

AD 86328
Form Approved, AVP-Law

Audit: 156077
Project: 0129631

ADOPTION AGREEMENT

THIS AGREEMENT is made and entered into as of the 4th day of October, 2023, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad") and **SBP REALTY, LLC, DBA THE TANNERY OF COWETA.**, an Oklahoma Limited Liability Company, whose address is 344800 E. 121st Street S, Coweta, OK 74429 (hereinafter the "Applicant").

RECITALS:

By instrument dated June 4, 1996, the Railroad and SCOTT JONES entered into an agreement (hereinafter the "Basic Agreement") identified in the records of the Railroad as its Audit No. 156077 covering lease of Railroad's property located at Coweta, OK as amended, modified or supplemented, for a retail store and purposes incidental thereto, only, and for no other purpose.

Applicant represents and warrants to Railroad that Applicant has heretofore acquired (but without the consent of the Railroad) all right, title and interest, as Lessee, in and to Basic Agreement.

The Railroad and Applicant now desire to adopt the Basic Agreement as their agreement.

AGREEMENT:

Article 1. ADOPTION OF BASIC AGREEMENT.

Effective as of the date first herein written, the Basic Agreement including all supplements or amendments thereto (if any), which by reference is made a part hereto, is hereby adopted by the parties hereto as their Agreement. Applicant specifically agrees:

- A. to comply with perform and observe all of the covenants, obligations, conditions and stipulations contained in Basic Agreement to be complied with, performed or observed by Lessee thereunder;
- B. to assume and discharge any and all of the obligations, duties and liabilities imposed by Basic Agreement upon the Premises thereunder, and
- C. to succeed to and take the place of said Lessee therein.

Where in the Basic Agreement reference is made to the Lessee, such reference shall be deemed to refer to the Applicant and all the terms and conditions of the Basic Agreement including any supplements or amendments thereto (if any) shall have the same force and effect and be as binding upon the Railroad and the Applicant as Lessee, as if the same were repeated herein.

Article 2. RENT.

A. Effective as of July 1, 2023, Applicant shall pay to Railroad, in advance, rent of two thousand two hundred fifty-one and 1/100 Dollars (\$2,251.01) every 12 month(s).

The rent shall be increased by Three Percent (3.0%) 12 cumulative and compounded.

B. Not more than once every three (3) years Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article 3. INSURANCE.

A. Throughout the entire term of this Lease, Applicant shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Applicant shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 3144-17.

Article 4. GUARANTOR LIABILITY.

In order to induce Lessor to enter into the above Adoption, Sarah Payne (Guarantor) unconditionally and absolutely guarantees to perform all of the obligations under the Lease to the same extent as if both Applicant and Guarantor had been named in the Lease as tenants with joint and several liability for the performance of all of the Applicant's covenants and conditions contained in the Lease. Guarantor waives any legal obligation of Lessor to proceed first against Applicant or to exhaust any remedy Lessor may have against Applicant. All notices given to Applicant under the Lease will be deemed to have been given to Guarantor. Any modification, amendment, waiver, change or extension of any of the terms, covenants, or conditions of the Lease which Applicant and Lessor may hereafter make (including, without limitation, any extension or renewal of the term of the Lease) will not in any way impair or discharge Guarantor's liability to Lessor, regardless of whether Guarantor has notice or knowledge thereof.

Article 5. AGREEMENT SUPPLEMENTAL.

This Agreement is supplemental to the Basic Agreement and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

IN WITNESS WHEREOF, the parties have caused this Adoption Agreement to be executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: 
MARK JENSEN
Title: B6E6D96A74F9468 DTR Field Operations East

SBP REALTY, LLC
DBA THE TANNERY OF COWETA

By: 
SARAH PAYNE
Name: SARAH PAYNE
Title: President

SARAH PAYNE

By: B2134BPEA2455...
Title: President
(Guarantor)

NOTE:

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Applicant shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Applicant is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must 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.

In any and all Claims against Railroad by any employee of Applicant, Applicant's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other employee benefits acts.

D. Pollution Liability insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Applicant must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured

facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. Umbrella or Excess insurance. If Applicant utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Applicant’s liability under the indemnity provisions of this Lease.

G. Applicant waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers’ liability or commercial umbrella or excess liability insurance obtained by Applicant required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. All insurance policies must 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 where the Premises are located.

J. The fact that insurance is obtained by Applicant, or by Railroad on behalf of Applicant, will not be deemed to release or diminish the liability of Applicant, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad from Applicant or any third party will not be limited by the amount of the required insurance coverage.