REAL PROPERTY INTERESTS AGREEMENT

This Real Property Interest Agreement herein called "Lease", made this 2nd day of August, 2021, by and between the Department of Transportation, Right-of-Way Section of the State of Delaware hereinafter called the **"DEPARTMENT"** and the Town of Elsmere hereinafter called **"LESSEE,"**

WITNESSETH:

Whereas, the **DEPARTMENT** is owner in fee of two certain tracts of land (Parcel 1 & Parcel 2), consisting of approximately 0.8970 acres +/-, together known as known as AR-NC-1 in New Castle County, State of Delaware and more particularly shown and outlined in yellow on the attached Exhibit "A"; and

Whereas, the **LESSEE** has requested the **DEPARTMENT** to lease said land interests located to the south side of New Road and beneath DelDOT Bridge Inventory No. 1-632 (Kirkwood Highway) to the **LESSEE** for the Town of Elsmere – Public Works and Associated Operations; and

Whereas, the **DEPARTMENT** is desirous of cooperating with the **LESSEE** to this end:

NOW, therefore, it is agreed by the parties hereto in consideration of the following annual lease payment; One and No/100 Dollars ($1.00). The **DEPARTMENT** hereby demises and leases to the **LESSEE** the herein described premises for a period of four (4) years commencing on August 1, 2021 and terminating on July 31, 2025. Subsequent requests for renewals will be reviewed upon receipt of written request 60 days prior to the end of the term of the lease. Said lease and subsequent renewals will be received and reviewed by the **DEPARTMENT** and **FHWA.**

This Lease shall be subject at all times to the following terms and conditions:

1. No use of the area shall impair the full use and safety of the **DEPARTMENT**; or otherwise interfere with the free flow of traffic.

2. All access, be it vehicle or pedestrian, will be permitted to said area to and from New Road.

3. The leased premises shall be used by **LESSEE** for the sole purpose of the Town of Elsmere – Public Works and Associated Operations.

4. No improvements shall be placed on the leased premises, nor alterations made on or to the rental space without prior written consent of the **DEPARTMENT** and the **FHWA**.

5. This Lease shall not be assigned or sublet without prior written consent by the **DEPARTMENT** and the **FHWA**.

6. **LESSEE** shall, at its own cost and expense, keep the leased premises in good repair. The **LESSEE** shall yield the immediate possession of the leased premises back to the **DEPARTMENT** upon termination or revocation of this lease and said premises shall be restored to its original condition. In the event **LESSEE** fails in its maintenance obligation, the **DEPARTMENT** may enter onto the premises for such purpose and the **LESSEE** shall be responsible for any and all costs incident hereto.

7. **LESSEE** shall not permit any unlawful or immoral practice to be committed or carried on by any person(s) whatsoever on the leased premises, nor shall **LESSEE** permit or allow the sale, dispensing,

or consumption or alcohol or illegal drugs on the premises.

8. **STORAGE:** Any storage of materials or other items for purposes deemed by the **DEPARTMENT** or the **FHWA** to be a potential fire or other hazard to the Highway and the operation and maintenance of the space will be subject to regulation by the **DEPARTMENT** and the **FHWA** to protect against fire or other hazards impairing the use, safety, and appearance of the highway. **LESSEE**'s use and occupancy of the leased premises shall not permit hazardous, noxious, or objectionable fumes, vapors, or odors to rise above the rental space. There shall be no hazardous materials of any kind stored or located under any structure or within the identified areas or DelDOT right of way at any time. The identification of what items constitute "hazardous materials" shall be as determined by **DEPARTMENT** and/or the **FHWA**, in its sole reasonable discretion, to include any items that may cause damage to any structures and/or the right of way areas. This shall include, but not be limited to, a prohibition of any long-lasting combustible materials such as wooden pallets, tires, plastic traffic cones/barrels, or other rubber or plastic items. This shall further include a prohibition of storage tanks of any kind as well as any items including, but not limited to, those identified in 49 CFR Part 172. There shall be no storage of any enclosed trailers, sheds, shipping containers, or other enclosed items within the identified areas at any time. No vehicles or materials shall be parked or stored within ten (10) feet of any side of a pier or column of any structure within the identified areas. Further, there shall be no vehicles or materials parked or stored within ten (10) feet of the underside of girders or any other structural elements, nor any items or materials that may fall or lean against any pier or column. Further, there shall be no materials stored that shall exceed a height of fifteen (15) feet from ground level anywhere within the identified areas. In the event that any vehicles, materials, and/or items are parked, placed, or stored in violation of any terms of the lease agreement, **LESSEE** will be required to remove those items from the identified areas immediately. In the event that you shall fail to do so, the DEPARTMENT shall have the right to remove those vehicles, materials, and/or items at **LESSEE**'s expense in the event that the **DEPARTMENT** and/or the **FHWA**, shall determine that there is a risk to the safety of persons, property, and/or the right of way and/or structures, or if the **DEPARTMENT** and/or the **FHWA** shall determine, that its ability to access the identified areas shall be limited in any way. Any and all use of the identified areas shall be consistent with Federal, State, and local laws, regulations, and requirements.

9 No signs will be permitted on the leased premises without prior consent from **DEPARTMENT**.

10. **LESSEE** agrees to pay any and all applicable taxes and assessments that may be of tenancy; to pay all charges for any utilities (sewer, water, electric, gas) supplied to or upon any part of the leased premises.

11. INDEMNIFICATION: **LESSEE** agrees to indemnify the **DEPARTMENT** and **FHWA** against any and all actions or claims which may be asserted or brought against the **DEPARTMENT** and **FHWA** that are based upon the **LESSEE**'s acts or omissions in connection with **LESSEE**'s use and occupancy of the demised property. **LESSEE** agrees to hold the **DEPARTMENT** and **FHWA**, and their respective officers and employees, harmless from any and all claims relating to this Agreement, including but not limited to any issues relating to the fitness of the site for the intended uses and purposes as stated herein. In case of fire or casualty, the **DEPARTMENT** and **FHWA** is not liable to **LESSEE** for any losses. The **DEPARTMENT** neither approves or disapproves of the design of the facility or any uses and **LESSEE** agrees that it is not relying upon the engineering judgement of the **DEPARTMENT** in entering into this Agreement.

12. This Lease is revocable and/or amendable for non-compliance with the foregoing and following

provisions by the LESSEE or for cessation of the use of the leased premises. The **DEPARTMENT** and the **FHWA** shall be the sole judge of non-compliance. **LESSEE** shall coordinate with the **DEPARTMENT** to remediate non-compliance issues within five (5) business days of receiving notification from **DEPARTMENT** of such violations. In the event the **LESSEE** fails to do so, or in the event that the **DEPARTMENT**, in its sole reasonable discretion, determines there is a risk to the safety of persons, property, and/or the right of way and/or structures, the **DEPARTMENT** shall have the right to remediate any and all compliance issues at the expense of the **LESSEE**. The **DEPARTMENT** shall have the right to terminate said lease agreement for any reason whatsoever, upon sixty (60) days written notice.

13. **ACCESS:** The **DEPARTMENT** reserves the right for itself, employees, agents, or contractors of free, uninterrupted entry upon the leased premises for the purpose of inspecting the leased premises for the protection or maintenance of the highway facilities and the **DEPARTMENT** further reserves the right to take possession thereof in the case of national or other emergency. **DEPARTMENT**, police, first responders, and the local fire department shall have immediate access to the identified areas at all times, including those times outside of normal business hours and shall be provided with a physical key to any lock and/or a currently valid entrance code to a keypad on any and all gates to ensure immediate access to all identified areas at all times.

14. The **LESSEE**, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said leased premises described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the **LESSEE** shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

15. The **LESSEE**, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that **LESSEE** shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

16. That in the event of breach of any of the above nondiscrimination covenants, the **DEPARTMENT** shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

17. If all or part of the leased premises is ever needed for highway purposes, this agreement shall be rescinded or modified at the sole discretion of the **DEPARTMENT** and/or the **FHWA**, and any land needed by the **DEPARTMENT** will revert for its use at no cost or expense to the **DEPARTMENT**.

18. It is expressly understood and agreed that whereas the **DEPARTMENT**'s consent or agreement is required under any provision of this lease, the concurrence of the **FHWA** is also required.

19. All notices, consents, or approvals required to be given by either party to the other hereunder shall be in writing, addressed and mailed as follows:

Department of Transportation
Right-of-Way
Land Services Section
Robby L. Brown
P. O. Box 778
Dover, DE 19903
Telephone No.: (302) 760-2240
FAX No.: (302) 739-2881

Town of Elsmere
Attn: Sally Jenson, Secretary of Council
Elsmere Town Hall
11 Poplar Avenue
Elsmere, DE 19805
(302) 998-2215

20. ADDITIONAL PROVISIONS: **LESSEE** agrees to hold the **FHWA** and **DEPARTMENT** and its officers and employees harmless from any and all claims relating to this Agreement, including but not limited to any issues relating to the fitness of the site for the intended use as a Public Works Facilty and Associated Operations. The **DEPARTMENT** neither approves or disapproves of the design of the parking facility, and **LESSEE** agrees that it is not relying upon the engineering judgement of the **DEPARTMENT**'s in entering into this Agreement.

In witness whereof, the parties have executed this lease of Real Property Interests and affixed their respective seals the day, month, and year first written above.

AGREED:

Witness

Eric Thompson
Mayor of Elsmere

Witness

Sally Jensen
Secretary of Council

Department of Transportation

RECOMMENDED:

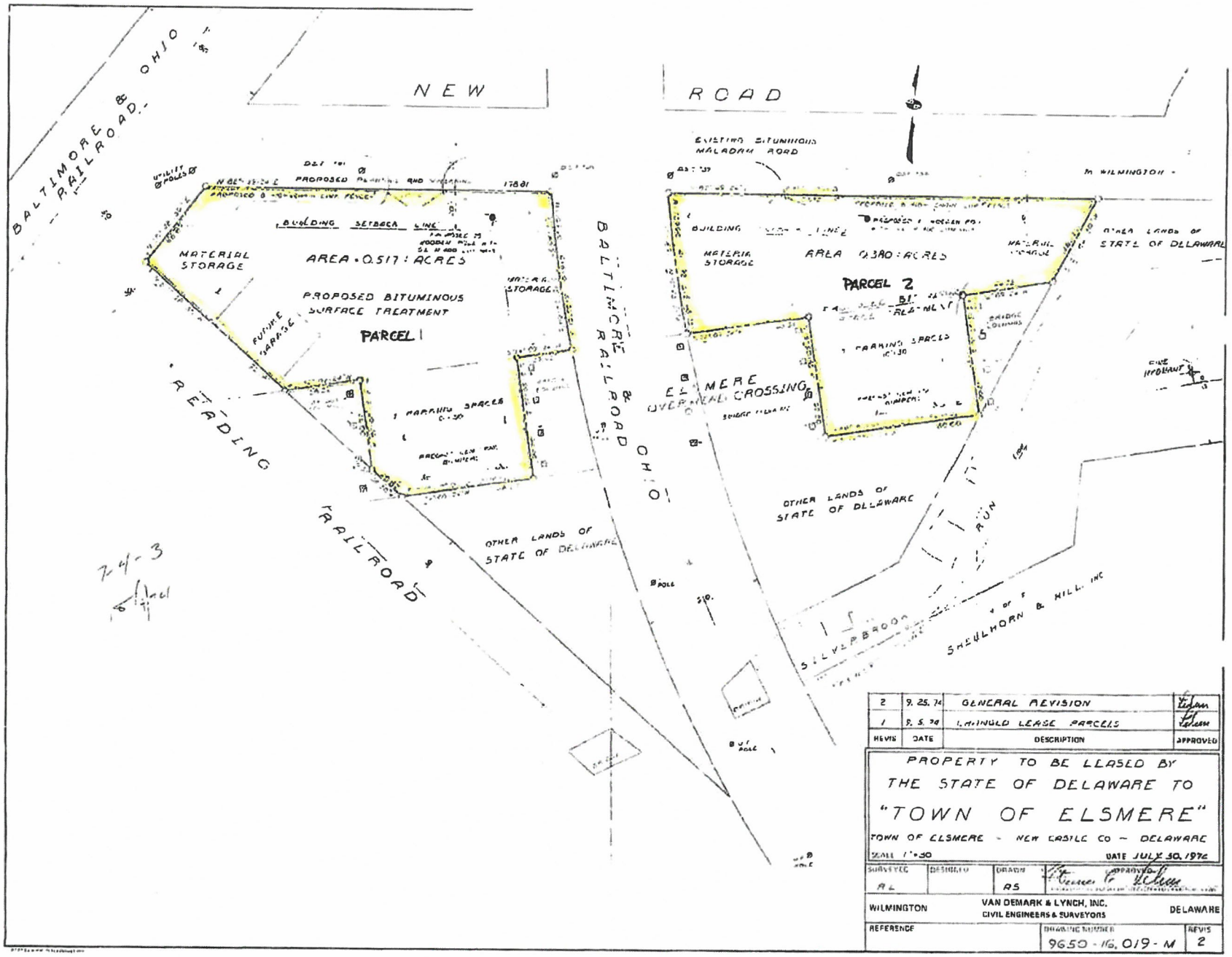
Ken Gallion
Right-of-Way Agent

APPROVED:

Robby L. Brown
Land Services Manager

INDEX OF EXHIBITS

Exhibit "A": AR-NC-1 (Two Portions)



REVIS	DATE	DESCRIPTION	APPROVED
2	9. 25. 74	GENERAL REVISION	Edson
1	9. 5. 74	LEASEHOLD LEASE PARCELS	Edson

PROPERTY TO BE LEASED BY
THE STATE OF DELAWARE TO
"TOWN OF ELSMERE"
TOWN OF ELSMERE - NEW CASTLE CO - DELAWARE
SCALE 1"=50 DATE JULY 30, 1974

SURVEYED	DESIGNED	DRAWN	APPROVED
RL		RS	Edson

WILMINGTON — VAN DEMARK & LYNCH, INC. CIVIL ENGINEERS & SURVEYORS — DELAWARE

REFERENCE	DRAWING NUMBER	REVIS
	9650 - 16, 019 - M	2

EXHIBIT A