RESOLUTION NO.: 07-29-2019
A RESOLUTION OF THE HOOSIER HERITAGE PORT AUTHORITY APPROVING A
BID TO SALVAGE A PORTION OF THE NICKEL PLATE RAILROAD
AND APPROVING INTERIM TRAILS USE AGREEMENTS

WHEREAS, on or around November 9, 1994, the City of Noblesville, Indiana
(“Noblesville”) and the Town of Fishers, which transitioned to a City pursuant to Indiana law on
January 1, 2015, (“Fishers”) jointly purchased 37.54 miles of real property commonly known as
the Nickel Plate Railroad that extends from Tipton to Indianapolis (“Real Estate”);

WHEREAS, Fishers and Noblesville later sold Hamilton County, Indiana (“County”) a
one third (1/3) interest in the Real Estate which resulted in Fishers, Noblesville and the County
(collectively, the “Owners”) each owning an equal one third (1/3) interest in the Real Estate;

WHEREAS, the Hoosier Heritage Port Authority (“HHPA”) was created in 1994, when
Noblesville and Fishers passed identical ordinances establishing the port authority, and was later
expanded to include the County;

WHEREAS, the HHPA was created to protect and preserve the existence of the Real
Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the
County, including, but not limited to, recreational, transportation, and tourism purposes;

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (“Trails
Act”), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate
commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R.
§1152.29 (“Interim Trails Use”);

WHEREAS, pursuant to Interim Trails Use, the Real Estate is to be preserved
(“railbanked”) for potential future restoration of common carrier service, and “trails-use status”
permits the corridor to be used as a linear recreational resource, consistent with the Rail
Transportation Policy of 49 U.S.C. §10101 (“Rail Policy”);

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real
Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all
legal action necessary to railbank the Real Estate, including but not limited to filing the
applicable petition(s) with the Surface Transportation Board (“STB”), and to be responsible for
the costs thereof;

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the
Real Estate with the STB, STB Docket No. FD 36137;

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail
banking the Real Estate under 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 without the need for
any revocation authority from the STB;
WHEREAS, the HHPA and the Owners desire to facilitate Interim Trails Use and convert a certain portion of the Real Estate from approximately Division Street in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana into a recreational trail ("Trail Path");

WHEREAS, in order to facilitate Interim Trails Use, the Owners desire to remove trackage and other rail assets along the Trail Path, have designated certain track assets as surplus, have designated the HHPA as their Purchasing Agent, pursuant to Ind. Code § 5-22-22 et. seq., and have directed the HHPA to obtain bids to remove trackage and other rail assets from the Trail Path;

WHEREAS, the HHPA issued a bid for the "Purchase and Removal of 22 Miles of Surplus Rail Assets," which contained a base bid to purchase and remove surplus rail assets within Fishers, and the following bid alternates: (1) purchase and remove rail assets from Noblesville, (2) purchase and remove rail assets from Indianapolis, (3) repair rail crossings in Fishers, and (4) repair rail crossings in Noblesville and Indianapolis ("Rail Bid");

WHEREAS, the Rail Bid was properly noticed in accordance with Ind. Code §5-3-1 and the HHPA now desires to award the Rail Bid to the highest responsive and responsible bidder in accordance with the terms provided herein, and as further specified in Exhibit A, which is attached hereto and incorporated herein, subject to approval of the Owners' ("Bid Award");

WHEREAS, for Interim Trails Use and the conversion to a Trail Path, trail sponsors must be identified, and the trail sponsors must petition the STB for issuance of a Notice of Interim Trail Use ("NITU");

WHEREAS, prior to the conversion to a Trail Path of the respective portions within their municipal boundaries, each in its individual capacity, Noblesville, Fishers and the City of Indianapolis ("Indianapolis") have agreed to be the trail sponsor for the portion of the Trail Path within their respective municipal boundaries (individually or collectively referred to as "Trail Sponsor");

WHEREAS, on or around June 8, 2018, Fishers (in its individual capacity as a Trail Sponsor) and the Owners jointly filed a request for issuance of an NITU to permit negotiations to begin toward a rail banking arrangement for the approximately 5-mile portion of the Trail Path within Fishers, STB Docket No. AB-290 (Sub-No. 117X) ("Fishers NITU");

WHEREAS, on or around August 3, 2018, Noblesville (in its individual capacity as a Trail Sponsor) and the Owners jointly filed a request for an NITU to permit negotiations to begin toward a rail banking arrangement for the approximately 4-mile portion of the Trail Path within Noblesville, STB Docket No. AB-290 (Sub-No. 117X) ("Noblesville NITU");

WHEREAS, on or around August 17, 2018, Indianapolis (in its individual capacity as a Trail Sponsor) and the Owners jointly filed a request for an NITU to permit negotiations to begin toward a rail banking arrangement for the approximately 12-mile portion of the Trail Path within
Indianapolis, STB Docket No. AB-290 (Sub-No. 117X) ("Indianapolis NITU") (the Fishers NITU, Noblesville NITU, and Indianapolis NITU are hereinafter individually or collectively referred to as "Trail Sponsor NITU");

WHEREAS, on or around December 21, 2018, the STB tendered the Trail Sponsor NITU;

WHEREAS, Trail Sponsor will be required to operate its portion of the Trail Path in accordance with the Trails Act and Interim Trails Use Agreement, and

WHEREAS, the HHPA now desires to approve the Interim Trails Use Agreement with each Trail Sponsor in substantially similar form as Exhibit B, which is attached hereto and incorporated herein.

NOW THEREFORE, be it resolved by the Hoosier Heritage Port Authority meeting in regular session as follows:

Section 1. **Bid Award.** The HHPA recommends that the Owners accept the Rail Bid of A&K Railroad. The HHPA hereby awards the Rail Bid to A&K Railroad, as the highest responsive and responsible bidder, subject to (i) the Owners’ collective approval of the Bid Award, and (ii) a fully executed Interim Trails Use Agreement for each segment of the Trail Path (i.e., Fishers, Noblesville, and Indianapolis) before salvage work begins on each corresponding segment. The HHPA hereby authorizes its President and/or Executive Director to execute an agreement with A&K Railroad, and further authorizes its President and/or Executive Director to execute any and all contracts, amendments, notices to proceed, and ancillary documents in furtherance of the Bid Award.

Section 2. **Salvage Proceeds.** The HHPA hereby agrees to utilize any net proceeds obtained from the Bid Award for maintenance or rail replacement along the Real Estate and agrees to expend all revenue received from the Bid Award before requesting additional funds from the Owners.

Section 3. **Interim Trails Use Agreements.** The HHPA hereby approves the Interim Trails Use Agreements with the City of Indianapolis, the City of Fishers, and the City of Noblesville in substantially similar form to Exhibit B, which is attached hereto and incorporated herein, subject to the Owner’s collective approval of the Bid Award. The HHPA hereby authorizes its President and/or Executive Director to execute the Interim Trails Use Agreement with each Trail Sponsor, and further authorizes its President and/or Executive Director to execute any and all contracts,
amendments, and ancillary documents in furtherance of Interim Trails Use.

**Section 3.** The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Resolution shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. If any provision of this Resolution or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Resolution or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Resolution a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable.

**Section 4.** This Resolution shall be of full force and effect from and upon its adoption.

SO RESOLVED BY THE HOOSIER HERITAGE PORT AUTHORITY
THIS 29th DAY OF JULY, 2019

[Signature]
President, Hoosier Heritage Port Authority

Attest:

[Signature]
Secretary, Hoosier Heritage Port Authority
EXHIBIT G – BASE BID DOCUMENTS
[Removal of Rail Assets along the Real Estate- Fishers Segment]
[Documents on following pages]
PART 1 –IDENTIFICATION OF BIDDER

[required submittal for Base Bid, Real Estate Alternate, and Alternate Work]

1) Name of Person or Entity: A&K Railroad Materials, Inc. - Rocky Smith

2) Address: 1505 South Redwood Road  Salt Lake City, Utah 84104

3) Email Address: rsmith@akrailroad.com

4) Phone
   (Office): 801-977-6305
   (Cell): 801-558-7374

5) Authorized Representative: Doug Davis

6) Authorized Representative Address:
   1505 South Redwood Road  Salt Lake City, Utah 84104

7) Authorized Representative Email Address: ddavis@akrailroad.com

8) Authorized Representative Phone
   (Office): 801-977-6347
   (Cell):
PART 2 – OFFER

Fishers Segment

Bidder offers to purchase the Rail Assets for the stated amount of ________________________________ ($ 72,750.00 ) and no/100 Dollars, which amount the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has available to it for such purchase as of the date that Bidder submits this Bid and will have available to it on the date that the Owner announces the Successful Bidder. Moreover, the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has the ability to safely, timely and properly remove the Rail Assets from the Real Estate in accordance with the Laws.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING FACTS AND INFORMATION ARE TRUE AND CORRECT.

Dated this 26 day of June, 2019

A&K Railroad Materials, Inc.
(Bidder)

Doug Davis
(Bidder’s Authorized Representative)

(Signature)

ACKNOWLEDGEMENT

STATE OF UTAH COUNTY
OF SALT LAKE

Before me, a Notary Public, personally appeared the above-named and swore that the statements contained in this Offer are true and correct.

Subscribed and sworn to me this 26 day of June, 2019.

Notary Public Signature

Hoosier Heritage Port Authority 33 N. 9th Street, Suite 215, Noblesville, Indiana 46060
“Removal and Salvage of Tail Assets”
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PART 3 - NON-COLLUSION AFFIDAVIT
[required submittal for Bid and Alternate]

The undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that neither Bidder nor any other member, representative or agent of the Bidder has entered into any combination, collusion or agreement with any person or entity relative to the price or other factors offered or in response to the Bid or in any way acted to prevent any other Bidder from responding or otherwise submitting a proposal to the Bid. Bidder's bid is made without reference to any other proposal and without any agreement, understanding or combination with any other person in reference to such proposal.

Further, no member of the Hoosier Heritage Port Authority, officer or employee of the City of Fishers, City of Noblesville or Hamilton County has any interest in the Bidder's Bid or the Work.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING FACTS AND INFORMATION ARE TRUE AND CORRECT.

Dated this 26 day of June, 2019

A&K Railroad Materials, Inc. (Bidder)

Doug Davis (Bidder's Authorized Representative)

(Base Signature)

ACKNOWLEDGEMENT

STATE OF UTAH COUNTY )
OF SALT LAKE )

Before me, a Notary Public, personally appeared the above-named and swore that the statements contained in this Non-Collusion Affidavit are true and correct.

Subscribed and sworn to me this 26 day of June, 2019.

Notary Public Signature

DENISE BURNSIDE
Notary Public State of Utah
Comm. Exp.: June 20, 2021
Comm. Number: 694593

Hoosier Heritage Port Authority 33 N. 9th Street, Suite 215, Noblesville, Indiana 46060
“Removal and Salvage of Tail Assets”
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PART 4 - NO DEFAULT OR BREACH
(required submittal for Bid and Alternate)

A&K RAILROAD MATERIALS, INC. HEREBY AFFIRMS that Bidder and its affiliates are not: (a) involved in any current or pending litigation or legal disputes with any federal, state, or local governmental entity; (b) in arrears to any federal, state, or local governmental entity of any debt or contract; (c) a defaulter as surety or other obligation upon any federal, state, or local governmental entity or (d) in failure to perform faithfully in any previous contract with a federal, state, or local governmental entity in the preceding five (5) years.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING FACTS AND INFORMATION ARE TRUE AND CORRECT.
Dated this 26 day of June, 2019

A&K Railroad Materials, Inc.
(Bidder)

Doug Davis
(Bidder’s Authorized Representative)

(Signature)

ACKNOWLEDGEMENT

STATE OF UTAH COUNTY
OF SALT LAKE

Before me, a Notary Public, personally appeared the above-named and swore that the statements contained in this No Default or Breach Affidavit are true and correct.

Subscribed and sworn to me this 26 day of June, 2019.

Notary Public Signature
PART 5 - NO BANKRUPTCY
[required submittal for Bid and Alternate]

A&K RAILROAD MATERIALS, INC. HEREBY AFFIRMS that Bidder and any members of the Bidder, if Bidder is a limited liability company, are currently solvent and have not, in the preceding five (5) years, voluntarily or involuntarily filed for bankruptcy or other similar insolvency proceeding.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING FACTS AND INFORMATION ARE TRUE AND CORRECT.

Dated this 26 day of June, 2019

A&K Railroad Materials, Inc.

(Bidder)

Doug Davis

(Bidder’s Authorized Representative)

(Signature)

ACKNOWLEDGEMENT

STATE OF UTAH COUNTY )
OF SALT LAKE )

Before me, a Notary Public, personally appeared the above-named and swore that the statements contained in this No Bankruptcy Affidavit are true and correct.

Subscribed and sworn to me this 26 day of June, 2019.

Notary Public Signature

Hoosier Heritage Port Authority 33 N. 9th Street, Suite 215, Noblesville, Indiana 46060
“Removal and Salvage of Tail Assets”
Page 21 of 32
EXHIBIT H — ALTERNATE REAL ESTATE
(Bid Alternate for Noblesville Segments and Indy Segment)
[Documents on following pages]
PART 1 – OFFER
[required submittal for Alternate Real Estate]

Noblesville Segment (146th Street – Division Street)
Bidder offers to purchase the Rail Assets along the Alternate Real Estate for the stated amount of __________________ ($ 50,750.00 ) and no/100 Dollars, which amount the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has available to it for such purchase as of the date that Bidder submits this Bid and will have available to it on the date that the Owner announces the Successful Bidder. Moreover, the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has the ability to safely, timely and properly remove the Rail Assets from the Alternate Real Estate in accordance with the Laws.

Noblesville Segment (Division Street to Logan Street)
Bidder offers to purchase the Rail Assets along the Alternate Real Estate for the stated amount of __________________ ($_________) and no/100 Dollars, which amount the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has available to it for such purchase as of the date that Bidder submits this Bid and will have available to it on the date that the Owner announces the Successful Bidder. Moreover, the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has the ability to safely, timely and properly remove the Rail Assets from the Alternate Real Estate in accordance with the Laws.

Noblesville Segment (rail assets within Forest Park)
Bidder offers to purchase the Rail Assets along the Alternate Real Estate for the stated amount of __________________ ($_________) and no/100 Dollars, which amount the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has available to it for such purchase as of the date that Bidder submits this Bid and will have available to it on the date that the Owner announces the Successful Bidder. Moreover, the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has the ability to safely, timely and properly remove the Rail Assets from the Alternate Real Estate in accordance with the Laws.

Indy Segment
Bidder offers to purchase the Rail Assets along the Alternate Real Estate for the stated amount of __________________ ($ 166,250.00 ) and no/100 Dollars, which amount the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has available to it for such purchase as of the date that Bidder submits this Bid and will have available to it on the date that the Owner announces the Successful Bidder. Moreover, the undersigned authorized representative of Bidder, being duly sworn on oath, states and affirms that Bidder has the ability to safely, timely and properly remove the Rail Assets from the Alternate Real Estate in accordance with the Laws.
OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING FACTS AND INFORMATION ARE TRUE AND CORRECT.

Dated this 26 day of June, 2019

A&K Railroad Materials, Inc.
(Bidder)

Doug Davis
(Bidder's Authorized Representative)

(Signature)

ACKNOWLEDGEMENT

STATE OF UTAH COUNTY )
OF SALT LAKE )

Before me, a Notary Public, personally appeared the above-named and swore that the statements contained in this Offer are true and correct.

Subscribed and sworn to me this 26 day of June, 2019.

Notary Public Signature

DENISE BURNSIDE
Notary Public State of Utah
Comm. Exp.: June 20, 2021
Comm. Number: 694593
LICENSE AGREEMENT BY AND AMONG THE HOOSIER HERITAGE PORT AUTHORITY AND THE CITY OF INDIANAPOLIS, ACTING BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS (IN ITS INDIVIDUAL CAPACITY AS A TRAIL SPONSOR) TO OPERATE A CERTAIN PORTION OF THE NICKEL PLATE TRAIL PURSUANT TO THE NATIONAL TRAILS SYSTEM ACT

This LICENSE AGREEMENT ("License") is entered into this ____ day of ________, 2019 ("Effective Date") by and between the Owners of the Nickel Plate Railroad, acting by and through the Hoosier Heritage Port Authority ("HHPA"), a body corporate and politic and operating pursuant to Ind. Code § 8-10-5 et seg., and the City of Indianapolis, an Indiana municipal corporation acting by and through its Department of Public Works (in its individual capacity as a trail operator and hereinafter referred to as "Trail Sponsor") pursuant to the National Trails System Act as follows:

RECITALS

WHEREAS, on or around November 9, 1994, the City of Noblesville ("Noblesville") and the Town of Fishers, which transitioned to a city on January 1, 2015 in accordance with Indiana law ("Fishers") jointly purchased 37.54 miles of real property commonly known as the Nickel Plate Railroad that extends from Tipton to Indianapolis ("Real Estate"); and

WHEREAS, Fishers and Noblesville later allowed Hamilton County (the "County") to purchase a one third (1/3) interest in the Real Estate, which resulted in Fishers, Noblesville and the County each owning an equal one third (1/3) interest in the Real Estate (Fishers, Noblesville, and the County are hereinafter collectively referred to as the "Owners"); and

WHEREAS, the Hoosier Heritage Port Authority ("HHPA") was created in 1994, when Noblesville and Fishers passed identical ordinances establishing the port authority, and was later expanded to include the County; and

WHEREAS, the HHPA was created to protect and preserve the existence of the Real Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the County, including, but not limited to, recreational, transportation, and tourism purposes; and

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R. § 1152.29 ("Interim Trails Use"); and

WHEREAS, pursuant to Interim Trails Use, the Real Estate shall be preserved ("railbanked") for potential future restoration of common carrier service, but "trails-use status" allows the corridor to be used as a linear recreational resource, consistent with the Rail Transportation Policy of 49 U.S.C. § 10101 ("Rail Policy"); and

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all legal
action necessary to railbank the Real Estate, including but not limited to filing the applicable petition(s) with the Surface Transportation Board ("STB"), and to be responsible for the costs thereof; and

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the Real Estate with the STB, STB Docket No. FD 36137; and

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail banking the Real Estate under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 without the need for any revocation authority from the STB; and

WHEREAS, on or around August 17, 2018, Trail Sponsor and Owners jointly filed a request for issuance of a notice of interim trails use ("NITU") to allow negotiations of a rail banking arrangement for an approximately 12-mile portion of the Real Estate within Indianapolis, STB Docket No. AB-290 (Sub-No. 117X); and

WHEREAS, on or around December 21, 2018, the STB tendered an NITU to Trail Sponsor; and

WHEREAS, to facilitate Interim Trails Use, the Owners and HHPA have decided to (a) remove trackage and other rail assets from approximately Division Street in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana ("Trail Path"), (b) repair crossings along the Trail Path, and (c) liquidate the remaining rail assets along the Trail Path; and

WHEREAS, Owners, acting by and through the HHPA, and Trail Sponsor now desire to memorialize a trails-use agreement consistent with the Trails Act & Rail Policy ("Interim Trails Use Agreement"); and

WHEREAS, pursuant to Chapter 261 of the Revised Code of Indianapolis and Marion County and Ind. Code §§ 36-3-5-4 and 36-3-4-23, the Department of Public Works is responsible to plan, finance, budget, design, construct, operate, fix, repair, clean and maintain all public streets and ways in Indianapolis, including recreational trail property.

Now therefore, in consideration of the mutual covenants and other good and valuable consideration contained herein, HHPA, for itself and the Owners, and Trail Sponsor hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this License and are hereby incorporated into and made a part of this License as though they were fully set forth in this Article I.
ARTICLE II. TRAILS USE

In consideration of and as a material inducement for Trail Sponsor fulfilling its obligations contained herein, HHPA hereby grants to Trail Sponsor the right to construct upon, use, operate, and maintain the Premises (as defined in Article IV) as a multi-use, pedestrian, recreational and transportation trail, and uses and functions attendant and related thereto (the “Permitted Use”), subject to the restrictions included herein. Trail Sponsor may design, construct and use the Premises, at its sole discretion, cost, and expense, for the Permitted Use consistent with the Laws and for no other purpose. For purposes of this License, the “Laws” shall be defined as all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation applicable zoning laws and the Trails Act, including regulations promulgated thereunder, and the STB’s Decision and NITU or Abandonment, STB Docket No. AB-290 (Sub-No. 117X).

ARTICLE III. LICENSED PREMISES

The premises subject to this License is that portion of the Real Estate consisting of approximately twelve (12) miles of railroad right-of-way of varying width from approximately milepost I-2.13 (proximate to the intersection of East 13th Street and Lewis Street in Indianapolis) to approximately milepost I-14 (to the north of the crossing of East 96th Street in Indianapolis), and includes all bridges, tunnels, culverts and other appurtenances associated therewith, which premises is depicted in Exhibit A, attached hereto and incorporated herein (“Premises”).

ARTICLE IV. OWNERS’ RESERVED RIGHTS

HHPA, for itself and the Owners, reserves all rights to (A) manage, amend, cancel or otherwise alter, and retain any proceeds of, any and all existing easements, leases, licenses or other agreements for the installation, operation, use or maintenance of utility facilities, and their support structures on, over or under the Premises, including, but not limited to fiber optic cables, communications or information transmission systems, or utility pipelines, wire lines or other service facilities (collectively, the "Facilities"); (B) current and future mineral rights in and about the Premises, including but, not limited to oil, coal, gas, and any other ore or minerals on, in, and under the Premises and the right to extract the same; and (C) enter the Premises at such times as will not unreasonably interfere with Trail Sponsor’s use of the Premises or as needed in emergency situations. Moreover, Trail Sponsor specifically acknowledges and agrees that Owners and HHPA will scrap and remove the rail infrastructure and that such removal shall exclusively inure to the benefit of the Owners.

All new easements or encroachments along the Premises will be permitted and processed, through the trail sponsor whose municipal boundaries include the proposed easement or encroachment. Notwithstanding the foregoing, prior to permitting or processing a new easement or encroachment along the Premises, Trail Sponsor shall receive the Owners’ or HHPA’s (on Owners’ behalf) approval, whose approval shall not be unreasonably withheld or delayed, and shall be based solely upon compliance with the Trails Act, the STB’s Interim Trails Use Regulations, and License. Any fee collected by Trail Sponsor pursuant to this Article IV that
exceeds the local jurisdiction’s cost of administering the permit/processing shall be remitted to the HHPA.

Any right exercised by Owners or HHPA under this Article IV shall not unduly interfere with or impede Trail Sponsor’s Permitted Use of the Premises. For purposes of this License “unduly interfere” shall mean an interference that causes Trail Sponsor to incur costs or that limits use of the Premises or a portion thereof for more than three (3) consecutive days or more than fifteen (15) days within any one hundred eighty (180) day period, without first obtaining Trail Sponsor’s prior written approval. Moreover, prior to issuing a new easement or allowing any new Facilities to be placed in an existing easement at and about the Premises, Owners shall cause the HHPA to seek the written approval of Trail Sponsor, which approval shall not be unreasonably withheld or delayed.

Notwithstanding the foregoing or anything herein contained to the contrary, this Article shall not be construed to prevent Trail Sponsor from soliciting and accepting donations or otherwise raising funds to support the Permitted Use in accordance with this License.

ARTICLE V. TERM

Subject to Early Termination, as defined in Article XV herein, this License shall remain in full force and effect for twenty-five (25) years from the Effective Date (the “Initial Term”) and shall automatically renew for one (1) additional twenty-five (25) year term (the “Renewal Term”). For purposes of this License, the Initial Term and the Renewal Term shall be jointly defined as the “Term”.

ARTICLE VI. RENT & OTHER ASSESSMENTS

Section 6.01. Rent. Annually, by or before January 1st of each year of the Term, Trail Sponsor shall pay to HHPA Three and no/100 Dollars ($3.00) for use of the Premises for the Permitted Use pursuant to this License, subject to annual appropriation of Trail Sponsor’s fiscal body.

Section 6.02. Taxes. Trail Sponsor shall pay all real estate and personal property taxes, special assessments and other charges assessed against and due on the Premises (except income taxes related to revenue received by Owners or HHPA pursuant to its reservation of rights set forth in Article IV above).

ARTICLE VII. SURVEY

[intentionally omitted]

ARTICLE VIII. REACTIVATION OF RAIL SERVICE

At all times herein, this License shall be subject to reactivation of rail service pursuant to the Trails Act and the STB Decision as further described below:
Section 8.01. Owners’ Reactivation. The Owners retain the right to reactivate railroad service over all or part of the Premises, which right may be exercised, in whole or in part, in the Owners’ sole discretion and upon unanimous consent of the Owners. Trail Sponsor expressly acknowledges that its use of the Premises is subject to the future reactivation of rail service on and over all or a part of the Premises by the Owners or as otherwise set forth below.

Section 8.02. In the event: (1) the STB, or any other entity of the United States government or by order of any court, compels the Owners to reactivate rail service on the Premises, or a portion thereof, or (2) the Owners, their successors or assigns, voluntarily takes steps to reactivate rail service by seeking to vacate the NITU issued in the STB Decision, and the STB approves the same; or (3) a party other than the Owners, their successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB approves the same, the HHPA shall inform Trail Sponsor as soon as the HHPA becomes aware of any such intention to reactivate and further provide at least sixty (60) days (or longer if such notice can reasonably be provided depending on the transaction contemplated) advance notice of the date on which this License shall terminate.

Section 8.03. In the event of reactivation of rail service, Trail Sponsor and HHPA shall negotiate in good faith and mutually determine the procedure for and cost allocation associated with removing any improvements made by Trail Sponsor to the Premises.

ARTICLE IX. SALVAGE WORK

Trail Sponsor acknowledges and agrees that after the Effective Date and pursuant to a certain salvage contract, the HHPA will remove certain rail assets along the Premises (“Salvage Work”). Neither the HHPA nor the Owners shall have an obligation to maintain the Salvage Work, and Trail Sponsor hereby releases, and agrees to and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents – with the exception of the contractor performing the Salvage Work -- from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities relating in any way to the Salvage Work. Trail Sponsor further acknowledges that the Salvage Work will likely not include removal of rail assets from within road and highway crossings, and that Trail Sponsor will become responsible for maintaining and/or removing such rail assets from crossings consistent with Article XII herein. After completion of the Salvage Work, Trail Sponsor shall accept the Premises “AS-IS, WHERE-IS” without any express or implied warranties, as further specified in Article X, herein.

ARTICLE X. CONDITION OF PREMISES

The Premises licensed hereunder is licensed "AS IS, WHERE IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Nothing in this License shall act as or be deemed to act as a warranty, guaranty or representation of the quality or quantity of Owners’ or HHPA’s title in and to any particular portion
of the Premises occupied, used or enjoyed by Trail Sponsor. The rights granted to Trail Sponsor do not extend beyond and shall be strictly limited by such right, title or interest of Owners or HHPA in the Premises. It is expressly understood that the Owners and HHPA do not warrant title to any portion of the Premises, and Trail Sponsor hereby accepts the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights or interests in and to the Premises, and all leases, licenses and easements or other interests previously granted to or reserved by others therein.

Trail Sponsor agrees that this License does not convey or confer a property right in the Premises, including, without limitation, a leasehold interest, and it shall not have and hereby completely and absolutely, waives its right to any claim against the Owners and HHPA for damages or any other legal or equitable relief on account of any deficiencies in title to the Premises.

ARTICLE XI. PRESERVATION OF PREMISES - ENVIRONMENTAL INDEMNITY

Trail Sponsor shall not create or cause or knowingly permit, as applicable: (a) any nuisance to exist in or about the Premises that materially and adversely affects the Owners’ or HHPA’s right, title and reserved use of the Premises; or (b) any unsightly condition or any noxious or objectionable dust, gases, odors, or noises to exist on, or to emanate from, the Premises that materially and adversely affects the operation or lawful intended use of the Premises. Further, Trail Sponsor shall not cause the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substances, except as necessary and appropriate to fulfill the purposes of this License, in which case such use, generation, release, manufacture, refining, production, processing, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws. Trail Sponsor shall immediately (y) notify Owners and HHPA of (i) any known violation by it of any Environmental Laws on, under or about the Premises, or (ii) the known presence or suspected presence of any Hazardous Substances on, under or about the Premises, and (z) deliver to the Owners and HHPA a copy of any notice received by it relating to (y)(i) and (y)(ii) above received from any source. Trail Sponsor shall indemnify the Owners and HHPA from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs incurred by Owners and/or HHPA in connection with any breach by Trail Sponsor of its obligations under this Section. Subject to strict compliance with the Environmental Laws, nothing herein is intended to prohibit Trail Sponsor from improving the Premises as a recreational trail.

For purposes of this License, “Environmental Laws” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or governmental entity having jurisdiction over the Premises; and “Hazardous Substance” shall mean those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste” or “infectious waste” under Environmental Laws and petroleum products.

ARTICLE XII. TRAIL CROSSINGS
Trail Sponsor shall assume full responsibility for the management, maintenance, and operation of any and all road and highway grade crossings (public or private) on the Premises, including the installation and maintenance of crossing warning devices and signage, which devices shall be installed and maintained in compliance with the Laws. Trail Sponsor may remove and dispose of rail assets left by Owners and HHPA in the crossings following the Salvage Work, and install or cause to be installed a new trail-roadway crossing on, under, or over the Premises and be solely responsible for any risks, costs, and expenses incurred (including attorneys' fees) in any hearings, proceedings or other actions regarding the removal, repair, or construction of such crossing. In the event Trail Sponsor desires to remove any public trail-roadway crossing, Trail Sponsor shall be responsible for all costs incurred by Owners and HHPA in petitioning or otherwise working with the applicable road authority for such removal.

HHPA assigns to Trail Sponsor, and Trail Sponsor hereby assumes all duties and obligations of the Owners and HHPA with respect to existing (identified at the time of execution or thereafter) or future private crossing agreements on and over the Premises. Trail Sponsor may remove any private crossings where such removal is not prohibited by contract or by law.

Trail Sponsor shall be responsible for any legal proceedings against a third party in which that party is responsible for damage to a road or highway crossing (public or private) on the Premises.

ARTICLE XIII. LIABILITY

In consideration and as a material inducement for HHPA entering into this License, Trail Sponsor assumes all financial, managerial, operational and legal responsibility, control and risk of loss associated with its use of the Premises, including, without limitation, responsibility for compliance with the Laws; except that Owner and HHPA shall remain responsible for those uses of the Premises specifically reserved to the Owners and HHPA in Article IV. The provisions of this Article XIII shall survive the expiration or termination of this License.

Section 13.01 Owners' Indemnity. Trail Sponsor hereby releases, and agrees to indemnify and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents (collectively referred to in this section as "Indemnified Parties"), from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities ("Losses") relating in any way to Trail Sponsor’s use of, presence on, maintenance, and operation of the Premises, including, but not limited to Losses for: (i) injury to or death of persons or damage to property arising from, out of or related to the use of, operation, or maintenance the Premises by Trail Sponsor, (ii) any obligations incurred by Trail Sponsor in financing or developing a recreational trail, or (iii) any taxes or assessments that are levied or assessed against the Premises. Trail Sponsor shall notify Indemnified Parties of any claim or lawsuit made against it relating to this License. At Trail Sponsor’s request, Indemnified Parties will provide advice and consultation to Trail Sponsor to assist in the defense and/or settlement of any such claim. Trail Sponsor shall assure that the Indemnified Parties are a party to any release agreement Trail Sponsor secures with any claimant.
Section 13.02 Trail Sponsor’s Indemnity. Owners and HHPA, on behalf of themselves and their respective principals, officers, directors, employees, contractors and agents, shall release, indemnify and hold harmless Trail Sponsor and its officers, directors, employees, contractors and agents, from and against any and all claims and/or legal liability (at law or in equity), and costs (including attorneys’ fees), fines or other expenses arising from the use of the Premises for matters reserved by HHPA and Owners in Article IV hereof. Trail Sponsor shall promptly notify Owners and HHPA in writing of any notification received by Trail Sponsor alleging any violation of any Laws relating to this License.

ARTICLE XIV. INSURANCE

Trail Sponsor shall, at its sole cost and expense, procure and maintain at all times during the Term the policies of insurance described on Exhibit B. Each such policy shall: (a) be written by a company reasonably acceptable to HHPA; and (b) provide that it shall not be modified or canceled without written notice to HHPA at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Trail Sponsor shall name Owners and HHPA as additional insureds. Trail Sponsor shall deliver to HHPA certificates of the insurance policies required by this Section. Trail Sponsor may self-insure any portion of the required coverages if (i) Trail Sponsor provides HHPA with evidence of sufficient coverage to the HHPA’s reasonable satisfaction, and (ii) Trail Sponsor obtains the HHPA’s prior written consent.

ARTICLE XV. EARLY TERMINATION

Section 15.01. Termination by HHPA. Subject to the Cure Period, if applicable, this License may be terminated by HHPA prior to conclusion of the Term as follows:

a. Upon ninety (90) days written notice of Trail Sponsor’s failure to maintain the Premises consistent with the terms of this License and generally acceptable standards for multi-use, pedestrian trails in the State of Indiana;

b. Immediately, for failure to: (1) maintain required insurance, or (2) assignment in violation of this License;

c. Upon ten (10) days written notice of Trail Sponsor’s abandonment of the Premises for a period of more than one hundred eighty (180) consecutive days without prior, written approval of the Owners;

d. Upon ninety (90) days written notice for Trail Sponsor’s failure to comply with all other provisions of this License; and

e. As set forth in Article VIII, for reactivation of rail service.

(In any instance, the “Early Termination”). The Cure Period shall not apply to Subsections 15.01(b), (c) or (e) above.

For purposes of this License, “Cure Period” shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this License to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably
necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default.

Section 15.02. Rights and Remedies. Upon early termination as a result of Trail Sponsor’s default under this License, HHPA (or the collective Owners) may seek all remedies available to it in law and equity, including attorneys’ fees and costs related thereto, take possession of the Premises and take whatever reasonable steps are necessary to terminate Trail Sponsor’s use of the Premises, including, without limitation requiring Trail Sponsor to remove all improvements made to the Premises and restore the Premises and other affected property of Owners and HHPA to substantially the same functional or operational condition existing immediately prior to Trail Sponsor’s construction of such improvements or as otherwise agreed by HHPA and Owners. If, following written request of the Owners and HHPA, Trail Sponsor fails to remove its improvements and restore the Premises and other affected property as provided in the preceding sentence, Trail Sponsor shall be deemed to have abandoned its property in place, in which event such improvements shall become the exclusive property of Owners and HHPA, for purposes of resale, use or operation by Owners and HHPA, in any manner and for any purpose Owners and HHPA deem appropriate, in their sole discretion. HHPA (or the collective Owners) shall also have the right to remove such property and restore the Premises, and all costs incurred by Owners and HHPA in such removal and restoration shall be immediately due and payable by Trail Sponsor to Owners and HHPA upon written demand (the “Self-Help Cost”). This obligation of Trail Sponsor shall survive the termination of this License.

ARTICLE XVI. MAINTENANCE, REPAIR, OR IMPROVEMENT

Trail Sponsor shall be exclusively responsible for maintaining, operating repairing, improving and using the Premises for the Permitted Use, including, without limitation, clearing or removing trees, shrubs, plants, ice, snow or debris from the Premises, providing necessary personnel at and about the Premises, ensuring that the Premises are used and operated in a safe condition and otherwise keeping at all times during the Term the Premises in good condition and repair, all of which shall be completed at Trail Sponsor’s sole risk, cost and expense.

ARTICLE XVII. LIENS, RELEASE AND SELF-HELP

Trail Sponsor shall not permit any mortgage, pledge, security interest, lien or encumbrance, including, without limitation, tax liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, operation, repair, maintenance, replacement or removal of any improvements related to the Permitted Use (collectively, "Liens or Encumbrances"), to be established or remain against the Premises or any other property of the Owners. In the event that any portion of Owners’ and/or HHPA’s property becomes subject to any Lien or Encumbrance, Trail Sponsor agrees to pay, discharge, remove, or bond over the same within thirty (30) days of Trail Sponsor’s receipt of notice that such Lien or Encumbrance has been recorded, filed or docketed against such Owners’ and/or HHPA’s property; provided, however, that if Trail Sponsor provides a bond or other security acceptable to Owners and HHPA for the payment and removal of such Lien or Encumbrance, Trail Sponsor shall have
the right to challenge, at its sole expense, the validity and/or enforceability of any such Lien or Encumbrance.

If Trail Sponsor fails to comply with the preceding paragraph, Owners and HHPA are hereby authorized, but not obligated, to advance and pay such amount as Owners and HHPA shall, in their absolute subjective discretion, determine to be necessary to procure release of such Mechanics' Lien or take such other action that shall otherwise be necessary for the protection of Owners and HHPA and the Premises.

ARTICLE XVIII. GENERAL CONDITIONS

Section 18.01 Interest. Trail Sponsor agrees that any monies advanced by Owners or HHPA pursuant to this License or by Owners' or HHPA's exercise of any right hereunder given shall be repaid by Trail Sponsor to Owners or HHPA, with interest thereon at four percent (4%) above the then prevailing prime rate which interest shall continue to accrue until the amount owed and interest are paid in full.

Section 18.02 Notice. Any notice required or permitted to be given by any party to this License shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Trail Sponsor at Director, Department of Public Works, 200 East Washington Street, Suite 2460, Indianapolis, IN 46204; and to HHPA at Executive Director, 33 North 9th Street, Suite 215 Noblesville, IN 46060. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 18.03 Authority. Each undersigned person executing this License on behalf of the HHPA and the Trail Sponsor represents and certifies that: (i) he or she has been empowered and authorized by all necessary action of the HHPA and the Trail Sponsor, to execute and deliver this License; and (ii) the execution, delivery, and performance of this License duly have been authorized by Trail Sponsor and HHPA, respectively.

Section 18.04. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this License as a result of Force Majeure, then: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 18.05. Merger. All prior agreements, understandings, and commitments among the parties hereto and relating to the License of the Premises are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.
Section 18.06. Indiana Tort Claims/Indemnification. Notwithstanding anything to the contrary contained herein, HHPA and Trail Sponsor hereby acknowledge that the other party’s financial exposure for certain claims is limited by the Indiana Tort Claims Act, Ind. Code § 34-13-3, and HHPA’s and Trail Sponsor’s obligation to indemnify and save the other party, its officers, directors, agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys’ fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 18.07. Assignment. Trail Sponsor may only assign this License with written approval from HHPA and approval of STB.

Section 18.08. Miscellaneous. This License shall inure to the benefit of, and be binding upon, Trail Sponsor, HHPA, and Owners, and their respective successors and assigns. Except for the Owners, who are the sole third party beneficiaries of this License, nothing herein is intended to give, nor shall it have the effect of giving, any enforceable rights to third parties who are not parties hereto (solely Trail Sponsor, HHPA, and Owners), whether such claims are asserted as third party beneficiary rights or otherwise. This License may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This License shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this License shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. The parties waive, to the extent permitted under applicable law: (i) the right to a trial by jury; and (ii) any right of a party may have to: (A) assert the doctrine of "forum non conveniens"; or (B) object to venue. This License may be modified only by a written agreement signed by HHPA and Trail Sponsor. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this License shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this License are attached hereto and incorporated herein by reference. Time is of the essence in this License. If any provision of this License or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this License or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this License a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this License are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this License or the scope or content of any of its provisions. Nothing contained in this License shall be construed to create a partnership or joint venture between or among HHPA, Owners, or Trail Sponsor or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Hamilton County, Indiana, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.
IN WITNESS WHEREOF, the parties hereto represent and warrant that each has the necessary authority to enter into this License and bind the respective parties to the terms and conditions hereof and have executed this License as of the dates set forth below.

TRAIL SPONSOR
CITY OF INDIANAPOLIS, by and through its Department of Public Works

Daniel J. Parker, Director

STATE OF INDIANA )
) SS:
COUNTY OF MARION )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel J. Parker, personally known to me to be the Director of the Department of Public Works of the City of Indianapolis, and acknowledged the execution of the foregoing License for and on behalf of said entities.

WITNESS my hand and notarial seal this _____ day of ____________, 2019.

Written Signature

Printed Signature

NOTARY PUBLIC

Approved for Execution:

Fady Qaddoura, City Controller

Approved for Form and Legality:

Robert M. Frye, Assistant Corporation Counsel

HHPA

Interim Trails Use Agreement
Page 13 of 14
HOOSIER HERITAGE PORT AUTHORITY

By: ______________________________
    David George, President

STATE OF INDIANA )
                     ) SS:
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David George, personally known to me to be the President of the Hoosier Heritage Port Authority, and acknowledged the execution of the foregoing License for and on behalf of said City.

WITNESS my hand and notarial seal this _____ day of _____________, 2019.

______________________________
Written Signature

______________________________
Printed Signature

NOTARY PUBLIC
LICENSE AGREEMENT BY AND AMONG THE HOOSIER HERITAGE PORT AUTHORITY AND THE CITY FISHERS (IN ITS INDIVIDUAL CAPACITY AS A TRAIL SPONSOR) TO OPERATE A CERTAIN PORTION OF THE NICKEL PLATE TRAIL PURSUANT TO THE NATIONAL TRAILS SYSTEM ACT

This LICENSE AGREEMENT ("License") is entered into this ______ day of _______, 2019 ("Effective Date") by and between the Owners of the Nickel Plate Railroad, acting by and through the Hoosier Heritage Port Authority ("HHPA"), a body corporate and politic and operating pursuant to Ind. Code § 8-10-5 et seq., and the City of Fishers (in its individual capacity as a trail operator and hereinafter referred to as "Trail Sponsor") pursuant to the National Trails System Act as follows:

RECITALS

WHEREAS, on or around November 9, 1994, the City of Noblesville ("Noblesville") and the Town of Fishers, which transitioned to a city on January 1, 2015 in accordance with Indiana law ("Fishers") jointly purchased 37.54 miles of real property commonly known as the Nickel Plate Railroad that extends from Tipton to Indianapolis ("Real Estate");

WHEREAS, Fishers and Noblesville later allowed Hamilton County (the "County") to purchase a one third (1/3) interest in the Real Estate which resulted in Fishers, Noblesville and the County each owning an equal one third (1/3) interest in the Real Estate (Fishers, Noblesville, and the County are hereinafter collectively referred to as the "Owners") and;

WHEREAS, the Hoosier Heritage Port Authority ("HHPA") was created in 1994, when Noblesville and Fishers passed identical ordinances establishing the port authority, and was later expanded to include the County;

WHEREAS, the HHPA was created to protect and preserve the existence of the Real Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the County, including, but not limited to, recreational, transportation, and tourism purposes;

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R. §1152.29 ("Interim Trails Use");

WHEREAS, pursuant to Interim Trails Use, the Real Estate shall be preserved ("railbanked") for potential future restoration of common carrier service, but "trails-use status" allows the corridor to be used as a linear recreational resource, consistent with the Rail Transportation Policy of 49 U.S.C. §10101 ("Rail Policy");

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all legal action necessary to railbank the Real Estate, including but not limited to filing the
applicable petition(s) with the Surface Transportation Board ("STB"), and to be responsible for the costs thereof;

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the Real Estate with the STB, STB Docket No. FD 36137;

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail banking the Real Estate under 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 without the need for any revocation authority from the STB;

WHEREAS, on or around June 8, 2018, Trail Sponsor and Owners jointly filed a request for issuance of a notice of interim trails use ("NITU") to allow negotiations of a rail banking arrangement for an approximately 5-mile portion of the Real Estate within Fishers, STB Docket No. AB-290 (Sub-No. 117X);

WHEREAS, on or around December 21, 2018, the STB tendered an NITU to Trail Sponsor;

WHEREAS, to facilitate Interim Trails Use, the Owners and HHPA have decided to (a) remove trackage and other rail assets from approximately Division Street in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana ("Trail Path"), (b) repair crossings along the Trail Path, and (c) liquidate the remaining rail assets along the Trail Path; and

WHEREAS, Owners, acting by and through the HHPA, and Trail Sponsor now desire to memorialize a trails-use agreement consistent with the Trails Act & Rail Policy ("Interim Trails Use Agreement").

Now therefore, in consideration of the mutual covenants and other good and valuable consideration contained herein, Owners and Trail Sponsor hereby agree as follows:

**ARTICLE I. RECITALS**

The representations, covenants and recitations set forth in the foregoing recitals are material to this License and are hereby incorporated into and made a part of this License as though they were fully set forth in this **Article I**.

**ARTICLE II. TRAILS USE**

In consideration of and as a material inducement for Trail Sponsor fulfilling its obligations contained herein, HHPA hereby grants to Trail Sponsor the right to construct upon, use, operate, and maintain the Premises as a multi-use, pedestrian, recreational and transportation trail, and uses and functions attendant and related thereto (the "Permitted Use"), subject to the restrictions included herein. Trail Sponsor may design, construct and use the Premises, at its sole discretion, cost, and expense, for the Permitted Use consistent with the Laws and for no other purpose. For purposes of this License, the "Laws" shall be defined as all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations,
ARTICLE III. LICENSED PREMISES

The premises subject to this License is approximately that portion of the Real Estate consisting of approximately (5) five miles of railroad right-of-way of varying width from approximately milepost I-14 (immediately north of the Real Estate’s crossing of E. 96th Street) Fishers, Hamilton County, Indiana to approximately milepost I-19 (immediately south of the Real Estate’s crossing of E. 146th Street) Fishers, Hamilton County, Indiana, and includes all bridges, tunnels, culverts and other appurtenances associated therewith, which premises is depicted in Exhibit A, attached hereto and incorporated herein ("Premises").

ARTICLE IV. OWNERS’ RESERVED RIGHTS

HHPA, for itself and the Owners, reserves all rights to (A) manage, amend, cancel or otherwise alter, and retain any proceeds of, any and all existing easements, leases, licenses or other agreements for the installation, operation, use or maintenance of utility facilities, and their support structures on, over or under the Premises, including, but not limited to fiber optic cables, communications or information transmission systems, or utility pipelines, wire lines or other service facilities (collectively, the "Facilities"); (B) current and future mineral rights in and about the Premises, including but, not limited to oil, coal, gas, and any other ore or minerals on, in, and under the Premises and the right to extract the same; and (C) enter the Premises at such times as will not unreasonably interfere with Trail Sponsor’s use of the Premises or as needed in emergency situations. Moreover, Trail Sponsor specifically acknowledges and agrees that Owners and HHPA will scrap and remove the rail infrastructure and that such removal shall exclusively inure to the benefit of the Owners.

All new easements or encroachments along the Premises will be permitted and processed, through the Trail Sponsor whose municipal boundaries include the proposed easement or encroachment. Notwithstanding the foregoing, prior to permitting or processing a new easement or encroachment along the Premises, Trail Sponsor shall receive the Owners’ approval, whose approval shall not be unreasonably withheld or delayed, and shall be based solely upon compliance with the Trails Act, the STB’s Interim Trails Use Regulations, and License. Any fee collected by Trail Sponsor pursuant to this Article IV that exceeds the local jurisdiction’s cost of administering the permit/processing shall be remitted to the HHPA.

Any right exercised by Owners or HHPA under this Article IV shall not unduly interfere with or impede Trail Sponsor’s Permitted Use of the Premises. For purposes of this License “unduly interfere” shall mean an interference that causes Trail Sponsor to incur costs or that limits use of the Premises or a portion thereof for more than three (3) consecutive days or more than fifteen (15) days within any one hundred eighty (180) day period, without first obtaining Trail Sponsor’s prior written approval. Moreover, prior to issuing a new easement or allowing any new Facilities to be placed in an existing easement at and about the Premises, Owners shall
cause the HHPA to seek the written approval of Trail Sponsor, which approval shall not be unreasonably withheld or delayed.

Notwithstanding the foregoing or anything herein contained to the contrary, this Article shall not be construed to prevent Trail Sponsor from soliciting and accepting donations or otherwise raising funds to support the Permitted Use in accordance with this License.

ARTICLE V. TERM

Subject to Early Termination, as defined in Article XV herein, this License shall remain in full force and effect for twenty-five (25) years from the Effective Date (the “Initial Term”) and shall automatically renew for one (1) additional twenty-five (25) year term (the “Renewal Term”). For purposes of this License, the Initial Term and the Renewal Term shall be jointly defined as the “Term”.

ARTICLE VI. RENT & OTHER ASSESSMENTS

Section 6.01. Rent. Annually, by or before January 1st of each year of the Term, Trail Sponsor shall pay to HHPA Three and no/100 Dollars ($3.00) for use of the Premises for the Permitted Use pursuant to this License, subject to annual appropriation of Trail Sponsor’s fiscal body.

Section 6.02. Taxes. Trail Sponsor shall pay all real estate and personal property taxes, special assessments and other charges assessed against and due on the Premises (except income taxes related to revenue received by Owners or HHPA pursuant to its reservation of rights set forth in Article IV above).

ARTICLE VII. SURVEY

[intentionally omitted]

ARTICLE VIII. REACTIVATION OF RAIL SERVICE

At all times herein, this License shall be subject to reactivation of rail service pursuant to the Trails Act and the STB Decision as further described below:

Section 8.01. Owners’ Reactivation. The Owners retain the right to reactivate railroad service over all or part of the Premises, which right may be exercised, in whole or in part, in the Owners’ sole discretion and upon unanimous consent of the Owners. Trail Sponsor expressly acknowledges that its use of the Premises is subject to the future reactivation of rail service on and over all or a part of the Premises by the Owners or as otherwise set forth below.

Section 8.02. In the event: (1) the STB, or any other entity of the United States government or by order of any court, compels the Owners to reactivate rail service on the Premises, or a portion thereof; or (2) the Owners, their successor or assigns, voluntarily takes steps to reactivate rail service by seeking to vacate the NITU issued in the STB Decision, and the STB approves the same; or (3) a party other than the Owners, their successors or assigns, seeks
to reactivate rail service by petitioning the STB to vacate the NITU, and the STB approves the same, the HHPA shall inform Trail Sponsor as soon as the HHPA becomes aware of any such intention to reactivate and further provide at least sixty (60) days (or longer if such notice can reasonably be provided depending on the transaction contemplated) advance notice of the date on which this License shall terminate.

Section 8.03. In the event of reactivation of rail service, Trail Sponsor and HHPA shall negotiate in good faith and mutually determine the procedure for and cost allocation associated with removing any improvements made by Trail Sponsor to the Premises.

ARTICLE IX. SALVAGE WORK

Trail Sponsor acknowledges and agrees that after the Effective Date and pursuant to a certain salvage contract, the HHPA will remove certain rail assets along the Premises ("Salvage Work"). Neither the HHPA nor the Owners shall have an obligation to maintain the Salvage Work, and Trail Sponsor hereby releases, and agrees to and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents – with the exception of the contractor performing the Salvage Work – from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities relating in any way to the Salvage Work. Trail Sponsor further acknowledges that the Salvage Work will likely not include removal of rail assets from within road and highway crossings, and that Trail Sponsor will become responsible for maintaining and/or removing such rail assets from crossings consistent with Article XII herein. After completion of the Salvage Work, Trail Sponsor shall accept the Premises "AS-IS, WHERE-IS" without any express or implied warranties, as further specified in Article X, herein.

ARTICLE X. CONDITION OF PREMISES

The Premises licensed hereunder is licensed "AS IS, WHERE IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Nothing in this License shall act as or be deemed to act as a warranty, guaranty or representation of the quality or quantity of Owners’ or HHPA’s title in and to any particular portion of the Premises occupied, used or enjoyed by Trail Sponsor. The rights granted to Trail Sponsor do not extend beyond and shall be strictly limited by such right, title or interest of Owners or HHPA in the Premises. It is expressly understood that the Owners and HHPA do not warrant title to any portion of the Premises, and Trail Sponsor hereby accepts the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights or interests in and to the Premises, and all leases, licenses and easements or other interests previously granted to or reserved by others therein.

Trail Sponsor agrees that this License does not convey or confer a property right in the Premises, including, without limitation, a leasehold interest, and it shall not have and hereby
completely and absolutely, waives its right to any claim against the Owners and HHPA for damages or any other legal or equitable relief on account of any deficiencies in title to the Premises.

ARTICLE XI. PRESERVATION OF PREMISES - ENVIRONMENTAL INDEMNITY

Trail Sponsor shall not create or cause or knowingly permit, as applicable: (a) any nuisance to exist in or about the Premises that materially and adversely affects the Owners’ or HHPA’s right, title and reserved use of the Premises; or (b) any unsightly condition or any noxious or objectionable dust, gases, odors, or noises to exist on, or to emanate from, the Premises that materially and adversely affects the operation or lawful intended use of the Premises. Further, Trail Sponsor shall not cause the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substances, except as necessary and appropriate to fulfill the purposes of this License, in which case such use, generation, release, manufacture, refining, production, processing, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws. Trail Sponsor shall immediately (y) notify Owners and HHPA of (i) any known violation by it of any Environmental Laws on, under or about the Premises, or (ii) the known presence or suspected presence of any Hazardous Substances on, under or about the Premises, and (z) deliver to the Owners and HHPA a copy of any notice received by it relating to (y)(i) and (y)(ii) above received from any source. Trail Sponsor shall indemnify the Owners and HHPA from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys’ fees, costs of testing and remediation costs incurred by Owners and/or HHPA in connection with any breach by Trail Sponsor of its obligations under this Section. Subject to strict compliance with the Environmental Laws, nothing herein is intended to prohibit Trail Sponsor from improving the Premises as a recreational trail.

For purposes of this License, “Environmental Laws” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or governmental entity having jurisdiction over the Premises; and “Hazardous Substance” shall mean those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste” or “infectious waste” under Environmental Laws and petroleum products.

ARTICLE XII. TRAIL CROSSINGS

Trail Sponsor shall assume full responsibility for the management, maintenance, and operation of any and all road and highway grade crossings (public or private) on the Premises, including the installation and maintenance of crossing warning devices and signage, which devices shall be installed and maintained in compliance with the Laws. Trail Sponsor may install or cause to be installed a new trail-roadway crossing on, under, or over the Premises and be solely responsible for any risks, costs, and expenses incurred (including attorneys’ fees) in any hearings, proceedings or other actions regarding the construction of such crossing. In the event Trail Sponsor desires to remove any public trail-roadway crossing, Trail Sponsor shall be

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responsible for all costs incurred by Owners and HHPA in petitioning or otherwise working with the applicable road authority for such removal.

HHPA assigns to Trail Sponsor, and Trail Sponsor hereby assumes all duties and obligations of the Owners and HHPA with respect to existing (identified at the time of execution or thereafter) or future private crossing agreements on and over the Premises. Trail Sponsor may remove any private crossings where such removal is not prohibited by contract or by law.

Trail Sponsor shall be responsible for any legal proceedings against a third party in which that party is responsible for damage to a road or highway crossing (public or private) on the Premises.

ARTICLE XIII. LIABILITY

In consideration and as a material inducement for HHPA entering into this License, Trail Sponsor assumes all financial, managerial, operational and legal responsibility, control and risk of loss associated with its use of the Premises, including, without limitation, responsibility for compliance with the Laws; except that Owner and HHPA shall remain responsible for those uses of the Premises specifically reserved to the Owners and HHPA in Article IV. The provisions of this Article XIII shall survive the expiration or termination of this License.

Section 13.01 Owners’ Indemnity. Trail Sponsor hereby releases, and agrees to indemnify, and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents (collectively referred to in this section as "Indemnified Parties"), from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys’ fees), damages, fines or other expenses related to such claims and liabilities ("Losses") relating in any way to Trail Sponsor’s use of, presence on, maintenance, and operation of the Premises, including, but not limited to Losses for: (i) injury to or death of persons or damage to property arising from, out of or related to the use of, operation, or maintenance the Premises by Trail Sponsor, (ii) any obligations incurred by Trail Sponsor in financing or developing a recreational trail, or (iii) any taxes or assessments that are levied or assessed against the Premises. Trail Sponsor shall notify Indemnified Parties of any claim or lawsuit made against it relating to this License. At Trail Sponsor’s request, Indemnified Parties will provide advice and consultation to Trail Sponsor to assist in the defense and/or settlement of any such claim. Trail Sponsor shall assure that the Indemnified Parties are a party to any release agreement Trail Sponsor secures with any claimant.

Section 13.02 Trail Sponsor’s Indemnity. Owners and HHPA, on behalf of themselves and their respective principals, officers, directors, employees, contractors and agents, shall release indemnify, and hold harmless Trail Sponsor and its officers, directors, employees, contractors and agents, from and against any and all claims and/or legal liability (at law or in equity), and costs (including attorneys' fees), fines or other expenses arising from the use of the Premises for matters reserved by HHPA and Owners in Article IV hereof. Trail Sponsor shall promptly notify Owners and HHPA in writing of any notification received by Trail Sponsor alleging any violation of any Laws relating to this License.

ARTICLE XIV. INSURANCE
Trail Sponsor shall, at its sole cost and expense, procure and maintain at all times during the Term the policies of insurance described on Exhibit B. Each such policy shall: (a) be written by a company reasonably acceptable to HHPA; and (b) provide that it shall not be modified or canceled without written notice to HHPA at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Trail Sponsor shall name Owners and HHPA as additional insureds. Trail Sponsor shall deliver to HHPA certificates of the insurance policies required by this Section. Trail Sponsor may self-insure any portion of the required coverages if (i) Trail Sponsor provides HHPA with evidence of sufficient coverage to the HHPA’s reasonable satisfaction, and (ii) Trail Sponsor obtains the HHPA’s prior written consent.

ARTICLE XV. EARLY TERMINATION

Section 15.01. Termination by HHPA. Subject to the Cure Period, if applicable, this License may be terminated by HHPA prior to conclusion of the Term as follows:

a. Upon ninety (90) days written notice of Trail Sponsor’s failure to maintain the Premises consistent with the terms of this License and generally acceptable standards for multi-use, pedestrian trails in the State of Indiana;
b. Immediately, for failure to: (1) maintain required insurance, or (2) assignment in violation of this License;
c. Upon ten (10) days written notice of Trail Sponsor’s abandonment of the Premises for a period of more than one hundred eighty (180) consecutive days without prior, written approval of the Owners;
d. Upon ninety (90) days written notice for Trail Sponsor’s failure to comply with all other provisions of this License; and
e. As set forth in Article VIII, for reactivation of rail service.

(In any instance, the “Early Termination”). The Cure Period shall not apply to Subsections 15.01(b), (c) or (e) above.

For purposes of this License, “Cure Period” shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this License to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default.

Section 15.02. Rights and Remedies. Upon early termination as a result of Trail Sponsor’s default under this License, HHPA (or the collective Owners) may seek all remedies available to it in law and equity, including attorneys’ fees and costs related thereto, take possession of the Premises and take whatever reasonable steps are necessary to terminate Trail Sponsor’s use of
the Premises, including, without limitation requiring Trail Sponsor to remove all improvements made to the Premises and restore the Premises and other affected property of Owners and HHPA to substantially the same functional or operational condition existing immediately prior to Trail Sponsor's construction of such improvements or as otherwise agreed by HHPA and Owners. If, following written request of the Owners and HHPA, Trail Sponsor fails to remove its improvements and restore the Premises and other affected property as provided in the preceding sentence, Trail Sponsor shall be deemed to have abandoned its property in place, in which event such improvements shall become the exclusive property of Owners and HHPA, for purposes of resale, use or operation by Owners and HHPA, in any manner and for any purpose Owners and HHPA deem appropriate, in its sole discretion. HHPA (or the collective Owners) shall also have the right to remove such property and restore the Premises, and all costs incurred by Owners and HHPA in such removal and restoration shall be immediately due and payable by Trail Sponsor to Owners and HHPA upon written demand (the "Self-Help Cost"). This obligation of Trail Sponsor shall survive the termination of this License.

ARTICLE XVI. MAINTENANCE, REPAIR, OR IMPROVEMENT

Trail Sponsor shall be exclusively responsible for maintaining, operating repairing, improving and using the Premises for the Permitted Use, including, without limitation, clearing or removing trees, shrubs, plants, ice, snow or debris from the Premises, providing necessary personnel at and about the Premises, ensuring that the Premises are used and operated in a safe condition and otherwise keeping at all times during the Term the Premises in good condition and repair, all of which shall be completed at Trail Sponsor's sole risk, cost and expense.

ARTICLE XVII. LIENS, RELEASE AND SELF-HELP

Trail Sponsor shall not permit any mortgage, pledge, security interest, lien or encumbrance, including, without limitation, tax liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, operation, repair, maintenance, replacement or removal of any improvements related to the Permitted Use (collectively, "Liens or Encumbrances"), to be established or remain against the Premises or any other property of the Owners. In the event that any portion of Owners' and/or HHPA's property becomes subject to any Lien or Encumbrance, Trail Sponsor agrees to pay, discharge, remove, or bond over the same within thirty (30) days of Trail Sponsor's receipt of notice that such Lien or Encumbrance has been recorded, filed or docketed against such Owners' and/or HHPA's property; provided, however, that if Trail Sponsor provides a bond or other security acceptable to Owners and HHPA for the payment and removal of such Lien or Encumbrance, Trail Sponsor shall have the right to challenge, at its sole expense, the validity and/or enforceability of any such Lien or Encumbrance.

If Trail Sponsor fails to comply with the preceding paragraph, Owners and HHPA are hereby authorized, but not obligated, to advance and pay such amount as Owners and HHPA shall, in their absolute subjective discretion, determine to be necessary to procure release of such Mechanics' Lien or take such other action that shall otherwise be necessary for the protection of Owners and HHPA and the Premises.
ARTICLE XVIII. GENERAL CONDITIONS

Section 18.01 Interest. Trail Sponsor agrees that any monies advanced by Owners or HHPA pursuant to this License or by Owners' or HHPA's exercise of any right hereunder given shall be repaid by Trail Sponsor to Owners or HHPA, with interest thereon at four percent (4%) above the then prevailing prime rate which interest shall continue to accrue until the amount owed and interest are paid in full.

Section 18.02 Notice. Any notice required or permitted to be given by any party to this License shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Trail Sponsor at 1 Municipal Drive, Fishers, IN 46038, with a copy to: Chris Greisl, 1 Municipal Drive, Fishers, IN 46038; and to HHPA at Executive Director, 33 N 9th Street, Suite 215 Noblesville, IN 46060. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 18.03 Authority. Each undersigned person executing this License on behalf of the HHPA and the Trail Sponsor represents and certifies that: (i) he or she has been empowered and authorized by all necessary action of the HHPA and the Trail Sponsor, to execute and deliver this License; and (ii) the execution, delivery, and performance of this License duly have been authorized by Trail Sponsor and HHPA, respectively.

Section 18.04. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this License as a result of Force Majeure, then: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 18.05. Merger. All prior agreements, understandings, and commitments among the parties hereto and relating to the License of the Leased Premises are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 18.06. Indiana Tort Claims/Indemnification. Notwithstanding anything to the contrary contained herein, HHPA and Trail Sponsor hereby acknowledge that the other party's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and HHPA's and Trail Sponsor's obligation to indemnify and save the other party, its officers, directors, agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.
Section 18.07. Assignment. Trail Sponsor may only assign this License with written approval from HHPA and approval of STB.

Section 18.08. Miscellaneous. This License shall inure to the benefit of, and be binding upon, Trail Sponsor, HHPA, and Owners, and their respective successors and assigns. Except for the Owners, which are the sole third party beneficiaries of this License, nothing herein is intended to give, nor shall it have the effect of giving, any enforceable rights to third parties who are not parties hereto (solely Trail Sponsor, HHPA, and Owners), whether such claims are asserted as third party beneficiary rights or otherwise. This License may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This License shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this License shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. The parties waive, to the extent permitted under applicable law: (i) the right to a trial by jury; and (ii) any right of a party may have to: (A) assert the doctrine of "forum non conveniens"; or (B) object to venue. This License may be modified only by a written agreement signed by HHPA and Trail Sponsor. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this License shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this License are attached hereto and incorporated herein by reference. Time is of the essence in this License. If any provision of this License or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this License or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this License a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this License are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this License or the scope or content of any of its provisions. Nothing contained in this License shall be construed to create a partnership or joint venture between or among HHPA, Owners, or Trail Sponsor or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Hamilton County, Indiana, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[SIGNATURE ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto represent and warrant that each has the necessary authority to enter into this License and bind the respective parties to the terms and conditions hereof and have executed this License as of the dates set forth below.

TRAIL SPONSOR
CITY OF FISHERS

______________________________
Scott Fadness, Mayor

STATE OF INDIANA )
) SS:
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Scott Fadness, personally known to me to be the Mayor of the City of Fishers, Indiana, and acknowledged the execution of the foregoing License for and on behalf of said entities.

WITNESS my hand and notarial seal this ____ day of _____________, 2019.

______________________________
Written Signature

______________________________
Printed Signature

NOTARY PUBLIC
HHPA
HOOSIER HERITAGE PORT
AUTHORITY

By: ________________________________
    David George, President

STATE OF INDIANA  )
     ) SS:
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David George, personally known to me to be the President of the Hoosier Heritage Port Authority, and acknowledged the execution of the foregoing License for and on behalf of said City.

WITNESS my hand and notarial seal this _____ day of ____________, 2019.

________________________
Written Signature

________________________
Printed Signature

________________________
NOTARY PUBLIC
LICENSE AGREEMENT BY AND AMONG THE HOOSIER HERITAGE PORT AUTHORITY AND THE CITY OF NOBLESVILLE DEPARTMENT OF PARKS AND RECREATION (IN ITS INDIVIDUAL CAPACITY AS A TRAIL SPONSOR) TO OPERATE A CERTAIN PORTION OF THE NICKEL PLATE TRAIL PURSUANT TO THE NATIONAL TRAILS SYSTEM ACT

This LICENSE AGREEMENT ("License") is entered into this _____ day of ________, 2019 ("Effective Date") by and between the Owners of the Nickel Plate Railroad, acting by and through the Hoosier Heritage Port Authority ("HHPA"), a body corporate and politic and operating pursuant to Ind. Code § 8-10-5 et seq., and the City of Noblesville Department of Parks and Recreation (in its individual capacity as a trail operator and hereinafter referred to as "Trail Sponsor") pursuant to the National Trails System Act as follows:

RECITALS

WHEREAS, on or around November 9, 1994, the City of Noblesville ("Noblesville") and the Town of Fishers, which transitioned to a city on January 1, 2015 in accordance with Indiana law ("Fishers") jointly purchased 37.54 miles of real property commonly known as the Nickel Plate Railroad that extends from Tipton to Indianapolis ("Real Estate");

WHEREAS, Fishers and Noblesville later allowed Hamilton County (the "County") to purchase a one third (1/3) interest in the Real Estate which resulted in Fishers, Noblesville and the County each owning an equal one third (1/3) interest in the Real Estate (Fishers, Noblesville, and the County are hereinafter collectively referred to as the "Owners") and;

WHEREAS, the Hoosier Heritage Port Authority ("HHPA") was created in 1994, when Noblesville and Fishers passed identical ordinances establishing the port authority, and was later expanded to include the County;

WHEREAS, the HHPA was created to protect and preserve the existence of the Real Estate in perpetuity for such uses that may benefit the citizens of Noblesville, Fishers, and the County, including, but not limited to, recreational, transportation, and tourism purposes;

WHEREAS, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"), the Real Estate can be utilized as a linear recreational trail, remaining within the interstate commerce network and subject to federal jurisdiction under interim trails use, 49 C.F.R. §1152.29 ("Interim Trails Use");

WHEREAS, pursuant to Interim Trails Use, the Real Estate shall be preserved ("railbanked") for potential future restoration of common carrier service, but "trails-use status" allows the corridor to be used as a linear recreational resource, consistent with the Rail Transportation Policy of 49 U.S.C. §10101 ("Rail Policy");

WHEREAS, on or around July 31, 2017, the Owners approved railbanking the Real Estate in accordance with and pursuant to the Trails Act and directed Fishers to take any and all legal action necessary to railbank the Real Estate, including but not limited to filing the
applicable petition(s) with the Surface Transportation Board ("STB"), and to be responsible for the costs thereof;

WHEREAS, on or around August 1, 2017, the Owners filed a petition to railbank the Real Estate with the STB, STB Docket No. FD 36137;

WHEREAS, on or around May 31, 2018, the STB held that the Owners may pursue rail banking the Real Estate under 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29 without the need for any revocation authority from the STB;

WHEREAS, on or around August 3, 2018, Trail Sponsor and Owners jointly filed a request for issuance of a notice of interim trails use ("NITU") to allow negotiations of a rail banking arrangement for an approximately 4-mile portion of the Real Estate within Noblesville, STB Docket No. AB-290 (Sub-No. 117X);

WHEREAS, on or around December 21, 2018, the STB tendered an NITU to Trail Sponsor;

WHEREAS, to facilitate Interim Trails Use, the Owners and HHPA have decided to (a) remove trackage and other rail assets from approximately Division Street in Noblesville, Indiana to milepost I-2.13 in Indianapolis, Indiana ("Trail Path"), (b) repair crossings along the Trail Path, and (c) liquidate the remaining rail assets along the Trail Path;

WHEREAS, Owners, acting by and through the HHPA, and Trail Sponsor now desire to memorialize a trails-use agreement consistent with the Trails Act & Rail Policy ("Interim Trails Use Agreement"); and

WHEREAS, pursuant to Ind. Code § 36-10-3 the Noblesville Department of Parks and Recreation exercises the parks and recreation functions of Noblesville, including in the maintenance and operation of recreational trail property.

Now therefore, in consideration of the mutual covenants and other good and valuable consideration contained herein, Owners and Trail Sponsor hereby agree as follows:

**ARTICLE I. RECITALS**

The representations, covenants and recitations set forth in the foregoing recitals are material to this License and are hereby incorporated into and made a part of this License as though they were fully set forth in this Article I.

**ARTICLE II. TRAILS USE**

In consideration of and as a material inducement for Trail Sponsor fulfilling its obligations contained herein, HHPA hereby grants to Trail Sponsor the right to construct upon, use, operate, and maintain the Premises as a multi-use, pedestrian, recreational and transportation trail, and uses and functions attendant and related thereto (the "Permitted Use"), subject to the

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restrictions included herein. Trail Sponsor may design, construct and use the Premises, at its sole discretion, cost, and expense, for the Permitted Use consistent with the Laws and for no other purpose. For purposes of this License, the “Laws” shall be defined as all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation applicable zoning laws and the Trails Act, including regulations promulgated thereunder, and the STB’s Decision and NITU or Abandonment, STB Docket No. AB-290 (Sub-No. 117X).

ARTICLE III. LICENSED PREMISES

The premises subject to this License is approximately that portion of the Real Estate consisting of approximately (2.9) two point nine miles of railroad right-of-way of varying width from south of its Division Street Crossing in Noblesville, Hamilton County, Indiana to immediately south of the Real Estate’s crossing of E. 146th Street in Noblesville (approximately milepost I-19), Hamilton County, Indiana, and includes all bridges, tunnels, culverts and other appurtenances associated therewith, which premises is depicted in Exhibit A, attached hereto and incorporated herein (“Premises”).

ARTICLE IV. OWNERS’ RESERVED RIGHTS

HHPA, for itself and the Owners, reserves all rights to (A) manage, amend, cancel or otherwise alter, and retain any proceeds of, any and all existing easements, leases, licenses or other agreements for the installation, operation, use or maintenance of utility facilities, and their support structures on, over or under the Premises, including, but not limited to fiber optic cables, communications or information transmission systems, or utility pipelines, wire lines or other service facilities (collectively, the "Facilities"); (B) current and future mineral rights in and about the Premises, including but, not limited to oil, coal, gas, and any other ore or minerals on, in, and under the Premises and the right to extract the same; and (C) enter the Premises at such times as will not unreasonably interfere with Trail Sponsor’s use of the Premises or as needed in emergency situations. Moreover, Trail Sponsor specifically acknowledges and agrees that Owners and HHPA will scrap and remove the rail infrastructure and that such removal shall exclusively inure to the benefit of the Owners.

All new easements or encroachments along the Premises will be permitted and processed, through the Trail Sponsor whose municipal boundaries include the proposed easement or encroachment. Notwithstanding the foregoing, prior to permitting or processing a new easement or encroachment along the Premises, Trail Sponsor shall receive the Owners’ approval, whose approval shall not be unreasonably withheld or delayed, and shall be based solely upon compliance with the Trails Act, the STB’s Interim Trails Use Regulations, and License. Any fee collected by Trail Sponsor pursuant to this Article IV that exceeds the local jurisdiction’s cost of administering the permit/processing shall be remitted to the HHPA.

Any right exercised by Owners or HHPA under this Article IV shall not unduly interfere with or impede Trail Sponsor’s Permitted Use of the Premises. For purposes of this License “unduly interfere” shall mean an interference that causes Trail Sponsor to incur costs or that limits use of the Premises or a portion thereof for more than three (3) consecutive days or more

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than fifteen (15) days within any one hundred eighty (180) day period, without first obtaining Trail Sponsor’s prior written approval. Moreover, prior to issuing a new easement or allowing any new Facilities to be placed in an existing easement at and about the Premises, Owners shall cause the HHPA to seek the written approval of Trail Sponsor, which approval shall not be unreasonably withheld or delayed.

Notwithstanding the foregoing or anything herein contained to the contrary, this Article shall not be construed to prevent Trail Sponsor from soliciting and accepting donations or otherwise raising funds to support the Permitted Use in accordance with this License.

ARTICLE V. TERM

Subject to Early Termination, as defined in Article XV herein, this License shall remain in full force and effect for twenty-five (25) years from the Effective Date (the “Initial Term”) and shall automatically renew for one (1) additional twenty-five (25) year term (the “Renewal Term”). For purposes of this License, the Initial Term and the Renewal Term shall be jointly defined as the “Term”.

ARTICLE VI. RENT & OTHER ASSESSMENTS

Section 6.01. Rent. Annually, by or before January 1[1st] of each year of the Term, Trail Sponsor shall pay to HHPA Three and no/100 Dollars ($3.00) for use of the Premises for the Permitted Use pursuant to this License, subject to annual appropriation of Trail Sponsor’s fiscal body.

Section 6.02. Taxes. Trail Sponsor shall pay all real estate and personal property taxes, special assessments and other charges assessed against and due on the Premises (except income taxes related to revenue received by Owners or HHPA pursuant to its reservation of rights set forth in Article IV above).

ARTICLE VII. SURVEY
[intentionally omitted]

ARTICLE VIII. REACTIVATION OF RAIL SERVICE

At all times herein, this License shall be subject to reactivation of rail service pursuant to the Trails Act and the STB Decision as further described below:

Section 8.01. Owners’ Reactivation. The Owners retain the right to reactivate railroad service over all or part of the Premises, which right may be exercised, in whole or in part, in the Owners’ sole discretion and upon unanimous consent of the Owners. Trail Sponsor expressly acknowledges that its use of the Premises is subject to the future reactivation of rail service on and over all or a part of the Premises by the Owners or as otherwise set forth below.

Section 8.02. In the event: (1) the STB, or any other entity of the United States government or by order of any court, compels the Owners to reactivate rail service on the
Premises, or a portion thereof, or (2) the Owners, their successor or assigns, voluntarily takes steps to reactivate rail service by seeking to vacate the NITU issued in the STB Decision, and the STB approves the same; or (3) a party other than the Owners, their successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB approves the same, the HHPA shall inform Trail Sponsor as soon as the HHPA becomes aware of any such intention to reactivate and further provide at least sixty (60) days (or longer if such notice can reasonably be provided depending on the transaction contemplated) advance notice of the date on which this License shall terminate.

Section 8.03. In the event of reactivation of rail service, Trail Sponsor and HHPA shall negotiate in good faith and mutually determine the procedure for and cost allocation associated with removing any improvements made by Trail Sponsor to the Premises.

ARTICLE IX. SALVAGE WORK

Trail Sponsor acknowledges and agrees that after the Effective Date and pursuant to a certain salvage contract, the HHPA will remove certain rail assets along the Premises ("Salvage Work"). Neither the HHPA nor the Owners shall have an obligation to maintain the Salvage Work, and Trail Sponsor hereby releases, and agrees to and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents – with the exception of the contractor performing the Salvage Work – from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities relating in any way to the Salvage Work. Trail Sponsor further acknowledges that the Salvage Work will likely not include removal of rail assets from within road and highway crossings, and that Trail Sponsor will become responsible for maintaining and/or removing such rail assets from crossings consistent with Article XII herein. After completion of the Salvage Work, Trail Sponsor shall accept the Premises "AS-IS, WHERE-IS" without any express or implied warranties, as further specified in Article X, herein.

ARTICLE X. CONDITION OF PREMISES

The Premises licensed hereunder is licensed "AS IS, WHERE IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Nothing in this License shall act as or be deemed to act as a warranty, guaranty or representation of the quality or quantity of Owners’ or HHPA’s title in and to any particular portion of the Premises occupied, used or enjoyed by Trail Sponsor. The rights granted to Trail Sponsor do not extend beyond and shall be strictly limited by such right, title or interest of Owners or HHPA in the Premises. It is expressly understood that the Owners and HHPA do not warrant title to any portion of the Premises, and Trail Sponsor hereby accepts the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights or interests in and to the Premises, and all leases, licenses and easements or other interests previously granted to or reserved by others therein.
Trail Sponsor agrees that this License does not convey or confer a property right in the Premises, including, without limitation, a leasehold interest, and it shall not have and hereby completely and absolutely, waives its right to any claim against the Owners and HHPA for damages or any other legal or equitable relief on account of any deficiencies in title to the Premises.

**ARTICLE XI. PRESERVATION OF PREMISES - ENVIRONMENTAL INDEMNITY**

Trail Sponsor shall not create or cause or knowingly permit, as applicable: (a) any nuisance to exist in or about the Premises that materially and adversely affects the Owners’ or HHPA’s right, title and reserved use of the Premises; or (b) any unsightly condition or any noxious or objectionable dust, gases, odors, or noises to exist on, or to emanate from, the Premises that materially and adversely affects the operation or lawful intended use of the Premises. Further, Trail Sponsor shall not cause the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Premises, or the transportation to or from the Premises of any Hazardous Substances, except as necessary and appropriate to fulfill the purposes of this License, in which case such use, generation, release, manufacture, refining, production, processing, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws. Trail Sponsor shall immediately (y) notify Owners and HHPA of (i) any known violation by it of any Environmental Laws on, under or about the Premises, or (ii) the known presence or suspected presence of any Hazardous Substances on, under or about the Premises, and (z) deliver to the Owners and HHPA a copy of any notice received by it relating to (y)(i) and (y)(ii) above received from any source. Trail Sponsor shall indemnify the Owners and HHPA from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs incurred by Owners and/or HHPA in connection with any breach by Trail Sponsor of its obligations under this Section. Subject to strict compliance with the Environmental Laws, nothing herein is intended to prohibit Trail Sponsor from improving the Premises as a recreational trail.

For purposes of this License, “Environmental Laws” shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or governmental entity having jurisdiction over the Premises; and “Hazardous Substance” shall mean those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste” or “infectious waste” under Environmental Laws and petroleum products.

**ARTICLE XII. TRAIL CROSSINGS**

Trail Sponsor shall assume full responsibility for the management, maintenance, and operation of any and all road and highway grade crossings (public or private) on the Premises, including the installation and maintenance of crossing warning devices and signage, which devices shall be installed and maintained in compliance with the Laws. Trail Sponsor may install or cause to be installed a new trail-roadway crossing on, under, or over the Premises and

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be solely responsible for any risks, costs, and expenses incurred (including attorneys' fees) in any hearings, proceedings or other actions regarding the construction of such crossing. In the event Trail Sponsor desires to remove any public trail-roadway crossing, Trail Sponsor shall be responsible for all costs incurred by Owners and HHPA in petitioning or otherwise working with the applicable road authority for such removal.

HHPA assigns to Trail Sponsor, and Trail Sponsor hereby assumes all duties and obligations of the Owners and HHPA with respect to existing (identified at the time of execution or thereafter) or future private crossing agreements on and over the Premises. Trail Sponsor may remove any private crossings where such removal is not prohibited by contract or by law.

Trail Sponsor shall be responsible for any legal proceedings against a third party in which that party is responsible for damage to a road or highway crossing (public or private) on the Premises.

ARTICLE XIII. LIABILITY

In consideration and as a material inducement for HHPA entering into this License, Trail Sponsor assumes all financial, managerial, operational and legal responsibility, control and risk of loss associated with its use of the Premises, including, without limitation, responsibility for compliance with the Laws; except that Owner and HHPA shall remain responsible for those uses of the Premises specifically reserved to the Owners and HHPA in Article IV. The provisions of this Article XIII shall survive the expiration or termination of this License.

Section 13.01 Owners’ Indemnity. Trail Sponsor hereby releases, and agrees to indemnify, and hold harmless, the Owners, the HHPA, and their respective principals, officers, directors, employees, contractors and agents (collectively referred to in this section as "Indemnified Parties"), from and against any and all claims and/or liability (in law or in equity), and all costs (including attorneys' fees), damages, fines or other expenses related to such claims and liabilities ("Losses") relating in any way to Trail Sponsor's use of, presence on, maintenance, and operation of the Premises, including, but not limited to Losses for: (i) injury to or death of persons or damage to property arising from, out of or related to the use of, operation, or maintenance the Premises by Trail Sponsor, (ii) any obligations incurred by Trail Sponsor in financing or developing a recreational trail, or (iii) any taxes or assessments that are levied or assessed against the Premises. Trail Sponsor shall notify Indemnified Parties of any claim or lawsuit made against it relating to this License. At Trail Sponsor's request, Indemnified Parties will provide advice and consultation to Trail Sponsor to assist in the defense and/or settlement of any such claim. Trail Sponsor shall assure that the Indemnified Parties are a party to any release agreement Trail Sponsor secures with any claimant.

Section 13.02 Trail Sponsor's Indemnity. Owners and HHPA, on behalf of themselves and their respective principals, officers, directors, employees, contractors and agents, shall release indemnify, and hold harmless Trail Sponsor and its officers, directors, employees, contractors and agents, from and against any and all claims and/or legal liability (at law or in equity), and costs (including attorneys' fees), fines or other expenses arising from the use of the Premises for matters reserved by HHPA and Owners in Article IV hereof. Trail Sponsor shall promptly
notify Owners and HHPA in writing of any notification received by Trail Sponsor alleging any violation of any Laws relating to this License.

ARTICLE XIV. INSURANCE

Trail Sponsor shall, at its sole cost and expense, procure and maintain at all times during the Term the policies of insurance described on Exhibit B. Each such policy shall: (a) be written by a company reasonably acceptable to HHPA; and (b) provide that it shall not be modified or canceled without written notice to HHPA at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Trail Sponsor shall name Owners and HHPA as additional insureds. Trail Sponsor shall deliver to HHPA certificates of the insurance policies required by this Section. Trail Sponsor may self-insure any portion of the required coverages if (i) Trail Sponsor provides HHPA with evidence of sufficient coverage to the HHPA’s reasonable satisfaction, and (ii) Trail Sponsor obtains the HHPA’s prior written consent.

ARTICLE XV. EARLY TERMINATION

Section 15.01. Termination by HHPA. Subject to the Cure Period, if applicable, this License may be terminated by HHPA prior to conclusion of the Term as follows:

a. Upon ninety (90) days written notice of Trail Sponsor’s failure to maintain the Premises consistent with the terms of this License and generally acceptable standards for multi-use, pedestrian trails in the State of Indiana;

b. Immediately, for failure to: (1) maintain required insurance, or (2) assignment in violation of this License;

c. Upon ten (10) days written notice of Trail Sponsor’s abandonment of the Premises for a period of more than one hundred eighty (180) consecutive days without prior, written approval of the Owners;

d. Upon ninety (90) days written notice for Trail Sponsor’s failure to comply with all other provisions of this License; and

e. As set forth in Article VIII, for reactivation of rail service.

(In any instance, the “Early Termination”). The Cure Period shall not apply to Subsections 15.01(b), (c) or (e) above.

For purposes of this License, “Cure Period” shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this License to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default.

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Section 15.02. Rights and Remedies. Upon early termination as a result of Trail Sponsor’s default under this License, HHPA (or the collective Owners) may seek all remedies available to it in law and equity, including attorneys’ fees and costs related thereto, take possession of the Premises and take whatever reasonable steps are necessary to terminate Trail Sponsor’s use of the Premises, including, without limitation requiring Trail Sponsor to remove all improvements made to the Premises and restore the Premises and other affected property of Owners and HHPA to substantially the same functional or operational condition existing immediately prior to Trail Sponsor’s construction of such improvements or as otherwise agreed by HHPA and Owners. If, following written request of the Owners and HHPA, Trail Sponsor fails to remove its improvements and restore the Premises and other affected property as provided in the preceding sentence, Trail Sponsor shall be deemed to have abandoned its property in place, in which event such improvements shall become the exclusive property of Owners and HHPA, for purposes of resale, use or operation by Owners and HHPA, in any manner and for any purpose Owners and HHPA deem appropriate, in its sole discretion. HHPA (or the collective Owners) shall also have the right to remove such property and restore the Premises, and all costs incurred by Owners and HHPA in such removal and restoration shall be immediately due and payable by Trail Sponsor to Owners and HHPA upon written demand (the “Self-Help Cost”). This obligation of Trail Sponsor shall survive the termination of this License.

ARTICLE XVI. MAINTENANCE, REPAIR, OR IMPROVEMENT

Trail Sponsor shall be exclusively responsible for maintaining, operating repairing, improving and using the Premises for the Permitted Use, including, without limitation, clearing or removing trees, shrubs, plants, ice, snow or debris from the Premises, providing necessary personnel at and about the Premises, ensuring that the Premises are used and operated in a safe condition and otherwise keeping at all times during the Term the Premises in good condition and repair, all of which shall be completed at Trail Sponsor’s sole risk, cost and expense.

ARTICLE XVII. LIENS, RELEASE AND SELF-HELP

Trail Sponsor shall not permit any mortgage, pledge, security interest, lien or encumbrance, including, without limitation, tax liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, operation, repair, maintenance, replacement or removal of any improvements related to the Permitted Use (collectively, "Liens or Encumbrances"), to be established or remain against the Premises or any other property of the Owners. In the event that any portion of Owners’ and/or HHPA’s property becomes subject to any Lien or Encumbrance, Trail Sponsor agrees to pay, discharge, remove, or bond over the same within thirty (30) days of Trail Sponsor’s receipt of notice that such Lien or Encumbrance has been recorded, filed or docketed against such Owners’ and/or HHPA’s property; provided, however, that if Trail Sponsor provides a bond or other security acceptable to Owners and HHPA for the payment and removal of such Lien or Encumbrance, Trail Sponsor shall have the right to challenge, at its sole expense, the validity and/or enforceability of any such Lien or Encumbrance.

If Trail Sponsor fails to comply with the preceding paragraph, Owners and HHPA are hereby authorized, but not obligated, to advance and pay such amount as Owners and HHPA
shall, in their absolute subjective discretion, determine to be necessary to procure release of such Mechanics’ Lien or take such other action that shall otherwise be necessary for the protection of Owners and HHPA and the Premises.

ARTICLE XVIII. GENERAL CONDITIONS

Section 18.01 Interest. Trail Sponsor agrees that any monies advanced by Owners or HHPA pursuant to this License or by Owners’ or HHPA’s exercise of any right hereunder given shall be repaid by Trail Sponsor to Owners or HHPA, with interest thereon at four percent (4%) above the then prevailing prime rate which interest shall continue to accrue until the amount owed and interest are paid in full.

Section 18.02 Notice. Any notice required or permitted to be given by any party to this License shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Trail Sponsor at 701 Cicero Road, Noblesville, Indiana 46060, with a copy to: City of Noblesville, 16 S. 10th, Noblesville, Indiana 46060, Attn: Mayor, and with a copy to: Noblesville City Attorney, 16 S. 10th, Noblesville, Indiana 46060; and to HHPA at Executive Director, 33 N 9th Street, Suite 215 Noblesville, IN 46060. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 18.03 Authority. Each undersigned person executing this License on behalf of the HHPA and the Trail Sponsor represents and certifies that: (i) he or she has been empowered and authorized by all necessary action of the HHPA and the Trail Sponsor, to execute and deliver this License; and (ii) the execution, delivery, and performance of this License duly have been authorized by Trail Sponsor and HHPA, respectively.

Section 18.04. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this License as a result of Force Majeure, then: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 18.05. Merger. All prior agreements, understandings, and commitments among the parties hereto and relating to the License of the Leased Premises are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 18.06. Indiana Tort Claims/Indemnification. Notwithstanding anything to the contrary contained herein, HHPA and Trail Sponsor hereby acknowledge that the other party’s financial exposure for certain claims is limited by the Indiana Tort Claims Act, and HHPA’s and Trail Sponsor’s obligation to indemnify and save the other party, its officers, directors, agents and employees harmless from and against any and all claims, damages, demands, penalties,
costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the
trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 18.07. Assignment. Trail Sponsor may only assign this License with written approval
from HHPA and approval of STB.

Section 18.08. Miscellaneous. This License shall inure to the benefit of, and be binding upon,
Trail Sponsor, HHPA, and Owners, and their respective successors and assigns. Except for the
Owners, which are the sole third party beneficiaries of this License, nothing herein is intended to
give, nor shall it have the effect of giving, any enforceable rights to third parties who are not
parties hereto (solely Trail Sponsor, HHPA, and Owners), whether such claims are asserted as
third party beneficiary rights or otherwise. This License may be signed in one or more
counterparts, each of which shall constitute one and the same instrument. This License shall be
governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings
arising in connection with this License shall be tried and litigated only in the state courts in
Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County,
Indiana. The parties waive, to the extent permitted under applicable law: (i) the right to a trial by
jury; and (ii) any right of a party may have to: (A) assert the doctrine of "forum non conveniens";
or (B) object to venue. This License may be modified only by a written agreement signed by
HHPA and Trail Sponsor. The invalidity, illegality, or unenforceability of any one or more of
the terms and conditions of this License shall not affect the validity, legality, or enforceability
of the remaining terms and conditions hereof. All Exhibits to this License are attached hereto and
incorporated herein by reference. Time is of the essence in this License. If any provision of this
License or application to any party or circumstances shall be determined by any court of
competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this
License or the application of such provision to such person or circumstances, other than those as
to which it is so determined invalid or unenforceable, shall not be affected thereby, and each
provision hereof shall be valid and shall be enforced to the fullest extent permitted by law;
provided that, in lieu of such invalid or unenforceable provision, there will be added to this
License a provision as similar to the invalid or unenforceable provision as is possible to reflect
the intent of the parties and still be valid and enforceable. The captions in this License are
inserted only as a matter of convenience and for reference and in no way define, limit, or
describe the scope of this License or the scope or content of any of its provisions. Nothing
contained in this License shall be construed to create a partnership or joint venture between or
among HHPA, Owners, or Trail Sponsor or their successors in interest. Unless otherwise
specified, in computing any period of time described herein, the day of the act or event after
which the designated period of time begins to run is not to be included and the last day of the
period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday
for national banks in Hamilton County, Indiana, in which event the period shall run until the end
of the next day which is neither a Saturday, Sunday, or legal holiday.

[SIGNATURE ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto represent and warrant that each has the necessary authority to enter into this License and bind the respective parties to the terms and conditions hereof and have executed this License as of the dates set forth below.

TRAIL SPONSOR
CITY OF NOBLESVILLE DEPARTMENT
OF PARKS AND RECREATION

Brandon Bennett, Director

With Approval of:
CITY OF NOBLESVILLE BOARD OF
PUBLIC WORKS AND SAFETY

John Ditslear, Mayor

STATE OF INDIANA )
) SS:
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brandon Bennett, personally known to me to be the Director of the City of Noblesville Department of Parks and Recreation, and John Ditslear, personally known to me to be the Mayor of the City of Noblesville, and acknowledged the execution of the foregoing License for and on behalf of said entities.

WITNESS my hand and notarial seal this ___ day of ______________, 2019.

________________________________________
Written Signature

________________________________________
Printed Signature

NOTARY PUBLIC
HHPA
HOOSIER HERITAGE PORT AUTHORITY

By: ____________________________
   David George, President

STATE OF INDIANA   )
   ) SS:
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David George, personally known to me to be the President of the Hoosier Heritage Port Authority, and acknowledged the execution of the foregoing License for and on behalf of said City.

WITNESS my hand and notarial seal this _____ day of ______________ , 2019.

______________________________
Written Signature

______________________________
Printed Signature

NOTARY PUBLIC