

DEFINITE TERM LEASE LAND

THIS DEFINITE TERM LEASE FOR LAND ("**Land Lease**") is made to be effective as of the _____ day of _____, 2017 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **CITY OF LAWRENCE**, a municipality formed under the laws of the State of Kansas ("**CITY**").

RECITALS

A. BNSF owns or controls (i) certain land, together with parking and parking-related improvements located thereon, situated at or near the railway station of Lawrence, County of Douglas, State of Kansas, Line Segment 7101-1, Mile Post 26.50 as shown on the attached Drawing No. 46848, dated 01/20/2016, as revised 3/07/2016, attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Land**"), and (ii) certain other improvements located on the Land consisting of that certain depot building (the "**Building**") consisting of one story and containing approximately 4,324 square feet, the footprint of which is located within a portion of the Land as shown on **Exhibit "A"**.

B. BNSF and CITY acknowledge that portions of the Land and Building are used by the National Railroad Passenger Corporation d/b/a AMTRAK, a District of Columbia corporation (together with its successors and assigns, collectively referred to hereinafter as "**AMTRAK**") for passenger rail operations (such portions of the Land and Building, together with other areas used exclusively by AMTRAK located on or adjacent to the Land [e.g., passenger boarding platforms, connecting walkways, parking areas] being collectively referred to hereinafter as the "**AMTRAK Premises**", which AMTRAK Premises are as more particularly described in the BNSF/AMTRAK Lease defined below) pursuant to that certain: (i) agreement between AMTRAK and Burlington Northern Railroad Company ("**BNR**") and The Atchison, Topeka and Santa Fe Railway Company ("**ATSF**") (collectively, BNR and ATSF are predecessors-in-interest to BNSF), dated September 1, 1996, as amended ("**Operating Agreement**") and (ii) Lease Agreement between AMTRAK and BNSF, dated June 15, 2010 (the "**BNSF/AMTRAK Lease**"). The Operating Agreement and the BNSF/AMTRAK Lease are referred to hereinafter collectively as the "**BNSF/AMTRAK Agreements**".

C. In connection with certain economic development objectives, the CITY desires to acquire the Building from BNSF, and BNSF is agreeable to conveying the Building to the CITY, subject to certain terms and conditions. Accordingly, the CITY and BNSF have entered into that certain Conveyance Contract (Improvements Only) ("**Contract**") dated effective _____, 2017.

D. If the conveyance of the Building from BNSF to the CITY proceeds to closing ("**Closing**") as described in the Contract, as part of the Closing deliveries BNSF and the CITY will simultaneously execute this Land Lease [attached to the Contract in the form of Exhibit "D"] under which BNSF (as lessor), will lease the Land underlying the Building to the CITY (as lessee), subject to the BNSF/AMTRAK Agreements.

AGREEMENTS

In consideration of the mutual covenants herein, BNSF and CITY hereby agree as follows:

Section 1. Lease and Term.

A. BNSF leases to CITY and CITY rents the Land from BNSF, subject to the covenants, agreements, terms, provisions and conditions of this Land Lease, for the Term (as defined below).

B. Unless earlier terminated as hereinafter provided, this Land Lease shall commence on the Closing Date (as defined in the Contract) of the conveyance of the Building from BNSF to the CITY under the

Contract (the "**Commencement Date**") and continue in force for the term of thirty (30) years ("**Initial Term**"). Thereafter, the term of this Land Lease shall then automatically continue on a month-to-month basis until terminated by BNSF giving to CITY thirty (30) days' written notice of its desire to terminate the same. Upon the expiration of the time specified in such notice, this Land Lease and all rights of CITY shall absolutely cease. The Initial Term, together with any month-to-month continuation after the conclusion of the Initial Term, is sometimes referred to hereinafter collectively as the "**Term**".

C. Each consecutive twelve-month period during the Term, beginning with the Effective Date of this Land Lease, is herein called a "**Lease Year**."

Section 2. Early Termination/Requirements on Termination.

A. Notwithstanding the Term described above, this Land Lease shall terminate at such time as any of the following may occur ("**Termination Events**"):

- i. BNSF closes the repurchase of the Building pursuant to an Early Repurchase Right under the Contract (as set forth and defined therein), in which case this Land Lease shall terminate as of the closing of the repurchase transaction; and/or
- ii. BNSF shall require the Land (or any portion thereof) for railroad purposes or activities and delivers written notice thereof ("**Termination Notice**") to CITY, in which case this Land Lease shall terminate effective as to the Land (or such portion thereof as is described in the Termination Notice) as of the date which is 180 days after the Termination Notice has been sent.

B. In any case, upon expiration of the Term hereunder, CITY shall have no right to remove any portion of the Building, the Building Renovations (as hereinafter defined) or any other improvements on the Land, but instead shall relinquish possession of the Land to BNSF, including possession of the Building, with all Building Renovations completed and in good condition and repair, less ordinary wear and tear. In the event of any alteration or other condition caused to the Land by CITY and not contemplated under the Building Renovations or otherwise pursuant to the express terms of this Land Lease, CITY shall restore the Land to substantially the state and environmental condition in which it was prior to the creation of such other alterations or conditions. CITY may remove its own equipment or moveable fixtures which are capable of being removed without damage to the Building or Building Renovations (the "**Removables**"), all of which Removables shall be removed by CITY upon such termination at CITY's expense without further compensation from BNSF. Notwithstanding the foregoing, however, the parties acknowledge and agree that the Removables shall not include those items listed in Exhibit "C" (the "**Excluded Personal Property**") attached hereto and incorporated herein by this reference.

C. If BNSF has exercised any Repurchase Right under the Contract (as defined therein) which causes or is a result of a Termination Event (or is triggered by the expiration of the Term as scheduled), then both parties shall fully perform their respective obligations under the Contract in connection with such repurchase.

Section 3. Use and Compliance.

A. For the portions of the Land that are already leased from BNSF to AMTRAK pursuant to the BNSF/AMTRAK Agreements, CITY expressly acknowledges and agrees that this Land Lease is subject and subordinate to the BNSF/AMTRAK Agreements for such Land portions. CITY may use the Land for the purpose of operating and maintaining the Building and for any lawful purpose deemed appropriate by the CITY provided, such use does not interfere with AMTRAK's operations or BNSF's operations, the determination of what constitutes interference being in AMTRAK's or BNSF's sole and absolute discretion, respectively.

Pursuant to the terms of the Contract, CITY may undertake a complete renovation of the Building and associated improvements, including without limitation installation of a geothermal heating/cooling system for the Building (referred to in the Contract and herein collectively as the "**Building Renovations**"). CITY shall not use the Land for any other purposes without the prior written consent of AMTRAK and BNSF. As set forth in the Contract, CITY shall have no rights to use BNSF's microwave tower (the "**Tower**") situated on the Land and/or Building. This Land Lease shall not grant CITY any right to cross any of BNSF's railroad tracks located directly adjacent to the Land.

B. CITY shall comply with all Laws applicable to CITY, this Land Lease and CITY's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance, including compliance with the Americans with Disabilities Act of 1990, as amended, and the regulations promulgated thereunder (collectively, "**ADA**"). As used herein, the term "**Laws**" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over CITY, the Land, this Land Lease, and/or CITY's obligations under this Land Lease, and shall include all Environmental Laws (as defined in **Section 5(A)**) and the ADA.

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

D. In addition to and not in limitation of anything contained in this Land Lease, CITY expressly acknowledges and agrees that its rights with respect to the Land are subject to AMTRAK's rights under applicable federal law, including but not limited to the Rail Passenger Service Act, 49 U.S.C. §§ 24101 *et seq.*, to continue to use the AMTRAK Premises for passenger rail operations (referred to in the Contract and herein collectively as the "**AMTRAK Rights**").

Section 4. Rent.

As of the Effective Date, CITY is paying to BNSF a one time fee of \$100.00 as rent (the "**Base Rent**") for the Land for the entire Term. BNSF hereby acknowledges its receipt of the Base Rent and that no further rental payments will be due from CITY during the Term.

Section 5. Environmental.

A. CITY shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Land, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). CITY shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Land. CITY shall not release or allow the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Land.

B. CITY shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 of any known release of hazardous substances on or from the Land and to BNSF'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 CITY's use of the Land. CITY shall use its best efforts to promptly respond to any release on or from the Land. CITY also shall give BNSF's Manager Environmental Leases immediate notice of all measures undertaken on behalf of CITY to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to BNSF's

Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Land.

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

D. CITY shall promptly report to BNSF in writing any conditions or activities upon the Land 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 CITY's reporting to BNSF shall not relieve CITY of any obligation whatsoever imposed on it by this Land Lease. CITY shall promptly respond to BNSF's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Land except as otherwise described herein. CITY expects to use on the Land the following Hazardous Materials: NONE, and to store on the Land the following Hazardous Materials (as defined in **Section 5(F)** below): NONE; provided, however, that CITY may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in CITY's industry for 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 Land of any Hazardous Materials not disclosed in this **Section 5(E)** is a breach of this Land Lease.

F. For purposes of this Section, "**Hazardous Materials**" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. BNSF may, at its option prior to termination of this Land Lease, require CITY to conduct an environmental audit ("**Exit Audit**") of the Land through an environmental consulting engineer acceptable to BNSF, at CITY's sole cost and expense, to determine if any noncompliance or environmental damage to the Land has occurred during CITY's occupancy thereof. The Exit Audit shall be conducted to BNSF's satisfaction and a copy of the audit report shall promptly be provided to BNSF for its review. CITY shall pay all expenses for any remedial action that may be required as a result of said Exit Audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by CITY prior to termination of this Land Lease.

H. Notwithstanding the foregoing or anything contained to the contrary in this Land Lease, except to the extent caused, aggravated or contributed by CITY or its officers, directors, shareholders, employees, agents, licensees and invitees, CITY shall not be responsible for any Pre-Existing Conditions (as defined below) in or on the Building. For purposes of this Land Lease, "**Pre-Existing Condition(s)**" shall mean any noncompliance or environmental condition(s) in, on or under the Land that CITY can demonstrate, to BNSF's reasonable sole satisfaction, existed prior to CITY's use and occupancy of the Land.

Section 6. Intentionally deleted.

Section 7. Access to Land by BNSF; AMTRAK.

A. BNSF 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 CITY's use of the Land as allowed hereunder, (i) enter the Land for inspection of the Land or to protect the BNSF's interest in the Land or to protect from damage any property adjoining the Land (which includes, without limitation, BNSF's railroad tracks which run adjacent to the Land), (ii) enter the Land to construct, maintain, and operate trackage, 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 Land, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Land, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Land as BNSF may elect if CITY defaults in its obligation to do so, (iv) enter the Land to show the Land to holders of encumbrances on the interest of BNSF in the Land, or to prospective purchasers or mortgagees of the Land, (v) during the twelve (12) months prior to expiration of the Term, exhibit the Land to prospective lessees, and BNSF or its broker may place signage on the Land 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 CITY for any loss of occupancy of the Land, or damage, injury or inconvenience thereby caused.

B. CITY hereby specifically acknowledges and agrees that BNSF shall have the right at all times to come onto the Land for purposes of accessing the Tower located on the Land and/or Building. CITY shall in no way interfere with BNSF's use of the Tower.

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

D. In an emergency, BNSF will be entitled to use any and all means that BNSF may deem proper to open doors, gates, and other entrances to obtain entry to the Land. Any entry to the Land by BNSF 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 Land, or any eviction of CITY from the Land, and any damages caused on account thereof will be paid by CITY.

E. AMTRAK, its employees, agents, licensees, contractors, passengers and invitees shall also have the right to enter the Land for purposes of accessing and using the Building and the Platform (as hereinafter defined) pursuant to the terms of the Station Lease (as defined in the Contract), the Operating Agreement and the BNSF/AMTRAK Lease.

Section 8. Warranties.

Without limitation to the provisions in the Contract, **LESSOR DOES NOT WARRANT ITS TITLE TO THE LAND NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.** This Land Lease is made subject to all outstanding rights or interests of others, including but not limited to the BNSF/AMTRAK Agreements and the AMTRAK Rights. If the Land is subsequently found to be subject to prior claim, this Land Lease shall terminate immediately on notice to that effect from BNSF. CITY accepts this Land Lease subject to that possibility and its effect on CITY's rights and ownership of the CITY Improvements. In case of eviction of CITY by anyone other than BNSF, or anyone owning or claiming title to or any interest in the Land, BNSF shall not be liable to CITY for damage of any kind (including any loss of ownership right to CITY's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 9. Land Condition; CITY Improvements.

A. Without limitation to the provisions in the Contract, subject to the provisions of **Section 5.H** above regarding Pre-Existing Conditions, CITY represents that the Land, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the CITY. CITY 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 BNSF, and without recourse to the BNSF as to the title thereto, the nature, condition or usability thereof, or the uses to which the Land may be put. By taking possession or commencing use of the Land, CITY (i)

acknowledges that it is relying on its own inspections of the Land and not on any representations from BNSF regarding the Land; (ii) establishes conclusively that the Land is at such time in satisfactory condition and in conformity with this Land Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Land in its condition as of the Effective 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 CITY to pay rent as provided above. CITY represents and warrants to BNSF as follows: (i) CITY does not intend to, and will not, use the Land for any purpose other than as set forth in **Section 3**; (ii) CITY has previously disclosed in writing to BNSF all special requirements (but BNSF shall have no responsibility relative to any such special requirement), if any, which CITY may have in connection with this intended use; and (iii) CITY has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Land for CITY's intended use. CITY shall comply with any covenants, conditions or restrictions now or hereafter affecting the Land, and acknowledges that BNSF may place any covenants, conditions or restrictions of record affecting the Land prior to or during the Term. In such event, this Land 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. CITY acknowledges that BNSF has given material concessions for the acknowledgements and provisions contained in this **Section 9**, and that BNSF is relying on these acknowledgements and agreements and would not have entered into this Land Lease without such acknowledgements and agreements by CITY. Notwithstanding the foregoing, if such covenants, conditions or restrictions unreasonably interfere with CITY's use of the Land for the purpose set forth in **Section 3**, in CITY's reasonable discretion, CITY may, upon written notice to BNSF, terminate this Land Lease.

B. If CITY proceeds with Building Renovations, CITY covenants and agrees it will complete the Building Renovations to the Building in accordance with the provisions of the Contract as referenced in Section 3 above. However, no other new improvements are permitted unless approved by BNSF in its sole discretion, and CITY represents that no other improvements are necessary for CITY's use of the Land. CITY hereby represents and warrants that it shall not construct or install any other improvements on the Land during the Term without the advance written approval of BNSF, which approval may be withheld in BNSF's sole discretion. CITY shall have no right to demolish or remove any existing improvements (including the Building) on the Property during the Term or upon expiration thereof.

Section 10. Taxes and Utilities.

A. In addition to Base Rent, CITY shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term of this Land Lease and may become due or levied against the Land, against CITY, against the business conducted on the Land or against the CITY 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 Land Lease. Payment of taxes for any tax year which includes periods before the Term shall be handled as set forth in the Contract. CITY agrees that BNSF shall not be required to furnish to CITY any utility or other services.

B. Without limitation to CITY's obligation to pay taxes as required, should the Land be subject to special assessment for public improvements, CITY shall be responsible for such special assessments in the same manner as other taxes above.

Section 11. Track Clearance.

A. There currently exists a platform ("**Platform**") extending from the Building to the edge of BNSF's railroad tracks adjacent to the Land and this Platform has been approved by BNSF. Aside from maintaining the Platform as a part of the Building as it is currently situated, CITY 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 BNSF's Tracks on or about the Land (nine and one-half (9-1/2) feet on

either side of the centerline of any of BNSF's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of BNSF's Tracks on or about the Land ("**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 CITY 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 CITY strictly complies with the terms of any such Legal Requirement and posts a sign on the Land clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. BNSF's operation over any BNSF's Track on or about the Land with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of CITY contained in this **Section 11** or of BNSF'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.

A. CITY shall, at its sole expense, take good care of the Land and shall not do or suffer any waste with respect thereto and CITY shall promptly make all necessary or desirable Repairs to the Land. The term "**Repairs**" means all reasonable repair and maintenance necessary to keep the Land in good condition and includes, without limitation, replacements, restoration and renewals when necessary. CITY shall keep and maintain any paved areas, sidewalks, curbs, parking lots, landscaping and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. BNSF 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 Land, including but not limited to structural repairs, or to maintain the Land in any manner. CITY acknowledges that BNSF shall have no responsibility for management of the Land.

Section 13. Safety; Dangerous and Hazardous Conditions.

It is understood by CITY that the Land may be in dangerous proximity to railroad tracks, including BNSF's Tracks, and that persons and property, whether real or personal, on the Land 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 Land), and CITY accepts this Land 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 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, REASONABLE 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 LAND LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LAND LEASE;
- (iii) LESSEE'S OCCUPATION AND USE OF THE LAND;
- (iv) SUBJECT TO THE PROVISIONS OF SECTION 5.H ABOVE REGARDING PRE-EXISTING CONDITIONS, THE ENVIRONMENTAL CONDITION AND STATUS OF THE LAND 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 ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES (1) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE OR (2) WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 14A, SUBJECT TO THE PROVISIONS OF SECTION 5.H ABOVE REGARDING PRE-EXISTING CONDITIONS, LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE LAND 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 LAND AS CONTEMPLATED BY THIS LAND 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. SUBJECT TO THE PROVISIONS OF SECTION 5.H ABOVE REGARDING PRE-EXISTING CONDITIONS, IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE LAND.

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. Upon written notice from BNSF, CITY agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Land Lease for which CITY has an obligation to assume liability for and/or save and hold harmless any Indemnatee. CITY shall

pay all costs incident to such defense, including, but not limited to, reasonable 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, AMTRAK, permitted to use BNSF'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. CITY shall not (i) assign or otherwise transfer this Land Lease or any interest herein, or (ii) sublet the Land or any part thereof, without, in each instance, obtaining the prior written consent of BNSF, which consent may be withheld in BNSF's sole and absolute discretion. Any person or legal representative of CITY, to whom CITY's interest under this Land Lease passes by operation of law, or otherwise, will be bound by the provisions of this Land 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 CITY hereunder and executes, acknowledges and delivers to BNSF an agreement, in form and substance satisfactory to BNSF, whereby the assignee assumes the obligations and performance of this Land Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of CITY to be performed or observed. CITY covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Land Lease, and notwithstanding the acceptance of rent by BNSF from an assignee or transferee or any other party, CITY will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Land Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Land Lease on the part of CITY to be performed or observed.

Section 17. Liens.

CITY 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 CITY on the Land. BNSF is hereby authorized to post any notices or take any other action upon or with respect to the Land that is or may be permitted by law to prevent the attachment of any such liens to the Land; provided, however, that failure of BNSF to take any such action shall not relieve CITY of any obligation or liability under this Section or any other Section of this Land Lease.

Section 18. Insurance.

The City of Lawrence, Kansas self-funds its assumed liabilities, including but not limited to bodily injury, motor vehicle and property damage. The City's self-funding arrangement is in accordance with K.A.R. 28-29-19.

Nothing herein shall be deemed a waiver of any rights and/or defenses provided by law including, but not limited to, the Kansas Torts Claim Act; K.S.A. 75-6101 et seq. and the Notice of Claim Statute; K.S.A. 12-105b.

Finally, the City of Lawrence, Kansas is self-insured for the purposes of workers' compensation pursuant to permit 873 issued by the State of Kansas, Department of Labor, Office of Workers Compensation.

CITY shall cause its contractor ("**Contractor**") to, at its sole cost and expense, procure and maintain during the life of this Land Lease the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000, but in no event less than the amount otherwise carried by CITY. 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

This policy shall also contain the following endorsements or language, which shall be indicated on 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.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) 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.

B. 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**.

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

- ◆ CITY'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**.

D. If construction is to be performed on the Land by CITY, CITY or CITY'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 BNSF prior to performing any work or services under this Land Lease.
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

CITY 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. CITY 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 CITY's care, custody or control.

CITY is allowed to self-insure without the prior written consent of **Railroad**. Any self-insured retention or other financial responsibility for claims shall be covered directly by CITY in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Land Lease, be covered by CITY's insurance will be covered as if CITY elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Land, CITY shall furnish to **Railroad** an acceptable certificate(s) of self-insurance.

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 Land is located.

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 is to be contracted by CITY, CITY shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming **Railroad** as an additional insured, and shall require that the contractor shall release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as CITY 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 Land Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of CITY's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by CITY shall not be deemed to release or diminish the liability of CITY including, without limitation, liability under the indemnity provisions of this Land Lease.

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 Land Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the BNSF which may be appurtenant to the Land. All right, title, and interest in and to such water is expressly reserved unto BNSF, and the right to use same or any part thereof may be obtained only by the prior written consent of the BNSF. Except for groundwater monitoring wells required by governmental authorities to be installed, if any, CITY shall not use, install or permit to be installed or used any wells on the Land without the prior written consent of BNSF.

Section 20. Default.

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

(i) if CITY fails to perform, comply with or observe any agreement, obligation or undertaking of CITY in this Land Lease (other than a monetary obligation), and such failure continues for a period of ninety (90) days after CITY receives written notice from the BNSF specifying the failure; provided, however, that if such failure cannot be reasonably cured within such ninety (90) day period, CITY shall not be deemed to be in default hereunder if CITY commences such cure within said ninety (90) day period and thereafter diligently pursues such cure to completion.;

(ii) if CITY fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Land Lease and such failure continues thirty (30) days after written notice from BNSF to CITY of CITY's failure to make such payment or perform such obligations;

(iii) if a decree or order of a court having jurisdiction over the Land for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over CITY or over all or a substantial part of the property of CITY shall be entered; or if CITY becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of CITY or of all or a substantial part of the property of CITY shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of CITY 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 Land is abandoned or vacated by CITY; or

(v) if there is an event of default by CITY (after applicable cure periods) under the Contract.

B. If an Event of Default occurs as provided above, BNSF may, at its option, (i) terminate this Land Lease by serving five (5) days notice in writing upon CITY, in which event CITY shall immediately surrender

possession of the Land to BNSF (together with the Building thereon with all Building Renovations and without any obligation of BNSF to pay CITY any amount with respect thereto), without prejudice to any claim for arrears of rent or breach of covenant, or (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by CITY of the applicable provisions of this Land Lease or to recover damages for a breach thereof. The foregoing rights and remedies given to BNSF 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 BNSF at any time of a different or inconsistent remedy. If, on account of breach or default by CITY of any of CITY's obligations hereunder, it shall become necessary for the BNSF to employ an attorney to enforce or defend any of BNSF's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by BNSF for reasonable attorneys' fees shall be paid by CITY. Any waiver by BNSF of any default or defaults of this Land Lease or any delay of BNSF 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 Land Lease for any subsequent default or defaults, nor shall any such waiver in any way affect BNSF's ability to enforce any Section of this Land Lease. The remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that BNSF may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until BNSF has actual knowledge of a breach or default.

Section 21. Survival of Obligations.

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

Section 22. Holding Over.

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

Section 23. Multiple Party CITY.

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

Section 24. Damage or Destruction.

If the whole or any part of the Building on the Land shall be destroyed or damaged by fire or other casualty, then the CITY shall, at the CITY's sole cost and expense, promptly restore, rebuild and repair the Building (and all associated improvements) to the same condition as existed prior to such casualty, using all diligent efforts to complete same as soon as possible.

Section 25. Eminent Domain.

If any part of the Building and/or Land is taken by a public authority (other than CITY) under the power of condemnation or eminent domain or by purchase in lieu thereof (a "**Taking**") to such an extent that the Building and Land cannot reasonably be restored to a functional and complete unit of substantially similar quality and character as existed prior to the Taking (a "**Full Taking**"), then this Land Lease shall terminate. All awards, proceeds, compensation or other payments from or with respect to any Taking ("**Condemnation Proceeds**") shall be split between the CITY and BNSF as follows: BNSF shall receive a portion of all Condemnation Proceeds for the Taking of the Building and Land equal to the Applicable Amount (as hereinafter defined) and the CITY shall retain the balance. As used herein, the BNSF's "**Applicable Amount**"

shall mean the greater of: (i) a fraction, the numerator of which is the number of months which have elapsed in the Term and the denominator of which is the total number of months in the Term, multiplied by the amount of Condemnation Proceeds, or (ii) the total available Condemnation Proceeds, less an amount equal to the Early Repurchase Price that BNSF would have paid under the Contract if it had exercised an Early Repurchase Right thereunder with an Early Repurchase Closing on the date of the Taking. In addition to the above, in such event BNSF shall have the right to repurchase whatever portion of the Building that remains pursuant to BNSF's End of Term Repurchase Right as defined and described in the Contract.

Section 26. Representations.

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

Section 27. Signs.

Any signs placed upon the Land will be placed in accordance with applicable sign code provisions or other approvals. Signs will not interfere with BNSF's railroad operations, or infringe on BNSF Railway's registered trademarks.

Section 28. Consents and Approvals.

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

Section 29. 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 Land Lease or the intent of any provision thereof.

Section 30. No Recordation.

It is understood and agreed that this Land Lease shall not be recorded in the public records of the county in which the Land is located.

Section 31. Governing Law.

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

Section 32. No Waiver.

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

Section 33. Binding Effect.

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

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Land Lease, if either party is delayed or hindered in, or prevented from the performance required under this Land 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 35. Entire Agreement/Modification.

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

Section 36. 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, (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth, or (iv) sent by telecopy transmission (if a machine generated confirmation is generated with the transmission). 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 BNSF 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 BNSF. 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 Land 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 CITY:

City of Lawrence, Kansas
Attention: City Manager
6 East 6th Street, P.O. Box 708
Lawrence, KS 66044
Fax: (785)832-3405

If to BNSF:

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Attn: _____

Fax: _____

With a copy to:

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155-2670

Attn: Transaction Manager

Fax: _____

Section 37. Counterparts.

This Land 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 Land 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 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Land 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 Land Lease, shall remain that of BNSF and CITY.

Section 39. Severability.

If any clause or provision of this Land Lease is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Land Lease shall not be affected thereby, and it is also the intention of the parties to this Land Lease that in lieu of each clause or provision of this Land Lease that is illegal, invalid or unenforceable, there be added, as a part of this Land 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 40. Third Party Beneficiary.

BNSF and CITY acknowledge and agree that AMTRAK is a third party beneficiary of **Sections 3(A); 3(D); 7(E);** the second sentence of **8; 11; 12(A); 13; 14** and **15** of this Lease

Section 41. Tax Waiver.

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

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Land 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 43. Contract.

This Land Lease is subject to the terms of the Contract. In the event of any conflict between the provisions of this Land Lease and the provisions of the Contract, the Contract shall control.

[Signature Page and Exhibits Follow – The Balance of This Page Has Been Intentionally Left Blank]

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

LESSOR

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

LESSEE

CITY OF LAWRENCE, a municipality formed under the laws of the State of Kansas

By: _____
Name: _____
Title: _____

EXHIBIT "A"

DESCRIPTION OF LAND AND BUILDING FOOTPRINT

[see attached]

EXHIBIT "B"

RESERVED

EXHIBIT "C"

LISTING OF EXCLUDED PERSONAL PROPERTY

Original lounge/lobby chairs and footstools
Original office desks and office chairs
Original louver blinds
Luggage/baggage cart