

**AMENDED AND RESTATED DEFINITE TERM COMMUTER STATION LEASE  
LAND AND IMPROVEMENTS**

THIS AMENDED AND RESTATED DEFINITE TERM COMMUTER STATION LEASE (LAND AND IMPROVEMENTS) ("Lease") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and the City of Aurora, Illinois, an Illinois municipal corporation ("Lessee").

**RECITALS**

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

C. Lessor and Lessee are parties to that certain Contract and Lease Agreement, as amended, originally entered into by the City of Aurora, Illinois and Burlington Northern Railroad as of October 10, 1984 (the "Pre-Existing Lease"), which the parties now desire to replace and restate in its entirety.

**AGREEMENTS**

In consideration of the mutual covenants herein, Lessor and Lessee do hereby replace and restate in its entirety the Pre-Existing Lease with the following new lease terms and conditions.

**Section 1. Premises and Term.**

A. (Intentionally deleted.)

B. Lessor leases to Lessee and Lessee rents from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, for the Term (as defined below), that certain parcel of real property and all improvements located thereon, including, without limitation, any and all tunnels, garages, stairs, platforms, shelters, stations, storage sheds, and related appurtenances situated in the City of Aurora, County of Kane, State of Illinois, and constituting the red outlined area shown on Exhibit "A" attached and made a part hereof ("Premises"). Notwithstanding anything in this Lease (including all exhibits hereto) to the contrary, BNSF's ballasted right-of-way and tracks are not a part of the Premises; provided, however, that the pedestrian tunnel that passes beneath such ballasted right of way and tracks is included herein as part of the Premises. For purposes of this Lease, "ballasted right-of-way" means the right-of-way, tracks and rail facilities between the platforms and the station and extending to the north as shown on the attached Exhibit "A"

C. Lessee leases the Premises from Lessor for a term ("Term") beginning \_\_\_\_\_ ("Commencement Date"), and continuing thereafter until \_\_\_\_\_ or until this Lease shall be terminated earlier pursuant to the terms herein ("Termination Date").

D. Each consecutive twelve-month period during the Term, beginning with the Commencement Date of this Lease, is herein called a "Lease Year."

**Section 2. Early Termination.**

A. If Lessor shall require the Premises for railroad purposes or activities, Lessor may, in its sole discretion at any time during the Term, terminate this Lease upon written notice ("Termination Notice") to Lessee of not less than six (6) months (the one hundred eightieth (180<sup>th</sup>) day after such Termination Notice hereinafter the "Early Termination Date"). In case of such termination, Lessor shall elect one of the following: (i) Lessor may purchase from Lessee all Lessee Improvements (as defined in Section 9(B)), (excluding, however, equipment or moveable fixtures or any of the contents of any Lessee Improvement which are capable of being removed without damage to such Lessee Improvement (the "Removables"), all of which Removables shall be removed by Lessee upon such termination at Lessee's expense without

further compensation from Lessor) ("Lessor Purchase Election") or (ii) Lessor may require Lessee to remove all of the Lessee Improvements from the Premises (together with all Removables) ("Lessor Removal Election"). In the event that Lessor shall elect the Lessor Purchase Election, Lessee shall remove at its expense all Removables on or prior to the Early Termination Date, and on the Early Termination Date shall deliver to Lessor a Bill of Sale or similar conveyance instrument ("Bill of Sale") in form reasonably acceptable to Lessor conveying all of the Lessee Improvements to Lessor. In the event of such a Lessor Purchase Election, Lessor shall pay to Lessee an amount equal to the fair market value of the Lessee Improvements. In the event that Lessor shall elect the Lessor Removal Election, Lessee shall remove at its expense all Removables on or prior to the Early Termination Date and shall also, on or prior to the Early Termination Date, remove all Lessee Improvements and restore the Premises to the same condition which existed prior to the erection of the Lessee Improvements, ordinary wear and tear excepted. In the event of such a Lessor Removal Election, Lessor shall nonetheless pay to Lessee an amount equal to the fair market value of said Lessee Improvements (less the reasonable salvage or reuse value of same). The "fair market value" shall be agreed to by the parties, and if the parties fail to agree, the same shall be determined by three disinterested appraisers selected in the manner set forth below, and the value agreed upon by any two of said appraisers shall be paid by Lessor, as Lessee's sole compensation and remedy for the early termination of this Lease. The party desiring the appraisal shall choose one appraiser after which the other shall have twenty (20) days in which to choose an appraiser. Should a second appraiser not be chosen within the said twenty (20) days, the party naming the first appraiser shall choose the second appraiser. The two so chosen shall select a third appraiser within twenty (20) days, and upon failure to do so, the selection, on application of either party, may be made by any district court judge of the state in which the Premises is located. The two or three appraisers, as the case may be, shall reach a decision within forty-five (45) days of the appointment of the last appraiser. The decision of any such two appraisers shall be binding upon the parties.

**B.** In the event of termination of this Lease pursuant to the Termination Notice in accordance with Section 2(A), Lessee, before the termination date stated in said Termination Notice, shall remove from the Premises Lessee's property not purchased by Lessor, and if it fails to do so, Lessee hereby grants Lessor the absolute right to remove such property at the cost of Lessee, or to keep, convey, destroy, or otherwise dispose of the property in any way Lessor chooses and, in addition, Lessee shall promptly upon demand pay Lessor the net (i.e., after deduction and salvage value) cost incurred by Lessor in doing so.

### **Section 3. Use and Compliance.**

**A.** Lessee may use the Premises for the sole and exclusive purposes of (i) the operation, landscaping, maintenance, repair, modification, replacement or required removal of the Aurora Transit Center Commuter Station and related appurtenances located on the Premises and (ii) providing BNSF's patrons with adequate and appropriate facilities for commuter passenger service operated by BNSF for Metra under certain agreements between those parties and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

**B.** Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, covenants, restrictions, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 5(A)).

**C.** If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

**D.** Lessee must not allow the use of any of the Premises for parking within twenty-five (25) feet of the centerline of any track.

**E.** Any portion of the Premises within twenty-five (25) feet from the nearest rail of Lessors trackage shall only be used for the construction, maintenance, repair and renewal of platforms, walkways to platforms, shelters, ramps and landscaping (subject to (i) legal clearance requirements, (ii) Lessor's clearance requirements, (iii) Lessor's Landscaping Guidelines, which Landscaping Guidelines are attached hereto as Exhibit "C" and made a part hereof ("Landscaping Guidelines"), and Lessor's approval of the plans for the same following the same process as is described in Section 9B).

#### **Section 4. Rent.**

**A.** Lessee shall pay as rental for the Premises, in advance, an amount equal to One Dollar (\$1.00) per year annually during the Term. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

Jones Lang LaSalle  
P.O. Box 847574  
Dallas, Texas 75284-7574

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 37 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

**B.** Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease, Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

**C.** Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 10 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

**D.**

#### **Section 5. Environmental.**

**A.** Lessee shall strictly comply with all federal, state, or local laws, statutes, ordinances, codes, rules, regulations, policies, common law, licenses, authorizations, decisions, orders, or injunctions which pertain to health, safety, any Hazardous Material, or the environment (including, but not limited to, ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future (collectively, "Environmental Laws".) Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

**B.** Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

**C.** In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on, from or otherwise affecting the Premises which occurred or may occur during the Term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation on, from or affecting the Premises or Lessor's property or right-of-way.

**D.** Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease or by any legal requirement. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

**E.** Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials:

<b>Commodity</b>	<b>Storage Method (tote, tank, railcar)</b>	<b>Storage Volume (gallons)</b>
UNLEADED GASOLINE	TOTE/CABINET	<5
DIESEL FUEL	TOTE/CABINET	<5
(OTC) HERBICIDE	TOTE/CABINET	<5
DE-ICING SALT	TOTE	250LB

Lessee may only use and store the listed Hazardous Materials in such small amounts as are necessary and customary in the operation of a commuter station and the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 5(E) is a breach of this Lease.

**F.** For purposes of this Section, "Hazardous Materials" means all materials, chemicals, wastes, compounds, or substances (including without limitation asbestos, asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenol compounds, hydrocarbons or like substances and their additives or constituents, pesticides, and agricultural chemicals) regulated under Environmental Laws, identified as hazardous or toxic under Environmental Laws, or otherwise is regulated by any federal, state, or local government authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment.

**G.** Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease. Lessee acknowledges that it remains responsible for any noncompliance or environmental damage during Lessee's occupancy of the Premises, regardless of whether such occupancy occurred during the term of this Lease or of a Pre-Existing Lease. Lessor and its agents and representatives shall have a right of entry and access to the Premises: (i) at any time an actual or suspected emergency exists; and (ii) at any reasonable time, upon prior written notice, and, at Lessee's election, with a representative of Lessee present, for the purposes of (a) inspecting the documentation relating to Hazardous Materials or environmental matters maintained by Lessor or any occupant of the Premises, and (b) ascertaining whether Lessor is in compliance with its obligations under this Section 5. Lessee's obligations under this Section 5 shall survive termination or expiration of this Lease.

**H.** Lessee represents and acknowledges that it has continuously occupied the Premises since October 10, 1984, and that it has been solely responsible for the condition, repair, and maintenance of the Premises under the terms of the Pre-Existing Lease, and that consequently it is fully aware of and has accepted the environmental condition of the Premises.

**I.** Prior to any building renovation, repair, modification, or removal activities, Lessee shall (i) confirm that an asbestos evaluation has been completed by a properly licensed individual for the building and/or any structures or components on the Premises; (ii) refrain from any work until one is completed; (iii) confirm that asbestos abatement or removal was completed if any asbestos, asbestos containing material ("ACM"), or presumed ACM ("PACM") was identified

in the evaluation and may be disturbed during any work on the Premises; (iv) ensure all applicable pre-work notifications have been filed with the appropriate governmental agency within regulatory timeframes; and (v) ensure appropriately-licensed personnel perform the work.

**J.** Lessee shall obtain and maintain any and all licenses, permits, authorizations, and approvals including without limitation, any necessary local, state, federal or tribal authorizations, environmental permits, and permits or authorizations to remove or abate asbestos, asbestos containing materials ("ACM"), or presumed asbestos containing materials ("PACM") that are necessary in order to occupy, use, or perform any work on the Premises and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

**K.** If Lessee will perform any sampling, abatement, removal, or disturbance of asbestos, ACM, or PACM on the Premises, such shall be conducted by appropriately licensed personnel or contractors certified by the state. Lessee shall not otherwise sample, remove, abate, disturb, or cause to be disturbed, any asbestos, ACM, or PACM.

**L.** In addition to, and not in limitation of, the release of liability and indemnity provisions of this Lease, if Lessee fails to comply with any of the provisions of this Section, Lessee shall indemnify, defend, and hold harmless Lessor from any and all fines, penalties, and claims, including without limitation any personal injury claims, enforcement or related proceedings, and Lessee shall be responsible at its sole cost and expense for inspection, remediation, and abatement of the disturbed area and interruption of use or service of the affected area.

**M.** Any and all materials generated from the Premises, including but not limited to debris, waste, building materials, soil, asbestos, ACM, or PACM, shall be appropriately managed and properly disposed of at an appropriately-licensed facility in accordance with all applicable Environmental Laws, including manifesting requirements. Lessee shall be deemed the generator of any and all such waste. Further, Lessee shall practice good housekeeping on the Premises. All fill materials to be imported to Lessor's property shall be certified clean fill or from a Lessor-approved source and supporting documentation shall be provided to Lessor upon request.

**N.** Lessee shall promptly transmit to Lessor copies of any and all documents, records, reports, data, and other information, including without limitation, those concerning asbestos, ACM, or PACM sampling, abatement, and disposal records, that are related to any work performed on the Premises and shall email copies of the same to EnvironmentalAccess@bnsf.com.

**O.** Notwithstanding anything in this Section, the parties agree that Lessor has no duty or obligation to monitor Lessee's use of the Premises to determine Lessee's compliance with Environmental Laws, it being solely Lessee's responsibility to ensure that Lessee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this Lease.

#### **Section 6. Access to Adjacent Property by Lessee.**

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 14. Notwithstanding anything to the contrary herein, this Section 6 shall not grant Lessee any right to use any of Lessor's ballasted right-of-way nor cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

#### **Section 7. Access to Premises by Lessor.**

**A.** Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder: (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises; (ii) enter the Premises to construct, maintain, replace, use, modify, relocate and operate new or existing trackage and related facilities, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage; (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or

additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so; (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises; (v) during the twelve (12) months prior to expiration of the Term, exhibit the Premises to prospective lessees, and Lessor or its broker may place signage on the Premises to advertise that the same is available for lease or sale, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

**B.** For purposes stated in this Section 7, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

**C.** In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 7 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

**D.** Lessee expressly agrees that Lessor is not responsible for any damage to landscaping on the Premises caused by or arising from the exercise of Lessor's rights to enter the Premises, and Lessor has no responsibility whatsoever to restore or pay for the restoration of any landscaping on the Premises so damaged.

#### **Section 8. Warranties.**

**LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.** This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

#### **Section 9. Premises Condition; Lessee Improvements.**

**A.** Lessee represents and acknowledges that it has continuously occupied the Premises since October 10, 1984, and that it has been solely responsible for the condition, repair, and maintenance of the Premises under the terms of the Pre-Existing Lease, and that consequently it is fully aware of and has accepted the condition of the Premises.

Lessee represents that the Premises, the title thereto, the improvements and structures thereon or adjoining the same, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By continuing in possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 9 affects the commencement of the Term or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 3; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the Term. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 9, and that Lessor is relying on these acknowledgements and agreements and would not have entered into this Lease without such acknowledgments and agreements by Lessee.

**B.** If improvements are necessary or desirable for Lessee's use of the Premises and are acceptable to Lessor in Lessor's sole discretion, or are required to comply with applicable laws, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to this Lease and all applicable terms and conditions of this Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the Term and removed from the Premises or surrendered to the Lessor pursuant to Section 2(B) above or Section 21 below, as applicable, upon termination of this Lease.

#### **Section 10. Taxes and Utilities.**

**A.** In addition to Base Rent, Lessee shall pay all taxes (including, without limitation, all real estate taxes, head taxes from which it is not exempt, leasehold taxes, and use taxes), special assessments, license fees, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term of this Lease and may become due or levied against the Premises, against Lessee, against any activities and business conducted on the Premises by Lessee or its subtenants, licensees or permitted assigns, or against the Lessee Improvements placed thereon during the Term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current charges of the types described above prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

**B.** Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease Year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

#### **Section 11. Track Clearance.**

**A.** Subject to Lessee's right to install and maintain within such distances platforms, walkways, shelters, and ramps to the extent the same are shown on Exhibit "A" attached, Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 11, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 11, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

**B.** Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 11 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

#### **Section 12. Repairs; Maintenance; Operation.**

**A.** Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, garages, canopies, canopy structures, light facilities, sidewalks, shelters, ramps, storage sheds, walkways, platforms, entrances, exits, tunnels, driveways, curbs, landscaping and lawn areas in a good, clean and orderly condition, and free of accumulation of dirt and rubbish. Lessee is responsible for maintenance of the structural shell of the pedestrian tunnel forming part of the Premises, but prior to undertaking any repairs or maintenance of the same, must secure Lessor's written approval of all plans and specifications for such work, and must comply with all terms of Exhibit "B" attached. Lessee is not responsible for maintenance of and must not undertake any work to the embankment outside of the structural shell of the pedestrian tunnel.

**B.** Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

**C.** In addition to and not as a limitation of any general statements contained in this Lease regarding maintenance, when necessary to ensure the safety and convenience of persons using the Premises, Lessee shall promptly remove ice and snow from the platforms, entrances, exits, sidewalks, walkways, tunnels, and driveways located on the Premises, and, when necessary, shall de-ice the same with commercial products or salt in order that they will be suitable for use.

**D.** Lessee shall, at its sole expense, perform all landscaping and landscape maintenance on the Premises in accordance with the Landscaping Guidelines.

**E.** During the Term of this Lease, Lessee shall provide and offer northbound and southbound train boarding and alighting platforms located within the limits of the Premises.

**F.** Lessee shall provide patrons of commuter train service safe and adequate platforms, walkways, and other appropriate facilities needed for Lessor's commuter passenger operations.

#### **Section 13. Safety; Dangerous and Hazardous Conditions.**

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

#### **Section 14. Indemnity.**

**A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR**



ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;
- (iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 14A, LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. To the fullest extent permitted by law, upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. To the fullest extent permitted by law, Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

#### **Section 15. Equal Protection.**

It is agreed that the provisions of Sections 11, 13, and 14 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 11, 13, and 14.

#### **Section 16. Assignment and Sublease.**

**A.** Lessee shall not assign or otherwise transfer this Lease or any interest herein without obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. Lessee may sublet portions of the Premises to users of the typical type found in commuter rail stations that provide services to riders of the service, except that under no circumstances may Lessee sublet to or allow any use that includes the sale or distribution of alcoholic beverages. For purposes of this Section 16, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

**B.** Any assignment, lease, sublease or transfer made pursuant to Section 16(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

### **Section 17. Liens.**

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section or any other Section of this Lease.

### **Section 18. Insurance.**

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

**A.** All risks property insurance covering all of **Railroad's** property and all improvements on the Premises, including property in the care, custody, or control of Lessee. Coverage shall include the following:

- ◆ Issued on a replacement cost basis.
- ◆ Shall provide that in respect of the interest of **Railroad** the insurance shall not be invalidated by any action or inaction of Lessee or any other person and shall insure the respective interests of **Railroad** as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.
- ◆ Include a standard loss payable endorsement naming **Railroad** as the loss payee as its interests may appear.
- ◆ Include a waiver of subrogation in favor of **Railroad**.

**B.** Commercial General Liability insurance.

This will provide a minimum of \$15,000,000 each occurrence and an aggregate limit of at least \$ 15,000,000, but in no event less than the amount otherwise carried by Lessee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations
- ◆ Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.

This policy shall also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- The definition of "Insured Contract" shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to **Railroad**.
- Additional insured endorsement in favor of and acceptable to **Railroad and Jones Lang LaSalle Brokerage, Inc. and also naming RTA, CRD, and the Northeast Illinois Railroad Corporation as additional insureds**
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by **Railroad and all other insureds**.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(ies) required herein are intended to apply to employees of the policy holder and shall not apply to **Railroad** employees.

No other endorsements limiting coverage may be included on the policy.

**C.** Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad**.
- ◆ Additional insured endorsement in favor of and acceptable to **Railroad**.
- ◆ Separation of insureds.

The policy shall be primary and non-contributing with respect to any insurance carried by **Railroad**.

**D.** Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad and also in favor of the other named additional insureds**.

◆

**E.** If construction or heavy maintenance is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Lease

#### Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under Lessee's care, custody, or control.

All policy(ies) required above (excluding Workers' Compensation, employers' liability and Railroad Protective) shall include a severability of interest endorsement; and Railroad, RTA, CRD, and Northeast Illinois Railroad Corporation shall be named as additional insureds with respect to work performed under this Lease. Severability of interest and naming Railroad and the other additional insureds shall be indicated on the certificate of insurance

Lessee is allowed to self-insure without the prior written consent of **Railroad**, **so long as Lessee first submits and Railroad approves complete audited financial statements or equivalent evidence of financial wherewithal to support the insurance limits contained in this Lease.** If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to executing this Lease, Lessee shall furnish to **Railroad** an acceptable certificate(s) of insurance (or equivalent proof of self-insurance if approved) including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located. Lessee agrees to provide evidence to Railroad that it has the required coverage in place at least annually or upon a renewal or material change of coverage

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense, including but not limited to, defense costs and expenses, shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation, services or work is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming **Railroad and the other names additional insureds** as additional insureds, and shall require that the contractor shall release, defend and indemnify **Railroad** and the other names additional insureds to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railroad** to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability or obligations of Lessee including, without limitation, Lessee's liability and obligations under the indemnity provisions of this Lease. Damages recoverable by **Railroad** shall not be limited by the amount of the required insurance coverage.

These insurance provisions are intended to be a separate and distinct obligation on Lessee's part. Therefore, these provisions shall be enforceable and Lessee shall be bound by them regardless of whether the indemnity provisions of this Lease are determined to be unenforceable in the jurisdiction in which the Premises are located.

The ballasted right-of-way and tracks are not part of the Premises, and it is understood that such areas are excluded from these insurance requirements. Notwithstanding the foregoing, the pedestrian tunnel that passes under the ballasted right-of-way and tracks are included in the insurance requirements hereunder.

For purposes of this section, **Railroad** shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **Section 19. Water Rights and Use of Wells.**

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

#### **Section 20. Default.**

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

- (i) if Lessee violates any safety provision contained in this Lease;
- (ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days' notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them

shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

#### **Section 21. Termination.**

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises. Lessee shall, at Lessor's direction, promptly remove any Lessee Improvements and restore the Premises to either: (i) substantially the state and environmental condition in which it was prior to Lessee's use; or (ii) any improved condition required under this Lease; as Lessor may elect between (i) and (ii) preceding ("Restoration Obligations"), all at Lessee's sole cost and expense. If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, or in the event Lessor has elected to purchase the same as provided herein, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

#### **Section 22. Survival of Obligations.**

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination or expiration date shall survive such termination or expiration.

#### **Section 23. Holding Over.**

If Lessee fails to surrender the Premises to Lessor upon the expiration of the Term or upon any other termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

#### **Section 24. Multiple Party Lessee.**

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

#### **Section 25. Damage or Destruction.**

If at any time during the Term, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease.

#### **Section 26. Eminent Domain.**

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of Lessee Improvements taken by the condemning authority. If this

Lease is terminated under this Section 26, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

**Section 27. Representations.**

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

**Section 28. Signs.**

No new signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

**Section 29. Consents and Approvals.**

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

**Section 30. Captions.**

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease, nor the intent of any provision thereof.

**Section 31. (Intentionally Deleted.)**

**Section 32. Governing Law.**

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

**Section 33. No Waiver.**

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**Section 34. Binding Effect.**

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

**Section 35. Force Majeure.**

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

**Section 36. Entire Agreement/Modification.**

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

**Section 37. Notices.**

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 4(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lessor:

**BNSF Railway Company**  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828  
Attn: \_\_\_\_\_

With a copy to:

**Jones Lang LaSalle Global Services - RR, Inc.**  
4300 Amon Carter Blvd., Suite 100  
Fort Worth, Texas 76155  
Attn: \_\_\_\_\_

**Section 38. Counterparts.**

This Lease may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Lease may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

**Section 39. Relationship.**

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the Term of this Lease, shall remain that of Lessor and Lessee.



**Section 40. Severability.**

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**Section 41. Transferability; Release of Lessor.**

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

**Section 42. Tax Waiver.**

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

**Section 43. Attorneys' Fees.**

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

**Section 44. Flagging.**

Neither Lessee nor its Contractors may conduct any construction or maintenance activities on, or be present on, any portion of Lessor's right-of-way or of the Premises that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagger provided by Lessor. In any case where a flagger or flaggers are required in connection with the presence of individuals on Lessor's rail corridor or the Premises, Lessee shall provide as much advance notice as possible before any entry upon such areas. Lessor shall arrange for the presence of the flagger or flaggers as soon as practicable after receipt of such notice from Lessee. Lessee shall reimburse to Lessor, within thirty (30) days following Lessee's receipt of each bill therefor, Lessor's costs in arranging for and providing the flagger or flaggers, which shall be billed to Lessee at Lessor's then-applicable standard rate.

**Section 45. Lessor's License.**

Nothing in this Lease shall be construed as a termination of Lessor's irrevocable license to maintain and operate commuter service at the present commuter station site, it being the intent of the parties that said license rights shall continue unaffected by the provisions of this Lease.

Executed by the parties to be effective as of the Effective Date set forth above.

LESSOR:

**BNSF Railway Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:

\_\_\_\_\_

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

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

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

**EXHIBIT "A"**

**PREMISES**

## EXHIBIT "B"

### WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Amended and Restated Definite Term Commuter Station Lease (Land and Improvements) ("Lease") dated \_\_\_\_\_, \_\_\_\_\_ by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and the City of Aurora, Illinois, an Illinois municipal corporation ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee performs or uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, maintenance, repairs, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of any Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor in its sole discretion.

2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease. Lessee acknowledges that any such approval by Lessor shall mean only that the Plans meet Lessor's subjective standards, and shall not be deemed to mean that Lessor is warranting, guaranteeing, or giving a professional opinion that the Plans or the Work (i) are structurally sound and appropriate, or (ii) meet the applicable construction standards or codes. Any deficiency in design, construction, or installation (notwithstanding the approval of the Plans by Lessor), shall be solely the responsibility of Lessee. All Lessee Improvements shall be constructed and installed (i) to Lessor's satisfaction; (ii) using new materials; (iii) in substantial accordance with the approved Plans; (iv) in a good and workmanlike manner, free from defects in materials and workmanship; (v) in conformity with all applicable laws, statutes, codes, restrictions, regulations, ordinances, orders, historic preservation sightlines and all other historic preservation requirements under any such designation applicable to the Premises; and (vi) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. Lessee acknowledges that the use of railroad flaggers, at Lessee's expense, may be required by Lessor as a condition of approving certain types of Work. Lessee shall provide as-built drawings of all Lessee Improvements to Lessor promptly upon completion of construction or installation and shall use its best efforts to cause such as-built drawings to be electronically accessible to Lessor.

3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.

4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.

5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.

6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.

7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.

8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter

the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's and its Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14 All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

**BNSF Railway Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT "C"

### Landscaping Guidelines

1. No agreements will be made for any landscaping within 15' of the centerline of the nearest railroad track.
2. Lessor will not agree to the installation of any plants or other features within 20' of the centerline of the nearest track if the mature height of said features is greater than 3'. Any vegetation with a mature height more than 3' high that are planted near the right-of-way must be chosen and placed so that the mature canopy of the vegetation will never encroach within 20' of the nearest track.
3. No alterations or improvements may be made on Lessor's property without Lessor's prior review and written approval. Wherever possible, projects should incorporate a barrier to deter the public from approaching the tracks. Any projects within 500' of an at-grade highway / railroad crossing must be reviewed and approved in writing by the Illinois Commerce Commission as a condition of Lessor's approval.
4. Lessor will not be responsible for any damage done to landscaping on its property. This includes, but is not limited to, damage that was caused by Lessor's own actions.
5. Lessor reserves the right to alter or remove landscaping on its property when, in Lessor's sole discretion, such action is necessary to protect, improve, or promote railroad operations.
6. Anyone performing maintenance on Lessor's property must be qualified through Lessor's contractor orientation program ([www.bnsfcontractor.com](http://www.bnsfcontractor.com)) and carry proof with them while on the property.
7. Anyone performing maintenance or other work which has the potential to foul Lessor's tracks must notify Lessor prior to beginning work and must follow any safety conditions stipulated by Lessor. ("Fouling the tracks" is defined as having any part of any person or equipment within 4' of the nearest rail of any track.) In many cases, such work will require the protection of a qualified railroad flagman, the cost of which shall be borne by the party requesting the work.
8. BNSF reserves the right to change these guidelines at any time.
9. These guidelines apply only to landscaping along the BNSF Metra corridor. For more general information about projects impacting Lessor's ty and facilities, please refer to the BNSF Public Projects Manual, currently available at <http://www.bnsf.com/bnsf-resources/pdf/in-the-community/public-projects-manual-mtm.pdf>.