

CT-00151

**COLUMBIA TERMINAL
LEASE AGREEMENT FOR USE OF RAILROAD RIGHT-OF-WAY**

This agreement made and entered into this ____ day of _____, 2022, by and between the City of Columbia, Missouri, (hereinafter "Columbia Terminal" or "CT") and White Oak Investment Properties, an LLC organized in the State of Missouri, whose address is 9550 South Tomlin Road, Columbia, MO 65203 (hereinafter "Lessee"). CT and Lessee are each individual referred to herein as a "Party" and collectively "Parties".

WHEREAS, CT owns and operates a line of railroad trackage between Columbia and Centralia, Missouri, and a railroad terminal facility at 6501 Brown Station Road in Columbia, Boone County, Missouri; and

WHEREAS, Lessee desires the privilege of nonexclusive occupation and the nonexclusive use of approximately 3707 square feet of land belonging to the CT and located in the State of Missouri, County of Boone, for purposes of use as a vehicle parking lot.

WHEREAS, CT is willing to grant Lessee permission to use CT's property at Lessee's own risk for the purposes of vehicle parking, provided that Lessee complies with the terms and conditions outlined in this Agreement.

NOW, THEREFORE, in consideration of the Premises and the rental herein provided, as well as the covenants and conditions set forth below, CT does hereby grant unto Lessee permission to use and occupy the Premises described herein for the limited purposes set forth herein, upon the following terms and conditions.

1. Location: The location of the area to be leased for vehicle parking is shown on Exhibit A and described on Exhibit B and hereinafter referred to as the Premises.
2. Right of use for a limited purpose: Subject to the payment of rent and compliance with the terms of this agreement, CT grants Lessee a lease for the limited purpose of vehicle parking on CT's property.
 - a. The Parties agree that this is a nonexclusive right to use the Premises for vehicle parking.
 - b. The Parties agree that Lessee shall use the Premises for vehicle parking at Lessee's own risk.
 - c. Lessee's nonexclusive use of Premises shall not interfere with CT's use of the property or railroad.
 - d. Subject to the terms and limitation set forth in this Agreement, CT promises that Lessee, if not in default, shall peaceably have, hold and enjoy the nonexclusive right to use the Premises as provided herein for the term of this Agreement, or any renewal or extension thereof.
 - e. CT is not responsible for any losses incurred by Lessee's use of the Premises.
 - f. The Premises shall be used only for the purpose mentioned herein and for no other purpose with the written permission of CT nor shall the Premises or any structure thereon be sold or sublet nor shall this lease be assigned without the prior written consent of CT.
 - g. CT shall retain the right to enter the leased Premises.
 - h. Lessee shall install improvements substantially as shown on Exhibit C, including but not limited to, installation of a pavement for vehicle parking, storm water facilities necessary

- to serve the parking area, removal of the existing shed located within the leased area, sidewalk along Fay street across the railroad, landscaping on the right-of-way adjacent to the leased area and maintenance of landscaping and parking area.
- i. The Facility shall be installed, constructed and maintained at a time, in a manner, with such material, under such general conditions and in accordance with plans and specifications as have been approved by the Director of Utilities.
 - j. The Facility shall be constructed at the sole cost and expense of the Licensee, including any necessary expense incurred by CT in protecting its tracks, equipment or traffic, etc., due to the construction, operation, maintenance or removal of the Facility. The Licensee shall, after completing the construction of the Facility, restore the premises of the CT to the same or as good a condition as they were in prior to commencing the construction of such Facility.
3. Rent: As consideration for the nonexclusive right to use the Premises, beginning on the effective date of this Agreement, Lessee shall pay to CT an annual rental fee. The rent will be \$1.00 annually.
 4. CT's use of Premises: Lessee's use of the Premises shall not interfere with CT's use of the site nor shall it interfere with CT's use of the railroad. In the event Lessee's use does interfere with CT's use of the site or facility, CT shall give Lessee written notice of such interference and Lessee shall have thirty (30) days from the date of such notice to end any such interference. CT's obligation to give Lessee notice of such interference and an opportunity to end the interference shall not preclude CT from taking those steps it deems necessary to protect its operation from such interference. Failure of Lessee to end the interference within thirty (30) days may be considered by City as a breach of this Agreement by Lessee.
 5. Insurance: Lessee shall obtain and maintain liability insurance in an amount not less than One Million Dollars (\$1,000,000) for any incident and Two Million Dollars (\$2,000,000) in aggregate, with a self-insured retention not exceed Twenty five Thousand Dollars (\$25,000), naming as additional insured, City of Columbia, Missouri. Lessee's insurance policy shall include coverage for Federal Employers Liability Act (FELA) claims. Said insurance shall be Primary and Non-Contributory and shown as such on the Certificate of Insurance provide to CT. Lessee shall provide a copy of said policy to CT annually upon obtaining coverage, and shall provide evidence of the fact of said coverage at any reasonable time upon request of CT.
 6. Indemnification: To the extent allowed by Law, Lessee agrees to assume all risks and liability and to indemnify and hold harmless CT, its officers, agents and employees from and against any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees of CT arising out of Lessee's activities on the Premises or use of the Premises by Lessee, and shall defend and indemnify and hold harmless CT, its officers, agents and employees for any and all claims, damages, suits costs, expense, liability, actions or proceeding of any and all nature whatsoever in any way resulting from or arising out of, directly or indirectly from the activities of Lessee on, or the Lessee's use of, the Premises. Whenever any loss of, damage to, or destruction of any property whatsoever (exclusive of normal wear and tear), or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife and vegetation, occurs in connection with the operation of Lessee at the Premises, Lessee shall assume all liability therefore and shall bear all cost and expense in connection therewith, and shall forever protect, defend, indemnify and save harmless CT and its directors, officers, against and employees, from and against any such liability, cost and expense.
 7. Term: Beginning as of the Effective Date, the term of this Agreement shall be one (1)

year from the date of the execution of the Agreement by CT (the "Term"). This agreement shall automatically renew for an additional one (1) year (each being a "Renal Term") unless the Agreement is terminated by one Party giving the other notice of its intent to do so at least thirty (30) days prior to the expiration of the current term.

8. Termination:
 - a. Termination by CT: CT shall conduct an annual review at the end of each contract year to determine if Lessee has met all of the following conditions: (1) paid all CT invoices when due; and (2) maintained insurance required herein. Should CT's annual review determine that one or more of the above described conditions has not been met, CT shall notify Lessee in writing and allow Lessee thirty (30) days to correct the condition, except that CT shall not allow Lessee to use the Premises should the insurance be found deficient. CT has the right to terminate this Agreement after thirty (30) days from the date of the first notification in writing should conditions not be resolved.
 - b. Termination by Lessee: Lessee may terminate this Agreement upon thirty (30) day written notice to CT. In the event of termination of this Agreement as provided above, Lessee shall vacate the Premises in an orderly manner.
 - c. Termination for Cause: If said rent, or any part thereof, shall remain unpaid for thirty (30) days after it shall become due, and without demand made therefor; or if said Lessee shall assign this lease or underlet said leased Premises, or any part thereof, or if said Lessee's interest therein shall be sold under execution or other legal process, with the written consent of CT, its successor or assigns, or if said Lessee or any assignee of this lease shall make an assignment for the benefit of Lessee's or assignee's creditors; or if proceedings in bankruptcy shall be instituted by or against Lessee or any assignee; or if a receiver or trustee be appointed for the property of the Lessee or any assignee; or if this lease by operation of law pass to any person or persons; or if said or any assignee shall fail to keep any of the over covenants of this lease, it shall be lawful for said CT, its successors or assigns, into said Premises to re-enter, and to repossess and enjoy as in the first and former estate; and thereupon this lease and everything herein contained on said CT's behalf be done and performed shall cease and be utterly void.
 - d. CT may revoke this license at will, at any time, for any reason or no reason at all. The City Manager and Director of Utilities shall have the authority to revoke the license and revocation shall be in writing and shall immediately terminate the License Agreement from the date notice is sent.
9. Effect of Termination: Upon termination or expiration of this Agreement, Lessee shall remove all improvements and restore the site to substantially the condition existing on the Effective Date. Any of Lessee's equipment or property that remains on the Premises after termination or expiration of this Agreement shall be deemed abandoned and CT shall be entitled to dispose of the equipment or property in whatsoever manner CT deems appropriate.
10. Assignment: This Agreement shall not be assigned by Lessee without the express written consent of CT. CT may assign this Agreement to any successor or transferee and CT shall notify Lessee in writing within thirty (30) days of such an assignment.
11. Accommodation: Lessee understands and agrees that CT owns, operates and maintains a railroad as a freight railroad and uses the Premises for other purposes as needed. Lessee agrees that Lessee's use of the Premises is done as an accommodation to Lessee and is not an agreement by CT to create a transferable business interest in CT's property of the benefit of Lessee or to subordinate CT's use of the property to Lessee.
12. Incorporation: This Agreement incorporates all agreements and understandings of the parties. No prior or subsequent agreements shall be binding unless executed in writing by the Parties. If any section of this Agreement is declared null or void, it shall not affect the remaining provisions of this Agreement.

13. Designated Representatives and Notices: All notices must be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law.

For Notice to Licensee:
White Oak Investment Properties, LLC
Attn: Gardell Powell
9550 S. Tomlin Hill Road
Columbia, MO 65201

For Notice to CT:
City of Columbia
Director of Utilities
P.O. Box 6015
Columbia, MO 65205

14. Compliance with Laws and Rules: Lessee shall operate its equipment and use the site in a manner which complies with all the laws, regulations and rules of all federal, state and municipal agencies which govern the site. Lessee's use of the premises shall be in compliance with CT's operating rules.
15. Choice of Law and Venue: This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Missouri and the laws of the United States. The venue for all litigation arising out of, or relating to, this Agreement shall be Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of form non conveniens.
16. Nuisances Prohibited: Lessee shall not create nor permit to be created or to exist upon the lease Premises any nuisance, public or private, during the continuance of this Agreement and shall save and keep harmless CT from any suit or claim growing out of any nuisance thereon or Lessee's violation of any applicable laws, ordinances or governmental regulations because of or arising from the condition of the leased Premises or any use thereof or operations thereon by Lessee or those claiming, by through or under Lessee.
17. This Agreement is for the sole benefit of CT and Licensee. Nothing in this Agreement is intended to confer any rights or remedies on any third party.
18. This Agreement constitutes the entire Agreement and understanding of the parties. No modification, amendment or waiver of any provisions of this Agreement or any of the rights or obligations arising hereunder shall be valid unless in writing and executed by both parties. This Agreement supersedes any prior agreements or understandings between them whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed in their respective names by their respective duly authorized representatives as of the date first above written.

CITY OF COLUMBIA, MISSOURI

BY: _____
De'Carlton Seewood, City Manager

TMS

ATTEST

Sheela Amin, City Clerk

APPROVED AS TO FORM

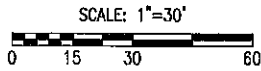
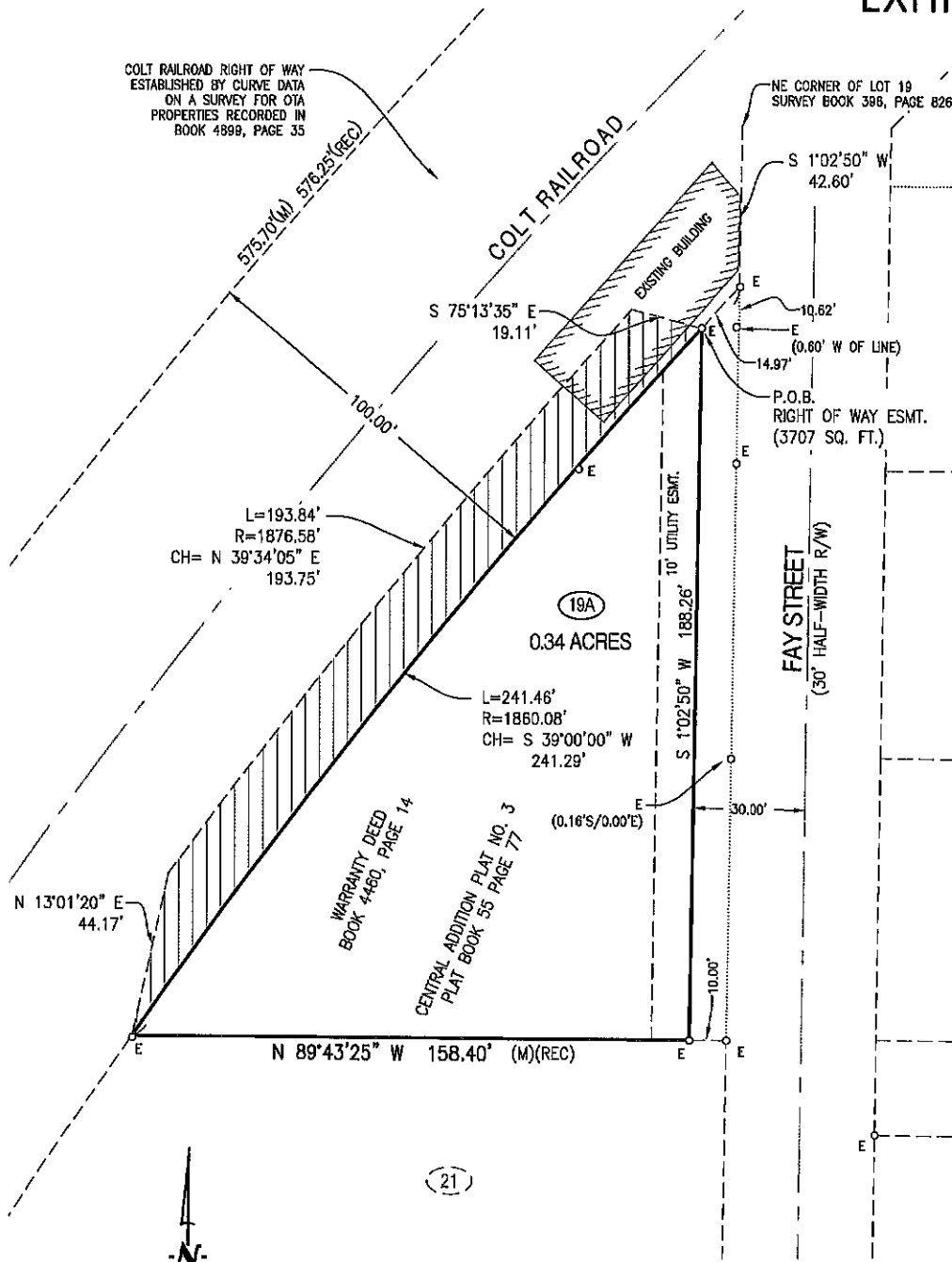
Nancy Thompson, City Counselor

LICENSEE:
BY:  _____
Gardell Powell

Title: _____
Manager

Address of Licensee:
9550 S. Tomlin Hill Road
Columbia, MO 65201

EXHIBIT A



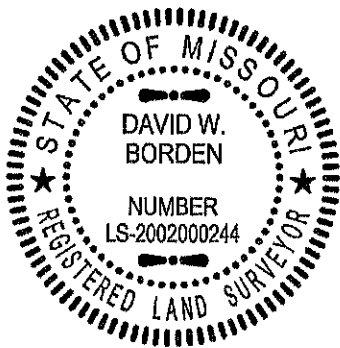
BEARINGS ARE REFERENCED TO GRID NORTH, OF THE MISSOURI STATE PLANE COORDINATE SYSTEM (CENTRAL ZONE), OBTAINED FROM GPS OBSERVATION.

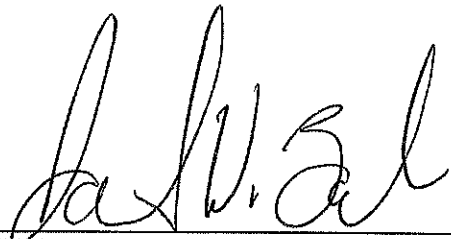
CROCKETT ENGINEERING CONSULTANTS 1000 W. Nifong Blvd., Building 1 Columbia, Missouri 65203 (573) 447-0292 www.crockettengineering.com	CORPORATE NUMBER: 200015304		RIGHT OF WAY ESMT. WHITE OAK INVESTMENT PROPERTIES, LLC CENTRAL ADDITION PLAT NO. 3 SEC 7- T48N - R12W COLUMBIA, BOONE COUNTY, MISSOURI ADDRESS:
	DATE: 2/18/2022	SCALE: 1" = 30'	
PROJECT: 120206	DRAWN BY: DWB		

EXHIBIT B

A TRACT OF LAND LOCATED IN SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE COLT RAILROAD RIGHT OF WAY, AS DESCRIBED BY A SURVEY RECORDED IN BOOK 4899, PAGE 35 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 19A, CENTRAL ADDITION PLAT NO. 3, RECORDED IN PLAT BOOK 55, PAGE 77 AND WITH THE NORTHWEST LINE OF SAID LOT, SAID LINE ALSO BEING THE SOUTHEAST RIGHT OF WAY LINE FOR SAID COLT RAILROAD, 241.46 FEET ALONG A 1860.08-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 39°00'00"W, 241.29 FEET; THENCE LEAVING SAID LINES, N 13°01'20"E, 44.17 FEET; THENCE 193.84 FEET ALONG A 1876.58-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, N 39°34'05"E, 193.75 FEET; THENCE S 75°13'35"E, 19.11 FEET TO THE POINT OF BEGINNING AND CONTAINING 3707 SQUARE FEET.





DAVID W. BORDEN, PLS-2002000244
2-18-22
DATE

CROCKETT ENGINEERING CONSULTANTS 1000 W. Nifong Blvd. Building 1 Columbia, Missouri 65203 (573) 447-0292 www.crockettengineering.com	CORPORATE NUMBER 2000151304	RIGHT OF WAY ESMT. WHITE OAK INVESTMENT PROPERTIES, LLC LOCATED IN S7-T48N-R12W COLUMBIA, BOONE COUNTY, MISSOURI
	DATE: 2/18/2022	
	PROJECT: 120206	

EXHIBIT C

