

Manchester NH

BOSTON AND MAINE CORPORATION, DEBTOR
ROBERT W. MESERVE AND BENJAMIN H. LACY, TRUSTEES

CONTRACT BUREAU TRANSMITTAL MEMO

DATE MAR 22 1978

FROM: L. R. Mattice
Director-Contract Bureau

TO: Messrs. P. W. Carr
J. J. Nee
D. J. Hughes
M. V. Smith
✓ Boston Div. Supt.-G. F. Gallagher
~~N. E. Div. Supt.-W. V. Furey~~
Agent-*Manchester, N.H.*

Attached for your information is copy of numbered document checked below.

CONTRACT # 60178

DEED #

CORRESPONDENCE RE CONTRACT #

✓ OPENING NOTICE SENT

CLOSING NOTICE SENT

2014
✓ H-2
H-3
H-11

AGREEMENT GOVERNING USE OF RAILROAD-OWNED LAND AND OPERATION OF SIDETRACK OWNED BY SHIPPER

AGREEMENT made in duplicate this 17th day of March 1978, between Robert W. Meserve and Benjamin H. Lacy as Trustees of the Property of Boston and Maine Corporation, Debtor, and not individually (see in the Matter of Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-M) with offices at 150 Causeway Street, Boston, Massachusetts, their successors or assigns, hereinafter called the "Trustees", and Granite State Packing Company, a corporation duly organized by law,

hereinafter called the "Shipper":

WITNESSETH

That WHEREAS the Trustees own, or control, and the Shipper desires the use of the premises shown outlined in red upon plan attached hereto and made a part hereof, entitled:

"Boston and Maine Corp. Val. Sec. 21 Map 17 MANCHESTER, N.H. Office of the Vice Pres. Engr. Scale = 1"=40' Issue= A-1-9-77",

which premises are a part of the land and location of the Trustees in the city of Manchester, N.H. and are held for railroad purposes but the Trustees are willing to lease the premises temporarily for the use of the said Shipper without in any way abandoning the title or the location of said Trustees therein, and

WHEREAS the Shipper desires the Trustees to switch cars to and from sidetrack A-E shown on said plan

NOW, THEREFORE, in consideration thereof the parties hereto mutually agree as follows:

Use 1 The Trustees hereby lease, so far as they lawfully may, the above-described premises to the Shipper and the Shipper may use the said premises, subject to the right of the Trustees or others to maintain and use any poles, wires, pipes, conduits, signs or other structures appurtenant thereto. The Shipper agrees not to permit or authorize the use of said leased premises by or for the benefit of any person, firm or corporation not a party to this agreement, nor to assign this contract or any rights thereunder without written consent of the Trustees. The leased premises shall not without written permission from the Trustees, be used for the retail sale of gasoline and, if so used without such permission from the Trustees, the Trustees reserve the right to terminate this agreement forthwith.

Rental 2 The Shipper agrees to pay the Trustees as rent the sum of One Hundred Twenty and no/100 (120.00) dollars a year during the continuance of this agreement, and at the same proportionate rate for any part of a year unexpired at the legal termination of this agreement, said rent being payable in advance in equal quarterly payments for the use of said land, and upon presentation of bills a further sum to cover taxes allocated to the premises covered by this agreement, any holding over of the premises by the Shipper after the termination hereof shall be upon the same terms and conditions as herein set forth. Notwithstanding the payment of any instalment of rent in advance, the right to terminate this agreement as hereinafter provided is to continue in full force and in case this agreement is so terminated, the Trustees shall repay to the Shipper such portion of the rent paid for the then current three months as is proportionate to the fraction of said three months then unexpired. In the event that this agreement is terminated prior to receipt from the municipality of tax bills for a current tax year, it is agreed that the amount due for taxes for that year shall be computed for that portion of the tax year during which the agreement was in effect and at the valuation and the tax rate which was applicable for the previous tax year.

Ownership and Maintenance 3 It is agreed that ~~the Trustees~~ ~~of the sidetrack~~ ~~agrees to keep said sidetrack~~ ~~B~~ ~~from~~ ~~E~~ ~~to~~ ~~including all grading, trestles, bridges, culverts, conduits and other structures appurtenant thereto, in good and proper repair and to remove ice and snow therefrom and keep and maintain the same in safe and suitable condition without notice from the Trustees. The Trustees may refuse to operate upon said sidetrack when the condition is unsatisfactory to the Trustees. The Trustees shall keep section A-B in proper repair and the Shipper shall reimburse the Trustees therefor.~~ ~~the said sidetrack A-E is owned or controlled by the Shipper and the Shipper~~

Track Changes 4 Any changes, rearrangements or extensions of said sidetrack or structures appurtenant thereto, hereafter required on account of size or type of cars switched to and from said sidetrack or any changes in the track or tracks of the Trustees or because of any changes in the operating practice of the Trustees, shall be made at the expense of the Shipper unless otherwise mutually agreed by the parties hereto.

Switching 5 The Trustees, at the request of the Shipper, and subject to reasonable terms and regulations from time to time made by the Trustees, will switch cars to and from said sidetrack as provided in and in accordance with published tariffs of the Trustees which are at the time applicable; provided, however, that cars shall be placed for the Shipper only upon sections B-C and D-E of said sidetrack.

Demurrage It is understood and agreed that the Trustees are compelled to assess demurrage and/or other car detention charges against all shippers for the detention of cars beyond the allotted free time as prescribed in tariffs legally on file.

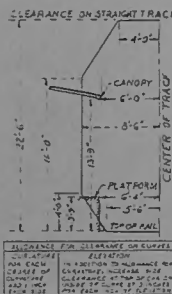
6. The Shipper shall pay to the Trustees all taxes, duties and assessments which may during the existence of this agreement be charged, assessed or imposed on tracks, structures or improvements which are now owned by the Shipper or have been erected by or for the Shipper on said premises; and upon presentation of bills the Shipper shall pay all charges for the use of municipal or other water supply and electricity upon said premises and agrees not to make or allow to be made any unlawful or offensive use thereof and shall use said premises in such manner as not to interfere in any way with the maintenance or operation of the Trustees' railroad or any of its appurtenances, and in such manner and condition as shall meet with the approval of the Superintendent of the railroad operated by the Trustees.

7. It is understood that the movement of railroad locomotives involves some risk of fire, and the Shipper assumes all responsibility for and agrees to indemnify the Trustees against loss or damage to property of the Shipper or to property upon the Shipper's premises, regardless of Trustees' negligence, arising from fire caused by locomotives operated by the Trustees on said sidetrack, or in the vicinity for the purpose of serving said sidetrack, except to the premises of the Trustees and to rolling stock belonging to the Trustees or to others and to shipments in the course of transportation.

The Shipper also agrees to indemnify and hold harmless the Trustees for loss, damage or injury from any act or omission of the Shipper, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said sidetrack and premises; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

8. No obstruction of any kind whatsoever shall be permitted within the distances shown by the lines on the Clearance Diagram upon this agreement without first obtaining the consent of the principal engineering officer of the railroad operated by the Trustees and the Shipper shall at all times save harmless and indemnify the Trustees from and against all loss, cost, damage and expense which the Trustees may directly or indirectly suffer or be subject to caused wholly or in part or in any way referable to the existence of such obstruction, whether with or without the consent of the said principal engineering officer.

9. The Shipper agrees not to load, unload or store hazardous materials as defined by regulations of the United States Department of Transportation, upon said sidetrack and premises, unless written permission is given by the Superintendent of the Trustees, and the Shipper shall at all times save harmless and indemnify the Trustees from and against any and all damage to rolling stock belonging to the Trustees or to others on or about said sidetrack due to the presence of said explosives or inflammable articles on the sidetrack or premises unless such damage is due to fire communicated by railroad locomotives while not operating on said sidetrack or in the vicinity for the purpose of serving said sidetrack.



10. SPECIAL PROVISIONS:

a. It is agreed by and between the parties that this agreement supersedes and cancels as of the effective date thereof, an agreement between Boston and Maine Railroad, predecessor to Boston and Maine Corporation dated January 8, 1954, covering use of Railroad land and operation and maintenance of sidetrack at Manchester, New Hampshire, which agreement was amended as to rent on January 20, 1975.

b. It is agreed that if tank cars are loaded or unloaded on said sidetrack by the Shipper the following rules and regulations must be followed:

- (1) Loading and/or unloading operations must be performed by reliable persons properly instructed and made responsible for safe handling.
- (2) Car brakes must be set and wheels blocked on all cars being loaded or unloaded.
- (3) At all times during loading and unloading operations caution signs of type that clamp to rail must be provided and so placed as to give necessary warning to persons approaching car from open end or ends of siding and such signs must be left up until after the car is completely loaded or unloaded and disconnected from the pipe connection. Signs must be of metal, at least 12 inches by 15 inches in size and must bear the words: "STOP - Tank Car Connected", the word "STOP" being in letters at least 4 inches high and the other words in letters at least 2 inches high. The letters must be white on a blue background.

11. This agreement shall take effect as of the 1st day of February, 1978 and shall continue in full force and effect for the term of one year and thereafter until terminated on any day by thirty days' written notice, given by either party to the other, of intention to terminate. Such notice on the part of the Trustees may, at their option, be given by posting in a conspicuous place upon the premises and this agreement, in such case, shall terminate in thirty days after such posting.

Buildings, structures and fixtures of any kind or nature upon the said premises and belonging to the Shipper shall remain the property of and may be removed by the Shipper at any time before the termination of this agreement or within ten days thereafter, and any and all buildings, structures and fixtures upon said premises ten days after termination of this agreement, regardless of how such termination has been effected, shall become and be absolutely the property of the Trustees.

Against any and all buildings, structures and fixtures, the Trustees shall have a lien for rents, taxes, assessments and all other charges whatever which may fall due under this agreement, and this lien shall attach to any and all buildings, structures and fixtures as soon as they are placed on the premises and will continue until this agreement has been terminated and until rents, taxes, assessments and all other charges as aforesaid shall have been duly satisfied. Nothing in this paragraph shall be construed to prevent the Trustees from acquiring absolute ownership of buildings, structures and fixtures as provided in the preceding paragraph.

Should the Shipper fail to comply with any covenant or condition whatever of this agreement, or should the Shipper's estate be taken from it by process of law, proceedings in bankruptcy or insolvency or otherwise, the Trustees may lawfully, immediately, or at any time thereafter, and while such neglect or default continues, and notwithstanding any license or waiver of any prior breach of condition and without demand or notice enter upon the said premises and repossess the same and expel (forcibly if necessary) the said Shipper or those claiming under it, thereby terminating this agreement and the estate hereby created. In the event of such a termination, the Shipper may enter the premises and remove buildings, structures and fixtures belonging to the Shipper, provided that such removal is completed within ten days after such termination, and provided that rents, taxes, assessments and all other charges falling due under the agreement have been fully satisfied. Buildings, structures and fixtures remaining on the premises ten days after termination, as provided in this paragraph, shall become absolutely the property of the Trustees.

Upon termination of this agreement the Shipper further agrees that, within ninety days after such termination, it will remove from said premises any or all buildings, structures or fixtures which were not owned by the Trustees on the date of said termination, and will repair any damage or defacement to said premises caused by such removal, all at the expense of the Shipper, and that upon failure to do so the Trustees may, at any time thereafter, remove the said buildings, structures or fixtures and dispose of them, without liability on the part of the Trustees for such removal and disposition, and repair the said premises, all at the expense of the Shipper.

It is agreed that if the leased premises or any part thereof shall be taken by public authority for public use, or shall receive any direct or consequential damage by reason of anything done in compliance with any public authority, the Trustees or their successors or assigns may thereupon terminate this lease, and any damage which may be recoverable by reason of such taking, or as a result of such action pursuant to any public authority, shall be due solely to the Trustees, and the Shipper hereby assigns and releases to the Trustees any and all rights which it may have in damages on account of such taking, or as the result of such action pursuant to any public authority.

In the event of a termination of this agreement as provided by paragraph 4 of this Section 11, the Shipper covenants and agrees that it will remain responsible for the residue of the said term for the full rent herein reserved, whether the said premises remain vacant or not, and shall be credited only with such amounts as shall actually be realized therefrom by the Trustees, and in the event of any such termination, the Trustees may immediately recover from the Shipper the pro rata rent up to the time of termination, irrespective of the periods herein prescribed for the payment of rent.

12. The Shipper covenants and agrees to surrender the premises herein leased at any time when this agreement shall be terminated as aforesaid in as good condition as they are now in, reasonable use and wear thereof and damage by the elements excepted.

This agreement is given subject to the terms of an Indenture dated December 1, 1919, made by and between Boston and Maine Railroad, predecessor to Boston and Maine Corporation and the Old Colony Trust Company and S. Parkman Shaw, Jr., Trustees, as provided in Article 14, Section 10, of said Indenture, and in any supplemental Indenture amendatory thereof, and is also given subject to the terms of an Indenture dated as of July 1, 1940, made by and between Boston and Maine Railroad, predecessor to Boston and Maine Corporation, and the State Street Trust Company and Dana M. Dutch, Trustees, as provided in Article 14, Section 10, of said Indenture, and in any supplemental Indenture amendatory thereof.

The covenants and agreements herein contained shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors or assigns of the parties hereto respectively, and the word "Trustees" shall be considered as meaning, "Robert W. Meserve and Benjamin H. Lacy, as Trustees of the Property of Boston and Maine Corporation, Debtor, and not individually (see In the Matter of Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-M with offices at 150 Causeway Street, Boston, Massachusetts, their successors or assigns)" and the word "Shipper" shall be considered as meaning the "Shipper, its heirs, executors, administrators, successors or assigns," wherever the context does not render such construction impossible.

IN WITNESS WHEREOF, the Shipper has hereunto set its hand and seal and the Trustees have authorized execution of these presents in duplicate on the day and year first above written.

Form approved

Execution approved

ROBERT W. MESERVE AND BENJAMIN H. LACY,
TRUSTEES OF THE PROPERTY OF BOSTON
AND MAINE CORPORATION — DEBTOR

BY: E. J. Maltz
Director—Real Estate and Industrial Development

Granite State Packing Company

By Lester Shapiro

Title: President

PARKING AREA

YARD 7

CULV #54.93

TO BOSTON

N.H.M.L.

BUNTER

PROPERTY LINE

HANCOCK ST.

STORAGE WAREHOUSE

PLATFORM

EXISTING BUILDING
GRANITE STATE PACKING COMPANY

LAND OF GRANITE

BASEMENT
FLOOR ELEV 64.33

MAR#	LENGTH	OWNED OR OPERATED BY
A-B	170'	GRANITE STATE PACKING CO.
B-C	383'	
C-D	26'	
D-E	232'	
X-Y	24"	REINFORCED CONCRETE OWNED AND MAINTAINED BY GRANITE STATE PACKING CO.

N

YARD TRACKS

CULV #54.93

← SOUTH BOUND TRACK

NORTH BOUND TRACK →

TO CONCORD →

STORAGE WAREHOUSE

M.H. 53' 0" R.C.P. PLATFORM

PLATFORM

LAND AREA: 3,615 SQ. FT.

LAND OF GRANITE STATE PACKING CO.

MARK	LENGTH	OWNED OR OPERATED BY	USED BY
A-B	170'	GRANITE STATE PACKING CO.	JOINTLY
B-C	383'	"	GRANITE STATE PACKING CO.
C-D	22'	"	"
D-E	232'	"	"
X-Y	24" REINFORCED CONCRETE PIPE OWNED AND MAINTAINED BY GRANITE STATE PACKING CO.		

BOSTON AND MAINE CORP
VAL SEC 21 MAP 17
MANCHESTER, N.H.

OFFICE OF THE VICE PRES. ENGR.
SCALE = 1" = 40' ISSUE = A 1-9-77