

# TWIN CITIES & WESTERN RAILROAD COMPANY

## LEASE OF LAND AND IMPROVEMENTS

THIS LEASE OF LAND AND IMPROVEMENTS ("Lease") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date") between **TWIN CITIES & WESTERN RAILROAD COMPANY**, a Minnesota corporation ("Lessor") and **OLSON ELEVATOR, LLC** ("Lessee").

### RECITALS

- A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.
- B. Lessee is purchasing property located adjacent to the Premises (described below).
- C. A grain elevator located on the property Lessee is purchasing encroaches onto the Premises.
- D. Lessor has agreed to lease the Premises to Lessee, subject to the terms, conditions and restrictions contained herein.

### AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

#### **Section 1. Premises and Term.**

A. Lessor leases to Lessee and Lessee rents from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property together with all buildings, structures and other improvements located thereon, together with the non-exclusive right to use the roadways providing access to the Premises on the date hereof, described as follows:

All that part of the Lessor's property located in the City of Glencoe, Minnesota lying northerly of a line drawn parallel to and distant 8.5 feet northerly of, measured at right angles, from the center line of the Lessor's most northerly track and lying between Hennepin and Ives Streets, containing 6,034 square feet, more or less, as depicted by broad black outline on the map attached hereto marked "Exhibit A" and made a part hereof (the "Premises").

**B.** This Lease begins on \_\_\_\_\_, 2011 (the "Commencement Date") and shall continue until terminated by either party as provided in this Section or terminated by the occurrence of an Event of a Default as herein defined. This Lease may be terminated by either party, at any time, without cause, by serving upon the other party written notice of termination at least thirty (30) days in advance of the effective date of the termination. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

**C.** Each consecutive twelve-month period this Lease is in effect, beginning with the Commencement Date of this Lease, is herein called a "Lease Year."

## **Section 2. Use and Compliance.**

**A.** Lessee may use the Premises for the sole and exclusive purpose of storing grain and for no other purpose without the prior written consent of Lessor. Lessee represents and warrants to Lessor that Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in this Section 2. Without limiting the scope of the preceding provisions, Lessee shall not allow parking of vehicles on the Premises except for vehicles used in transporting grain and Lessee shall not allow members of the public to be in or on the Premises.

**B.** Lessee shall not erect or install any buildings, improvements, structures, aboveground or underground storage tanks, or related structures of any kind on the Premises.

**C.** Lessor shall not excavate or grade the Premises and shall not otherwise change or permit any change in the existing grade or topography of the Premises.

**D.** Lessee shall timely respond to Lessor's reasonable inquiries regarding the use or condition of the Premises, and shall permit Lessor to inspect the Premises from time to time to ensure compliance with the terms and conditions of this Lease. Lessor will give Lessee advance notice of such inspections and will conduct such inspections during normal business hours to the extent practicable.

**E.** Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder. 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 Lessor, Lessee, the Premises, this Lease, and/or the parties' obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4 of this Lease).

**F.** If any governmental license or permit is required for the proper and lawful conduct of Lessee's business or activities in or on the Premises, or if the failure to secure such a license or permit would materially and adversely affect Lessor, then Lessee, at Lessee's expense, shall procure, maintain in effect, and comply with the conditions of such license or permit and provide a copy of the same to Lessor.

**G.** Lessee shall not at any time park vehicles, pile materials, or use the Premises between the street and the 75 foot setback line shown on Exhibit A for any purpose that will



restrict the vision of vehicle operators approaching the railroad tracks on the street from either direction. No additional driveways shall be established over the Premises between the street and the 75 foot setback line without first obtaining the written permission of Lessor.

**H.** Lessor excepts and reserves the following rights, to be exercised by Lessor and any other parties who may obtain written permission or authority from Lessor:

- (1) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
- (2) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
- (3) to use the Premises in any manner as Lessor in its sole discretion deems appropriate, provided Lessor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Lessee for the purpose specified in Section 1 above; and
- (4) to discontinue services over any railroad line or lines by which rail service may be provided to the Premises.

**Section 3. Rent.**

**A.** Lessee shall pay as rental for the Premises the sum of One Thousand Dollars (\$1,000.00) in advance (the "Base Rent") for the initial Lease Year.

**B.** The Base Rent will be increased annually as provided herein and is due in full on or before the anniversary of the Commencement Date. The Base Rent shall be adjusted in amounts equal to the product of the Base Rent multiplied by the fraction of the "index" for the "comparison month" over the "index" for the "base month," provided, however, that in no event will the Base Rent be less than \$1,000.00 per year. As used herein, "index" means the "all items" group of the United States City Average of the Consumer Price Index for All Urban Consumers (CPI-U) – Midwest Urban issued monthly by the Bureau of Labor Statistics of the United States Department of Labor or its successor. The "comparison month" means the month most recently preceding each December 1 for which the "index" is available. The base "index" is 208.689, which is the index for the "base month" of October 2010.

**C.** All rent and other monetary payments under this Lease due from Lessee to Lessor shall be delivered solely to the following address:

Twin Cities & Western Railroad Company  
2925 12<sup>th</sup> Street East  
Glencoe, Minnesota 55336

Provided, however, Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor

has actually received such payment and posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

**D.** Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

**E.** If any Base Rent or any other payment due by Lessee hereunder is not paid within five (5) days after notice that the same is overdue, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to three percent (3%) of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to the lesser of (i) the greater of (a) twelve percent (12%) or (b) the rate which is two and one-half percent (2-1/2%) over the prime rate published in The Wall Street Journal for the preceding December (for the period January 1 through June 30) or for the preceding June (for the period July 1 through December 31), or (ii) the maximum rate permitted by law.

#### **Section 4. Environmental.**

**A.** Lessee will comply with all Environmental Laws as hereafter defined. Lessee shall not maintain any Hazardous Materials treatment, storage, transfer or disposal facility, or Hazardous Materials underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the Release of Hazardous Materials, as defined by Environmental Laws, on or about the Premises.

**B.** The Parties acknowledge that there has been no environmental survey or similar analysis of the Premises. Lessee represents and warrants to Lessor that it is not aware of any Release of Hazardous Materials on or adjacent to the Premises, or that any Hazardous Materials are located on or adjacent to the Premises. Each of the Parties will give the other Party immediate notice upon becoming aware of any Release of Hazardous Materials on or from the Premises, any violation of Environmental Laws related to the Premises, or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the Premises. Lessee and/or any contractor will immediately stop work upon the discovery of a Release of Hazardous Materials on the Premises and will not commence any additional work until specifically authorized to do so by the Lessor. In such event, Lessor may, among other things, direct that no further construction activities take place on or adjacent to the locations affected by any Release of Hazardous Materials. Each Party shall use its best efforts to promptly respond to any Release on or from the Premises, subject to its responsibilities as set forth in subparagraph D below. Each Party also shall give the other Party immediate notice of all measures to investigate, remediate, respond to or otherwise cure any Release or violation and



shall provide to the other Party copies of all reports and/or data regarding any investigations or remediation of the Premises.

C. The Parties will bear the responsibility for Hazardous Materials as follows:

- (1) Lessee will be responsible for investigation, remediation, and other responses with respect to a Release of Hazardous Materials which were brought onto the Premises by Lessee, its employees, agents, contractors, invitees, or any other person or entity acting on behalf of Lessee at any time.
- (2) Lessor will be responsible for investigation, remediation, and other responses with respect to a Release of Hazardous Materials which were brought onto the Premises by Lessor, its employees, agents, contractors, invitees, or any other person or entity acting on behalf of Lessor at any time
- (3) In the event that Lessor has notice from Lessee or otherwise of a Release or violation of Environmental Laws by Lessee, or its contractors, employees, agents or anyone acting on behalf of Lessee on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

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

E. Hazardous Materials are not permitted on the Premises within fuel tanks of vehicles engaged in transporting grain. Hazardous Materials used on the Premises in the normal course of transporting grain must be handled, controlled, stored and disposed of in accordance with all applicable Environmental Laws by Lessee at all times.

F. For purposes of this Lease:

- (1) "**Hazardous Materials**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl, or any other chemical, substance, compound or material (including without limitation asbestos, petroleum products, and lead-based paint) listed or identified in or regulated by any Environmental Laws.

- (2) **“Environmental Laws”** includes all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., The Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 33 U.S.C. § 1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.
- (3) **“Release”** means any actual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Materials into the environment, as “environment” is defined in CERCLA.

**Section 5. Access to Premises by Lessor.**

**A.** Lessor and its employees, contractors, agents and other designated third parties may at all reasonable times, and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, 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 Premises, without payment of any sum for any damage, including damage to growing crops, provided such work does not interfere with Lessee's operations on the Premises; (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so.

**B.** In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 5 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

**Section 6. No Warranty. LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.** This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that



possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

**Section 7. Condition of Premises; Inspection.**

**A.** Lessee acknowledges and understands that Lessor makes no representation or warranty, expressed or implied, in fact or by law, as to the nature, condition or usability of the Premises or any improvements located thereon, or the uses to which the Premises may be put.

**B.** Lessee represents that Lessee has fully examined the Premises, the improvements and structures thereon or adjoining the same, and the present uses thereof, and Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee accepts the Premises subject to any and all existing permits, licenses, leases, easements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installation thereof, provided such future installations do not unreasonably interfere with Lessee's use of the Premises. By taking possession or commencing use of the Premises, Lessee (1) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises and (2) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities.

**Section 8. Taxes and Utilities.**

**A.** Lessor is not responsible for the provision of utilities to the Premises. Lessee shall pay to the service provider when due all charges for the use on the Premises of water, heat, gas, electricity, telephone, and any other public utility, and shall pay all taxes, and other charges of every kind and nature, with respect to the Premises which are attributable to the term of this Lease and which become due or are levied against the Premises, the Lessee, the business conducted on the Premises, or against the improvements placed thereon, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease. In addition, Lessee shall save harmless the Lessor, the Premises and the improvements thereon from any and all liens attaching thereto by reason of nonpayment of any such charges.

**B.** If the Premises is subject to special assessment for public improvements, Lessee shall pay the installments due during the term of this Lease and may pay such assessments over the longest period allowed by the assessing authority. If Lessor is required to pay any such special assessments, Lessee will promptly reimburse Lessor upon demand for the amount paid by Lessor in full.

**Section 9. Track Clearance.**

**A.** Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, equipment, trailer, truck, motor vehicle, tools, grain,

container, or other obstruction of any sort within (i) 15 feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (20 feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 23 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement.

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

**Section 10. Repairs; Maintenance.**

**A.** Lessee shall, at its sole expense, keep the Premises and any improvements thereon clean, safe, and in good condition and repair. Lessee shall keep and maintain the grounds in a clean and orderly condition, and free of accumulation of brush, vegetation, dirt, debris, junk and rubbish. Lessee shall be responsible for weed control and snow removal. Lessee agrees not to push snow onto railroad property. Lessee shall not permit the existence of any nuisance on the Premises; and shall not keep or store on the Premises any explosive, flammable or combustible material which would increase the risk of fire, except for the minimum amounts of such material necessary to Licensee's business and in compliance with all applicable Laws. Lessee shall not handle or store any dangerous or toxic materials on the Premises.

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

**Section 11. Safety; Dangerous and Hazardous Conditions.** It is understood by Lessee that the Premises are in dangerous proximity to railroad tracks and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises). As one of the material considerations of this Lease, without which it would not be granted, Lessee accepts this Lease and assumes such dangers. Furthermore, Lessee shall not nor shall Lessee foster, sanction or permit others to operate any equipment, motor driven or otherwise, for the purpose of serving Lessee, upon or across any railroad track located on or adjacent to the Premises except at established crossings.

**Section 12. Indemnity.**



**\* A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, ACTIONS, CAUSES OF ACTION, SUITS, DEMANDS, RIGHTS, CONTROVERSIES, LIABILITIES, OBLIGATIONS, SETTLEMENTS, COURT ORDERS, AWARDS, INTEREST, ASSESSMENTS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, FEES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS, AND ENGINEERS 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):**

**(1) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;**

**(2) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;**

**(3) LESSEE'S OCCUPATION AND USE OF THE PREMISES;**

**(4) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR**

**(5) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

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

**B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 12(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER",**



OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

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

D. Upon written notice from Lessor, Lessee 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 Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

E. It is mutually agreed that the assumption of liabilities and indemnification provided for in this Lease will survive the termination of this Lease.

**Section 13. Equal Protection.** It is agreed that the provisions of Sections 9, 11, and 12 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees.

**Section 14. Assignment and Sublease.** Lessee shall not assign, sublease, or otherwise transfer to encumber the Premises without the prior written consent of Lessor. Lessor has no obligation to consent to any assignment, sublease or other transfer. Any assignment, lease, sublease or transfer made pursuant to this Section may be made only if, and shall not be effective until, the assignee cures all outstanding Defaults of Lessee hereunder and executes,



acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

**Section 15. Liens.** Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. If Lessee contests a lien or other charge, Lessee shall supply Lessor with security acceptable to Lessor that if the lien or other charge is established, it will be paid. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section. Lessee shall not mortgage, pledge, or otherwise encumber the land and tracks being leased under this Lease to secure any payment obligation.

**Section 16. Insurance.** Lessee shall, at its sole cost and expense, procure and maintain during the term of this Lease the following insurance coverage:

**A.** All risks property insurance covering all of Lessee's property including property in the care, custody, or control of Lessee, and including the elevator building located in part on the Premises and in part on adjacent property owned by Lessee. Coverage shall:

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

**B.** General Liability insurance that contains broad form contractual liability coverage with a combined single limit of a minimum of \$2,000,000 each occurrence. Coverage must be purchased on a post 1998 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 liability
- Liabilities as to any Release of Hazardous Materials or violation of any Environmental Law

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

- The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Any exclusions related to the explosion, collapse and underground hazards must be removed.
- No other endorsements limiting coverage may be included in the policy.

**C. Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$2,000,000 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

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

- Lessee's statutory liability under the worker's compensation laws of Minnesota.
- 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 insurance must include coverage for the Federal Employers Liability Act and include an alternate employer endorsement naming Lessor as the alternate employer with coverage for the Federal Employers Liability Act. The term Alternate Employer as used herein and above is being used solely as an insurance term of art. By Lessee's actions of obtaining insurance coverage as set forth above Lessee is in no way intending or evidencing an alternate or dual employment relationship with Lessor. The parties agree: (1) Lessor has no right to direct or control Lessee's employees with respect to the physical conduct or the performance of services; (2) Lessor does not supervise, nor does it have the right to supervise, details of Lessee's employees' work or the manner in which such work is accomplished; (3) Lessor retains no control over the details of the Lessee's employees' work; and (4) Lessor has no right to select, hire, train or fire Lessee's employees.

**E.** Prior to any future construction on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the Lessor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 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.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Lessor prior to performing any work or services.

F. Other Requirements:

- (1) Lessee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor with respect to Liabilities which Lessee has assumed in this Lease or for which Lessee has agreed to indemnify Lessor. In addition, Lessee's insurers, through the terms of the policy or through policy endorsement, must waive their right of subrogation against Lessor for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor, for loss of Lessee's owned or leased property or property under Lessee's care, custody, or control.
- (2) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- (3) Lessee is not allowed to self-insure for amounts in excess of \$50,000 without the prior written consent of Lessor. If granted by Lessor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- (4) Lessee shall furnish to Lessor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available.
- (5) Lessee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Lessor. The certificate of insurance must reflect that the above wording is included in evidenced policies.
- (6) All policy(ies) required above (excluding Workers Compensation and Railroad Protective) shall include a severability of interest endorsement and shall name Lessor as an additional insured with respect to work performed and operations under this Lease. Severability of interest and naming Lessor as an additional insured must be indicated on the certificate of insurance.

- (7) The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.
- (8) Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.
- (9) Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease.
- (10) Not more frequently than once every five years, Lessor 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.
- (11) If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming Lessor as an additional insured, and shall require that the contractor shall release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify Lessor herein.
- (12) Failure to provide evidence of insurance as required by this Section shall entitle, but not require, Lessor to terminate this Lease after giving written notice to Lessee and allowing Lessee a ten (10) day cure period. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.
- (13) The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease.
- (14) Upon request, Lessee shall furnish complete copies of the insurance policies to Lessor.

**Section 17. Default.**

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

- (1) If Lessee violates any material provision contained in this Lease;



- (2) If Lessee fails to pay rent when due and this violation continues for five (5) days after written notice thereof, or if Lessee violates or fails to perform any other material provision of this Lease and such violation or failure continues thirty (30) days after written notice of the violation or failure to perform;
- (3) If a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee is appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee is issued and any such event shall not be stayed, dismissed, bonded or discharged within one hundred twenty (120) days after such entry, appointment or issuance;
- (4) If the Premises are abandoned or vacated.

**B.** If an Event of Default occurs as provided above, the Lessor may, at its option, (i) terminate this Lease by delivery of written notice to Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at the Lessee's sole expense, without waiving or releasing the Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligation to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of its rights or remedies hereunder, then, in any such event, any reasonable amount incurred by the Lessor for attorneys' fees, costs, and disbursements shall be paid by the Lessee. Any waiver of any default or defaults of this Lease or any delay in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect the ability to enforce any Section of this Lease. The remedies set forth in this Section shall be in addition to, and not in limitation of, any other remedies that the Parties may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until the Party has actual knowledge of a breach or default.

**Section 18. Restoration Obligations.** For purposes of this section, "improvements" refers to any structures located on the Premises. If (a) the improvements are not used for the



storage of grain for a period of six months, or (b) any part of the improvements becomes dangerous or hazardous as determined by Lessor, or (c) any government unit or agency requests or demands that the improvements be repaired, demolished, or boarded up or determines the improvements are condemned or are a nuisance or that the improvements endanger health, safety, or property, or (d) the improvements are damaged or destroyed such that the cost of repairs necessary to return the improvements to good condition exceeds fifty (50%) percent of the fair market value of the improvements prior to such damage and the improvements are not fully repaired within six months, or (e) Lessee otherwise defaults in its obligation to maintain the improvements in good condition and repair as required by Section 10 of this Lease, Lessor shall have the right to require Lessee to remove all of the improvements and personal property located on the Premises, fill up all excavations that may have been made, grade the Premises and provide ground cover satisfactory to Lessor, and surrender possession of the Premises to the Lessor in a condition satisfactory to the Lessor. Should the Lessee fail to make such removal or restoration, Lessor, at its election, may (i) demolish and remove the improvements from the Premises (and any adjacent property owned or controlled by Lessee) and remove any personal property located on the Premises and restore the Premises to substantially its former state prior to lease to the Lessee's predecessor in interest, at the sole expense of the Lessee, and Lessor shall be entitled to a lien on the Premises in order to enforce this right, (ii) retain the improvements without cost or charge and Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor, or (iii) specifically enforce Lessee's obligation to remove and restore, or (iv) pursue any remedy at law or in equity against Lessee for failure to so remove and restore.

**Section 19. Survival of Obligations.** All of the Parties' indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive termination of the Lease.

**Section 20. Holding Over.** If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease except that the Base Rent shall be doubled.

**Section 21. Damage or Destruction.** If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may, in its sole discretion, either terminate this Lease or require Lessee to repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction. Lessor is not required to repair or reconstruct any buildings, structure, improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises.

**Section 22. Eminent Domain.** If any part of the Premises is taken by eminent domain, Lessor or Lessee may, in its sole discretion, either terminate this Lease or continue the Lease in effect. If both parties elect to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold



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

**Section 23. Signs.** No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, content, and location thereof, which approval or denial shall not be unreasonably withheld or delayed.

**Section 24. Consents and Approvals.** Except as otherwise specifically provided herein, whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied.

**Section 25. Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

**Section 26. Confidentiality.**

- A. The provisions of this Lease and information obtained in the drafting thereof are confidential and shall not be disclosed by Lessee to any third party, other than a parent or subsidiary entity, unless disclosure is required by law. Lessee may disclose the terms of this Lease to potential purchasers and lenders but must require such persons or entities to keep the terms confidential.
- B. It is understood and agreed that this Lease shall not be placed of public record.

**Section 27. Governing Law.** All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the State of Minnesota.

**Section 28. No Waiver.** One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**Section 29. Binding Effect.** All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective executors, heirs, legal representatives, and permitted successors and assigns of Lessor and Lessee.

**Section 30. Entire Agreement/Modification.** This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the

Premises. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

**Section 31. Notices.** Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

**Olson Elevator, LLC**  
8155 – 130<sup>th</sup> Street  
Cologne, MN 55322

If to Lessor:

**Twin Cities & Western Railroad Company**  
2925 12<sup>th</sup> Street East  
Glencoe, Minnesota 55336

**Section 32. Counterparts.** This Agreement 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 Agreement 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 33. Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**Section 34. Transferability; Release of Lessor.** Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the



Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

**Section 35. Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

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

**LESSOR**

**Twin Cities & Western Railroad Company**

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

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

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

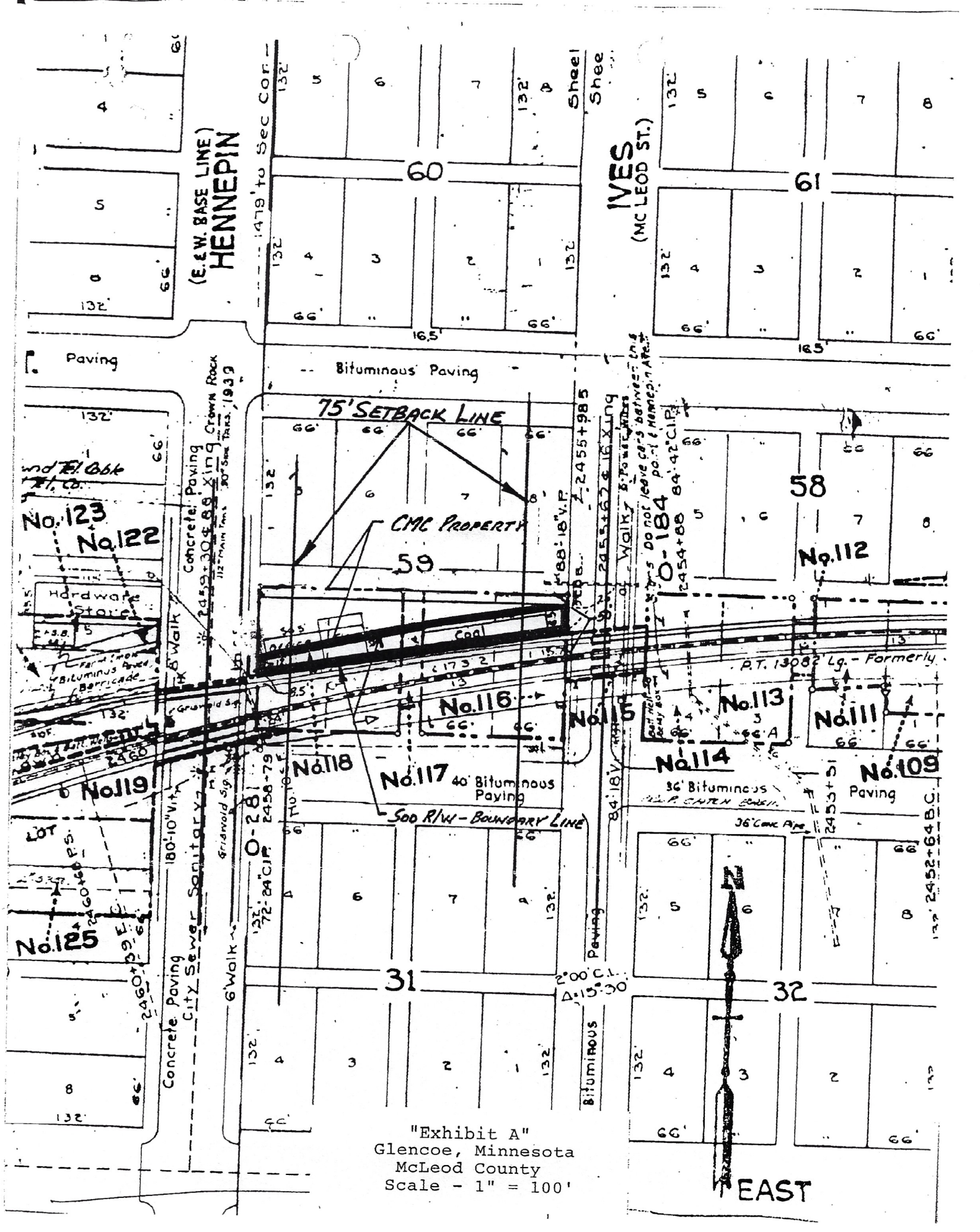
**LESSEE**

*Olson Elevator owner*  
\_\_\_\_\_  
**Olson Elevator, LLC**

**EXHIBIT "A"**

**MAP OF PREMISES**





"Exhibit A"  
 Glencoe, Minnesota  
 McLeod County  
 Scale - 1" = 100'

