



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

+1 202 736 8198
THYNES@SIDLEY.COM

AMERICA • ASIA PACIFIC • EUROPE

300589

April 30, 2020

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
April 30, 2020
Part of
Public Record

Re: Finance Docket No. 36402, *Fortress Investment Group
LLC – Exemption for Intra-Corporate Family Transaction
– Ohio River Partners Shareholder LLC and Katahdin
Railcar services LLC*

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter is a Verified Notice Exemption for Intra-Corporate Family Transaction, filed on behalf of Fortress Investment Group LLC, pursuant to 49 C.F.R. § 1180.2(d)(3). The required filing fee has been paid via pay.gov

Fortress is also filing a Motion for Protective Order to protect certain Highly Confidential information provided in the agreements that pertain to this transaction.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Terence Hynes

Terence M. Hynes

FILED
April 30, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 30, 2020
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36402

**FORTRESS INVESTMENT GROUP LLC
—EXEMPTION FOR INTRA-CORPORATE FAMILY TRANSACTION—
OHIO RIVER PARTNERS SHAREHOLDER LLC AND KATAHDIN RAILCAR
SERVICES LLC**

VERIFIED NOTICE OF EXEMPTION

**Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000**

***Attorney for Fortress Investment Group LLC, Fortress Transportation and Infrastructure
Investors LLC, Ohio River Partners Shareholder LLC and Katahdin Railcar Services LLC***

Dated: April 30, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36402

**FORTRESS INVESTMENT GROUP LLC
—EXEMPTION FOR INTRA-CORPORATE FAMILY TRANSACTION—
OHIO RIVER PARTNERS SHAREHOLDER LLC AND KATAHDIN RAILCAR
SERVICES LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Fortress Investment Group LLC (“Fortress”) files this Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(3) for the benefit of Fortress Transportation and Infrastructure Investors LLC (“FTAI”), Ohio River Partners Shareholder LLC (“ORPS”) and Katahdin Railcar Services LLC (“KRS”) (collectively, the “Parties”), for an exemption from the prior approval requirements of 49 U.S.C. § 11323 *et seq.* in connection with a transaction within a corporate family.

FTAI, a Delaware limited liability company, is managed by an affiliate of Fortress. FTAI indirectly owns a majority equity interest in ORPS, a Delaware limited liability company that is a carrier subject to the Board’s jurisdiction.¹ KRS, a Delaware limited liability company that is currently a non-carrier, is also indirectly owned by FTAI.

¹ See *Ohio River Partners Shareholder LLC – Exemption for Intracorporate Family Transaction – Ohio River Partners LLC*, Finance Docket No. 36152 (served November 13, 2017) (“*ORPS-ORP Control*”).

In Ohio River Partners LLC – Exemption for Acquisition and Operation of a Rail Line -- Hannibal Development, LLC in Monroe County, Ohio, STB Docket No. 35984 (decisions served April 1, 2016 and December 22, 2017) (“*Omal Line Acquisition Exemption*”), Ohio River Partners LLC (“ORP”) was authorized to acquire and operate a 12.2-mile rail line between Milepost 60.5 at or near Powhatan Point, Ohio and Milepost 72.7 at or near Hannibal, Ohio (the “Omal Line”).² In *ORPS-ORP Control*, ORP was merged with and into its parent, ORPS, and ORPS succeeded to ORP’s ownership of and common carrier obligation with respect to the Omal Line.

The transaction that is the subject of this Verified Notice of Exemption is the lease of the Omal Line by ORPS to KRS. Upon consummation of the transaction, KRS will become a carrier and assume the common carrier obligation with respect to the Omal Line, and Fortress will continue in control of KRS when it becomes a carrier.³

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

49 C.F.R. § 1180.4(g) specifies certain information that must be included in a Verified Notice of Exemption filed pursuant to 49 C.F.R. § 1180.2(d)(3). The required information is provided below, preceded by the subsection of the Board’s regulations to which it is responsive.

² In *Fortress Investment Group LLC – Continuance in Control Exemption – Florida East Coast Railway, L.L.C., Central Maine & Quebec Railway US, Inc. and Ohio River Partners LLC*, Finance Docket No. 35985 (served December 31, 2015), Fortress was authorized to continue in control of ORP and certain other rail carriers controlled by companies managed by affiliates of Fortress upon ORP becoming a rail carrier.

³ Fortress may be deemed to control KRS and ORPS for purposes of 49 U.S.C. § 11323 because those companies are indirectly controlled by FTAI, which is managed by an affiliate of Fortress.

1180.6(a)(1)(i) ***Brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the transaction can be addressed.***

The railroad line acquisition that was the subject of *Omal Line Acquisition Exemption* was part of a broader real estate transaction pursuant to which ORPS acquired certain industrial property (including the land upon which the Omal Line is located) from Hannibal Development LLC. Since the effective date of the *Omal Line Acquisition Exemption*, ORPS has satisfied its common carrier obligation by engaging its affiliate, Central Maine & Quebec Railway US, Inc. (“CMQR”), to operate the Omal Line on a contract basis.

On December 30, 2019, FTAI sold CMQR to Soo Line Corporation, an indirect wholly owned subsidiary of Canadian Pacific Railway Company (“CP”). *See Soo Line Corp. – Control – Central Maine & Quebec Railway US Inc.*, STB Docket No. FD 36368 (pending). Pursuant to the sale agreement for that transaction, CMQR (which is no longer an affiliate of ORPS) agreed to continue to operate the Omal Line until June 30, 2020. From and after that date, the contract arrangement between ORPS and CMQR will terminate. The transaction that is the subject of this Verified Notice of Exemption will provide for uninterrupted operation of the Omal Line by another ORPS affiliate (KRS) upon expiration of the contract between ORPS and CMQR.

This transaction within a corporate family will not result in any adverse change in service levels or significant operational changes. KRS will operate the Omal Line in the same manner, and provide the same level of rail service to customers located on and along the Line, as CMQR does today. KRS intends to offer employment to the same CMQR crews who operate trains over the Omal Line today. The subject transaction will simply replace one ORPS affiliate with another as the operator of the Omal Line.

The Lease Agreement between ORPS and KRS will not result in any change in the competitive balance with carriers outside the corporate family. The Board’s *Omal Line*

Acquisition Exemption decision required ORPS to enter into appropriate interchange arrangements with Ohio Terminal Railway Company (“OTRC”) and Norfolk Southern Railway Company (“NS”). ORPS satisfied that requirement by entering into an Operating and Haulage Services Agreement with OTRC, pursuant to which CMQR handles rail cars for OTRC’s account between Omal Yard and the point of interchange with NS. ORPS also entered into a standard Interchange Agreement with NS. The Lease Agreement expressly requires KRS to assume ORPS’s obligations under both of those agreements, and to provide the same service frequency as CMQR does today (*see* Exhibit B, Omal Line Lease Agreement, Section 7.01).

Accordingly, this transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(3), and is exempt from the requirement of prior approval by the Board.

The business address and telephone number for KRS is:

Katahdin Railcar Services, LLC
c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attn: Ken Nicholson
(212) 479-5350

The business address and telephone number for ORPS is:

Ohio River Partners Shareholders LLC
43840 State Route 7
Hannibal, Ohio 43931
Attn: Robert Wholey
(917) 691-1455

Correspondence with respect to this Verified Notice of Exemption should be addressed to:

Terence M. Hynes
Sidley Austin LLP
1501 K St N.W.
Washington, DC 20005
(202) 736-8198

1180.6(a)(1)(ii) *Consummation Schedule*

The Parties intend to consummate the proposed transaction as soon as practicable after the effective date of this Verified Notice of Exemption.

11.80.6(a)(1)(iii) *Purpose of the Transaction*

The purpose of the intracorporate family transaction that is the subject of this Verified Notice of Exemption is to provide for continued operation of the Omal Line upon expiration of the contract between ORPS and CMQR on June 30, 2020. Prior to the sale of CMQR to CP, KRS was a subsidiary of CMQR engaged in rail car inspection, repair and rehabilitation services. KRS was not included in the sale transaction with CP, and it remains an affiliate of FTAI and ORPS. KRS will acquire the right and common carrier obligation to operate the Omal Line pursuant to the Lease Agreement between ORPS and KRS (see Exhibit B). The transaction will facilitate an orderly transition of rail operations upon expiration of the current arrangement between ORPS and CMQR, and provide for uninterrupted rail service to customers located on and along the Omal Line.

1180.6(a)(5) *List of States in which the Parties' Property is Located*

The Omal Line is located entirely within the State of Ohio.

1180.6(a)(6) *Map (Exhibit A)*

A map of the Omal Line is attached as Exhibit A.

1180.6(a)(7)(ii) *Agreement (Exhibit B)*

A copy of the Lease Agreement between KRS and ORPS is attached as Exhibit B.

1180.4(g)(1)(i) *Level of Labor Protection*

ORPS is a Class III carrier. Upon consummation of the subject transaction, KRS will become a Class III carrier. Accordingly the provisions of 49 C.F.R. § 11326 are not applicable. Nevertheless, as stated above, KRS intends to offer employment to all of the CMQR employees who currently operate the Omal Line.

1180.4(g)(4) *Transactions imposing interchange commitments.*

The Lease Agreement does not impose or involve any interchange commitment by or affecting the Parties, nor is the Omal Line currently subject to any agreement that imposes an interchange commitment.

Environmental and Historic Preservation Matters.

The Lease Agreement between KRS and ORPS will not result in any change to rail operations on and along the Omal Line. To the contrary, KRS will step into the shoes of CMQR, operating the Omal Line in the same manner and providing the same rail services to customers as CMQR does today. The transaction will not cause a diversion of: (1) more than 1,000 rail carloads per year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of the Omal Line to motor carriage. The proposed transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the Omal Line (indeed, CMQR operates only one train per day on the Line); (2) an increase of rail yard activities of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. The transaction will not affect a Class I or nonattainment area under the Clean Air Act, nor will the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) be exceeded. KRS does not contemplate that it will transport any

ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

KRS will operate the entire 12.2-mile Omal Line. ORPS will retain a residual common carrier obligation should the Lease Agreement terminate or KRS cease to provide rail service. Prior Board approval or exemption would be required if, in the future, KRS sought to abandon or discontinue rail service over any portion of the Omal Line. Neither KRS nor ORPS has plans to dispose of or to alter any property that is subject to the Board's jurisdiction and is 50 years old or older. Accordingly, this Verified Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

Respectfully submitted,

/s/ Terence M. Hynes
Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorney for Fortress Investment Group LLC, Fortress Transportation and Infrastructure Investors LLC, Ohio River Partners Shareholder LLC and Katahdin Railcar Services LLC

Dated: April 30, 2020

VERIFICATION

I, Daniel Bass, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption.

Executed on: April 30, 2020.

A handwritten signature in black ink that reads "Daniel Bass". The signature is written in a cursive, flowing style. The first name "Daniel" is written with a large, looped 'D' and the last name "Bass" is written with a large, looped 'B'. The signature is positioned above a horizontal line.

Daniel Bass, solely in my capacity as Chief
Financial Officer of Fortress Investment
Group LLC and not in my individual
capacity

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36402

**FORTRESS INVESTMENT GROUP LLC
—EXEMPTION FOR INTRA-CORPORATE FAMILY TRANSACTION—
OHIO RIVER PARTNERS SHAREHOLDER LLC AND KATAHDIN RAILCAR
SERVICES LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

**EXHIBIT A
SYSTEM MAP**

ORPS Railroad Map



LONG RIDGE
ENERGY TERMINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36402

**FORTRESS INVESTMENT GROUP LLC
—EXEMPTION FOR INTRA-CORPORATE FAMILY TRANSACTION—
OHIO RIVER PARTNERS SHAREHOLDER LLC AND KATAHDIN RAILCAR
SERVICES LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

**EXHIBIT B
LEASE AGREEMENT**

OMAL LINE LEASE AGREEMENT

Dated as of April 30, 2020

Between

KATAHDIN RAILCAR SERVICES LLC

and

OHIO RIVER PARTNERS SHAREHOLDER LLC

TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.....	2
<u>1.01 Defined Terms.</u>	2
<u>1.02 Other Definitional Provisions.</u>	5
II. GRANT OF A LEASE	5
<u>2.01 Description of Leased Property.</u>	5
<u>2.02 Grant of a Lease.</u>	5
<u>2.03 Permitted Uses of Leased Property.</u>	6
<u>2.04 Restrictions On Use Of Leased Property.</u>	6
<u>2.05 Reservation of Rights by Lessor.</u>	7
<u>2.06 Other Licenses, Encumbrances, Reservations.</u>	7
III. MANAGEMENT AND OPERATION OF THE LEASED LINE.....	8
<u>3.01 Common Carrier Obligation.</u>	8
<u>3.02 Rail Services.</u>	8
<u>3.03 Service Frequency.</u>	9
<u>3.04 Freight Revenues.</u>	9
<u>3.05 Management and Control of Leased Line.</u>	9
<u>3.06 Dispatching.</u>	9
<u>3.07 Employees.</u>	9
<u>3.08 Line Maintenance.</u>	9
<u>3.09 Capital Improvements.</u>	10
<u>3.10 Utilities.</u>	10
<u>3.11 Operating Expenses.</u>	11
IV. MONTHLY RENTAL.....	11
<u>4.01 Monthly Rental.</u>	11
V. LIABILITY.....	11
VI. INSURANCE.....	12
VII. AGREEMENTS PERTAINING TO LEASED PROPERTY.....	13
<u>7.01 Agreements Affecting the Leased Property.</u>	13
VIII. TAXES AND ASSESSMENTS.	13
IX. TERM.	13
<u>9.01 Effective Date.</u>	14
<u>9.02 Initial Term and Renewal.</u>	14

X.	EXPROPRIATION.....	14
	10.01 <u>Expropriation of Leased Property.</u>	14
XI.	CASUALTY LOSSES.....	15
	11.01 <u>Damage To Or Destruction of Leased Property.</u>	15
XII.	FORCE MAJEURE	15
XIII.	COMPLIANCE WITH LAWS.....	16
XIV.	LIENS AND CHARGES.....	16
	14.01 <u>Charges Against The Leased Property.</u>	16
	14.02 <u>Adverse Possession.</u>	17
XV.	DEFAULT, RIGHTS AND REMEDIES OF LESSOR	17
	15.01 <u>Events of Default.</u>	17
	15.02 <u>Lessor's Remedies Upon An Event of Default.</u>	18
XVI.	ABANDONMENT OF LEASED PROPERTY	19
	16.01 <u>Abandonment of Operations By Lessee.</u>	19
XVII.	RECORDATION OF LEASE	20
	17.01 <u>Registration by Lessee.</u>	20
XVIII.	INDEMNIFICATION PROCEDURES.	20
	18.01 <u>Notice of Claims.</u>	20
	18.02 <u>Third Person Claims</u>	20
XIX.	MISCELLANEOUS	21
	19.01 <u>STB Approval.</u>	21
	19.02 <u>Other Governmental Permits.</u>	21
	19.03 <u>Payments to Lessor.</u>	21
	19.04 <u>Successors and Assigns.</u>	21
	19.05 <u>Assignment.</u>	21
	19.06 <u>Notices.</u>	22
	19.07 <u>Confidentiality.</u>	23

OMAL LINE LEASE AGREEMENT

THIS OMAL LINE LEASE AGREEMENT (the “**Lease Agreement**”) is entered into as of this 30th day of April, 2020, by and between OHIO RIVER PARTNERS SHAREHOLDER LLC (“**ORPS**” or “**Lessor**”) and KATAHDIN RAILCAR SERVICES, LLC (“**KRS**” or “**Lessee**”). ORPS and KRS are referred to individually herein as a “Party” and collectively as the “Parties.”

RECITALS

A. WHEREAS, ORPS owns that certain railroad line between a point of connection with Norfolk Southern Railway Company (“**NS**”) at Milepost 60.5 + in the vicinity of Powhatan Point, Ohio and Milepost 72.7 + at Hannibal, Ohio, known as the Omal Secondary Track, and certain connecting side tracks and yard tracks (collectively, the “**Omal Line**” or “**Leased Line**”);

B. WHEREAS, ORPS has fulfilled its common carrier obligation as owner of the Omal Line by contracting with its affiliate, Central Maine & Quebec Railway US, Inc. (“**CMQR**”) to operate, and to provide rail service to industries located on and along, the Omal Line;

C. WHEREAS, on December 30, 2019, ORPS’ parent, Fortress Transportation & Infrastructure Investors LLC (“**FTAI**”) sold CMQR to Canadian Pacific Railway Company (“**CP**”);

D. WHEREAS, in connection with the sale of CMQR to CP, CMQR agreed to continue to operate, and to provide rail service to industries located on and along, the Omal Line, until June 30, 2020;

E. WHEREAS, KRS has agreed to lease from ORPS, and to assume the common carrier obligation with respect to, the Omal Line from and after the Effective Date, on the terms and subject to the conditions set forth in this Agreement; and

F. WHEREAS, ORPS has agreed to lease, and to transfer the common carrier obligation with respect to, the Omal Line to KRS from and after the Effective Date, on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, the Parties hereto, in consideration of the mutual covenants and agreements hereinafter set forth, intending to be legally bound, agree as follows:

I. DEFINITIONS

1.01 Defined Terms. As used in this Lease Agreement, the following terms shall have the meaning set forth in this Section 1.01:

“Additional Term” – as defined in Section 9.02.

“Affiliate” - With respect to any person, any other person which directly or indirectly controls, is controlled by or is under common control with such person.

“Casualty Loss” - As defined in Section 11.01.

“Charge” - As defined in Section 14.01.

“Claim Notice” – As defined in Section 18.01.

“Effective Date” – As defined in Section 9.01.

“Encumbrance” - With respect to any portion of the Leased Property, any mortgage, pledge, lien, claim, security interest, title retention, License (other than any License that is subject to an absolute right of termination by Lessee upon notice of ninety (90) days or less), or other encumbrance or restriction of any kind.

“Environmental Laws” - All applicable federal, state, municipal and local laws, statutes, ordinances, rules, by-laws, guidelines, treaties and regulations, and all applicable directives, rules, standards, requirements, policies, orders, judgments, injunctions, or decrees which have the force of law or which are capable of having the force of law, in each case relating to or addressing the environment.

“Event of Default” - As defined in Section 15.01.

“Expenses” - Any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder including, without limitation, court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel and other professionals.

“Expropriation Proceeding” - As defined in Section 10.01(a).

“Governmental Authority” - Any agency, board, bureau, executive, court, commission, department, tribunal, instrumentality or administration of the United States, the State of Ohio, or any local or other governmental body in a state, territory or possession of the United States.

“Governmental Permits” - All licenses, permits, approvals, consents, certificates, waivers, exemptions, orders and other authorizations from any and all Governmental Authorities.

“HRE Industrial Park” – As defined in Section 2.03(a).

“Indemnified Party(ies)” – As defined in Section 18.01.

“Indemnitor” – As defined in Section 18.01.

“Initial Term” - As defined in Section 9.02.

“KRS Indemnites” – As defined in Section 5.02.

“Lease Agreement” - This Lease Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

“Leased Line” - As defined in Recital A.

“Leased Property” – As defined in Section 2.01.

“Long Ridge Energy Facility” – that certain terminal facility owned and operated by ORPS adjacent to the Leased Line in the vicinity of Hannibal, Ohio.

“Long Ridge Terminal Rate” – as defined in Appendix B.

“Loss and Damage” – As defined in Section 5.01.

“Losses” - Any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges.

“Monthly Rent” – as defined in Section 4.01 and Appendix A.

“Non-Rail Capital Improvements” – As defined in Section 3.09(b).

“Notice” - As defined in Section 19.07.

“NS/KRS Interchange Point” – the point of interchange designated from time to time by KRS and NS pursuant to the ORPS-NS Interchange Agreement.

“Omali Yard” – those side tracks and yard tracks adjacent to the Leased Line in the vicinity of Omali, Ohio (except those tracks located within the Long Ridge Energy Facility).

“ORPS Indemnites” – As defined in Section 5.01.

“ORPS-NS Interchange Agreement” – that certain Interchange Agreement between ORPS and NS.

“ORTC” – Ohio Terminal Railway Company.

“ORTC Haulage Agreement” - that certain Operating and Haulage Services Agreement between ORPS and Ohio Terminal Railway Company.

“Rail Capital Improvements” – As defined in Section 3.09(a).

“STB” – the Surface Transportation Board.

“Taxes” - All taxes, assessments and other similar charges, general, special, ad valorem, ordinary or extraordinary, including any interest or penalties related thereto.

“Term” – the Initial Term and any Additional Term(s), in each case as defined in Section 9.02.

“Termination Date” - As defined in Section 15.02(a).

“Termination Notice” – As defined in Section 15.02(a).

1.02 Other Definitional Provisions. Each definition in this Lease Agreement includes the singular and the plural, and references in this Lease Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. References to a business day mean a day other than Saturday, Sunday or a legal holiday in New York City, New York. As used in this Lease Agreement, the word “including” means “without limitation,” and the words “herein,” “hereof” and “hereunder” refer to this Lease Agreement as a whole. Unless the context otherwise requires, references herein to Articles, Sections and Appendices mean the Articles and Sections of, and Appendices attached to, this Lease Agreement. Unless otherwise expressly stated, all dollar amounts referred to herein are in United States currency. All words, terms and phrases used in this Lease Agreement, and not otherwise defined explicitly, shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

II. GRANT OF A LEASE

2.01 Description of Leased Property. The property subject to this Lease Agreement consists of (i) all of the immovable property constituting the Leased Line and any and all improvements or fixtures thereto (whether existing as of the date hereof or created during the Initial Term or an Additional Term), including, without limitation, roadbed, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, bridge abutments, culverts, stations, buildings, structures, depots, yards, shops, crossing protection devices, communications and signal facilities, and parking and storage areas, and (ii) any materials, fit materials, parts, equipment, machinery and supplies for the maintenance of railroad rolling stock or locomotives located on or along the Leased Line as of the Effective Date (collectively, the “**Leased Property**”); provided, that the Leased Property shall not include the roadbed, tracks, rails, ties, ballast, other track materials, switches, crossings, buildings, structures, depots, yards, communications and signal facilities, and parking and storage areas located within the Long Ridge Energy Facility; and provided further, that Lessee shall have the right to access the tracks and rail facilities within the Long Ridge Energy Facility for the purpose of providing rail service to that facility and performing maintenance pursuant to Section 3.08 of this Lease Agreement.

2.02 Grant of a Lease. Subject to the terms and on the conditions set forth in this Lease Agreement, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Property.

2.03 Permitted Uses of Leased Property. Lessee shall be entitled to use the Leased Property for the purpose of conducting freight railroad operations thereon, including the following:

- a. The right to originate and terminate freight traffic at, and provide rail services to, industries located on or along the Leased Line, which right shall be exclusive; provided, that Lessee shall not provide rail services to industries located within that certain industrial park owned by Hannibal Real Estate, LLC in the vicinity of Omal, Ohio (the “**HRE Industrial Park**”) unless Lessee is notified in writing by Lessor that it is authorized to serve customers in the HRE Industrial Park;
- b. The right to interchange cars and equipment with other rail carriers at points on or along the Leased Line;
- c. The right to switch, store cars and equipment, and make up and break up trains at points on or along the Leased Line; and
- d. The right to establish such rates, fares, terms and conditions for the provision of freight railroad service on the Leased Line in accordance with [HIGHLY CONFIDENTIAL MATERIAL REDACTED].

2.04 Restrictions On Use Of Leased Property. Lessee shall not, without the prior written consent of Lessor:

- a. conduct any regional, local, commuter or excursion passenger railroad operations on or along the Leased Line, or cause or permit any other person or entity to do so;
- b. permit any third person, entity or railroad other than Lessee and its Affiliates to conduct any freight railroad operations on or along the Leased Line, except (i) such operations by OTRC as are contemplated by the OTRC Haulage Agreement, and (ii) such operations by NS as are contemplated by the ORPS/NS Interchange Agreement;
- c. sublet the Leased Property, or any portion thereof, for any purpose whatsoever;
- d. grant licenses or rights of occupancy in, on, under, through, above, across or along the Leased Property, or any portion thereof, to a third party; provided, however, that Lessee may grant to third parties temporary access to the Leased Property for purposes relating to the conduct of Lessee’s ordinary course of business on the Leased Property (which access shall not interfere with Lessor’s rights to the Leased Property);

- e. mine, take, extract, remove or market any coal, oil, petroleum, gas, water and any and all other ores and minerals of every kind, nature or description in and underlying the surface of the Leased Property, or any portion thereof, or cause or permit any other person or entity to do so; and
- f. cause or permit the creation of any Encumbrance on the Leased Property or any portion thereof.

2.05 Reservation of Rights by Lessor. Lessee shall take the Leased Property subject to Lessor's following exceptions, reservations, rights and privileges:

- a. the right to create Encumbrances on the Leased Property, or any portion thereof; provided, that such Encumbrances shall not materially affect the ability of Lessee to conduct freight railroad operations on the Leased Line;
- b. the right to grant leases, licenses or rights of occupancy with respect to the Leased Property or any portion thereof; provided, that such leases, licenses or rights of occupancy shall not materially affect the ability of Lessee to conduct freight railroad operations on the Leased Line;
- c. the right, upon reasonable notice to Lessee, to enter upon and use the Leased Property, or any portion thereof, for the enjoyment and use of any and all of Lessor's exceptions, reservations, rights and privileges contained in this Section 2.05, and to grant other party(ies) the right, upon reasonable notice to Lessee, to enter upon the Leased Property, or any portion thereof, for the enjoyment and use of any and all such exceptions, reservations, rights and privileges of Lessor that may be granted or assigned to such other party(ies) by Lessor; provided, that the exercise of such rights of entry by Lessor and/or other party(ies) shall not unreasonably interfere with the ability of Lessee to conduct freight railroad operations on and along the Leased Property.

2.06 Other Licenses, Encumbrances, Reservations. Lessee shall also take the Leased Property subject to:

- a. The rights granted to OTRC pursuant to the OTRC Haulage Agreement;
- b. The rights granted to NS pursuant to the ORPS/NS Interchange Agreement;
- c. Any existing exceptions, reservations, restrictions and rights of record;
- d. Any and all Licenses or Encumbrances on or affecting the Leased Property as of the Effective Date;
- e. Existing and future building, zoning, subdivision and other applicable federal, state, municipal and local laws, ordinances and regulations;

- f. Reservations or exceptions of record of minerals or mineral rights;
- g. All encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Leased Property; and
- h. Any and all existing ways, alleys, party walls, privileges, rights, appurtenances and servitudes, howsoever created.

III. MANAGEMENT AND OPERATION OF THE LEASED LINE.

3.01 Common Carrier Obligation. In consideration for the rights granted to Lessee herein, Lessee agrees to assume during the Term of this Lease Agreement Lessor's common carrier obligation with respect to the provision of freight railroad service on and along the Leased Line, and to provide such rail services and to perform such actions as may reasonably be required to satisfy that common carrier obligation.

3.02 Rail Services. The rail services to be provided by KRS shall include, as required:

- a. picking up and setting off loaded and empty rail cars at customer facilities;
- b. the transportation of loaded and empty rail cars between customer facilities and the NS/KRS Interchange Point;
- c. switching and blocking of rail cars at the NS/KRS Interchange Point and in Omal Yard as required in connection with the interchange of such rail cars with NS and OTRC;
- d. switching and blocking of rail cars on sidetracks, spur tracks and industry tracks, including without limitation tracks within the Long Ridge Energy Facility;
- e. such mechanical or other inspections of loaded and empty rail cars as may be required by applicable laws or regulations or by KRS's operating practices;
- f. issuing tariffs, entering into transportation contracts with customers, and issuing waybills, shipping documents and invoices in connection with the movement of rail cars to and from industries located on and along the Leased Line;
- g. providing customer service support in connection with rail shipments moving to or from industries located on or along the Leased Line;

- h. marketing rail service to existing and prospective new customers located on or along the Leased Line; and
- i. such other services as may be necessary or appropriate to provide safe, efficient and reliable rail services consistent with ORPS's common carrier obligation.

3.03 Service Frequency. KRS shall provide train service between Omal Yard and the NS/ORPS Interchange Point at least three (3) days per week, in each direction, subject to weather conditions and the tender by customers (and NS and/or OTRC, as applicable) of a sufficient number of rail cars to warrant such frequency of service. KRS may, in its sole discretion, operate trains between Omal Yard and the NS/KRS Interchange Point more frequently where traffic volumes warrant such additional service.

3.04 Freight Revenues. KRS shall operate the Leased Line for its own revenue and car hire account. Rail cars transported by KRS on or along the Leased Line shall be in the revenue waybill and car hire account of KRS, NS or OTRC (as applicable). KRS shall collect from customers and/or connecting railroads, and shall be entitled to, all line haul revenue, fuel surcharges, switching charges, demurrage and storage charges, and other charges attributable to the railroad services provided by KRS pursuant to this Lease Agreement. ORPS shall not be entitled to any line haul revenue, fuel surcharges, switching charges, demurrage and storage charges, and other charges attributable to the railroad services provided by KRS, nor shall ORPS participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of rail cars.

3.05 Management and Control of Leased Line. KRS shall at all times have exclusive management and control of the movement of trains on or along the Leased Line. KRS shall have the authority to issue appropriate operating rules, timetables, practices, regulations, special instructions, bulletins and orders governing rail operations on the Leased Line by KRS, OTRC and NS.

3.06 Dispatching. KRS shall be responsible, at its sole cost and expense, for dispatching all trains moving on or along the Leased Line. KRS shall implement appropriate train schedules and interchange arrangements as agreed to among KRS, OTRC and NS.

3.07 Employees. KRS shall provide its own employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the Leased Line.

3.08 Line Maintenance. Lessee shall be responsible, at its sole cost and expense, for all required maintenance of, and repairs to, (i) the Leased Line (except to the extent that the OTRC Haulage Agreement requires OTRC to perform such maintenance), (ii) any Rail Capital Improvements constructed, installed or placed on or along the Leased Line by Lessee, and (iii) the tracks and rail facilities located within the Long Ridge Energy Facility. Lessee shall perform, or cause to be performed, all work required to maintain the right-of-way, rail, ties, ballast, switches and crossovers, other track material, signals and communication facilities to at least FRA Class I standards. Lessee shall not be responsible for replacing or renewing (i) the Leased Line (except

as otherwise provided in Section 11.01), or (ii) the tracks and facilities located within the Long Ridge Energy Facility. Lessee shall not be responsible for maintaining any Non-Rail Capital Improvements constructed, installed or placed on the Leased Property by Lessor. From time to time, Lessor may, upon reasonable notice to Lessee, conduct such inspection of the Leased Line as it deems appropriate to determine Lessee's compliance with its obligations under this Section 3.08.

3.09 Capital Improvements.

- a. Lessee shall have the right to construct, install or place such additional rail, ties, ballast, switches and crossovers, other track material, signals and communications facilities, utilities, structures, and/or improvements (collectively, "Rail Capital Improvements") on or along the Leased Property as Lessee, in its sole judgment, determines are necessary or desirable or legally required to support the freight railroad operations contemplated by this Lease Agreement. Rail Capital Improvements to the Leased Line shall be made under Lessee's direction, control and management, and at Lessee's sole cost and expense. Any Rail Capital Improvements constructed, installed or placed on or along the Leased Line by Lessee shall be owned by, and the sole property of, ORPS.
- b. Lessor shall have the right to construct, install or place such pipes, wires, fiber optic cables, structures and/or improvements for non-railroad purposes (collectively, "Non-Rail Capital Improvements") on the Leased Property or any portion thereof as Lessor, in its sole judgment, determines are necessary or desirable or legally required to support Lessor's operations; provided, that such Non-Rail Capital Improvements shall not materially affect the ability of Lessee to conduct freight railroad operations on the Leased Line. Non-Rail Capital Improvements to the Leased Property shall be made under Lessor's direction, control and management, and at Lessor's sole cost and expense.
- c. Lessor or Lessee (as applicable) shall provide at least ten (10) days prior notice in writing to the other Party of its intention to construct, install or place Rail Capital Improvements or Non-Rail Capital Improvements (as applicable) on or along the Leased Property. Lessor and Lessee each shall cooperate with the other Party to minimize the impact of such construction, installation or placement activities on their respective operations.

3.10 Utilities. Lessee shall initiate, contract for and obtain, in its name, any and all utility services required on the Leased Property from and after the Effective Date, including gas, electricity, telephone, water and sewer connections and services. Lessee shall bear and pay all charges for such utility services as they become due during the term of this Lease Agreement.

3.11 Operating Expenses. Lessee shall be solely responsible for all costs and Expenses relating to or arising from the use and occupancy of, and provision of freight railroad operations on and along, the Leased Property during the Term of this Lease Agreement.

IV. MONTHLY RENTAL.

4.01 Monthly Rental. As compensation for the rights granted to it pursuant to this Lease Agreement, Lessee shall pay to Lessor monthly an amount [HIGHLY CONFIDENTIAL MATERIAL REDACTED] (the “**Monthly Rent**”).

V. LIABILITY.

5.01 As between the ORPS and KRS, responsibility for any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever, including employees of ORPS, KRS, OTRC, NS or rail customers (collectively “**Loss and Damage**”), resulting from, arising out of, incidental to or occurring in connection with the use and occupancy of the Leased Property and the conduct of freight railroad operations on and along the Leased Line, by KRS pursuant to this Lease Agreement shall be the sole responsibility of KRS. KRS shall (i) forever protect, defend, indemnify and hold harmless ORPS and its parent corporations, subsidiaries and affiliates, and its and their respective directors, officers, agents, and employees (collectively, the “**ORPS Indemnitees**”) from and against all such liability, cost and expense, and (ii) defend the ORPS Indemnitees against such claims with counsel selected by KRS and approved by ORPS (such approval not to be unreasonably withheld, conditioned or delayed). Such indemnification shall include all expenses, including attorney’s fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the ORPS Indemnitees in defending a claim for which KRS is responsible pursuant to this Section 5.01.

5.02 As between the ORPS and KRS, responsibility for any Loss and Damage resulting from, arising out of, incidental to or occurring in connection with (i) the use of, or operation of trains over, the Leased Line by OTRC; (ii) the maintenance, repair, replacement, and renewal of, or the construction, installation and operation of capital improvements on, the Leased Property by OTRC; and/or (iii) the presence and/or operations of industries located on ORPS property on or along the Leased Line shall be the sole responsibility of ORPS. ORPS shall (i) forever protect, defend, indemnify and hold harmless KRS and its parent corporations, subsidiaries and affiliates, and its and their respective directors, officers, agents, and employees (collectively, the “**KRS Indemnitees**”) from and against all such liability, cost and expense, and (ii) defend the KRS Indemnitees against such claims with counsel selected by ORPS and approved by KRS (such approval not to be unreasonably withheld, conditioned or delayed). Such indemnification shall include all expenses, including attorney’s fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the KRS Indemnitees in defending a claim for which ORPS is responsible pursuant to this Section 5.02.

5.03 Whenever any liability, cost or expense is assumed by or is the responsibility of KRS or ORPS (as applicable) under this Section 5, that Party shall (i) forever protect, defend,

indemnify and save harmless the other Party and its Indemnitees (as defined in Section 5.01 or Section 5.02, as applicable) from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnified Party or its Indemnitees, and (ii) defend such indemnified Party and its Indemnitees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

5.04 In every case of death or injury suffered by an employee of ORPS, KRS, OTRC, NS or a rail customer, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and a Party is required under provisions of this Lease Agreement to pay same or a portion of same in installments over a period of time, said Party shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Lease Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

5.05 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Lease Agreement shall be included as costs and expenses in applying the liability provisions of this Section 5.

5.06 Neither Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Lease Agreement without the written concurrence of such other Party (which consent shall not be unreasonably withheld) if the consideration for such settlement or compromise exceeds [HIGHLY CONFIDENTIAL MATERIAL REDACTED]; provided, however, that the indemnifying Party may, without the concurrence of such other Party, settle any claim so long as such settlement (i) does not require any payment by such other Party (and/or its Indemnitees), (ii) does not impose any future obligation on such other Party (and/or its Indemnitees), (iii) does not require or constitute an admission of guilt or liability by or on behalf of such other Party (and/or its Indemnitees), and (iv) fully releases such other Party (and its Indemnitees) from any liability in connection with the settled claim. Notwithstanding the foregoing, the Indemnified Party(ies) shall have the right to pay, settle or compromise any such claim, action or suit without such consent, provided, that in such event the Indemnified Party(ies) shall waive any right to indemnification under this Lease Agreement unless such Indemnified Party(ies) shall have sought the consent of the Indemnitor to such payment, settlement or compromise and such consent is unreasonably withheld, conditioned or delayed.

VI. INSURANCE.

6.01 Lessee shall procure and maintain, at its own cost and expense, at all times during the term of this Lease Agreement a policy of Commercial General Liability Insurance covering all liabilities that are the responsibility of Lessee under the terms of this Lease Agreement. Said policy shall have limits of at least Twenty-Five Million Dollars (\$25,000,000) per occurrence and

in the annual aggregate. Lessee shall submit to Lessor evidence of the insurance required by this Section 6.01 prior to the Effective Date, and upon the renewal of the required insurance thereafter. Such insurance shall be procured from insurers authorized to do business in the State of Ohio, shall name Lessor as an additional insured, and shall provide for thirty (30) day written notice to be given to Lessor in the event insurance coverage is substantially changed, canceled, or not renewed.

6.02 Lessor shall procure and maintain, at its own cost and expense, at all times during the term of this Agreement a policy of Commercial General Liability Insurance covering all liabilities that are the responsibility of Lessor under the terms of this Lease Agreement. Said policy shall have limits of at least Twenty Million Dollars (\$20,000,000) per occurrence and in the annual aggregate. Lessor shall submit to Lessee evidence of the insurance required by this Section 6.02 prior to the Effective Date, and upon the renewal of the required insurance thereafter. Such insurance shall be procured from insurers authorized to do business in the State of Ohio, shall name Lessee as an additional insured, and shall provide for thirty (30) day written notice to be given to Lessee in the event insurance coverage is substantially changed, canceled, or not renewed. Lessor shall be responsible for procuring and maintaining, at its own cost and expense, property insurance covering the Leased Property and the Long Ridge Energy Facility.

VII. AGREEMENTS PERTAINING TO LEASED PROPERTY.

7.01 Agreements Affecting the Leased Property. In consideration for the rights granted to Lessee pursuant to this Lease Agreement, Lessee shall (i) accept assignment of, and assume all rights and obligations of ORPS pursuant to, the ORPS-NS Interchange Agreement; and (ii) provide all rail services, and perform all actions required to be performed by ORPS pursuant to, the OTRC Haulage Agreement; provided, however, that Lessee shall not assume or be responsible for any obligation or liability of ORPS pursuant to Section 8 of the OTRC Haulage Agreement.

VIII. TAXES AND ASSESSMENTS.

8.01 All property taxes and similar assessments relating to the Leased Property and the Long Ridge Energy Facility shall be the sole responsibility of, and payable by, ORPS.

8.02 All income taxes, franchise taxes, sales taxes and similar assessments relating to the railroad services and to the operation of the Leased Line by KRS pursuant to this Lease Agreement shall be the sole responsibility of, and payable by, KRS.

8.03 All income taxes, franchise taxes, sales taxes and similar assessments relating to (i) the operation of the Long Ridge Energy Facility and (ii) the Monthly Rental paid to ORPS pursuant to Section 4.01 of this Agreement shall be the sole responsibility of, and payable by, ORPS.

IX. TERM.

9.01 Effective Date. This Lease Agreement shall become effective upon a date to be mutually agreed to and memorialized in writing by ORPS and KRS (the “**Effective Date**”).

9.02 Initial Term and Renewal. This Lease Agreement shall remain in full force and effect for an initial term that will expire on the fifth anniversary of the Effective Date, unless earlier terminated pursuant to Section 15.02(a) or Section 16.01 (the “**Initial Term**”). Thereafter, this Lease Agreement shall automatically renew under the same terms and conditions for successive terms of one year (each an “**Additional Term**”), unless either Party provides to the other Party written notice of its intent to terminate this Lease Agreement not less than ninety (90) days prior to the expiration of the Initial Term or the then-current Additional Term (as applicable).

9.03 If Lessor determines, in its sole judgment, that modification or amendment of this Lease Agreement is necessary to enable Lessor to pursue business opportunities related to the Long Ridge Energy Facility, then Lessor may request that the parties renegotiate the terms and conditions of this Lease Agreement by providing written notice to Lessee at least ninety (90) days prior to the third anniversary of the Effective Date. In that event, the parties shall negotiate in good faith such modifications and/or amendments to this Lease Agreement as Lessor determines are necessary to enable it to pursue such business opportunities. If the parties are unable to reach agreement with respect to the modifications and/or amendments proposed by Lessor, Lessor shall have the right to terminate this Lease Agreement by providing a Termination Notice to Lessee at any time between the date that is thirty (30) days prior to the Effective Date and the date that is thirty (30) days after the Effective Date. If Lessor provides such a Termination Notice, this Lease Agreement shall be terminated in the manner set forth in Section 15.02(a).

X. EXPROPRIATION

10.01 Expropriation of Leased Property.

a. If, during the term of this Lease Agreement, a proceeding is instituted by any Governmental Authority or other lawful entity for the condemnation, expropriation or seizure of the Leased Property or any portion thereof for any public or quasi-public purpose (an “**Expropriation Proceeding**”), and such Expropriation Proceeding results in the taking of the whole or a portion of the Leased Property that materially interferes with Lessee’s ability to conduct freight railroad operations on the Leased Line in substantially the same manner as currently conducted by CMQR, then Lessee shall have the right, upon written notice to Lessor, to terminate this Lease Agreement in its entirety, and the Term hereof shall expire on the date that title to the Leased Property (or portion thereof) vests in the condemning authority.

b. If an Expropriation Proceeding results in the taking of less than all of the Leased Property, and such taking does not materially interfere with Lessee’s ability to conduct freight railroad operations on the remaining portions of the Leased Line in substantially the same manner as currently conducted by CMQR, then this Lease Agreement shall terminate only as to the portion of the Leased Property so taken, and shall continue in full force and effect as to the part of the Leased Property remaining, without any reduction, abatement, or effect upon any sum or charge to be paid by the Lessee under the provisions of this Lease Agreement.

c. If temporary use of the whole or any portion of the Leased Property shall be taken at any time during the Term of this Lease Agreement for any public or quasi-public purpose, this Lease Agreement shall continue for the balance of its Term. In such case, Lessee shall continue to pay, in full, all sums and charges to be paid by Lessee under the provisions of this Lease Agreement. For purposes of this Section 10.01(c), a temporary taking shall mean the use or occupation of all or a portion of the Leased Property that shall not exceed thirty (30) consecutive days. In the event that such taking shall exceed such thirty (30) day period, then Lessee may elect to treat such taking in accordance with the provisions of Sections 10.01 (a), (b) and (d) hereof. The provisions of this Section 10.01(c) shall not apply to any temporary use or taking of the Leased Property, or any portion thereof, involving or incident to the exercise of any exception, reservation, right, or privileges reserved to Lessor by the terms of this Lease Agreement.

d. Lessor shall be entitled to any and all funds paid or payable by any Governmental Authority or other entity as compensation for the expropriation or temporary use of the Leased Property or any portion thereof; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting a separate claim directly against the condemning authority for loss of its business or for the value of its leasehold estate as a result of such expropriation or temporary use of the Leased Property.

e. Each Party shall provide prompt notice to the other Party of any Expropriation Proceeding, or threatened Expropriation Proceeding, involving the Leased Property. Each Party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other Party, its attorneys, and experts.

XI. CASUALTY LOSSES

11.01 Damage To Or Destruction of Leased Property. Lessee accepts the Leased Property for the Term of this Lease Agreement at Lessee's sole risk and peril. Any damage to or destruction of the Leased Property, or any portion thereof, by accident, flood, fire, civil disturbance, vandalism, earthquake, storm, sabotage, or any other eventuality, whether foreseeable or not foreseeable ("**Casualty Loss**"), shall not cause a termination of this Lease Agreement and shall not release Lessee from liability to pay Lessor the Monthly Rent herein provided or from the performance of any of the terms and conditions of this Lease Agreement. Lessee shall (i) repair and/or replace any portion of the Leased Property affected by such Casualty Loss, or (ii) abandon such portion of the Leased Property pursuant to Section 16.01. Lessor shall have no obligation to Lessee to repair, replace or rebuild any portion of the Leased Property affected by such Casualty Loss; provided, however, that Lessor shall diligently seek to recover the cost of repairing or replacing damage to the Leased Property to the maximum extent provided under the property insurance maintained by Lessor pursuant to Section 6.02 of this Lease Agreement, and shall assign any and all proceeds of that insurance recovered by Lessor to Lessee for use in performing such repair and/or replacement of the Leased Property.

XII. FORCE MAJEURE

12.01 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, pandemic, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. If an event of force majeure impairs a Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take reasonable measures to restore performance of its obligations in a timely manner.

XIII. COMPLIANCE WITH LAWS

13.01 Lessee shall comply, at its sole cost and expense, with all applicable federal, state and local laws, rules, regulations and orders promulgated by any Governmental Authority that relate to the freight railroad operations contemplated by this Lease Agreement, including without limitation the Federal Locomotive Inspection Act, the Federal Safety Appliance Act, as amended, regulations issued from time to time by the Federal Railroad Administration and the STB, and environmental laws and regulations, in each case relating to the operation, condition, inspection and safety of Lessee's trains, locomotives, rail cars and equipment while such trains, locomotives, rail cars, and equipment are being operated on or along the Leased Line. Lessee shall indemnify, protect, defend, and save harmless the OPRS Indemnitees from and against all fines, penalties, claims, actions, costs, damages, losses, and Expenses in any manner caused by, arising out of, or connected with Lessee's failure to comply with its obligations pursuant to this Section 13.01.

13.02 Lessee shall have the right to contest by appropriate legal proceedings, at its sole cost and expense, the validity of any law, ordinance, order, decision, rule, regulation, or requirement of a nature referred to in Section 13.01 and compliance with which is the obligation of Lessee hereunder. Lessee may postpone compliance therewith until the final determination of any such proceedings; provided, that all such proceedings shall be prosecuted with due diligence and dispatch on the part of Lessee; and provided further, that Lessee shall forever protect, indemnify, defend, and hold harmless the ORPS Indemnitees from and against any and all liability, cost, and Expense arising out of or connected with any such contest or noncompliance by Lessee. In connection with any such contest, objection or protest, Lessee may, where necessary in Lessee's reasonable judgment, implead Lessor (or its Affiliates) as owner of the Leased Property; provided, that Lessee shall reimburse Lessor for any and all costs (including attorneys' fees) Lessor may incur as a result of Lessee's so impleading Lessor. Lessor shall provide Lessee notice of any alleged violation of any law, ordinance, order, decision, rule, regulation, or requirement of a nature referred to in Section 13.01 that it receives as owner of the Leased Property during the term of this Lease Agreement.

XIV. LIENS AND CHARGES.

14.01 Charges Against The Leased Property.

a. Lessee shall not, at any time during the term of this Lease Agreement, create, suffer, or otherwise permit any lien, claim, mortgage, Encumbrance, or charge of any

nature whatsoever, including, without limitation, any materialmen's, supplier's or similar lien or charge, but excepting any inchoate lien or charge which has not ripened (hereinafter collectively referred to as a "**Charge**") to be asserted or claimed against the Leased Property or any portion thereof, for any reason; provided, however, that the provisions of this Section 14.01 shall not apply to a Charge created (i) by Lessor or (ii) by a person (other than Lessee) claiming any interest in the Leased Property by, through or under Lessor.

b. If any Charge (other than a Charge created by Lessor or by a person other than Lessee claiming any interest in the Leased Property by, through or under Lessor) shall at any time be asserted against the Leased Property, Lessee shall cause such Charge to be discharged of record within thirty (30) days after the date of filing of same. If Lessee fails to discharge such Charge within such period, then, in addition to any other rights or remedies available to Lessor, Lessor may, but shall not be obligated to, discharge said Charge by paying the amount claimed to be due, without inquiry by Lessor into the validity of said Charge. Any amount paid by Lessor in procuring the discharge of a Charge pursuant to this Section 14.01, and all costs and Expenses incurred by Lessor in connection therewith, shall be paid by Lessee to Lessor within thirty (30) days of Lessor's submission to Lessee of a bill therefor.

c. Lessee shall have the right to contest any Charge asserted against the Leased Property; provided, that, within thirty (30) days after any such Charge is filed or attaches, Lessee shall give written notice to Lessor of Lessee's intention to contest such Charge, and such notice shall specify the amount of the Charge to be contested. In the event that Lessee has provided such written notice, Lessor may not pay, remove, or otherwise proceed to discharge such Charge pursuant to Section 14.01(b); provided, that all such legal proceedings shall be prosecuted with due diligence and dispatch on the part of Lessee, and provided further, that Lessee shall forever protect, indemnify, defend, and hold harmless the ORPS Indemnitees from all liability, cost, and Expense arising out of or connected therewith, including, without limitation, the principal amount of the Charge.

14.02 Adverse Possession. Lessee shall not knowingly permit the Leased Property or any portion thereof to be used by any third party (or by the public generally) without restriction or in such manner as might reasonably tend to (i) impair Lessor's title to all or any part of the Leased Property, or (ii) make possible any claim by such party(ies) or the public of adverse usage, adverse possession or implied dedication of the Leased Property or any portion thereof. The foregoing shall not be construed to restrict public access to the Leased Property in the normal course of Lessee's railroad operations.

XV. DEFAULT, RIGHTS AND REMEDIES OF LESSOR

15.01 Events of Default. Any of the following events, if occurring during the Term of this Lease Agreement, shall constitute an event of default by Lessee (each, an "**Event of Default**"):

a. any default or breach of Lessee's obligation to maintain the Leased Line to the standard specified in Section 3.08 of this Lease Agreement, and Lessee's continuance in such

default or breach for a period of thirty (30) days after Lessor shall have sent written notice of default to Lessee (which notice shall identify in reasonable detail the defects or track conditions constituting such failure to maintain the Leased Line to the standard specified in Section 3.08);

b. any default or breach of Lessee's obligation to pay the Monthly Rent or any other amount payable by Lessee to Lessor pursuant to the terms of this Lease Agreement, and Lessee's continuance in such default or breach for a period of thirty (30) days after Lessor shall have sent written notice of default to Lessee (which notice shall identify in reasonable detail the nature and amount unpaid by Lessee);

c. any default or breach of Lessee's covenants, agreements and obligations under Section 2.04 of this Lease Agreement, and Lessee's continuance in such default or breach for a period of thirty (30) days after Lessor shall have sent written notice of such default to Lessee;

d. any default or breach of Lessee's obligation to maintain the insurance coverage set forth in Section 6.01 of this Lease Agreement, and Lessee's continuance in such default or breach for a period of thirty (30) days after Lessor shall have sent written notice of such default to Lessee; and

e. the voluntary or involuntary filing of any petition or similar pleading, or the commencement of any proceeding, by or against Lessee under any federal or state bankruptcy, insolvency, reorganization, arrangement of debt, readjustment of debt or receivership law or statute, or the assignment of all or a substantial portion of Lessee's property for the benefit of creditors, or the appointment of a receiver, trustee, or liquidator for all or a substantial portion of Lessee's property; provided, that such bankruptcy or insolvency proceedings or such assignments for the benefit of creditors or such appointment of a receiver, trustee, or liquidator has not been discharged, vacated, dismissed, or otherwise terminated within thirty (30) days after the filing of such petition or similar pleading, or a valid appeal therefrom shall not be pending.

15.02 Lessor's Remedies Upon An Event of Default. Upon the occurrence of any Event of Default specified in Section 15.01, Lessor may, at its sole discretion, exercise one or more of the following remedies:

a. Lessor shall have the right at its sole option and upon ten (10) days' written notice to Lessee (the "**Termination Notice**") to terminate this Lease Agreement. Upon receipt of a Termination Notice, Lessee shall promptly file such petition or other pleading with the STB as may be required to obtain approval or exemption for Lessee to abandon or discontinue its freight railroad operations on and along the Leased Line. On the date immediately following the effective date of the STB notice or decision granting such approval or exemption, this Lease Agreement shall terminate (the "**Termination Date**") and Lessee shall discontinue its freight railroad operations, vacate and peaceably surrender to Lessor the Leased Property, and remove from the Leased Property all personal property of Lessee located thereon, all at Lessee's sole risk, cost, and expense. Notwithstanding termination of this Lease Agreement pursuant to this Section 15.02(a), Lessor and Lessee shall remain liable for all of their respective liabilities and obligations accrued or incurred under the provisions of this Lease Agreement prior to the Termination Date.

Termination of this Lease Agreement by Lessor pursuant to this Section 15.02(a) shall not be deemed to affect in any way any rights, claims or causes of action (including any claim for money damages) which either Party may have against the other Party on account of any default or breach of this Lease Agreement prior to termination.

b. Lessor may, in its sole discretion, afford Lessee an opportunity to cure the default or breach giving rise to an Event of Default within such period as may be specified by Lessor; provided that, in such event, Lessee shall protect, defend, indemnify, and hold harmless the ORPS Indemnitees from and against any liability, Charge, cost, or Expense arising from such default or breach during the period afforded by Lessor to Lessee to effect such cure.

c. Lessor shall have the right to exercise any and all rights or remedies provided to Lessor against Lessee in law or equity on account of the default or breach giving rise to an Event of Default, including, without limitation, injunctive relief. Lessee expressly acknowledges that the nature and purpose of this Lease Agreement are such that, in the event of a default or breach of any covenant hereunder, damages may not be an adequate remedy, and equitable relief, such as an injunction, mandatory or otherwise, may be necessary.

d. Except to the extent inconsistent with the above-specified remedies for default or breach under this Lease Agreement, each right and remedy provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either Party of any one or more of the rights or remedies provided in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

XVI. ABANDONMENT OF LEASED PROPERTY

16.01 Abandonment of Operations By Lessee.

a. Lessee shall, at its sole cost and expense, obtain any required STB approval or exemption in the event Lessee desires to abandon or discontinue its freight railroad operations on and along the Leased Line or any portion thereof. Upon Lessee's exercise of abandonment or discontinuance authority with respect to all of the Leased Line, this Lease Agreement shall automatically terminate and be of no further force or effect. Upon Lessee's exercise of abandonment or discontinuance authority with respect to less than all of the Leased Line, this Lease Agreement shall automatically terminate with respect to that portion of the Leased Line over which service is abandoned or discontinued, but shall remain in full force and effect in accordance with its terms with respect to the remainder of the Leased Line.

b. Termination of this Lease Agreement as it pertains to all or any portion of the Leased Line as a result of abandonment or discontinuance of freight railroad operations by Lessee shall not relieve or release either Party hereto from any obligation or any liability which may have arisen or been incurred by such Party prior to any such termination.

XVII. RECORDATION OF LEASE

17.01 Registration by Lessee. Lessee may cause this Lease Agreement, or a memorandum of this Lease Agreement in a form mutually agreeable to the Parties, to be registered in the office of register of deeds of every county in which the Leased Property is located. In the event that the description of the Leased Property contained in this Lease Agreement is deemed insufficient for registration purposes by any such registry office, then Lessor shall execute and deliver such additional documents with such description as Lessee may require for such registration purposes. Lessee shall bear all cost and Expense arising out of or connected with such recordation. Upon the termination of this Lease Agreement with respect to all or any portion of the Leased Property, Lessee agrees to execute and deliver to Lessor a copy of an appropriate registration instrument evidencing the termination and cancellation of this Lease Agreement.

XVIII. INDEMNIFICATION PROCEDURES.

18.01 Notice of Claims. If the ORPS Indemnitees or KRS Indemnitees, as applicable (each “**Indemnified Party(ies)**”) seek indemnification hereunder, such Indemnified Party(ies) shall give to the Party obligated to provide indemnification to such Indemnified Party(ies) (the “**Indemnitor**”) a notice (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Lease Agreement upon which such claim is based; provided, that a Claim Notice with respect to any legal action by or against a third person as to which indemnification will be sought shall be given promptly after the action or suit is commenced; provided further, that failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except to the extent it shall have been prejudiced by such failure.

18.02 Third Person Claims.

a. Subject to Section 18.02(b), the Indemnified Party(ies) shall have the right to conduct and control, through counsel of its/their choosing, the defense, compromise or settlement of any third person claim, action or suit against such Indemnified Party(ies) as to which indemnification will be sought by any Indemnified Party(ies) from any Indemnitor hereunder, and in any such case the Indemnitor shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnified Party(ies) in connection therewith; provided, that the Indemnitor may participate, through counsel chosen by it and at its own expense, in the defense of any such claim, action or suit as to which the Indemnified Party(ies) has/have so elected to conduct and control the defense thereof; and provided, further, that the Indemnified Party(ies) shall not, without the written consent of the Indemnitor (which written consent shall not be unreasonably withheld, conditioned or delayed), pay, compromise or settle any such claim, action or suit, except as permitted by Section 5.06 of this Lease Agreement.

b. If any third person claim, action or suit against any Indemnified Party is solely for money damages, then the Indemnitor shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any such third person claim, action or suit against such Indemnified Party as to which indemnification will be sought by any Indemnified Party from any Indemnitor hereunder if the Indemnitor has acknowledged and agreed in writing that, if the same is adversely determined, the Indemnitor has an obligation to provide indemnification to the Indemnified Party in respect thereof, and in any such case the Indemnified Party shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnitor in connection therewith; provided, that the Indemnified Party may participate, through counsel chosen by it and at its own expense, in the defense of any such claim, action or suit as to which the Indemnitor has so elected to conduct and control the defense thereof. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay, settle or compromise any such claim, action or suit, provided that in such event the Indemnified Party shall waive any right to indemnity therefor hereunder unless the Indemnified Party shall have sought the consent of the Indemnitor to such payment, settlement or compromise and such consent was unreasonably withheld, in which event no claim for indemnity therefor hereunder shall be waived.

XIX. MISCELLANEOUS

19.01 STB Approval. This Lease Agreement will not become effective until the later of (i) the effective date of a STB decision granting any required approval or exemption for the transaction contemplated by this Lease Agreement and (ii) such later date as the Parties may designate in writing as the Effective Date.

19.02 Other Governmental Permits. In the event either Party receives notice from any Governmental Authority that any notices, applications, filings or Governmental Permits are required in connection with this Lease Agreement or the transactions contemplated hereby, Lessor and/or Lessee, as appropriate, shall make such notices, applications or filings and seek such Governmental Permits unless they decide in good faith that such compliance is not necessary.

19.03 Payments to Lessor. All payments due the Lessor under this Lease Agreement shall be made to Ohio River Partners Shareholder LLC, 501 Corporate Drive, Suite 210, Canonsburg, PA 15317, or to such other person as Lessor may direct by written notice to Lessee.

19.04 Successors and Assigns. This Lease Agreement shall inure to the benefit of and be binding upon ORPS, KRS and their respective successors and assigns.

19.05 Assignment. This Lease Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Assignment of this Lease Agreement by either Party shall not transfer or extinguish any liability or obligation incurred by that Party under this Lease Agreement prior to such assignment.

19.06 Notices. Any notice required or permitted to be given by one Party to the other Party under this Agreement (a “**Notice**”) shall be in writing. Notices shall be deemed to have been given, made or delivered: (a) if delivered in person or by overnight courier service, when received; and (b) if sent by registered or certified mail return receipt requested, on the earlier of the date of receipt or the fifth day after it is mailed. Notices shall be addressed as follows:

- (a) If to ORPS:
Robert Wholey
President
Ohio River Partners Shareholder LLC
43840 State Route 7
Hannibal, Ohio 43931
bo.wholey@LongRidgeenergy.com

with copies to:

Joe Adams
FIG LLC
1345 Avenue of the Americas
45th Floor
New York, NY 10105
jadams@fortress.com

and

Matthew Rinklin
[GCM Grosvenor](mailto:mrinklin@gcmlp.com)
767 Fifth Avenue, 14th Floor
New York, NY 10153
mrinklin@gcmlp.com

- (b) If to KRS:
Katahdin Railcar Services LLC
FIG LLC
1345 Avenue of the Americas
45th Floor
New York, NY 10105
knicholson@fortress.com

with copies to:

Joe Adams
FIG LLC
1345 Avenue of the Americas

45th Floor
New York, NY 10105
jadams@fortress.com

and

Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
thynes@sidley.com

19.07 Confidentiality. Except as provided by law or by rule, order or regulation of any court or government agency with jurisdiction over the subject matter of this Lease Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Lease Agreement, during the Initial Term and any Additional Term(s), the terms and provisions of this Lease Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than (i) such Party's directors, officers, employees, and attorneys, and (ii) such Party's parent corporations, subsidiaries and affiliates, and its or their respective directors, officers, agents or employees, without the prior written approval of the other Party. Each Party shall cause its parent and affiliates to comply with the terms of this Section 19.08.

19.08 This Lease Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto (and, with respect to the indemnification set forth in Sections 5 and 18, their respective Indemnitees), and not for the benefit of any third person. Nothing herein contained shall be taken as creating or increasing any right of any third person to recover by way of damages or otherwise against any of the Parties hereto.

19.10 This Lease Agreement contains the entire understanding of the Parties hereto, and supersedes any and all prior oral or written understandings between the Parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Lease Agreement and the terms of any other agreement, arrangement or understanding between ORPS and KRS, the terms of this Lease Agreement shall govern.

19.11 No term or provision of this Lease Agreement may be amended, changed, waived, discharged or terminated except by an instrument in writing and signed by both ORPS and KRS.

19.12 The division of this Lease Agreement into sections and subsections and the insertion of headings and section numbers are for convenience of reference only, and shall not affect the construction or interpretation of this Lease Agreement. Unless the context otherwise requires, all references to sections are to sections of this Lease Agreement.

19.13 This Lease Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

19.14 If any provision of this Lease Agreement, or the application thereof to a Party hereto or to any circumstance, shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Lease Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In such event, the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Lease Agreement in all material respects.

19.15 Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between ORPS and KRS.

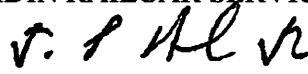
19.16 This Agreement shall be construed in accordance with the domestic laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would result in the application of the laws of any jurisdiction other than the State of Delaware. Any legal action or proceeding involving the interpretation or application of this Agreement or arising out of this Agreement shall be subject to the exclusive jurisdiction and venue of the courts of the State of Delaware.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly
executed as of the date first above written.

OHIO RIVER PARTNERS SHAREHOLDER LLC

By: 
Robert Wholey
President

KATAHDIN RAILCAR SERVICES LLC

By: 
Joseph P. Adams Jr.
President

PUBLIC VERSION

APPENDIX A

HIGHLY CONFIDENTIAL INFORMATION REDACTED

PUBLIC VERSION

APPENDIX B

HIGHLY CONFIDENTIAL INFORMATION REDACTED