

LEASE

THIS LEASE, made and entered into this _____ day of _____, 20____ ("Effective Date") by and between NORFOLK SOUTHERN RAILWAY COMPANY ("Company"), a(n) Virginia corporation, and BOARD OF PARK COMMISSIONERS, CITY OF FORT WAYNE ("Lessee"), a(n) Indiana government entity, whose address is 705 E. State Blvd. Fort Wayne, IN 46805 (with Company and Lessee referenced as "Party" or "Parties" as context requires).

WITNESSETH:

The Parties hereto hereby agree as follows:

1. **Premises.** Company, in consideration of the covenants of Lessee and other good and valuable consideration, to the extent that Company's right, title, and interest permits (with Lessee waiving any claim or cause of action that may accrue in the event that Company's interest is found insufficient to make such a Lease) and without warranty or representation of any type, grants to Lessee the right to occupy and use the property at having an area of _____ acres, more or less, as is more particularly depicted on the print dated November 29, 2021, attached hereto and made a part hereof as "Exhibit A" (hereinafter "Premises"). Lessee shall utilize the Premises for the purpose of a hike/bike trail, and no other purpose. Lessee shall not assign, transfer, or otherwise permit any third party to use or occupy the Premises without the prior written consent of Landlord. Lessee accepts the Premises subject to all other leases, agreements, encumbrances, conditions, restrictions, licenses, or other rights of any third party existing prior to the date of this Lease whether or not of record. Further, Company, for itself, its affiliates, parent corporation, subsidiaries, and third parties under the direction of Company reserves the right to maintain, operate and reconstruct upon, under, or over the Premises any existing or future railroad facilities (and ingress and egress for access to the same) as Company may deem necessary for Company's railroad or business purposes.

2. **Rent.** Lessee will pay unto Company as rent, on a (n) annual basis, the sum of **THREE HUNDRED AND NO/100 DOLLARS (\$300.00)**, payable in advance, without demand, deduction, or abatement, beginning as of April 30, 2022, and by the first day of each succeeding year after the Effective Date ("Base Rent"). The Base Rent shall be increased (and not decreased) on an annual basis on each subsequent anniversary of the Effective Date until termination, by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) (1982-1984 = 100) U.S. City Average, All Items (the "Index") that is most recently published prior to the applicable upcoming adjustment anniversary ("Adjustment Date"). If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is replaced shall be utilized in place of the Index. Lessee's failure to pay Base Rent, or any other sum payable to Company under this Lease, in accordance with applicable due date shall result in a late charge equal to five percent (5%) of the unpaid amount accruing for each month that the Base Rent or other sum remains unpaid. In addition to rent, Lessee will also pay all property taxes assessed by any local taxing authority related to Lessee's use of the Premises (but not any operating taxes assessed as part of Company's usual and customary operating tax return on operating property), and other taxes, fees, or other charges arising from, or related to Lessee's use of the Premises. Any sum payable under this Lease (including, but not limited to, Base Rent) not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%). All payments

of Base or other sums payable to Company shall be sent to the Treasurer of Company at Mail Code 5629, P.O. Box 105046, Atlanta, Georgia 30348-5046, or such other address as Company may designate in any invoice delivered to Lessee.

3. **Term.** Upon the Effective Date, this Lease shall continue until terminated by either party upon thirty (30) days' prior written notice to the other party, provided that no rent or other sums paid prior to such termination will be pro-rated and refunded to Tenant. Prior to the end of such thirty (30) days, Lessee will vacate the Premises, remove all improvements, fixtures, equipment, personal property, owned by or placed thereon by Lessee, and leave the Premises, including the subsurface, in as good order and condition as said Premises were prior to the use and occupation thereof by Lessee. No termination of this Lease will relieve either party hereto from any obligation incurred hereunder. Any possession of the Premises after termination of this Lease, by Lessee shall subject Lessee (a Tenant At Sufferance) to immediate eviction. In such event, Lessee shall pay Company any damages resulting from such holdover and pay monthly rent at the rate of three hundred percent (300%) of the then current rental, pro-rated on a daily basis. Acceptance of holdover rental, back rental, or other damages by Company shall not constitute consent or agreement by Company to Lessee's holding over and shall not waive Company's right to evict Lessee immediately.

4. **Use and Maintenance of Premises.** Company shall have no responsibility or obligation whatsoever, monetary or otherwise (including but not limited to permitting, licensing, utilities, liens, encumbrances, agreements and services), for anything related to Lessee's activity or modification(s) of and to the Premises and Lessee shall obtain prior written consent from the Company, which may be withheld in Company's sole discretion, for any such modifications (excepting normal wear and tear and Lessee's use of non-affixed equipment and personal property on the Premises). Any accounts for any applicable utilities or other services shall be placed in the name of Lessee, with Lessee terminating the same prior to termination.

5. **Environmental Matters.** Lessee shall not dispose of any wastes of any kind, whether hazardous or not, on the Premises, and Lessee shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety. Lessee shall not install any underground tanks or associated underground piping for the storage of any product on the Premises without the express written consent of Company given prior to installation.

6. **Indemnification.** Lessee hereby agrees to indemnify and save harmless Company, its officers, agents, and employees, and the all of the corporate subsidiaries, parent corporation, and affiliates of Company and all of their respective officers, agents and employees from and against all losses, fines, penalties, liabilities, claims, demands, causes of action, costs and expenses (including attorneys' fees) for any violation of any applicable law, rule, or regulation due to action or inaction of Lessee or any party under Lessee direction, including but not limited to any such action or inaction arising in whole or in part from Lessee's operations, or the placement of Lessee's equipment or other property, within twenty-five feet (25') of Company's tracks, if any, as well as any personal injury to or death of any person or persons whomsoever, including, but not limited to, Lessee's agents, workmen, servants or employees, and liens, encumbrances, damage to or destruction of any property whatsoever arising from or growing out of, directly or indirectly, the presence of Lessee, its agents, servants or employees upon or about the Premises or in connection with the lease rights herein granted, whether or not such losses, fines, penalties, liabilities, claims, demands, causes of action, costs or expenses shall have been contributed to by the negligence of any of the indemnitees.

7. **Default.** In addition to any other rights or remedies under this Lease, if Lessee shall fail to pay any rent or other sums within ten (10) days after the due date thereof, or otherwise violate any other covenants or restrictions required under this Lease, with such violation of covenants or restrictions of this Lease not cured within ten (10) days after written notice of such violation from Company, Company may, in addition to any remedy available at law or in equity, do any one or more of the following: (a) terminate this Lease by written notice to Lessee, or (b) perform any unperformed obligation of Lessee (including, without limitation, any environmental remediation or other restoration of the Premises to the condition required by this Lease at termination), in which event any sums expended by Company shall be repaid by Lessee, as additional rental, within ten (10) days of demand therefore by Company. Lessee agrees to pay all costs and expenses, including, but not limited to, reasonable attorneys' and consultants' fees, incurred by Company in connection with enforcing the performance of any of the provisions of this Lease. Further, any property of any type left by Lessee upon the Premises after termination or abandonment, shall be deemed abandoned property.

8. **Insurance.** Lessee shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Company, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$1,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Lessee's contractual liability hereunder, (c) cover Lessee and Company for liability arising out of work performed by any third parties for Lessee in or about the Premises, (d) name the Company and its subsidiaries and affiliates as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Company. Any property insurance maintained by Lessee on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Company. Lessee shall deliver certificates of insurance to Company's Risk Management Department, 650 West Peachtree St., NW, Atlanta, GA 30308, evidencing the insurance required hereinabove to Company simultaneously with the execution of this Lease by Lessee, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Company. If Lessee fails to obtain the necessary coverages, Company may do so at Lessee's expense and the same shall constitute additional rental. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Lessee hereunder and shall not waive Company's right to seek a full recovery from Lessee.

9. **Miscellaneous.** If any provision of this Lease shall be deemed invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Any provision of this Lease that imposes an obligation after termination shall be deemed to survive the termination of this Lease. Any term of this Lease inconsistent with any provision of any prior agreement shall be deemed to supersede and cancel the inconsistent provisions of the prior agreement.

10. **Notice.** All notices required by this Lease shall be deemed to be delivered, when deposited in the United States Postal Service or when deposited with a nationally recognized courier for overnight delivery at the addresses set forth below.

Company:
Director – Real Estate

Norfolk Southern Corporation
650 West Peachtree St., NW, Atlanta, GA 30308

Lessee:
Board of Park Commissioners, City of Fort Wayne

705 E. State Blvd.
Fort Wayne, IN 46805

(Signature Page to Lease)

IN WITNESS WHEREOF, the parties have executed this Lease in duplicate, each being an original, as of the date hereinafter first recited.

NORFOLK SOUTHERN RAILWAY
COMPANY

Signature:

Signature:

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

SAA\December 11, 2020\Activity 1298030

EXHIBIT A



