical iron ladder, and Mr. Harper brought Nana after me up the ladder, and the men at the top lifted her up to me again.

"There was no opportunity for farewell, and, in fact, even then we did not realize the danger, as we were assured again and again that the vessel could not sink, that the Olympic would be alongside at any minute, and that the women and children were to be put into the boats first and the men to follow, and that there were boats sufficient for all. Our boat was well manned—it was the eleventh to leave the vessel.

"After about half an hour the Titanic went down. We were about a mile away.

Took Another Vessel.

John McCarthy, 4634 Wallace street, received a telegram from New York yesterday stating that his sister, Catherine McCarthy, who he believed had sailed from Ireland on the Titanic, reached New York Monday on another vessel.

Miss Catherine McGown, sister of Mrs. Thomas McDermott, 3241 North Ashland avenue, a Chicagoan who had been spending some months in Ireland and who was bringing back her niece, Miss Annie McGown of County Mayo, was drowned. Annie was picked up by the Carpathia.

Mrs. Ida Hippach, wife of L. A. Hippach, and her daughter, Gertrude, are expected back in Chicago either Monday or Tuesday. They are now in New York in company with Mr. Hippach, who will bring them back to their home at 7252 Sheridan road.

Mrs. F. R. Kenyon, who is a sister of Mrs. George P. Baldwin, Oak Park, has gone to her home in Connecticut and will not be in Chicago for some time. Mrs. Marion Smith, daughter of William Haines, 8900 Lake avenue, is not expected to visit Chicago before the middle of the summer.

Chicagoans Mourned as Dead.

Mr. Kenyon is on the list of Chicagoans or relatives of Chicagoans who are mourned as dead. Others are:

Arthur Ryerson, Philadelphia, formerly of Chicago and uncle of Edward L. Ryerson Jr.

Miss Alice Touch, Edinburgh, Scotland, sister of Arthur S. Touch, 525 North Central avenue, Austin.

Miss Ann Elizabeth Isham, daughter of the late Edward S. Isham of Chicago.

Edwin J. Lewy, jeweler, 5628 South Park avenue.

J. Clinch Smith, brother-in-law of Nelson L. Barnes, 22 East Ontario street.

Clarence Moore, formerly of Chicago, husband of the former Miss Maybelle Swift, daughter of E. C. Swift.

Gerda Dahlberg, Stockholm, Sweden, sister of Miss Signa Dahlberg, 1530 Calumet avenue.

John Burke, Mary Burke, Miss Catherine Burke of St. Louis, relatives of Miss Helen McHugh, 5509 Cornell avenue.

Mrs. Alma Paulson and four children, wife and children of Nels Paulson, 754 Townsend street.

Joseph Foley, County Wexford, Ireland, brother of Thomas Foley, 3157 Harrison street, and Nicholas Foley, Fortieth and Lake streets.

J. Hugo Ross, cousin of H. H. Perry, 9915 Commercial avenue, South Chicago.

A. A. Stewart of New York, father of Mrs. Oren Taft, 68 Cedar street.

Mrs. E. E. West, sister of Andrew Larsen, 8748 Wabansia avenue, and her two children, Eric and Kene.

Oliver Myhrman, nephew of John Nelson, 6620 Lafin street.

Thomas Conlin, brother of Miss Mary Conlin, 2519 Prairie avenue.

Henry B. Harris, nephew of Mrs. Yetta Steele, whose husband is manager of the Colonial theater.

Chicago ministers in practically all the churches will preach sermons today in memory of the dead.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

Exhibit MM

quainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 27 th day of August 1917.

(L. S.) WM. F. SCHNEIDER, Clerk.

Entered and compared the foregoing with the original September 1, 1917, at 10.32 A. M. and indexed under Section 4 Block 279 on the Land Map of the County of Queens.

Examined by Clerk.
Recorded at the request of Beard, Abbott &--- 32 Liberty St., N. Y. C.

19427. THIS INDENTURE, made the eighteenth day of August, nineteen hundred and seventeen. BETWEEN THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of Connecticut, having an office for the transaction of business at No. 2 Rector Street, Borough of Manhattan, City of New York, party of the first part, and THE VALENTINE COMPANY, a corporation organized and existing under the laws of the State of Maine and having an office for the transaction of business in the Borough of Queens, City of New York, at Railroad and Greenpoint Avenues, there being no street number, party of the second part. WITNESSETH that the party of the first part, in consideration of the sum of One Dollar ($1.00) lawful money of the United States, and other valuable considerations paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever.

2142-106

ALL that certain strip, piece or parcel of land situate lying and being in the Borough of Queens, in the City and State of New York, being more particularly bounded and described as follows :- BEGINNING at a point in the centre line of the right of way of the Long Island Railroad where the same is intersected by the southeasterly line of premises now owned by the party of the second part and which were conveyed to it by deed from Charles A. Alling and wife, dated October 1st 1909, and recorded in the office of the Clerk of Queens County on January 10 th 1910, in Liber 1665 of Deeds at page 230, being the parcel of land first described in said deed and which point of beginning measured southeasterly along said center line of said railway is 179.24 feet southeasterly from a point where the same is intersected by the division line between land lately belonging to Helenah Rowenhoven and land lately belonging to the heirs of Agnes Pine, deceased, as located in said deed above refererred to and the survey thereto attached: running thence southwesterly along the southeasterly line of said premises now owned by the party of the second part as aforesaid 236.75

feet to party of the first part herein: and running thence easterly in a line in prolongation of the northeasterly boundary line of said premises so conveyed 15.07 feet to a point two feet southeasterly from said last course measured on a line at right angles thereto: and running thence northeasterly on a line parallel to the first course and always two feet southeasterly therefrom 221.82 feet more or less to the said centre line of the right of way of the Long Island Railroad: and running thence northwesterly along the said centre line of said railway two feet more or less, to the point or place of beginning: subject, however, to the right if any, of the Long Island Railroad Company to so much of said premises as is now occupied by it. TOGETHER with a perpetual right, privilege and easement to party of the second part, its successors and assigns forever, for purposes of supporting any buildings, fence or other structure now or hereafter to be built upon land of party of the second part, to construct and maintain foundations, piers or other substructures below grade upon a strip of land six feet in width, extending from the southwesterly line of premises above conveyed and said line prolonged to the bulkhead line of Newtown Creek: the northwesterly boundary line of said strip being the northwesterly boundary line of a strip of land this day, by deed of even date, conveyed by party of the second part to party of the first part: and the southeasterly boundary line thereof being parallel to and six feet southeasterly from said northwesterly boundary line. Such right, privilege and easement to be exercised and such foundations to be constructed in such manner as not to interfere with the use of the railroad siding now on the property of the party of the first part, nor the buildings now erected thereon. TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD, the premises herein granted unto the party of the second part its successors and assigns forever.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers the day and year first above written.

(CORPORATE SEAL) THE AMERICAN AGRICULTURAL CHEMICAL COMPANY,
by Wm. Prescott, Vice-President.

Attest ; Clarence P. Leggett,
Assistant Secretary.

STATE OF NEW YORK; COUNTY OF NEW YORK;SS: On the 24 th day of August, nineteen hundred and seventeen, before me came W. PRESCOTT, to me known, who, being by me duly sworn, did depose and say that he resides in Lakewood, Ohio: that he is the Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, the corporation described in, and which executed the foregoing instrument: that he knows the seal of said corporation: that the seal affixed to said instrument is such corporate seal: that it was so affixed by order of the Board of Directors of said corporation: and that he signed his name thereto by like order.

(L. S.) J. A. STARKEY,
Notary Public, Queens County, No. 1630,
Certificate filed in New York County No. 302.

Entered and compared the foregoing with the original September 1, 1917, at 10.02 A. M. and indexed under Section 4 Block 279 on the Land Map of the County of Queens.

Clerk.

Examined by
Recorded at the request of Beard, Abbott, & Morgan, 32 Liberty St., N. Y. C.

19428.

THIS INDENTURE, made the 31 st day of August in the year One thousand nine hundred and seventeen, between [illegible] DI LEO, of Corona, Queens County, New York, party of the first part and [illegible] DI LEO, residing at 89-48th Street, Corona, Queens County, New York, party of the second part, WITNESSETH, That the said party of the first part in consideration of the sum of TEN DOLLARS, lawful money of the United States, and other val-

Exhibit NN

Supreme Court

OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY,

Plaintiff,

against

POCAHONTAS COAL CORPORATION,

Defendant.

CONTROVERSY SUBMITTED UNDER SECTIONS 546, 547 AND 548 OF THE CIVIL PRACTICE ACT

SULLIVAN & CROMWELL,
Attorneys for Plaintiff,
48 Wall Street,
New York, N. Y.

F. R. HAWTHORNE,
F. A. DOOLEY,
Attorneys for Defendant,
1 Broadway,
New York, N. Y.

[illegible] Printing Company, Inc., [illegible] Street, New York City

INDEX

	PAGE
Statement Under Rule 234.....	1
Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act....	2
Exhibit A: Lease dated February 20, 1934 between The American Agricultural Chemical Company and Avers Fuel Corporation	17
Exhibit B: Assignment of Lease dated August 2, 1937 from Avers Fuel Corporation to Avers Fuel Company, Inc.	40
Exhibit C: Letter dated March 22, 1938 from Avers Fuel Company, Inc. to The American Agricultural Chemical Company	50
Stipulation Waiving Certification.....	53

1

Supreme Court

OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY,
Plaintiff,

against

POCAHONTAS COAL CORPORATION,
Defendant.

2

Statement Under Rule 234

This is a submission, pursuant to Sections 546-548 of the Civil Practice Act, of a controversy which has arisen between the above-named parties. The case and submission and affidavit on submission were filed in the office of the Clerk of the County of Kings on September 7, 1938. The plaintiff is a Delaware corporation, authorized to do business in the State of New York. The defendant is a New York corporation. The attorneys for the plaintiff are Sullivan & Cromwell, and the attorneys for the defendant are H. R. Hawthorne and F. A. Doocey. There has been no change of parties or attorneys.

3

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY,
Plaintiff,

against

POCAHONTAS COAL CORPORATION,
Defendant.

Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act

STIPULATION OF ADMITTED FACTS.

The above named plaintiff and defendant do hereby agree upon the following facts upon which this controversy between them depends and hereby submit the same to the Court for decision:

1. The plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of New York.

2. Defendant, Pocahontas Coal Corporation, is a corporation duly organized and existing under the laws of the State of New York. Defendant

was incorporated under the name of Avers Fuel Company, Inc. on July 19, 1937, to purchase some of the assets of Avers Fuel Corporation, a domestic corporation.

3. By deed dated August 7, 1905 (recorded in the office of the Clerk of the County of Queens, Liber No. 1383, Page 423 of Conveyances, on August 15, 1905), plaintiff's predecessor in title, The American Agricultural Chemical Co., a Connecticut corporation, acquired title to a parcel of land approximately rectangular in shape, situated between Newtown Creek and Review Avenue in the Borough and County of Queens, State of New York, its boundaries being approximately 240 feet on the southwesterly side, along Newtown Creek, approximately 815 feet on the southeasterly side, approximately 200 feet on the northeasterly side along Review Avenue, and approximately 825 feet on the northwesterly side. This rectangular parcel was divided by a 50-foot right-of-way of the Long Island Railroad Company running from the northwesterly side to the southeasterly side of the rectangular parcel and located approximately midway between the southwesterly side and the northeasterly side. The said parcel was also crossed by a 12-foot right-of-way for a private road, running across said parcel parallel to and adjoining the aforesaid right-of-way of the Long Island Railroad Company on the southwest.

4. The Long Island Railroad Company and its predecessor, the Flushing Railroad, have used

10 the tract, 50 feet in width, herein referred to as "the Long Island Railroad Company right of way", continuously since prior to 1856 for maintaining and operating upon railroad tracks running upon said tract. Except for knowledge of the aforestated facts, the parties have been unable to ascertain in what manner the Flushing Railroad first used, or acquired rights in, the said tract or what nature of rights or interests it so ac-
11 quired.

5. By deed dated December 22, 1920 (recorded in the office of the Clerk of the County of Queens, Liber No. 2226, Page 559 of Conveyances, on January 17, 1921), plaintiff's predecessor in title, The American Agricultural Chemical Company, of Connecticut, conveyed to the Long Island Railroad Company a parcel of land out of and from near the center of the said rectangular parcel above described, and adjoining the aforesaid right-of-way of the Long Island Railroad Com-
12 pany on the northeast, approximately 16 feet wide and extending across said rectangular parcel of land from the southeasterly side to the northwesterly side thereof. This deed of December 22, 1920 conveyed said 16-foot parcel of land in fee simple and free from any reservations or encumbrances. Said 16-foot parcel has been and is being used by the Long Island Railroad Company for the purpose of maintaining and operating upon siding trackage thereon.

6. The portion of the original rectangular parcel lying southwest of the Long Island Railroad

Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act

Company right-of-way is hereinafter referred to as the "South Parcel", and the portion of said original rectangular parcel lying northeast of the tract conveyed to the Long Island Railroad Company by the deed of December 22, 1920, is hereinafter referred to as the "North Parcel".

7. By deed dated June 30, 1930 (recorded in the office of the Register of the County of Queens, Liber No. 3418, Page 249 of Conveyances, on August 15, 1930), The American Agricultural Chemical Company, of Connecticut, conveyed to the plaintiff, The American Agricultural Chemical Company, of Delaware, the original rectangular tract excepting therefrom, however, the aforesaid parcel of land conveyed by the deed of December 22, 1920, and also excepting two other parcels, which two other parcels were subsequently conveyed to the plaintiff by a deed dated December 31, 1930 (recorded in the office of the Register of the County of Queens, Liber No. 3454, Page 58 of Conveyances, on January 14, 1931). The said deed of June 30, 1930 conveyed the premises, subject "to the rights, if any, of the Long Island Railroad Company to so much of the premises * * * as is now occupied by said Company", and also subject to the right-of-way in the 12-foot strip for a private road reserved to the grantors in the deed of August 7, 1905.

8. By deed dated May 1, 1931 (recorded in the office of the Register of the County of Queens, Liber No. 3480, Page 504 of Conveyances, on May

7, 1931), plaintiff conveyed to Triplex Oil Refining Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Triplex", and referred to in said deed as "party of the second part"), the southerly half of the North Parcel, together with a ten (10) foot strip of the northerly half of the North Parcel running along the southeasterly boundary of the northerly half of
17 the North Parcel to Review Avenue, said deed containing, among other things, the following grants and reservations:

> "TOGETHER with a right of way Ten (10) feet in width extending from Review Avenue southwesterly and adjoining for the entire length the Ten (10) foot strip of land included in the premises above described adjoining the land now or formerly of Standard Oil Company of New York, which right of way is to be used in common by the parties hereto and their respective
> 18 successors and assigns as a means of ingress from and egress to Review Avenue; and reserving to the party of the first part, its successors and assigns, an easement over the Ten (10) foot strip of land included in the premises first above described adjoining the land now or formerly of the Standard Oil Company of New York, said strip of land to be used in common by the parties hereto and their respective successors and assigns as a means of ingress from and egress to Review Avenue,

so that the parties hereto and their respective successors and assigns shall have a common easement or right of way over a strip of land Twenty (20) feet in width lying between the lands now or formerly of the Standard Oil Company of New York and other land of the party of the first part. Said Twenty (20) foot right of way to be also used by the parties hereto and their respective successors and assigns, to install, operate, maintain and replace sewers, gas and water mains, telephone, electric light and power lines and other public and private utilities, above or under ground, to serve the lands hereby conveyed and other lands of the party of the first part, it being expressly agreed that such utilities are to be installed in such manner as not to interfere with the use of said right of way as a means of ingress from and egress to Review Avenue from the land hereby conveyed and other lands of the party of the first part.

"TOGETHER, ALSO, with the right to the party of the second part, its successors and assigns, to connect with and use the existing six (6) inch sewer on other land of the party of the first part lying southwesterly of the lands of the Long Island Railroad Company, such sewer connection not to exceed six (6) inches in diameter, and such connection and use to continue only so long as the same may be permitted by municipal

or other governmental authority having jurisdiction of such sewer, provided, however, that the party of the second part, its successors or assigns, shall pay a just and reasonable proportion of the cost of maintaining said existing sewer; and reserving to the party of the first part, its successors and assigns, the right to relocate said sewer within the boundaries of other lands at their own expense.

"The party of the first part also reserves for itself, its successors and assigns a right of way or easement to lay, maintain, replace, operate and remove sewer, water and other pipe lines and conduits and other public and private utilities and appurtenances thereto in and through the strip of land five (5) feet in width adjoining said property of Standard Oil Company of New York and extending from the land of the Long Island Railroad Company to the southwesterly end of said twenty (20) foot right of way hereinabove described and then crossing said right of way diagonally to the remaining lands of the party of the first part. Said utilities shall be placed at least two (2) feet six (6) inches below the surface of the ground and shall be installed and maintained so as not to unreasonably inconvenience the party of the second part, its successors and assigns and so as not to unreasonably interfere with the operation of a railroad

spur track which may hereafter be constructed or with roadways which may hereafter be constructed. The party of the first part and its successors and assigns who shall at such time own the lands adjoining fronting on Review Avenue agree to and with the party of the second part, its successors and assigns that it or they will indemnify and save harmless the party of the second part, its successors and assigns from all loss or damage which the party of the second part, its successors or assigns may suffer by reason of any damage to persons or property arising out of the installation and maintenance of said public or private utilities."

The easement granted to Triplex by the first of the above quoted paragraphs runs along the 10-foot strip conveyed in fee to Triplex along the southeasterly side of the northerly half of the North Parcel. The easement reserved to the plaintiff in the third of the above quoted paragraphs runs along the southeasterly side of the southerly half of the North Parcel.

9. The plaintiff has at no time used the northerly half of the North Parcel for any purpose, and there has been no building or structure thereon.

10. The defendant admits the matters contained in the foregoing paragraphs 3, 4, 6, 7, 8

and 9 to be facts but does not admit that such facts are either material or relevant to this controversy.

11. On February 20, 1934 plaintiff and Avers Fuel Corporation entered into an indenture of lease by which plaintiff leased to Avers Fuel Corporation the South Parcel as more fully described in the indenture of lease, a true copy of which is annexed hereto and marked "Exhibit A".

12. On August 2, 1937, Avers Fuel Corporation duly assigned the said lease to the defendant, Pocahontas Coal Corporation, then known as Avers Fuel Company, Inc. and the plaintiff duly consented to said assignment. A true copy of said assignment is annexed hereto and marked "Exhibit B". At the time of the assignment of said lease to the defendant, the defendant had no knowledge of any of the facts pertaining to the title to the land included in the lease or history thereof except the facts contained in said lease of February 20, 1934, Exhibit A, and made no inquiry with respect thereto.

13. At the time of the making of the lease of February 20, 1934, Avers Fuel Corporation had no knowledge of any of the facts pertaining to the title to the land included in the lease or history thereof, except the facts contained in said lease, Exhibit A, and except that Avers Fuel Corporation knew that the North Parcel had been

owned by the plaintiff, that the plaintiff had conveyed the southerly half of the North Parcel to "Triplex", that the plaintiff continued to own the northerly half of the North Parcel and that the plaintiff, in its deed to "Triplex" of May 1, 1931, had reserved certain easements as set forth in paragraph 8 above.

14. The defendant admits the matters contained in the foregoing paragraph 13 to be facts but does not admit that such facts are either material or relevant to this controversy.

15. In January 1938 plaintiff entered into negotiations with Triplex for the sale to Triplex of the northerly half of the North Parcel. Triplex required of the plaintiff that the conveyance should include an assignment to Triplex of the easements and rights reserved to plaintiff in the twelfth and thirteenth paragraphs of the lease (Exhibit A hereto), and in addition an express grant of the right, when exercising the right reserved in the thirteenth paragraph of the lease of docking vessels, barges or other carriers alongside the bulkhead in front of a certain five (5) foot strip, to permit such vessels, barges or other carriers to overlap onto the bulkhead beyond said five (5) foot strip. Triplex further required of the plaintiff as a guaranty of quiet enjoyment that the plaintiff obtain the consent in writing of the defendant to such conveyance. The defendant refused to give its consent thereto, contending that the right to so moor vessels reserved to

34 plaintiff in the thirteenth paragraph of the lease (Exhibit A hereto) is not assignable and in any event does not include the right to have vessels overlap as aforesaid onto the bulkhead beyond the five (5) foot strip. Plaintiff contended that such right is assignable and includes the right to have vessels overlap as aforesaid.

16. At no time during the life of the said lease
35 of February 20, 1934 has the plaintiff moored or docked any vessel, barge or other carrier alongside or in front of the aforesaid bulkhead.

17. Thereupon on March 31, 1938, the plaintiff and defendant entered into an agreement, a copy of which is annexed hereto and marked "Exhibit C", in order to enable the plaintiff to make said conveyance to Triplex, and reserving for the determination of the Court the questions in controversy between the plaintiff and the defendant.

36 18. WHEREFORE, in order to determine the aforesaid controversy existing between the plaintiff and the defendant, and in order to avoid litigation in the future between the parties hereto or either of them and Triplex, the parties submit for determination by this Honorable Court the following questions:

> 1. Does the reservation in the lease give the plaintiff the right to have vessels, barges or other carriers, moored or docked alongside the bulkhead in front of said five (5) foot strip, overlap onto the bulkhead beyond said five (5) foot strip?

Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act 37

2. Is the said right reserved in the lease assignable by the plaintiff?

New York, August 31st, 1938.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By Anthony B. Arnold

(SEAL)

POCAHONTAS COAL CORPORATION 38

By O. L. Alexander

(SEAL)

SULLIVAN & CROMWELL,
Attorneys for Plaintiff,
48 Wall Street,
New York, N. Y.

H. R. HAWTHORNE,
F. A. DOOLEY,
Attorneys for Defendant,
1 Broadway,
New York, N. Y. 39

Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 27th day of August, 1938, before me personally appeared O. L. ALEXANDER, to me known to be the President of POCAHONTAS COAL CORPORATION, a New York corporation, and one of the parties described in and which executed the foregoing submission, who, being by me duly sworn, did depose and say that he resides at No. 829 Park Avenue, New York City, N. Y., that he is the President of Pocahontas Coal Corporation, the corporation described in and which executed the foregoing submission; that he knew the seal of said corporation; that the seal affixed to such submission was such corporation seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

AGNES K. NEARY
Notary Public
Notary Public, New York County
(SEAL) New York Co. Clerk's No. 20, Register's No. O-N-6 Commission expires March 30, 1940

Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act 43

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 31st day of August, 1938, before me personally appeared ANTHONY B. ARNOLD, to me known to be the Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a Delaware corporation, and one of the parties described in and which executed the foregoing submission, 44
who, being by me duly sworn, did depose and say, that he resides at 538 Lawrence Avenue, Westfield, New Jersey, that he is the Vice-President of The American Agricultural Chemical Company, the corporation described in and which executed the foregoing submission; that he knew the seal of said corporation; that the seal affixed to such submission was such corporation seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

45

RODNEY T. KINGSBURY
Notary Public
Notary Public Nassau Co. No. 1765
Cert. filed in N. Y. Co. Clk's No. 442, Reg. No. O-K-265 Commission Expires March 30, 1940
(SEAL)

46 *Controversy Submitted Under Sections 546, 547 and 548 of the Civil Practice Act*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ANTHONY B. ARNOLD, being duly sworn, deposes and says, that he is Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, the plaintiff above named; that the controversy mentioned in the foregoing case, and dependent
47 upon the facts set forth therein and herewith submitted to the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, for decision thereof, is real and the submission thereof is made in good faith for the purpose of determining the rights of the parties.

ANTHONY B. ARNOLD

Sworn to before me this 31st }
day of August, 1938. }

RODNEY T. KINGSBURY
48 Notary Public.
Notary Public Nassau Co. No. 1765
Cert. filed in N. Y. Co. Clk's No. 442,
Reg. No. O-K-265 Commission Expires
March 30, 1940
(SEAL)

Exhibit A

THIS INDENTURE OF LEASE AND OPTION OF PURCHASE, made this 20th day of February, 1934, between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation of the State of Delaware, having a principal office at No. 420 Lexington Avenue, New York, N. Y. (hereinafter called "Landlord"), and AVERS FUEL CORPORATION, a corporation of the State of New York, having its principal office at No. 350 Fifth Avenue, New York, N. Y. (hereinafter called "Tenant"),

WITNESSETH:

That the Landlord does hereby lease to the Tenant, and the Tenant hires from the Landlord, ALL that certain tract or parcel of land, together with the buildings and improvements thereon, situate in the Borough and County of Queens, City and State of New York, more particularly described as follows:

> BEGINNING at a point in the Southwesterly line of lands occupied by The Long Island Railroad Company where it is intersected by the division line between the herein described premises and lands now or formerly of The Standard Oil Company of New York, said division line being defined in a boundary line agreement dated August 3rd, 1905, between George F. Piper and Walter D. Douglas and Standard Oil Company of New York, and recorded in the office of the Clerk of the County of Queens in Liber 1383, page 418, of Conveyances on August 15th, 1905, and run-

52 *Exhibit A*

ning thence (1) in a Southwesterly direction along said division line as defined in the above mentioned agreement to an angle point in said division line; thence (2) continuing in a Southwesterly direction along said division line two hundred thirty-six and forty-seven one-hundredths (236.47) feet, more or less, to the Northeasterly bulkhead line of Newtown Creek; thence (3) in a Northwesterly direction along said
53 Northeasterly bulkhead line two hundred forty and sixty-eight one-hundredths (240.68) feet, more or less, to the division line between the herein described premises and lands now or formerly of the Van Iderstine Company; thence (4) in a Northeasterly direction along said division line as described in the deed dated August 18th, 1917, from the Van Iderstine Company to The American Agricultural Chemical Company (Connecticut) and recorded in the office of the Clerk of the County of Queens in Liber 2146, page 69,
54 of Conveyances on October 6th, 1917, a distance of one hundred and sixty-four (164) feet, more or less, to an angle point in said division line; thence (5) continuing along said division line in a Northeasterly direction along a line forming with the last mentioned course an angle of 172° 22′ 44″, a distance of twenty-eight and twenty-six one-hundredths (28.26) feet to an angle point in said division line; thence (6) in a Northeasterly direction still along said

55

division line as described in a deed from The American Agricultural Chemical Company to the Van Iderstine Company dated August 24th, 1917, to a point in the Southwesterly line of lands occupied by The Long Island Railroad Company; thence (7) in a Southeasterly direction along said Southwesterly line to the point or place of beginning.

TOGETHER with a right of way over a strip of land about twelve (12) feet in width lying South of and adjoining the right of way of The Long Island Railroad Company and extending Westerly from the herein described premises over other lands formerly owned by George F. Piper and Walter D. Douglas, as acquired by them by deed from Guaranty Trust Company of New York dated February 28th, 1903, together with all riparian rights and appurtenances. 56

SUBJECT to any state of facts an accurate survey may show. 57

SUBJECT to the rights and/or title of the City of New York and/or the State of New York in so much of the above described premises as lies between the original high water line of Newtown Creek and said bulkhead line, and subject to any changes which may have been made in the pier or bulkhead line in Newtown Creek in front of said premises, and to the right of the United States Government and/or the State of

58 *Exhibit A*

New York to regulate and change said pier and bulkhead lines, and to any encroachment of the bulkhead into the waters of Newtown Creek beyond the bulkhead line.

SUBJECT to a right of way reserved to George F. Piper and Walter D. Douglas, their heirs and assigns, over a strip of land twelve (12) feet in width, a part of the herein described premises, lying South of and adjoining the right of way of The
59 Long Island Railroad Company, for the use and benefit of the owners or occupants of that property lying West of the herein described premises, formerly owned by said George F. Piper and Walter D. Douglas and acquired by them by said deed from the Guaranty Trust Company of New York dated February 28th, 1903.

SUBJECT to all the terms and conditions of a boundary line agreement dated August 3rd, 1905, between George F. Piper and Walter D. Douglas and Standard Oil
60 Company of New York and recorded in the office of the Clerk of the County of Queens in Liber 1383, page 418, of Conveyances on August 15th, 1905.

SUBJECT to the rights of the Van Iderstine Company, their successors and assigns, in a six (6) foot strip, a portion of the above described premises, extending from the Northeasterly boundary line of property conveyed to The American Agricul-

tural Chemical Company by the Van Iderstine Company by deed dated August 24th, 1917, and said line prolonged to the Northeasterly bulkhead line of Newtown Creek, the Northwesterly boundary line of said strip being the Northwesterly boundary line of said property as conveyed in the above mentioned deed, and the Southeasterly boundary line of said strip being parallel to and six (6) feet Southeasterly from said Northwesterly boundary line; said rights being a perpetual right, privilege and easement to construct and maintain thereon foundations, piers or other substructures below grade, for the purpose of supporting any building, fence or other structure now or hereafter to be built upon adjoining land of the Van Iderstine Company, their successors and assigns; such right, privilege and easement to be exercised and such foundation to be constructed in such manner as not to interfere with the use of the railroad siding now on the above described premises, or the buildings now erected thereon.

SUBJECT to an easement through the above described premises for a six (6) inch sewer line as more particularly described in a deed to the Triplex Oil Refining Company from The American Agricultural Chemical Company dated May 1st, 1931, and to the use of the existing sewer line as set forth therein.

SUBJECT, ALSO, to any laws, ordinances and regulations of the City and State of

64 *Exhibit A*

New York or the County and Borough of Queens regulating the use of said premises.

Reserving to the Landlord a right of way or easement to construct, maintain, replace, operate and remove sewer, water, and other pipe lines and conduits and other public and private utilities and appurtenances thereto, through and under a strip of land five (5) feet in width being a portion of the
65 herein described premises, adjacent to the Southeasterly line thereof, and extending from the Southwesterly line of lands occupied by The Long Island Railroad Company to the exterior line of the bulkhead on Newtown Creek. The Landlord also reserves the right to enter upon said easement for the purpose of constructing, maintaining, operating, protecting and replacing said pipe lines. Said pipe lines shall be laid and maintained not less than two (2) feet six (6) inches below the established
66 grade of the land, and shall be installed and maintained so as not to unreasonably inconvenience the Tenant. Reserving also to the Landlord the right to construct, maintain, replace and operate on or near the bulkhead and over the strip of land above described a fireproof structure or shed not exceeding five (5) feet in width by ten (10) feet in length by ten (10) feet in height to be used for the installation and storage of pumping equipment which may be used in the operation of said pipe lines.

Exhibit A 67

RESERVING, ALSO, to the Landlord the right to moor or dock vessels, barges or other carriers alongside the bulkhead in front of said five (5) foot strip.

It is understood that the railroad spur track on the demised premises which extends Southwesterly and Southerly from the Southerly line of the right of way of The Long Island Railroad Company is the property of the Landlord and is operated under an agreement with said Railroad 68
Company dated October 19, 1905. The Tenant shall have the right to use and operate said railroad spur track subject to such regulations and limitations as may be imposed by said Railroad Company.

For the term of five (5) years commencing on the 1st day of April, 1934 and ending on the 31st day of March, 1939 (subject to earlier termination as hereinafter provided);

For use as a coal yard;

69

At an annual rental of Five thousand dollars ($5,000) during the first three (3) years of the term and of Seven thousand five hundred dollars ($7,500) during the two (2) remaining years of the term, payable in equal quarterly instalments in advance commencing on the first day of the term, at the office of the Landlord hereinabove stated or at such other place as the Landlord may designate in writing; and upon the further following covenants, terms and conditions:

70 *Exhibit A*

1. The Tenant shall pay the rent to the Landlord at the times and in the manner above mentioned.

2. The Tenant shall at the time of the execution of this agreement deposit with the Landlord the sum of Two thousand five hundred dollars ($2,500), to be held as security for the payment of the rent and the performance of the other covenants, terms and conditions of this agree-
71 ment of lease herein contained on the part of the Tenant to be kept and performed. Said sum of money so deposited or so much thereof as shall not have been applied on account of previous defaults by the Tenant shall be applied in payment on account of the rent for the last two quarters of the term of this lease. In the event, however, that the Tenant exercises its option to purchase said premises as hereinafter provided said deposit shall be applied on account of the payment hereinafter required to be made by the Tenant on the exercise of such option to purchase.

72 3. The Tenant shall pay and discharge when due all water rates or charges for water which may be imposed upon the demised premises during the term of this lease and shall submit the receipted bills therefor to the Landlord upon the request of the Landlord. In the event that the Tenant shall fail to pay any of said water rates or water charges within thirty days after the same become due and payable, the Landlord may pay the same, together with any penalties and interest thereon, and the amount of such payment shall be immc-

73

diately due and payable from the Tenant to the Landlord and the Landlord shall have the same rights and remedies for the recovery thereof from the Tenant as in the case of the non payment of the annual rent. In the event that during any year of the term of this lease the taxes on the demised premises imposed by the City of New York shall exceed the amount of taxes payable on said premises during the year 1933, the Tenant shall pay to the Landlord the amount of such excess. The Tenant shall make such payments upon written demand of the Landlord and at the times when said taxes are payable and such excess of taxes shall be deemed additional rent.

74

4. The Tenant shall, at its own cost and expense, during the term of this lease insure and keep insured against loss by fire the buildings and improvements, including bulkheads, now on said premises, in an amount of not less than eighty per cent (80%) of the insurable value of such buildings and improvements, including bulkheads, now stated at $15,000, of which $8,000 shall be on the buildings and $7,000 on the bulkhead or wharf and shall pay the premiums therefor and deliver the policies with evidence of the payment of the premiums to the Landlord. All renewal policies shall be delivered to the Landlord not less than ten days prior to the expiration of existing policies. In the event that the Tenant shall at any time fail to take out such insurance or any part thereof, then the Landlord may take out such insurance and pay the premium thereon and the amount thereof shall be treated as additional rent and recovered by the Landlord from the Tenant,

75

76 *Exhibit A*

and the Landlord shall have the same rights and remedies for the recovery thereof as in the case of the non-payment of the annual rent.

5. The Tenant shall at its own expense promptly comply with all laws, orders, regulations or requirements (including structural changes which may arise out of the use of the demised premises by the Tenant) of any governmental authority having jurisdiction over the demised premises. In the event that the Tenant shall at any
77 time neglect or fail to comply with any such law, order, regulation or requirement for thirty days after receiving notice thereof, the Landlord may make compliance, and the expense thereof, with interest thereon, shall be added to the next instalment of rent to become due, and the Landlord shall have the same rights and remedies for the collection thereof as in the case of non-payment of rent. The Tenant may at its own cost and expense contest the validity of any such law, order, regulation or requirement and in such case shall indemnify and hold harmless the Landlord
78 against all loss or damage which it may suffer by reason of such contest and the delay or failure of the Tenant in the performance of its obligation hereunder.

6. The Tenant shall not make any alterations to the wharf or the buildings now on the demised premises other than may be required under the preceding covenant without the written consent of the Landlord having been first obtained. The Tenant shall procure all licenses and permits

which may be required by any governmental authorities for the conduct of its business on the demised premises. The Tenant shall indemnify and save harmless the Landlord against any mechanic's or other liens which may attach to said demised premises for any work done or improvements constructed by the Tenant on said premises. Any structures or other improvements which the Tenant may erect on the demised premises, excepting the new wharf, shall remain the property of the Tenant and the Tenant shall have the 80
right to remove the same or any part thereof before the termination of the lease, and the Tenant covenants that upon the removal of any such structures or other improvements it will leave the subsoil and surface under such structures or improvements in substantially the same condition as the same were at the commencement of the term of this lease. In the event that the Tenant should fail to remove any such structures or other improvements on the termination of the term of this lease the Landlord may do so at the expense of the Tenant.

81

7. The Tenant shall indemnify and hold harmless the Landlord against and from any and all damage which the Landlord may suffer by reason of any injury to person or property occuring upon the demised premises of any and every nature and by reason of any matter or thing growing out of the occupancy of said premises by the Tenant. The Tenant shall at its own expense defend or cause to be defended any and all suits which may be brought against the Landlord or in which the

82 *Exhibit A*

Landlord may be impleaded with others upon any claim or claims for damage for any such injury or damage arising out of the Tenant's occupancy of said premises, and shall pay and discharge, or cause to be paid and discharged, any and all judgments which may be recorded against the Landlord in any such action. The Tenant shall during the term of this lease at its own cost and expense procure general liability insurance with minimum limits of $50,000 and $100,000, insuring the Land-
83 lord and the Tenant against any damage which they may sustain by reason of any accident or injury occurring to any person in or about said demised premises or adjacent thereto, in such company or companies as may be approved by the Landlord, and deliver the policies to the Landlord accompanied by evidence of the payment of the premiums thereon, and should the Tenant at any time fail to take out such insurance and deliver the policy or fail to pay the premium on any such policy, the Landlord may take out such insurance and pay such premium, and any moneys so paid shall become immediately due and owing from the
84 Tenant to the Landlord and be recovered and shall be deemed as additional rent, and the Landlord shall have the same rights and remedies for the collection thereof as in the case of the non-payment of said annual rent.

8. The Tenant shall not use said premises or any part thereof, or allow the same to be used for any unlawful purpose. The use of the premises for unlawful purposes shall, at the option of the Landlord, immediately terminate this lease and

the Landlord shall have the right of redress against the Tenant for the unexpired term of this lease.

9. The Tenant shall take good care of the demised premises and keep them in good repair, and at the expiration or earlier termination of this lease will surrender the same in good order and condition, subject to ordinary wear and tear.

10. The Tenant shall not assign this lease nor sublet the whole or any part of the demised premises, nor shall any right or interest of the Tenant in this lease or the demised premises be transferred by operation of law or otherwise without the consent in writing of the Landlord having been first obtained, but such consent shall not be unreasonably withheld.

11. If any of the structures belonging to the Landlord on said premises shall be damaged by fire, the Tenant shall promptly repair such damage and the Landlord shall apply the insurance moneys collected by it for such fire damage to the expense incurred by the Tenant in repairing said damage, but not to exceed the amount of the insurance moneys collected, less the expense of collection, and there will be no abatement in rent.

12. Said premises are leased by the Landlord to the Tenant without any representation or warranty of their condition or fitness for any particular use by the Tenant and without liability by the Landlord for their maintenance or repair

88 *Exhibit A*

and without liability by the Landlord for the furnishing of any facilities or service in connection with said premises, except as herein provided.

13. In the event that the Tenant shall default in the payment of any instalment of annual rent upon the day the same is payable or shall default for more than thirty days in the payment of any water rates or water charges upon the demised premises or shall fail to keep said premises in-
89 sured against loss by fire, as herein provided, or shall fail to perform any of the other covenants and/or conditions herein contained on the part of the Tenant to be kept and performed for thirty days after being notified in writing by the Landlord of such failure, or if a petition in bankruptcy shall be filed by or against the Tenant, or if the demised premises shall become vacant or abandoned, then and in any such event it shall be lawful for the Landlord to terminate the lease upon giving the Tenant five days' written notice of its intention so to do, and at the expiration of said notice this lease shall terminate and the Land-
90 lord shall have the right to enter into possession of said premises and remove all persons therefrom, and to recover the possession thereof by legal proceedings, and the same to repossess as in its former estate; or at its option may relet the same as the agent of the Tenant, applying the income therefrom first to the payment of the expense of reentering and then to the payment of the rent reserved by this lease, and the balance, if any, to pay over to the Tenant; and the Tenant covenants to pay to the Landlord any deficiency be-

tween the amount received on such reletting and the rent reserved by this lease and does further agree that in case of reentry by the Landlord and whether it shall relet as the agent of the Tenant or not, that the Tenant shall be liable to the Landlord for a sum equal to the rent hereby reserved (including water rates and water charges and premiums on fire insurance policies), and payable at the same periods, less any sum which shall be received by the Landlord as rent of said premises for said periods. The Tenant agrees that, 92
in the event of dispossession under this paragraph, all right of redemption provided or permitted by law now or hereafter in force shall be waived and barred.

14. No waiver of any covenant or condition herein contained shall be of binding effect upon the Landlord unless said waivers shall be in writing and signed by the parties hereto.

15. The Tenant shall permit the Landlord and its agents to inspect the demised premises at all 93
reasonable times, consideration being had for the convenience of the Tenant and its business hours. If it shall appear to the Landlord at any time that the Tenant is not keeping said premises in good order and condition, the Landlord may give written notice to the Tenant of such failure by the Tenant, and should the Tenant then fail or neglect to put the demised premises in good order and condition as required by said notice within thirty days after receipt of said notice, the Landlord may do such work and recover the expense thereof from the Tenant, and such expense shall

94 be deemed additional rent. "Good order and condition" as used herein is intended to mean substantially the same order and condition as the premises are in at the commencement of the term hereby created, ordinary wear and tear and action of the elements excepted.

16. The Tenant requires the improvement of the present bulkhead or wharf and also dredging in the Creek in front of said bulkhead and the Landlord agrees to permit the Tenant to make
95 such improvement and dredging. The Tenant shall procure all the necessary permits for such work and the Landlord, as Owner, will sign all applications for such permits upon the request of the Tenant. The Tenant shall arrange for the work under contracts which shall be first submitted to the Landlord for approval and such work shall be done in accordance with the requirements of all Municipal, State and Federal authorities having jurisdiction over the demised premises in respect to such work, and shall be done under the supervision of the Landlord's engineer
96 and the work shall be acceptable to the Landlord. The Landlord agrees to loan to the Tenant the money required to pay the actual expense of such work, not to exceed the sum of $10,000, and said money shall be paid directly by the Landlord to the contractors on account of the cost of the work in accordance with the terms of the contracts so approved. The Tenant shall repay to the Landlord the sum of money so loaned in instalments as follows: 1/24th of said amount on July 1, 1934, and the same sum quarterly thereafter on the first days of October, January, April and July to and

97

including April 1, 1937, and 1/16th of said amount on July 1, 1937, and the same sum quarterly thereafter on the first days of October, January, April and July to and including April 1, 1939, together with interest thereon, or on such part thereof as shall from time to time remain unpaid, at the rate of Six percentum (6%) per annum, to commence from the dates that said money is loaned, and to be payable semi-annually on the first days of October and April in each year. The Tenant shall, before the commencement of said work, furnish 98
the Landlord with its bond in the amount of $10,000 with a surety company satisfactory to the Landlord, as surety, conditioned upon the repayment to the Landlord of the said sum of money so advanced for this work, with interest, at the times and in the manner herein provided. The premiums on said bond shall be paid out of said sum of $2,500 deposited as security. In the event that the Tenant shall exercise the option for the purchase of said premises, as hereinafter provided, the Tenant shall pay any accrued interest on the moneys so loaned up to the day of closing
title and also pay to the Landlord an amount which 99
will equal the difference between the sums of money repaid and one-half of the amount loaned, and upon such payment and the closing of title the Landlord shall release the Tenant from all further liability for the repayment of the balance of the moneys so loaned. The Tenant shall have the right to anticipate the payment of any of said instalments and in the event that at the time of closing title the Tenant shall have repaid to the Landlord more than one-half of the moneys so loaned the Landlord shall apply such excess payment on account of the purchase price.

17. Any notices to be given by the Landlord to the Tenant shall be in writing and delivered to any officer or director of the Tenant or mailed by registered mail addressed to the Tenant at the demised premises, and any notices to be given by the Tenant to the Landlord shall be in writing and delivered to any officer or director of the Landlord or mailed by registered mail addressed to the Landlord at its office at No. 420 Lexington Avenue, New York, N. Y.

18. The Tenant, upon paying said annual rent and complying with all the other covenants, terms and conditions of this lease, shall quietly have, hold and enjoy the demised premises for the term aforesaid.

It is agreed that the Tenant shall have the option to purchase said demised premises at any time during the first three years of the term of this lease, provided the Tenant shall not then be in default under the terms of this lease, at the price of One hundred thousand dollars ($100,000) if said option is exercised and title is taken before April 1, 1935; at the price of One hundred and ten thousand dollars ($110,000) if the option is exercised and title is taken subsequent to April 1, 1935 and prior to April 1, 1936, and at the price of One hundred and fifteen thousand dollars ($115,000) if the option is exercised and title is taken subsequent to April 1, 1936 and prior to April 1, 1937. The Tenant shall give the Landlord thirty days' written notice of its intention to exercise said option and at the same time with the giving of said notice shall pay to the Land-

103

lord ten per cent. (10%) of the purchase price and such notice shall state the date and hour when the deed shall be delivered, such date not to be on a Saturday, Sunday or legal holiday, and not to be more than forty days after the giving of such notice. The deed shall be delivered at the office of the Landlord.

The balance of the purchase price shall be payable as follows: Fifteen per cent. (15%) of the purchase price on the delivery of the deed and the balance of said purchase price by the Tenant executing and delivering to the Landlord its bond for the amount of such balance payable in twenty (20) or twenty-one (21) semi-annual instalments according to the amount of said bond and mortgage, said instalments to be of Two thousand dollars ($2,000) each during the first two years from the date thereof, Two thousand two hundred and fifty dollars ($2,250) each during the third year, Two thousand five hundred dollars ($2,500) each during the fourth and fifth years, Three thousand seven hundred and fifty dollars ($3,750) each during the sixth, seventh and eighth years, Six thousand two hundred and fifty dollars ($6,250) each during the ninth year and Eight thousand seven hundred and fifty dollars ($8,750) each during the tenth year, and the final instalment, in case the principal sum of said bond and mortgage exceeds $75,000, six (6) months subsequent to the end of the tenth year, the first instalment to be paid six (6) months subsequent to the date of the delivery of the deed, together with interest at five per cent. (5%) per annum on the unpaid principal of said bond and mortgage, payable

104

105

106 semi-annually, and a purchase money mortgage securing said bond and covering said premises. Said bond and mortgage shall be prepared by the Landlord at the expense of the Tenant and shall be in the form and contain the provisions used by the Title Guarantee and Trust Company of the City of New York, including twenty days' interest and instalment of principal and thirty days' tax default clauses. The Tenant shall pay the cost of the United States documentary stamps re-
107 quired on said bond, the recording tax on said mortgage and the cost of recording said mortgage. Said bond and mortgage shall contain a provision permitting the Tenant to anticipate any or all of the instalment payments.

Said deed shall be in the usual short form of bargain and sale deed with covenant against grantor's acts, shall be prepared, executed and delivered by the Landlord at its own expense with necessary United States documentary stamps affixed, and shall convey said premises to the Tenant by marketable title, subject to the exceptions,
108 easements and reservations hereinabove stated, and free from encumbrances except as herein stated and except as to any encumbrances which may have attached to said premises by the acts of the Tenant or by the omission by the Tenant to pay any charges or perform any other covenants under the lease aforesaid. Said deed shall be delivered upon the payment of the purchase price in the manner above stated.

The rent under this lease and the taxes on said premises shall be adjusted, apportioned and allowed at the time of the delivery of the deed.

Exhibit A

Said premises shall be conveyed in the condition in which they may be at the time of closing title and the Tenant shall assume all risk for any loss or damage by fire or other casualty to the premises until the delivery of the deed, and the Tenant shall have a right to insure its interest in the premises for its own benefit pending the closing of title. The lease shall terminate upon the delivery of the deed.

It is further agreed that the stipulations aforesaid shall apply to and bind the successors and assigns of the respective parties.

In Witness Whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective officers thereunto duly authorized on the day and year first above written.

The American Agricultural Chemical Company,

By Anthony B. Arnold
Vice-President

(Seal)

Attest:

F. B. Bourne,
Asst.-Secretary

Avers Fuel Corporation,

By R. B. Avers
President

(Seal)

Attest:

H. D. Avers,
Secretary

112 *Exhibit A*

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On the 20th day of February, 1934, before me came Anthony B. Arnold, to me known, who, being by me duly sworn, did depose and say that he resides in Westfield, New Jersey; that he is the Vice President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, one of the corporations described in, and which executed, the foregoing in-
113 strument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ANTOINETTE A. VOLK
Notary Public, Bronx County No. 15
Bronx County Register No. 15V35
Certificate filed in New York Co. No. 113
New York County Register's No. 5V66
My commission expires March 30, 1935.
114

(Seal)

Exhibit A 115

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 20th day of February, 1934, before me came R. B. Avers, to me known, who, being by me duly sworn, did depose and say that he resides in Jackson Heights, New York; that he is the President of AVERS FUEL CORPORATION, one of the corporations described in, and which executed, the foregoing instrument; that he knows 116
the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ANTOINETTE A. VOLK
Notary Public, Bronx County No. 15
Bronx County Register No. 15V35
Certificate filed in New York Co. No. 113
New York County Register's No. 5V66
My commission expires March 30, 1935. 117
(Seal)

118

Exhibit B

THIS AGREEMENT made this the 2nd day of August, 1937, between AVERS FUEL CORPORATION, a corporation of the State of New York, having its principal office at 37-79 Railroad Avenue, Long Island City, New York, hereinafter called the "Assignor", AVERS FUEL COMPANY, INC., a corporation of the State of New York, having its principal office at No. 1 Broadway, New York, N. Y., hereinafter called the "Assignee", and
119 THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation of the State of Delaware, having a principal office at 50 Church Street, New York, N. Y., hereinafter called the "Landlord".

WITNESSETH:

WHEREAS, by a certain instrument called an Indenture of Lease dated the 20th day of February, 1934, the Landlord leased to the Assignor certain property situate on Railroad Avenue, South of Greenpoint Avenue in Long Island City, Borough
120 and County of Queens, State of New York, and in said instrument more particularly described, for a term of five (5) years, and

WHEREAS, the Assignor has agreed to assign to the Assignee the unexpired term of said lease and the Landlord has agreed to give its consent in writing thereto.

NOW, THEREFORE, in consideration of the premises, of the obligations of the parties one to the

Exhibit B 121

other as herein assumed and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto hereby agree as follows:

AVERS FUEL CORPORATION, Assignor, hereby assigns unto AVERS FUEL COMPANY, INC., Assignee, all of its rights, title and interest under said Indenture of Lease dated the 20th day of February, 1934, made by THE AMERICAN AGRICULTURAL CHEMICAL COMPANY to AVERS FUEL CORPORATION, covering 122
certain premises situate on Railroad Avenue, South of Greenpoint Avenue, Long Island City, Borough and County of Queens, State of New York, and fully described in said lease, for the term of five (5) years, of which term there now remains the unexpired residue of one (1) year and eight (8) months, to wit: from August 1st, 1937 to March 31st, 1939, to hold the same to the said AVERS FUEL COMPANY, INC. its successors and assigns from the first day of August, 1937, and during all the residue and remainder of said term to the 31st day of March, 1939, subject, nevertheless, to the rents, 123
covenants, conditions and provisions therein mentioned and set out, and the said AVERS FUEL CORPORATION for itself and its successors and assigns hereby covenants with AVERS FUEL COMPANY, INC. its successors and assigns that the covenants and agreements contained in said lease to be observed and performed, on the part of the lessee have been up to the date hereof duly observed and performed, and that the said assigned premises are now free and clear of all charges and encumbrances, grants, leases, taxes and assessments whatsoever made or suffered by said lessee.

124 *Exhibit B*

AVERS FUEL COMPANY, INC., Assignee, hereby agrees with THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, Landlord, and AVERS FUEL CORPORATION, Assignor, to assume the covenants, conditions and provisions of said lease and the payment of the rental reserved therein during the unexpired residue of the term thereof, to wit: from the quarterly payment due the 1st day of October, 1937 to the 31st day of March, 1939.

125 THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, Landlord, hereby consents to the assignment of said lease of 20th day of February, 1934 from AVERS FUEL CORPORATION, Assignor, to AVERS FUEL COMPANY, INC., Assignee, and agrees to release and discharge AVERS FUEL CORPORATION, Assignor, from any obligation under said lease from and after the date hereof. However, this consent is restricted to the particular assignment hereby authorized and save, as aforesaid, the covenant in paragraph number "10" of said lease of the 20th day of February, 1934, against subletting without the consent in writing of the
126 Landlord, shall remain in full force and effect. On the execution hereof the said Landlord has refunded and paid over to AVERS FUEL CORPORATION the sum of Twenty-Five Hundred Dollars ($2,500.00) which it has held as a deposit from said corporation under paragraph "2" of said lease of the 20th day of February, 1934, the receipt of which payment is hereby acknowledged by AVERS FUEL CORPORATION.

The said Landlord hereby gives and grants unto the Assignee the right and privilege to extend and renew the said lease from March 31st,

1939 to March 31st, 1942, upon the same terms, conditions and covenants of the lease of the 20th day of February, 1934, except that the annual rental for such extension and renewal of term shall be increased to Ten Thousand Dollars ($10,000.00) a year, and there shall be no charges in addition to said rental except that the Assignee shall, as tenant, pay any taxes which may be levied on the said premises in excess of the taxes thereon for the year 1939 by reason of any improvements placed upon said premises by said 128
Assignee as tenant, and provided said Assignee shall give said Landlord notice in writing not later than the 1st day of October, 1938 of its election to so renew and extend said lease to the 31st day of March, 1942.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, Landlord, hereby acknowledges receipt from AVERS FUEL COMPANY, INC., Assignee, of the sum of $4166.67, being in full satisfaction of the unpaid installment payments, with accrued interest, provided for under paragraph "16" of said lease 129
of the 20th day of February, 1934, and the obligations thereunder of the Assignor and the Assignee herein are hereby acknowledged as fully satisfied and discharged, and said paragraph "16" of said lease is hereby declared satisfied and of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed and these presents to be signed by

130 *Exhibit B*

their respective officers thereunto duly authorized on the day and year first above written.

AVERS FUEL CORPORATION

By R. B. AVERS
President

(Seal)

Attest:

R. L. VAN DYKE
131 *Secretary.*

AVERS FUEL COMPANY, INC.

By O. L. ALEXANDER
President

(Seal)

Attest:

H. R. HAWTHORNE,
Secretary.

132

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By ANTHONY B. ARNOLD
Vice-President

(Seal)

Attest:

F. B. BOURNE,
Asst. Secretary.

Exhibit B

IT IS UNDERSTOOD that The American Agricultural Chemical Company has consented to the foregoing assignment dated August 2, 1937, from Avers Fuel Corporation, assignor, to Avers Fuel Company, Inc., assignee, of the lease made by said The American Agricultural Chemical Company as landlord to Avers Fuel Corporation as tenant of certain premises located on Railroad Avenue, South of Greenpoint Avenue, Borough and County of Queens, City and State of New York, dated February 20, 1934, at the request of the undersigned Pocahontas Fuel Company Incorporated, a Virginia corporation, and relying upon the guaranty hereby given; And in consideration thereof, the undersigned hereby agrees to and with said The American Agricultural Chemical Company, the landlord in said lease, and its successors and assigns, that if default shall at any time be made by said Avers Fuel Company, Inc., in the payment of rent and in the performance of any of the other covenants contained in said lease on the tenant's part to be paid and performed during the balance of the term of said lease and any renewal thereof, as provided in the foregoing Agreement of Assignment, that the undersigned will well and truly pay said rent, and will pay all damages which may arise in consequence of the non-performance of any of the other covenants contained in said lease on the part of the tenant to be performed, without requiring notice of any such default.

WITNESS our signature and seal this 2nd day of August, 1937.

POCAHONTAS FUEL COMPANY INCORPORATED

By O. L. ALEXANDER
President

(Seal)

Attest:

136 *Exhibit B*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 2nd day of August, 1937, before me came O. L. ALEXANDER to me known, who, being by me duly sworn, did depose and say that he resides at 829 Park Avenue, New York, New York; that he is the President of Pocahontas Fuel Company Incorporated, the corporation described in, and
137 which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

AGNES K. NEARY
Notary Public, New York County
Certificate filed in New York County No. 16
New York County Register's No. 8-N-5
Term expires March 30, 1938

138 (Seal)

Exhibit B 139

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 2nd day of August, 1937, before me came ROY B. AVERS, to me known, who, being by me duly sworn, did depose and say that he resides in 85-10 34th Avenue, Jackson Heights, Queens County, New York; that he is the President of AVERS FUEL CORPORATION, one of the corporations described in, and which executed, the foregoing 140
instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

AGNES K. NEARY
Notary Public
Notary Public, New York County
Certificate filed in New York County No. 16
New York County Register's No. 8-N-5
Term expires March 30, 1938 141

(Seal)

142 *Exhibit B*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 2nd day of August, 1937, before me came , to me known, who, being by me duly sworn, did depose and say that he resides in 829 Park Avenue, New York, New York; that he is the of AVENS FUEL COMPANY, INC., one of the corporations
143 described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

AGNES K. NEARY
Notary Public
Notary Public, New York County
Certificate filed in New York County No. 16
New York County Register's No. 8-N-5
144 Term expires March 30, 1938

(Seal)

Exhibit B 145

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On the 2nd day of August, 1937, before me came ANTHONY B. ARNOLD, to me known, who, being by me duly sworn, did depose and say that he resides in Westfield, New Jersey; that he is the Vice-President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, one of the corporations described in, and which executed, the foregoing instrument that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 146

ANTOINETTE A. VOLK
Notary Public
Notary Public Bronx Co. No. 8, Reg. No. 12V39
Cert. filed in N. Y. Co. No. 69, Reg. No. 9V41
My Commission expires March 30, 1939

(Seal) 147

148

Exhibit C

AVERS FUEL COMPANY, INC.
One Broadway
New York

March 22, 1938.

Mr. B. I. Loomis,
The American Agricultural Chemical Company,
50 Church Street,
New York, N. Y.

149 Dear Mr. Loomis:

We have your letter of March 15th in which you set forth your conception of the question in controversy and your understanding of what should be agreed upon prior to submission of the matter to the Appellate Division.

For the purpose of brevity and in order to have our agreement in one letter, we are rephrasing your letter as follows.

There are two questions in controversy which must be submitted for determination by the Ap-
150 pellate Division:

1. Does the reservation in the lease give the landlord the right to have vessels, barges or other carriers, moored or docked alongside the bulkhead in front of said 5 ft. strip, overlap onto the bulkhead beyond said 5 ft. strip?

2. Is the said right reserved in the lease assignable by the landlord?

Should the court decide that the overlapping is not included as a part of the right reserved or

151

should the court decide that the rights reserved are not assignable, then landlord will pay Avers Fuel Company, Inc. the sum of $2,083.33 for such right regardless of whether the lease is renewed under the agreement of August 2nd, 1937.

Landlord and its assigns shall immediately have the right to moor boats alongside the bulkhead in front of the 5 ft. strip and overlap on the adjoining bulkhead which will continue during the balance of the term of the lease and the renewal provided for under the above mentioned agreement.

152

Such right shall be exercised by the landlord and its assigns under the following terms:

(a) Any vessel, barge or other carrier moored alongside the bulkhead by the landlord or its assigns shall always be so moored and so handled as to cause a minimum of inconvenience to Avers Fuel Company, Inc.;

(b) Landlord, for itself and its assigns, agrees to repair or pay for any damage to the bulkhead caused by the use of the bulkhead by landlord or its assigns;

153

(c) Avers Fuel Company, Inc. is to have prior right in the mooring, discharging and loading of vessels, barges and other carriers along the bulkhead. Said right is to be exercised in a spirit of cooperation and so as to avoid unnecessary or capricious interference with or delay in the mooring, loading and discharging of vessels, barges or other carriers by the landlord and its assigns.

154 *Exhibit C*

If the above set forth terms are agreeable to you, you may sign and return to us the duplicate copy of this letter which is enclosed and we will treat it as our agreement upon which we will take up with your counsel the matter of an agreed statement of facts and submission of the controversy to the Appellate Division.

Very truly yours,

155 HUGH R. HAWTHORNE,
Vice President.

FAS:ES
Enclosure

ACCEPTED:

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

By BUTLER I. LOOMIS

March 31, 1938

156

157

Stipulation Waiving Certification

It is hereby stipulated that the foregoing case and submission and affidavit on submission are true and correct copies of the originals thereof now on file in the office of the Clerk of the County of Kings and that certification thereof by said Clerk pursuant to the provisions of the Civil Practice Act is hereby waived.

Dated, New York, N. Y., September 15, 1938.

158

SULLIVAN & CROMWELL,
Attorneys for Plaintiff.

H. R. HAWTHORNE,
F. A. DOOCEY,
Attorneys for Defendant.

159

Exhibit OO

lies in section 56 in block 13905 on the land map of the county of Queens. Recorded May 7th, 1931 at 12;13 P. M., at the request of LILLIAN M.WIRTH, 131-25 225th Street, LAURELTON, N. Y.

COMPARED

26610 THIS INDENTURE, made the 1st day of May 1931 between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of Delaware, party of the first part, and TRIPLEX OIL REFINING COMPANY, a corporation also organized and existing under the laws of the State of Delaware, and having a principal office at NO. 591 BORDEN AVENUE, in the BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, party of the second part, WITNESSETH, that the party of the first part, in consideration of ONE HUNDRED AND MORE DOLLARS, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors, and assigns forever;-

A L L that certain plot or parcel of land, situate in the FIRST WARD, of the BOROUGH OF QUEENS, in the COUNTY OF QUEENS, CITY AND STATE OF NEW YORK: and bounded and described as follows;- BEGINNING, at a point in the southwesterly line of REVIEW AVENUE, where the same is intersected by the northwesterly line of land now or formerly of STANDARD OIL COMPANY OF NEW YORK, and running thence southwesterly along said line, as fixed in the boundary line agreement made between GEORGE F.PIPER, AND WALTER D. DOUGLAS, and STANDARD OIL COMPANY OF NEW YORK, dated August 3, 1905, and recorded in the office of the clerk of said county of Queens, in liber 1383 of conveyances, at page 418, to the northeasterly line of land conveyed by THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (Connecticut) to LONG ISLAND RAILROAD COMPANY by deed dated December 22, 1920; and recorded January 17, 1921 in liber 2326 page 559; thence northwesterly along said last mentioned land on a curve to the right with a radius of 2,824.93 feet; a distance of one hundred eighty and eighty nine one hundredths (180.89) feet, more or less, measured along the arc to land now or formerly of VAN HEERSTINE COMPANY; thence northeasterly along said last mentioned land one hundred eighty seven and twentyfive one hundredths (187.25) feet more or less, to a point which is distant one hundred and ninety five (195) feet southwesterly from the southwesterly side of REVIEW AVENUE, measured along a line drawn at right angles to the southwesterly line of REVIEW AVENUE: thence southeasterly and parallel to REVIEW AVENUE, to a point distant ten (10) feet northwesterly from the northwesterly boundary line of land now or formerly of STANDARD OIL COMPANY OF NEW YORK, as established, measured along a line drawn at right angles to the northwesterly line of land now or formerly of STANDARD OIL COMPANY OF NEW YORK, thence northeasterly and parallel with said last mentioned line of landnow or formerly of STANDARD OIL COMPANY OF NEW YORK, and distant ten (10) feet northwesterly therefrom, measured at right angles thereto to a point in the southwesterly line of REVIEW AVENUE: and thence southeasterly along the southwesterly line of REVIEW AVENUE, to the point of beginning. Together with all right title and interest of the party of the first part in and to any land lying in the bed of any street, road or avenue, open or propsed, in front of and adjoining said premises to the centre line thereof. TOGETHER WITH a right of way ten (10) feet in width extending from REVIEW AVENUE, southwesterly and adjoining for the entire length the ten (10) foot strip of land included in the premises above described adjoining the land now or formerly of STANDARD OIL COMPANY OF NEW YORK: which right of way is to be used in common by the parties hereto, and their respective successors,

and assigns as a means of ingress from and egress to REVIEW AVENUE: and reserving to the party of the first part, its successors, and assigns, an easement over the ten (10) foot strip of land, included in the premises first above described adjoining the land now or formerly of the STANDARD OIL COMPANY OF NEW YORK: said strip of land to be used in common bythe parties hereto and their respective successors, and assigns as a means of ingress from and egress to REVIEW AVENUE, sothat the parties hereto, and their respective successors, and assigns shall have a common easement or right of way over a strip of land,twenty (20) feet in width lying between the lands now or formerly of the STANDARD OIL COMPANY OF NEW YORK, and other land of the party of the first part. Said twenty (20) foot right of way tobe alsoused by the parties hereto, and their respective successors,and assigns,toinstall, operate maintain and replace sewers,gas and water mains,telephone, electric light and power lines and other public and private utilities, above or under ground, to serve the lands hereby conveyed and other lands of the party of the first part, it being expressly agreed that such utilities are tobe installed in such manner as not in interfere with the use of said right of way as a means of ingress from and egress to Review Avenue,from the land hereby conveyed and other lands of the party of the first part. TOGETHER ALSO, with the right to the party of the second part, its successors, and assigns to connect with and use the existing six (6) inch sewer on other land of the party of the first part lying southwesterly of the lands of the LONG ISLAND RAILROAD COMPANY, such sewer connection not to exceed six (6) inches in diameter, and such connection, and use to continue only so long as the same may be permitted by municipal or other governmental authority having jurisdiction of such sewer,provided, however, that the party of the second part, its successors, or assigns, shall pay a just and reasonable proportion of the cost of maintaining said existing sewer; and reserving to the party of the first part, its successors, and assigns, the right to relocate said sewer within the boundaries of other lands at their own expense. THE PARTY of the first part also reserves for itself, its successors, and assigns a right of way or easement to lay, maintain, replace operate and remove sewer,water and other pipe lines and conduits and other public and private utilities and appurtenances thereto in and through the strip of land five (5) feet in width adjoining said property of STANDARD OIL COMPANY OF NEW YORK, and extending from the land of the LONG ISLAND RAILROAD COMPANY to the southwesterly end of said twenty (20) foot right of way hereinabove described,and then crossing said right of way diagonally to the remaining lands of the party of the first part. Said utilities shall be placed at least two (2) feet six (6) inches below the surface of the ground, and shallbe installed and maintained so as not to unreasonably inconvenience the party of the second part, its successors, and assigns, and so as not to unreasonably interefere with the operation of a railroad spur track which may hereafter be constructed or with roadways which may hereafter be constructed. THE party of the first part, and its successors, and assigns who shall at such time own the lands adjoining fronting on REVIEW AVENUE, agree to and with the party of the second part, its successors, and assigns that it or they will indemnify and save harmless the party of the second part, its successors, and assigns from all loss or damage which the party of the second part, its successors, or assigns may suffer by reason of any damage to persons or property arising out of the installation and maintenance of said public or private utilities. SUBJECT TO any state of facts an accurate survey may show, not rendering title to the above property unmarketable, and subject also to the covenants and provisions of the above mentioned boundary line agreement. TOGETHER WITH the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors, and assigns forever.

AND the party of the first part,covenants,as follows; FIRST:THAT the party of the first part, is seized of the said premises in fee simple, and has good right to convey the same. SECOND: THAT the party of the second part, shall quietly enjoy the said premises. THIRD:THAT the said premises are free from incumbrances,except as aforesaid; FOURTH: THAT the party of the first part,will execute or procure any further necessary assurance of the title to said premises; FIFTH:THAT the party of the first part, will forever wa rant the title to said premises. IN WITNESS WHEREOF, the party of the first part,has caused its corporate seal to be hereunto affixed,and these presents to be signed by its duly authorized officer the day and year first above written.

Attest; (CORPORATE SEAL) THE AMERICAN AGRICULTURAL CHEMICAL COMPANY
F. B. [illegible]. (a Delaware Corporation)
ASSISTANT SECRETARY: by HORACE BOWKER, PRESIDENT.

STATE OF NEW YORK: COUNTY OF NEW YORK:SS: ON the 1st day of May,nineteen hundred and thirty-one before me came HORACE BOWKER, to me known, who,being by me duly sworn, did depose and say that he resides in LAWRENCE, L. I., N. Y., that he is the President of THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a Delaware Corporation, the corporation described in,and which executed the foregoing instrument;that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed byorder of the board of directors of said corporation; and that he signed his name thereto by like order. (LS)
A.M. SANBORN: Notary Public, WESTCHESTER COUNTY, N. Y., cert.filed in N. Y. CO.NO. 585; Reg. NO. 3-S-404; COMMISSION expires March 30, 1933.

STATE OF NEW YORK: COUNTY OF NEW YORK:SS; I, DANIEL E. FINN, CLERK of the county of NEW YORK: and also clerk of the SUPREME COURT, in and for said county, DO HEREBY CERTIFY: that said COURT is a court of Record,having by law a seal; that A.M.SANBORN, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument,was,at the time of taking the same a NOTARY PUBLIC, acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the county of NEW YORK a certified copy of his appointment and qualification as NOTARY PUBLIC, for the COUNTY OF WESTCHESTER, with his autograph signature that as such NOTARY PUBLIC, he was duly authorized by the laws of the State of NEW YORK to protest notes;to take and certify depositions; to administer oaths and affirmations,to take affidavits and certify the acknowledgment and proof of deeds,and other written instruments for lands,tenements and hereditaments to be read in evidence or recorded inthis state;and further that I am well acquainted with the handwriting of such NOTARY PUBLIC, and verily believe that his signature to such proof or acknowledgment is genuine. IN TESTIMONY WHEREOF: I have hereunto set my hand and affixed the seal of said COURT, at the CITY OF NEW YORK in the county of NEW YORK this 2 day ofMAY, 1931; (LS) DANIEL E. FINN, CLERK:

THE LAND AFFECTED by the within instrument lies in section 4 in block 770 on the land map of the county of Queens. Recorded May 7th, 1931 at 12;18 P. M., at the request of N.Y.TITLE AND MORTGAGE CO., Jamaica, L.I.N.Y.

COMPARED
[illegible]

26614; AGREEMENT: made the 29th day of April, one thousand nine hundred and thirtyone,between MICHAEL J.BROWN, also known as MICHAEL J.BROWNE, hereinafter

Exhibit PP

Leases on Newtown Creek.
New York Times (1923-Current file); Mar 28, 1934;
ProQuest Historical Newspapers: The New York Times (1851-2009)
pg. 42

Leases on Newtown Creek.

The Avers Fuel Company has leased for a wholesale and retail coal yard about 80,000 square feet on Newtown Creek, near Greenpoint Avenue. The lessee is improving the property to accommodate ocean-going steamers. C. Grant Keck and Hosinger & Bode arranged the rental for the American Agricultural Chemical Company.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

Exhibit QQ

Improvement, Due in Industrial Areas; Some Recent Waterfront Deals ...
New York Times (1923-Current file); Jan 6, 1935;
ProQuest Historical Newspapers: The New York Times (1851-2009)
pg. RE1

Improvement, Due in Industrial Areas; Some Recent Waterfront Deals Reviewed

Promise of an early improvement in real estate values generally is seen in the fact that activity in industrial and waterfront property, one of the first groups to slacken under the depression, was equal during 1934 to the aggregate for the three previous years, according to specialists in this class of property.

"Industrial real estate began to stagnate two years before the stock market decline and three years before the building boom subsided," George J. Brown said yesterday. "Its present return to activity is significant.

"Several sales in 1934 marked the return of properties from financial institutions where they were not desired, to interests able to employ them in profitable business operations. But the most important transactions were voluntary sales and leases prompted solely by business necessity.

"And this demand for additional facilities for transshipping and warehousing merchandise, for storing and distributing coal, oil and lumber, and for manufacturing purposes, indicates both a return of confidence and an increase in business activities."

Among the deals was a long lease on more than twenty-six acres of land with warehouses and industrial buildings at Kearny, N. J., known as the Lincoln Tidewater Terminal, which has extensive deep-water frontage on the Passaic River, and five miles of railroad sidings. It was let to the Harvey C. Miller organization, which also took purchase options.

Another deal was the sale by the Bowery Savings Bank, comprising 800 feet of frontage on Gowanus Bay, Brooklyn, with about sixteen acres of land and land under water improved with docks and warehouses. This property was taken over by interests engaged in a general storage and terminal business.

Among coal companies there were signs of activity. The Avers Fuel Corporation leased, with purchase options, about 75,000 square feet of land in Long Island City fronting on Newtown Creek. A Manhattan coal yard at 141st Street and the Harlem River changed ownership. A large yard at the foot of North First Street, Brooklyn, was leased by Miners Fuel Corporation, and Sinram Brothers, Inc., purchased the yard at the foot of 138th Street and the Harlem River.

Expanding business made it necessary for oil companies also to find new land. The First National Oil Corporation leased about 94,000 square feet of land in Long Island City fronting on the East River, and two smaller parcels were leased to oil companies on Newtown Creek.

The lumber industry was repre-

Continued on Page Two.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

INDUSTRIAL REALTY SHOWING STABILITY

Continued From Page One.

sented in the leasing by a large producer, of ten acres on West Street, Greenpoint, Brooklyn, with an East River frontage improved with two piers.

Listing several other deals, Mr. Brown declared:

"The aggregate value of these waterfront properties is about $3,000,000 at current prices. There were also numerous transactions in industrial properties not on the waterfront. These included leases of manufacturing space, some of them for large floor areas, in warehousing and manufacturing buildings well scattered over the Port district."

Among these were the sale of the General Electric Plant, 110,000 square feet of modern buildings, at Harrison, N. J., bought by the Reynolds Metal Company; the Barber Thread plant at Clifton, N. J., about 125,000 square feet of buildings sold to the Bright Star Battery Company, and 150,000 square feet of land and buildings at Elizabeth, N. J., purchased by S. E. and M. Vernon, blankbook manufacturers.

"The interest and activity in all kinds of industrial properties was well distributed over the Port district, and well sustained throughout the year, and the prospect for 1935 is brighter than at any corresponding date for at least seven years," Mr. Brown said.

C. Grant Keck, another specialist in this type of property, also expressed confidence in the immediate future of the market, and asserted as well that "there was greater activity in waterfront property in 1934 than in a great many years."

Among the large leases concluded by his office in the last year he mentioned that of about 60,000 square feet in the breakwater at the Erie Basin, in Brooklyn, to the Shepard & Morse Lumber Company, which also received a number of valuable privileges there. For the American Agricultural Chemical Company he leased 80,000 square feet on Review Avenue and Newtown Creek to the Avers Fuel Company.

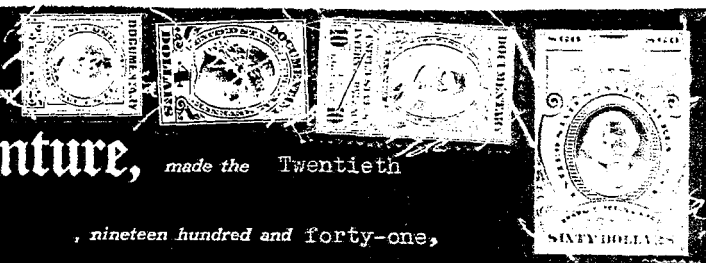
He also sold a plot at Greenpoint Avenue and Newtown Creek, Brooklyn, to the Arguis Gas Stations for a bulk oil plant, and recently leased, for the French Government, about 120,000 square feet at Commercial Street and Newtown Creek, Brooklyn, to the Beacon Coal Company.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

Exhibit RR

DEED 4346 PAGE 546

STATUTORY FORM CC—756
(Chapter 681, Laws 1917)
BARGAIN AND SALE DEED. With Covenant



This Indenture,

made the Twentieth day of February, nineteen hundred and forty-one,

Between THE AMERICAN AGRICULTURAL CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware, duly qualified to transact business in the State of New York and having its principal office at 50 Church Street in the Borough of Manhattan, City, County and State of New York,

~~a corporation organized under the laws of~~

party of the first part,

and POCAHONTAS COAL CORPORATION, a corporation organized under the laws of the State of New York, and having its principal office at 1 Broadway, in the Borough of Manhattan, City, County and State of New York

party of the second part,

Witnesseth, that the party of the first part, in consideration of Sixty-seven thousand five hundred Dollars ($67,500)

~~Dollars~~,

lawful money of the United States,

paid by the party of the second part,

does hereby grant and release unto the party of the second part, its successors and assigns forever,

All that certain lot, piece or parcel of land, situate, lying and being at Long Island City in the First Ward of the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point in the Southwesterly right of way line of the Long Island Railroad Company where it is intersected by the division line between the herein described premises and lands now or formerly of The Standard Oil Company of New York, said division line being defined in a boundary line agreement dated August 3rd, 1905, between George F. Piper and Walter D. Douglas and Standard Oil Company of New York and recorded in the Office of the Clerk of the County of Queens in Liber 1383, page 418 of Conveyances on August 15th, 1905 and running (1) thence in a Southwesterly direction along said division line as defined in the above mentioned agreement 126.06 feet to an angle point in said division line; (2) thence continuing in a Southwesterly direction along said division line 236.47 feet to the Northeasterly bulkhead line of Newtown Creek; (3) thence in a Northwesterly direction along said Northeasterly bulkhead line 240.68 feet to the division line between the herein described premises and lands now or formerly of The Van Iderstine Company; (4) thence in a Northeasterly direction along said division line as described in the deed dated August 18, 1917, from The Van Iderstine Company to The American Agricultural Chemical Company (Connecticut) and recorded in the Office of the Clerk of the County of Queens in Liber 2146, page 69 of Conveyances on October 6th, 1917, a distance of 164 feet to an angle point in said division line; (5) thence continuing along said division line in a Northeasterly direction along a line forming with the last mentioned course an angle of 172 degrees 22 minutes 44 seconds, a distance of 28.26 feet to an angle point in said division line; (6) thence in a Northeasterly direction still along said division line as described in a deed from The American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917, 196.82 feet to the Southwesterly right of way line of The Long Island Railroad Company; (7) thence in a Southeasterly direction along said Southwesterly right of way line to the point or place of beginning.

TOGETHER with any and all rights of the party of the first part, in and to the land under the waters of Newtown Creek in front of the premises herein described.

TOGETHER with the appurtenances and all the estate and rights and rights of reversion of the party of the first part in and to the lands now occupied by the Long Island Railroad Company included in a deed to the party of the first part from The American Agricultural Chemical Company, of Connecticut, dated June 30, 1930, and recorded in the Office of the Register of the County of Queens on August 15, 1930, in Liber 3418 of Conveyances, page 249.

TOGETHER with a right of way over a strip of land about 12 feet in width lying southwesterly of and adjoining the right of way of the Long Island Railroad Company and extending Northwesterly from the herein described premises over other lands formerly owned by George F. Piper and Walter D. Douglas, as acquired by them by deed from Guaranty Trust Company of New York, dated February 28th, 1903 and recorded August 7, 1905 in Liber 1382, page 419 of Conveyances.

SUBJECT to changes heretofore made in the pier or bulkhead lines in Newtown Creek in front of said premises and the right of the United States Government and/or the State of New York to regulate and change said pier and bulkhead lines.

SUBJECT to a right of way reserved to George F. Piper and Walter D. Douglas, their heirs and assigns, over a strip of land twelve feet in width, a part of the herein described premises, lying Southwesterly of and adjoining the right of way of The Long Island Railroad Company, for the use and benefit of the owners or occupants of that property lying Northwest of the herein described premises, formerly owned by said George F. Piper and Walter D. Douglas and acquired by them by said deed from the Guaranty Trust Company of New York dated February 28th, 1903.

SUBJECT to all the terms and conditions of a boundary line agreement dated August 3, 1905, between George F. Piper and Walter D. Douglas and Standard Oil Company of New York and recorded in the Office of the Clerk of the County of Queens in Liber 1383, page 418 of Conveyances on August 15, 1905.

SUBJECT to the right and easement of The Van Iderstine Company, its successors and assigns, over a six foot strip, a portion of the above described premises, as the said right and easement is more specifically located and the uses and purposes defined in deed by The American Agricultural Chemical Company (a Connecticut Corporation) to said The Van Iderstine Company dated August 18, 1917 and recorded in the office of the Clerk of the County of Queens on September 1, 1917 in Liber 2142 of Conveyances, page 106.

SUBJECT ALSO to the reservations and grants contained in two certain deeds made by the party of the first part to Triplex Oil Refining Company, - one dated May 1, 1931 and recorded in the Office of the Register of the County of Queens in Liber 3480, page 504 of Conveyances, on May 7, 1931, and the other dated April 29, 1938 and recorded in the office of said Register in Liber 3948, page 368 of Conveyances, on May 5, 1938.

FORM CC

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever.

And the party of the first part, in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance as a trust fund to be applied first for the purpose of paying the cost of the improvement and that it will apply the same to the payment of the cost of such improvement before using any part of the total of the same for any other purpose.

And the party of the first part covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatsoever.

In Witness Whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers this [illegible] year first above written.

THE AMERICAN AGRICULTURAL CHEMICAL COMPANY

Attest:

By

Asst. Secretary

Vice President

Exhibit SS

6914-260

This Indenture,

Made the 28th *day of* September *, nineteen hundred*

and fifty-five,

Between POCAHONTAS COAL CORPORATION, a corporation organized under the laws of the State of New York, having its principal office at 122 East 42nd Street, Borough of Manhattan, City and County of the State of New York,

~~a corporation organized under the laws of~~

, party of the first part,

and THE VAN IDERSTINE COMPANY, a corporation organized under the laws of the State of Maine, having an office at 37-30 Review Avenue, Long Island City, Borough and County of Queens, City and State of New York,

, party of the second part,

Witnesseth, *that the party of the first part, in consideration of* One Hundred Dollars ($100), lawful money of the United States and other good and valuable considerations

Dollars,

~~lawful money of the United States~~

paid by the party of the second part

does hereby grant and release unto the party of the second part, its successors

and assigns forever,

All that certain lot, piece or parcel of land, situate, lying and being at Long Island City in the First Ward of the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point in the Southwesterly right of way line of the Long Island Railroad Company where it is intersected by the division line between the herein described premises and lands now or formerly of The Standard Oil Company of New York, said division line being defined in a boundary line agreement dated August 3rd, 1905, between George F. Piper and Walter D. Douglas and Standard Oil Company of New York and recorded in the Office of the Clerk of the County of Queens in Liber 1383, page 418 of Conveyances on August 15th, 1905 and running (1) thence in a Southwesterly direction along said division line as defined in the above mentioned agreement 126.06 feet to an angle point in said division line; (2) thence continuing in a Southwesterly direction along said division line 236.47 feet to the Northeasterly bulkhead line of Newtown Creek; (3) thence in a Northwesterly direction along said Northeasterly bulkhead line 240.68 feet to the division line between the herein described premises and lands now or formerly of The Van Iderstine Company; (4) thence in a Northeasterly direction along said division line as described in the deed dated August 18, 1917, from The Van Iderstine Company to The American Agricultural Chemical Company (Connecticut) and recorded in the Office of the Clerk of the County of Queens in Liber 2146, page 69 of Conveyances on October 6th, 1917, a distance of 164 feet to an angle point in said division line; (5) thence continuing along said division line in a Northeasterly direction along a line forming with the last mentioned course an angle of 172 degrees 22 minutes 44 seconds, a distance of 28.26 feet to an angle point in said division line; (6) thence in a Northeasterly direction still along said division line as described in a deed from The American Agricultural Chemical Company to The Van Iderstine Company dated August 18, 1917, 196.82 feet to the Southwesterly right of way line of The Long Island Railroad Company; (7) thence in a Southeasterly direction along said Southwesterly right of way line to the point or place of beginning, being the same premises described in a certain deed dated February 20, 1941 from The American Agricultural Chemical Company to Pocahontas Coal Corporation which said deed was duly recorded in the Office of the Register of the County of Queens, in Liber 4346, page 546 of Conveyances, on February 24, 1941 and indexed under Section 4, Block 770, on the land map of the County of Queens.

STATE OF ILLINOIS; COOK COUNTY: SS I. ROBERT M. SWEITZER. County Clerk of the County of Cook, DO HEREBY CERTIFY that I am the lawful custodian of the official records of Notaries Public of said county and as such officer, am duly authorized to issue certificates of magistracy that Richard A. Hale, whose name is subscribed to the annexed Jurat, was, at the time of signing the same, a Notary Public in Cook County, duly commissioned, sworn and acting as such, and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments in said State of Illinois, all of which appears from the records and files in my office: that I am well acquainted with the handwriting of said Notary, and verily believe that the signature to the said Jurat is genuine. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago in the said County, this 21 st day of August 1917.

(L. S.) ROBERT M. SWEITZER, County Clerk.

Entered and compared the foregoing with the original October 6, 1917, at 10.20 A. M. and indexed under Section 4 Block 771 on the Land Map of the County of Queens.

Examined by Alex Dupat Clerk. COMPARED

Recorded at the request of Gifford, Hobbs & Beard, 60 B'way, N. Y. C.

22013. THIS INDENTURE, made the Twenty-first day of September in the year One thousand nine hundred seventeen, BETWEEN JACOB SCHMITT, of the Borough of Queens, County of Queens, City and State of New York, party of the first part, and ELIZABETH SCHMITT, his wife, residing at 1233 Atfield Avenue, Richmond Hill, New York, party of the second part. WITNESSETH, That the said party of the first part, in consideration of the sum of ONE ($1.00) dollar, lawful money of the United States, paid by the party of the second part, does hereby grant, bargain, sell, and release unto the said party of the second part, her heirs and assigns forever.

ALL those certain lots, pieces or parcels of land, situate, lying and being in the former Town of Jamaica, now the Fourth Ward of the Borough and County of Queens, City and State of New York, known and designated on a certain map entitled " Map of Dunton Park containing 911 lots, in the Town of Jamaica, Queens County, New York, surveyed and drawn November, 1890 by James F. Oechsel, surveyor, successor to Martin G. Hohnson, and filed in the office of the Clerk of the County of Queens on and by the lots Numbers Two hundred and forty-three (243) & Two hundred forty-four (244) in Block Seven (7) which taken together are bounded and described, with reference to said map as follows :-

BEGINNING at a point on the westerly side of Frost Avenue, distant Two hundred and fifty [illegible] Avenue, formerly Broadway, and the westerly side of Frost Avenue, and running thence southerly along the westerly side of Frost Avenue Fifty (50) feet: thence westerly at right angles to Frost Avenue One hundred (100) feet: thence northerly parallel with Frost Avenue Fifty (50) feet: thence easterly again at right angles to Frost Avenue one hundred (100) feet to the westerly side of Frost Avenue, at the point or place of beginning. TOGETHER with all the right, title and interest of the party of the first part of, in and to Frost Avenue, in front of and adjoining said premises to the centre line thereof. T O G E T H E R with the appurtenances and all the estate and rights of the said party of thefirst part, in and to the said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, her heirs and assigns forever. T H E P U R C H A S E R, under this conveyance resides as follows: 1233 Atfield Avenue, Richmond Hill, Borough of Queens, City of New York.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Exhibit TT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DMJ ASSOCIATES, L.L.C.,

Plaintiff,

-against-

CARL A. CAPASSO; BASF CORPORATION; CHEMICAL LEAMAN TANK LINES, INC.; PROCTER & GAMBLE HAIRCARE LLC; EXXON MOBIL CORPORATION; GENERAL DYNAMICS CORPORATION; RUSSELL W. MAHLER; REVIEW SUPPLIES, INC.; QUANTA RESOURCES CORPORATION; THE HITCHCOCK GAS ENGINE COMPANY; THE STANLEY WORKS; NANCO CONTRACTING CORP.; UNDERGROUND EQUIPMENT CO., LTD.; ROCKWELL AUTOMATION, INC.; DAIMLERCHRYSLER CORPORATION; FORD MOTOR COMPANY; INGERSOLL-RAND COMPANY; UNITED TECHNOLOGIES CORPORATION; MERRILL LYNCH & CO., INC.; PARIBAS NORTH AMERICA INC. AS INDEMNITOR OF MERRILL LYNCH & CO., INC. AND MERRILL LYNCH MONEY MARKETS, INC.; ALCOA INC. f/k/a ALUMINUM COMPANY OF AMERICA; ALLIED WASTE INDUSTRIES, INC. (INCLUDING BROWNING-FERRIS INDUSTRIES, LLC OR "B.F.I."); BARRY CONTROLS DIVISION OF BARRY WRIGHT CORPORATION; BEAZER EAST, INC. F/K/A KOPPERS, COMPANY, INC.; BORGWARNER INC.; BP PRODUCTS NORTH AMERICA INC., INCLUDING BP AMOCO CORPORATION, ATLANTIC RICHFIELD CO., AND AMERICAN BRASS-ANACONDA (A/K/A OUTOKUMPU AMERICAN BRASS, INC.); BUCKEYE PIPE LINE COMPANY, L.P.; CARRIER CORPORATION; CATERPILLAR INC.; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY (FOR ITSELF AND ON BEHALF OF CHEVRON U.S.A. INC., TEXACO INC., AND KEWANEE INDUSTRIES, INC.); COLONIAL PIPELINE COMPANY; CRUCIBLE MATERIALS CORPORATION (A/K/A CRUCIBLE SPECIALTY METALS) FORMERLY A DIVISION OF COLTEC

CV 97 7285 (DLI)(RML)

THIRD AMENDED THIRD-PARTY COMPLAINT OF EXXON MOBIL CORPORATION AND QUANTA RESOURCES CORPORATION

INDUSTRIES; DANA CORPORATION; EVEREADY BATTERY CO., INC., SUCCESSOR TO CERTAIN OF THE BATTERY RELATED LIABILITIES OF UNION CARBIDE CORP.; GENERAL ELECTRIC COMPANY; GENERAL MOTORS CORPORATION; GOULDS PUMPS, INC.; HONEYWELL INTERNATIONAL INC.; MACK TRUCKS, INC.; METROPOLITAN SUBURBAN BUS AUTHORITY D/B/A MTA LONG ISLAND BUS; MILLER BREWING COMPANY; NIAGARA MOHAWK POWER CORP.; NATIONAL GRID USA; NATIONAL GRID GROUP PLC; NORTHROP GRUMMAN CORPORATION (ON BEHALF OF NORTHROP GRUMMAN SYSTEMS CORPORATION) (GRUMMAN AEROSPACE CORP.) AND NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORPORATION (TRW INC.); PFIZER INC; WARNER-LAMBERT COMPANY LLC (ITS FORMER SCHICK-WILKINSON SWORD DIVISION); WARNER-LAMBERT COMPANY LLC (ITS FORMER WHOLLY-OWNED SUBSIDIARY NEPERA, INC.); PHARMACIA CORPORATION (ITS WHOLLY-OWNED SUBSIDIARY THE UPJOHN COMPANY); PUBLIC SERVICE ELECTRIC AND GAS COMPANY ("PSE&G"); REYNOLDS METALS COMPANY A/K/A REYNOLDS ALUMINUM; ROME STRIP STEEL COMPANY, INC.; SHELL OIL CO.; SIKORSKY AIRCRAFT CORPORATION; SPX CORPORATION, ON BEHALF OF ITS FORMER DIVISION, LEEDS & NORTHRUP; THE MILLER COMPANY (N/K/A T CORP.); AND VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, FORMERLY KNOWN AS WESTINGHOUSE ELECTRIC CORPORATION,

Defendants.

EXXON MOBIL CORPORATION and QUANTA RESOURCES CORPORATION,

Defendants/Third-Party Plaintiffs,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE;

ALCAN ALUMINUM CORPORATION (a/k/a ALCAN SHEET & PLATE); ALL-COUNTY ENVIRONMENTAL SERVICE; AMPHENOL CORPORATION; ANDAX ENVIRONMENTAL CORP.; ASHLAND CHEMICAL, INC. (a/k/a ASHLAND, INC.); AVCO CORPORATION (a/k/a AVCO LYCOMING); BROOKHAVEN NATIONAL LABORATORY; REPUBLIC ENVIRONMENTAL SYSTEMS, INC. (a/k/a CHEMICAL MANAGEMENT INC.); CHEMICAL POLLUTION CONTROL, INC. (a/k/a PHILLIPS ENVIRONMENTAL); CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC.) (f/k/a CROSMAN ARMS COMPANY, INC.); AMERICAN CLASSIC SANITATION (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); HARBOR PETROLEUM CORP.; EMHART TEKNOLOGIES LLC; THE HITCHCOCK GAS ENGINE COMPANY; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); INTERSTATE TANK CLEANING CORP.; JONES ENVIRONMENTAL SERVICES (NORTHEAST), INC. (f/k/a GEOCHEM, INC.) (f/k/a JET-LINE SERVICES, INC.); THE MARLIN FIREARMS COMPANY; NASSAU TANK CLEANING SERVICE, INC.; REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a AMERICAN NATIONAL CAN COMPANY); NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW ENGLAND TANK LINING OF CONNECTICUT, INCORPORATED; NEW ERA OIL SERVICE, INC.; OIL CITY PETROLEUM CO., INC.; PEABODY COASTAL (a/k/a PEABODY INTERNATIONAL CORP.) (a/k/a PULLMAN, INC.); UNION CARBIDE CORPORATION; PROCTER & GAMBLE HAIRCARE LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES) (f/k/a UNION MINERAL & ALLOYS CORP.); ROYAL TANK CLEANING CORP.; SIMMONDS PRECISION PRODUCTS, INC.; MOEN INCORPORATED, A FORTUNE BRANDS COMPANY (f/k/a STANADYNE, INC.); SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; TOTAL RECOVERY, INC.;

UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF THE NAVY; WALLACE INDUSTRIES INC. (a/k/a WALLACE STEEL CORP.); KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY; ZOLLO DRUM COMPANY; COOPER CROUSE-HINDS, LLC (f/k/a CROUSE-HINDS COMPANY); THE HERTZ CORPORATION; LONG ISLAND LIGHTING COMPANY; NL INDUSTRIES, INC.; CROWN CORK & SEAL COMPANY, INC.; and CONOCOPHILLIPS,

Third-Party Defendants.

THIRD AMENDED THIRD-PARTY COMPLAINT OF DEFENDANTS/THIRD-PARTY PLAINTIFFS QUANTA RESOURCES CORPORATION AND EXXON MOBIL CORPORATION

Defendants/Third-Party Plaintiffs Quanta Resources Corporation ("Quanta") and Exxon Mobil Corporation ("ExxonMobil," collectively, the "Third-Party Plaintiffs"), by and through their respective undersigned counsel, bring this Third Amended Third-Party Complaint, pursuant to Federal Rule of Civil Procedure 14, and in support thereof aver as follows:

INTRODUCTION

1. In its complaint herein, plaintiff DMJ Associates, L.L.C. ("DMJ") sought to recover, inter alia, response costs that it allegedly incurred pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA"). DMJ sought reimbursement of response costs that it

allegedly incurred in response to the alleged presence of hazardous substances on the property located at 37-30 through 37-32 Review Avenue, 37-98 Railroad Avenue and 38-20 Railroad Avenue/Newtown Creek, in Queens, New York (the "Capasso Property"), and a declaratory judgment on liability for response costs that would obligate the named defendants to pay for any past and future response costs associated with the Capasso Property. DMJ also sought to recover damages from the defendants under certain other theories which, together with DMJ's CERCLA allegations, are detailed in DMJ's Fourth Amended Complaint, a copy of which is annexed hereto as Exhibit "A" (the "Complaint").

2. In the Complaint, DMJ alleged, inter alia, that:

a) hazardous substances allegedly present at the Capasso Property were released, in part, from property located at 37-80 Review Avenue, Queens, New York (the "Quanta Facility"), that Third-Party Plaintiff Quanta was liable for such releases as an owner and operator of the Quanta Facility and that the allegedly-released substances were hazardous substances within the meaning of 40 C.F.R. § 302.4;

b) the defendants other than Quanta were liable for such releases as generators of hazardous substances sent to the Quanta Facility;

c) the allegedly-released hazardous substances migrated, and continued to migrate, from the Quanta Facility through the environment to the Capasso Property, and endangered and contaminated that property;

d) from in or about 1970 until in or about 1981, the Quanta Facility was an active disposal site and transfer facility for substances generated primarily or exclusively off-site, and was also used as a waste oil recycling and storage facility; and

e) substances were spilled and released into the environment at the Quanta Facility, that such substances posed a substantial present or potential hazard to human health or the environment, and that therefore such substances were hazardous.

3. A number of the defendants have expended response costs in connection with the Quanta Facility and Capasso Property, and upon information and belief, will expend additional response costs in the future.

4. The group of defendants that expended most of these response costs (the "Settling Defendants") entered into a written settlement agreement with DMJ (the "Settlement Agreement") pursuant to which they agreed to pay, and have paid, certain amounts to DMJ and made certain commitments to DMJ to remediate the contaminated conditions at the Quanta Facility and the Capasso Property. Those amounts and commitments represent recovery for 100 percent of the claims that were made and that could have been made by DMJ in this action.

5. By making payments pursuant to the Settlement Agreement and committing to remediate the Quanta Facility and Capasso Property, the Settling Defendants have paid or will pay more than their fair share of the claims that DMJ made or could have made in this action.

6. The Settling Defendants have assigned their rights to recover their response costs, their right to seek contribution arising from their payments to DMJ and their costs of fulfilling their commitment to DMJ to remediate the Quanta Facility and the Capasso Property to the Third-Party Plaintiffs.

THE THIRD-PARTY DEFENDANTS

7. With the exception of Proctor & Gamble Haircare LLC and The Hitchcock Gas Engine Company, none of the entities or their predecessors named herein as Third-Party Defendants were named as defendants in the Complaint.

8. Each Third-Party Defendant generated or transported hazardous wastes or other hazardous materials that were delivered for disposal or treatment to the Quanta Facility.

9. This Third Amended Third-Party Complaint asserts claims against those entities whose waste, upon information and belief, was delivered to the Quanta Facility during the time period of 1972-1981. These claims are for any costs, damages and equitable relief that

DMJ recovered in this action and for the response costs incurred and to be incurred by the Settling Defendants.

10. The Settling Defendants denied that they were liable to DMJ under any of the causes of action DMJ asserted against them. However, they entered into the Settlement Agreement with DMJ. The commitments made and the amounts that the Settling Defendants agreed to pay, and amounts that they have paid to DMJ pursuant to the Settlement Agreement, represent recovery for 100 percent of the claims that were made by DMJ in this action.

11. By making the payments and undertaking the remediation obligations pursuant to the Settlement Agreement to DMJ, the Settling Defendants have paid or will pay more than their fair share of the claims that DMJ made or could have made in this action. Thus, each of the entities named as a Third-Party Defendant is liable to the Third-Party Plaintiffs for such costs and amounts, or alternatively for contribution of such Third-Party Defendants' equitable share of said costs and amounts.

12. Upon information and belief, the following Third-Party Defendants generated or transported hazardous waste that was delivered to the Quanta Facility, from which, DMJ alleges, these materials were released and/or disposed of and migrated to the Capasso Property: Ace Waste Oil, Inc., Active Oil Service; Alcan Aluminum Corporation (a/k/a Alcan Sheet & Plate); All-County Environmental Service; Amphenol Corporation; Andax Environmental Corp.; Ashland Chemical, Inc. (a/k/a Ashland, Inc.); Avco Corporation (a/k/a Avco Lycoming); Brookhaven National Laboratory; Republic Environmental Systems, Inc. (a/k/a Chemical Management Inc.); Chemical Pollution Control, Inc. (a/k/a Phillips Environmental); Crosman Corp. (f/k/a Coleman Airguns, Inc.) (f/k/a Crosman Arms Company, Inc.); American Classic Sanitation (f/k/a Farnham Environmental & Farnham Sanitation Systems

of CT); Harbor Petroleum Corp.; Emhart Teknologies LLC; The Hitchcock Gas Engine Company; Industrial Development Corp. (a/k/a Industrial Environmental); Interstate Tank Cleaning Corp.; Jones Environmental Services (Northeast), Inc. (f/k/a Geochem, Inc.) (f/k/a Jet-Line Services, Inc.); The Marlin Firearms Company; Nassau Tank Cleaning Service, Inc.; Rexam Beverage Can Company (a/k/a National Can Company) (a/k/a American National Can Company); Neapco, Inc. (a/k/a United Components, Inc.); New England Tank Lining of Connecticut, Incorporated; New Era Oil Service, Inc.; Oil City Petroleum Co., Inc.; Peabody Coastal (a/k/a Peabody International Corp.) (a/k/a Pullman, Inc.); Union Carbide Corporation; Procter & Gamble Haircare, LLC; Revere Copper Products, Inc. (a/k/a Revere Copper & Brass Incorporated); River Terminal Development (Scrap Yard Division) (a/k/a RTC Properties) (f/k/a Union Mineral & Alloys Corp.); Royal Tank Cleaning Corp.; Simmonds Precision Products, Inc.; Moen Incorporated, a Fortune Brands Company (f/k/a Stanadyne, Inc.); Sunoco, Inc. (a/k/a Sun Oil Refinery) (f/k/a Sun Oil Co.); TDY Industries, Inc.; Total Recovery, Inc.; United States Department of the Air Force; United States Department of the Army; United States Department of the Coast Guard; United States Department of the Navy; Wallace Industries Inc. (a/k/a Wallace Steel Corp.); Kraft Foods Global, Inc. (f/k/a Ware Chemical); Waste Management of Maryland, Inc.; Wyman-Gordon Company; Zollo Drum Company; Cooper Crouse-Hinds, LLC (f/k/a Crouse-Hinds Company); The Hertz Corporation; Long Island Lighting Company; NL Industries, Inc.; Crown Cork & Seal Company, Inc.; and ConocoPhillips.

13. Pursuant to Federal Rules of Civil Procedure 14 and 18, the Third-Party Plaintiffs hereby assert claims against the Third-Party Defendants under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9601 et seq., and under C.P.L.R. §1401, for (i) response costs, (ii) contribution in connection with the claims that were asserted by DMJ against the Settling

Defendants and subsequently settled, and (iii) a declaratory judgment of liability for response costs and/or contribution that will be binding on any subsequent action or actions to recover further response costs and/or contribution. To the extent inconsistent with any of the averments in their Answers, Affirmative Defenses and/or Counterclaims, the allegations made below by the Third-Party Plaintiffs are made in the alternative to and without waiver of any such averments.

14. Without any waiver of, or prejudice to, its rights, Third-Party Plaintiff Quanta does not join in or assert any claim or cause of action against Third-Party Defendants Ashland Chemical (a/k/a Ashland, Inc.), Avco Corporation (a/k/a Avco Lycoming), Brookhaven National Laboratory, Sunoco, Inc. (a/k/a Sun Oil Refinery) (f/k/a Sun Oil Co.), Ware Chemical (n/k/a Kraft Foods Global, Inc.), and ConocoPhillips.

15. Without any waiver of, or prejudice to, its rights, Third-Party Plaintiff ExxonMobil does not join in or assert any claim or cause of action against Third-Party Defendant Rexam Beverage Can Co. (a/k/a National Can Company) (a/k/a American National Can Company).

JURISDICTION AND VENUE

16. This Court properly had jurisdiction to adjudicate the Complaint. Jurisdiction for this Third Amended Third-Party Complaint is founded upon Sections 107(a) and 113(b) of CERCLA; 42 U.S.C. §§ 9607(a) and 9613(b); 28 U.S.C. § 1331, as well as the principles of ancillary jurisdiction over those claims arising under the laws of the State of New York.

17. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b), because the alleged releases and threatened releases that are the subject of the underlying action occurred in this district.

COUNT I

Cost Recovery Pursuant to Section 107(a) of CERCLA

18. The above allegations of this Third Amended Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

19. Pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), any person who, by contract, agreement or otherwise arranges for disposal or treatment, or arranges with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned and operated by another party or entity and containing such hazardous substances, is liable for response costs incurred or to be incurred in connection with the alleged releases or threatened releases of hazardous substances at the facility.

20. The Quanta Facility and the Capasso Property are both "facilities" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

21. Each of the Third-Party Defendants is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

22. The Third-Party Defendants, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of hazardous substances they owned or possessed to the Quanta Facility within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

23. There has been a "release" or "threatened release" of hazardous substances from the Quanta Facility as defined by CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22), 9607(a).

24. The Third-Party Defendants are thus within one or more of the classes of liable "covered persons" provided by CERCLA Section 107(a), 42 U.S.C. § 9607(a).

25. The release or threatened release of hazardous substances at the Quanta Facility has caused the Settling Defendants to incur response costs, as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), that are "necessary costs of response" for which the Third-Party Defendants are liable to the Third-Party Plaintiffs pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

26. The Settling Defendants have incurred response costs in order to carry out the investigation, analysis, and necessary response actions, including, without limitation, remediation and costs reasonably incurred to identify potentially responsible parties. Response actions at the Quanta Facility and the Capasso Property are ongoing and the Settling Defendants will incur additional expenses in completing the response actions.

27. These response actions undertaken by the Settling Defendants are necessary costs of response consistent with the National Contingency Plan, 40 C.F.R. § 300, CERCLA Section 101(31), 42 U.S.C. § 9601(31).

28. Third-Party Defendants are therefore jointly and severally liable for all past and future response costs incurred and to be incurred by the Settling Defendants in connection with the Quanta Facility and Capasso Property.

29. Notice of this action is being given or has been given to the Administrator of the Environmental Protection Agency and to the Attorney General of the United States, as required by and in compliance with CERCLA Section 113(1), 42 U.S.C. § 9613(1).

COUNT II

Contribution Claim For Relief Under Section 113 of CERCLA

30. The above allegations of this Third Amended Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

31. In the Complaint, DMJ sought judgment for response costs that it incurred or that it would incur in connection with the Capasso Property and Quanta Facility.

32. Because the amounts paid and commitments made by the Settling Defendants to DMJ represent recovery for 100 percent of the claims that were made and that could have been made by DMJ in this action, and that by making those payments and undertaking those commitments, the Settling Defendants have paid or will pay more than their fair share of the claims that DMJ made or could have made in this action, the Third-Party Defendants are liable to Third-Party Plaintiffs for contribution under Section 113(f) of CERCLA, 42 U.S.C. §9613(f).

COUNT III

Claim For Declaratory Judgment Under Section 113(g)(2) of CERCLA

33. The above allegations of this Third Amended Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

34. There is a present and actual controversy between Third-Party Plaintiffs and Third-Party Defendants concerning their respective rights and obligations with respect to the costs of response and contribution claims associated with the Quanta Facility and the Capasso Property and arising from the settlement with DMJ.

35. Third-Party Plaintiffs are entitled to judgment, under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. §§ 2201 and 2202, against Third-Party Defendants, declaring that the Third-Party Defendants are and shall be liable to the Third-Party

Plaintiffs for response costs and for contribution claims arising from the settlement with DMJ that will be binding in any subsequent action to recover further response costs.

COUNT IV

Contribution Claim For Relief Pursuant to C.P.L.R. Section 1401

36. The above allegations of this Third Amended Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

37. By virtue of each Third-Party Defendant's status and/or conduct as alleged hereinabove, each Third-Party Defendant is a tortfeasor.

38. The Settling Defendants agreed to a settlement with DMJ wherein they agreed to pay certain amounts to DMJ and made certain commitments to DMJ that represented recovery of 100 percent of the claims that were made and that could have been made by DMJ in this action. Those payments and commitments represent more than the Settling Defendants' fair share of the claims that DMJ made or could have made in this action.

39. By virtue of the above, Third-Party Plaintiffs are entitled to contribution from the Third-Party Defendants pursuant to C.P.L.R. §1401.

WHEREFORE, Third-Party Plaintiffs Quanta and ExxonMobil demand judgment against the Third-Party Defendants as follows:

a) Upon the First Cause of Action, awarding the Third-Party Plaintiffs their response costs to date and the response costs that they will incur into the future, jointly and severally against each Third-Party Defendant;

b) Upon the Second and Fourth Causes of Action, for the full amount paid by the Settling Defendants, or what the Settling Defendants will pay, to DMJ under the Settlement Agreement, and in an amount equal to their share of the response costs to be allocated by the Court using such equitable factors as the Court determines are appropriate;

c) Upon the Third Cause of Action, declaratory judgment of liability for response costs and for contribution that will be binding on any subsequent action or actions to recover further response costs;

d) Together with the costs and disbursements of this action, including reasonable attorneys' fees; and

e) Any further relief as this Court shall deem just and proper.

Dated: New York, New York
November 8, 2007

SONNENSCHEIN NATH & ROSENTHAL LLP

By: \s\
ALLEN G. REITER

1221 Avenue of the Americas
New York, New York 10020-1089
(212) 768-6700

Attorneys for Third-Party Plaintiff
Quanta Resources Corporation

McCUSKER, ANSELMI, ROSEN & CARVELLI, P.C.

By: \s\
ANDREW E. ANSELMI
ROSEMARIE DASILVA

1325 Avenue of the Americas
New York, New York 10019
(212) 308-0070

Attorneys for Third-Party Plaintiff
Exxon Mobil Corporation

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DMJ ASSOCIATES, L.L.C.,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CARL A. CAPASSO; BASF CORPORATION; CHEMICAL LEAMAN TANK LINES, INC.; PROCTER & GAMBLE HAIRCARE LLC; EXXON MOBIL CORPORATION; GENERAL DYNAMICS CORPORATION; RUSSELL W. MAHLER; REVIEW SUPPLIES, INC.; QUANTA RESOURCES CORPORATION; THE HITCHCOCK GAS ENGINE COMPANY; THE STANLEY WORKS; NANCO CONTRACTING CORP.; UNDERGROUND EQUIPMENT CO., LTD.; ROCKWELL AUTOMATION, INC.; DAIMLERCHRYSLER CORPORATION; FORD MOTOR COMPANY; INGERSOLL-RAND COMPANY; UNITED TECHNOLOGIES CORPORATION; MERRILL LYNCH & CO., INC.; PARIBAS NORTH AMERICA INC. AS INDEMNITOR OF MERRILL LYNCH & CO., INC. AND MERRILL LYNCH MONEY MARKETS, INC.; ALCOA INC. f/k/a ALUMINUM COMPANY OF AMERICA; ALLIED WASTE INDUSTRIES, INC. (INCLUDING BROWNING-FERRIS INDUSTRIES, LLC OR "B.F.I."); BARRY CONTROLS DIVISION OF BARRY WRIGHT CORPORATION; BEAZER EAST, INC. F/K/A KOPPERS, COMPANY, INC.; BORGWARNER INC.; BP PRODUCTS NORTH AMERICA INC., INCLUDING BP AMOCO CORPORATION, ATLANTIC RICHFIELD CO., AND AMERICAN BRASS-ANACONDA (A/K/A OUTOKUMPU AMERICAN BRASS, INC.); BUCKEYE PIPE LINE COMPANY, L.P.; CARRIER CORPORATION; CATERPILLAR INC.; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY (FOR ITSELF AND ON BEHALF OF CHEVRON U.S.A. INC., TEXACO INC., AND KEWANEE INDUSTRIES, INC.); COLONIAL PIPELINE COMPANY; CRUCIBLE MATERIALS CORPORATION (A/K/A CRUCIBLE SPECIALTY METALS) FORMERLY A DIVISION OF COLTEC INDUSTRIES; DANA CORPORATION; EVEREADY BATTERY CO., INC., SUCCESSOR TO CERTAIN OF THE BATTERY RELATED LIABILITIES OF UNION CARBIDE CORP.; GENERAL ELECTRIC COMPANY; GENERAL MOTORS CORPORATION; GOULDS PUMPS, INC.; HONEYWELL INTERNATIONAL	)	CV 97 7285 (DLI) (RML)

INC.; MACK TRUCKS, INC.; METROPOLITAN SUBURBAN BUS AUTHORITY D/B/A MTA LONG ISLAND BUS; MILLER BREWING COMPANY; NIAGARA MOHAWK POWER CORP.; NATIONAL GRID USA; NATIONAL GRID GROUP PLC; NORTHROP GRUMMAN CORPORATION (ON BEHALF OF NORTHROP GRUMMAN SYSTEMS CORPORATION) (GRUMMAN AEROSPACE CORP.) AND NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORPORATION (TRW INC.); PFIZER INC; WARNER-LAMBERT COMPANY LLC (ITS FORMER SCHICK-WILKINSON SWORD DIVISION); WARNER-LAMBERT COMPANY LLC (ITS FORMER WHOLLY-OWNED SUBSIDIARY NEPERA, INC.); PHARMACIA CORPORATION (ITS WHOLLY-OWNED SUBSIDIARY THE UPJOHN COMPANY); PUBLIC SERVICE ELECTRIC AND GAS COMPANY ("PSE&G"); REYNOLDS METALS COMPANY A/K/A REYNOLDS ALUMINUM; ROME STRIP STEEL COMPANY, INC.; SHELL OIL CO.; SIKORSKY AIRCRAFT CORPORATION; SPX CORPORATION, ON BEHALF OF ITS FORMER DIVISION, LEEDS & NORTHRUP; THE MILLER COMPANY (N/K/A T CORP.); AND VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, FORMERLY KNOWN AS WESTINGHOUSE ELECTRIC CORPORATION.

Defendants.

FOURTH AMENDED COMPLAINT

Plaintiff, DMJ Associates, L.L.C. ("DMJ") hereby makes the following allegations upon knowledge as to itself and upon information and belief as to all other matters:

I. NATURE OF THE ACTION

1. This action involves real property located in Long Island, New York, and associated real and personal property interests. The property at issue includes three parcels, 37-30 through 37-32 Review Avenue, 37-98 Railroad Avenue and 38-20 Railroad Avenue/Newtown Creek ("the Capasso Property").

2. The defendants, in operating their businesses, used and handled hazardous substances, which were released and disposed of on the Capasso Property and on adjacent properties.

3. Preliminary investigation has detected released hazardous substances in, at, around and in the vicinity of the Capasso Property. These hazardous substances include, without limitation, polychlorinated biphenyls ("PCBs"), gasoline, oil, toluene and other solvents.

4. The plaintiff seeks immediate abatement of these uncontrolled releases because, unabated, these releases may pose an imminent and substantial endangerment to public health and the environment.

5. Besides posing a threat to human health and the environment, the contamination has damaged the Capasso Property by significantly reducing its market value.

6. The environmental contamination in, at, around and in the vicinity of the Capasso Property creates potential legal liabilities for future owners of the property. These potential liabilities result from the possibility of injury to neighboring property owners and visitors to the area, and the possibility of government lawsuits, as contaminants pass through the Capasso Property, move off-site and potentially discharge into surface water and groundwater. Upon information and belief, these potential liabilities will persist for as long as the Capasso Property remains contaminated or under threat of contamination.

7. The plaintiff is the holder in due course of a mortgage on the Capasso Property. The mortgage secures a loan issued to Carl A. Capasso, the owner of the Capasso Property. In or about June 1987, the loan was converted to a judgment. As of April 2004, the judgment, with interest, totaled approximately $25.7 million and interest is accruing on the judgment at a rate of 9% per annum pursuant to CPLR §5004.

8. Actual and threatened contamination of the Capasso Property has sharply reduced the value of the plaintiffs collateral and the loan it secures.

9. The plaintiff did not cause or contribute to the contamination that has rendered its

collateral insecure and reduced the value of the mortgage held by the plaintiff.

10. Because the contamination impairs the potential of the Capasso Property for productive use and development, the economy of the surrounding community is affected by the contamination.

11. The plaintiff seeks immediate abatement of the contamination in, at, around and in the vicinity of the Capasso Property in order to abate threats to human health and the environment, to restore the value of its collateral and to restore potentially valuable real property to beneficial use.

12. The defendants are companies and individuals whose commercial activities over many years involved the use of hazardous substances that, when released, are harmful to public health, the environment and real property value. Under both federal law and the common law, such entities are strictly liable and are responsible for abatement of the risks and damages associated with their activities.

II. JURISDICTION, VENUE AND NOTICE

13. This Court has jurisdiction over the subject matter of the plaintiff's First and Second Causes of Action pursuant to §7002(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6972(a); §113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9613(b); the Declaratory Judgment Act, 28 U.S.C. §2201; and 28 U.S.C. §1331.

14. This Court has supplemental jurisdiction over the plaintiff's Third Cause of Action under 28 U.S.C. §1367 because the state law public nuisance claim is so related to the federal claims in this action that they form the same case and controversy under Article III of the U.S. Constitution.

15. Venue is proper in this Court pursuant to RCRA §7002(a), 42 U.S.C. §6972(a); CERCLA §113(b), 42 U.S.C. §9613(b); and 28 U.S.C. §1391(b) because the actual and threatened

endangerments, releases, injuries and damage at issue are taking place and have taken place in this district.

16. On or about September 4, 1997, the plaintiff, in a Notice of Endangerment, provided notice of the endangerments and actual and threatened injuries and damage alleged herein to: (1) the Administrator of the Environmental Protection Agency ("EPA"); (2) the State of New York ("the State"); and (3) each of the following defendants: BASF Corporation, Chemical Leaman Tank Lines, Inc., Clairol, Incorporated, Exxon Corp., General Dynamics Corporation, Russell W. Mahler, Review Supplies, Inc., Quanta Resources Corporation, The Hitchcock Gas Engine Company and The Stanley Works. The plaintiff's Notice of Endangerment complies fully with RCRA, §7002(b)(2)(A), 42 U.S.C. §6972(b)(2)(A), and 40 C.F.R. pt. 254.

17. The plaintiff waited at least ninety (90) days after receipt of the plaintiff's Notice of Endangerment by EPA, the State and each of the defendants who were sent a notice before filing this action.

18. On or before January 5, 1998, the plaintiff, in a Notice of Endangerment, provided notice of the endangerments and actual and threatened injuries and damage alleged herein to: (1) the Administrator of the Environmental Protection Agency ("EPA"); (2) the State of New York ("the State"); and (3) each of the following defendants: Rockwell International Corporation, Underground Equipment Co., Ltd., and Nanco Contracting Corp. The plaintiff's Notice of Endangerment complies fully with RCRA, §7002(b)(2)(A), 42 U.S.C. §6972(b)(2)(A), and 40 C.F.R. pt. 254.

19. The plaintiff waited at least ninety (90) days after receipt of the plaintiff's Notice of Endangerment by EPA, the State and each of the defendants who were sent a notice before asserting its first cause of action against Rockwell International Corporation, Underground Equipment Co., Ltd., and Nanco Contracting Corp.

20. On or about March 28, 2003, the plaintiff, in a Notice of Endangerment, provided notice of the endangerments and actual and threatened injuries and damage alleged herein to: (1) the Administrator of the Environmental Protection Agency ("EPA"); (2) the State of New York ("the State"); and (3) each of the following defendants: DaimlerChrysler Corporation, Ford Motor Company, Ingersoll-Rand Company and United Technologies Corporation. The plaintiff's Notice of Endangerment complies fully with RCRA, §7002(b)(2)(A), 42 U.S.C. §6972(b)(2)(A), and 40 C.F.R. pt. 254.

21. The plaintiff waited at least ninety (90) days after receipt of the plaintiff's Notice of Endangerment by EPA, the State and each of the defendants who were sent a notice before asserting its first cause of action against DaimlerChrysler Corporation, Ford Motor Company, Ingersoll-Rand Company and United Technologies Corporation.

22. On or about November 12, 2003, the plaintiff, in a Notice of Endangerment, provided notice of the endangerments and actual and threatened injuries and damage alleged herein to: (1) the Administrator of the Environmental Protection Agency ("EPA"); (2) the State of New York ("the State"); (3) defendant Paribas North America, Inc.; and (4) Merrill Lynch & Co., Inc. The plaintiff's Notice of Endangerment complies fully with RCRA, §7002(b)(2)(A), 42 U.S.C. §6972(b)(2)(A), and 40 C.F.R. pt. 254.

23. The plaintiff waited at least ninety (90) days after receipt of the plaintiffs Notice of Endangerment by EPA, the State and defendant Merrill Lynch & Co., Inc., before asserting its first cause of action against defendant Merrill Lynch & Co., Inc. Pursuant to a June 18, 2004 Stipulation and Order, Defendant Paribas North America, Inc. agreed with Merrill Lynch & Co., Inc., Merrill Lynch Money Markets, Inc., (together "Merrill Lynch") and Plaintiff DMJ Associates LLC to assume the liabilities of Merrill Lynch to the extent set forth in that Stipulation and Order, and that Paribas

North America should be substituted for Merrill Lynch as a defendant in this action.

III. LEGAL BACKGROUND TO CLAIMS ASSERTED BY PLAINTIFF

National Environmental Policy

24. The National Environmental Policy Act, one of the first federal environmental statutes, mandates that "to the fullest extent possible" federal "public laws . . . shall be interpreted" to: (1) "promote efforts which will prevent or eliminate damage to the environment"; (2) "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations"; (3) "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings"; and (4) "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences." 42 U.S.C. §4332 (emphasis added); id. §4321, 4331(b)(1)-(3). Congress declared these policies in recognition of "the critical importance of restoring and maintaining environmental quality." Id. §4331(a). All federal laws, including RCRA and CERCLA, must be interpreted in light of these policies.

The Resource Conservation and Recovery Act ("RCRA")

25. Congress intended RCRA to protect valuable real property from damage from mismanaged hazardous wastes, finding that "land is too valuable a national resource to be needlessly polluted by discarded materials . . . ." 42 U.S.C. §6901(b)(1). Congress also intended RCRA to protect ground water and surface water from damage and to protect human health, id. §6801(b)(4), (5).

26. RCRA §7002, under which the plaintiff brings a claim in this action, is RCRA's citizen enforcement provision. Section 7002(a) authorizes "any person" to seek redress in federal court for potential risks posed to public health and the environment by hazardous and solid waste. 42 U.S.C. §6972(a)(1)(B). The term "any person" in RCRA's citizen suit provision is a

congressional authorization of "remarkable breadth," giving citizen suit plaintiffs the authority to bring such suits on their own behalf and as "private attorneys general", *cf., Bennett v. Spear*, 117 S.Ct. 1154 (1997) (construing the phrase "any person" in the context of the Endangered Species Act's citizen suit provision).

27. RCRA §7002(a) provides for three kinds of citizen enforcement: (1) suits to enforce RCRA requirements, regulations, permits and orders, 42 U.S.C. §6972(a)(1)(A); (2) mandamus-like suits to force EPA to perform nondiscretionary duties, id. §6972(a)(2); and (3) public nuisance-like suits to abate potential risks to the public health and environment, id. §6972(a)(1)(B). The instant action falls within this third type of citizen enforcement.

28. Congress based this third type of citizen suit--under RCRA §7002(a)(1)(B)--on EPA's "imminent hazard authority" under RCRA §7003, 42 U.S.C. §6973, and intended this type of citizen suit to build on "common law public nuisance remedies. "*Middlesex City Board of Chosen Freeholders v. New Jersey*, 645 F. Supp. 715, 721-22 (D. N.J. 1986). The gravamen of such a suit is a potential endangerment to health or environment rather than a statutory violation.

29. Any person may bring a lawsuit under RCRA §7002(a)(1)(B) when: (1) "solid or hazardous waste" (2) "may present an imminent and substantial endangerment to health or the environment" and (3) the defendant falls within one of the categories of entities that Congress deemed liable for taking abatement action or "such other action as may be necessary."

30. The persons declared liable by Congress for potential endangerments under RCRA §7002(a)(1)(B) are entities that contributed to "past or present handling, storage, treatment, transportation, or disposal" of the solid or hazardous waste at issue. These entities specifically include "any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility." 42 U.S.C. §6972(a)(1)(B).

31. Under RCRA §1004(27), subject to limited exceptions not applicable to this case, ""solid waste" is any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities," 42 U.S.C. §6903(27).

32. Under RCRA §1004(5), "hazardous waste" is:

> a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
>
> (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

42 U.S.C. §6903(5).

33. The administrative regulations promulgated under RCRA contain additional definitions of hazardous and solid waste. 40 C.F.R. pt. 261. However, for purposes of RCRA §7002(a)(1)(B) citizen suits, substances qualify as solid or hazardous waste when the statutory definitions (i.e., those set forth in RCRA §1004(5) and (27)) apply. 40 C.F.R. §261.1(b)(2); *Connecticut Coastal Fishermen's Ass'n v. Remington Arms Co.*, 989 F.2d 1305, 1315 (2d Cir. 1993).

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

34. Congress enacted CERCLA "with the expansive, remedial purpose of ensuring 'that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions.' . . . . One of CERCLA's primary goals is to extend liability to all those involved in creating harmful environmental conditions." *Schiavone v. Pearce*, 79 F.3d 248, 253 (2d

Cir. 1996) (citations omitted).

35. CERCLA §107(a)(1)-(4)(B), under which the plaintiff brings a claim in this action, empowers "any . . . person" to recover "necessary costs of response" incurred "consistent with the national contingency plan," plus interest. 42 U.S.C. §9607(a)(1)-(4)(B). Subject only to narrow defenses and limitations of liability set forth in CERCLA, these costs may be recovered "notwithstanding any other provision or rule of law." In the event of (1) a release or threatened release, (2) from a facility, (3) of a hazardous substance, (4) which causes incurrence of response costs, the person incurring costs can recover from any entity that falls within the four categories of parties deemed liable by Congress. *Id.*

36. The four categories of parties that Congress deemed liable for cleanup costs under CERCLA include the following entities whose commercial activities have involved hazardous substances: (1) owners and operators of polluting facilities; (2) persons who owned or operated such facilities at the time hazardous substances were disposed of there; (3) persons "who by contract, agreement, or otherwise arranged" for disposal, treatment or transport of hazardous substances; and (4) transporters who selected disposal or treatment sites. CERCLA §107(a)(1)-(4), 42 U.S.C. §9607(a)(1)-(4).

37. Substances are "hazardous substances" under CERCLA if they appear on a list published at 40 C.F.R. §302.4, which EPA promulgated pursuant to CERCLA. CERCLA's definition of hazardous substances also includes substances that EPA has listed, or with respect to which EPA has taken action, under a variety of other environmental laws. 40 C.F.R. §9601(14)(A), (C)-(F).

38. Most or all of the RCRA hazardous and solid wastes at issue in this litigation also qualify as CERCLA hazardous substances.

The National Contingency Plan ("NCP")

39. In CERCLA §105, Congress required EPA to publish, in the national contingency plan ("NCP"), 40 C.F.R. pt. 300, "methods for evaluating . . . and remedying any releases or threats of releases [of hazardous substances] . . . which pose substantial danger to the public health or the environment." 42 U.S.C. §9605(a). Subpart H of the NCP provides the requirements for private party cleanups. 40 C.F.R. §300.700.

40. Under CERCLA §106, EPA may issue abatement orders when there "may be an imminent and substantial endangerment." 42 U.S.C. §9606. CERCLA §106(c) requires EPA to exercise this authority "consistent with the national hazardous substance response plan"--which is the NCP. *See* CERCLA §105(a), 42 U.S.C. §9605(a).

41. The NCP is the only comprehensive set of regulations promulgated by EPA to govern the investigation and abatement of environmental contamination. Accordingly, the most reliable response to hazardous and solid wastes that "may present an imminent and substantial endangerment to health or the environment" within the meaning of RCRA §7002(a)(1)(B) is to develop and follow an "NCP-compliant" plan to investigate, evaluate and abate the actual and threatened endangerments, releases, injuries and damage.

Public Nuisance

42. A common law public nuisance consists, inter alia, of "conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all in a manner such as to offend public morals, interfere with use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons." *Copart Indus. Inc. v. Consolidated Edison Co.*, 362 N.E.2d. 968, 971 (1977) (emphasis added) (citations omitted). Public nuisance actions lie for potential endangerments, since authorities "ought not to wait until

some citizen is sick or dead before they prevent or abate the nuisance tending to the injurious result." *New York Trap Rock Corp. v. Town of Clarkstown*, 85 N.E.2d 873, 879 (1949).

43. Liability for abatement of a public nuisance attaches "irrespective of negligence or fault." *See State of New York v. Shore Realty Corp.*, 759 F.2d 1032, 1051 (2d Cir. 1985). Even activity that complies with all applicable laws and regulations may be enjoined as a public nuisance. *State v. Waterloo Stock Car Raceway*, 409 N.Y.S.2d 40, 44-45 (N.Y. Sup. Ct. 1978).

44. Generators of solid or hazardous waste or hazardous substances may be held liable for abatement under the doctrine of public nuisance, regardless of whether they own the property on which the nuisance is located. *See State v. Schenectady Chemicals, Inc.*, 459 N.Y.S.2d 971, 977 (N.Y. Sup. Ct. 1983), aff'd in pertinent part 479 N.Y.S.2d 1010 (N.Y. App. Div. 1984).

45. A condition that is unlawful even if created with the utmost care is a nuisance per se. *McFarlane v. City of Niagara Falls*, 160 N.E. 391, 391-92 (1928) (One "is not to [create a nuisance per se] at all, whether he is negligent or careful"). Causing or contributing to the uncontrolled release and migration of hazardous and solid waste and hazardous substances is a nuisance per se. *State of New York v. Shore Realty Corp.*, 759 F.2d 1032, 1051 (2d Cir. 1985) (holding that the "release or threat of release of hazardous waste into the environment . . . is a public nuisance as a matter of New York law").

46. A private entity may maintain an action for public nuisance if it has suffered "special damage" from the nuisance, *Copart Indus. Inc. v. Consolidated Edison Co.*, 362 N.E. 2d 968, 971 (1977), i.e., "if there is some injury peculiar to a plaintiff." *Leo v. General Electric Co.*, 538 N.Y.S.2d 844, 846 (N.Y. App. Div. 1989).

IV. GENERAL FACTUAL ALLEGATIONS IN SUPPORT OF PLAINTIFFS CLAIMS

Environmental Contamination in, at, around and in the vicinity of the Capasso Property

47. The Capasso Property, including without limitation groundwater and surface water associated therewith, has suffered and continues to suffer environmental contamination with dangerous substances that have been discarded, released and abandoned. These substances include polychlorinated biphenyls (PCBs), gasoline, oil, toluene, ethyl benzene, 1,3-dichlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, xylene, chlorobenzene, tetrachloroethane, trichloroethane, 1,2- trichloroethane, benzene, chloroform and other compounds. These substances meet the legal definitions of hazardous waste and solid waste. Polychlorinated biphenyls (PCBs), toluene, ethyl benzene, 1,3-dichlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, xylene, chlorobenzene, tetrachloroethane, trichloroethane, 1,2- trichloroethane, benzene and chloroform, *inter alia*, meet the legal definition of hazardous substances.

48. The environmental contamination and damage in, at, around and in the vicinity of the Capasso Property began in or about 1970 and has been continuous and progressive since it began.

49. The hazardous wastes, solid wastes and hazardous substances in, at, around and in the vicinity of the Capasso Property have commingled to create a single and indivisible harm.

50. Upon information and belief, groundwater underlying the general area of the Capasso Property travels in a southwesterly direction, towards and into Newtown Creek, which borders the property on the south. Upon information and belief, this groundwater and Newtown Creek have the potential to carry hazardous and solid waste and hazardous substances off-site.

51. The New York Department of Environmental Conservation has assigned a "SD" classification to the surface waters of Newtown Creek. Class SD waters should be suitable for

fishing. 6 NYCRR §701.14. The Department has assigned groundwater in the area of the Capasso Property either class "GA" or "GSA." 6 NYCRR §701.18. These waters should be suitable to serve as a source of potable water or conversion to fresh potable waters. 6 NYCRR §701.15, .16.

52. Upon information and belief, due at least in part to the defendants' acts and omissions, surface waters and groundwater in the area of the Capasso Property fail to meet the standards associated with the SD, GA and GSA classifications and are not suitable for their designated potential uses.

53. The presence of uncontrolled hazardous and solid waste and hazardous substances at and near the Capasso Property may pose a significant risk of human exposure and resulting injury to health and will continue to pose such a potential risk until the contamination is abated. This hazardous and solid waste and these hazardous substances also pose potential hazards to quality of the surrounding environment.

Sources of Contamination

The Quanta Facility

54. The Capasso Property adjoins a property located at 37-80 Review Avenue, which is referred to in this Complaint as the "Quanta Facility."

55. From in or about 1970 until in or about 1982, the Quanta Facility was an active disposal site and transfer facility for substances generated primarily or exclusively off-site.

56. From in or about 1970 until in or about 1982, the Quanta Facility was also a waste oil recycling and storage facility.

57. During the operation of the Quanta Facility, substances were spilled and released into the environment.

58. Substances disposed of, spilled and released at the Quanta Facility consist of

discarded materials that, because of their chemical characteristics, may pose a substantial present or potential hazard to human health or the environment when improperly managed. Thus, the substances are hazardous and solid waste.

59. Substances disposed of, spilled and released at the Quanta Facility are listed at 40 C.F.R. §302.4 and thus are hazardous substances.

60. Upon information and belief, substances disposed of, spilled and released at the Quanta Facility migrated through the environment (including without limitation the soil and groundwater) and have come to be located at the Capasso Property.

61. Upon information and belief, substances disposed of, spilled and released at the Quanta Facility continue to migrate through the environment and continue to enter, endanger and contaminate the Capasso Property.

62. Upon occasion, the operators of the Quanta Facility may have disposed of substances directly on the Capasso Property from a pipe on an easement through the Capasso Property.

The Capasso Property

63. For periods beginning at least prior to January 1, 1960 until at least 1990, the businesses that operated on various parts of the Capasso Property included companies that used hazardous substances and generated solid and hazardous wastes. These businesses included a heavy machinery and construction equipment storage and maintenance operation.

64. Upon information and belief, businesses that operated on various parts of the Capasso Property allowed or suffered releases of substances into the soils and groundwater at and near the Capasso Property.

65. Upon information and belief, substances released on various parts of the Capasso Property constitute discarded materials that, because of their chemical characteristics, may pose a

substantial present or potential hazard to human health or the environment when improperly managed. Thus, the substances are hazardous and solid waste.

66. Upon information and belief, substances released on various parts of the Capasso Property are listed at 40 C.F.R. §302.4 and thus are hazardous substances.

The Parties and Their Relationships to the Environmental Contamination in, at, around and in the Vicinity of the Capasso Property

The Plaintiff

67. The plaintiff is a New York limited liability company and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

68. In a public auction conducted by European American Bank in December 1996, the plaintiff purchased a loan issued to Mr. Carl Capasso and his various business entities which was in default and was converted into a judgment. The bank note and the judgment were and have been secured by the Capasso Property.

69. Because of the environmental conditions on the Capasso Property, the plaintiff cannot effectively exercise its right to foreclosure and sale of the property because the property has little or no value in its contaminated condition. Thus the plaintiff's collateral has been severely impacted by the endangerment complained of herein.

The Owner/Operator Defendants

Companies Controlled by Carl A. Capasso

70. Review Supplies, Inc. is a New York corporation. It was formerly known as Nanco Concrete Corp.

71. Nanco Contracting Corp. is a New York corporation.

72. Underground Equipment Co., Ltd. is a New York corporation. It was formerly known

as Nanco Equipment Corp.

73. Review Supplies, Inc., Nanco Contracting Corp. and Underground Equipment Co., Ltd. are "persons" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

74. Carl A. Capasso operated and controlled several businesses on the Capasso Property, including Nanco Contracting Corp., Underground Equipment Co., Ltd. (formerly known as Nanco Equipment Corp.), Capasso Contracting Corp., and Review Supplies, Inc. (formerly known as Nanco Concrete Corp.).

75. Upon information and belief, Review Supplies, Inc., Nanco Contracting Corp. and Underground Equipment Co., Ltd. are and continue to be tenants at, and operators of, the Capasso Property.

76. Upon information and belief, Review Supplies, Inc., Nanco Contracting Corp. and Underground Equipment Co., Ltd. used and handled hazardous and solid wastes and hazardous substances in their operations, and allowed or suffered releases of hazardous and solid wastes and hazardous substances into the environment at and from the Capasso Property.

Russell W. Mahler

77. Russell W. Mahler is a natural person and Russell W. Mahler is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

78. Russell W. Mahler owned and operated a waste and oil recycling business on the Quanta Facility during the 1970s.

79. Russell W. Mahler operated his business on the Quanta Facility under numerous company names, including Sea Lion Corp., North East Oil Service, Inc., Ag-Met Oil Services, Inc., Newtown Refining Corp., Newtown Refining Corporation, Hudson Oil Refining Corporation, and Portland Holding Corporation ("the Mahler Companies").

80. Businesses owned, operated and controlled by Russell W. Mahler disposed of and allowed or suffered releases of hazardous and solid wastes and hazardous substances at and from the Quanta Facility.

81. Upon information and belief, some or all of the Mahler Companies' releases have contributed to environmental contamination in, at, around and in the vicinity of the Capasso Property.

Quanta

82. Quanta Resources Corporation ("Quanta") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

83. Quanta purchased the Quanta Facility and other assets of the Mahler Companies in 1980.

84. Quanta was an operator of the Quanta Facility from 1980 until 1981 and still owns the Quanta Facility.

85. Quanta disposed of solid and hazardous wastes and hazardous substances at and from the Quanta Facility.

86. On information and belief, some or all of Quanta's releases of hazardous substances have contributed to environmental contamination in, at, around and in the vicinity of the Capasso Property.

Paribas North America, Inc.

87. Pursuant to a June 18, 2004 Stipulation and Order, Defendant Paribas North America, Inc. agreed with Merrill Lynch and Plaintiff DMJ Associates LLC to assume the liabilities of Merrill Lynch to the extent set forth in that Stipulation and Order, and that Paribas North America should be

substituted for Merrill Lynch as a defendant in this action.

88. Merrill Lynch is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

89. On or about September 1984, Merrill Lynch purchased and merged into itself Becker Paribas Holdings Incorporated and its constituent corporations, including but not limited to A.G. Becker Paribas Incorporated f/k/a Warburg Paribas Becker Incorporated/A.G. Becker Incorporated (hereinafter "Becker").

90. Through the merger on or about September 1984, Merrill Lynch succeeded to the liabilities of Becker with respect to the Quanta Facility.

91. Becker was an operator of the Quanta Facility within the meaning of *United States v. Bestfoods*, 524 U.S. 51, 65 (1998), and/or the corporate veil between Quanta Resources Corporation and Becker may be pierced under the federal common law analysis articulated in *City of New York v. Exxon Corp.*, 112 B.R. 540, 553 (S.D.N.Y.1990).

92. Becker was the 100% shareholder of Waste Recovery Incorporated, which was the 100% shareholder of Quanta Holding Corporation, which was the 100% shareholder of Quanta Resources Corporation, the owner of the Quanta Facility.

93. On information and belief, during the time period 1980 through 1981 Becker managed, directed or conducted operations of the Quanta Facility having to do with leakage or disposal of hazardous wastes, and decisions about compliance with environmental regulations, including but not limited to decisions regarding permits, licensing, compliance with consent orders, capital expenditures to meet these obligations, the types of waste streams Quanta would be involved with, cleanup of the Quanta Facility, efforts to sell the Quanta Facility, and ultimately, the decision to abandon the Quanta Facility in bankruptcy. At the time of the bankruptcy abandonment, the Quanta

Facility contained 106 tanks and over 70,000 gallons of toxic, PCB-contaminated oil in deteriorating and leaking containers. The decision to abandon the Quanta Facility in and of itself constitutes a release of hazardous substances within the meaning of 42 U.S.C. § 9601(22), and was made in contravention of state and federal regulations designed to protect public health and safety from the dangers of hazardous wastes, *Midlantic Nat. Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 507 (1986).

94. Becker was the exclusive source of initial funding for Quanta Resources Corporation, Quanta Holding Corporation and Waste Recovery Incorporated, and the primary if not exclusive source of operating capital for these corporations. These corporations were inadequately capitalized by Becker for the purposes for which they were organized: hazardous waste and waste oil transportation, treatment, handling and disposal. Becker knowingly refused to provide sufficient capital for the operations of Quanta Resources Corporation, including money necessary to clean up contaminated material at the Quanta Facility. Becker's decision to withhold funding forced Quanta Resources Corporation into bankruptcy.

95. Quanta Resources Corporation, Quanta Holding Corporation and Waste Recovery Incorporated were engaged in a single business. Jerry Rubenstein, who was President and CEO of Waste Recovery Inc., Chairman and Director of Quanta Holding Company, and Chairman and Director of Quanta Resources Corporation, has testified that he had no concern for where Quanta Resources Corporation was in the corporate structure, and considered these entities to be "one whole company."

96. On information and belief, Becker extensively and pervasively controlled these companies through such actions as, *inter alia*, determining who would serve as officers and directors of Waste Recovery Incorporated, dominating the board of Waste Recovery Incorporated with Becker

officers and directors, controlling all capital expenditures and approval for financing, and expressly conditioning the purchase of the Mahler Companies on Becker's "ability to control the expansion as well as divestment of any of the Waste Recovery operations."

97. The corporate assets of Becker, Waste Recovery Incorporated, Quanta Holding Corporation and Quanta Resources Corporation were intermingled through such mechanisms as Becker's consolidation with some or all of these corporations for tax purposes, Becker's assumption of Quanta Resources Corporation's $5,000,000 tax loss, and Becker's "loan" of substantial sums to Waste Recovery Incorporated, portions of which amounts were "reloaned" to Quanta Resources Corporation, and which "loans" have never been repaid.

98. On information and belief, Becker, Waste Recovery Incorporated, Quanta Holding Corporation and Quanta Resources Corporation failed to observe proper corporate formalities and separateness.

99. At least one of the named "officers and directors" of Waste Recovery Incorporated, Quanta Holding Corporation and Quanta Resources Corporation was a non-functioning officer and director.

The Generator Defendants

100. Alcoa Inc. f/k/a Aluminum Company of America; BASF Corporation; Beazer East, Inc. f/k/a Koppers, Company, Inc.; BorgWarner Inc.; Chemical Leaman Tank Lines, Inc.; DaimlerChrysler Corporation; General Motors Corporation; Dana Corporation; Exxon Mobil Corporation; Ford Motor Company; General Dynamics Corporation; Honeywell International Inc.; Ingersoll-Rand Company; Northrop Grumman Corporation (on behalf of Northrop Grumman Systems Corporation) (Grumman Aerospace Corp.) and Northrop Grumman Space & Mission Systems Corporation (TRW Inc.); Paribas North America Inc. as indemnitor of Merrill Lynch & Co.,

Inc. and Merrill Lynch Money Markets, Inc.; Procter & Gamble Haircare LLC; Quanta Resources Corporation; Reynolds Metals Company a/k/a Reynolds Aluminum; Rockwell Automation, Inc.; The Stanley Works; United Technologies Corporation; Carrier Corporation; and Sikorsky Aircraft Corporation; Allied Waste Industries, Inc. (including Browning-Ferris Industries, LLC or "B.F.I."); Barry Controls division of Barry Wright Corporation; BP Products North America Inc., including BP Amoco Corporation, Atlantic Richfield Co., and American Brass-Anaconda (a/k/a Outokumpu American Brass, Inc.); Buckeye Pipe Line Company, L.P.; Caterpillar Inc.; Chevron Environmental Management Company (for itself and on behalf of Chevron U.S.A. Inc., Texaco Inc., and Kewanee Industries, Inc.); Colonial Pipeline Company; Crucible Materials Corporation (a/k/a Crucible Specialty Metals) formerly a division of Coltec Industries; Eveready Battery Co., Inc., successor to certain of the battery related liabilities of Union Carbide Corp.; General Electric Company; Goulds Pumps, Inc.; Mack Trucks, Inc.; Metropolitan Suburban Bus Authority d/b/a MTA Long Island Bus; Miller Brewing Company; Niagara Mohawk Power Corp.; National Grid USA; National Grid Group PLC; Pfizer Inc; Warner-Lambert Company LLC (its former Schick-Wilkinson Sword Division); Warner-Lambert Company LLC (its former wholly-owned subsidiary Nepera, Inc.); Pharmacia Corporation (its wholly-owned subsidiary The Upjohn Company); Public Service Electric and Gas Company ("PSE&G"); Reynolds (Reynolds Metals Co. a/k/a Reynolds Aluminum); Rome Strip Steel Company, Inc.; Shell Oil Co.; SPX Corporation, on behalf of its former division, Leeds & Northrup; The Hitchcock Gas Engine Company; The Miller Company (n/k/a T Corp.); and Viacom Inc., successor by merger to CBS Corporation, formerly known as Westinghouse Electric Corporation., are collectively referred to in this Complaint as the "Generator Defendants."

101. The Generator Defendants sent hazardous and solid waste and hazardous substances into commerce for storage, transport and disposal.

102. Upon information and belief, hazardous and solid waste and hazardous substances sent into commerce by each Generator Defendant came to be located at and released from the Quanta Facility to cause and contribute to releases, threatened releases and potential endangerments at and near the Capasso Property.

103. Disposal, storage, transportation and treatment of solid and hazardous wastes and hazardous substances, of the type that came to be located at the Quanta Facility, was and is inherently dangerous work. The Generator Defendants failed to take proper precautions in selecting competent parties to do this work and failed to ensure that the work was done in a safe and reasonable manner and at an appropriate location.

104. By their continuing failure to act to address this situation, the Generator Defendants have allowed wastes to migrate from the Quanta Facility onto the Capasso Property and potentially beyond, and create a potential endangerment to public health and the environment at and in the vicinity of the Capasso Property.

Alcoa Inc. (f/k/a Aluminum Company of America)

105. Defendant, Alcoa Inc (f/k/a Aluminum Company of America ("Alcoa"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

106. On information and belief, Alcoa handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Allied Waste Industries, Inc. (including Browning-Ferris Industries, LLC or "B.F.I.")

107. Defendant, Allied Waste Industries, Inc. (including Browning-Ferris Industries, LLC or "B.F.I.") ("Allied"), is a corporation doing business in the State of New York and is a "person" as

that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

108. On information and belief, Allied handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Barry Controls division of Barry Wright Corporation

109. Defendant, Barry Controls division of Barry Wright Corporation ("Barry"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

110. On information and belief, Barry handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

BASF Corporation

111. Defendant BASF Corporation ("BASF") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

112. BASF or its predecessor in interest sent hazardous substances to the Quanta Facility.

113. BASF or its predecessor in interest handled, generated and arranged for the transport and treatment or disposal of at least 480,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1978 and 1979.

114. The wastes sent by BASF or its predecessor to the Quanta Facility included oil sludge, 2-ethyl hexanol, phthalic anhydride, phthalic acid, maleic acid and 0-xylene.

Beazer East, Inc. f/k/a Koppers, Company, Inc.

115. Defendant Beazer East Inc. f/k/a Koppers Company ("Beazer") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

116. On information and belief, Beazer's predecessor in interest, Koppers Company ("Koppers"), sent hazardous substances to the Quanta Facility.

117. On information and belief, Koppers handled, generated and arranged for the transport and treatment or disposal of at least 1.6 million gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at least 1978 and 1980.

118. On information and belief, the wastes sent by Koppers to the Quanta Facility included waste oils and waste water from coal tar processing which contained polynuclear aromatic hydrocarbons, ammonia, naptha, naphthalene, phenols, chloride, cyanide, sulfate, arsenic, copper, lead, iron, selenium and nickel.

BorgWarner Inc.

119. Defendant Borg Warner, Inc. ("BorgWarner") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

120. On information and belief, BorgWarner and/or its predecessor in interest Morse Chain sent hazardous substances to the Quanta Facility either directly or via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

121. On information and belief, BorgWarner and/or its predecessor in interest Morse Chain handled, generated and arranged for the transport and treatment or disposal of at least 1.5 million gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at

least 1976 and 1980.

122. On information and belief, the wastes sent by BorgWarner to the Quanta Facility included hazardous wastes and hazardous substances.

BP Products North America Inc., including BP Amoco Corporation, Atlantic Richfield Co., and American Brass-Anaconda (a/k/a Outokumpu American Brass, Inc.)

123. Defendant, BP Products North America Inc., including BP Amoco Corporation, Atlantic Richfield Co., and American Brass-Anaconda (a/k/a Outokumpu American Brass, Inc.) ("BP"), is a Maryland corporation and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

124. On information and belief, BP handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Buckeye Pipe Line Company, LP

125. Defendant, Buckeye Pipe Line Company, LP ("Buckeye"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

126. On information and belief, Buckeye handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Carrier Corporation

127. Defendant, Carrier Corporation ("Carrier"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

128. On information and belief, Carrier handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Caterpillar Inc.

129. Defendant, Caterpillar Inc. ("Caterpillar"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

130. On information and belief, Caterpillar handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Chemical Leaman Tank Lines, Inc.

131. Defendant Chemical Leaman Tank Lines, Inc. ("Chemical Leaman") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

132. Chemical Leaman sent hazardous substances to the Quanta Facility.

133. Chemical Leaman handled, generated and arranged for the transport and treatment or disposal of at least 150,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1978 and 1979.

134. The wastes sent by Chemical Leaman to the Quanta Facility included heavy latex emulsions, formaldehyde, methyl methacrylate, naphthalene, diamine and methanol.

Chevron Environmental Management Company
(for itself and on behalf of Chevron U.S.A. Inc, Texaco Inc., and Kewanee Industries)

135. Defendant, Chevron Environmental Management Company (for itself and on behalf

of Chevron U.S.A. Inc., Texaco Inc., and Kewanee Industries) ("Chevron"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

136. On information and belief, Chevron handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Colonial Pipeline Company

137. Defendant, Colonial Pipeline Company, LP ("Colonial"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

138. On information and belief, Colonial handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Crucible Materials Corporation (a/k/a Crucible Specialty Metals)
formerly a division of Coltec Industries

139. Defendant, Crucible Materials Corporation (a/k/a Crucible Specialty Metals) formerly a division of Coltec Industries ("Crucible"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

140. On information and belief, Crucible handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

DaimlerChrysler Corporation

141. Defendant DaimlerChrysler Corp. ("DaimlerChrysler") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

142. DaimlerChrysler's predecessor in interest, Chrysler Corporation ("Chrysler"), sent hazardous substances to the Quanta Facility, both directly and via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

143. Chrysler handled, generated and arranged for the Mahler Companies to transport and treat or dispose of at least several million gallons of solid and hazardous waste and hazardous substances, some which was transported directly to the Quanta Facility between at least 1975 and 1980.

144. On information and belief, the wastes sent by Chrysler to the Quanta Facility included solvents, chlorinated hydrocarbons, chromic acid, hexavalent chromium, cyanide, aluminum, cadmium, cobalt, copper, iron, lead, nickel, and zinc.

Dana Corporation

145. Defendant Dana Corporation ("Dana") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

146. On information and belief, Dana and/or its predecessor in interest, Turbo Products, sent hazardous substances to the Quanta Facility.

147. On information and belief, Dana and/or its predecessor in interest, Turbo Products, handled, generated and arranged for the transport and treatment or disposal of at least 840,000 gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at least 1976 and 1980.

148. On information and belief, the wastes sent by Dana and/or its predecessor in interest, Turbo Products, to the Quanta Facility included waste hydraulic oils, cutting oils and coolants, aluminum oxide slurry, and electrochemical machining slurry, containing aluminum, chromium, silver, copper, iron, nickel, cadmium and zinc.

Eveready Battery Co., Inc.,
successor to certain of the battery related liabilities of Union Carbide Corp.

149. Defendant, Eveready Battery Co., Inc., successor to certain of the battery related liabilities of Union Carbide Corp. ("Eveready"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

150. On information and belief, Eveready handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Exxon Mobil Corporation

151. Defendant Exxon Mobil Corporation is the successor in interest to Exxon Corp. ("Exxon") and Mobil Corporation. Defendant Exxon Mobil Corporation is a New Jersey corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

152. Exxon sent hazardous substances to the Quanta Facility.

153. Exxon handled, generated and arranged for the transport and treatment or disposal of at least several million gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1975 and 1980.

154. The wastes sent by Exxon to the Quanta Facility included oil slop, heptane and hexane.

Ford Motor Company

155. Defendant Ford Motor Company ("Ford") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

156. Ford sent hazardous substances to the Quanta Facility, both directly and via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

157. Ford handled, generated and arranged for the Mahler Companies to transport and treat or dispose of at least several million gallons of solid and hazardous waste and hazardous substances, some which was transported directly to the Quanta Facility between at least 1977 and 1980.

158. The wastes sent by Ford to the Quanta Facility contained copper, chromium, arsenic, zinc, lead and cadmium.

General Dynamics Corporation

159. Defendant General Dynamics Corporation ("General Dynamics") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

160. General Dynamics sent hazardous substances to the Quanta Facility.

161. General Dynamics handled, generated and arranged for the transport and treatment or disposal of at least 400,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1974 and 1976.

162. The wastes sent by General Dynamics to the Quanta Facility included sulfamic acid, hydraulic oil, trisoldium phosphate, methyl chloroform and methyl ethyl ketone.

General Electric Company

163. Defendant General Electric Company ("General Electric") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

164. On information and belief, General Electric sent hazardous substances to the Quanta Facility from operations in Lynn, Massachusetts.

165. On information and belief, General Electric handled, generated and arranged for the transport and treatment or disposal of 99,500 gallons of solid and hazardous waste, which waste was transported to the Quanta Facility in 1974.

166. On information and belief, the wastes sent by General Electric to the Quanta Facility included hazardous wastes and hazardous substances.

General Motors Corporation

167. Defendant General Motors Corporation ("General Motors") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

168. On information and belief, General Motors or its predecessor in interest sent hazardous substances from operations in Tonawanda, New York to the Quanta Facility either directly or via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

169. On information and belief, General Motors or its predecessor in interest handled, generated and arranged for the transport and treatment or disposal of at least a million gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between 1975 and 1977.

170. On information and belief, the wastes sent by General Motors or its predecessor in

interest to the Quanta Facility included hazardous wastes and hazardous substances.

Gould Pumps

171. Defendant, Gould Pumps ("Gould"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

172. On information and belief, Gould, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Honeywell International Inc.

173. Defendant, Honeywell International Inc. ("Honeywell"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

174. On information and belief, Honeywell handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Ingersoll-Rand Company

175. Defendant, Ingersoll-Rand Company ("Ingersoll-Rand"), is a New Jersey corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

176. Ingersoll-Rand sent hazardous substances to the Quanta Facility, both directly and via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

177. Ingersoll-Rand handled, generated and arranged for the Mahler Companies to transport and treat or dispose of at least several million gallons of solid and hazardous waste and hazardous substances, some which was transported directly to the Quanta Facility between at least

1972 and 1980.

178. The wastes sent by Ingersoll-Rand to the Quanta Facility included waste oils, halogenated solvents, cadmium, chromium, copper, iron, lead, nickel and zinc.

Mack Trucks, Inc.

179. Defendant Mack Trucks, Inc. ("Mack Trucks") is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

180. On information and belief, Mack Trucks sent hazardous substances from operations in Allentown, Pennsylvania to the Quanta Facility either directly or via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

181. On information and belief, Mack Trucks handled, generated and arranged for the transport and treatment or disposal of approximately 300,000 gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at least 1974 and 1976.

182. On information and belief, the wastes sent by Mack Trucks to the Quanta Facility included hazardous wastes and hazardous substances.

Metropolitan Suburban Bus Authority d/b/a MTA Long Island Bus

183. Defendant, Metropolitan Suburban Bus Authority d/b/a MTA Long Island Bus ("Metropolitan"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

184. On information and belief, Metropolitan handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Miller Brewing Company

185. Defendant, Miller Brewing Company ("Miller Brewing"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

186. On information and belief, Miller Brewing handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Niagara Mohawk Power Corp., National Grid USA, National Grid Group PLC

187. Defendant, Niagara Mohawk Power Corp., National Grid USA, National Grid Group PLC ("Niagara"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

188. On information and belief, Niagara handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Northrop Grumman Corporation
(on behalf of Northrop Grumman Systems Corporation) (Grumman Aerospace Corp.) and
Northrop Grumman Space & Mission Systems Corporation (TRW Inc.)

189. Defendant, Northrop Grumman Corporation (on behalf of Northrop Grumman Systems Corporation (Grumman Aerospace Corp.) and Northrop Grumman Space & Missions Systems Corporation (TRW Inc.), ("Northrop"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

190. On information and belief, Northrop handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Pfizer Inc; Warner-Lambert Company LLC (its former Schick-Wilkinson Sword Division); Warner-Lambert Company LLC (its former wholly-owned subsidiary Nepera, Inc.); Pharmacia Corporation (its wholly-owned subsidiary The Upjohn Company)

191. Defendant, Pfizer Inc; Warner-Lambert Company LLC (its former Schick-Wilkinson Sword Division); Warner-Lambert Company LLC (its former wholly-owned subsidiary Nepera, Inc.); Pharmacia Corporation (its wholly-owned subsidiary The Upjohn Company) ("Pfizer"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

192. On information and belief, Pfizer handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982. .

Procter & Gamble Haircare LLC

193. Defendant Procter & Gamble Haircare LLC, is the successor in interest to Clairol, Incorporated ("Clairol"). Defendant Procter & Gamble Haircare LLC is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

194. Clairol sent hazardous substances to the Quanta Facility.

195. Clairol handled, generated and arranged for the transport and treatment or disposal of at least 220,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1978 and 1979.

196. The wastes sent by Clairol to the Quanta Facility included metals, isopropyl alcohol, ammonia and ethanol.

Public Service Electric & Gas Company

197. Defendant, Public Service Electric & Gas Company ("PSE&G") is a New Jersey

corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

198. On information and belief, the predecessor in interest of Public Service Electric & Gas Company ("PSE&G") sent hazardous substances to the Quanta Facility.

199. On information and belief, PSE&G handled, generated and arranged for the transport and treatment or disposal of at least 69,000 gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at least 1974 and 1977.

200. On information and belief, the wastes sent by PSE&G to the Quanta Facility included waste oils and transformer fluids containing PCBs, sulfur, chloride, bromide, halogens, arsenic, cadmium, chromium, lead and nickel.

Reynolds (Reynolds Metals Co. a/k/a Reynolds Aluminum)

201. Defendant, Reynolds (Reynolds Metals Co. a/k/a Reynolds Aluminum) ("Reynolds"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

202. On information and belief, Reynolds handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Rockwell Automation Inc.

203. Defendant Rockwell Automation, Inc., formerly known as Rockwell International Corporation, ("Rockwell") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

204. Rockwell sent hazardous substances to the Quanta Facility.

205. Rockwell handled, generated and arranged for the transport and treatment or disposal

of at least 263,745 gallons of coolants and oily waste water, which waste was transported to the Quanta Facility between at least 1974 and 1976.

206. The wastes sent by Rockwell to the Quanta Facility included hazardous wastes and hazardous substances.

Rome Strip Steel Co., Inc.

207. Defendant, Rome Strip Steel Co., Inc. ("Rome"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

208. On information and belief, Rome handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

Shell Oil Co.

209. Defendant, Shell Oil Co. ("Shell"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

210. On information and belief, Shell handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

SPX Corporation, on behalf of its former division, Leeds & Northrup

211. Defendant, SPX Corporation, on behalf of its former division, Leeds & Northrup ("Leeds & Northrup"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

212. On information and belief, Leeds & Northrup handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was

transported to the Quanta Facility during the time frame 1970 to 1982.

The Hitchcock Gas Engine Company

213. Defendant The Hitchcock Gas Engine Company ("Hitchcock") is a Connecticut corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

214. Hitchcock sent hazardous substances to the Quanta Facility.

215. Hitchcock handled, generated and arranged for the transport and treatment or disposal of at least 200,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1974 and 1979.

216. The wastes sent by Hitchcock to the Quanta Facility included cyanide and heavy metals.

The Miller Company (n/k/a T Corp.)

217. Defendant, The Miller Company (n/k/a T Corp.) ("Miller Company"), is a corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

218. On information and belief, Miller Company handled, generated and arranged for the transport and treatment or disposal of hazardous wastes and hazardous substances which waste was transported to the Quanta Facility during the time frame 1970 to 1982.

The Stanley Works

219. Defendant The Stanley Works ("Stanley") is a Connecticut corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

220. Stanley sent hazardous substances to the Quanta Facility.

221. Stanley handled, generated and arranged for the transport and treatment or disposal of at least 882,000 gallons of solid and hazardous waste and hazardous substances, which were transported to the Quanta Facility between at least 1973 and 1979.

222. The wastes sent by Stanley to the Quanta Facility included cyanide, methyl ethyl ketone, benzene and xylene.

United Technologies Corporation

223. Defendant United Technologies Corporation ("UTC") is a Delaware corporation doing business in the State of New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

224. Predecessors in interest of UTC, including Pratt & Whitney, Carrier Corporation and Sikorsky Aircraft Corporation, sent hazardous substances to the Quanta Facility, both directly and via the Mahler Companies' facility located on Lodi Street in Syracuse, New York.

225. Predecessors in interest of UTC, including Pratt & Whitney and Carrier Corporation, handled, generated and arranged for the Mahler Companies to transport and treat or dispose of at least several million gallons of solid and hazardous waste and hazardous substances, some which was transported directly to the Quanta Facility between at least 1972 and 1979.

226. The wastes sent by predecessors in interest of UTC, including Pratt & Whitney, Carrier Corporation, and Sikorsky Aircraft Corporation to the Quanta Facility included waste oils, cyanide, zyglow, sulfuric acid, chlorinated solvents and kerosene.

Viacom Inc., successor by merger to CBS Corporation,
formerly known as Westinghouse Electric Corporation

227. Defendant Viacom Inc., successor by merger to CBS Corporation, formerly known as Westinghouse Electric Corporation ("Westinghouse") is a corporation doing business in the State of

New York and is a "person" as that term is defined in 42 U.S.C. §6903(15) and 42 U.S.C. §9601(21).

228. On information and belief, Westinghouse sent hazardous substances from its operations, including those located in Philadelphia, Pennsylvania, to the Quanta Facility.

229. On information and belief, Westinghouse handled, generated and arranged for the transport and treatment or disposal of at least 130,000 gallons of solid and hazardous waste, which waste was transported to the Quanta Facility between at least 1973 and 1975.

230. On information and belief, the wastes sent by Westinghouse to the Quanta Facility included hazardous wastes and hazardous substances.

V. FIRST CAUSE OF ACTION (RCRA)

(Asserted against defendants BASF Corporation, Chemical Leaman Tank Lines, Inc., Proctor & Gamble Haircare LLC, Exxon Mobil Corporation, General Dynamics Corporation, Russell W. Mahler, Review Supplies, Inc., Quanta Resources Corporation, The Hitchcock Gas Engine Company, The Stanley Works, Nanco Contracting Corp., Underground Equipment Co., Ltd., Rockwell Automation, Inc., DaimlerChrysler Corporation, Ford Motor Company, Ingersoll-Rand Company, United Technologies Corporation and Paribas North America)

231. The plaintiff re-alleges and incorporates by reference paragraphs 1 through 230.

232. Each defendant is a person or the successor to a person who has contributed to the handling, storage, treatment, transportation or disposal of hazardous or solid waste that may present an imminent and substantial endangerment to health or the environment.

233. The defendants have not stopped the potential endangerments and actual and threatened injuries and damage at issue. The potential endangerments and actual and threatened injuries and damage at issue are continuing and progressive and, upon information and belief, will persist until enjoined by this Court.

234. The defendants' liability under RCRA §7002(a), 42 U.S.C. §6972(a)(1)(B), is strict,

joint and several and retroactive.

235. Unless abated by order of the Court, the potential endangerment complained of will cause irreparable injury to the plaintiff.

236. Unless abated by order of the Court, the potential endangerment complained of will cause irreparable injury to the public and the environment in, at, around and in the vicinity of the Capasso Property.

237. Neither EPA nor the State of New York has commenced or is prosecuting diligently an action under RCRA §7003, 42 U.S.C. §6973; RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B); or CERCLA §106, 42 U.S.C. §9606, to abate the endangerments at issue.

238. Neither EPA nor the State of New York is actually engaged in a removal action under authority of CERCLA §104, 42 U.S.C. §9604, to abate the endangerments at issue.

239. Neither EPA nor the State of New York has incurred costs to initiate a remedial investigation and feasibility study under CERCLA §104, 42 U.S.C. §9604, and is diligently proceeding with a remedial action under CERCLA to abate the endangerments at issue.

240. No responsible party is diligently conducting a removal action, remedial investigation and feasibility study or proceeding with a remedial action pursuant to a judicial or administrative order obtained by EPA under CERCLA §106, 42 U.S.C. §9606, or RCRA §7003, 42 U.S.C. §6973, to abate the endangerments at issue.

241. The plaintiff shall serve a copy of this complaint on the Attorney General of the United States and on EPA.

242. The plaintiff is entitled to relief under RCRA §7002(a), 42 U.S.C. §6972(a), restraining the defendants and requiring each of them, jointly and severally, to take such action as may be necessary to abate the potential endangerments at issue.

243. The plaintiff is also entitled to an order requiring the defendants to pay the plaintiff's costs of litigation, including reasonable attorney and expert witness fees, pursuant to RCRA §7002(e), 42 U.S.C. §6972(e).

VI. SECOND CAUSE OF ACTION (CERCLA)
(Asserted against all defendants)

244. The plaintiff realleges and incorporates by reference paragraphs 1 through 243.

245. The Capasso Property and the Quanta Facility are a "facility" within the meaning of CERCLA §101(9) because they are a site "where a hazardous substance has . . . come to be located." 42 U.S.C. §9601(9).

246. Releases and threatened releases of hazardous substances at and from the Capasso Property and the Quanta Facility have caused the plaintiff to incur necessary costs of response that are consistent with the NCP. Those costs include, without limitation, the development of a preliminary community relations plan pursuant to 40 C.F.R. §300.700(c)(6), 300.155, 300.415(m), and 300.430(c) to allow interested members of the public a full opportunity to exercise their rights to participate in cleanup decisions.

247. Defendant Quanta is liable under CERCLA as the current owner of the Quanta Facility, as a person who owned or operated the Quanta Facility at the time of disposal of hazardous substances at that property and as a person who transported hazardous substances to the Quanta Facility for treatment or disposal.

248. Pursuant to the June 18, 2004 Stipulation and Order, Defendant Paribas North America has assumed the liabilities of Merrill Lynch, which is liable under CERCLA because it succeeded, through merger, to the liabilities of Becker as a person who operated the Quanta Facility at the time of disposal of hazardous substances at that property, and as an entity whose assets may be

reached through piercing the corporate veil between Becker, Waste Recovery Incorporated, Quanta Holding Corporation and Quanta Resources Corporation.

249. Defendants Review Supplies, Inc., Nanco Contracting Corp. and Underground Equipment Co., Ltd. are liable under CERCLA as the current owners or operators of the Capasso Property, as persons who owned or operated the Capasso Property at the time of disposal of hazardous substances at that property, and persons who arranged for disposal or treatment of hazardous substances at the Capasso Property.

250. Defendant Russell W. Mahler is liable under CERCLA as a person who owned or operated the Quanta Facility at the time of disposal of hazardous substances at that facility, and as a person who arranged for disposal or treatment of hazardous substances at the Quanta Facility and the Capasso Property, and arranged for transport of hazardous substances to the Quanta Facility and the Capasso Property.

251. The Generator Defendants are liable under CERCLA as persons who by contract, agreement or otherwise arranged for disposal or treatment of hazardous substances at the Quanta Facility and the Capasso Property and arranged for transport of hazardous substances to the Quanta Facility and the Capasso Property.

252. On or about September 4, 1997, the plaintiff demanded in writing that the following defendants pay its response costs: BASF, Chemical Leaman, Clairol, Exxon, General Dynamics, Russell W. Mahler, Review Supplies, Inc., Hitchcock and Stanley.

253. On or before January 5, 1998, the plaintiff demanded in writing that the following defendants pay its response costs: Rockwell, Underground Equipment Co., Ltd., and Nanco Contracting Corp.

254. On or about March 28, 2003, the plaintiff demanded in writing that the following

defendants pay its response costs: Chrysler, Ford, Ingersoll-Rand and UTC.

255. On or about November 12, 2003, the plaintiff demanded in writing that Paribas North America, Inc. and Merrill Lynch pay its response costs.

256. The plaintiff is entitled to an award of its response costs, plus interest, pursuant to CERCLA §107(a)(1)-(4)(B), 42 U.S.C. §9607(a)(1)-(4)(B).

257. The plaintiff is entitled to a declaratory judgment that the defendants shall be liable for necessary future costs of investigation and cleanup consistent with the NCP in subsequent actions for further response costs, pursuant to CERCLA §113(g)(2), 42 U.S.C. §9613(g)(2).

VII. THIRD CAUSE OF ACTION (PUBLIC NUISANCE)
(Asserted against all defendants)

258. The plaintiff realleges and incorporates by reference paragraphs 1 through 257.

259. Each defendant's acts and omissions have unreasonably interfered and continue to unreasonably interfere with the public's right to safe and healthful surroundings.

260. Each defendant's acts and omissions also have unreasonably interfered and continue to unreasonably interfere with the public's right to productive surroundings that are consistent with economic vitality, alienation of property and the ability to put real property to the widest range of beneficial uses without undesirable and unintended consequences.

261. Each of the defendants has been provided with notice of the potential endangerments caused by the public nuisance at the Capasso Property and each defendant has been asked to abate the public nuisance at the Capasso Property. The defendants, however, have refused--either expressly or through silence and inaction--to properly and timely abate the nuisance.

262. By their continuing failure to act the defendants have allowed wastes to continue to migrate through the Capasso Property and, potentially, travel off-site. The continued and

uncontrolled migration of such waste through the environment is a condition that is unlawful, regardless of circumstances. The defendants' continuing failure to abate this nuisance creates a condition that, in its inherent nature, is so hazardous as to make ongoing and increasing damage to the public and environment so probable as to be almost a certainty.

263. The plaintiff has suffered special and particular damages from the endangerment and nuisance complained of because the contamination has impaired and continues to impair the collateral on its loan, causing significant economic loss. The full amount of plaintiff's damages will not be knowable until the public nuisance complained of by plaintiff has been abated by order of the Court.

264. Unless abated by order of the Court, the public nuisance complained of will cause irreparable injury to the plaintiff.

265. Unless abated by order of the Court, the public nuisance complained of will cause irreparable injury to the public and the environment in, at, around and in the vicinity of the Capasso Property.

VIII. PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment as follows:

First Cause of Action

On its first cause of action, with respect to defendants BASF Corporation, Chemical Leaman Tank Lines, Inc., Proctor & Gamble Haircare LLC, Exxon Mobil Corporation, General Dynamics Corporation, Russell W. Mahler, Review Supplies, Inc., Quanta Resources Corporation, The Hitchcock Gas Engine Company, The Stanley Works, Nanco Contracting Corp., Underground Equipment Co., Ltd., Rockwell Automation, Inc., DaimlerChrysler Corporation, Ford Motor Company, Ingersoll-Rand Company, United Technologies Corporation and Paribas North America,

the plaintiff asks this Court to:

A. Declare, pursuant to 28 U.S.C. §2201, that the Defendants are jointly and severally liable for taking all necessary action to investigate, abate and otherwise respond to potential endangerments associated with solid or hazardous wastes that are located at, may have passed through, or threaten to become located at or to pass through, the Capasso Property; and

B. Enter a mandatory injunction:

1. Ordering the Defendants, jointly and severally, to deposit with the Court an amount of money determined at trial to be sufficient to fund the plaintiff's development and implementation of a cost-effective plan, consistent with the NCP and such orders as may be entered by this Court, to *(1)* eliminate all unacceptable risks to the public and environment from the potential endangerment at, from or affecting the Capasso Property, and *(2)* restore the Capasso Property, as expeditiously as practicable, to a condition consistent with the widest range of beneficial and unrestricted use of that property and the surrounding area, and authorizing the plaintiff to use that money for those purposes; or

2. In the alternative, ordering the Defendants, jointly and severally, at their expense, to:

a. Develop and file with the Court a plan for an NCP-compliant investigation and evaluation, including but not limited to any necessary testing, monitoring and risk assessment, that will establish the nature and extent of the potential endangerment at, from or affecting the Capasso Property and evaluate alternative approaches to abatement in terms of: (1) overall protection of public health and the environment; (2) compliance with all applicable or relevant and appropriate state and federal standards and criteria; (3) long-term effectiveness; (4) reduction of toxicity, mobility or volume through treatment; (5) short-term

effectiveness; (6) implementability; (7) cost; (8) projected acceptability to government regulators; and (9) projected acceptability to the community; and then

b. Conduct an NCP-compliant investigation and evaluation, consistent with such further orders as may be entered by this Court, that will establish the nature and extent of the potential endangerment, and evaluate alternative plans for abatement; and then

c. Provide the results of the investigation and evaluation to the public, for comment, and provide those results, and copies of all comments and a transcript of any public hearing, to this Court; and then

d. Implement a cost-effective, NCP-compliant abatement plan, consistent with such further orders as may be entered by this Court, to (1) eliminate all unacceptable risks to the public and environment from the potential endangerment at, from or affecting the Capasso Property, and (2) restore the Capasso Property, as expeditiously as practicable, to a condition consistent with the widest range of beneficial and unrestricted use of that property and the surrounding area; and

C. Order the Defendants, jointly and severally, to pay the plaintiff its costs of litigation, including but not limited to reasonable attorney and expert witness fees, as authorized by 42 U.S.C. §6972(e).

Second Cause of Action

On its second cause of action, with respect to all defendants, the plaintiff asks this Court to:

D. Declare, pursuant to CERCLA §113(g)(2), 42 U.S.C. §9613(g)(2), that the defendants are jointly and severally liable for any necessary costs of response, removal or remedial action incurred in connection with the Capasso Property in a manner consistent with the NCP; and

E. Declare, pursuant to CERCLA §113(g)(2), 42 U.S.C. §9613(g)(2), which abatement

plan for actual and threatened releases at, from or through the Capasso Property is cost-effective, appropriate, necessary and consistent with the NCP and, thus, which abatement plan should be implemented; and

F. Order the defendants, jointly and severally, to pay the plaintiff an amount to be determined at trial to reimburse the plaintiff for its necessary costs of response incurred consistently with the NCP and pay the plaintiff pre-judgment interest at the rate mandated by Congress.

Third Cause of Action

On its third cause of action, with respect to all defendants, the plaintiff asks this Court to:

G. Declare, pursuant to 28 U.S.C. §2201, that the defendants are jointly and severally liable for taking all necessary action to investigate, abate and otherwise respond to the public nuisance at, from or affecting the Capasso Property; and

H. Enter a mandatory injunction:

1. Ordering the defendants, jointly and severally, to deposit with the Court an amount determined at trial to be sufficient to fund the plaintiff's development and implementation of a cost-effective plan, consistent with such orders as may be entered by this Court, to (1) eliminate all unacceptable risks to the public and environment from the potential endangerment at, from or affecting the Capasso Property, and (2) restore the Capasso Property, as expeditiously as practicable, to a condition consistent with the widest range of beneficial and unrestricted use of that property and the surrounding area, and authorizing the plaintiff to use that money for those purposes; or

2. In the alternative, ordering the defendants, jointly and severally, at their expense, to:

a. Develop and submit to the Court a plan for an investigation and

evaluation, including but not limited to any necessary testing, monitoring and risk assessment, that will establish the nature and extent of the public nuisance at, from or affecting the Capasso Property and an evaluation of alternative approaches to abatement in terms of: (1) overall protection of public health and the environment; (2) compliance with all applicable and relevant and appropriate state and federal standards and criteria; (3) long-term effectiveness; (4) reduction of toxicity, mobility or volume through treatment; (5) short-term effectiveness; (6) implement ability; (7) cost; (8) state acceptance; and (9) community acceptance; and then

b. Conduct an investigation and evaluation, consistent with such further orders as may be entered by this Court, that will establish the nature and extent of the public nuisance, and evaluate alternative plans for abatement; and then

c. Provide the results of the investigation and evaluation to the public, for comment, and provide those results, and copies and a transcript of all comments, to this Court; and then

d. Implement a cost-effective abatement plan, consistent with such further orders as may be entered by this Court, to: (1) eliminate all unacceptable risks to the public and environment associated with the public nuisance at or affecting the Capasso Property, and (2) restore the Capasso Property, as expeditiously as practicable, to a condition consistent with the widest range of beneficial and unrestricted use of the property and the surrounding area.

I. Award plaintiff damages or restitution as appropriate for defendants' failure to take all necessary actions to investigate, abate and otherwise respond to the public nuisance at, from or affecting the Capasso Property.

All Causes of Action

On all of its claims for relief, the plaintiff asks this Court to:

K. Pierce the corporate veil of Quanta Resources Corporation to hold Merrill Lynch liable, by merger, for all liabilities of Becker, Waste Recovery Incorporated, Quanta Holding Company and Quanta Resources Corporation with respect to each of Plaintiff's causes of action;

L. Retain continuing jurisdiction of this action to the extent necessary and for as long as necessary to enforce and interpret, and to review the defendants' compliance with, this Court's orders; and

M. Grant it such other and further relief as the Court deems just and appropriate.

DMJ ASSOCIATES, L.L.C.

By: Barbara B Guibord
Barbara B. Guibord, Esq.

Dated: June 16, 2005

BARBARA B. GUIBORD (BG 3865)
Fognani Guibord & Homsy
20 North Clark Street
Thirty-Second Floor
Chicago, Illinois 60602
Tel: 312-596-7777
Fax: 312- 596-7788

MICHAEL D. GOODSTEIN (MG 9891)
STACEY H. MYERS (SM 5249)
Resolution Law Group, P.C.
5335 Wisconsin Ave., N.W. Suite 305
Washington, DC 20015
Tel: 202-686-4844
Fax: 202-686-4843

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DMJ ASSOCIATES, L.L.C.,

Plaintiff,

-against-

CARL A. CAPASSO; BASF CORPORATION; CHEMICAL LEAMAN TANK LINES, INC. PROCTOR & GAMBLE HAIRCARE LLC; EXXON MOBIL CORPORATION; GENERAL DYNAMICS CORPORATION; RUSSELL W. MAHLER; REVIEW SUPPLIES, INC.; QUANTA RESOURCES CORPORATION; THE HITCHCOCK GAS ENGINE COMPANY; THE STANLEY WORKS; NANCO CONTRACTING CORP.; UNDERGROUND EQUIPMENT CO., LTD; ROCKWELL AUTOMATION, INC.; DAIMLERCHRYSLER CORPORATION; FORD MOTOR COMPANY; INGERSOLL-RAND COMPANY; UNITED TECHNOLOGIES CORPORATION; MERRILL LYNCH & CO., INC.; PARIBAS NORTH AMERICA INC. AS INDEMNITOR OF MERRILL LYNCH 7 CO., INC. AND MERRILL LYNCH MONEY MARKETS, INC,; ALCOA INC. f/k/a ALUMINUM COMPANY OF AMERICA; ALLIED WASTER INDUSTRIES, INC. (INCLUDING BROWNING-FERRIS INDUSTRIES, LLC OR "B.F.I."); BARRY CONTROLS DIVISION OF BARRY WRIGHT CORPORATION; BEAZER EAST, INC. F/K/A KOPPERS, COMPANY, INC.; BORGWARNER INC.; BP PRODUCTS NORTH AMERICA, INC. INCLUDING BP AMOCO CORPORATION, ATLANTIC RICHFIELD CO., AND AMERICAN BRASS-ANACONDA (A/K/A OUTOKIMPU AMERICAN BRASS, INC.); BUCKEYE PIPE LINE COMPANY, L.P.; CARRIER CORPORATION; CATERPILLAR INC.; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY (FOR ITSEFL AND ON BEHALF OF CHEVRON U.S.A. INC., TEXACO INC., AND KEWANEE INDUSTRIES, INC.); COLONIAL PIPELINE COMPANY; CRUCIBLE MATERIALS CORPORATION (A/K/A CRUCIBLE SPECIALTY

CV 97 7285 (DLI)(RML)

ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIMS AND COUNTERCLAIMS OF THIRD PARTY DEFENDANT CONOCOPHILLIPS COMPANY (IMPROPERLY IMPLEADED AS CONOCOPHILLIPS) TO THIRD AMENDED THIRD-PARTY COMPLAINT OF EXXON MOBIL CORPORATION AND QUANTA RESOURCES CORPORATION

METALS) FORMERLY A DIVISION OF COLTEC INDUSTRIES; DANA CORPORATION; EVEREADY BATTERY CO., INC.; SUCCESSOR TO CERTAIN OF THE BATTERY RELATED LIABILITIES OF UNION CARBIDE CORP.; GENERAL ELECTRIC COMPANY; GENERAL MOTORS CORPORATION; GOULD PUMPS, INC. HONEYWELL INTERNATIONAL INC.; MACK TRUCKS, INC.; METROPOLITAN SUBURBAN BUS AUTHORITY D/B/A/ MTA LONG ISLAND BUS; MILLER BREWING COMPANY; NIAGRA MOHAWK POWER CORP.; NATIONAL GRID USA; NATIONAL GRID GROUP PLC; NORTHROP GRUMMAN CORPORATION (ON BEHALF OF NORTHROP GRUMMAN SYSTEMS CORPORATION) GRUMMAN AEROSPACE CORP.) AND NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORPORATION (TRW INC.); PFIZER INC; WARNER-LAMBERT COMPANY LLC (ITS FORMER SCHICK=WILKINSON SWORD DIVISION); WARNER-LAMBERT COMPANY LLC (ITS FORMER WHOLLY-OWNED SUBSIDIARY NEPERA, INC.) PHARMACIA CORPORATION (ITS WHOLLY-OWNED SUBSIDIARY THE UPJOHN COMPANY); PUBLIC SERVICE ELECTRIC AND GAS COMPANY ("PSE&G"); REYNOLDS METALS COMPANY A/K/A REYNOLDS ALUMINUM; ROME STRIP STEEL COMPANY, INC.; SHELL OIL CO.; SIKORSKY AIRCRAFT CORPORATION; SPX CORPORATION, ON BEHALF OF ITS FORMER DIVISION, LEEDS NORTHRUP; THE MILLER COMPANY (N/K/A T CORP.); AND VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, FORMERLY KNOWN AS WESTINGHOUSE ELECTRIC CORPORATION,

Defendants.

EXXON MOBIL CORPORATION and QUANTA RESOURCES CORPORATION,

Defendants/Third-Party Plaintiffs,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE;

ALCAN ALUMINUM CORPORATION (a/k/a ALCAN SHEET & PLATE); ALL-COUNTY ENVIRONMENTAL SERVICE; AMPHENOL CORPORATION; ANDAX ENVIRONMENTAL CORP.; ASHLAND CHEMICAL, INC (a/k/a ASHLAND, INC.); AVCO CORPORATION (a/k/a AVCO LYCOMING); BROOKHAVEN NATIONAL LABORATORY; REPUBLIC ENVIRONMENTAL SYSTEMS, INC. (a/k/a CHEMICAL MANAGEMENT INC.); CHEMICAL POLLUTION CONTROL, INC. (a/k/a PHILLIPS ENVIRONMENTAL); CROSSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC.)(f/k/a CROSMAN ARMS COMPANY, INC.); AMERICAN CLASSIC SANITATION (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); HARBOR PETROLEUM CORP.; EMHART TEKNOLOGIES LLC; THE HITCHCICK GAS ENGINE COMPANY; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); INTERSTATE TANK CLEANING CORP.; JONES ENVIRONMENTAL SERVICES (NORTHEAST), INC. (f/k/a GEOCHEM, INC.) (f/k/a JET-LINE SERVICES, INC.); THE MARLIN FIREARMS COMPANY; NASSAU TANK CLEANING SERVICE, INC.; REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a AMERICAN NATIONAL CAN COMPANY); NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW ENGLAND TANK LINING OF CONNECTICUT, INCORPORATED; NEW ERA OIL SERVICE, INC.; OIL CITY PETROLEUM CO., INC.; PEABODY COASTAL (a/k/a PEABODY INTERNATIONAL CORP. (a/k/a/ PULLMAN, INC.); UNION CARBIDE CORPORATION; PROCTOR & GAMBLE HAIRCARE LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES (f/k/a UNION MINERAL & ALLOYS CORP.); ROYAL TANK CLEANING CORP.; SIMMONDS PRECISION PRODUCTS, INC.; MOEN INCORPORATED, A FORTUNE BRANDS COMPANY (f/k/a STANADYNE, INC.); SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; TOTAL

RECOVERY, INC.; UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF THE NAVY; WALLACE INDUSTRIES INC. (a/k/a WALLACE STEEL CORP.); KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY; ZOLLO DRUM COMPANY; COOPER CROUSE-HINDS, LLC (f/k/a CROUSE-HINDS COMPANY); THE HERTZ CORPORATION; LONG ISLAND LIGHTING COMPANY; NL INDUSTRIES, INC.; CROWN CORK & SEAL COMPANY, INC.; and CONOCOPHILLIPS,

Third-Party Defendants.

Third–Party Defendant, ConocoPhillips Company improperly impleaded as ConocoPhillips, by and through its undersigned counsel, Waters, McPherson McNeill, P.C. answers Defendants/Third Party Plaintiffs, Quanta Resources Corporation and Exxon Mobil Corporation (collectively, the "Third-Party Plaintiffs") Third Amended Third-Party Complaint as follows:

INTRODUCTION

1. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

2. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

3. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

4. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

5. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. In addition, the allegations contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

6. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

7. Admitted in part and denied in part. Answering Third Party Defendant. Admits that neither it nor it predecessors were named as a Defendant in the Complaint, as to all other Third-Party Defendants, answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments as to all other Third-Party Defendants and, therefore, denies same.

8. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

9. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

10. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

11. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint also contain conclusions of law to which no additional response is required.

12. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

13. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

14. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

15. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

JURISDICTION AND VENUE

16. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

17. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

COUNT I

Cost recovery Pursuant to Section 107(a) of CERCLA

18. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 17 as though the same were set forth more fully at length herein.

19. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

20. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

21. Denied. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

22. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint also contain conclusions of law to which no additional response is required.

23. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

24. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

25. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

26. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

27. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

28. Denied.

29. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiffs' Complaint contain conclusions of law to which no additional response is required.

COUNT II

Contribution Claim for Relief Under Section 113 of CERCLA

30. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 29 as though the same were set forth more fully at length herein.

31. Admitted.

32. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

COUNT III

Claim for declaratory judgment under section 113(g)(2) of CERCLA

33. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 32 as though the same were set forth more fully at length herein.

34. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

35. Denied.

COUNT IV

Contribution claim for relief pursuant to C.P.L.R. Section 1401

36. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 35 as though the same were set forth more fully at length herein.

37. Denied.

38. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

39. Denied

WHEREFORE, Answering Third-Party Defendant demands this Court dismiss Third-Party Plaintiffs' Third Amended Third-Party Complaint with prejudice as well as such other relief in favor of Answering Defendant as this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Third-Party Plaintiffs' claims are barred for failure to state a claim for which relief may be granted.

2. Third-Party Plaintiffs' claims are barred by the applicable statute of limitations.

3. Third-Party Defendant denies that Third-Party Plaintiff Exxon Mobil Corporation has suffered any harm whatsoever, but in the event that it has, the cause thereof is beyond the control or responsibility of Third-Party Defendant ConocoPhillips Company and is solely the responsibility of third-parties over whom Third-Party Defendant ConocoPhillips Company had no responsibility or right of control.

4. If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against Third-Party Defendant ConocoPhillips Company, if any, must be reduced by the proportionate damages caused by he acts and conduct of Third-Party Plaintiffs and/or its agents or employees

5. The damages sustained by Third-Party Plaintiffs, if any, were the result of actions of an independent contractor precluding any liability on the part of Third-Party Defendant ConocoPhillips Company.

6. The damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichments to Third-Party Plaintiffs.

7. Third-Party Plaintiffs claims are barred in that Third-Party Defendant ConocoPhillips Company has complied with, and satisfied, all applicable laws, regulations, rules,

orders, directives and /or other requirements of local, state and/or federal agencies.

8. Third-Party Plaintiffs have failed to take reasonable steps to mitigate its damages, if any, and as a result of such failure, Third-Party Plaintiffs' claims against Third-Party Defendant ConocoPhillips Company must be reduced, excused and/or discharged.

9. If it is determined that Third-Party Defendant ConocoPhillips Company engaged in any of the activities allege in Third-Party Plaintiffs' Third Party Complaint, which Third-Party Defendant ConocoPhillips Company denies, such activities were *de minimis* and not the cause of any damages or injuries alleged to have been sustained by Third-Party Plaintiffs.

10. Third-Party Plaintiffs' damages or injuries, if any, were not caused by Third-Party Defendant ConocoPhillips Company.

11. To the extent that claims asserted in Third-Party Plaintiffs' Third Party Complaint against Third-Party Defendant ConocoPhillips Company on the basis of alleged joint and several liability, they are barred or limited because: (1) the acts and omission of all other parties were separate and distinct from those, if any, of Third-Party Defendant ConocoPhillips Company; (2) neither the common law nor any federal or state statute renders Third-Party Defendant ConocoPhillips Company jointly and severally liable for the acts or omissions of other Third-Party Defendants; (3) Third-Party Plaintiffs are liable for all of a portion of the relief they seek; and (4) the injury, harm and costs that are the subject of Third-Party Plaintiffs' claims are reasonable capable of apportionment.

12. Any recovery against Third-Party Defendant ConocoPhillips Company for alleged cleanup and removal costs is barred to the extent that it would be an unlawful double recovery and/or multiple compensation for the same alleged damages or injuries.

13. Third-Party Plaintiffs' claims are barred to the extent that Third-Party Plaintiffs

see to recover costs, damages and expenses including, but not limited to cleanup and/or removal costs that Third-Party Plaintiffs improperly incurred.

14. Sources and conditions other than that of Third-Party Defendant ConocoPhillips Company were the source of any alleged damage or injury.

15. The costs incurred for cleanup and removal costs have not been in accordance with the National Contingency Plan to the greatest extent possible.

16. Third-Party Plaintiffs' claims are barred by lack of standing.

17. Third-Party Plaintiffs' claims are barred by lack of subject matter jurisdiction.

18. Third-Party Plaintiffs' Third Amended Third-Party Complaint is barred by the doctrine of waiver.

19. Third-Party Plaintiffs' Third Amended Third-Party Complaint is barred by the doctrine of estoppel.

20. Third-Party Plaintiffs' Third Amended Third-Party Complaint is barred by the doctrine of laches.

21. Third-Party Plaintiffs' Third Amended Third-Party Complaint is barred by the doctrine of unclean hands.

22. Third-Party Plaintiffs' Third Amended Third-Party Complaint claims are barred in that Answering Third-Party Defendant did not commit any wrongful, illegal or inappropriate acts.

23. Third-Party Plaintiffs' claims are barred because Answering Third-Party Defendant has not breached any legal duty owed to Third-party Plaintiffs.

24. Third-Party Plaintiffs' Third-Part Complaint is barred due to the statutory defenses afforded Third-Party Defendant ConocoPhillips Company under CERCLA.

25. Any damages to Third-Party Plaintiffs were caused by individuals or entities over which Answering Third-party Defendant exercises and had no control.

26. Answering Defendant reserves the right to interpose such other defenses and objections as continuing discovery may disclose.

CROSSCLAIMS

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

Third-Party Plaintiffs, Exxon Mobil Corporation and Quanta Resources Corporation allege that they have paid or will pay response costs which are greater than their fair share of the claims that DMJ made or could have made in this action and. While denying any liability to the Third-Party Plaintiffs, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Co-Third-Party Defendants are liable to Third-Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

Third-Party Plaintiffs, Exxon Mobil Corporation and Quanta Resources Corporation allege that Third-Party Defendant ConocoPhillips Company status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiffs, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Co-Third-Party Defendant pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNTERCLAIM

Counterclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Counterclaim against Third-Party Plaintiff Exxon Mobil Corporation in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

While denying any liability to the Third-Party Plaintiff Exxon Mobil Corporation., should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Third-Party Plaintiff Exxon Mobil Corporation is liable to Third-Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff Exxon Mobile Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Counterclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Counterclaim against Third-Party Plaintiff Exxon Mobil Corporation in this matter states:

Third-Party Plaintiff, Exxon Mobil Corporation status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiff, Exxon Mobil Corporation, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Third-Party Plaintiffs, Exxon Mobil Corporation pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff, Exxon Mobil Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way, P.O. Box 1560
Secaucus, New Jersey 07096
(201) 863-4400
Attorneys for Third-Party Defendant
CONOCOPHILLIPS COMPANY
(Improperly impleaded as CONOCOPHILLIPS)

By: S/ Donald J. Fay, Esq.
DONALD J. FAY, ESQ. (DF 5389)

DATED: February 27, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB LLC, WINDMILL DISTRIBUTING COMPANY, L.P., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC.,

Plaintiffs,

-against-

EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION,

Defendants.

Case No. 1:12-CV-03771 (PKC) (JO)

EXXON MOBIL CORPORATION,

Third-Party Plaintiff,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC.) (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PEABODY INTERNATIONAL CORP.) (a/k/a PULLMAN, INC.); PROCTER & GAMBLE HAIRCARE LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a

AMERICAN NATIONAL CAN COMPANY); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES) (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES DEPARTMENT OF DEFENSE; WALLACE INDUSTRIES INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY; ALCOA INC. (f/k/a ALUMINUM COMPANY OF AMERICA); BASF CORPORATION; BEAZER EAST, INC. (f/k/a KOPPERS COMPANY, INC.); BORG WARNER INC. (a/k/a MORSE CHAIN); CARRIER CORPORATION (CARLYLE COMPRESSOR DIVISION); ELECTRIC BOAT CORPORATION, A GENERAL DYNAMICS COMPANY; FORD MOTOR COMPANY; HONEYWELL INTERNATIONAL, INC. (f/k/a ALLIED SIGNAL); INGERSOLL RAND COMPANY; NORTHROP GRUMMAN CORP. (a/k/a GRUMMAN AEROSPACE CORP.) (a/k/a TRW, INC.); QUALITY CARRIERS, INC. (f/k/a CHEMICAL LEAMAN TANK LINES, INC.); REYNOLDS METALS CO. (a/k/a REYNOLDS ALUMINUM); ROCKWELL AUTOMATION (a/k/a ROCKWELL INTERNATIONAL); SIKORSKY AIRCRAFT CORPORATION; STANLEY BLACK & DECKER (f/k/a THE STANLEY WORKS); UNITED TECHNOLOGIES CORPORATION (a/k/a PRATT & WHITNEY),

Third-Party Defendants.

THIRD-PARTY COMPLAINT OF DEFENDANT/THIRD-PARTY PLAINTIFF EXXON MOBIL CORPORATION

Defendant/Third-Party Plaintiff Exxon Mobil Corporation ("ExxonMobil," or the "Third-Party Plaintiff"), by and through its undersigned counsel, brings this Third-Party

Complaint, pursuant to Federal Rule of Civil Procedure 14, and in support thereof avers as follows:

INTRODUCTION

1. In its complaint herein, Plaintiffs Phoenix Beverages, Inc., RODB LLC, Windmill Distributing Company, L.P., Up From the Ashes, Inc. and other affiliated companies of Phoenix Beverages, Inc. (collectively "Phoenix") seek to recover, *inter alia*, response costs that it allegedly incurred pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 *et seq.* ("CERCLA"). Phoenix seeks reimbursement of response costs that it allegedly incurred or will incur in response to the alleged presence of hazardous substances on the property located at 37-88 Review Avenue, in Queens, New York (the "Phoenix Property") that were allegedly released from property located at 37-80 Review Avenue, Queens, New York (the "Quanta Facility"), and a declaratory judgment on liability for response costs that would obligate the named defendants to pay for any past and future response costs associated with the Phoenix Property. Phoenix also sought to recover damages from the defendants under certain other theories which, together with Phoenix's CERCLA allegations, are detailed in Phoenix's Complaint, which is attached hereto as Exhibit A.

2. In its Complaint, Phoenix alleged, *inter alia*, that:

a) hazardous substances allegedly present at the Phoenix Property were released, in part, on or from Quanta Facility, that Defendant Quanta was liable for such releases as an owner and operator of the Quanta Facility and that the allegedly-released substances were hazardous substances within the meaning of 40 C.F.R. §302.4;

b) the defendants, Exxon Mobil Corporation and ExxonMobil Research & Engineering may be liable for such releases as a generator of hazardous substances sent to the Quanta Facility;

c) the allegedly-released substances migrated, and continue to migrate, from the Quanta Facility through the environment to the Phoenix Property, and endangered and contaminated that property;

d) from in or about 1970 until in or about 1981, the Quanta Facility was an active disposal site and transfer facility for substances generated primarily or exclusively off-site, and also served as a waste oil recycling and storage facility; and

e) substances were spilled and released into the environment at the Quanta Facility, that such substances pose a substantial present or potential hazard to human health or the environment, and that therefore such substances were and are hazardous.

3. Third-Party Plaintiff has denied that it is liable for such releases as a generator of hazardous substances sent to the Quanta Facility.

4. Notwithstanding any of the allegations in the Complaint, and Third Party-Plaintiffs' claims and defenses thereto, to the extent it is adjudged liable to Plaintiffs in the first party action, Third-Party Plaintiff hereby seeks contribution from Third-Party Defendants for costs it has and/or will incur as a result of Plaintiffs' action in excess of its several share, including any judgment against Third-Party Plaintiff arising from the Complaint, and ordering and directing that each such Third-Party Defendant contribute to any judgment against or damages suffered by Third-Party Plaintiff.

5. Defendants have expended response costs in connection with the investigation and remediation of the Phoenix Property, and upon information and belief, will expend further response costs in the future.

THE THIRD-PARTY DEFENDANTS

6. None of the entities, or their predecessors, named herein as Third-Party Defendants were named as defendants in the Complaint.

7. Each Third Party Defendant generated or transported hazardous wastes or other hazardous materials that were delivered for disposal or treatment to the Quanta Facility.

8. This Third-Party Complaint asserts claims against those entities whose waste, upon information and belief, was delivered to the Quanta Facility during the time period of 1970-1981. These claims are for any costs, damages, or equitable relief that Plaintiffs recover in this action and for the response costs incurred and to be incurred by the Defendants.

9. If Phoenix recovers from Third-Party Plaintiff, Third-Party Plaintiff will pay more than its fair share of the claims that Phoenix made or could have made against Third-Party Plaintiff it in this action. Thus, each of the entities named as a Third-Party Defendant is liable to the Third-Party Plaintiff for such costs and accounts, or alternatively for contribution of such Third-Party Defendants' equitable share of said costs and amounts.

10. Upon information and belief, the above Third-Party Defendants, generated or transported hazardous waste that was delivered to the Quanta Facility, from which, Phoenix alleges, these materials were released and/or disposed of and migrated to the Phoenix Property:

11. Pursuant to Federal Rules of Civil Procedure 14 and 18, the Third-Party Plaintiffs hereby assert claims against the Third-Party Defendants under Section 107 and 113 of CERCLA, 42 U.S.C. §§9601 *et seq.*, and under N.Y. C.P.L.R. §1401 for (i) response costs, (ii) contribution in connection with the claims that were asserted by Phoenix against the ExxonMobil, and (iii) a declaratory judgment of liability for response costs and/or contribution that will be binding on any subsequent action or actions to recover further response costs and/or contribution. To the extent inconsistent with any of the averments in their Answers, Affirmative Defenses and/or Counterclaims, the allegations made below by the Third-Party Plaintiff are made in the alternative to and without waiver of any such averments.

12. Pursuant to Federal Rule of Civil Procedure 19(c), additional parties, some of whom Third-Party Plaintiff has settled with in part, for response costs, may be liable to Third Party Plaintiffs under Section 107 and 113 of CERCLA, 42 U.S.C. §§9601 *et seq.*, and under N.Y. C.P.L.R. §1401 for (i) response costs, (ii) contribution in connection with the claims that were asserted by Phoenix against the ExxonMobil, and (iii) a declaratory judgment of liability for response costs and/or contribution that will be binding on any subsequent action or actions to recover further response costs and/or contribution.

JURISDICTION AND VENUE

13. This Court properly has jurisdiction to adjudicate the Plaintiffs' Complaint. Jurisdiction for this Third-Party Complaint is founded upon Section 107(a) and 113(b) of CERCLA; 42 U.S.C. §9607(a) and 9613(b); 28 U.S.C. §1331, as well as the principles of ancillary jurisdiction over those claims arising under the laws of the State of New York.

14. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §1331, 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b), because the alleged releases and threatened releases that are the subject of the underlying action occurred in this district.

COUNT I

Contribution Claim For Relief Under Section 107(a) of CERCLA

15. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

16. Pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), any person who, by contract, agreement, or otherwise arranges for disposal or treatment, or arranges with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned and operated by another party or entity and containing such hazardous substances, is liable for response costs incurred or to be incurred in connection with the alleged releases or threatened releases of hazardous substances at the facility.

17. The Quanta Facility and the Phoenix Property are both "facilities" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

18. Each of the Third-Party Defendants is a "person" within the meaning of the CERCLA Section 101(21), 42 U.S.C. § 9601(21).

19. The Third-Party Defendants, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of hazardous substances they owned or possessed to the Quanta Facility within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

20. If Plaintiffs succeed on their claims in the first party action, they will have established that there has been a "release" or "threatened release" of hazardous

substances from the Quanta Facility as defined by CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22), 9607(a).

21. The Third-Party Defendants are thus within one or more of the classes of liable "covered persons" provided by CERCLA Section 107(a), 42 U.S.C. § 9607(a).

22. Third-Party Plaintiff has incurred and will continue to incur response costs in order to carry out the investigation, analysis, and necessary response actions, including, without limitation, remediation and costs reasonably incurred to identify potentially responsible parties. Response actions at the Phoenix Property are ongoing and Third-Party Plaintiff will incur additional expenses in completing the response actions.

23. These response actions undertaken by the Third-Party Plaintiff are necessary costs of response consistent with the National Contingency Plan, 40 C.F.R. § 300, CERCLA § 101(31), 42 U.S.C. § 9601(31).

24. Third-Party Defendants are therefore jointly and severally liable for all past and future response costs incurred and to be incurred by the Third-Party Plaintiff in connection with the Quanta Facility and Phoenix Property.

25. Notice of this action is being given or has been given to the Administrator of the Environmental Protection Agency and to the Attorney General of the United States.

COUNT II

Contribution Claim For Relief Under Section 113 of CERCLA

26. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

27. In the Complaint Phoenix seeks judgment for response costs that it incurred or that it will incur in connection with the Phoenix Property.

28. Because the amounts paid and remedial actions performed by the Third-Party Plaintiff, will represent more than a fair share of the claims that were made and/or could have been made by Phoenix in this action, and that by making those payments and undertaking those remedial activities, Third-Party Plaintiff has paid or will pay more than its fair share of the claims that Phoenix made or could have made in this action, the Third Party Defendants are liable to the Third-Party Plaintiff for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

COUNT III

Claim For Declaratory Judgment Under Section 113(g)(2) of CERCLA

29. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

30. There is a present and actual controversy between Third-Party Plaintiff and Third-Party Defendants concerning their respective rights and obligations with respect to the costs of response and contribution claims associated with the Phoenix Property.

31. Third-Party Plaintiff is entitled to judgment, under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. §§ 2201 and 2202, against Third-Party Defendants, declaring that the Third-Party Defendants are and shall be liable to the Third-Party Plaintiff for response costs and for contribution claims arising and Phoenix's claims that will be binding in any subsequent action to recover further response costs.

COUNT IV

Contribution Claim for Relief Pursuant to N.Y. C.P.L.R. Section 1401

32. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

33. By virtue of each Third-Party Defendants' status and/or conduct as alleged hereinabove, each Third-Party Defendant is a tortfeasor.

34. To the extent that Third-Party Plaintiff is liable to Phoenix, any payments and/or response actions taken represent more than the Third-Party Plaintiffs' share of the claims that Phoenix made or could have made in this action.

35. By virtue of the above, Third-Party Plaintiffs are entitled to contribution from the Third-Party Defendants pursuant to N.Y. C.P.L.R. § 1401.

WHEREFORE, Third-Party Plaintiff ExxonMobil demands judgment against the Third-Party Defendants as follows:

a) Upon the First Cause of Action, awarding the Third-Party Plaintiffs their response costs to date and the response costs that they will incur into the future, jointly and severally against each Third-Party Defendant;

b) Upon the Second and Fourth Causes of Action, for the full amount paid by the Third-Party Defendants, or what the Third-Party Defendants will pay, to Phoenix and in an amount equal to their share of the response costs to be allocated by the Court using such equitable factors as the Court determines are appropriate;

c) Upon the third Cause Action, declaratory judgment of liability for response costs and for contribution that will be binding on any subsequent action or actions to recover further response costs;

d) Together with the costs and disbursements of this action, including reasonable attorneys' fees; and

e) Any further relief as this Court shall deem just and proper.

Dated: July 1, 2013
New York, New York

MCCUSKER, ANSELMI, ROSEN & CARVELLI

By: /s/

Andrew E. Anselmi
Maura W. Sommer
805 Third Avenue, 12th Floor
New York, New York 10022
(212) 308-0070

Attorneys for Third-Party Plaintiff Exxon Mobil Corporation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB, LLC, WINDMILL DISTRIBUTING COMPANY, LP., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC.,

Plaintiff,

-against-

EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION,

Defendants.

EXXON MOBIL CORPORATION,

Third-Party Plaintiff,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC. (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES, LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION)) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PULLMAN, INC.) PROCTER & GAMBLE HAIRCARE, LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY)

Case No. 1:12-CV-03771 (PKC) (JO)

ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIMS, COUNTERCLAIMS, AND ANSWER TO ALL CROSSCLAIMS OF THIRD PARTY DEFENDANT CONOCOPHILLIPS COMPANY TO THIRD PARTY COMPLAINT OF EXXON MOBIL CORPORATION

(a/k/a AMERICAN NATIONAL CAN COMPANY); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES OF AMERICA; WALLACE INDUSTRIES, INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY, ALCOA INC. (f/k/a ALUMINUM COMPANY OF AMERICA); BASF CORPORATION; BEAZER EAST, INC. (f/k/a KOPPERS COMPANY, INC.); BORG WARNER INC. (a/k/a MORSE CHAIN); CARRIER CORPORATION (CARLYLE COMPRESSOR DIVISION); ELECTRIC BOAT CORPORATION, A GENERAL DYNAMICS COMPANY; FORD MOTOR COMPANY; HONEYWELL INTERNATIONAL, INC. (f/k/a ALLIED SIGNAL); INGERSOLL RAND COMPANY; NORTHROP GRUMMAN CORP. (a/k/a GRUMMAN AEROSPACE CORP.) (a/k/a TRW, INC.); QUALITY CARRIERS, INC. (f/k/a CHEMICAL LEAMAN TANK LINES, INC.); REYNOLDS METALS CO. (a/k/a REYNOLDS ALUMINUM); ROCKWELL AUTOMATION (a/k/a ROCKWELL INTERNATIONAL) SIKORSKY AIRCRAFT CORPORATION; STANLEY BLACK & DECKER (f/k/a THE STANLEY WORKS); UNITED TECHNOLOGIES CORPORATION (a/k/a PRATT & WHITNEY),

Third-Party Defendants.

Third–Party Defendant, ConocoPhillips Company ("COP"), by and through its undersigned counsel, Waters, McPherson McNeill, P.C. answers the Third Party Complaint ("Complaint") of Third Party Plaintiff, Exxon Mobil Corporation ("Third-Party Plaintiff") as follows:

INTRODUCTION

1. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

2. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

3. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

4. Denied. Answering Third Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore denies same. In addition, the allegations contained in this paragraph of the Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

5. Denied. Answering Third Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore denies same. In addition, the allegations contained in this paragraph of the Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

THE THIRD-PARTY DEFENDANTS

6. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

7. Denied as to Third Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendants.

8. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

9. Denied, as to the first sentence of paragraph 9; Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same; as to the second sentence of Paragraph 9, denied as to Third Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendants.

10. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

11. Denied. Answering Third Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore denies same. In addition, the allegations contained in this paragraph of the Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

12. Denied. Answering Third Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore denies same. In addition, the allegations contained in this paragraph of the Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

JURISDICTION AND VENUE

13. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

14. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

COUNT I

Cost Recovery Pursuant to Section 107(a) of CERCLA

15. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 14 as though the same were set forth more fully at length herein.

16. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

17. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

18. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

19. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

20. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

21. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

22. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

23. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

24. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

25. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

COUNT II

Contribution Claim for Relief Under Section 113 of CERCLA

26. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 25 as though the same were set forth more fully at length herein.

27. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

28. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

COUNT III

Claim for Declaratory Judgment Under Section 113(g)(2) of CERCLA

29. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 28 as though the same were set forth more fully at length herein.

30. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

31. Denied.

COUNT IV

Contribution Claim for Relief Pursuant to C.P.L.R. Section 1401

32. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 31 as though the same were set forth more fully at length herein.

33. Denied as to Third-Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendants.

34. Denied.

35. Denied.

WHEREFORE, Answering Third-Party Defendant demands this Court dismiss Third-Party Plaintiff's Complaint with prejudice and award reasonable counsel fees, costs of suit and such other relief in favor of Answering Third-Party Defendant as this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Third-Party Plaintiff's claims are barred for failure to state a claim for which relief may be granted.

2. Third-Party Plaintiff's claims are barred by the applicable statute of limitations.

3. Third-Party Defendant denies that Third-Party Plaintiff has suffered any harm whatsoever, but in the event that it has, the cause thereof is beyond the control or responsibility of Third-Party Defendant ConocoPhillips Company and is solely the responsibility of third-parties over whom Third-Party Defendant ConocoPhillips Company had no responsibility or right of control.

4. If Third-Party Plaintiff sustained any injury or is entitled to any damages, such

injury and damages were wholly, or in part, caused by Third-Party Plaintiff's own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiff's agents or employees. In the event that Third-Party Plaintiff is found to have sustained any injury and is entitled to damages, Third-Party Plaintiff's recovery against Third-Party Defendant ConocoPhillips Company, if any, must be reduced by the proportionate damages caused by he acts and conduct of Third-Party Plaintiff and/or its agents or employees

5. The damages sustained by Third-Party Plaintiff, if any, were the result of actions of an independent contractor precluding any liability on the part of Third-Party Defendant ConocoPhillips Company.

6. The damages Third-Party Plaintiff seeks, if awarded, would result in unjust enrichments to Third-Party Plaintiff.

7. Third-Party Plaintiff's claims are barred in that Third-Party Defendant ConocoPhillips Company has complied with, and satisfied, all applicable laws, regulations, rules, orders, directives and /or other requirements of local, state and/or federal agencies.

8. Third-Party Plaintiff has failed to take reasonable steps to mitigate its damages, if any, and as a result of such failure, Third-Party Plaintiff's claims against Third-Party Defendant ConocoPhillips Company must be reduced, excused and/or discharged.

9. If it is determined that Third-Party Defendant ConocoPhillips Company engaged in any of the activities alleged in Third-Party Plaintiff's Complaint, which Third-Party Defendant ConocoPhillips Company denies, such activities were *de minimis* and not the cause of any damages or injuries alleged to have been sustained by Third-Party Plaintiff.

10. Third-Party Plaintiff's damages or injuries, if any, were not caused by Third-Party Defendant ConocoPhillips Company.

11. To the extent that claims asserted in Third-Party Plaintiff's Complaint against Third-Party Defendant ConocoPhillips Company on the basis of alleged joint and several liability, they are barred or limited because: (1) the acts and omissions of all other parties were separate and distinct from those, if any, of Third-Party Defendant ConocoPhillips Company; (2) neither the common law nor any federal or state statute renders Third-Party Defendant ConocoPhillips Company jointly and severally liable for the acts or omissions of other Third-Party Defendants; (3) Third-Party Plaintiff is liable for all or a portion of the relief they seek; and (4) the injury, harm and costs that are the subject of Third-Party Plaintiff's claims are reasonably capable of apportionment.

12. Any recovery against Third-Party Defendant ConocoPhillips Company for alleged cleanup and removal costs is barred to the extent that it would be an unlawful double recovery and/or multiple compensation for the same alleged damages or injuries.

13. Third-Party Plaintiff's claims are barred to the extent that Third-Party Plaintiff seek to recover costs, damages and expenses including, but not limited to cleanup and/or removal costs that Third-Party Plaintiff improperly incurred.

14. Sources and conditions other than that of Third-Party Defendant ConocoPhillips Company were the source of any alleged damage or injury.

15. The costs incurred for cleanup and removal costs have not been in accordance with the National Contingency Plan to the greatest extent possible.

16. Third-Party Plaintiff's claims are barred by lack of standing.

17. Third-Party Plaintiff's claims are barred by lack of subject matter jurisdiction.

18. Third-Party Plaintiff's Complaint is barred by the doctrine of waiver.

19. Third-Party Plaintiff's Complaint is barred by the doctrine of estoppel.

20. Third-Party Plaintiff's Complaint is barred by the doctrine of laches.

21. Third-Party Plaintiff's Complaint is barred by the doctrine of unclean hands.

22. Third-Party Plaintiff's Complaint claims are barred in that Answering Third-Party Defendant did not commit any wrongful, illegal or inappropriate acts.

23. Third-Party Plaintiff's claims are barred because Answering Third-Party Defendant has not breached any legal duty owed to Third-Party Plaintiff.

24. Third-Party Plaintiff's Complaint is barred due to the statutory defenses afforded Third-Party Defendant ConocoPhillips Company under CERCLA.

25. Any damages to Third-Party Plaintiffs were caused by individuals or entities over which Answering Third-Party Defendant did not exercise or have control.

26. Answering Defendant reserves the right to interpose such other defenses and objections as continuing discovery may disclose.

CROSSCLAIMS

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

Third-Party Plaintiff, Quanta Resources Corporation alleges that it has paid or will pay response costs which are greater than its fair share of the claims that Plaintiff Phoenix Beverage, et. al made or could have made in this action. While denying any liability to the Third-Party Plaintiffs, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Co-Third-Party Defendants are liable to Third-

Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

Third-Party Plaintiff, Exxon Mobil Corporation alleges that Third-Party Defendant ConocoPhillips Company status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiff, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Co-Third-Party Defendants pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNTERCLAIM

Counterclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Counterclaim against Third-Party Plaintiff Exxon Mobil Corporation in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

While denying any liability to the Third-Party Plaintiff Exxon Mobil Corporation, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Third-Party Plaintiff Exxon Mobil Corporation is liable to Third-Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff Quanta Resource Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Third-Party Plaintiff, Exxon Mobil Corporation status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiff, Exxon Mobil Corporation, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Third-Party Plaintiffs, Exxon Mobil Corporation pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff, Exxon Mobil Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

ANSWER TO ALL CROSSCLAIMS

Third-Party Defendant ConocoPhillips Company denies the allegations and denies liability asserted in any crossclaims filed by any party in this case.

WHEREFORE, Third-Party Defendant ConocoPhillips Company demands judgment dismissing crossclaims asserted against it by any other party in the case, together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way, P.O. Box 1560
Secaucus, New Jersey 07096
(201) 863-4400
dfay@lawwmm.com
Attorneys for Third-Party Defendant
CONOCOPHILLIPS COMPANY

By: S/ Donald J. Fay, Esq.
DONALD J. FAY, ESQ. (DF 5389)

DATED: October 18, 2013

767676

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB, LLC, WINDMILL DISTRIBUTING COMPANY, LP., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC.,

Plaintiff,

-against-

EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION,

Defendants.

Case No. 1:12-CV-03771 (PKC) (JO)

CERTIFICATE OF SERVICE

EXXON MOBIL CORPORATION,

Third-Party Plaintiffs,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC. (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES, LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION)) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PULLMAN, INC.) PROCTER & GAMBLE HAIRCARE, LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a AMERICAN NATIONAL CAN COMPANY);

RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES OF AMERICA; WALLACE INDUSTRIES, INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY, ALCOA INC. (f/k/a ALUMINUM COMPANY OF AMERICA); BASF CORPORATION; BEAZER EAST, INC. (f/k/a KOPPERS COMPANY, INC.); BORG WARNER INC. (a/k/a MORSE CHAIN); CARRIER CORPORATION (CARLYLE COMPRESSOR DIVISION); ELECTRIC BOAT CORPORATION, A GENERAL DYNAMICS COMPANY; FORD MOTOR COMPANY; HONEYWELL INTERNATIONAL, INC. (f/k/a ALLIED SIGNAL); INGERSOLL RAND COMPANY; NORTHROP GRUMMAN CORP. (a/k/a GRUMMAN AEROSPACE CORP.) (a/k/a TRW, INC.); QUALITY CARRIERS, INC. (f/k/a CHEMICAL LEAMAN TANK LINES, INC.); REYNOLDS METALS CO. (a/k/a REYNOLDS ALUMINUM); ROCKWELL AUTOMATION (a/k/a ROCKWELL INTERNATIONAL) SIKORSKY AIRCRAFT CORPORATION; STANLEY BLACK & DECKER (f/k/a THE STANLEY WORKS); UNITED TECHNOLOGIES CORPORATION (a/k/a PRATT & WHITNEY),

Third-Party Defendants.

I, **Donald J. Fay,** do hereby certify that on October 18, 2013, I electronically filed and served the **ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIMS, COUNTER-**

CLAIMS, AND ANSWER TO ALL CROSSCLAIMS OF THIRD PARTY DEFENDANT CONOCOPHILLIPS COMPANY TO THE THIRD PARTY COMPLAINT OF EXXON MOBIL CORPORATION with the Clerk of the United States District Court for the Eastern District of New York using the CM/ECF system.

Dated: NEW YORK, NEW YORK
October 18, 2013

Respectfully submitted,

WATERS, MCPHERSON, MCNEILL, P.C.
300 Lighting Way, 7th Floor, Secaucus, NJ 07096
201-863-4400
dfay@lawwmm.com
Attorneys for Defendant
CONOCOPHILLIPS COMPANY

By: S/ Donald J. Fay, Esq.
DONALD J. FAY, ESQ. (DF5389)

767677

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB LLC, WINDMILL DISTRIBUTING COMPANY, L.P., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC.,

Plaintiffs,

-against-

EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION,

Defendants.

Case No. 1:12-CV-03771 (PKC) (JO)

QUANTA RESOURCES CORPORATION,

Third-Party Plaintiff,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC.) (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PEABODY INTERNATIONAL CORP.) (a/k/a PULLMAN, INC.); PROCTER & GAMBLE HAIRCARE LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER &

BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a AMERICAN NATIONAL CAN COMPANY); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES) (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES OF AMERICA; WALLACE INDUSTRIES INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY,

Third-Party Defendants.

THIRD-PARTY COMPLAINT OF DEFENDANT
THIRD-PARTY PLAINTIFF QUANTA RESOURCES CORPORATION

Defendant/Third-Party Plaintiff Quanta Resources Corporation ("Quanta"), by and through its undersigned counsel, brings this Third-Party Complaint, pursuant to Federal Rule of Civil Procedure 14, and in support thereof avers as follows:

INTRODUCTION

1. In their complaint herein, plaintiffs Phoenix Beverages, Inc., RODB LLC, Windmill Distributing Company, L.P., Up from the Ashes, Inc., and other affiliated companies of Phoenix Beverages, Inc. (collectively, "Plaintiffs") seek to recover, *inter alia*, response costs that they allegedly incurred pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA"). Plaintiffs seek reimbursement of response costs that it has allegedly incurred in

response to the alleged presence of hazardous substances on the property located at 37-88 Review Avenue, Long Island City, New York (the "Phoenix Property"), that were allegedly released from property located at 37-80 Review Avenue, Queens, New York (the "Quanta Property"). Plaintiffs allege that Quanta was liable for such releases as an owner and operator of the Quanta Property and that the allegedly-released substances were hazardous substances within the meaning of 40 C.F.R. § 302.4. Plaintiffs also seek a declaratory judgment on liability for response costs that would obligate Quanta to pay for any past and future response costs associated with the Phoenix Property. Plaintiffs also seek to recover damages from Quanta under certain other theories which, together with Plaintiffs' CERCLA allegations, are detailed in Plaintiffs' Complaint. A copy of Plaintiffs' Complaint is annexed hereto as Exhibit A (the "Complaint"), and the allegations thereof are incorporated by reference without admitting the truth of such allegations.

2. In response to the Complaint, Quanta has denied that hazardous wastes, solid wastes and hazardous substances migrated through the environment onto the Phoenix Property from the Quanta Property during the time period that Quanta owned the Quanta Property. Quanta includes by reference each of the allegations, defenses, and claims set forth in its Answer, which is annexed hereto as Exhibit B.

3. Notwithstanding Quanta's allegations, defenses, and claims, to the extent it is adjudged liable to Plaintiffs in the first-party action, Quanta hereby seeks contribution from Third-Party Defendants for costs it has and/or will incur as a result of Plaintiffs' action in excess of its several share, including any judgment against Quanta arising from the Complaint, and ordering and directing that each such Third-Party Defendant contribute to any judgment against or damages suffered by Quanta.

4. Quanta has already expended significant response costs in connection with the Phoenix Property, and upon information and belief, will expend additional response costs in the future.

THE THIRD-PARTY DEFENDANTS

5. None of the entities or their predecessors named herein as Third-Party Defendants are named as a defendant in the Complaint.

6. Each Third-Party Defendant generated or transported hazardous wastes or other hazardous materials that were delivered for disposal or treatment to the Quanta Property.

7. This Third-Party Complaint asserts claims against those entities whose waste, upon information and belief, was delivered to the Quanta Property during the time period of 1970-1981. These claims are for any costs, damages and equitable relief that Plaintiffs recover in this action and for the response costs incurred and to be incurred by the Plaintiffs as well as for contribution from Third-Party Defendants for any damages that Quanta incurs in excess of its several share.

8. In the event Plaintiffs recover from Quanta, Quanta will pay more than its fair share of the claims that Plaintiffs made or could have made against Quanta in this action. Thus, each of the entities named as a Third-Party Defendant is liable to Quanta for such costs, or alternatively for contribution of such Third-Party Defendant's equitable share of said costs.

9. Upon information and belief, the above-named Third-Party Defendants generated or transported hazardous waste that was delivered to the Quanta Property, from which, Plaintiffs allege, these materials were released and/or disposed of and migrated to the Phoenix Property.

10. Pursuant to Federal Rules of Civil Procedure 14 and 18, Quanta hereby asserts claims against the Third-Party Defendants under Sections 107 and 113 of CERCLA, 42

U.S.C. §§ 9601 *et seq.*, and under C.P.L.R. § 1401, for (i) response costs, (ii) contribution in connection with the claims that were asserted by Plaintiffs against Quanta, and (iii) a declaratory judgment of liability for response costs and/or contribution that will be binding on any subsequent action or actions to recover further response costs and/or contribution. To the extent inconsistent with any of the averments in their Answers, Affirmative Defenses and/or Counterclaims, the allegations made below by Quanta are made in the alternative to and without waiver of any such averments.

JURISDICTION AND VENUE

11. This Court properly had jurisdiction to adjudicate the Complaint. Jurisdiction for this Third-Party Complaint is founded upon Sections 107(a) and 113(b) of CERCLA; 42 U.S.C. §§ 9607(a) and 9613(b); 28 U.S.C. § 1331, as well as the principles of ancillary jurisdiction over those claims arising under the laws of the State of New York.

12. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b), because the alleged releases and threatened releases that are the subject of the underlying action occurred in this district.

COUNT I

Cost Recovery Pursuant to Section 107(a) of CERCLA

13. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

14. Pursuant to CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), any person who, by contract, agreement or otherwise arranges for disposal or treatment, or arranges with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned and operated by another party or entity and containing such hazardous substances, is liable for response costs

incurred or to be incurred in connection with the alleged releases or threatened releases of hazardous substances at the facility.

15. The Quanta Property and the Phoenix Property are both "facilities" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

16. Each of the Third-Party Defendants is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

17. The Third-Party Defendants, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of hazardous substances they owned or possessed, at the Quanta Property within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

18. If Plaintiffs succeed on their claims in the first-party action, they will have established that there has been a "release" or "threatened release" of hazardous substances from the Quanta Property as defined by CERCLA Sections 101(22) and 107(a), 42 U.S.C. §§ 9601(22), 9607(a).

19. The Third-Party Defendants are thus within one or more of the classes of liable "covered persons" provided by CERCLA Section 107(a), 42 U.S.C. § 9607(a).

20. This alleged release or threatened release of hazardous substances at the Quanta Property onto the Phoenix Property has and will continue to cause Quanta to incur response costs, as defined by CERCLA Section 101(25), 42 U.S.C. § 9601(25), that are "necessary costs of response" for which the Third-Party Defendants are liable to Quanta pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

21. Response actions at the Phoenix Property are ongoing and Quanta will incur additional expenses in completing the response actions.

22. These response actions undertaken by Quanta are necessary costs of response consistent with the National Contingency Plan, 40 C.F.R. § 300, CERCLA Section 101(31), 42 U.S.C. § 9601(31).

23. Third-Party Defendants are therefore jointly and severally liable for all past and future response costs incurred and to be incurred by Quanta in connection with the Phoenix Property.

24. Notice of this action is being given or has been given to the Administrator of the Environmental Protection Agency and to the Attorney General of the United States, as required by and in compliance with CERCLA Section 113(1), 42 U.S.C. § 9613(1).

COUNT II

Contribution Claim For Relief Under Section 113 of CERCLA

25. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

26. In the Complaint, Plaintiffs seek judgment for response costs that they incurred or that they will incur in connection with the Phoenix Property.

27. To the extent that Quanta is adjudged liable to Plaintiffs in the first-party action, the amounts paid by Quanta to Plaintiffs will represent recovery for more than its fair share of the claims that Plaintiffs made or could have made in this action and the Third-Party Defendants are liable to Quanta for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

COUNT III

Claim For Declaratory Judgment Under Section 113(g)(2) of CERCLA

28. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

29. There is a present and actual controversy between Quanta and Third-Party Defendants concerning their respective rights and obligations with respect to the costs of response and contribution claims associated with the Phoenix Property.

30. Quanta is entitled to judgment, under CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), and 28 U.S.C. §§ 2201 and 2202, against Third-Party Defendants, declaring that the Third-Party Defendants shall be liable to Quanta for response costs and for contribution claims arising from the action with Plaintiffs that will be binding in any subsequent action to recover further response costs.

COUNT IV

Contribution Claim For Relief Pursuant to C.P.L.R. Section 1401

31. The above allegations of this Third-Party Complaint are hereby incorporated by reference as if fully set forth herein.

32. By virtue of each Third-Party Defendants' status and/or conduct as alleged hereinabove, each Third-Party Defendant is a tortfeasor.

33. To the extent that Quanta is liable to Plaintiffs, any payments and/or response actions taken represent more than its share of the claim that Plaintiffs made or could have made in this action.

34. By virtue of the above, Quanta is entitled to contribution from the Third-Party Defendants pursuant to C.P.L.R. § 1401.

WHEREFORE, Third-Party Plaintiff Quanta demands judgment against the Third-Party Defendants as follows:

a) Upon the First Cause of Action, a declaration from the Court awarding Quanta its response costs to date and the response costs that it will incur into the future, jointly and severally against each Third-Party Defendant;

b) Upon the Second and Fourth Causes of Action, a declaration from the Court that Quanta is entitled to contribution from Third-Party Defendants for costs it has and/or will incur as a result of Plaintiffs' action in excess of its several share, including any judgment against Quanta arising from the Complaint, and ordering and directing that each Third-Party Defendant contribute to any judgment against or damages suffered by Quanta, allocated by the Court using such equitable factors as the Court determines are appropriate;

c) Upon the Third Cause of Action, declaratory judgment of liability for response costs and for contribution that will be binding on any subsequent action or actions to recover further response costs;

d) Together with the costs and disbursements of this action, including reasonable attorneys' fees; and

e) Any further relief as this Court shall deem just and proper.

Dated: New York, New York
July 1, 2013

ARENT FOX LLP

By: /s/ Allen G. Reiter
Allen G. Reiter
Adrienne M. Hollander

1675 Broadway
New York, New York 10019
Phone: 212-484-3900
Fax: 212-484-3990
Email: reiter.allen@arentfox.com
hollander.adrienne@arentfox.com

Attorneys for Defendant Quanta Resources Corporation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB, LLC, WINDMILL DISTRIBUTING COMPANY, LP., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC.,

Plaintiff,

-against-

EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION,

Defendants.

QUANTA RESOURCES CORPORATION,

Third-Party Plaintiff,

-against-

ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC. (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES, LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION)) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PULLMAN, INC.) PROCTER & GAMBLE HAIRCARE, LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY)

Case No. 1:12-CV-03771 (PKC) (JO)

ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIMS AND COUNTERCLAIMS OF THIRD PARTY DEFENDANT CONOCOPHILLIPS COMPANY TO THIRD PARTY COMPLAINT OF QUANTA RESOURCES CORPORATION

(a/k/a AMERICAN NATIONAL CAN COMPANY); RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES OF AMERICA; WALLACE INDUSTRIES, INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY,

Third-Party Defendants.

Third–Party Defendant, ConocoPhillips Company ("COP"), by and through its undersigned counsel, Waters, McPherson McNeill, P.C. answers the Third Party Complaint ("Complaint") of Third Party Plaintiff, Quanta Resources Corporation ("Third-Party Plaintiff") as follows:

INTRODUCTION

1. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

2. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

3. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

4. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

THE THIRD-PARTY DEFENDANTS

5. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

6. Denied as to Third Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendants.

7. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

8. Denied, as to the first sentence of paragraph 8; Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same; as to the second sentence of Paragraph 8, denied as to Third Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendant.

9. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

10. Denied. Answering Third Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore denies same. In addition, the allegations contained in this paragraph of the Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

JURISDICTION AND VENUE

11. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

12. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

COUNT I

Cost Recovery Pursuant to Section 107(a) of CERCLA

13. Answering Third-Party Defendant hereby incorporates its answers to paragraphs 1 through 12 as though the same were set forth more fully at length herein.

14. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

15. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

16. Denied. The averments contained in this paragraph of Third-Party Plaintiff's Complaint contain conclusions of law to which no additional response is required.

17. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

18. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

19. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

20. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

21. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

22. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

23. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

24. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The

averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

COUNT II

Contribution Claim for Relief Under Section 113 of CERCLA

25. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 24 as though the same were set forth more fully at length herein.

26. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

27. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same. The averments contained in this paragraph of Third-Party Plaintiff's Complaint also contain conclusions of law to which no additional response is required.

COUNT III

Claim for Declaratory Judgment Under Section 113(g)(2) of CERCLA

28. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 27 as though the same were set forth more fully at length herein.

29. Denied. Answering Third-Party Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, denies same.

30. Denied.

COUNT IV

Contribution Claim for Relief Pursuant to C.P.L.R. Section 1401

31. Answering Third-Party Defendant hereby incorporations its answers to paragraphs 1 through 30 as though the same were set forth more fully at length herein.

32. Denied as to Third-Party Defendant COP; Third Party Defendant COP is without knowledge or information sufficient to form a belief as to the truth of the averments against the other Third Party Defendants.

33. Denied.

34. Denied.

WHEREFORE, Answering Third-Party Defendant demands this Court dismiss Third-Party Plaintiff's Complaint with prejudice and award reasonable counsel fees, costs of suit and such other relief in favor of Answering Third-Party Defendant as this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Third-Party Plaintiff's claims are barred for failure to state a claim for which relief may be granted.

2. Third-Party Plaintiff's claims are barred by the applicable statute of limitations.

3. Third-Party Defendant denies that Third-Party Plaintiff has suffered any harm whatsoever, but in the event that it has, the cause thereof is beyond the control or responsibility of Third-Party Defendant ConocoPhillips Company and is solely the responsibility of third-parties over whom Third-Party Defendant ConocoPhillips Company had no responsibility or right of control.

4. If Third-Party Plaintiff sustained any injury or is entitled to any damages, such

injury and damages were wholly, or in part, caused by Third-Party Plaintiff's own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiff's agents or employees. In the event that Third-Party Plaintiff is found to have sustained any injury and is entitled to damages, Third-Party Plaintiff's recovery against Third-Party Defendant ConocoPhillips Company, if any, must be reduced by the proportionate damages caused by he acts and conduct of Third-Party Plaintiff and/or its agents or employees

5. The damages sustained by Third-Party Plaintiff, if any, were the result of actions of an independent contractor precluding any liability on the part of Third-Party Defendant ConocoPhillips Company.

6. The damages Third-Party Plaintiff seeks, if awarded, would result in unjust enrichments to Third-Party Plaintiff.

7. Third-Party Plaintiff's claims are barred in that Third-Party Defendant ConocoPhillips Company has complied with, and satisfied, all applicable laws, regulations, rules, orders, directives and /or other requirements of local, state and/or federal agencies.

8. Third-Party Plaintiff has failed to take reasonable steps to mitigate its damages, if any, and as a result of such failure, Third-Party Plaintiff's claims against Third-Party Defendant ConocoPhillips Company must be reduced, excused and/or discharged.

9. If it is determined that Third-Party Defendant ConocoPhillips Company engaged in any of the activities alleged in Third-Party Plaintiff's Complaint, which Third-Party Defendant ConocoPhillips Company denies, such activities were *de minimis* and not the cause of any damages or injuries alleged to have been sustained by Third-Party Plaintiff.

10. Third-Party Plaintiff's damages or injuries, if any, were not caused by Third-Party Defendant ConocoPhillips Company.

11. To the extent that claims asserted in Third-Party Plaintiff's Complaint against Third-Party Defendant ConocoPhillips Company on the basis of alleged joint and several liability, they are barred or limited because: (1) the acts and omissions of all other parties were separate and distinct from those, if any, of Third-Party Defendant ConocoPhillips Company; (2) neither the common law nor any federal or state statute renders Third-Party Defendant ConocoPhillips Company jointly and severally liable for the acts or omissions of other Third-Party Defendants; (3) Third-Party Plaintiff is liable for all or a portion of the relief they seek; and (4) the injury, harm and costs that are the subject of Third-Party Plaintiff's claims are reasonably capable of apportionment.

12. Any recovery against Third-Party Defendant ConocoPhillips Company for alleged cleanup and removal costs is barred to the extent that it would be an unlawful double recovery and/or multiple compensation for the same alleged damages or injuries.

13. Third-Party Plaintiff's claims are barred to the extent that Third-Party Plaintiff seek to recover costs, damages and expenses including, but not limited to cleanup and/or removal costs that Third-Party Plaintiff improperly incurred.

14. Sources and conditions other than that of Third-Party Defendant ConocoPhillips Company were the source of any alleged damage or injury.

15. The costs incurred for cleanup and removal costs have not been in accordance with the National Contingency Plan to the greatest extent possible.

16. Third-Party Plaintiff's claims are barred by lack of standing.

17. Third-Party Plaintiff's claims are barred by lack of subject matter jurisdiction.

18. Third-Party Plaintiff's Complaint is barred by the doctrine of waiver.

19. Third-Party Plaintiff's Complaint is barred by the doctrine of estoppel.

20. Third-Party Plaintiff's Complaint is barred by the doctrine of laches.

21. Third-Party Plaintiff's Complaint is barred by the doctrine of unclean hands.

22. Third-Party Plaintiff's Complaint claims are barred in that Answering Third-Party Defendant did not commit any wrongful, illegal or inappropriate acts.

23. Third-Party Plaintiff's claims are barred because Answering Third-Party Defendant has not breached any legal duty owed to Third-Party Plaintiff.

24. Third-Party Plaintiff's Complaint is barred due to the statutory defenses afforded Third-Party Defendant ConocoPhillips Company under CERCLA.

25. Any damages to Third-Party Plaintiffs were caused by individuals or entities over which Answering Third-Party Defendant did not exercise or have control.

26. Answering Defendant reserves the right to interpose such other defenses and objections as continuing discovery may disclose.

CROSSCLAIMS

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

Third-Party Plaintiff, Quanta Resources Corporation alleges that it has paid or will pay response costs which are greater than its fair share of the claims that Plaintiff Phoenix Beverage, et. al made or could have made in this action. While denying any liability to the Third-Party Plaintiffs, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Co-Third-Party Defendants are liable to Third-

Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Crossclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Crossclaim against the other Third-Party Defendants in this matter states:

Third-Party Plaintiff, Quanta Resources Corporation alleges that Third-Party Defendant ConocoPhillips Company status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiff, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Co-Third-Party Defendants pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Co-Third-Party Defendants together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNTERCLAIM

Counterclaimant, Third-Party Defendant ConocoPhillips Company, without admitting any matters not specifically admitted in its pleadings, by way of Counterclaim against Third-Party Plaintiff Quanta Resources Corporation in this matter states:

COUNT I

Contribution under Section 113 of CERCLA

While denying any liability to the Third-Party Plaintiff Quanta Resources Corporation, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company, ConocoPhillips Company asserts that Third-Party Plaintiff Quanta Resources Corporation is liable to Third-Party Defendant ConocoPhillips Company for contribution under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff Quanta Resource Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

COUNT II

Contribution under C.P.L.R. Section 1401

Third-Party Plaintiff, Quanta Resources Corporation status is that of a tortfeasor as a result of its alleged conduct. While denying any liability to the Third-Party Plaintiff, Quanta Resources Corporation, should any liability be adjudged against the Third-Party Defendant ConocoPhillips Company as a tortfeasor, ConocoPhillips Company is entitled to contribution from Third-Party Plaintiffs, Quanta Resources Corporation pursuant to C.P.L.R. § 1401.

WHEREFORE, the Third-Party Defendant ConocoPhillips Company demands judgment for contribution against Third-Party Plaintiff, Quanta Resources Corporation together with reasonable counsel fees, costs of suit and such other relief as the Court deems just and equitable.

WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way, P.O. Box 1560
Secaucus, New Jersey 07096
(201) 863-4400
djf@lawwmm.com
Attorneys for Third-Party Defendant
CONOCOPHILLIPS COMPANY

By: S/ Donald J. Fay, Esq.
DONALD J. FAY, ESQ. (DF 5389)

DATED: September 16, 2013

767392

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHOENIX BEVERAGES, INC., RODB, LLC, WINDMILL DISTRIBUTING COMPANY, LP., UP FROM THE ASHES, INC., and other affiliated companies of PHOENIX BEVERAGES, INC., Plaintiff, -against- EXXON MOBIL CORPORATION, EXXONMOBIL RESEARCH AND ENGINEERING COMPANY and QUANTA RESOURCES CORPORATION, Defendants.	Case No. 1:12-CV-03771 (PKC) (JO) CERTIFICATE OF SERVICE
QUANTA RESOURCES CORPORATION, Third-Party Plaintiffs, -against- ACE WASTE OIL, INC.; ACTIVE OIL SERVICE; ANDAX ENVIRONMENTAL CORP.; AVCO CORPORATION (a/k/a AVCO LYCOMING); CONOCOPHILLIPS COMPANY; CROSMAN CORP. (f/k/a COLEMAN AIRGUNS, INC. (f/k/a CROSMAN ARMS COMPANY, INC.); CROWN CORK & SEAL COMPANY, INC.; EMHART TEKNOLOGIES, LLC; INDUSTRIAL DEVELOPMENT CORP. (a/k/a INDUSTRIAL ENVIRONMENTAL); THE HERTZ CORPORATION; KRAFT FOODS GLOBAL, INC. (f/k/a WARE CHEMICAL); THE MARLIN FIREARMS COMPANY; NEAPCO, INC. (a/k/a UNITED COMPONENTS, INC.); NEW YORK CITY TRANSIT AUTHORITY; NL INDUSTRIES, INC.; NOVELIS CORPORATION (f/k/a ALCAN ALUMINUM CORPORATION)) (a/k/a ALCAN SHEET & PLATE); PEABODY COASTAL (a/k/a PULLMAN, INC.) PROCTER & GAMBLE HAIRCARE, LLC; REVERE COPPER PRODUCTS, INC. (a/k/a REVERE COPPER & BRASS INCORPORATED); REXAM BEVERAGE CAN COMPANY (a/k/a NATIONAL CAN COMPANY) (a/k/a AMERICAN NATIONAL CAN COMPANY);	

RIVER TERMINAL DEVELOPMENT (SCRAP YARD DIVISION) (a/k/a RTC PROPERTIES (f/k/a UNION MINERAL & ALLOYS CORP.); SIMMONDS PRECISION PRODUCTS, INC.; SUNOCO, INC. (a/k/a SUN OIL REFINERY) (f/k/a SUN OIL CO.); TDY INDUSTRIES, INC.; UNITED SITE SERVICES (f/k/a AMERICAN CLASSIC SANITATION) (f/k/a FARNHAM ENVIRONMENTAL & FARNHAM SANITATION SYSTEMS OF CT); UNITED STATES DEPARTMENT OF THE AIR FORCE; UNITED STATES DEPARTMENT OF THE ARMY; UNITED STATES DEPARTMENT OF THE COAST GUARD; UNITED STATES DEPARTMENT OF DEFENSE; UNITED STATES DEPARTMENT OF THE NAVY; UNITED STATES OF AMERICA; WALLACE INDUSTRIES, INC. (a/k/a WALLACE STEEL CORP.); WASTE MANAGEMENT OF MARYLAND, INC.; WYMAN-GORDON COMPANY,

Third-Party Defendants.

I, **Donald J. Fay,** do hereby certify that on September 16, 2013, I electronically filed and served the **ANSWER, AFFIRMATIVE DEFENSE, CROSSCLAIMS AND COUNTERCLAIMS OF THIRD PARTY DEFENDANT CONOCOPHILLIPS COMPANY TO THE THIRD PARTY COMPLAINT OF QUANTA RESOURCES CORPORATION** with the Clerk of the United States District Court for the Eastern District of New York using the CM/ECF system.

Dated: NEW YORK, NEW YORK
September 16, 2013

Respectfully submitted,

WATERS, MCPHERSON, MCNEILL, P.C.
300 Lighting Way, 7th Floor, Secaucus, NJ 07096
201-863-4400
djf@lawwmm.com
Attorneys for Defendant
CONOCOPHILLIPS COMPANY

By: S/ Donald J. Fay, Esq.
DONALD J. FAY, ESQ. (DF5389)