

## **PROPERTY LEASE AND EASEMENT AGREEMENT**

This Property Lease and Easement Agreement (the "Agreement") made and entered into upon this 3<sup>rd</sup> day of July 2023, by and between The Beaver Excavating Company, an Ohio corporation, with its principal office in Canton, Ohio, (hereinafter referred to as "Beaver") and Benbery, LLC, an Ohio limited liability company, with an address of 9345 Ravenna Rd, Unit A, Twinsburg, Ohio (hereinafter the "Owner").

WHEREAS, Beaver conducts construction operations on a nearby Ohio Turnpike Infrastructure Commission ("OTIC") Project (43-23-04) (the "Project") and as a result thereof, is seeking a property for field office staging and storage, employee parking, and equipment and material storage.

WHEREAS, Owner owns that certain vacant real property consisting of approximately 12.533 acres of land located on Stow Road, Hudson, OH 44236 and known as Summit County Parcel No. 3009781 and as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

WHEREAS, Owner desires to lease to Beaver, and Beaver desires to Lease from Owner, that certain portion of the Property depicted on Exhibit B attached hereto and incorporated herein.

NOW therefore, in consideration of the mutual benefits hereinabove mentioned, and the promises herein contained, the parties agree as follows:

1) **GRANT.** For and in consideration of the sum of thirty thousand dollars (\$30,000) and other valuable consideration, and the further considerations herein described, Owner hereby leases exclusively unto Beaver, its successors and assigns, that certain portion of the Property identified as the "Beaver Controlled Area" (the "Premises") as outlined on the depiction of the Property on Exhibit B to utilize for field office staging, employee parking, construction laydown yard and for use to set a construction field office trailer and equipment, material storage, and other ancillary uses for the Project.

2) **EASEMENT.** In connection with the leasing of the Premises, Owner grants to Beaver a non-exclusive right-of-way, easement and license to go upon that certain portion of the Property identified as the "Unlimited Access for Beaver to Controlled Area" as outlined on the depiction of the Property on Exhibit B (the "Access Easement").

3) **TERM.** This Agreement shall commence as of the date hereof and continue for a period of 36 months ending on July 5<sup>th</sup>, 2026 (The "Term") provided however, that the original Term hereof shall be extended until the completion of the Project for which Beaver has continuing contractual responsibilities. If contractual obligations should require Beaver to extend the Term, Beaver shall be provided the right to reasonably negotiate terms for extension with Owner or its successors.

4) **TITLE TO PREMISES, CONVENANTS AND WARRANTIES.** Owner, for Owner, Owner's heirs, executors, administrators, successors and assigns does hereby covenant with Beaver, its successors and assignees, that Owner is lawfully seized of the Property aforesaid and has full power to grant this lease, right-of-way, easement and license; that the Property is free and clear of all encumbrances which would affect this Agreement; and that Owner does forever

warrant and defend the title to said Property and the rights hereby granted unto Beaver, its successors and assigns, against the lawful claims of all persons whomsoever and will hold Beaver and OTIC harmless from claims that may arise from this Agreement.

5) DISCLAIMER. The parties agree that Beaver shall have no responsibility for damages or diminution in value resulting to the Premises by reason of Beaver's normal operations upon the Premises. The existing condition of the Premises shall be video recorded prior to disturbance and submitted to Owner. Beaver shall return the Premises to the existing condition as of July 14<sup>th</sup>, 2023, as documented in the video recording, upon completion of the Term.

6) LIABILITY INSURANCE AND INDEMNITY. Beaver agrees to indemnify and save Owner harmless from any third-party claim for injury to person or property by reason of anything done or permitted to be done or suffered or omitted by Beaver, or the employees, agents, patrons or invites of Beaver upon or about the leased Premises and shall bear all cost and expense incurred by Beaver in connection therewith, including, but not limited to, reasonable attorney fees, and will defend any claims or actions arising from same which might be asserted or instituted against Owner. Beaver shall, at Beaver's expense, procure and maintain general liability insurance covering any and all claims for injuries to persons occurring upon the leased Premises during the term of this lease in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for injury to any one person and not less than Five Hundred Thousand Dollars (\$500,000.00) for injuries to more than one person in any accident or occurrence. Beaver shall, at Beaver's expense, procure and maintain property damage insurance during the term of this Lease in an amount not less than Fifty Thousand Dollars (\$50,000.00) for damage to property arising out of any one accident or occurrence. All policies of insurance required to be maintained hereunder shall name Beaver as the insured party, and Owner as additional insured, as their interests may appear.

7) ENVIRONMENTAL ASSESSMENT. At Beaver's option, Beaver may retain a professional environmental consulting firm to perform Phase I (and to the extent necessary, Phase II) environmental assessments of the Premises ("Environmental Assessment"). Beaver shall be solely responsible for paying the cost of such Environmental Assessment.) If the Environmental Assessment determines that there are any hazardous materials in, on or about the Premises, in addition to any other rights or remedies of Beaver hereunder, Beaver shall have the right to terminate this Lease upon notice thereof to Owner if Owner is unable or unwilling to remove the hazardous materials within thirty (30) days of receipt of the Environmental Assessment or (ii) if Beaver determines, in Beaver's sole discretion, that the hazardous materials pose an unreasonable risk of harm to Beaver's employees or business, or (iii) the investigation, remediation and/or restoration work required materially interferes with Beaver's ability to use the Premises.

8) VALIDATION. This Agreement is valid only if Beaver chooses to exercise this right, and is contingent upon award of contract in which this Agreement is necessitated.

9) ADDITIONAL PROVISIONS. Beaver and Owner shall establish limits of the Premises to which Beaver has available to them. Beaver shall maintain unlimited access to that portion of the Premises, and unlimited use of the Premises within the final established boundaries.

Beaver may alter site grading within the Premises' limits by means of excavating, filling, or placing of stone or other materials. Upon expiration of the Term, Beaver and Owner may agree to leave any grading work and material placed or Beaver will remove material and grade the site similar to what was existing at the start of the Term as Beaver and Owner may agree in the future.

10) COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

11) GOVERNING LAW. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio.

12) AUTHORITY. If the Owner is a corporation, limited liability company, partnership or other form or type of entity, the person(s) executing this Agreement on behalf of such party covenants and warrants that they have been duly authorized by all appropriate entity actions to sign this Agreement and to bind such party to the terms of this Agreement. If the Owner is an individual, such individual represents that he or she has attained the age of majority, is fully competent and is not under duress.

13) PAYMENTS. Payment for use of the property is a will be made in two parts: 2/3 (\$20,000.00) to William G. Kinney 1220 Chagrin River Road, Gates Mills Ohio 44087 and 1/3 (\$10,000.00) to Brad E. Nelson 67 South Hayden Hudson, OH 44236.

14) RECORDATION. The parties agree that either party, at such party's sole cost and expense, may cause this Lease, or a memorandum thereof, to be recorded with the County Recorder of the county where the Property is located.

[END OF AGREEMENT – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year above set forth.

THE BEAVER EXCAVATING CO.

By: [Signature]

Name: Ryan Pepper, PE

Title: Project Manager

Email: ryan.pepper@beaverexcavating.com

Phone: (330) 417-7754

Date: 7/19/2023

STATE OF Ohio )  
COUNTY OF Stark ) SS: ACKNOWLEDGEMENT (BEAVER)

Before me a Notary Public in and for said County and State personally appeared The Beaver Excavating Co., an Ohio corporation, by Ryan Pepper its Project Manager who acknowledged that he being thereunto duly authorized, signed the foregoing instrument and that the same is his free act and deed and the free act and deed of said corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand at Canton, Ohio, this 19th day of July, 2023.  
Gary Mathes

Notary Public



OWNER:

By: [Signature]

Name: William G Kinney

Title: Managing Partner

Email: Wkinney@summitpetroleuminc.com

Phone: 440 773 7008

Date: July 18 2023

STATE OF OHIO )

COUNTY OF Summit )

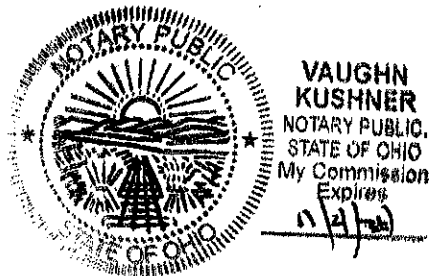
SS: CORPORATE ACKNOWLEDGEMENT (OWNER)

Before me a Notary Public in and for said County and State personally appeared Embrey LLC, an Ohio limited liability corporation, by William Kinney its Managing Partner, who acknowledged that he being thereunto duly authorized, signed the foregoing instrument and that the same is a free act and deed and the free act and deed of said corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Summit, Ohio, this 18 day of July, 2023.

[Signature]

Notary Public



This Instrument Prepared By:  
The Beaver Excavating Co.  
2000 Beaver Place Ave., S.W.  
P. O. Box 6059  
Canton, Ohio 44706

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PREMISES

Situated in the City of Hudson, County of Summit and State of Ohio and also known as being part of Original Township of Hudson, Township No. 69 currently deeded to Hudson Park Estates, Inc., in Deed Volume 3842, Page 341 of the Summit County Record of Deeds and more fully described as follows:

Beginning at an iron pin monument found at the Northwest corner of Original Lot Number 69 and also being the centerline of Stow Road (C.H. 106) 60 feet wide said point also being the Principal Place of Beginning for the parcel herein described;

Thence North 89°51' 48" E, a distance of 1376.11 feet to a point (a 5/8 iron pin found 0.10 ft. North-0.24 ft. West) from this point;

Thence South 00° 08'12" E, a distance of 404.74 feet to an iron pin set;

Thence South 83° 16' 00" W, a distance of 574.14 feet to an iron pin set;

Thence North 06° 21' 35" W, a distance of 27.45 feet to an iron pin set;

Thence North 65° 15' 11" W, a distance of 165.03 feet to an iron pin set;

Thence North 85° 20' 32" W, a distance of 166.09 feet to an iron pin set;

Thence South 89° 16' 45" W, a distance of 86.08 feet to an iron pin set;

Thence South 86° 59' 51" W, a distance of 102.19 feet to an iron pin set;

Thence North 89° 42' 21" W, a distance of 99.92 feet to an iron pin set;

Thence North 75° 39' 26" W, a distance of 94.48 feet to an iron pin set;

Thence North 83° 15' 34" W, a distance of 76.87 feet to an iron pin set on the easterly right of way line to Stow Road;

Thence South 89° 34' 00" W, a distance of 30.00 feet to a point on the centerline of Stow Road;

Thence North 00° 26' 00" W, along the centerline of Stow Road a distance of 332.66 feet to the principal place of beginning and containing 12,533 acres of land, more or less, of which 0.23 acres are within the right of way, as surveyed by Terence R. Allison, Ohio Registered Surveyor No. 7176, in August 2005. But subject to all roads, highways and easements of record.

All Iron pins set are 5/8" rebar capped with "T.R. Allison S-7176."

The basis of bearings for this description is Summit County Deed Record AFN# 54952551.

## EXHIBIT B

### LOCATION OF PROPERTY USE LEASE AND EASEMENT AGREEMENT AREA

