

# REAL ESTATE LEASE AGREEMENT

THIS LEASE dated as of \_\_\_\_\_, 2016 between, **STILLWATER CENTRAL RAILROAD, LLC, 315 West 3<sup>rd</sup> Street, Pittsburg, Kansas 66762** (“Lessor”) and **CITY OF STILLWATER, a municipal corporation, 723 South Lewis, Stillwater, Oklahoma 74076** (“Lessee”).

For and in consideration of the mutual benefits and obligations set forth in this Lease, the Parties agree to be bound as follows:

## 1. LEASED PROPERTY.

Lessor hereby leases to Lessee the property (“Property”) (sometimes referred to as the “Leased Premises”) located in the City of Stillwater, County of Payne, and State of Oklahoma, and more particularly described in **Exhibit A** to this lease.

## 2. TERM.

The term of this Lease (“Lease Term”) shall commence at 12:01 a.m. on **October 1, 2016** (“Commencement Date”) and shall last for a period of 93 days ending at 11:59 a.m. on the date immediately preceding the anniversary date of the Commencement date **January 1, 2017** (“Termination Date”). The Lease will terminate at 11:59 a.m. on January 1, 2017 unless earlier terminated by either party with (30) days written notice.

## 3. RENT.

**3.1** Rent for the Leased Premises (“Rent”), shall be **\$600.00 for a one-time rental fee**, payable in advance, on the Commencement Date. Lessee shall send payment to Watco Transportation Services Attn: Real Estate Dept. **315 W. 3<sup>rd</sup> ST. Pittsburg, KS 66762** or to such other address as Lessor may indicate by written notice to Lessee in accordance with the terms of this Lease.

## 4. USE.

**4.1** Lessee shall use the Leased Premises solely to build a sidewalk for a pedestrian walkway to provide railcar passengers to load and unload in connection with the Polar Express and for no other purpose (“Use”), without the prior written consent of Lessor.

**4.2** Neither Party shall allow the Leased Premises to be used by any other person or firm without the prior written consent of the other Party.

**4.3** Lessee shall, at its sole cost and expense, promptly comply with all present and future laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any governmental authority or court of competent jurisdiction affecting the Use and condition of the Leased Premises and any equipment placed or used thereon and Lessee’s operations and activities

on  
the Leased Premises (“Legal Requirements”). Lessee shall obtain all permits required by any federal,  
state, municipal or other governmental entity necessary for Industry’s Use of the

Leased Premises as outlined in this Section.

**5. RESERVED FACILITIES.**

**5.1** Lessor reserves the right to operate, maintain, repair, replace, augment, or relocate (provided that said relocation does not unreasonably interfere with Lessee's Use of the Leased Premises for the purposes set forth in Section 4) any Reserved Facilities, as defined in Section 5.2, existing within or adjacent to the Leased Premises. This Lease is subject and subordinate to any right which Lessor or any easement holder, lessee, or licensee of Lessor may have in the Reserved Facilities. Lessee shall not interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto.

**5.2** "Reserved Facilities" means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles and guys for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.

**5.3** Lessor reserves the right to use the Leased Premises provided that such use does not unreasonably interfere with the Use thereof by Lessee.

**5.4** Lessee shall maintain prescribed clearances for all railroad tracks on or adjacent to the Premises. All such clearance areas shall be kept free of any obstruction.

**6. UTILITIES.**

Lessee, at its sole cost and expense (including fees for permits and similar documents), shall obtain all utility services required or desired by Lessee, including the installation of meters and submeters if none exist. Lessee shall be responsible for all charges for utilities consumed by, and supplied to, Lessee by the provider thereof. To the extent any existing utility services on the Leased Premises are used by Lessee with Lessor's prior, written consent, and are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion of the cost of the utility services.

**7. CONDITION OF PREMISES AND MAINTENANCE.**

**7.1** Lessee will construct a sidewalk on the Leased Premises. The type of materials to be used in the construction of this sidewalk is to be determined by the parties. The constructed sidewalk shall be used for the purpose of loading/unloading passengers for the Polar Express. The constructed sidewalk shall become the property of Lessor upon termination of the Lease.

**8. IMPROVEMENTS.**

Lessor acknowledges Lessee will be installing a sidewalk for ingress and egress of loading and unloading passengers in connection with the Polar Express.

**9. ASSIGNMENT AND SUBLETTING.**

Lessee shall not assign, license or transfer any portion of Lessee's interest in this Lease or the Leased Premises without the prior written consent of Lessor, and any attempt to do so without such consent shall render same null and void. Lessee shall not permit any security interest in any third party to attach to the Leased Premises or any part thereof, or any improvements or any personal property now or hereafter placed or kept thereon, without the prior written consent of Lessor, and any attempt to do so without such consent shall render same null and void.

**10. CONDEMNATION.**

Subject to Lessee's right to recover from Lessor an amount equal to the depreciated value of the improvements that were placed on the Leased Premises by Lessee with Lessor's consent, if all or any part of the Leased Premises shall be acquired or taken under eminent domain proceedings, or transferred to a public authority in lieu of such proceedings, Lessor may terminate this Lease as of the date when possession is taken. Subject to the above, all damages awarded for such taking shall belong to and be the property of Lessor and Lessee shall have no claim against Lessor by reason of such taking or termination and shall not have any claim or right to any portion of the amount that may be awarded or paid to Lessor as a result of any such taking. In addition to the above, Lessee may make claims against the condemning authority for moving expenses, loss of fixtures, or other matters which do not affect the award otherwise payable to Lessor so long as such claim does not reduce the award otherwise payable to Lessor.

**11. DEFAULTS AND REMEDIES.**

**11.1** Should Lessee default in: (1) fulfilling any of the covenants or obligations of this Lease other than the covenants for making payments; or (2) if the Leased Premises become vacant or deserted; or (3) if the Leased Premises are damaged by reason of negligence or carelessness of Lessee, or its agents, then, in any one or more of such events, upon Lessor serving a thirty (30) day notice upon Lessee specifying the nature of said default, and upon the expiration of said thirty (30) days, if Lessee shall have failed to remedy such default, or if the said default or omission complained of shall be of such a nature that the same cannot be completely cured or remedied within said thirty (30) day period and Lessee has not diligently commenced curing such default within such thirty (30) day period and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Lessor may serve a three (3) day notice of termination of this Lease upon Lessee, and upon the expiration of said three (3) days, this Lease and the Lease Term hereunder shall end and expire and Lessee shall then quit and surrender the Leased Premises to Lessor.

**11.2** If the notice provided for in Section 15.1 hereof shall have been given, and the term shall have expired as aforesaid; or (i) if Lessee shall default in making a timely payment as herein provided; or (ii) if any execution or attachment shall be issued against Lessee or any of Lessee's property whereupon the Leased Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee; or (iii) if there occurs a Bankruptcy Default as defined in Section 16 hereof; then, and in any of such events, Lessor may, without notice, re-enter the Leased Premises either by force or otherwise, and dispossess Lessee and the legal representatives of Lessee or other occupant of the Leased Premises, by summary proceedings or otherwise, and remove their

effects. Lessee hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Lessee shall default hereunder prior to the date fixed as the commencement of any renewal or extension of this Lease, Lessor may cancel and terminate such renewal or extension agreement by written notice.

**11.3** Lessor may, in addition to any other remedies set forth in this Section, suspend rail service (if applicable) in the event Lessee breaches any of the covenants in this Lease, and such suspension may continue until such breach is remedied.

**12. DISCONTINUANCE.**

Lessor shall not be responsible for any loss or damage sustained by Lessee in consequence of any temporary elimination of the Tracks, or service thereover, due to circumstances beyond Lessor's reasonable control. However, the payment of any rent or additional rent will be prorated for the period of time the Tracks are out of service or service has been suspended under this section.

**13. NO WAIVER.**

The waiver by Lessor of any breach by Lessee of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained. No covenant, term, obligation or condition of this Lease shall be deemed to have been waived by Lessor, unless such waiver is in a notice to Lessee executed by Lessor.

**14. NOTICES.**

Every notice, approval, consent, or other communication desired or required under this Lease shall be effective only if the same shall be in writing and sent postage prepaid by United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address set forth below, or such other address as either party may designate by notice given from time to time in accordance with this Section.

**Lessor:**

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With copy to:

Watco Transportation Services  
Attn: Real Estate Department  
315 W. 3<sup>rd</sup> St.  
Pittsburg, KS 66762

**Lessee:**

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City of Stillwater a municipal corporation  
723 South Lewis  
Stillwater, Oklahoma 74076

**15. QUIET ENJOYMENT.**

Nothing herein contained shall imply or import a covenant on the part of Lessor for quiet enjoyment.

**16. ENTIRE AGREEMENT.**

The entire agreement between Lessor and Lessee is set forth in this Lease and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this Lease. No change or modification of any of the covenants, terms or provisions hereof shall be valid unless in writing and signed by the parties hereto.

**17. HEADINGS.**

The heading of each section of this Lease is for convenience only and it shall not affect any construction or interpretation of this Lease.

**18. RIGHT TO INSPECT AND EXHIBIT.**

Lessor shall have the right to enter the Leased Premises at reasonable hours in the day or night to examine and inspect the Leased Premises, make such repairs, additions or alterations as it may deem necessary for the safety, preservation or restoration of the Leased Premises and the improvements, if any, located thereon (there being no obligation, however, on the part of Lessor to make any such inspections, repairs, additions or alterations), or to exhibit the Leased Premises to prospective purchasers.

**19. SEVERABILITY.**

If any term, covenant, obligation or condition of this Lease or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each covenant, agreement, obligation and other provision of this Lease is and shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, and not dependent on any other provision of this Lease unless expressly so provided.

**20. THIRD PARTY BENEFICIARY.**

Nothing contained in this Lease shall be construed as to confer upon any other party the rights of a third party beneficiary.

**21. APPLICABLE LAW.**

This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Oklahoma.

**22. TERMINOLOGY.**

As used in this Lease, the terms "Lessor," "Lessee" and "party" shall include the subsidiaries, affiliates, directors, officers, agents and employees of Lessor and Lessee.

**23. EXHIBITS.**

The provisions typed on this page, and/or the following pages, and any exhibit or addendum to this Lease shall be deemed a part hereof.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first set forth above.

**(LESSOR)**

**STILLWATER CENTRAL RAILROAD, LLC**

BY \_\_\_\_\_

TITLE \_\_\_\_\_

**(LESSEE)**

**CITY OF STILLWATER, OKLAHOMA**  
a Municipal Corporation

BY \_\_\_\_\_  
GINA J. NOBLE, MAYOR

(SEAL)

ATTEST:

\_\_\_\_\_  
ELIZABETH CHRZ, CITY CLERK

APPROVED AS TO FORM AND LEGALITY THIS \_\_\_\_ DAY OF \_\_\_\_\_,  
2016.

\_\_\_\_\_  
JOHN E. DORMAN  
CITY ATTORNEY

