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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

July 29, 2025

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36870**
Port Rail, Inc. – Operation Exemption –
In Lake Charles, Calcasieu Parish, Louisiana

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Port Rail, Inc. Pursuant to 49 C.F.R. § 1150.42**, dated July 29, 2025. The sum of \$2,500, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Port Rail, Inc.

TJL:tl

Attachment

FILED
July 29, 2025
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
July 29, 2025
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36870

PORT RAIL, INC.
-- OPERATION EXEMPTION --
IN LAKE CHARLES, CALCASIEU PARISH, LOUISIANA

**VERIFIED NOTICE OF EXEMPTION
OF
PORT RAIL, INC.
PURSUANT TO 49 C.F.R. § 1150.42**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

ATTORNEY FOR PORT RAIL, INC.

Dated: July 29, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36870

PORT RAIL, INC.
-- OPERATION EXEMPTION --
IN LAKE CHARLES, CALCASIEU PARISH, LOUISIANA

**VERIFIED NOTICE OF EXEMPTION
OF
PORT RAIL, INC.
PURSUANT TO 49 C.F.R. § 1150.42**

Port Rail, Inc. (“Port Rail”), a Class III rail carrier, hereby files this notice of exemption under 49 C.F.R. § 1150.42 to operate two non-contiguous segments of existing rail trackage owned by the Lake Charles Harbor and Terminal District (the “District”)¹ in Lake Charles, Calcasieu Parish, Louisiana known as the East Industrial Track and the South Industrial Track and extending a total distance of approximately 13.59 miles (collectively, the “Subject Track”). The two track segments each connect with the Lake Charles Industrial Lead of Union Pacific Railroad Company (“UP”). Port Rail has leased the Subject Track from the District since 2016, and has conducted railcar storage and limited unregulated switching operations on the track segments. In consultation with UP, Port Rail now seeks to assume common carrier status on the Subject Track.

Based on projected revenues for the Subject Track, Port Rail expects to remain a Class III rail carrier.

¹ The District is the operator of the Port of Lake Charles.

In accordance with the requirements of 49 C.F.R. § 1150.43, Port Rail submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

The full name and address of the applicant herein is as follows:

Port Rail, Inc.
150 Marine Street
Lake Charles, Louisiana 70601
(844) 876-7245

Applicant's Representative: 49 C.F.R. § 1150.43(b)

The Port Rail representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

The District and Port Rail are parties to two Track Lease Agreements, both effective as of January 1, 2016, as well as a recent First Amendment to each agreement, which provide for Port Rail's use of the East Industrial Track and the South Industrial Track, respectively, for the movement, switching and storage of railcars. No further changes to those agreements are required or contemplated in connection with Port Rail's operation of the Subject Trackage as a common carrier.

Operation of the Property: 49 C.F.R. § 1150.43(d)

Port Rail will be the common carrier operator of the Subject Track.

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

Port Rail is a Class III rail carrier which commenced operations in 2011 after leasing approximately 5.1 miles of trackage from UP and the District. *Port Rail Link, Inc. – Acquisition and Operation Exemption – Rail Lines of Union Pacific Railroad and The Lake Charles Harbor and Terminal District*, Docket No. FD 35570 (STB served Dec. 2, 2011).² Port Rail is a non-profit economic development corporation established by the District under Louisiana law. Port Rail interchanges traffic with UP and, via UP switch, with BNSF Railway Company. Port Rail’s current operations connect with UP at Milepost 7.15 of UP’s Lake Charles Industrial Lead, and Port Rail interchanges traffic with UP at UP’s Harbor Yard at Milepost 7.15 (manifest traffic) and at UP’s Mallard Yard between Milepost 1.00 and Milepost 2.72 (unit trains).

The East Industrial Track extends approximately 0.99 miles from a connection with UP at Milepost 2.22 on UP’s Lake Charles Industrial Lead east of Runway 15/33 at Chennault International Airport in a northeasterly direction to its terminus at the south end of James Sudduth Parkway. The East Industrial Track does not have mileposts. It is owned by the District and was constructed in 1997. It has been leased to Port Rail since 2016 and is currently used for railcar storage.

The South Industrial Track extends approximately 12.6 miles from a connection with UP at Milepost 4.13 on UP’s Lake Charles Industrial Lead near the intersection of East Ward Line Road (LA 397) and Farm Road in a southwesterly direction to its terminus at the Lake Charles Carbon Company (Alcoa) facility near the intersection of Big Lake Road and West Lincoln Road. It is owned by the District and was constructed in 1967. The South Industrial Track does not have

² Port Rail was originally known as “Port Rail Link, Inc.”, but adopted its current name shortly after making its initial filing with the STB. See Docket No. FD 35570, Port Rail letter filing dated December 6, 2011.

mileposts. Like the East Industrial Track, it has been leased to Port Rail since 2016 and is currently used for railcar storage.

In consultation with UP and to accommodate expected new traffic opportunities, Port Rail now seeks operating authority from the Board to establish rail common carrier operations on the Subject Track. Operations on the Subject Track will be conducted under the current Track Lease Agreements with the District, which were originally entered into in 2016 and amended and extended in 2025. Pursuant to a new interchange agreement between UP and Port Rail, traffic from the East Industrial Track and South Industrial Track will be interchanged with UP for unit trains at UP's Mallard Yard and for non-unit trains at UP's Harbor Yard, or on other designated trackage that the parties may mutually agree to.

The full name and address of the owner of the Subject Track is:

Lake Charles Harbor and Terminal District
1611 West Sallier Street
P.O. Box 3753
Lake Charles, LA 70602

In accordance with the Board's directive in *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.*, FD 35296 (STB served Aug. 16, 2010) ("*Macrie*"), at 3, copies of the Track Lease Agreements between Port Rail and the District, as amended, are included as Exhibit D to this notice. Those agreements would not allow the District to interfere with Port Rail's freight operations or Port Rail's ability to meet its common carrier obligation to shippers on the Subject Track. *Macrie* at 3-4; *Wisconsin Cent. Ltd. v. STB*, 112 F.3d 881 (7th Cir. 1997).

Port Rail intends to commence operations as a regulated rail common carrier on the Subject Track on or after August 28, 2025, the effective date of the exemption sought in this Notice.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Subject Track and indicating the area served by the lines is attached as Exhibit A to this notice.

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this notice.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

The Track Lease Agreements between the District and Port Rail, as amended, contain no restriction on Port Rail interchanging traffic with any rail carriers.

Advance Notice: 49 C.F.R. § 1150.42(e)

The projected annual revenue of Port Rail is not expected to exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.42(e) are not applicable to this transaction. See Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), the proposed common carrier operation of the Subject Track by Port Rail is exempt from environmental reporting requirements. Port Rail's operation of the Subject Track will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed common carrier operation of the Subject Track by Port Rail also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Surface

Transportation Board approval is required to discontinue or abandon service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

/s/ Thomas J. Litwiler

By: _____

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

ATTORNEY FOR PORT RAIL, INC.

Dated: July 29, 2025

EXHIBIT A

Exhibit A
Docket No. FD 36870

**East
Industrial**

MP 2.22

MP 4.13

**South
Industrial**

-  **Port Leased to Port Rail**
-  **UP**
-  **UP Leased to Port Rail**

CERTIFICATION

I, Derek W. Midkiff, hereby certify under penalty of perjury that the projected annual rail revenue of Port Rail, Inc. does not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

/s/ *Derek W. Midkiff*

Derek W. Midkiff
Executive Director

Dated: July 29, 2025

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36870

PORT RAIL, INC.
-- OPERATION EXEMPTION --
IN LAKE CHARLES, CALCASIEU PARISH, LOUISIANA

Port Rail, Inc. (“Port Rail”), a Class III rail carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.41, *et seq.* to operate as a common carrier trackage owned by the Lake Charles Harbor and Terminal District in Lake Charles, Calcasieu Parish, Louisiana known as the East Industrial Track and the South Industrial Track and extending a total distance of approximately 13.59 miles (collectively, the “Subject Track”). The East Industrial Track extends approximately 0.99 miles from a connection with Union Pacific Railroad Company (“UP”) at Milepost 2.22 on UP’s Lake Charles Industrial Lead east of Runway 15/33 at Chennault International Airport in a northeasterly direction to its terminus at the south end of James Sudduth Parkway. The South Industrial Track extends approximately 12.6 miles from a connection with UP at Milepost 4.13 on UP’s Lake Charles Industrial Lead near the intersection of East Ward Line Road (LA 397) and Farm Road in a southwesterly direction to its terminus at the Lake Charles Carbon Company (Alcoa) facility near the intersection of Big Lake Road and West Lincoln Road. The Subject Track does not have mileposts.

Port Rail expects to commence common carrier operation of the Subject Track on or after August 28, 2025, the effective date of the Verified Notice of Exemption.

Comments must be filed with the Board and served on:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.41. If this Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: August __, 2025

By the Board

**TRACK LEASE AGREEMENTS
AND
FIRST AMENDMENTS TO TRACK LEASE AGREEMENTS
BETWEEN
LAKE CHARLES HARBOR AND TERMINAL DISTRICT
and
PORT RAIL, INC.

EFFECTIVE AS OF
JANUARY 1, 2016 AND JANUARY 1, 2026**

LAKE CHARLES HARBOR AND TERMINAL DISTRICT

TRACK LEASE AGREEMENT

THIS TRACK LEASE AGREEMENT ("AGREEMENT") is made to be effective January 1, 2016, ("EFFECTIVE DATE") by and between the LAKE CHARLES HARBOR AND TERMINAL DISTRICT ("DISTRICT"), a political subdivision of the State of Louisiana, and PORT RAIL, INC. ("PORT RAIL"), a Louisiana non-profit corporation licensed to and doing business within the State of Louisiana.

RECITALS

- a. DISTRICT owns or controls certain rail, ties, ballast, and appurtenances thereto as shown on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "DISTRICT TRACK") and otherwise identified as the Industrial Park East Spur at mile marker 2.22 of the Lake Charles Industrial Lead.
- b. PORT RAIL desires to lease approximately 5,204 feet of DISTRICT TRACK for the movement, switching and storage of railcars.
- c. DISTRICT desires to allow PORT RAIL the use of approximately 5,204 feet of DISTRICT TRACK for the movement, switching and storage of railcars, subject to the terms and conditions of this AGREEMENT.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. OWNERSHIP.

- 1.1 DISTRICT represents that it owns and/or controls the DISTRICT TRACK including the land underlying the DISTRICT TRACK and that there are no existing easements or encumbrances affecting such land that would interfere with the DISTRICT's rights under this AGREEMENT.
- 1.2 This AGREEMENT does not grant or convey PORT RAIL any real property interest in any property of the DISTRICT or the DISTRICT TRACK.

Section 2. USE.

- 2.1 Subject to the terms and conditions set forth herein, the DISTRICT has granted, and hereby grants, unto PORT RAIL a non-exclusive right to use

the DISTRICT TRACK, to the extent that it does not disrupt or unreasonably interfere with the DISTRICT'S operations for the following purpose: (1) moving and switching railcars at the Industrial Park East Spur, located within Lake Charles, Calcasieu Parish, Louisiana. PORT RAIL acknowledges that the DISTRICT TRACK is designated as Excepted Track and is restricted to: (1) train speeds of ten (10) miles per hour or less; (2) no freight trains shall be operated that contain more than five cars required to be placarded by the Hazardous Materials Regulations (49 C.F.R. part 172); and (3) no occupied passenger train shall be operated on DISTRICT TRACK.

- 2.2 In using the DISTRICT TRACK, PORT RAIL shall comply with any and all applicable federal, state, and local laws and regulations required by its operations on or use of the DISTRICT TRACK and in accordance with any future terms and conditions established by the DISTRICT.
- 2.3 PORT RAIL shall obtain and maintain all licenses, permits and other authorizations required by its operation on or use of the DISTRICT TRACK.

Section 3. RENT.

- 3.1 In consideration of this Agreement and subject to the terms of this AGREEMENT and provisions contained herein, PORT RAIL agrees to pay the DISTRICT rent for the use of DISTRICT TRACK in the amount of Ten Dollars (\$10.00) per year payable annually in advance beginning January 1, 2016.
- 3.2 PORT RAIL shall make all due rent payments and all other payments required by this AGREEMENT, to DISTRICT at Post Office Box 3753, Lake Charles, LA 70602, Attention: Executive Director, or at such other location or to such other individual as may be designated by the DISTRICT in writing.

Section 4. MAINTENANCE.

- 4.1 PORT RAIL shall maintain DISTRICT TRACK. Maintenance, for purposes of this AGREEMENT, means keeping the DISTRICT TRACK in good working order and condition, including without limitation: (a) providing proper drainage along the DISTRICT TRACK; (b) keeping the DISTRICT TRACK free and clear of vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, all as determined by the DISTRICT in DISTRICT'S sole discretion.
- 4.2 DISTRICT shall have the right to inspect the DISTRICT TRACK at all reasonable times. DISTRICT shall notify PORT RAIL in writing of any failure of PORT RAIL to maintain the DISTRICT TRACK as required in Section 4.1. PORT RAIL shall, within ninety (90) days of its receipt of

such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

- 4.3 PORT RAIL shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8 ½) feet laterally from the center (nine and one-half (9 ½) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23 ½) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment within 250 feet of either side of any at-grade crossings on the DISTRICT TRACK (collectively "Minimal Clearances"), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 4.3, then PORT RAIL shall strictly comply with such Legal Requirement. PORT RAIL operation with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of PORT RAIL contained in this Section 4.3 or any right of the DISTRICT to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons that may result therefrom.
- 4.4 PORT RAIL, at its own sole cost and expense, shall be responsible for all repairs and restorations to DISTRICT TRACK resulting from its negligence, gross negligence or intentional acts; normal wear and tear excepted.

Section 5. TERM.

- 5.1 This AGREEMENT shall continue in force for a period of ten (10) years unless terminated sooner by either party, with or without cause, on ninety (90) days prior written notice to the other party. If PORT RAIL, in accordance with applicable law, abandons or otherwise discontinues service over the DISTRICT TRACK, this AGREEMENT shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this AGREEMENT.
- 5.2 Until terminated, this AGREEMENT shall inure to the benefit of and be binding upon the parties and their respective successors and assigns, but PORT RAIL shall not assign or otherwise transfer this AGREEMENT without the express written consent of the DISTRICT.
- 5.3 Nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions, by which the DISTRICT, Union Pacific Railroad Company or PORT RAIL may, from time to time, provide rail

service to, from or on DISTRICT TRACK, or a modification or amendment to any other arrangement or agreement regarding such service.

Section 6. CHANGES.

PORT RAIL shall not make any changes to the DISTRICT TRACK without the prior written consent of the DISTRICT.

Section 7. INDEMNITY.

7.1 For purposes of this AGREEMENT: (a) "Indemnitees" means the DISTRICT and the DISTRICT'S commissioners, successors, assigns, legal representatives, officers, directors, employees, agents and affiliated companies; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) "Port Rail Parties" means Port Rail or Port Rail's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

7.2 PORT RAIL will save, to the maximum extent permitted by law, indemnify and hold harmless, Indemnitees against any and all damages, liability, causes of action, demands, claims (including accident or injury), costs or expenses (including, but not limited to, attorneys' fees and expenses incurred in defense of the DISTRICT), arising out of or in any way incidental to PORT RAIL'S use of the DISTRICT TRACK, unless caused solely by the DISTRICT'S own negligence or arising out of or in any way incidental to the DISTRICT'S ownership of the DISTRICT TRACK, including, but not limited to, PORT RAIL, or damage to property, including, but not limited to, the property of PORT RAIL, in any way connected with or incidental to the use of the DISTRICT TRACK by PORT RAIL, PORT RAIL'S agents, employees or business invitees. It is understood that this paragraph places upon PORT RAIL the total responsibility to indemnify Indemnitees from any claim, action, damage, or injury occurring on or arising out of PORT RAIL'S use of the DISTRICT TRACK including claims based upon a theory of strict liability during the term of this AGREEMENT. It is specifically agreed that the DISTRICT shall not be liable for any reason to PORT RAIL or any insurer of PORT RAIL for any damage which may occur for whatever reason to any property of PORT RAIL or others which may occur upon the DISTRICT TRACK or which arises out of the use of the DISTRICT TRACK by PORT RAIL. It shall be the responsibility of PORT RAIL to obtain the appropriate insurance covering the loss of any such property.

- 7.3 PORT RAIL shall release, indemnify, defend, and hold the Indemnitees harmless from and against any liabilities under CERCLA or other Environmental laws arising out of or related to (in whole or in part) PORT RAIL'S use of the DISTRICT TRACK as contemplated in this AGREEMENT regardless of any negligence or strict liability of any Indemnatee.
- 7.4 If any employee of any entity other than an Indemnatee asserts that he or she is an employee of any Indemnatee, PORT RAIL shall release, indemnify, defend, and hold the Indemnitees harmless from and against any liabilities (as defined above) arising out of or related to (in whole or in part) any such assertion including, but not limited to, the Federal Employers' Liability Act, the Safety Appliance Act, the Locomotive Inspection Act, the Occupational Safety and Health act, the Resource Conservation and Recovery Act, and any similar state or federal statute. PORT RAIL'S obligations under this Section 7.4 are regardless of any actual or alleged negligence, fault, or comparative fault of any Indemnatee related to such causes of action.
- 7.5 Upon written notice from DISTRICT, PORT RAIL agrees to assume the defense and control of any lawsuit or other proceeding brought against any Indemnatee by any entity or person, relating to any matter covered by this AGREEMENT for which PORT RAIL has an obligation to assume liability for and/or save and hold harmless any Indemnatee. PORT RAIL shall pay all costs and expenses incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. DISTRICT agrees to assist in defense of any such matter (at PORT RAIL'S expense) as reasonably requested.

Section 8. INSURANCE.

PORT RAIL shall, at its sole cost and expense, procure and maintain during the life of this AGREEMENT the following minimum insurance coverage:

- 8.1 Commercial General Liability Insurance. This insurance shall contain a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by PORT RAIL.
- 8.2 Any insurance policy shall be written by a reputable insurance company acceptable to DISTRICT or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the State of Louisiana. If PORT RAIL subcontracts any portion of the operation utilizing the DISTRICT TRACK, PORT RAIL shall require that the subcontractor provide and maintain insurance coverage set forth herein. This provision in no way allows PORT RAIL to subcontract any portion of the operation

utilizing the DISTRICT TRACK without the express written consent of the DISTRICT.

- 8.3 PORT RAIL will provide DISTRICT with thirty (30) days written notice of any cancellation or material modification to the coverage of an applicable policy.
- 8.4 At the DISTRICT'S request, PORT RAIL shall promptly provide to the DISTRICT certificates evidencing such insurance.
- 8.5 The DISTRICT may change by reasonable amounts, consistent with prevailing commercial practices of the DISTRICT, the limits of insurance coverage required by this Section 7 upon ninety (90) days written notice to PORT RAIL stating such changed limits of coverage and the reasons for the change.
- 8.6 As part of the consideration of this AGREEMENT, each of the parties hereby releases the other from all liability for damage due to any act or neglect of the other party which is the result of fire or other casualty to the extent covered by any insurance policy (waiver of subrogation).
- 8.8 In the event of a claim or lawsuit involving the DISTRICT arising out of this AGREEMENT, PORT RAIL will immediately make available any required policy covering such claim or lawsuit, but only to the extent of coverage provided and relative to indemnities assumed in this contract.
- 8.9 Failure to provide evidence as required by this Section 8 shall entitle, but not require, DISTRICT to terminate this AGREEMENT immediately. Acceptance of a certificate that does not comply with this Section 7 shall not operate as a waiver of PORT RAIL'S obligation hereunder. The fact that insurance is obtained by PORT RAIL shall not be deemed to release or diminish the liability of PORT RAIL including, without limitation, liability under the indemnity provisions of this AGREEMENT. Damages recoverable by the DISTRICT shall not be limited by the amount of the required insurance coverage.

Section 9. ASSIGNMENT.

PORT RAIL may not assign this AGREEMENT and/or its rights and obligations under this AGREEMENT without the prior written consent of the DISTRICT.

Section 10. RELATIONSHIP OF PARTIES.

Nothing contained herein shall be deemed or construed as making the DISTRICT a partner of PORT RAIL in the conduct of PORT RAIL'S business or as creating the relationship of principal and agent between the DISTRICT and PORT RAIL or as creating a joint venture between the DISTRICT and PORT RAIL.

Section 11. NOTICE.

Any notice herein required or permitted to be given shall be in writing and

shall be sent (a) by registered or certified mail, postage prepaid, addressed to the party or parties at their addresses set for in this Section 10 or at such other address as may be designated from time to time by written notice to all parties, (b) by electronic mail (email) addresses set forth or to such other address as may be designated from time to time by written notice to all parties or (c) by facsimile to the facsimile number set forth below or such other facsimile number as may be designated. Any notice given or made in this manner prescribed by this Article 11 shall be effective when received. The sender of a notice shall have the burden of producing a valid registered or certified mail receipt if sent by mail, a valid read-receipt response if sent by email and a valid result report if sent by facsimile.

If to DISTRICT:

Lake Charles Harbor and Terminal District
P.O. Box 3753
Lake Charles, LA 70602
Facsimile: (337) 493-3502
Email: brase@portlc.com

If to PORT RAIL:

Port Rail, Inc.
150 Marine Street
Lake Charles, Louisiana 70601
Email: dmidkiff@portrailc.com

Section 12. NOTIFICATION REQUIREMENTS.

- 12.1 PORT RAIL shall give the DISTRICT immediate notice of any release of hazardous materials on, from, or affecting the DISTRICT TRACK, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the use of DISTRICT TRACK. PORT RAIL also shall give the DISTRICT immediate notice of all measures undertaken by or on behalf of PORT RAIL to investigate, remediate, respond to or otherwise cure each such release or violation.
- 12.2 PORT RAIL shall promptly report to the DISTRICT in writing any conditions or activities upon the DISTRICT TRACK which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that PORT RAIL'S reporting to the DISTRICT shall not relieve PORT RAIL of any obligation whatsoever imposed on it by this AGREEMENT or by any Legal Requirement. PORT RAIL shall promptly respond to the

DISTRICT'S request for information regarding such conditions or activities. To the extent such conditions or activities with respect to the DISTRICT TRACK are attributable to PORT RAIL, the DISTRICT may require PORT RAIL, at PORT RAIL'S sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such conditions or activities on, from, or otherwise affecting the DISTRICT TRACK.

- 12.3 For purposes of this AGREEMENT, "Environmental Laws" mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S. C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, The Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §3001 *et seq.*, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 1101 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. §2701 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- 12.4 For purposes of this AGREEMENT, "Hazardous Material" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 13. APPLICABLE LAW.

- 13.1 The laws of the State of Louisiana shall govern the validity, construction, interpretation, and effect of this AGREEMENT.
- 13.2 Any action pertaining to this AGREEMENT shall be instituted and litigated in the courts of Calcasieu Parish, Louisiana, and in no other.
- 13.3 If a party has not appointed an agent for service of process in Louisiana, the party nominates the Secretary of State of the State of Louisiana as its agent to receive service of process for any action pertaining to this AGREEMENT, and the parties submit to the jurisdiction of the courts of Calcasieu Parish, Louisiana.

Section 14. AUTHORITY TO EXECUTE.

Each party represents to the other that it has the capacity and authority to enter into this AGREEMENT.

Section 15. SPECIFIC PERFORMANCE.

A party shall have the right to enforce this AGREEMENT by specific performance.

Section 16. RECORDATION.

Either party may record this AGREEMENT in the official records of Calcasieu Parish, Louisiana or may cause a memorandum of this AGREEMENT meeting the requirements of Louisiana Law to be executed and recorded in the official records of Calcasieu Parish, Louisiana.

Section 17. AMENDMENT.

This AGREEMENT may not be amended except by a written instrument signed on behalf of each of the parties and in a form suitable for recordation in the official records of Calcasieu Parish, Louisiana.

Section 18. COUNTERPARTS.

This AGREEMENT may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on the parties.

Section 19. SECTION HEADINGS.

Section headings throughout this Agreement are for convenience only and do not constitute a part of this AGREEMENT.

Section 20. BURDEN AND BENEFIT.

All provisions herein contained shall bind and inure to the benefit of the respective parties hereto, their heirs, personal representatives, successors and assigns.

Section 21. PRONOUNS AND PLURALS.

All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require in the context and the singular forms of nouns, pronouns and verbs shall include the plural, and vice versa, whichever the context may require.

Section 22. SURVIVAL.

Any representation, warranty, or covenant contained herein which contemplates performance after the expiration or termination of this AGREEMENT shall be deemed to survive the expiration or termination of this AGREEMENT.

Section 23. ENTIRE AGREEMENT.

This AGREEMENT sets forth all of the promises, agreements and understandings between the parties hereto with respect to the subject matter hereof, and there are no promises, agreements or understandings, oral or written, express or implied, between them with respect to the subject matter of this AGREEMENT.

Section 24. MUTUAL NEGOTIATION.

The parties agree that they have participated jointly in the negotiation and drafting of this AGREEMENT and, if there is any ambiguity or question of intent or question of interpretation concerning this AGREEMENT, this AGREEMENT shall be construed as having been jointly negotiated and drafted by all parties without the creation of any burden of proof favoring or disfavoring any party that arose from the negotiation and drafting of this AGREEMENT.

Section 25. FURTHER ASSURANCES.

Each party shall execute such documents and other instruments, and shall take such further actions, as may reasonably be required or desirable to carry out the provisions of this AGREEMENT and the transactions contemplated by this AGREEMENT.

Section 26. EFFECTIVE DATE.

The effective date of this AGREEMENT shall be the 1st day of January, 2016.

THUS DONE AND SIGNED on this 9th day of December, 2015, in Lake Charles, Calcasieu Parish, Louisiana, in my presence, Notary Public and in the presence of the undersigned competent witnesses.

WITNESSES:

LAKE CHARLES HARBOR AND TERMINAL DISTRICT

Michelle Bolen
(signature)
Michelle Bolen
(print name)

By: William J. Rase III
William J. Rase, III, Executive Director

Tiffany Fournet
(signature)
T. Fournet
(print name)

Sharon L. Edwards

NOTARY PUBLIC



SHARON L. EDWARDS
Notary Public No. 6529
State of Louisiana
Parish of Calcasieu
My Commission Is For Life

THUS DONE AND SIGNED on this 16th day of December,
2015, in Lake Charles, Calcasieu Parish, Louisiana, in my presence, Notary Public and in
the presence of the undersigned competent witnesses.

WITNESSES:

PORT RAIL, INC.

Tiffany Fournet
(signature)
Tiffany Fournet
(print name)

By: [Signature]
Derek Midkiff, Executive Director

Michelle Bolen
(signature)
Michelle Bolen
(print name)

Sharon R. Edwards

NOTARY PUBLIC



SHARON L. EDWARDS
Notary Public No. 6529
State of Louisiana
Parish of Calcasieu
My Commission Is For Life

N

Exhibit "A"

SWIFT RD

BROAD ST

STATE HWY 397

FIRST AMENDMENT TO TRACK LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE TRACK LEASE AGREEMENT (this "Agreement") effective as of January 1, 2026 (the "Effective Date"), is entered into by and between LAKE CHARLES HARBOR AND TERMINAL DISTRICT, a political subdivision of the State of Louisiana ("District"), whose address is 1611 West Sallier Street, Lake Charles, Louisiana 70601, and PORT RAIL, INC. ("PORT RAIL"), a Louisiana non-profit corporation licensed to and doing business within the State of Louisiana.. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Lease (as defined below).

BACKGROUND:

WHEREAS, the District and Port Rail are party to that certain Track Lease Agreement effective January 1, 2016 (the "Lease"), pursuant to which Port Rail leases from the District certain rail, ties, ballast, and appurtenances thereto as shown on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "DISTRICT TRACK") and otherwise identified as the Industrial Park East Spur at mile marker 2.22 of the Lake Charles Industrial Lead; and

WHEREAS, the District and Port Rail desire to make amendments to the Track Lease Agreement on the terms and subject to the conditions set forth herein.

WHEREAS, pursuant to Section 17 of the Track Lease Agreement, each change to the Lease set forth herein shall not be effective unless set forth in a writing signed by District and Port Rail.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the District and Port Rail agree as follows:

1. Section 1.1 shall be deleted and replaced in its entirety with the following:

"DISTRICT represents that it owns and/or controls the DISTRICT TRACK including the land underlying the DISTRICT TRACK and that there are no existing easements or encumbrances affecting such land that would interfere with PORT RAIL's rights under this AGREEMENT."

2. Section 2.1 and 2.2 shall be deleted and replaced in their entirety with the following:

- 2.1 Subject to the terms and conditions set forth herein, the DISTRICT has granted, and hereby grants, unto PORT RAIL a non-exclusive right to use the DISTRICT TRACK for the following purpose: (1) moving, switching and spotting railcars on the Industrial Canal Spur, located within Calcasieu Parish, Louisiana, in common carrier service or otherwise. PORT RAIL acknowledges that the DISTRICT TRACK is designated as Excepted Track and is restricted to: (1) train speeds of ten (10) miles per hour or less; (2) no freight trains shall be operated that contain more than five cars required to be placarded by the Hazardous Materials Regulations (49 C.F.R. part 172); and (3) no occupied passenger train shall be operated on DISTRICT

TRACK. Any DISTRICT operations or use of the DISTRICT TRACK shall not unreasonably disrupt or interfere with PORT RAIL's use of the DISTRICT TRACK for the purposes provided in this AGREEMENT.

- 2.2 In using the DISTRICT TRACK, PORT RAIL shall comply with any and all applicable federal, state, and local laws and regulations required by its operations on or use of the DISTRICT TRACK and in accordance with any future terms and conditions reasonably established by the DISTRICT

3. Section 5.1 shall be deleted and replaced in its entirety with the following"

This AGREEMENT shall continue in force for a period of twenty (20) years unless terminated sooner by either party, with or without cause, on ninety (90) days prior written notice to the other party. If PORT RAIL, in accordance with applicable law, abandons or otherwise discontinues service over the DISTRICT TRACK, this AGREEMENT shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this AGREEMENT.

4. Section 6 shall be deleted and replaced in its entirety with the following:

PORT RAIL shall not make any changes to the DISTRICT TRACK without the prior written consent of the DISTRICT, which consent shall not unreasonably be withheld.

All other terms, conditions and agreements set forth in the Track Lease Agreement attached hereto and made a part hereof shall be applicable to this First Amendment and are hereby specifically adopted and made a part of this Agreement.

IN WITNESS WHEREOF, the District has caused its name to be affixed hereunto effective as of the Effective Date.

WITNESSES:

**LAKE CHARLES HARBOR AND
TERMINAL DISTRICT**

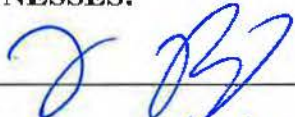
Printed Name: *[Signature]*

Michelle Bolen
Printed Name: *Michelle Bolen*

By: *[Signature]*
Richert L. Self
Executive Director

IN WITNESS WHEREOF, Port Rail, Inc., has caused its name to be affixed hereunto effective as of the Effective Date.

WITNESSES:

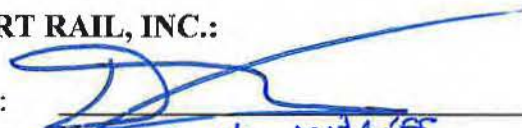

Printed Name: Jonathan Ringo

Michelle Bolen

Printed Name: Michelle Bolen

PORT RAIL, INC.:

By:


Name: Luke Mickler
Title: Executive Director

LAKE CHARLES HARBOR AND TERMINAL DISTRICT

TRACK LEASE AGREEMENT

THIS TRACK LEASE AGREEMENT ("AGREEMENT") is made to be effective January 1, 2016, ("EFFECTIVE DATE") by and between the LAKE CHARLES HARBOR AND TERMINAL DISTRICT ("DISTRICT"), a political subdivision of the State of Louisiana, and PORT RAIL, INC. ("PORT RAIL"), a Louisiana non-profit corporation licensed to and doing business within the State of Louisiana.

RECITALS

- a. DISTRICT owns or controls certain rail, ties, ballast, and appurtenances thereto as shown on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "DISTRICT TRACK") and otherwise identified as the Industrial Canal Spur at mile marker 4.13 of the Lake Charles Industrial Lead heading south 12.6 miles and terminates at the current Alcoa facility.
- b. PORT RAIL desires to lease approximately 12.6 miles of DISTRICT TRACK for the movement, switching and storage of railcars.
- c. DISTRICT desires to allow PORT RAIL the use of approximately 12.6 miles of DISTRICT TRACK for the movement, switching and storage of railcars, subject to the terms and conditions of this AGREEMENT.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. OWNERSHIP.

- 1.1 DISTRICT represents that it owns and/or controls the DISTRICT TRACK including the land underlying the DISTRICT TRACK and that there are no existing easements or encumbrances affecting such land that would interfere with the DISTRICT's rights under this AGREEMENT.
- 1.2 This AGREEMENT does not grant or convey PORT RAIL any real property interest in any property of the DISTRICT or the DISTRICT TRACK.

Section 2. USE.

- 2.1 Subject to the terms and conditions set forth herein, the DISTRICT has granted, and hereby grants, unto PORT RAIL a non-exclusive right to use

the DISTRICT TRACK, to the extent that it does not disrupt or unreasonably interfere with the DISTRICT'S operations for the following purpose: (1) moving and switching railcars at the Industrial Canal Spur, located within Calcasieu Parish, Louisiana. PORT RAIL acknowledges that the DISTRICT TRACK is designated as Excepted Track and is restricted to: (1) train speeds of ten (10) miles per hour or less; (2) no freight trains shall be operated that contain more than five cars required to be placarded by the Hazardous Materials Regulations (49 C.F.R. part 172); and (3) no occupied passenger train shall be operated on DISTRICT TRACK.

2.2 In using the DISTRICT TRACK, PORT RAIL shall comply with any and all applicable federal, state, and local laws and regulations required by its operations on or use of the DISTRICT TRACK and in accordance with any future terms and conditions established by the DISTRICT.

2.3 PORT RAIL shall obtain and maintain all licenses, permits and other authorizations required by its operation on or use of the DISTRICT TRACK.

Section 3. RENT.

3.1 In consideration of this Agreement and subject to the terms of this AGREEMENT and provisions contained herein, PORT RAIL agrees to pay the DISTRICT rent for the use of DISTRICT TRACK in the amount of Ten Dollars (\$10.00) per year payable annually in advance beginning January 1, 2016.

3.2 PORT RAIL shall make all due rent payments and all other payments required by this AGREEMENT, to DISTRICT at Post Office Box 3753, Lake Charles, LA 70602, Attention: Executive Director, or at such other location or to such other individual as may be designated by the DISTRICT in writing.

Section 4. MAINTENANCE.

4.1 PORT RAIL shall maintain DISTRICT TRACK. Maintenance, for purposes of this AGREEMENT, means keeping the DISTRICT TRACK in good working order and condition, including without limitation: (a) providing proper drainage along the DISTRICT TRACK; (b) keeping the DISTRICT TRACK free and clear of vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, all as determined by the DISTRICT in DISTRICT'S sole discretion.

4.2 DISTRICT shall have the right to inspect the DISTRICT TRACK at all reasonable times. DISTRICT shall notify PORT RAIL in writing of any failure of PORT RAIL to maintain the DISTRICT TRACK as required in Section 4.1. PORT RAIL shall, within ninety (90) days of its receipt of

such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

- 4.3 PORT RAIL shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8½) feet laterally from the center (nine and one-half (9½) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23½) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment within 250 feet of either side of any at-grade crossings on the DISTRICT TRACK (collectively "Minimal Clearances"), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 4.3, then PORT RAIL shall strictly comply with such Legal Requirement. PORT RAIL operation with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of PORT RAIL contained in this Section 4.3 or any right of the DISTRICT to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons that may result therefrom.
- 4.4 PORT RAIL, at its own sole cost and expense, shall be responsible for all repairs and restorations to DISTRICT TRACK resulting from its negligence, gross negligence or intentional acts; normal wear and tear excepted.

Section 5. TERM.

- 5.1 This AGREEMENT shall continue in force for a period of ten (10) years unless terminated sooner by either party, with or without cause, on ninety (90) days prior written notice to the other party. If PORT RAIL, in accordance with applicable law, abandons or otherwise discontinues service over the DISTRICT TRACK, this AGREEMENT shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this AGREEMENT.
- 5.2 Until terminated, this AGREEMENT shall inure to the benefit of and be binding upon the parties and their respective successors and assigns, but PORT RAIL shall not assign or otherwise transfer this AGREEMENT without the express written consent of the DISTRICT.
- 5.3 Nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions, by which the DISTRICT, Union Pacific Railroad Company or PORT RAIL may, from time to time, provide rail

service to, from or on DISTRICT TRACK, or a modification or amendment to any other arrangement or agreement regarding such service.

Section 6. CHANGES.

PORT RAIL shall not make any changes to the DISTRICT TRACK without the prior written consent of the DISTRICT.

Section 7. INDEMNITY.

7.1 For purposes of this AGREEMENT: (a) "Indemnitees" means the DISTRICT and the DISTRICT'S commissioners, successors, assigns, legal representatives, officers, directors, employees, agents and affiliated companies; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) "Port Rail Parties" means Port Rail or Port Rail's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

7.2 PORT RAIL will save, to the maximum extent permitted by law, indemnify and hold harmless, Indemnitees against any and all damages, liability, causes of action, demands, claims (including accident or injury), costs or expenses (including, but not limited to, attorneys' fees and expenses incurred in defense of the DISTRICT), arising out of or in any way incidental to PORT RAIL'S use of the DISTRICT TRACK, unless caused solely by the DISTRICT'S own negligence or arising out of or in any way incidental to the DISTRICT'S ownership of the DISTRICT TRACK, including, but not limited to, PORT RAIL, or damage to property, including, but not limited to, the property of PORT RAIL, in any way connected with or incidental to the use of the DISTRICT TRACK by PORT RAIL, PORT RAIL'S agents, employees or business invitees. It is understood that this paragraph places upon PORT RAIL the total responsibility to indemnify Indemnitees from any claim, action, damage, or injury occurring on or arising out of PORT RAIL'S use of the DISTRICT TRACK including claims based upon a theory of strict liability during the term of this AGREEMENT. It is specifically agreed that the DISTRICT shall not be liable for any reason to PORT RAIL or any insurer of PORT RAIL for any damage which may occur for whatever reason to any property of PORT RAIL or others which may occur upon the DISTRICT TRACK or which arises out of the use of the DISTRICT TRACK by PORT RAIL. It shall be the responsibility of PORT RAIL to obtain the appropriate insurance covering the loss of any such property.

- 7.3 PORT RAIL shall release, indemnify, defend, and hold the Indemnitees harmless from and against any liabilities under CERCLA or other Environmental laws arising out of or related to (in whole or in part) PORT RAIL'S use of the DISTRICT TRACK as contemplated in this AGREEMENT regardless of any negligence or strict liability of any Indemnatee.
- 7.4 If any employee of any entity other than an Indemnatee asserts that he or she is an employee of any Indemnatee, PORT RAIL shall release, indemnify, defend, and hold the Indemnitees harmless from and against any liabilities (as defined above) arising out of or related to (in whole or in part) any such assertion including, but not limited to, the Federal Employers' Liability Act, the Safety Appliance Act, the Locomotive Inspection Act, the Occupational Safety and Health act, the Resource Conservation and Recovery Act, and any similar state or federal statute. PORT RAIL'S obligations under this Section 7.4 are regardless of any actual or alleged negligence, fault, or comparative fault of any Indemnatee related to such causes of action.
- 7.5 Upon written notice from DISTRICT, PORT RAIL agrees to assume the defense and control of any lawsuit or other proceeding brought against any Indemnatee by any entity or person, relating to any matter covered by this AGREEMENT for which PORT RAIL has an obligation to assume liability for and/or save and hold harmless any Indemnatee. PORT RAIL shall pay all costs and expenses incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. DISTRICT agrees to assist in defense of any such matter (at PORT RAIL'S expense) as reasonably requested.

Section 8. INSURANCE.

PORT RAIL shall, at its sole cost and expense, procure and maintain during the life of this AGREEMENT the following minimum insurance coverage:

- 8.1 Commercial General Liability Insurance. This insurance shall contain a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by PORT RAIL.
- 8.2 Any insurance policy shall be written by a reputable insurance company acceptable to DISTRICT or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the State of Louisiana. If PORT RAIL subcontracts any portion of the operation utilizing the DISTRICT TRACK, PORT RAIL shall require that the subcontractor provide and maintain insurance coverage set forth herein. This provision in no way allows PORT RAIL to subcontract any portion of the operation

utilizing the DISTRICT TRACK without the express written consent of the DISTRICT.

- 8.3 PORT RAIL will provide DISTRICT with thirty (30) days written notice of any cancellation or material modification to the coverage of an applicable policy.
- 8.4 At the DISTRICT'S request, PORT RAIL shall promptly provide to the DISTRICT certificates evidencing such insurance.
- 8.5 The DISTRICT may change by reasonable amounts, consistent with prevailing commercial practices of the DISTRICT, the limits of insurance coverage required by this Section 7 upon ninety (90) days written notice to PORT RAIL stating such changed limits of coverage and the reasons for the change.
- 8.6 As part of the consideration of this AGREEMENT, each of the parties hereby releases the other from all liability for damage due to any act or neglect of the other party which is the result of fire or other casualty to the extent covered by any insurance policy (waiver of subrogation).
- 8.8 In the event of a claim or lawsuit involving the DISTRICT arising out of this AGREEMENT, PORT RAIL will immediately make available any required policy covering such claim or lawsuit, but only to the extent of coverage provided and relative to indemnities assumed in this contract.
- 8.9 Failure to provide evidence as required by this Section 8 shall entitle, but not require, DISTRICT to terminate this AGREEMENT immediately. Acceptance of a certificate that does not comply with this Section 7 shall not operate as a waiver of PORT RAIL'S obligation hereunder. The fact that insurance is obtained by PORT RAIL shall not be deemed to release or diminish the liability of PORT RAIL including, without limitation, liability under the indemnity provisions of this AGREEMENT. Damages recoverable by the DISTRICT shall not be limited by the amount of the required insurance coverage.

Section 9. ASSIGNMENT.

PORT RAIL may not assign this AGREEMENT and/or its rights and obligations under this AGREEMENT without the prior written consent of the DISTRICT.

Section 10. RELATIONSHIP OF PARTIES.

Nothing contained herein shall be deemed or construed as making the DISTRICT a partner of PORT RAIL in the conduct of PORT RAIL'S business or as creating the relationship of principal and agent between the DISTRICT and PORT RAIL or as creating a joint venture between the DISTRICT and PORT RAIL.

Section 11. NOTICE.

Any notice herein required or permitted to be given shall be in writing and

shall be sent (a) by registered or certified mail, postage prepaid, addressed to the party or parties at their addresses set for in this Section 10 or at such other address as may be designated from time to time by written notice to all parties, (b) by electronic mail (email) addresses set forth or to such other address as may be designated from time to time by written notice to all parties or (c) by facsimile to the facsimile number set forth below or such other facsimile number as may be designated. Any notice given or made in this manner prescribed by this Article 11 shall be effective when received. The sender of a notice shall have the burden of producing a valid registered or certified mail receipt if sent by mail, a valid read-receipt response if sent by email and a valid result report if sent by facsimile.

If to DISTRICT:

Lake Charles Harbor and Terminal District
P.O. Box 3753
Lake Charles, LA 70602
Facsimile: (337) 493-3502
Email: brase@portlc.com

If to PORT RAIL:

Port Rail, Inc.
150 Marine Street
Lake Charles, Louisiana 70601
Email: dmidkiff@portrailc.com

Section 12. NOTIFICATION REQUIREMENTS.

- 12.1 PORT RAIL shall give the DISTRICT immediate notice of any release of hazardous materials on, from, or affecting the DISTRICT TRACK, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the use of DISTRICT TRACK. PORT RAIL also shall give the DISTRICT immediate notice of all measures undertaken by or on behalf of PORT RAIL to investigate, remediate, respond to or otherwise cure each such release or violation.
- 12.2 PORT RAIL shall promptly report to the DISTRICT in writing any conditions or activities upon the DISTRICT TRACK which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that PORT RAIL'S reporting to the DISTRICT shall not relieve PORT RAIL of any obligation whatsoever imposed on it by this AGREEMENT or by any Legal Requirement. PORT RAIL shall promptly respond to the

DISTRICT'S request for information regarding such conditions or activities. To the extent such conditions or activities with respect to the DISTRICT TRACK are attributable to PORT RAIL, the DISTRICT may require PORT RAIL, at PORT RAIL'S sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such conditions or activities on, from, or otherwise affecting the DISTRICT TRACK.

- 12.3 For purposes of this AGREEMENT, "Environmental Laws" mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, The Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §3001 *et seq.*, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 1101 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. §2701 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- 12.4 For purposes of this AGREEMENT, "Hazardous Material" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 13. APPLICABLE LAW.

- 13.1 The laws of the State of Louisiana shall govern the validity, construction, interpretation, and effect of this AGREEMENT.
- 13.2 Any action pertaining to this AGREEMENT shall be instituted and litigated in the courts of Calcasieu Parish, Louisiana, and in no other.
- 13.3 If a party has not appointed an agent for service of process in Louisiana, the party nominates the Secretary of State of the State of Louisiana as its agent to receive service of process for any action pertaining to this AGREEMENT, and the parties submit to the jurisdiction of the courts of Calcasieu Parish, Louisiana.

Section 14. AUTHORITY TO EXECUTE.

Each party represents to the other that it has the capacity and authority to enter into this AGREEMENT.

Section 15. SPECIFIC PERFORMANCE.

A party shall have the right to enforce this AGREEMENT by specific performance.

Section 16. RECORDATION.

Either party may record this AGREEMENT in the official records of Calcasieu Parish, Louisiana or may cause a memorandum of this AGREEMENT meeting the requirements of Louisiana Law to be executed and recorded in the official records of Calcasieu Parish, Louisiana.

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All provisions herein contained shall bind and inure to the benefit of the respective parties hereto, their heirs, personal representatives, successors and assigns.

Section 21. PRONOUNS AND PLURALS.

All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require in the context and the singular forms of nouns, pronouns and verbs shall include the plural, and vice versa, whichever the context may require.

Section 22. SURVIVAL.

Any representation, warranty, or covenant contained herein which contemplates performance after the expiration or termination of this AGREEMENT shall be deemed to survive the expiration or termination of this AGREEMENT.

Section 23. ENTIRE AGREEMENT.

This AGREEMENT sets forth all of the promises, agreements and understandings between the parties hereto with respect to the subject matter hereof, and there are no promises, agreements or understandings, oral or written, express or implied, between them with respect to the subject matter of this AGREEMENT.

Section 24. MUTUAL NEGOTIATION.

The parties agree that they have participated jointly in the negotiation and drafting of this AGREEMENT and, if there is any ambiguity or question of intent or question of interpretation concerning this AGREEMENT, this AGREEMENT shall be construed as having been jointly negotiated and drafted by all parties without the creation of any burden of proof favoring or disfavoring any party that arose from the negotiation and drafting of this AGREEMENT.

Section 25. FURTHER ASSURANCES.

Each party shall execute such documents and other instruments, and shall take such further actions, as may reasonably be required or desirable to carry out the provisions of this AGREEMENT and the transactions contemplated by this AGREEMENT.

Section 26. EFFECTIVE DATE.

The effective date of this AGREEMENT shall be the 1st day of January, 2016.

THUS DONE AND SIGNED on this 9th day of December, 2015, in Lake Charles, Calcasieu Parish, Louisiana, in my presence, Notary Public and in the presence of the undersigned competent witnesses.

WITNESSES:

LAKE CHARLES HARBOR AND TERMINAL DISTRICT

Michelle Bolen
(signature)
Michelle Bolen
(print name)

By: William J. Rose
William J. Rose, III, Executive Director

Tiffany Fournet
(signature)
Tiffany Fournet
(print name)

Sharon L. Edwards
NOTARY PUBLIC



SHARON L. EDWARDS
Notary Public No. 6529
State of Louisiana
Parish of Calcasieu
My Commission Is For Life

THUS DONE AND SIGNED on this 16th day of December,
2015, in Lake Charles, Calcasieu Parish, Louisiana, in my presence, Notary Public and in
the presence of the undersigned competent witnesses.

WITNESSES:

PORT RAIL, INC.

Tiffany Fournet
(signature)

Tiffany Fournet
(print name)

Michelle Bolen
(signature)

Michelle Bolen
(print name)

By:

[Signature]
Derek Midkiff, Executive Director

Sharon L. Edwards

NOTARY PUBLIC



SHARON L. EDWARDS

Notary Public No. 6529

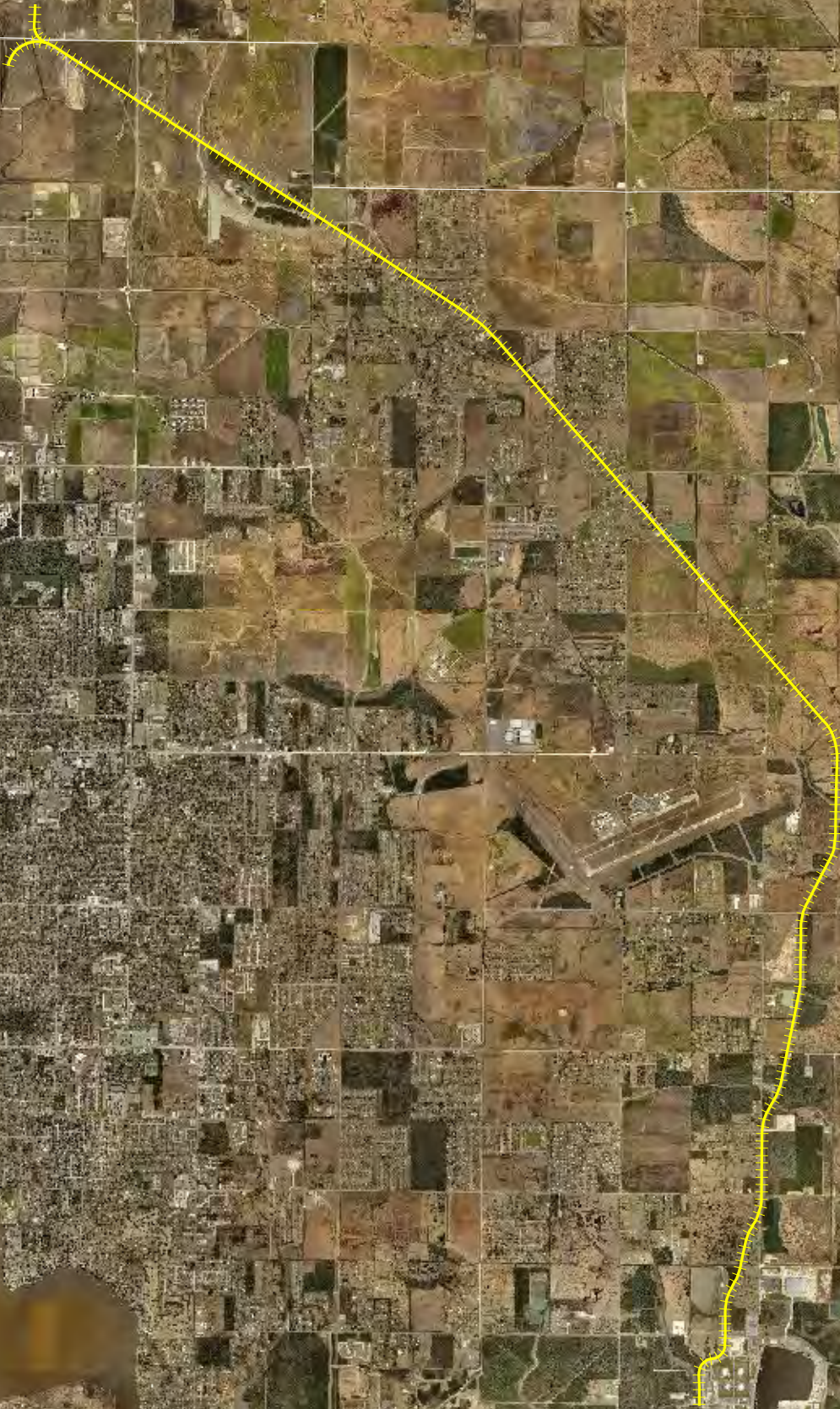
State of Louisiana

Parish of Calcasieu

My Commission Is For Life



Exhibit "A"



FIRST AMENDMENT TO TRACK LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE TRACK LEASE AGREEMENT (this "**Agreement**") effective as of January 1, 2026 (the "**Effective Date**"), is entered into by and between **LAKE CHARLES HARBOR AND TERMINAL DISTRICT**, a political subdivision of the State of Louisiana ("**District**"), whose address is 1611 West Sallier Street, Lake Charles, Louisiana 70601, and **PORT RAIL, INC. ("PORT RAIL")**, a Louisiana non-profit corporation licensed to and doing business within the State of Louisiana..

WHEREAS, The District and Port Rail are party to that certain Track Lease Agreement effective January 1, 2016 (the "**Lease**"), pursuant to which Port Rail leases from the District certain rail, ties, ballast, and appurtenances thereto as shown on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "**DISTRICT TRACK**") and otherwise identified as the Industrial Canal Spur at mile marker 4.13 of the Lake Charles Industrial Lead heading south 12.6 miles and terminates at the current Alcoa facility

WHEREAS, the District and Port Rail desire to make amendments to the Track Lease Agreement on the terms and subject to the conditions set forth herein.

WHEREAS, pursuant to Section 17 of the Track Lease Agreement, each change to the Lease set forth herein shall not be effective unless set forth in a writing signed by District and Port Rail.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the District and Port Rail agree as follows:

1. Section 1.1 shall be deleted and replaced in its entirety with the following:

"DISTRICT represents that it owns and/or controls the DISTRICT TRACK including the land underlying the DISTRICT TRACK and that there are no existing easements or encumbrances affecting such land that would interfere with PORT RAIL's rights under this AGREEMENT."

2. Section 2.1 and 2.2 shall be deleted and replaced in their entirety with the following:

- 2.1 Subject to the terms and conditions set forth herein, the DISTRICT has granted, and hereby grants, unto PORT RAIL a non-exclusive right to use the DISTRICT TRACK for the following purpose: (1) moving, switching and spotting railcars on the Industrial Canal Spur, located within Calcasieu Parish, Louisiana, in common carrier service or otherwise. PORT RAIL acknowledges that the DISTRICT TRACK is designated as Excepted Track and is restricted to: (1) train speeds of ten (10) miles per hour or less; (2) no freight trains shall be operated that contain more than five cars required to be placarded by the Hazardous Materials Regulations (49 C.F.R. part 172); and (3) no occupied passenger train shall be operated on DISTRICT TRACK. Any DISTRICT operations or use of the DISTRICT TRACK shall

not unreasonably disrupt or interfere with PORT RAIL's use of the DISTRICT TRACK for the purposes provided in this AGREEMENT.

- 2.2 In using the DISTRICT TRACK, PORT RAIL shall comply with any and all applicable federal, state, and local laws and regulations required by its operations on or use of the DISTRICT TRACK and in accordance with any future terms and conditions reasonably established by the DISTRICT

3. Section 5.1 shall be deleted and replaced in its entirety with the following"

This AGREEMENT shall continue in force for a period of twenty (20) years unless terminated sooner by either party, with or without cause, on ninety (90) days prior written notice to the other party. If PORT RAIL, in accordance with applicable law, abandons or otherwise discontinues service over the DISTRICT TRACK, this AGREEMENT shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this AGREEMENT.

4. Section 6 shall be deleted and replaced in its entirety with the following:

PORT RAIL shall not make any changes to the DISTRICT TRACK without the prior written consent of the DISTRICT, which consent shall not unreasonably be withheld.

All other terms, conditions and agreements set forth in the Track Lease Agreement attached hereto and made a part hereof shall be applicable to this First Amendment and are hereby specifically adopted and made a part of this Agreement.

IN WITNESS WHEREOF, the District has caused its name to be affixed hereunto effective as of the Effective Date.

WITNESSES:

**LAKE CHARLES HARBOR AND
TERMINAL DISTRICT**


Printed Name: Jonathan Riley


Printed Name: Michelle Bolen

By: 
Richert L. Self
Executive Director

IN WITNESS WHEREOF, Port Rail, Inc., has caused its name to be affixed hereunto effective as of the Effective Date.

WITNESSES:


Printed Name: Jonathan Ring

Michelle Bolen

Printed Name: Michelle Bolen

PORT RAIL, INC.

By: 

Name: Derek Mitchell

Title: Executive Director

VERIFICATION

I, Derek W. Midkiff, hereby verify under penalty of perjury that I am Executive Director of Port Rail, Inc., that I have read the foregoing Notice of Exemption and know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information and belief.

/s/ *Derek W. Midkiff*

Derek W. Midkiff

Dated: July 29, 2025