

*This Lease cancels and supersedes Lease No. 18222 dated February 17<sup>th</sup>, 1988 between Grand Trunk Western Railroad and City of Imlay as well as all subsequent extensions and amendments.*

**PROPERTY LEASE AGREEMENT**  
**Lease No. 2010/3003455**

THIS Property Lease Agreement (“Lease”) made as of the 25<sup>th</sup> day of May, 2023, by and between **GRAND TRUNK WESTERN RAILROAD COMPANY** as Lessor (hereinafter called “Railroad”), with offices located at 17641 S Ashland Ave, Homewood, IL 60430 and **CITY OF IMLAY**, whose mailing address is 150 North Main Street, Imlay City, MI 48444 and whose telephone number is 810-724-2135 and email address is [CITYMANAGER@IMLAYCITY.ORG](mailto:CITYMANAGER@IMLAYCITY.ORG) as Lessee (hereinafter called the “Lessee”).

WITNESSETH, that the parties hereto, for and in consideration of the performance of the covenants, conditions and agreements hereinafter expressed, agree as follows:

1. **LEASE OF PREMISES.** Railroad leases to Lessee and Lessee leases from Railroad, upon the terms, covenants and conditions herein contained, the use of the property consisting of 0.66 acres, more or less, as shown Exhibit A, attached hereto and made a part hereof, (hereinafter called the “Premises”), located at or near Milepost 301.82 – 301.99, Flint Subdivision at Imlay, County of Lapeer, State of Michigan.

The Premises are to be used by Lessee and Lessee’s Agents, Contractors, Licensees and Invitees exclusively for a building, parking and fence; and for no other purpose without the express written consent of Railroad.

2. **TERM.** The term of this Lease shall be for an initial term of FIVE (5) YEARS commencing on the 1<sup>st</sup> day of January, 2023, and ending at 12:00 AM CST on the 31<sup>st</sup> day of December, 2027, unless sooner terminated or renewed as hereinafter provided.

3. **RENTAL.** Lessee agrees to pay as rent for the Premises the amounts shown as follows, payable annually in advance.

Rent Schedule

Year	Term	Rent for Term
Year 1	01-01-2023 to 12-31-2023	\$ 800.00
Year 2	01-01-2024 to 12-31-2024	\$ 800.00
Year 3	01-01-2025 to 12-31-2025	\$ 1,000.00
Year 4	01-01-2026 to 12-31-2026	\$ 1,000.00
Year 5	01-01-2027 to 12-31-2027	\$ 1,000.00

Although Lessee’s right to possession of the Premises shall terminate when the term of this Lease has expired or is terminated prior to such expiration in accordance with the provisions of this Lease, Lessee’s obligations under this Lease, including but not limited to the obligation to pay rental, taxes and assessments, and utilities, shall continue until Lessee delivers possession of the Premises to Railroad in the condition required by this Lease. Any payment that is not received by Railroad by the due date shall bear interest at the rate of twelve percent (12%) per annum calculated

from the due date to the date of receipt, or the maximum rate allowed by law, whichever is less. In addition to payment of interest to cover loss of use of the funds, Lessee must pay a late payment charge of \$100.00 to cover Railroad's cost of administration resulting from each such late payment.

Lessee shall arrange for and pay the cost of any utility service that is desired or required with respect to Lessee's use of the Premises. If Railroad pays any utility charges which are Lessee's obligation under the provisions of this Lease, all sums paid by Railroad shall be deemed to be additional rent and recoverable as such, and shall bear interest at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is less, from the date paid by Railroad until Railroad is reimbursed by Lessee.

4. LEASE SUBJECT TO SUPERIOR RIGHTS. Lessee accepts this Lease subject to all existing liens, encumbrances, mortgages and other superior rights, if any, in and to said Premises. Lessee agrees it shall not have any claim against Railroad for damage on account of any deficiency in title of the Premises and agrees that in the event of failure of such title the sole remedy of Lessee shall be the right to the return of a proportionate share of rent paid in advance for any period in which Lessee is deprived of possession of Premises by a claim of title superior to that of Railroad. Lessee accepts the Premises subject to rights of any party, including Railroad, in and to any existing conduits, sewers, water lines, gas lines, power lines, cable lines, fiber optic lines, drainage, telephone, telegraph, or other wires, and poles and utilities of any kind whatsoever, whether or not of record. Should it at any time become necessary to relocate any of same because of this Lease, Lessee shall bear and pay that cost. Lessee accepts the Premises subject to rights of any party, including Railroad, in and to any existing roadways, easements, permits, or licenses. Lessee agrees to provide to Railroad, and other lessees, grantees and permittees of Railroad, access over and through the Premises on these existing roadways, easements, permits or licenses should such access be deemed necessary by Railroad. Railroad hereby reserves unto itself and its grantees and licensees: (a) the right and easement to install, construct, use, operate, maintain, repair and replace any pipe, conduit or tunnel, and any electric, cable, fiber optic, communication or signal transmission lines, together with poles and guys therefore, as may now exist or may hereafter be placed upon, under or over the Premises, (b) all ores and minerals of any kind or nature, whether on or underlying the surface of the Premises, together with the full and exclusive right, privilege and license to explore, protect, conserve, mine, extract, remove and market such minerals, and (c) all railroad operating rights, if any, associated with the Premises under applicable law; it being agreed that this Lease is subject and subordinate to any and all such rights, easements and uses. Lessee further agrees that Railroad shall not be responsible for the care or maintenance of such roadways, easements, permits or licenses. Railroad makes no covenant for quiet enjoyment of the Premises. Lessee assumes any damage Lessee may sustain as a result of, or in connection with, any want or failure at any time of Railroad's title to the Premises.

5. PREMISES ACCEPTED AS IS. Lessee has examined the Premises, knows the condition of the Premises, has received the same in existing order and repair and acknowledges that no representations as to the condition and repair thereof have been made by Railroad or its agents or employees prior to or at the execution of this Lease that are not herein expressed. Lessee accepts the Premises "AS IS, WHERE IS", subject to all existing conditions, including but not limited to any existing easements, railroad facilities, pipe lines, telephone, telegraph, communication and signal lines or any other similar facilities. Lessee also acknowledges that Railroad shall have the right to make future installations from time to time of any of the aforementioned types of facilities, provided such future installations do not unreasonably interfere

with Lessee's use of the Premises. Should it at any time become necessary to relocate any of Railroad's facilities by reason of the Lease, or Lessee's use of Premises, Lessee shall bear and pay the cost thereof.

6. TAXES/SPECIAL ASSESSMENTS AND UTILITIES

(a) In addition to rental payment provided for herein, Lessee shall be responsible for general real estate taxes and general and special assessments levied against the Premises and/or improvements located thereon. Lessee shall pay taxes and assessments applicable to the Premises promptly upon receipt of a statement from Railroad, which shall be delivered to Lessee when Railroad receives bills from the taxing authority. If general real estate taxes are paid in arrears, the first payment required to be made by Lessee shall be based on an appropriate proration of the tax bill received by Railroad that covers the Premises. Upon termination of this Lease, Lessee shall be obligated to pay taxes and assessments applicable to the Premises up to and including the effective date of said termination, which obligations shall be determined on the basis of the most recent tax bill covering the Premises. If the Premises are included with other property in a single tax bill, the amount of the taxes attributable to the land in the Premises shall be determined on a square-foot basis. If the Premises are not locally assessed, but are included in Railroad's unit assessment which applies to Railroad's operating property, Lessee shall receive an estimated statement from Railroad for general real estate taxes attributable to the Premises while the Premises are included in Railroad's unit assessment. Any improvements located on the Premises that are owned by Lessee are to be assessed directly to Lessee, and Lessee must pay all taxes attributable to such improvements before such taxes become overdue. In addition to general real estate taxes and assessments attributable to the Premises, Lessee shall also be responsible for all other taxes, license fees and charges which may be assessed during the term of this Lease against the Premises, any improvements thereon or Lessee's occupancy or operations thereon. If Railroad pays any tax, assessment or charge which is Lessee's obligation under the provisions of this Lease, all sums paid by Railroad shall be deemed to be additional rent and recoverable as such, and shall bear interest at the rate of twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is less, from the date paid by Railroad until Railroad is reimbursed by Lessee.

7. IMPROVEMENTS BY LESSEE -- RAILROAD CONSENT REQUIRED.

No improvement shall be installed or constructed on the Premises by or on behalf of Lessee unless Railroad has received a complete set of plans and specifications for such improvement and Railroad's authorized representative has given prior written consent thereof. Railroad's consent to any improvement of the Premises shall not result in an assumption of any responsibility or liability by Railroad arising from the installation or construction of any improvement, which shall be at the sole risk and expense of Lessee. Lessee shall not permit any lien or claim of lien to be filed against Railroad or the Premises with respect to any improvement installed or constructed on the Premises by or on behalf of Lessee. Lessee hereby waives its right to a lien with respect to any such improvement and shall require a waiver of lien against Railroad and the Premises by any party or parties who furnish labor, material or services with respect to an improvement of the Premises, such waiver to be delivered to and received by Railroad before any work is performed on the Premises. **FURTHERMORE, EACH PARTY WHO FURNISHES SUCH LABOR, MATERIAL OR SERVICES MUST AGREE IN WRITING TO BE DELIVERED TO AND RECEIVED BY RAILROAD BEFORE ANY WORK IS PERFORMED ON THE PREMISES (I) TO DEFEND, INDEMNIFY AND HOLD HARMLESS RAILROAD FROM ANY LIABILITY ARISING IN CONNECTION WITH WORK TO BE PERFORMED ON**

**THE PREMISES, AND (II) TO INSURE RAILROAD AGAINST ANY SUCH LIABILITY BY A POLICY OF INSURANCE WHICH IS SATISFACTORY TO RAILROAD'S AUTHORIZED REPRESENTATIVE. PRIOR TO COMMENCEMENT OF ANY WORK ON THE PREMISES, LESSEE SHALL DELIVER TO RAILROAD COPIES OF ALL CONTRACTS AND INSURANCE POLICIES RELATIVE TO IMPROVEMENT OF THE PREMISES. LESSEE AND/OR THEIR CONTRACTOR(S) WILL BE REQUIRED TO OBTAIN AND CARRY A RIGHT OF ENTRY AGREEMENT FROM THE MANAGER, PUBLIC WORKS OR AN AUTHORIZED RAILROAD REPRESENTATIVE THEREOF PRIOR TO ACCESSING THE PREMISES.**

*Thomas L. Brasseur  
Manager, Public Works  
24002 Vreeland Road  
Flat Rock, Michigan 48134  
email: [thomas.brasseur@cn.ca](mailto:thomas.brasseur@cn.ca)*

**8. LESSEE'S USE TO COMPLY WITH LEGAL REQUIREMENTS AND SHALL AVOID HAZARDS, NUISANCE, ETC.**

(a) Lessee agrees at its sole risk and expense to comply with all obligations imposed on it and on its use of the Premises under the terms of this Lease and any and all applicable laws, rules, regulations and requirements imposed by any governmental authority with jurisdiction over Lessee, Railroad or the Premises, any public ways adjacent to the Premises and/or the business conducted by Lessee on the Premises. Lessee also agrees to comply with current circulars, specifications and standards (as they may be revised from time to time) imposed by the Association of American Railroads or any similar organization with respect to railroad operations on or in the vicinity of the Premises, copies of said circulars, specifications and standards being available for delivery to Lessee by Railroad upon written request.

(b) During the term of this Lease, Lessee shall maintain in good and safe condition and in good order and repair, the Premises and all improvements thereon (except for railroad improvements to be maintained by Railroad or public improvements to be maintained by appropriate public bodies or public utilities), all at Lessee's sole risk and expense. Lessee shall also keep any sidewalks on or abutting the Premises in good order, repair and safe condition, unobstructed and free from snow and ice.

(c) Lessee shall not erect or maintain any building, structure or physical obstruction of any kind adjacent to or over any railroad track at distances less than those prescribed by lawful authority, but in no event shall said distances be less than (i) eight and one-half (8 1/2) feet horizontally from the center line of any track, measured at right angles (said horizontal minimum clearance with respect to curved tracks to be increased by one inch for each degree of curvature); and (ii) twenty-five (25) feet vertically above top of rail (except as to wires, the overhead minimum clearance of which shall be in accordance with specifications of the current National Electrical Safety Code, and in no case less than twenty-seven (27) feet [twenty-five (25) feet in case of wires or cables suspended from messengers] above the top of rails), unless lesser distances are prescribed by lawful authority and approved, in writing by Railroad. However, any written approval by Railroad shall not relieve Lessee from any risk arising from establishment of clearances less than those specifically provided above. Lessee shall be responsible for ascertaining

all clearance requirements imposed by lawful authority and Lessee hereby acknowledges that since Railroad's crews are not able to make precise measurements during normal operations, Railroad's continued operation of a track with clearances less than those prescribed herein shall not be a waiver of the requirements set forth herein.

(d) Lessee shall not interfere with or obstruct drainage ditches or drain pipes on or below the surface of the Premises, nor shall Lessee put or permit any contaminous matter to enter into any drainage ditch or drain pipe on Premises. If it should become necessary to make any change or alteration in any existing drainage ditch, drain pipe or pipes on the surface or below the surface of the Premises by reason of any improvements that Lessee may desire to construct thereon, Lessee shall, at its own risk and expense, make such changes or alterations in a manner satisfactory to the authorized officer of Railroad.

(e) Lessee agrees that at all times during the term of this Lease, Lessee shall exercise due diligence to protect the Premises and all property located thereon and in the vicinity thereof against any danger of fire from any cause whatsoever. Without limiting the generality of the foregoing, Lessee specifically agrees that artificial lighting shall be by electricity only and that flammable or explosive substances shall be adequately protected from hazards of fire and explosion and meet the requirements set forth in the then current edition of the National Electrical Safety Code with respect to Class I Hazardous Locations, the current specifications of the Association of American Railroads, and applicable federal, state and municipal laws, rules and regulations governing handling of flammable or explosive substances.

(f) Lessee shall not cause or permit any Hazardous Material to be treated, stored, generated or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, subcontractors or invitees, or any related persons or entities, without first obtaining Railroad's written consent and in compliance with all applicable laws, ordinances, rules, regulations and requirements of all governmental authorities and the various departments thereof. **DURING THE TERM OF THIS LEASE, IF HAZARDOUS MATERIALS ARE TREATED, STORED, GENERATED, OR DISPOSED OF ON OR IN THE PREMISES EXCEPT AS PERMITTED ABOVE, OR IF HAZARDOUS MATERIALS ARE TREATED, STORED, GENERATED, OR DISPOSED OF ON, IN, OR FROM THE PREMISES IN VIOLATION OF LOCAL, STATE, OR FEDERAL LAW, OR IF THE PREMISES OR SURROUNDING, ADJACENT OR NEARBY PROPERTY BECOMES CONTAMINATED IN ANY MANNER FOR WHICH LESSEE IS LEGALLY LIABLE, LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RAILROAD FROM ANY AND ALL CLAIMS, DAMAGES, FINES, JUDGMENTS, PENALTIES, COSTS, LIABILITIES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, A DECREASE IN VALUE OF THE PREMISES, DAMAGES CAUSED BY LOSS OR RESTRICTION OF RENTABLE OR USABLE SPACE, OR ANY DAMAGES CAUSED BY ADVERSE IMPACT ON MARKETING OF THE SPACE, AND ANY AND ALL SUMS PAID FOR SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANT, AND EXPERT FEES) ARISING DURING OR AFTER THE LEASE TERM. THIS DEFENSE, INDEMNIFICATION AND HOLDING HARMLESS INCLUDES, WITHOUT LIMITATION, ANY AND ALL COSTS INCURRED BECAUSE OF ANY INVESTIGATION OF CONTAMINATION OR VIOLATION OF LOCAL, STATE OR FEDERAL LAW, OR ANY CLEANUP, REMOVAL, OR RESTORATION MANDATED BY A FEDERAL, STATE, OR LOCAL GOVERNMENT OR AGENCY THEREOF.** Without limitation of the foregoing, if Lessee

causes or permits the presence of any Hazardous Material on the Premises that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Material on the Premises. Lessee shall first obtain Railroad's approval for any such remedial action. As used herein, "Hazardous Material" means and includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.), and Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, as such laws or regulations now exist or may exist in the future. For purposes of this Lease, "Hazardous Material" shall include petroleum and any fraction thereof.

(g) Lessee shall not permit any activity on the Premises which could reasonably be construed as a nuisance or annoyance to owners or occupants of property in the vicinity of the Premises or which might result in a claim of interference or risk to the health, welfare and/or safety of the community. Lessee shall not dispose of "Solid Waste" on the Premises; as such term is defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.). Lessee shall in no way pollute the Premises or any surrounding property. Railroad shall be the sole and exclusive judge as to whether any activity permitted by Lessee on the Premises violates the requirements of the foregoing provision. Failure by Lessee to immediately abate or discontinue any nuisance or annoyance claimed by Railroad or to immediately remove the cause and affects of any pollution shall be considered a default under the provisions of this Lease.

(h) The parties hereby acknowledge that sale or dispensation of intoxicating liquors on the Premises is prohibited, unless specifically permitted by an amendment to the Lease that is signed by Railroad's authorized officer. Such amendment shall require, among other things, that Lessee furnish dram shop insurance or other appropriate insurance protecting Railroad from the risks incident to such sale or dispensation,

(i) Lessee shall be prohibited from placing or allowing on the Premises any signs other than a reasonable sign advertising Lessee's business being conducted at the Premises or a "For Sale/Lease" sign on any building owned by Lessee and located on the Premises. The size and location of any such permitted sign is subject to Railroad's approval.

**9. INDEMNIFICATION. AS FURTHER CONSIDERATION AND AS A CONDITION WITHOUT WHICH THIS LEASE WOULD NOT HAVE BEEN ISSUED AND TO THE EXTENT PERMISSIBLE BY LAW, LESSEE AGREES, REGARDLESS OF ANY NEGLIGENCE OR OTHER LEGAL FAULT BY OR ON THE PART OF RAILROAD OR ITS OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, LESSEES AND LICENSEES, AND RELATED PERSONS AND ENTITIES, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS OWNERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (THE "RAILROAD PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION, AND TO ASSUME ALL RISK, RESPONSIBILITY AND LIABILITY (INCLUDING ALL LIABILITY FOR ANY EXPENSES, ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY RAILROAD OR ANY OF RAILROAD**

**PARTIES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED OR OTHERWISE):**

**(a) FOR DEATH OF, OR BODILY INJURY TO, ANY PERSONS, INCLUDING, BUT NOT LIMITED TO, OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, LESSEES AND LICENSEES OF THE PARTIES HERETO, AND FOR LOSS, DAMAGE OR INJURY TO ANY PROPERTY, INCLUDING BUT NOT LIMITED TO, THAT BELONGING TO OR IN THE CUSTODY OR CONTROL OF THE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, LESSEES AND LICENSEES OF THE PARTIES HERETO, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO, OR RESULTING FROM THE ISSUANCE OR EXERCISE OF THIS LEASE OR THE FAILURE OF LESSEE TO CONFORM TO ALL THE CONDITIONS OF THIS LEASE, WORK PERFORMED BY RAILROAD FOR LESSEE UNDER THE TERMS OF THIS LEASE, THE CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, ALTERATION, CHANGE, RELOCATION, EXISTENCE, PRESENCE, USE, OPERATION, OR REMOVAL OF ANY FACILITIES INCIDENT THERETO, OR FROM ANY ACTIVITY CONDUCTED BY OR ON BEHALF OF LESSEE ON OR IN THE VICINITY OF THE AREA COVERED BY THE LEASE, AND**

**(b) FOR DEATH OF, OR BODILY INJURY TO, THE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, AND RELATED PERSONS AND ENTITIES OF LESSEE, AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO THEIR PROPERTY, AND TO ANY PROPERTY BELONGING TO OR IN THE CARE, CUSTODY AND CONTROL OF LESSEE, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE CONDUCT OF ANY RAILROAD OPERATIONS AT OR NEAR THE PREMISES.**

It is the intention of the parties hereto that Lessee shall be solely responsible for all such destruction or damage to property or for bodily injury to death of persons which would not have occurred if the Premises had never been leased. The word "Railroad" as used in this Section shall include the assigns of Railroad and any other railroad company that may be operating upon and over any tracks crossing the Premises. At the election of Railroad, Lessee, upon receipt of notice to that effect, shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.

10. INSURANCE. Lessee shall provide and maintain in effect during the term of this Lease commercial general liability insurance (occurrence based), including public liability, property damage, and comprehensive liability covering liability assumed by Lessee under the provisions of Lessee's covenants herein. Such insurance shall have a minimum combined single limit of liability of \$5,000,000, with an aggregate of not less than \$10,000,000. The insurance shall not contain an exclusion for either damage occurring on, near or adjacent to railroad property. Such insurance shall be primary and non-contributory.

Lessee shall provide and maintain in effect during the term of this Lease Environmental Legal Liability Insurance applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims, or compliance with statute; all in connection with any loss from surface, subsurface pollution contamination or seepage, or handling, treatment, disposal, or dumping of waste materials or substances. Coverage shall be maintained in an amount of not less than \$2,000,000 per pollution incident, with an annual aggregate of not less than \$10,000,000. Such insurance shall be primary and non-contributory.

Lessee shall also keep its personal property, fixtures, and any buildings and improvements constructed or placed on the Premises by Lessee insured with "Causes of Loss – Special Form" (or equivalent) insurance in an amount to cover one hundred percent (100%) of the replacement cost of such property, fixtures, buildings and improvements.

All insurance required hereunder shall be in companies and form acceptable to Railroad and such insurance policies shall be endorsed to name Railroad as an additional insured party and to provide not less than thirty (30) days to Railroad of any cancellation thereof any material change in coverage. Lessee agrees to cause all insurance policies to contain a waiver of subrogation against Railroad, its owners, directors, officers, employees and agents (the "Railroad Parties") and to be so written that the insurers shall have no claim or recourse of any kind whatsoever against Railroad, Railroad Parties, or the Premises. Lessee shall furnish to Railroad complete copies of all such insurance policies with evidence of payment and premiums therefore. The providing of said insurance coverage and Railroad's acceptance thereof shall not be deemed a limitation or modification of the liability or obligations of Lessee as provided in this Lease, but shall be additional security therefore.

#### 11. DEFAULT.

(a) If Railroad does not receive in full any installment of rent by the date such payment is due and such default continues for a period of ten (10) days, or if Lessee shall default in the performance of any other covenants or agreements herein contained and such default continues for a period of ten (10) days after Railroad delivers written notice thereof to Lessee, or if bankruptcy, insolvency, receivership, foreclosure of any similar proceedings affecting Lessee shall be instituted and not dismissed for a period of ten (10) days, or if Lessee abandons the Premises for a period of thirty (30) days, Railroad may, in any such instance, at its election treat such occurrence as a breach of this Lease and have one or more of the following described remedies, in addition to any and all remedies available at law or in equity.

(i) Railroad may terminate this Lease and the term created hereby, in which event Railroad may forthwith repossess the Premises and be entitled to recover as damages a sum of money equal to the value of the rent and additional rent provided to be paid by Lessee for the Premises for the balance of the stated term of the Lease, less the fair rental value of the Premises for said period (and the result thereof shall then be reduced to its present value using a discount rate of 10%), and any other sum of money and damages owed by Lessee to Railroad.

(ii) Railroad may terminate Lessee's right of possession and may repossess the Premises by any lawful means, without further demand or notice of any kind to



Lessee and without terminating this Lease, in which event Railroad shall, to the extent it is required by law to mitigate any damages, relet all or any part of the Premises, for such rent and upon such terms as shall be commercially reasonable and satisfactory to Railroad (including the right to relet the Premises for a term greater or lesser than that remaining under the term of this Lease and the right to relet the Premises as a part of a larger area and the right to change the character or use made of the Premises). For the purpose of such reletting, Railroad is authorized to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient and if Railroad shall fail or refuse to relet the Premises or if the Premises are relet and a sufficient sum shall not be realized from such reletting after paying the costs and expenses of such repairs, changes, alterations and additions and the expenses of such reletting and of the collection of the rent accruing therefrom to satisfy the rent provided for in this Lease to be paid, then Lessee shall pay to Railroad as damages a sum equal to the amount of the rent and additional rent reserved in this Lease for such period or periods, or, if the Premises have been relet, Lessee shall satisfy and pay any such deficiency upon demand therefor from time to time, and Lessee agrees that Railroad may file suit to recover any sums falling due under the terms of this paragraph and any other sums due under this Lease from time to time and that no suit or recovery of any portion due Railroad hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Railroad.

Lessee hereby agrees that to the extent any of the foregoing notice periods provided in this Article 11 and elsewhere in this Lease are greater than the notice periods required under the applicable state statutes, such greater notice periods as are provided for herein shall substitute for any such statutory notice periods, and any notices given pursuant to the terms hereof shall be deemed the notice required by any such statute.

(b) Whenever or however this Lease or Lessee's right to possession is terminated, Railroad shall have the right (without being guilty of any manner of trespass or forcible entry or detainer) either with or without notice or demand, and either with or without process of law, to immediately take possession of Premises and any improvements thereon, and to remove therefrom Lessee and any and all effects that may be then on the Premises, using such force as may be necessary, and to repossess and enjoy the Premises. When the term of this Lease shall be ended for any cause, Lessee covenants and agrees to give up and surrender to Railroad peaceably and immediately the Premises and all improvements thereon without further demand or notice, and in good order, repair and condition, failing which Railroad may restore the Premises and improvements to good order, repair and condition at the sole risk and expense of Lessee. Termination of this Lease shall not affect Railroad's rights with respect to Lessee's obligations for rent or otherwise and shall not prevent Railroad from pursuing such other actions or proceedings, as it may deem advisable.

(c) Lessee agrees that Railroad shall at all times have the right to distrain for rent due, and shall have a first lien upon all building, structures or other personal property of Lessee on the Premises, whether exempt by law or not, as security for the payment of the rent and other amounts to be paid hereunder, and the faithful performance of the covenants herein contained, and in the event of default on the part of Lessee in any respect under this Lease, Railroad shall have the right to take the said property and sell it at public auction, giving such notice as is required by

law and from the proceeds of such sale to pay all rents, expenses or other amounts which may at such time be due, and to pay over to Lessee the surplus moneys arising from such sale.

(d) If Lessee fails to substantially begin compliance with any obligations under the terms of this Lease after receiving ten (10) days written notice from Railroad, Railroad may, at its option, perform such obligations at the sole risk and expense of Lessee. Cost of work performed by Railroad for Lessee's account as referred to in this Lease is hereby defined to be the cost of labor and material furnished by Railroad and rental on equipment used. To the cost of labor there shall be added 10% to cover supervision and accounting. Also added shall be the cost of vacation allowance, paid holiday allowance, health and welfare allowance, Railroad Retirement and/or Social Security taxes, unemployment compensation and premiums on workmen's compensation, property damage and public liability insurance. To the cost of material there shall be added 15% to cover accounting, handling and transportation. In addition, the cost shall include taxes payable by Railroad under any excise, sales or use tax based on the wages of labor, cost of material, or the gross cost of the work, as the case may be. Lessee shall pay bills covering such cost and expense as herein defined within fifteen (15) days after the receipt thereof. Bills not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due, or the maximum rate allowed by law, whichever is less.

(e) In the event that Railroad shall incur any costs or expenses, including attorneys' fees and costs, in enforcing Lessee's covenants and agreements under this Lease, Lessee shall reimburse Railroad for all such costs, expenses and attorneys' fees as additional rent hereunder.

(f) Acceptance of money by Railroad from Lessee after any default by Lessee or after the expiration of the term of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises, shall not waive such default or reinstate, continue or extend the term of this Lease or affect any such notice or suit, as the case may be.

## 12. TERMINATION OF THIS LEASE/NOTICE OF SUBSTANTIAL CHANGE.

(a) Railroad shall have the right at any time in its sole and absolute discretion to terminate this Lease and recover possession of the Premises by delivery to Lessee of thirty (30) days prior written notice of Railroad's election. Railroad shall also give Lessee thirty (30) days prior written notice before a substantial change occurs which effects Lessee's rights herein. If this Lease is terminated pursuant to this Section without any default by Lessee, Lessee shall be entitled to refund of the balance of the security deposit, if any, and unearned prepaid rental, which is not required to satisfy Lessee's obligations.

(b) Upon termination of this Lease by expiration of the term, election of Railroad, or pursuant to any provision of this Lease, Lessee shall remove all buildings, structures, foundations, footings, materials, signs, debris or other articles or facilities owned or used by Lessee, above or below the surface of the premises by Lessee, or by any person, firm or corporation or former Lessee through which the Lessee does or did at any time obtain a clear position of the premises whether by assignment or otherwise. Lessee agrees to restore the premises to a condition satisfactory to the Railroad. Lessee shall be responsible to leave the Premises in a neat, safe and clean condition and if Lessee fails to do so, Railroad shall have the right to perform necessary

work at the sole risk and expense of Lessee. Termination date of said Lease will not be in effect until all buildings and structures, if any, are removed from the Premises and all rental payments and any and all costs incurred by the Railroad, if any, are paid by Lessee.

(c) Railroad shall have the right, but not the duty, to require Lessee to remove from the Premises any improvement which is installed or constructed on the Premises by Lessee, said removal to be performed at Lessee's sole risk and expense, and if Lessee fails to so perform Railroad shall have the right to perform necessary work to remove said improvement and to restore the Premises, all at the sole risk and expense of Lessee.

(d) No termination of this Lease shall release either party hereto from any liability or obligation that has accrued prior to said termination.

13. SUCCESSORS AND ASSIGNS -- NO ASSIGNMENT PERMITTED WITHOUT RAILROAD CONSENT.

(a) Lessee shall not have the right to assign this Lease or to sublet the Premises or any part thereof, without the prior written consent of Railroad, which may be withheld for any reason or no reason. Lessee shall not allow or permit any transfer of this Lease or any interest hereunder by operation or law and shall not convey, mortgage, pledge or encumber this Lease or the Premises. Any attempted assignment, sublease or transfer of this Lease shall be void if not made pursuant to Railroad's prior written consent.

(b) This Lease and all covenants, agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the successors, assigns and transferees of Railroad and the permitted successors, assigns and transferees of Lessee.

14. MISCELLANEOUS.

(a) If the whole or any part of the Premises shall be taken or condemned by any competent authority for any purpose, or is sold by Railroad under the threat of condemnation, the term of this Lease shall end upon and not before the date when possession of the part so taken shall be required for such use or purpose and without apportionment of the award. Current rent shall be apportioned as of the date of such termination and Lessee shall have no right to share in the condemnation award or sales proceeds.

(b) Railroad shall have the right at any time, but not the obligation, to inspect Premises to assure itself that there has been compliance with the terms of this Lease, but the exercise by Railroad of such right, or the failure to exercise the same, shall not relieve Lessee of any obligation imposed upon Lessee under the terms of this Lease. Railroad shall have the right, during the period of ninety (90) days prior to the expiration or other termination of the term hereof, to post on the Premises notices of "For Rent" or "For Sale" and to show the Premises to prospective tenants or purchasers.

(c) This Lease is made subject to the approval of any governmental authority having jurisdiction thereover.

(d) The invalidity or unenforceability of any provision of the Lease shall not affect or impair any other provision.

(e) It is expressly agreed by and between the parties hereto that the agreements, terms and covenants contained in this Lease are the entire agreement entered into between the parties affecting the lease of the Premises.

(f) Failure or delay of Railroad to require full compliance with any one or more of the terms of this Lease shall not be held as a waiver of a right to subsequently insist upon such compliance or terminate this Lease, or to terminate this Lease for any subsequent breach which may occur, or to enforce any other provision of this Lease.

(g) Railroad and Lessee voluntarily, intentionally and irrevocably waive the right to a trial by jury with respect to any legal proceeding based hereon or arising out of, under or in connection with this Lease.

(h) The captions of the various Sections of this Lease are for convenience only and are not to be considered in the interpretation hereof.

(i) This Lease shall be governed by the laws of the State in which the Premises are located, without regard to choice of law principles.

(j) Lessee agrees, at Lessee's sole cost and expense, to keep the Premises in a neat and orderly condition during the term of this Lease.

(k) Lessee agrees, at Lessee's sole cost and expense, to install a fence or barricade on the trackside boundary of the Premises. Fence or barricade will be owned and maintained by Lessee. At the end of the useful life of the fence or barricade or the termination of this Lease, whichever occurs first, Lessee will be responsible for removing the fence or barricade.

(l) Lessee agrees, at Lessee's sole cost and expense, during the lease period to maintain all roads and to repair/maintain all fencing during the term of this Lease.

(m) Proper PPE (hard hat, safety vest, safety glasses and safety shoes) must be worn by all employees at all times while on the Premises.

(n) Lessee will not allow snow removal or debris to be placed on adjacent Railroad property.

(o) Lessee will not negatively impact drainage from Railroad property.

(p) Lessee will not impair or damage track structure.

(q) Railroad to inspect the condition of the property prior to lease termination to ensure the Premises are in equal or better condition than the condition at the start of the Lease term.

15. NOTICES. All notices to be given to Lessee shall be considered as having been properly given upon mailing such notice by certified U. S. mail, postage prepaid, addressed to

Lessee at its billing and mailing address set forth above. For the purposes of effectuating termination of the Lease, notice may be served upon Lessee by (a) personally delivering notice of termination to Lessee; (b) by personally delivering notice to any of Lessee's employees on the Premises; (c) by posting said notice of termination on the Premises; or (d) by mail as above provided. Utilization of any one or more of such methods for giving notice of termination of this Lease shall be considered to be proper notice to Lessee.

All notices to Railroad shall be addressed to the Senior Manager, Real Estate, at the address stated above or to such other address as may be designated by written notice given by Railroad's authorized representative, by U. S. certified mail, return receipt requested and shall be considered as having been properly given when actually received by Railroad.

16. LIMITATION OF LIABILITY. If the Premises are sold or transferred, voluntarily or involuntarily, Railroad's Lease obligations and liabilities accruing after the transfer shall be the sole responsibility of the new owner. If Railroad, its agents, employees, officers, directors or owners are ordered to pay Lessee a judgment because of Railroad's default, then Lessee's sole remedy to satisfy the judgment shall be Railroad's interest in the Premises.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in duplicate originals as of the day and year first above written.

**RAILROAD:**

**GRAND TRUNK WESTERN RAILROAD COMPANY**  
**17641 S. Ashland Avenue**  
**Homewood, Illinois 60430**

By: \_\_\_\_\_  
James V. Fountain  
Senior Manager, Real Estate

**LESSEE:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

CALKIN

ALMONT ST.

BANCROFT

THRUD ST.

MAIN ST.

SECOND ST.


9.6m ± [31.5' ±]

278.1m ± [912.3' ±]

7.6m ± [25.0' ±]

9.6m ± [31.5' ±]

North Arrow

<b>DESCRIPTION:</b> PART OF 2010/MIPR/100596 (0.66 Acs.±) Imlay State of Michigan United States of America  <b>THIS IS NOT A PLAN OF SURVEY / CECI N'EST PAS UN PLAN D'ARPENTAGE</b>	<b>LEASE SKETCH</b>		<b>SUBDIVISION:</b> Flint (302)	
			<b>SPUR / ANTENNE:</b> N/A	
	<input checked="" type="checkbox"/> <b>Subject Lands/Terrain Sujet</b>		<b>MILEAGE / MILLIAIRE:</b> 301.82 - 301.99	
			<b>DATE:</b> May 4, 2023	
			<b>SCALE / ÉCHELLE:</b> 1:1500	

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