

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda


 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: April 24, 2007 (B of T) Date: May 3, 2007

TITLE: Union Pacific Passenger Station Lease

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

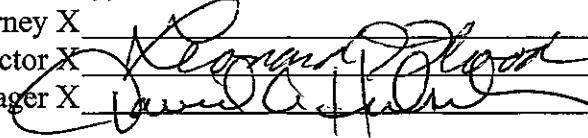
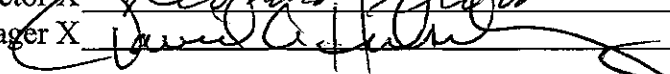
The Department of Community Development transmits for your consideration a resolution authorizing signatures of Village President and Clerk on an Agreement with the Union Pacific Railroad Company for a Passenger Station Lease which allows the Village to maintain and lease the interior commercial vendor space as well as make improvements to the train station. (DISTRICT #1)

Staff recommends approval of this request.

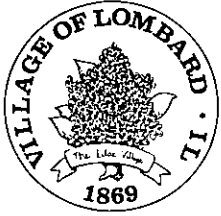
Please place this item on the May 3, 2007 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X  _____ Date 4/25/07
Village Manager X  _____ Date 4/25/07

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *DAH*

DATE: May 3, 2007

SUBJECT: **Union Pacific Passenger Station Lease**

Attached please find a copy of an Agreement between the Village and the Union Pacific Railroad. This agreement will allow the Village to maintain and lease the interior commercial vendor space. The lease also allows the Village to make improvements to the Lombard train station as described in the Commuter Facility Improvement Grant received from Metra.

RECOMMENDATION

Staff recommends that the Village Board authorize the Village President and Village Clerk to sign the attached Agreement.

RESOLUTION
R _____ 07

**A RESOLUTION AUTHORIZING SIGNATURES OF
VILLAGE PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement from the Union Pacific Railroad Company, attached as Exhibit A, for a Passenger Station Lease; and

WHEREAS, the agreement will allow the Village to proceed with desired improvements to the train station and surrounding property that will complement and support the Village's plans to maintain a quality Downtown; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto

Adopted this _____ day of _____, 2007.

Ayes: _____

Nayes: _____

Absent: _____

Approved this _____ day of _____, 2007.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

PASSENGER STATION LEASE

THIS PASSENGER STATION LEASE ("Lease") is entered into on _____, 2007, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"), and the VILLAGE OF LOMBARD, ILLINOIS, an Illinois Municipal corporation, whose address is 255 E. Wilson Avenue, Lombard, Illinois 60148 ("Tenant").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Railroad leases to Tenant and Tenant leases from Railroad the passenger station at Lombard, Illinois, shown on the attached print identified as ORDER NO. 91-10574-067EXHIBIT REV-1, marked **Exhibit A**, and made a part of this Lease, ("Premises"), subject to the provisions of this Lease and of **Exhibit B** attached and made a part of this Lease. The Premises may be used as a public commuter rail passenger station with ancillary commercial uses serving commuter passengers, only, and for no other purposes.

Article II. TERM.

The term ("Term") of this Lease is for twenty (20) years beginning on _____, 20____, and expiring on _____, 2____, unless sooner terminated as provided in this Lease.

Article III. RENT.

Tenant shall pay to Railroad advance fixed rent of One Dollar (\$1.00) for the Term. Tenant shall pay the advance fixed rent before commencement of the Term.

Article IV. INSURANCE.

A. Before commencement of the Term, Tenant shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C** attached and made a part of this Lease.

B. Not more recently than once every two (2) years, Railroad has the right to reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements must be directed to: Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, ATTN: _____, Folder No. _____.

Article V. SPECIAL PROVISION. (If none, remove this Article.)

Railroad:

UNION PACIFIC RAILROAD COMPANY

Tenant:

By: _____
Director - Real Estate

By: _____
Title: _____

Marginal Notes:

**EXHIBIT B
TO
PASSENGER STATION LEASE**

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Tenant will become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Railroad reserves to itself, its licensees, agents and contractors, the rights to (i) use the Premises in the conduct of its railroad business, including, without limitation, commuter passenger operations, (ii) enter the Premises at such times as Railroad deems necessary or desirable, and (iii) the exclusive use and occupancy of the portion (if any) of the Premises shown outlined in red on **Exhibit A** ("Railroad's Space").

B. Railroad also reserves the rights to (i) permit third party placement of advertising signs on the Premises, (ii) modify, remove or relocate new and existing improvements on or under the Premises and to construct, maintain and operate new and existing improvements (including, without limitation, trackage, fences, communication facilities, roadways and utilities) on or under the Premises, and to grant to others such rights, (iii) regulate and control the persons who enter the Premises, and (iv) post, paint or place informational signs on the Premises relative to the commuter passenger operations of Railroad, including, but not limited to, those designed to enhance the accessibility of facilities and services to the elderly and handicapped.

C. Tenant acknowledges that Railroad makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Tenant under this Lease do not extend beyond such right, title or interest as Railroad may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Railroad reserves the right to renew any such outstanding rights granted by Railroad or Railroad's predecessors. If Tenant requires the relocation of any facilities owned by third parties, such relocation will be at Tenant's expense and only with the consent of such third party.

D. Without limitation of Subparagraphs B. and C. above, Tenant shall not interfere in any manner with the use or operation of any new or existing signboards on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards).

Section 3. PAYMENT OF RENT.

Tenant shall pay all rent (which includes the fixed advance rent and all other amounts to be paid by Tenant under this Lease) in lawful money of the United States of America, at the place designated by Railroad, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

Tenant shall pay, prior to delinquency, all Taxes on Tenant's personal property and improvements on the Premises. Tenant shall reimburse Railroad within thirty (30) days of rendition of Railroad's bill for any Taxes paid by Railroad, whether paid separately, as a part of the levy on other real property of Railroad, or as a part of the central or unit assessment of Railroad's property. For purposes of this Lease, "Taxes" means all governmental charges and levies (including, without limitation, real estate and personal property taxes, special assessments and other charges for public improvements or services, and impact fees, but not including income taxes) as may during the Term be levied, assessed or imposed.

Section 5. CARE AND USE OF PREMISES.

A. Tenant shall use reasonable care and caution against damage or destruction to the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use or permit the use of the Premises in any way that creates a hazard to persons or property or that would invalidate any new or existing insurance policies on the Premises. Tenant shall keep

the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad track(s) on or serving the Premises, free and clear from any substance that might create a hazard except for snow removal from the passenger platform.

B. Tenant shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair, except as otherwise specifically provided in Subparagraph C. below. Tenant's responsibility for repair and maintenance includes, without limitation, roof, exterior walls, foundation, overhead doors, loading docks, outside light poles, gutters, downspouts, interior floors, glass, walls, ceilings, plumbing, heating and cooling plant, electric wiring and fixtures, and regardless of whether the need for maintenance and repair is necessitated by ordinary wear and tear, or existing conditions, or explosion or fire howsoever caused, the elements, or by any other cause whatsoever.

C. Tenant is not obligated to make any repair of the Railroad Space or that has an estimated cost for each single item in excess of \$2500 (in year 2007 dollars), unless the need for the repair is caused by (i) any act or omission of Tenant, or Tenant's employees, invitees or licensees, or (ii) any casualty for which Tenant is required by this Lease to maintain insurance coverage and the proceeds from such insurance coverage received by Railroad are insufficient to pay the cost of repair.

D. Tenant shall not permit any sign on the Premises, except signs relating to Tenant's or its subtenant's business.

E. Tenant is responsible for securing the Premises and for controlling access to the Premises by the public, provided, however, that public access must be available during commuter train operating hours.

F. Tenant shall comply with all governmental laws, ordinances, rules, regulations and orders relating to the Premises and this Lease, and also shall comply with Railroad's rules relating to use of passenger stations.

Section 6. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Railroad, Tenant is prohibited from using or permitting the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Tenant may use, if lawful and necessary, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids. Railroad may withhold its consent for any reason whatsoever, and such consent may be subject to conditions in addition to those set forth below. It is the sole responsibility of Tenant to determine whether a contemplated use of the Premises is a Hazardous Substance use.

B. If Tenant uses or permits the use of the Premises for a Hazardous Substance use, with or without Railroad's consent, Tenant shall furnish to Railroad copies of all permits, identification numbers and notices issued by governmental agencies, reports, and other records of any nature, relating to any such Hazardous Substance use, together with such other information on the Hazardous Substance use as Railroad may request.

C. Without limitation of the provisions of Section 11 of this Exhibit B, Tenant is responsible for all damages, losses, costs, expenses, claims, fines and penalties (including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property), and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure) related in any manner to any Hazardous Substance use of the Premises by Tenant) or related in any manner to any contamination of or from the Premises that is exacerbated by Tenant, regardless of Railroad's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party.

D. In addition to the other rights and remedies of Railroad under this Lease or as may be provided by law, if Railroad reasonably determines that the Premises may have been used, or are being used, for any Hazardous Substance, with or without Railroad's consent thereto, and that a release or other contamination may have occurred, Railroad may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Railroad to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Railroad, (iii) cause to be performed any restoration of the

Premises and any adjacent lands of Railroad, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Railroad, as Railroad reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Tenant to Railroad within thirty (30) days after rendition of Railroad's bill .except to the extent the contamination was caused by Railroad, or was caused by a third party and could not reasonably have been prevented by the Tenant, or migrated to the Premises from adjacent property not owned or occupied by Tenant. In addition, Railroad may, at its election, require Tenant, at Tenant's sole cost and expense, to perform such work, in which event Tenant shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Railroad.

E. Tenant shall promptly notify Railroad of any event, notice, claim or demand relating to contamination of or from the Premises.

F. For purposes of this Section 6, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 7. UTILITIES.

A. Tenant will arrange and pay for all utilities and services supplied to the Premises (except for Railroad's Space) or to Tenant. Without limitation of the foregoing, Tenant shall provide all cleaning and janitorial services and supplies (including, without limitation, toilet paper and hand soap).

B. All utilities and services (except for Railroad's Space) will be separately metered to Tenant. If not separately metered, Tenant shall pay its proportionate share as reasonably determined by Railroad.

Section 8. LIENS.

Tenant shall not allow any liens to attach to the Premises for any services, labor or materials furnished to Tenant at the Premises or otherwise arising from Tenant's use of the Premises. Railroad has the right to discharge any such liens at Tenant's expense.

Section 9. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made to the Premises by Tenant without the prior consent of Railroad, which consent Railroad may withhold at Railroad's sole and absolute discretion. Such consent, if given, may be subject to the needs and requirements of the Railroad in the operation of its Railroad and to such other conditions as Railroad determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Railroad's then-current clearance standards.

B. All alterations, improvements or installations by Tenant are at Tenant's sole cost and expense. Tenant is not entitled to any compensation for any such alterations, improvements or installations, regardless of whether this Lease is terminated by Railroad.

C. Tenant shall comply with Railroad's then-current clearance standards, except where to do so would cause Tenant to violate an applicable governmental requirement.

D. Any actual or implied knowledge of Railroad of a violation of the clearance requirements of this Lease or of any governmental requirements will not relieve Tenant of the obligation to comply with such requirements, nor will any consent of Railroad be deemed to be a representation of such compliance.

E. If funds become available from a public agency or other sources for the rehabilitation of

railway stations, Railroad shall cooperate with Tenant or other parties in the applications for such funds, provided there is no cost, expense or liability to Railroad of any kind in the acquisition of the funds and provided that such rehabilitation in no way adversely affects Railroad's interests in the Premises or adversely affects the commuter railway operation.

Section 10. AS-IS.

Tenant accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Tenant acknowledges that Railroad has no duty to maintain, repair or improve the Premises or to provide any equipment, facilities or services (including, without limitation) on or to the Premises.

Section 11. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Tenant, to the extent it may lawfully do so, waives and releases any and all claims against Railroad and the Commuter Rail Division of the Regional Railway Authority ("METRA") for, and agrees to indemnify, defend and hold harmless Railroad, its affiliates, METRA, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Railroad, METRA, Tenant, or any employee of Railroad, METRA, or Tenant) arising from or related to (i) this Lease, (ii) any use of the Premises by Tenant or any invitee or licensee of Tenant, (iii) any act or omission of Tenant, its officers, agents, employees, licensees or invitees, or (iv) any breach of this Lease by Tenant.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party, or to have been caused by the negligence of any Indemnified Party in exercising any of the Railroad's rights reserved under Section 2 above but the indemnity shall apply to the extent such Loss was not caused by such negligence.

C. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 11.

Section 12. TERMINATION FOR CAUSE.

A. Railroad may terminate this Lease for Tenant's default by giving Tenant notice of termination, if Tenant defaults under any obligation of Tenant under this Lease and, after written notice is given by Railroad to Tenant specifying the default, Tenant fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Tenant acknowledges that Railroad's possible future needs for the Premises in connection with Railroad's transportation operations are paramount. Accordingly, if at any time Railroad, in its sole and absolute discretion, determines that the Premises or any portion thereof are necessary or desirable for use in connection with Railroad's transportation operations, or that Tenant's use of the Premises should be terminated due to safety considerations associated with Railroad's transportation operations, Railroad may terminate this Lease upon thirty (30) days prior written notice to Tenant or, in emergency situations, upon such shorter notice as is reasonable in the circumstances.

C. Tenant or Railroad may terminate this Lease without cause upon ninety (90) days' prior written notice to the other party.

Section 13. RAILROAD'S REMEDIES.

Railroad's remedies for Tenant's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Tenant, collect and receive the rent from reletting, and charge Tenant for the cost of reletting, and/or (b) terminate this Lease as provided in Section 11

A) above and sue Tenant for damages, and/or (c) exercise such other remedies as Railroad may have at law or in equity. Railroad may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Tenant, all without being liable for damages.

Section 14. VACATION OF PREMISES; REMOVAL OF TENANT'S PROPERTY.

A. Upon termination howsoever of this Lease, Tenant (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Railroad, without Railroad giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials of Tenant, and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Tenant has not completed such removal and restoration within thirty (30) days after termination of this Lease, Railroad may, at its election, and at any time or times, (i) perform the work and Tenant shall reimburse Railroad for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Tenant, (iii) collect from Tenant the estimated cost of such removal and restoration, and/or (iv) treat Tenant as a holdover tenant at will until such removal and restoration is completed.

Section 15. FIBER OPTICS.

Tenant shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Railroad may change the telephone number and hours of operation by giving Tenant notice of the change. If cable is buried on the Premises, Tenant shall telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Tenant with this Section 15, the release and indemnity provisions of Section 11 above shall apply fully to any damage or destruction of any telecommunications system.

Section 16. NOTICES.

Any notice, consent or approval to be given under this Lease must be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Railroad at: Union Pacific Railroad Company, Attn: General Manager - Real Estate, Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179; and to Tenant at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices are deemed served five (5) days after deposit in the U.S. Mail. Notices that are personally served or sent by courier service are deemed served upon receipt.

Section 17. ASSIGNMENT.

A. Tenant may sublease the Premises or assign this Lease, by operation of law or otherwise, only if Railroad has consented in advance in writing. Such consent must not be unreasonably withheld for any sublease of a portion of the Premises for commercial commuter convenience services. No subletting or assignment will relieve Tenant of its obligations under this Lease. Any assignment or sublease by Tenant in violation of this Paragraph A will be void and ineffective and will, at the option of Railroad, result in an immediate termination of this Lease. Tenant may retain, in full, any fee/rent it receives for any commercial entering into a sublease with Tenant of a portion of the premises.

B. Subject to this Section 17, this Lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

Section 18. CONDEMNATION.

If, as reasonably determined by Railroad, Tenant cannot use the Premises because of a condemnation or sale in lieu of condemnation, then this Lease will automatically terminate. Railroad is entitled

to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Tenant hereby assigns to Railroad any and all claims that Tenant would have to any such awards or proceeds. Notwithstanding the foregoing, Tenant may pursue recovery from the condemning authority of such compensation as may be separately awarded to Tenant for Tenant's relocation expenses, the taking of Tenant's personal property and fixtures, and the interruption of or damage to Tenant' business.

Section 19. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 20. RIGHTS AND OBLIGATIONS OF RAILROAD.

If any of the rights and obligations of Railroad under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Railroad may require Tenant to enter into an amendment to this Lease to eliminate the negative effect on Railroad's rights and obligations to the extent reasonably possible.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, any prior lease under which all or any portion of the Premises was leased to Tenant. Notwithstanding the prior sentence, Tenant retains any and all obligations and liabilities that may have accrued under any other such agreements prior to the commencement of the Term. This Lease may be amended only by a written instrument signed by Railroad and Tenant.

**EXHIBIT C
TO
PASSENGER STATION LEASE**

**UNION PACIFIC RAILROAD
INSURANCE REQUIREMENTS**

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

A. Commercial General Liability insurance. This insurance shall contain a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$5,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements, which **shall be indicated on the certificate of insurance**:

- The workers compensation and employee related exclusions in the above policy apply only to employees of Tenant.
- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Waiver of subrogation
- Designated Premises Pollution Coverage (CG00-39), unless Tenant does not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substance (as defined in Section 6F of **Exhibit B** to this Lease).

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements, which **shall be indicated on the certificate of insurance**:

- The workers compensation and employee related exclusions in the above policy apply only to employees of Tenant.
- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or

crossings), and explosion, collapse and underground hazard shall be removed.

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

- Tenant's statutory liability under the workers' compensation laws of the state(s) affected by this Lease
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Tenant in states that require participation in state workers' compensation fund, Tenant shall comply with the laws of such states. If Tenant is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement, which **shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Tenant utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. All Risk Property insurance (including Flood and Quake) covering Lessor's building, betterments, and improvements on the Premises and all appurtenances thereof in an amount not less than their replacement value, and naming Railroad as Loss Payee.

F. Comprehensive Boiler and Machinery Coverage (Object Definition Number 6 - including Production Machinery) including business interruption and extra expense for all objects on the leased premises, and naming Railroad as an Additional Insured and Loss Payee.

Other Requirements

G. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

H. Tenant agrees to waive its right of recovery, and shall cause its insurers, through policy endorsement, to waive their right of subrogation against Railroad, including, without limitation, for loss of Tenant's owned or leased property or property under its care, custody and control. Tenant's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

I. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. The coverage provided to Railroad as additional insured shall provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Tenant's liability under the indemnity provisions of this Lease. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

J. Prior to execution of this Lease, Tenant shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

K. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

L. Tenant **WARRANTS** that this Lease has been thoroughly reviewed by Tenant's insurance agent(s)/broker(s), who have been instructed by Tenant to procure the insurance coverage required by this Lease and acknowledges that Tenant's insurance coverage will be primary.

M. If Tenant fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Tenant plus a 25% administration fee.

N. The fact that insurance is obtained by Tenant or Railroad on behalf of Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.