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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36528

SOUTH POINT & OHIO RAILROAD, LLC
— OPERATION EXEMPTION —
LAWRENCE ECONOMIC DEVELOPMENT CORPORATION

EXHIBIT A

**LEASE, DEVELOPMENT AND
MARKETING SERVICES AGREEMENT**

REDACTED VERSION

**LEASE, DEVELOPMENT AND
MARKETING SERVICES AGREEMENT**

Between

**LAWRENCE ECONOMIC
DEVELOPMENT CORPORATION**

and

SOUTH POINT & OHIO RAILROAD

**Covering Certain Real Property and Railroad
Track**

South Point, Ohio

Effective as of _____

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**LEASE, DEVELOPMENT
AND MARKETING
SERVICES AGREEMENT**

THIS LEASE, DEVELOPMENT AND MARKETING SERVICES AGREEMENT (“Lease”), dated as of this 19th day of May, 2021, by and between **LAWRENCE ECONOMIC DEVELOPMENT CORPORATION** (the “**Landlord**”), an Ohio nonprofit corporation established pursuant to Ohio Code 1702.04 et al., whose mailing address is 216 Collins Avenue, South Point, Ohio 45680, and **SOUTH POINT & OHIO RAILROAD (“SPOR”)**, a Illinois limited liability company, whose mailing address is 2201 N. Willenborg St., Suite #2, Effingham, IL 62401. Landlord and SPOR are each a “**Party**” and are collectively referred to herein as the “**Parties**.”

RECITALS

A. Whereas, Landlord is an Ohio nonprofit corporation charged with the responsibility of redeveloping approximately 500 acres and related improvements of the former Buckeye Munitions Plant which is generally located in the Village of South Point, in Lawrence County, Ohio, which is now known as The Point Industrial Park (“**POINT**”); and

B. Landlord is the fee simple owner of certain rail facilities located within the POINT totaling over 7.0 miles of track as of the Effective Date of this Lease; and

C. The rail facilities located within the POINT are currently operated by Landlord; and

D. Whereas, Landlord desires to engage a third party to (a) operate under lease certain rail facilities within portions of the POINT; (b) manage current and future associated rail infrastructure located within the POINT; and (c) manage certain industrial development and marketing services to benefit the POINT; and

E. Whereas, SPOR desires to undertake the tasks outlined in Recital D as more particularly described in this Lease.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

SECTION I. LEASED PREMISES

SECTION 1.1 Landlord does hereby lease to SPOR, and SPOR does hereby lease from Landlord, the rail facilities within portions of the POINT described in the Recitals and in Section 1.2, as depicted on Exhibit A (the “**Leased Premises**”) under the terms and conditions set forth in this Lease.

SECTION 1.2 The Leased Premises shall include, without limitation, the right to use for railroad and related purposes the right of way located thereon, along with the existing tracks, concrete intermodal pad, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings, crossings, warning devices, and any and

all improvements or fixtures affixed to the right of way. The right of way associated with each track is twelve feet from centerline of track. The Leased Premises does not include any and all items of personal property not owned by Landlord or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials and supplies. To the extent that there exists, on the Leased Premises, personal property included in or owned by prior railroads or licensees, said personal property may remain on the Leased Premises to the extent permitted by the terms of the lease or license under which it was placed on the Leased Premises, although Landlord shall relocate at its sole cost and expense said personal property to the extent that it interferes with SPOR's performance of its common carrier obligations or the obligations undertaken by SPOR herein.

SECTION 1.3 SPOR may, at its expense, obtain and place on the Leased Premises AEI readers at locations of its choice on the Leased Premises. Any AEI readers obtained and placed at the expense of SPOR shall remain the property of SPOR, and SPOR shall have the right to remove such readers from the Leased Premises at any time.

SECTION 1.4 SPOR shall take the Leased Premises without any express or implied warranties except as otherwise stated herein, subject to: (a) reservations or exceptions of record of minerals or mineral rights, including but not limited to all coal, oil, gas, casing head gasoline and minerals of any nature and character whatsoever underlying the Leased Premises together with the sole, exclusive and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to Landlord, (b) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wire lines, fiber optic facilities, roads, streets, highways and other legal purposes; (c) existing and future building zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (d) encroachments or other conditions that may be revealed by a survey, title search or inspection of the property; (e) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created; (f) any liens of mortgage or deeds of trust encumbering said property; (g) Landlord's exclusive right (subject to Section 1.6 herein) to grant any and all easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof; (h) Landlord's right to sell and develop parcels of land adjacent to the Leased Premises to non-rail using developers and to remove and/or relocate rail within the Leased Premises as provided in Section 21.1.6 of this Lease, provided, however, that the exercise of the above listed reservations and/or exceptions shall not materially interfere with SPOR's railroad operations or satisfaction of SPOR's common carrier obligations.

SECTION 1.5 SPOR shall rent from Landlord an existing office trailer (the "Office") located on the POINT . The Office shall be used exclusively by SPOR and its contractors and invitees. . SPOR shall pay to Landlord [REDACTED] [REDACTED] for use of the Office. SPOR may make improvements to the existing Office or replace the existing Office with a new office trailer of equal or better condition with prior approval of Landlord which may not be unreasonably withheld. Unless otherwise agreed to in writing by the Parties, all improvements to the existing Office made by SPOR shall become the sole and exclusive property of Landlord upon installation, but SPOR shall be the sole and exclusive owner

of any new office trailer placed by SPOR on the Leased Premises.

SECTION 1.6 Unless otherwise agreed to in writing by the Parties, and notwithstanding the provisions of Section 1.4(g) herein, SPOR shall be the exclusive rail operator on the Leased Premises during the Term.

SECTION II. LEASE TERM

SECTION 2.1 Unless this Lease is earlier terminated in accordance with Section XV, SPOR shall have and hold the Leased Premises unto itself, its successors and assigns, under the terms and conditions hereof, for a term commencing on the Effective Date and continuing for a [REDACTED] (the “Initial Term”). The “Effective Date” shall be a date agreed upon by Landlord and SPOR in writing, but in no event later than ten (10) days after the satisfaction of all Conditions Precedent as stated in Section V hereof.

SECTION 2.2 At least one hundred eighty (180) days prior to the expiration of the Initial Term, and so long as SPOR is not in material breach of any of the provisions of this Lease, SPOR, in its sole discretion, may provide Landlord with written notice of renewal of this Lease for a period not to exceed [REDACTED]. At least one hundred eighty (180) days prior to the expiration of the First Extended Term, and so long as SPOR is not in material breach of any of the provisions of this Lease, SPOR, in its sole discretion may provide Landlord with written notice of renewal of this Lease for a period not to exceed [REDACTED].

SECTION III. RAIL SERVICE

SECTION 3.1 SPOR shall promptly plan to commence rail operations on the Leased Premises on the Effective Date .

SECTION 3.2 Upon Effective Date of this Lease, SPOR shall have hired a minimum of [REDACTED] and secured motive power sufficient for providing the services outlined in this Lease.

SECTION 3.3 SPOR shall be responsible for securing all motive power, personal property, and equipment required to provide common carrier services on the Leased Premises upon the date of the satisfaction of all of the Conditions Precedent stated in Section 5 hereof.

SECTION 3.4 Upon its assumption of common carrier operations on the Track, SPOR shall provide switching services on the Leased Premises consistent with both its common carrier obligation and written contracts assumed by SPOR hereunder, if any. SPOR’s switching obligations shall extend to any Track constructed or returned to in

service condition on the Leased Premises after the commencement of SPOR's common carrier service.

SECTION 3.5 Beginning on the Effective Date and throughout the Term, SPOR shall be entitled to the exclusive use of the Leased Premises for the operation of common carrier rail service. Landlord warrants that as of the Effective Date and during the Term, there will be no other rail carriers to which Landlord has granted rights to use the Leased Premises. During the Term, SPOR shall not grant to any third party the right to provide rail operations on the Leased Premises, whether as a common carrier or otherwise, except as agent for SPOR, but in any event, such agent shall be deemed to be SPOR for all purposes under this Lease, and SPOR shall remain liable for the actions of said agent as if the actions were performed by SPOR directly.

SECTION 3.6 During the term of this Lease, SPOR:

3.6.1 will not suspend or discontinue its operation as a common carrier by rail over all or any regulated main line part of the Leased Premises without first applying for and obtaining from the U.S. Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; provided, however, that SPOR will not seek such regulatory authority without first giving Landlord one (1) month advance written notice of SPOR's intent to do so.

3.6.2 agrees to offer freight transportation services on the Leased Premises, to all shippers on the Leased Premises at least at the levels in place on the Effective Date of this Lease, which are set forth in Exhibit "B", attached hereto and incorporated herein by reference (the "**Base Line Service Levels**"), and sufficient to comply with all current contracts with shippers located on the Leased Premises.

3.6.3 agrees to fulfill all service requirements of existing transportation contracts to the extent such services involve services formerly provided on Leased Premises. SPOR agrees to comply with the terms of all existing agreements to be assigned to SPOR that are related to the use of the Leased Premises, including but not limited to: crossing agreements, interlocker agreements and joint facility agreements, as listed on Exhibit "C".

SECTION 3.7 Upon suspension or discontinuance of SPOR's operations as a common carrier of freight over all or any part of the Leased Premises during the Term, for reasons other than events of force majeure, or a lawful embargo, whether or not pursuant to necessary and proper regulatory authority as required by Section 3.5.1 of this Section III, SPOR will promptly relinquish to Landlord possession of the part of the Leased Premises suspended or discontinued, and this Lease will terminate as provided by Section XV of this Lease as to that part of the Leased Premises; provided, however, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises generally will be permitted and will not result in a termination of this Lease or require relinquishment

of possession of the Leased Premises by SPOR.

SECTION IV. **RENT**

SECTION 4.1 For the effective period of the Initial Term, First Extended Term and Second Extended Term as outlined in Section II, SPOR shall pay to Landlord:

4.1.1

[REDACTED]

SECTION 4.2 In addition to the Rent as provided for in Section 4.1, SPOR shall dedicate

[REDACTED]

SECTION 4.4 SPOR shall pay all Rent, and all other payments required by this Lease, to Landlord at P.O. Box 488, 216 Collins Avenue, South Point,

Ohio 45680, or at such other location as may be reasonably designated by Landlord in writing from time to time.

SECTION 4.5 Acceptance by Landlord, its successors, assigns or designees, of Rent or other payments shall not be deemed to constitute a waiver of any other provision of this Lease, including without limitation Landlord's rights to pursue unpaid disputed payments due from SPOR.

SECTION 4.6 In the event any amount owed from SPOR to Landlord is disputed by SPOR, payment of all undisputed payments shall be made by SPOR within the time limits herein, and, without waiver of any other rights the Parties may have under this Lease or other applicable law, the Parties will confer in good faith to resolve issues relating to disputed charges.

SECTION V. **CONDITIONS PRECEDENT**

SECTION 5.1 Prior to the Effective Date and as conditions precedent to either Party's obligations hereunder:

5.1.1 Any other rail operator, other than a customer that may reposition its rail cars as an adjunct to its primary business, shall have ceased operations and removed all of its on-track equipment from the Leased Premises, unless leased or purchased by SPOR; however, SPOR will accommodate all pre-existing relationships of the POINT at the agreedto price (as reflected on Exhibit "E") for 30 days to allow them time to move their cars or accept the new terms of SPOR.

5.1.2 Unless waived by SPOR in writing in its sole discretion, SPOR's right to conduct common carrier freight rail service over the Leased Premises shall have been received from the STB through an application or exemption under 49 U.S.C. § 10901, and shall be effective, and SPOR shall have obtained such other judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder. SPOR shall file its application or exemption for authority to operate portions of the Leased Premises as a common carrier railroad within sixty (60) days after SPOR's receipt of Landlord fully executing this Lease. Landlord shall provide reasonable cooperation with SPOR to prepare any necessary STB filing.

5.1.3 SPOR and Landlord shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

5.1.4 SPOR and Norfolk Southern ("NS") shall have fully executed an interchange agreement, or at SPOR's option, taken an assignment of any existing interchange agreement with NS, in a form reasonably acceptable to SPOR for rail traffic destined to or originating on the Leased Premises.

5.1.5 Within 60 days of the execution of this Lease, Landlord shall make available for SPOR's inspection and review all contracts, deeds, agreements and

documents located by Landlord in its records that pertain or to or affect the Leased Premises, provided that Landlord is not prohibited from making such items available to SPOR as a result of a confidentiality obligation contained therein. If Landlord is not permitted to make any such item available to SPOR, Landlord shall advise SPOR of the effect of such item on SPOR's obligations to the Leased Premises contained in this Lease, and shall provide other basic information (such as identification of the parties, obligations to be assumed by SPOR, and term) regarding such agreements.

5.1.6 SPOR shall serve a letter upon the Federal Railroad Administration ("FRA") at the applicable FRA office to confirm SPOR's continuing track and signal maintenance obligations.

5.1.7 SPOR shall have completed a track inspection at its sole expense.



5.1.9 Landlord, at its sole cost and expense, will have secured SPOR's written acceptance of an assignment to SPOR of all easement rights held by Landlord or any other party sufficient to allow unimpeded and unconditioned common carrier operations of all the rail facilities on the Point.

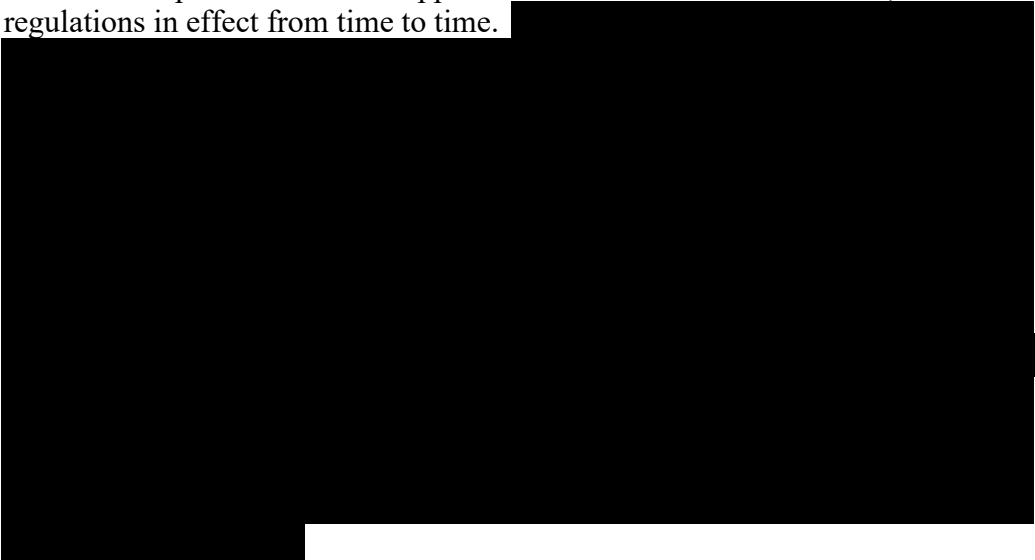
SECTION 5.2 SPOR shall be responsible for all costs of protection of its respective employees arising out of STB approval or exemption of this transaction under 49 U.S.C. § 10901 and implementation of the transaction, the exercise or performance by SPOR of any rights or obligations hereunder, the termination of this Lease, or SPOR's discontinuance of operations on the Lease Premises, whether such costs are attributable to protective conditions or benefits imposed by any judicial, regulatory or governmental body or are required to be paid pursuant to collective bargaining or other agreements.

SECTION VI. MAINTENANCE, MODIFICATIONS AND IMPROVEMENTS

SECTION 6.1

6.1.1. As of the Effective Date, over 7.0 miles of railroad track will be present on the Leased Premises (the "**Track**"). SPOR and Landlord will confer prior to the Effective Date to review which portions of the Track will be deemed in service as of the Effective Date, and thereafter, SPOR shall reasonably determine by the Effective Date which portions of the Track are in service and suitable for operations, and will confirm that determination in writing to Landlord.

6.1.2. SPOR shall maintain the Track deemed in service as of the Effective Date in compliance with all applicable state and federal statutes, rules and regulations in effect from time to time.



6.1.3. During the Term, SPOR shall maintain in-service Track in a condition that allows operations to be safely conducted over it at ten (10) miles per hour, except for occasional slow orders imposed by SPOR from time to time consistent with safety and promptly remediated by SPOR.

6.1.4. To the extent that traffic volumes decrease on any segment of the Track to a level that SPOR is not able to generate sufficient revenue to warrant continued track maintenance and/or operations over said segment, the Parties will negotiate in good faith to determine whether or not to continue track maintenance and/or alter the operations on the affected segment of the Track.

6.1.5. Except as otherwise specifically provided herein, SPOR's maintenance obligations shall not include (i) maintenance of Track deemed not in service by mutual agreement of Landlord and SPOR; (ii) non-rail additions, replacements or betterments of a capital nature, (iii) the obligation to construct new track or reconstruct track or appurtenances damaged by casualty loss (other than casualty losses fully insured or covered by a third party or caused solely by SPOR) or a force majeure event, (iv) maintenance or repair of any non-Track infrastructure within the Leased Premises (e.g., maintenance of or repairs to the building, building systems such as HVAC, electrical and plumbing, docks, ramps and the like), (v) replacement or rehabilitation of bridges or culverts on the Leased Premises, or (vi) damage or destruction of the Track or appurtenances caused by an act or omission of Landlord, its tenants (other than SPOR), contractors or agents.

SECTION 6.2 If Landlord reasonably believes that SPOR has failed to comply with any of its maintenance obligations under this Lease, Landlord shall notify SPOR in writing that SPOR has so failed to perform such maintenance obligations under

this Lease, and SPOR shall, within thirty (30) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence, provided that SPOR shall immediately commence repairs and maintenance on any track for which Landlord has notified SPOR it is not in a condition such that operations can be safely performed on such Track. SPOR may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority and after ten (10) days' written notice to Landlord.

SECTION 6.3 Nothing herein shall preclude SPOR, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided, but SPOR shall not be required hereunder to do so.

SECTION 6.4 Except for Reserved Rights, SPOR's maintenance obligations hereunder shall include, but shall not be limited to, buildings, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures, sub-roadbed and all other improvements on the Leased Premises. SPOR is expressly prohibited from adding, removing, or modifying any grade crossings (either public or private) or grade crossing protection devices on the Leased Premises without prior written consent from Landlord and securing all required permissions and authorizations.

SECTION 6.5 Any repair or replacement of welded rail shall also be welded. SPOR may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, without the prior written consent of the Landlord.

On or before December 1st of each calendar year, during the Term of this Lease, SPOR shall provide Landlord with a written summary of all salvage or other materials removed from the Leased Premises, the proceeds received therefor and the manner in which the proceeds were reinvested. Failure to either reinvest such proceeds or pay any unreinvested proceeds to Landlord within six (6) months following such reporting date shall, , constitute an Event of Default hereunder.

SECTION 6.6 SPOR and Landlord may from time to time establish or relocate sidetracks or industrial spur tracks on the Leased Premises. That portion of any such spur track that is constructed upon the Leased Premises shall become part of the Leased Premises and, upon termination of this Lease, the property of Landlord. Prior to execution of any industry track agreement by SPOR, SPOR shall obtain Landlord's written approval, which shall not be unreasonably withheld, delayed or conditioned. For any industry or Customer track built on the Leased Premises after the Effective Date, which is constructed or financed by SPOR, SPOR shall be entitled to any and all track rentals derived therefrom during the Term of this Lease. All industry track agreements, regardless of duration, shall contain provisions indemnifying Landlord and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

SECTION 6.7 In the event of a dispute between Landlord and SPOR with respect to SPOR's fulfillment of its duties under this Section VI, an inspection by a

qualified representative of the FRA shall be arranged by SPOR and such representative shall inspect those segments or portions of track in dispute and his or her findings in this regard shall be binding upon the Parties.

SECTION 6.8 SPOR shall not allow any liens to be placed on the Leased Premises or encumbrances against the Leased Premises or any portion thereof, and will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by SPOR during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Landlord or of SPOR, within thirty (30) days of receiving notice of such lien. **SPOR WILL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD FROM ALL SUCH CLAIMS, LIENS, OR DEMANDS WHATSOEVER.** In the event this Lease is terminated or expires, SPOR shall return the Leased Premises to Landlord free and clear of any such liens, claims and demands.

SECTION 6.9 During the Term of this Lease, SPOR shall be entitled to, and Landlord shall not be entitled to, take the benefit of all lawful tax credits on the Leased Premises pursuant to 26 U.S.C. Section 45G et seq., as amended from time to time, or any other applicable law, rule or regulation providing reimbursement or grants for shortline maintenance expenses.

SECTION 6.10

6.10.1 During the Term of this Lease, SPOR shall perform testing and inspections of the Leased Premises in conformance with applicable law, rules and regulations.

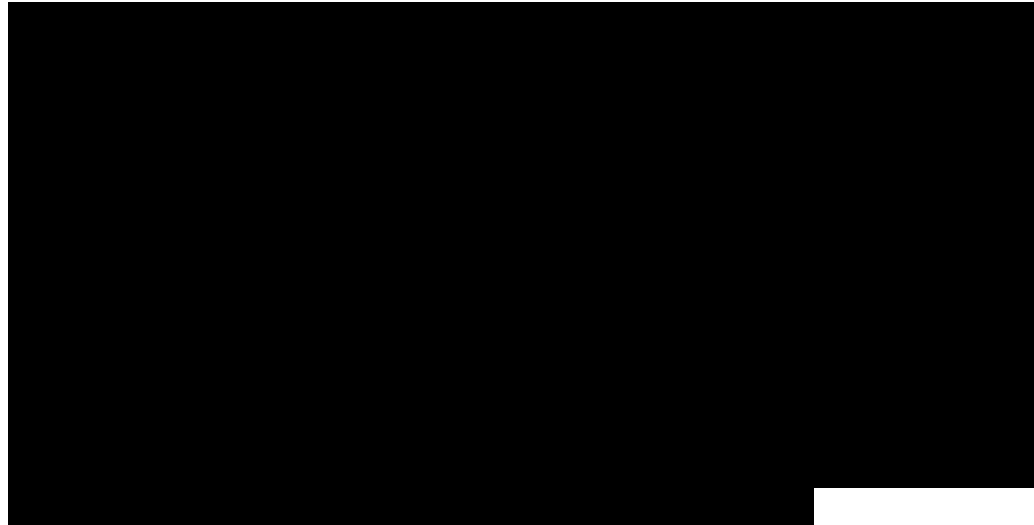
6.10.2 All inspectors performing testing or inspection on the Leased Premises must satisfy all applicable qualification regulations and rules promulgated by the FRA or any other applicable government agency.

SECTION 6.11 The Parties agree during the Term of this Lease:

6.11.1 At least one month prior to the anniversary of the Effective Date, SPOR will provide Landlord with a copy of SPOR's maintenance plan for the Leased Premises for the following twelve (12) months, which shall include, among other things, a list of the amounts for specific projects, labor, materials (including the specifications of such materials), for that calendar year so that SPOR will be able to maintain the Track in the condition required by this Lease. SPOR agrees to notify Landlord before implementing any changes to the maintenance plan.

6.11.2 To jointly conduct an inspection of the Leased Premises approximately every six (6) months to establish the condition of the Leased Premises and determine SPOR's compliance with the terms of this Lease including, but not limited to, SPOR's obligation to maintain the Track in the condition required by Section 6.1 of this Lease. Any defects or failures by SPOR to maintain the Leased

Premises in compliance with the terms of this Lease that are identified during such inspection will be remedied by the time periods set forth in this Lease unless otherwise agreed to by Landlord. If SPOR fails to remedy such defects or failures in the time period set forth in this Lease, Landlord may take such actions it believes are reasonably necessary to remedy such defects or failures. Within thirty (30) days of receipt of an invoice from Landlord, SPOR shall reimburse Landlord for the costs of any actions that Landlord takes that Landlord determined were necessary to correct such defects or failures.



6.11.4 To meet at least once each calendar quarter during the Term of this Lease, if requested by either Party, to discuss any issues or disagreements related to the application of the terms of this Lease.

6.11.5 To appoint officers to participate in the quarterly meetings referenced in 6.11.3 and 6.11.4 above. The appointed officers will be empowered to resolve any customer's service performance complaint, or issues or disagreements related to the application of the terms of this Lease.

SECTION VII **MARKETING AND DEVELOPMENT**

SECTION 7.1 Upon commencement of SPOR's operations on the Leased Premises, SPOR and Landlord shall jointly develop and thereafter commence a substantial industrial marketing and development program, as described herein ("**Program**") to retain and attract users of the POINT. The Program shall support Landlord's priorities for the POINT, SPOR's rail service on the Leased Premises, and the overall growth and development of the POINT. The Program shall include:



[REDACTED]

[REDACTED]

[REDACTED]

SECTION 7.2 SPOR and Landlord will develop a mutually beneficial master development and recruitment plan (the “**Plan**”) for the POINT within three (3) months of SPOR’s commencement of operations on the Leased Premises. Upon agreeing to terms for the Plan, the Parties shall use commercially reasonable efforts to operate in conformity with the Plan.

SECTION 7.3 The Plan shall include areas of the POINT that are not suitable for rail-served development. SPOR and the Plan shall not limit the development of industrial sites within the POINT to rail-served enterprises.

SECTION 7.4 SPOR may purchase sites on the POINT with approval from Landlord. Sites owned by SPOR shall benefit from the Plan, but may be limited by SPOR to development for rail-served businesses.

SECTION VIII. ACCOUNTING AND REPORTING

SECTION 8.1 SPOR agrees to furnish to Landlord its most recent audited copies of its financial reports by an independent accounting firm on an annual basis on or before sixty (60) days after each anniversary date of the Effective Date for the Term of this Lease. Copies of unaudited financial reports pertaining to SPOR and the Leased Premises prepared in the normal course of SPOR's business shall be provided to Landlord on a quarterly basis. Landlord shall take the same precautions to protect the confidentiality of non-public financial information provided under this Section that it uses to protect its own confidential non-public financial information.

SECTION 8.2 SPOR shall provide Landlord with monthly reports documenting the number of railroad cars switched into and out of the Leased Premises for the prior month.

SECTION 8.3 SPOR shall provide Landlord with a report of annual maintenance expenditures incurred by SPOR for maintenance of the Track, to be accompanied by a map depicting particular segments of the Track that required more than routine maintenance efforts and expenditures.

SECTION IX. REPRESENTATIONS AND WARRANTIES

SECTION 9.1 Landlord represents and warrants that:

9.1.1 It has full statutory power and authority to enter into this Lease and to carry out the obligations of Landlord hereunder.

9.1.2 Its execution of and performance under this Lease do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

SECTION 9.2 SPOR represents and warrants that:

9.2.1 It is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois and qualified to do business in the State of Ohio.

9.2.2 It has full power and authority to enter into this Lease, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.

9.2.3 The execution of this Lease and the consummation by SPORR of the transactions contemplated herein do not, and will not, result in any breach of any of the terms or provisions of or constitute a default or a condition that, upon notice or lapse of time or both, would ripen into a default under any indenture, agreement, instrument, or obligation to which SPOR or its parent organization is a part and does not constitute a violation of any order, rule, or regulation applicable to SPOR or its parent organization of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over SPOR or its parent organization.

9.2.4 SPOR will provide to Landlord annual financial statements once finalized.

SECTION X. **OBLIGATIONS OF THE PARTIES**

SECTION 10.1 During the Term of this Lease, SPOR will initiate, contract for and obtain in its sole name all utility services required for its use of or operations on the Leased Premises. SPOR shall pay all bills for water, sewer, gas, telephone and electric service and taxes applicable to the Leased Premises. If Landlord is required to, or does pay, any such bills, SPOR will promptly reimburse Landlord upon receipt of a bill or bills therefor. If the Leased Premises are not billed separately but as a part of the POINT, SPOR shall pay that portion of such bills as is reasonably attributable to usage on or in connection with the Leased Premises.

SECTION 10.2 During the Term of this Lease, SPOR and Landlord will comply with all applicable federal, state and municipal laws, ordinances, and regulations, and neither Party will knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law, ordinance or regulation.

SECTION 10.3 **SPOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FOR ANY CLAIMS, COSTS, LIABILITIES, EXPENSES (INCLUDING WITHOUT LIMITATION COURT COSTS AND**

ATTORNEYS' FEES), OR DEMANDS OF WHATSOEVER NATURE OR SOURCE ASSERTED AGAINST LANDLORD TO THE EXTENT CAUSED BY (i) THE NEGLIGENT ACTIONS OF SPOR, (ii) SPOR'S VIOLATION OF ANY APPLICABLE FEDERAL, STATE OR LOCAL LAW, RULE, REGULATION OR ORDINANCE, OR (iii) SPOR'S BREACH OF ANY TERM OR CONDITION OF THIS LEASE.

SECTION 10.4 LANDLORD AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SPOR FOR ANY CLAIMS, COSTS, LIABILITIES, EXPENSES (INCLUDING WITHOUT LIMITATION COURT COSTS AND ATTORNEYS' FEES), OR DEMANDS OF WHATSOEVER NATURE OR SOURCE ASSERTED AGAINST SPOR TO THE EXTENT CAUSED BY (i) THE NEGLIGENT ACTIONS OF LANDLORD, (ii) LANDLORD'S VIOLATION OF ANY APPLICABLE FEDERAL, STATE OR LOCAL LAW, RULE, REGULATION OR ORDINANCE, OR (iii) LANDLORD'S BREACH OF ANY TERM OR CONDITION OF THIS LEASE.

SECTION 10.5 SPOR will promptly notify by telephone, the Landlord official responsible for environmental matters and furnish Landlord written notice of any and all (i) releases on the Leased Premises of hazardous wastes, materials or substances (collectively "**Hazardous Materials**") of which it becomes aware which occur during the Term whenever such releases are required to be reported to any federal, state, or local authority, and (ii) alleged water or air permit condition violations, and (iii) any notification received by SPOR alleging any violation of any state, federal or local statute, ordinance, ruling, order or regulation pertaining to environmental protection and or Hazardous Material handling, transportation or storage. To the extent practicable, such notice will identify the substance(s) released, the amount released, and the measures undertaken to clean up and remove the released Hazardous Material and any contaminated soil or water. SPOR will also provide Landlord with copies of any and all reports made to any governmental agency that relate to such releases or such alleged violations during the term of this Lease.

SECTION 10.6 During the Term of this Lease, Landlord will have the right, upon forty-eight hour prior notice to SPOR, to enter the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Lease. If Landlord detects any violation, including, but not limited to, any contamination of the Leased Premises, which is the responsibility of SPOR under this Lease, Landlord will notify SPOR of the violation. Upon receipt of such notice SPOR will take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should SPOR inadequately remedy or fail to eliminate the violation, Landlord or its representative will have the right, but not the obligation, to enter the Leased Premises and to take whatever corrective action Landlord reasonably deems necessary to eliminate the violation, at the sole expense of SPOR. The above provision shall in no way limit or restrict SPOR's right to challenge or otherwise object to the legitimacy of the interpretation or applicability of any governmental requirement.

SECTION 10.7 Landlord will provide SPOR, at no cost to SPOR, access to Landlord' radio towers and local and base radios as needed to support

communications on the Leased Premises. SPOR, at SPOR's expense, shall be responsible for delivery and implementation of connections between Leased Premises and other SPOR related properties.

SECTION 10.8 Upon expiration of the Term or upon termination hereof by Landlord pursuant to Section XV, SPOR will bear any and all costs of protection of its current or future employees, including former employees of Landlord that may be employed by SPOR, arising from any labor protective conditions imposed by the STB, any other regulatory agency or statute as a result of SPOR's lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder. Nothing in this Lease shall be construed as an assumption by SPOR of any obligations to Landlord's current or former employees under collective bargaining or other agreements that may exist or have existed between Landlord and its employees, or any of them.

SECTION 10.9 In the event any governmental authority lawfully requires SPOR to implement Positive Train Control ("PTC"), the Parties will discuss this Lease in good faith prior to any investment in PTC and make any equitable adjustments, to the extent agreed to by the Parties.

SECTION XI. EMINENT DOMAIN

SECTION 11.1 In the event that at any time during the Term of this Lease the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

11.1.1 To the extent any compensation received by Landlord is for improvements paid for by SPOR, SPOR will be [REDACTED]

11.1.2 If such proceedings shall result in the taking of the whole or a portion of the Leased Premises that materially interferes with SPOR's use of the Leased Premises for railroad purposes, SPOR shall have the right, upon written notice to Landlord, to terminate this Lease in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease shall be adjusted as of the date of such vesting.

11.1.3 If such proceeding shall result in the taking of less than all of the Leased Premises and such taking does not materially interfere with SPOR's use of the Leased Premises for railroad purposes, then the Lease shall continue for the balance of its Term as to the part of the Leased Premises remaining, without any

reduction, abatement or effect upon the rent or any other sum or charge to be paid by the SPOR under the provisions of this Lease.

11.1.4 Except as otherwise expressly provided in this Section, Landlord shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by SPOR; provided, however, that nothing contained herein shall be construed to preclude SPOR from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

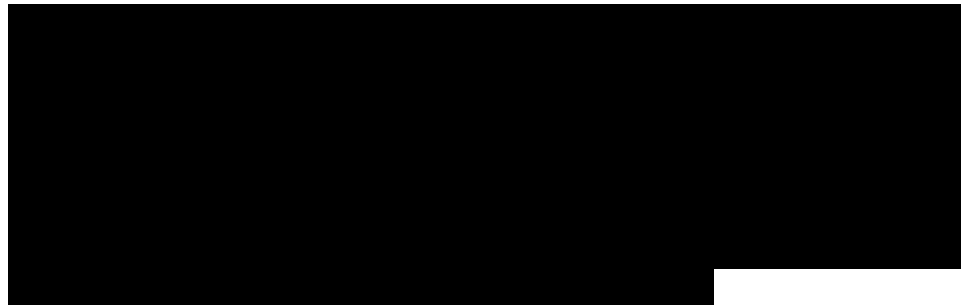
11.1.5 Each Party shall provide prompt notice to the other Party of any eminent domain proceeding involving the Leased Premises. Each Party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other Party, its attorneys, and experts. SPOR and Landlord shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure SPOR's continued ability to use the Leased Premises for the conduct of common carrier freight railroad operations.

11.1.6 Under no circumstance will Landlord exercise eminent domain over all or any portion of the Leased Premises without the written consent of SPOR, which may be delayed, conditioned or denied for any reason or no reason.

SECTION XII.

INSURANCE

SECTION 12.1 At its own sole cost and expense, SPOR shall procure the following kinds of insurance for the Term commencing as of the Effective Date and promptly pay when due all premiums for that insurance. Upon the failure of SPOR to maintain insurance as provided herein, Landlord shall have the right, after giving SPOR ten (10) days' written notice, to obtain such insurance and SPOR shall promptly reimburse Landlord for the reasonable expenses incurred by Landlord. The following minimum insurance coverage shall be kept in force during the Term:



SECTION 12.2 SPOR warrants that this Lease has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name Landlord as additional insured with respect to all liabilities assumed by SPOR hereunder.

SECTION 12.3 SPOR shall furnish to Landlord certificates of insurance evidencing the required coverage and endorsements and upon request a certified

duplicate original of any of those policies. SPOR shall notify Landlord in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 12.4 The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Landlord or with a current Best's Insurance Guide Rating of B and Class X or better. Such insurance company shall be authorized to transact business in the State of Ohio.

SECTION 12.5 Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve SPOR from liability hereunder in excess of such coverage, nor shall it preclude SPOR from taking such other action as is available to it under any other provision of this Lease or otherwise in law.

SECTION XIII. TAXES

[REDACTED]

[REDACTED]

[REDACTED]

SECTION XIV. EASEMENTS, LEASES AND LICENSES

SECTION 14.1 Except to the extent specifically provided for in other Sections of this Lease, or agreed upon in writing by the Parties, SPOR shall not be entitled to receive any revenue from any Reserved Rights as defined in Section 23.1 of this Lease or renewals thereof, or attributable to any agreements entered into by Landlord for Reserved Rights following the Effective Date. Landlord reserves the exclusive right to grant easements, licenses, agreements and leases affecting the Leased Premises which do not materially interfere with the SPOR's use of the Leased Premises or satisfaction of SPOR's common carrier obligations. Landlord shall be responsible for all duties, maintenance, costs, fencing, insurance, taxes (income, ad valorem, or otherwise), special assessments and liabilities owed to, on or for said revenues, easements, leases, licenses, or other agreements.

SECTION 14.2 SPOR shall not execute any encumbrance, lease, easement or any agreement affecting the Leased Premises, except for agreements relating to new customer tracks as described in this Lease.

SECTION XV. TERMINATION

SECTION 15.1 At any point during the Term, this Lease may be terminated as follows:

15.1.1 By Landlord or SPOR upon the occurrence of an Event of Default as defined in Section 18.1 or such other breach of any material term as outlined in Section 18.2; or

15.1.2 By SPOR or Landlord upon the effective date of regulatory approvals or exemptions requested by SPOR that permit SPOR to suspend, abandon or discontinue rail operations over all of the Leased Premises;

SECTION 15.2 In the event of termination of this Lease SPOR shall vacate the Leased Premises in an orderly manner, subject to receipt of any necessary discontinuance authority from the STB or other authority with jurisdiction. Upon any termination resulting from an Event of Default by SPOR, Landlord, at any time thereafter and subject to all necessary prior regulatory approvals or exemptions, may re-enter and take possession of the Leased Premises by affording sixty (60) days' written notice to SPOR specifying such Event or Events of Default and that this Lease has terminated. If Lease is terminated in its entirety for any reason other than an Event of Default by SPOR or Landlord at any time prior to the 20th anniversary of the Effective Date, Landlord shall promptly reimburse SPOR an amount calculated as the net present value of the remaining term of the lease.

SECTION 15.3 At least sixty (60) days prior to the expiration of this Lease, or promptly upon the earlier termination of this Lease, SPOR shall submit all necessary applications, petitions and/or notices to the STB or any successor agency, and shall make when and where due all related ancillary submissions (including but not limited environmental reports) required to effectuate a termination of this Lease and a discontinuance of SPOR's operations hereunder. Upon expiration or earlier termination of this Lease, Landlord shall have the right to enter onto and operate the Leased Premises. Upon the natural expiration or termination of this Lease, if any Class II or Class III rail carrier other than SPOR or an affiliate thereof shall assume the rail freight operations over the Leased Premises, the Parties hereto agree to use their commercially reasonable best efforts to cause any such new carrier to take an assignment from SPOR of SPOR's assignable written agreements.

SECTION 15.4 The termination or expiration of this Lease will not affect or impair the rights or obligations of either Party arising under this Lease prior to such termination or expiration.

SECTION XVI. FORCE MAJEURE

Either Party shall be excused from its obligations under this Lease, other than payment of Rent, to the extent its performance is prevented by an event of Force Majeure. For purposes of this Lease, an event of Force Majeure shall include: strikes, lockouts, labor disputes, casualties, acts of God, war, terrorist acts, pandemic, court orders, work

stoppages, nuclear incidents, riots, public disorder, acts of a public enemy, criminal acts or acts or omissions of other Parties or entities, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climactic conditions, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, embargoes, Association of American Railroads (“AAR”), STB or FRA orders, other governmental laws, orders or regulations or other such causes beyond the reasonable control of said Party (each a “**Force Majeure**”). In the event either Party is prevented from performing its obligations under this Lease by a Force Majeure, the Party so prevented shall be excused from its obligations under this Lease upon service of written notice to the other Party advising in reasonable detail the cause(s) of the Force Majeure, explaining the extent such performance was prevented by such Force Majeure. The Party experiencing Force Majeure shall take prompt action to remove such causes of Force Majeure insofar as practicable with all reasonable dispatch, and its obligation to perform the provisions of this Lease shall resume immediately after such causes have been removed.

SECTION XVII. DEFEASANCE.

SPOR shall not make any use of the Leased Premises inconsistent with Landlord’s right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any third party other than Landlord. SPOR shall provide reasonable cooperation to Landlord, and Landlord shall take all reasonable efforts to defend Landlord’s title to the Leased Premises against any adverse claims.

SECTION XVIII. EVENTS OF DEFAULT AND BREACH

SECTION 18.1 The following shall be **Events of Default**, if not cured within thirty (30) days [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SECTION 18.2 Upon the occurrence of an Event of Default, or any breach of any material term of this Lease not considered a default under Section 18.1, the injured Party shall notify the breaching Party in writing and identify with reasonable specificity the alleged breach, and what corrective action is desired to cure the breach.

SECTION 18.3 If, upon the expiration of thirty (30) days from the receipt of said notice or time specified in Section 18.2, the breach has not been cured (or, if such breach cannot be cured within 10 days, steps have not been taken to effect such cure and pursued with all due diligence within said period), the injured Party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching Party for the cost thereof, including any and all reasonable attorney's fees, and for any

reasonably foreseeable consequential damages.

SECTION 18.4 Nothing herein shall prevent the injured Party from resorting to any other remedy permitted under this Lease or at law or equity, including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured Party whole in the premises. Failure of the injured Party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching Party.

SECTION 18.5 The failure of either Party hereto to enforce at any time any of the provisions of this Lease or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provisions as to the future, nor in any way to affect the validity of this Lease or any part hereof or the right of either Party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach.

SECTION XIX. ARBITRATION

[REDACTED]

SECTION 19.2 In the event a controversy arises between the Parties as described in Section 19.1, the Parties agree to meet within fifteen (15) days of receipt of written notice of the controversy given by either Party and attempt to negotiate in good faith to resolve the controversy. If the Parties are unable to resolve the controversy, the Parties shall, within thirty (30) days of the written notice, jointly subject the matter to final and binding arbitration under this Section in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any Party may, upon 10 days' prior notice to the other Party or Parties, refer the matter to arbitration hereunder. The arbitrator shall be jointly selected by the Parties, but, if they do not agree on an arbitrator within thirty (30) days after demand for arbitration is made by a Party, they shall request that the arbitrator be designated by the American Arbitration Association.

SECTION 19.3 Until any award is made upon questions submitted to arbitration, the business, settlements and payments to be transacted and made and other performance under this Lease shall continue to be transacted and made in the manner and form existing prior to the time such questions arose. Any such damages in such an award shall earn interest from the date the damages were initially incurred until paid at the corporate prime rate as reported in The Wall Street Journal on the date of the Award.

SECTION 19.4 The arbitrator shall have the power to award damages as deemed appropriate, and to require the performance of acts found to be required by this Lease and to require the cessation or nonperformance of acts found to be prohibited by this Lease. The arbitrator shall not have the power to award consequential

or punitive damages. No award under this Section may change the terms of this Lease.

SECTION 19.5 The arbitrator shall make an award in writing, shall be final, binding and conclusive on the Parties to the arbitration when delivered to them.

SECTION 19.6 Any Party may, within ten (10) days of delivery of the award, seek clarification or reconsideration of the award from the arbitrator. The other Party shall be provided an opportunity for a response thereto within twenty (20) days of receipt thereof. The arbitrator shall make the decision granting or denying such clarification or reconsideration in writing, within sixty (60) days of receipt of a petition for such clarification or reconsideration, which shall then be final, binding and conclusive on the Parties when delivered to them.

SECTION 19.7 Each Party to the arbitration shall pay the fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, and expenses of the arbitrator shall be paid in equal shares by the Parties.

SECTION 19.8 The Parties may conduct such reasonable discovery as will facilitate a prompt and efficient resolution of the issues in dispute; provided that the arbitrator may provide for and place such limitations on the conduct of such discovery as the arbitrator may deem appropriate. The books and papers of the Parties, as far as they relate to the matter submitted for arbitration, shall be open to the examination of the arbitrator.

SECTION 19.9 All proceedings relating to any such arbitration, and all testimony, written submissions and award of the arbitrator therein, shall be private and confidential as between the Parties, and shall not be disclosed to any other person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

SECTION 19.10 The location of any arbitration proceeding held hereunder shall be agreed upon by the Parties, or, if they are unable to agree, in South Point, Ohio.

SECTION XX. AAR RULES

For the Term, SPOR agrees to comply with and be legally bound by the terms and provisions of the Association of American Railroads' practices, rules, agreements, and circulars such as OT-5, claim handling, as it applies to lading and equipment damage occurring while in SPOR's possession.

SECTION XXI. RESERVED RIGHTS

SECTION 21.1 Landlord reserves unto itself, its affiliates, subsidiaries, parents, successors and/or assigns, the following property rights, hereinafter collectively referred to as the “**Reserved Rights**,” to the extent the exercise of such rights do not materially interfere with SPOR’s operations on the Leased Premises or SPOR’s satisfaction of its common carrier operations

21.1.1 All existing agreements, leases, or licenses listed in Exhibit “D;”

21.1.2 The exclusive right to prepare and enter into future agreements, leases, licenses or occupations with third parties, consistent with the Reserved Rights;

21.1.3 The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove utility systems and their associated and appurtenant equipment and facilities as well as the right to attach the utility systems and related facilities to existing bridges, and to install them in existing tunnels, and the right of ingress and egress for access purposes; and

21.1.4 The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove commercial poster panels (or their electronic equivalent) and towers and their associated and appurtenant equipment and facilities as well as the right to attach the commercial poster panels and towers and related facilities to existing bridges and to install them in existing tunnels, and the right of ingress and egress for access purposes; and

21.1.5 All rights to and the right to convey all minerals, mineral rights, and air rights in, on or under the Leased Premises.

21.1.6 The right to sell tracts of land adjacent to the Leased Premises to developers for non-rail developments under the provisions of this Lease.

21.1.7 The right to install, upgrade or relocate switches, rail, ties or other rail related improvements at its own expense during the effective term, with prior approval of SPOR which may not be unreasonably withheld.

SECTION 21.2 Landlord shall retain any rentals, fees or other payments associated with the Reserved Rights. Landlord shall be responsible for any duties required to be performed pursuant to the Reserved Rights including but not limited to all maintenance, costs, fencing, insurance, taxes (income, ad valorem, or otherwise), special assessments, and liabilities owed to, on, or for said Reserved Rights.

SECTION XXII. CONFIDENTIALITY

SECTION 22.1 To the fullest extent as allowed by law, each Party hereto covenants that all information and documents concerning the other Party known to, or received or reviewed by, the first Party, its employees, agents or representatives, in connection with this Lease shall be maintained in confidence and not be disclosed or utilized (other than in connection with the transactions contemplated hereby) by the first Party, its employees, agents or representatives, without the other Party’s prior written consent, unless (i) such information and documents were, are now, or become generally available to the public (but not as a result of a breach of any duty of confidentiality by which the first Party, or any of its employees, agents and representatives, is bound), (ii) such information and documents were known to the first Party prior to their disclosure to the first Party by the other Party in connection with this Lease, as demonstrated by the

first Party's written records, (iii) such information and documents are disclosed by a third Party, or (iv) such items are required to be disclosed pursuant to a judicial order or applicable law, rule or regulation or to the Parties' insurers. Notwithstanding anything herein to the contrary, each Party may disclose (without prior notification to, or approval or consent by, the other Party), to taxing authorities and/or to such Party's representatives, outside counsel and advisors, any confidential information that is required to be disclosed in connection with such Party's tax filings, reports, claims, audits, and litigation.

SECTION 22.2 In the event that either Party, or any of its employees, agents or representatives, becomes legally compelled to disclose any such confidential information or documents, the disclosing Party shall provide the other Party with prompt notice before such disclosure so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Lease, or both. In the event that such protective order or other remedy is not obtained, or that the other Party waives compliance with the provisions of this Lease, the disclosing Party shall furnish only that portion of the information or documents that it is advised by written opinion of counsel is legally required.

SECTION 22.3 It is agreed that money damages would not be a sufficient remedy or any breach of this Section XXII, and that either Party hereto shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Section XXII, but shall be in addition to all other remedies available at law or in equity. Each Party hereto further agrees and covenants that it shall not use any information or document that it obtains or has obtained in connection with this Lease in any judicial or administrative proceeding brought against the other Party, except in a proceeding brought hereunder. With respect to any judicial or administrative proceeding brought by a third party challenging any provision of this Lease or relating to any action or inaction required by this Lease, the Party against whom such proceeding is brought may use for purposes of defending such proceeding information or documents that it obtains or has obtained in connection with this Lease; provided, however, that the Party against whom such proceeding is brought shall consult with and obtain the written consent of the other Party prior to such use of information or documents.

SECTION XXIII. MISCELLANEOUS

SECTION 23.1 **Entire Agreement.** This Lease expresses the entire agreement between the Parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Lease shall be binding upon the Party affected unless set forth in writing and duly executed by the Parties.

SECTION 23.2 **Notices.** All notices, demands, requests or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Lease shall be in writing and shall be deemed to have been properly given or sent:

23.2.1 If intended for Landlord, by mailing by registered or certified mail,

return receipt requested, with postage prepaid, addressed to Landlord at:

23.2.2 If intended for SPOR, by mailing by registered or certified mail, return receipt requested with postage prepaid, addressed to SPOR at:

23.2.3 Each notice, demand, request or communication which shall be mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 23.3 **Binding Effect.** This Lease shall be binding upon and inure to the benefit of Landlord and SPOR, and shall be binding upon their successors and assigns, subject to the limitations hereinafter set forth. SPOR may not assign its rights under this Lease or any interest therein, or attempt to have any other person assume its obligations under this Lease through merger or otherwise, without the prior written consent of Landlord, which consent shall not unreasonably withheld, conditioned or delayed.

SECTION 23.4 **Severability.** If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

SECTION 23.5 **Headings.** Article headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose.

SECTION 23.6 **Governing Law.** This Lease shall be governed and construed in accordance with the laws of the State of Ohio.

SECTION 23.7 **Amendment.** No modification, addition, deletion, change, or amendments to this Lease or any of the Exhibits shall be effective unless and until such modification, addition or amendment is in writing and signed by the Parties.

SECTION 23.8 **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

SECTION 23.9 **Recitals.** All Recitals stated in this Lease are substantive and shall be incorporated into this Lease as if more fully stated herein.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be duly executed on their behalf, as of the _____ day of _____ 2021.

LAWRENCE ECONOMIC DEVELOPMENT CORPORATION

By: _____

Print: _____

Title: _____

SOUTH POINT & OHIO RAILROAD

By: _____

Print: _____

Title: _____

EXHIBIT A
LEASED PREMISES

EXHIBIT B

BASE LINE SERVICE LEVELS

EXHIBIT C

ASSIGNED AGREEMENTS

FD 36465
EXHIBIT A
PUBLIC
EXHIBIT D

RESERVED AGREEMENTS

FD 36465
EXHIBIT A
PUBLIC

EXHIBIT E

AGREED-TO PRICES OF PRE-EXISTING RELATIONSHIPS