

[PEORIA DRAFT DATED April 12, 2022]

**RAIL LINE LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF PEORIA, ILLINOIS**

**AND**

**PIONEER INDUSTRIAL RAILWAY CO.**

## RAIL LINE LEASE AGREEMENT

THIS RAIL LINE LEASE AGREEMENT, (hereinafter referred to as “Lease Agreement” or “Agreement”), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF PEORIA, ILLINOIS (“Lessor”) and PIONEER INDUSTRIAL RAILWAY CO., an Iowa corporation (“Lessee”).

### RECITALS

WHEREAS, Lessor and Lessee, along with the now dissolved Central Illinois Railroad Company (“CIRY”), were parties to that certain Rail Operating and Trackage Rights Agreement entered into in 2009 (hereinafter “ROTRA”) for portions of the line owned by Lessor and all being in Peoria County, Illinois; and

WHEREAS, Lessor and Lessee agree that the ROTRA has been terminated and is to be replaced and superseded in its entirety with this Lease Agreement to remove the CIRY and terms therefrom that are no longer applicable, and to further modify and update its terms; and

WHEREAS, Lessor desires that a common carrier railroad maintain and provide service on the North Line and Western Connection (“Leased Premises”), as defined below and as depicted in **Exhibit A**; and

WHEREAS; Lessee desires the right to operate as a common carrier railroad on the North Line and Western Connection and in exchange for use of the Leased Premises is willing to perform maintenance on the line and provide common carrier service, and engaged in actions and obligations in accordance with the terms of this Lease Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the adequacy of which being hereby acknowledged, the parties hereby agree that the 2009 Trackage Rights Agreement has been terminated, and replaced in its entirety by this Lease Agreement as follows:

#### SECTION I – LEASED PREMISES/PERMITTED USES

SECTION 1.01 – Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor, upon the terms and conditions set forth below, the Leased Premises as referenced in the Recitals above and as more particularly described in Sections 1.02 and 1.03 of this Lease Agreement, for the Permitted Uses as set forth in Section 1.05 of this Agreement.

SECTION 1.02 – The Leased Premises include both the North Line and the Western Connection, as defined below, and as indicated on **Exhibit A**.

- (a) “North Line” shall mean the Kellar Branch trackage between milepost 8.50 north to the end of the Kellar Branch at milepost 10.0. The North Line does not include the portion of railroad right-of-way which is currently being used as a recreational trail, said portion being North of Pioneer Parkway.

(b) “Western Connection” shall include the portion of the line between the Kellar Branch and the interchange with Union Pacific Railroad (“UP”) at a point known as Pioneer Junction. The Western Connection runs between milepost 71.5 to the end of the track a short distance west of University Avenue, and includes approximately 1,800 feet of connecting track that links the Western Connection to the North Line.

SECTION 1.03 – The Leased Premises shall include, without limitation, right-of-way, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings, crossing warning devices, and any and all improvements or fixtures affixed to the right-of-way as indicated on **Exhibit A**, but excluding any and all (a) communications equipment and related facility structures, and (b) items of personal property not owned by Lessor or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials, and supplies.

SECTION 1.04 – Lessee shall lease the Leased Premises in an “AS IS, WHERE IS” condition, subject to all faults and infirmities and the environmental condition of the Leased Premises, whether now or hereafter existing, and without any express or implied warranties, including but not limited to any warranties of merchantability, fitness for particular purpose or volume or quality of traffic on the Leased Premises, subject, however, to all existing interests, including but not limited to all reservations, rights-of-way, easements, and other encumbrances, of record or otherwise. Lessee shall assume the maintenance of the Leased Premises pursuant to the terms hereinafter set forth.

SECTION 1.05 – Lessee shall use the Leased Premises exclusively for freight railroad operating and maintenance activities pursuant to the terms hereinafter set forth and for no other purposes (“collectively, the “Permitted Uses”).

SECTION 1.06 – Lessee shall not store transload, or dispose any Hazardous Materials on the Leased Premises, without written consent from Lessor, provided however, that nothing herein shall preclude Lessee from using the Leased Premises for the movement, pick-up and delivery of Hazardous Materials in railcars in the normal course of providing rail transportation service to or from rail customers located on the Leased Premises. For purposes of this Agreement, Hazardous Materials shall include but shall not be limited to any substance, material, or waste that is regulated by any federal or state law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as “hazardous chemicals,” “hazardous substances,” “hazardous materials,” “toxic substances,” or “hazardous wastes.”

## **SECTION II – LEASE TERM**

SECTION 2.01 – Unless this Lease Agreement is terminated earlier in accordance with Section 16, this Lease will be in force for a maximum Lease Term (the “Initial Term”) beginning

on the Commencement Date, as hereinafter defined, and ending on May 1, 2032 at 11:59 p.m. CST (the “Termination Date”) or such date as otherwise agreed to by the parties hereto in writing. The “Commencement Date” shall be the later of: (a) May 1, 2022 or (b) when the Conditions Precedent (defined below) have been satisfied, or such other date as mutually agreed upon by the parties. The Initial Term (and any applicable Renewal Term, as defined below) will automatically be extended by up to two additional terms of five (5) years each (each a “Renewal Term”) unless either party hereto provides the other party written notice of its intent to not renew the Agreement at least 180 days prior to the end of the then Lease Term or Renewal Term, as applicable. The Initial Term, together with any applicable Renewal Term(s), will be collectively referred to in this Agreement as the “Lease Term” or “Term.” For purposes of this Section 2, “Conditions Precedent” shall mean the full granting, satisfaction, and/or completion of the discontinuation of service, termination of trackage rights, and acquisition of common service over the Leased Premises described under Sections 9.03(b), 9.03(c) and 9.03(d) of this Agreement. The parties agree to meet in good faith and work to promptly resolve and cure any delays or issues arising with respect to the fulfillment of the Conditions Precedent.

### **SECTION III – RAIL SERVICE**

SECTION 3.01 – Beginning on the Commencement Date and throughout the Lease Term, Lessee shall be entitled to full and exclusive use of the Leased Premises for operation of rail freight service, including the right to access and interchange traffic directly with all present and future railroads; provided however, that Lessor expressly reserves the right to concurrently construct on, use, and operate the Leased Premises for passenger rail service, including but not limited to intercity high-speed rail service, in a manner that does not unreasonably interfere with Lessee’s rail freight service operations and provided any and all expense associated with passenger rail service shall not be Lessee’s responsibility. During the Lease Term, except as otherwise provided for in this Lease Agreement, Lessor shall neither operate freight trains over the Leased Premises, except to the extent required under law, nor shall Lessor grant such right to any third party. Lessor further warrants that as of the date of this Agreement, there is no other existing freight rail carrier to which Lessor has granted rights to use the Leased Premises, and Lessor shall not grant such right(s) to any third party during the Lease Term absent the prior written consent of Lessee in the absence of any material breach or Event of Default in accordance with the terms of this Agreement. Lessee shall not use the Leased Premises for any purpose other than for rail freight service subject to the jurisdiction of the Surface Transportation Board (“the STB”), as applicable. During the Lease Term, at its sole cost and expense, Lessee may use the Leased Premises for limited railcar storage, to the extent that such use does not interfere with its common carrier railroad service obligations, for a period of up to thirty (30) days for each stored railcar (“Initial 30-Day Storage Period”). Lessee shall provide Lessor with written notice each time a railcar is initially stored on the Leased Premises. The Initial 30-Day Storage Period may be extended for additional thirty (30) day periods (each an “Additional 30-Day Storage Period”), upon (i) obtaining Lessor’s prior written consent for each Additional 30-Day Storage Period, and (ii) giving Lessor at least five business days’ notice of the date on which Lessee seeks to extend the then existing 30-Day Storage Period. During the Lease Term, Lessee shall not use the Leased Premises for loaded railcar storage, unless (1) such loaded railcar storage is incidental to movement for a railroad customer using the Leased Premises to ship freight via railcar (“Rail User”) served by Lessee, and (2) Lessee has obtained the prior written consent of Lessor, with such use subject to the above-referenced terms. The railcar storage rights provided in this section are limited to non-hazardous materials. In no case shall Lessee

store on the Leased Premises any railcars containing oil, Hazardous Materials, or hazardous substances, as defined by Environmental Laws (as defined below) without Lessor's prior written consent. Lessor reserves the right to revoke and terminate the continued use of the Leased Premises for the limited railcar storage rights provided in this section upon thirty (30) days written notice to Lessor should the City determine that such action is necessary to address public safety, or is otherwise in the public interest.

SECTION 3.02 – During the Lease Term, Lessee shall at all times comply with its common carrier service obligations as required at law. Lessee will not suspend or discontinue its operation by rail over all or any part of the Leased Premises without first applying for and obtaining from the STB, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; provided, however, that Lessee shall not seek such regulatory authority, or if no regulatory authority is required, take any action to suspend or discontinue its operations on the Leased Premises, without first (i) obtaining Lessor's prior written consent for such suspension or discontinuance of service, and (ii) giving Lessor at least one hundred and eighty (180) days' notice of the date in which Lessee seeks to suspend or discontinue service over the Leased Premises.

#### **SECTION IV – REVENUE AND FEES**

SECTION 4.01 – When traffic on the line exceeds an average of 150 cars per week and continuing on each anniversary thereof during the Term, Lessee shall pay to Lessor in advance an annual rental payment of fifty thousand Dollars (\$50,000.00) (“Base Rent”) for the lease of the Leased Premises. Such Base Rent shall be subject to an annual escalation of two percent (2%) on each anniversary date from when traffic exceeded an average of 150 cars per week, so long as the traffic continues to exceed 150 cars per week. If during any year of the Term the traffic does not exceed 150 cars per week on average, Lessee shall not pay an annual rental amount in the next year of the Term should Lessee reasonably validate that its traffic will not exceed 150 cars per week on average during that next year; provided, however, should traffic actually exceed 150 cars per week on average during that next year, Lessee shall pay the annual rental amount within 30 days of the end of that year of the Term. The Base Rent amount shall be subject to revision by Lessor every three years upon thirty (30) days written notice to Lessee prior to the anniversary of the Commencement Date in such applicable year. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease.

SECTION 4.02 – Lessee shall pay all Rent required by this Lease Agreement, to Lessor at City of Peoria, 419 Fulton Street, Peoria, Illinois 61602, Attn: City Manager, or at such other location or to such other individual as may be designated by Lessor in writing. Upon written request by Lessor, Lessee shall make payments electronically via EFT (Electronic Fund Transfer) or ACH (Automated Clearing House).

SECTION 4.03 – Lessee shall pay the Base Rent and all additional amounts (such Base Rent and all additional amounts being sometimes referred to hereinafter collectively as “rent” or “rental”) due pursuant to this Lease Agreement as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Agreement is an independent covenant and no act or circumstance, regardless of

whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Agreement.

SECTION 4.04 – If any Base Rent or any payment under this Lease Agreement or any other payment due by Lessee hereunder is not paid within thirty (30) days after the date the same is due, Lessor may assess Lessee a late fee (“Late Fee”) in an amount equal to two percent (2%) of the amount which was not paid when due to compensate Lessor for Lessor’s administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to twelve percent (12%), or the maximum rate permitted by law, whichever is less.

SECTION 4.05 – If Lessee fails to surrender the Leased Premises to Lessor upon the expiration or termination of this Lease Agreement, and Lessor does not consent in writing to Lessee’s holding over, then such holding over will be deemed a month-to-month tenancy. Lessee’s holdover will be subject to all provisions of this Agreement, provided that Lessee shall pay to Lessor in advance a total monthly rental of One Hundred Fifty Percent (150%) of one-twelfth (1/12th) of the prior invoiced annual rental charge during such holdover period. In no event shall such holding over renew or extend the Lease Term except as provided for in this Section 4.

SECTION 4.06 – Except for the obligation to pay the amounts set forth in Section 4.01 above, Lessee shall be entitled to retain all revenues received by it as part of its rail freight operations over and upon the Leased Premises, including, but not be limited to freight divisions, tariffs, switching charges, storage revenue, and railcar repair fees. If Lessee desires to install any new track connections or expansions in connection with such new service, Lessee shall first submit in writing to Lessor the plans and specifications for such construction, and secure written approval from Lessor before construction is undertaken by Lessee.

## **SECTION V – MAINTENANCE**

### **SECTION 5.01 – LESSEE’S MAINTENANCE OBLIGATIONS**

- (a) During the term hereof, Lessee shall maintain (or cause to be maintained) and repair (or cause to be repaired) the Leased Premises in a safe and satisfactory condition, and in strict compliance with all applicable Legal Requirements (defined below) and sufficient to continue rail freight service commensurate with the needs of the rail users located thereon at Lessee’s own risk, cost, and expense. For the avoidance of doubt, if there are no rail users located on the Leased Premises, Lessee shall only be responsible for Maintenance as defined herein. Maintenance, for purposes of this Lease, means: (a) providing proper drainage on the Leased Premises; (b) keeping the Leased Premises free and clear vegetation, structures, and other obstacles; and (c) maintaining grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals, if any. The track shall be maintained to the existing track condition on the Commencement Date, unless there is a rail user, in which case the track conditions shall be maintained commensurate with the needs of the rail user and consistent with all Federal Railroad Administration and Legal Requirements.

- (b) Lessee shall be responsible for obtaining, without expense to Lessor, all necessary public rights and permissions, including without limitation applicable licenses and permits, for the operation and maintenance of the Leased Premises, and shall at all times comply with the requirements of each such license and permit. Lessee agrees to comply with all Legal Requirements applicable to Lessee and the Leased Premises, this Lease Agreement, and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Legal Requirements" shall mean all applicable federal, state, or local laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the track, all other parts of the Leased Premises, this Agreement, and/or Lessee's obligations under this Agreement, and shall include all Environmental Laws (as defined below). Lessee shall protect the Leased Premises against all encroachments or unauthorized uses, to the extent reasonably practicable.
- (c) Lessor shall have the right to inspect the Leased Premises at all reasonable times.
- (d) Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided.
- (e) Without the prior written consent of Lessor, Lessee will not replace existing track and other track materials ("OTM") on the Leased Premises with substitute or replacement track or OTM having a lighter weight, of lesser quality, or having a lower fair market value. Such requirement shall also apply to all other facilities leased hereunder. Any repair or replacement of welded rail shall also be welded. Lessee may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, without the prior written consent of the Lessor, provided that the work being performed by the Lessee and the materials being provided by the Lessee are sufficient to maintain the trackage to the standards set forth in this Section 5.01.
- (f) Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used purchased, contracted for, or employed by Lessee during the term of this Lease Agreement in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens, or demands whatsoever.
- (g) Lessee may, also at its own expense, seek to make from time to time additions, modifications or improvements to the Leased Premises it may deem desirable for its business purposes that do not adversely affect the structural integrity of the track located on the Leased Premises or substantially reduce its value; provided that all such additions, modifications and improvements to the track shall be located wholly within the boundary lines of the Leased Premises., provided, however, that Lessee shall first submit in writing to Lessor the plans and specification for such

improvements, and secure written approval from Lessor before construction is undertaken by Lessee. If Lessee makes such improvements, any Lessee shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any improvements to be a source of danger or environmental harm to the Leased Premises, or interfere with the safe operations of the track or Leased Premises. Lessee shall also be solely responsible for assuring the safe and satisfactory condition of all of the equipment and personal property on the Leased Premises and shall not allow any equipment or property to be a source of danger to the safe operation of the track. All such additions, modifications, and improvements so made by the Lessee shall become a part of the Leased Premises to be owned by Lessor and shall not be removed by Lessee; provided, that any real or personal property installed by the Lessee as part of the Leased Premises without expense to the Lessor, which is not essential to the operation of the Leased Premises, may be removed by the Lessee at any time and from time to time while it is not in default under this Agreement; and provided further, that any damage to the Leased Premises occasioned by such removal shall be repaired by the Lessee at its own expense.

**SECTION 5.02 – LESSOR’S MAINTENANCE OBLIGATIONS.** During the term hereof, Lessor shall maintain (or cause to be maintained) and repair (or cause to be repaired) all grade crossing surfaces. Except for grade crossing surfaces, Lessor shall have no liability or obligation for maintenance of the Leased Premises and no obligation to furnish any materials for the maintenance of the Leased Premises; provided, however, should capital improvements be made on the Leased Premises to accommodate passenger rail service pursuant to section 3.01 of this Agreement, maintenance of such improvements shall be conducted by or on behalf of Lessor, at no cost to Lessee. Lessor shall also not have any liability or obligation to furnish or pay for any water, light, power, or any other services or facilities of whatsoever nature or to make any repairs or alterations of whatsoever nature in or to the Leased Premises, including but not limited to structural repairs, or to maintain the Leased Premises in any manner.

## **SECTION VI – SUBSURFACE RIGHTS AND RESERVED FACILITIES**

**SECTION 6.01 – SUBSURFACE RIGHTS.** This Lease Agreement does not grant, convey or transfer any right to the use of the subsurface of the Leased Premises, except as specifically set forth herein, nor water under any water right owned or claimed by Lessor which may be appurtenant to the Leased Premises. Except as provided herein, all right, title, and interest in and to such water, or to the subsurface, is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessee.

**SECTION 6.02 – RESERVED FACILITIES.** This Lease is made subject to all outstanding rights or interests of others. Lessor reserves the right to operate, maintain, repair, replace, augment, or relocate (provided that said relocation does not unreasonably interfere with Lessee’s use of the Leased Premises for the purposes set forth in Section 3) any Reserved Facilities, as defined below, existing within or adjacent to the Leased Premises. This Lease is subject and subordinate to any right which Lessor or any easement holder, lessee, or licensee of Lessor may have in the Reserved Facilities. Lessee shall not interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto.

“Reserved Facilities” means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles and guys for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.

## **SECTION VII – ACCOUNTING AND REPORTING**

SECTION 7.01 – Lessee agrees to furnish to Lessor such copies of reports pertaining to Lessee and the Leased Premises, including but not limited to inspection reports, prepared in the normal course of Lessee's business as Lessor may reasonably request and Lessee may lawfully furnish.

## **SECTION VIII – DISPUTE RESOLUTION**

SECTION 8.01 – If at any time a question or controversy shall arise between the parties hereto in connection with this Lease Agreement upon which the parties cannot agree, senior representatives of the parties shall meet at least once and will attempt in good faith to resolve the dispute between their respective representatives. If following thirty (30) days after the parties first meet as provided for above, the parties remain unable resolve any claim or controversy, the parties reserve all of their rights at law to address any question or controversy. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Illinois.

## **SECTION IX – REPRESENTATIONS AND WARRANTIES**

SECTION 9.01 – Lessor's duties and warranties are limited to those expressly stated in this Lease Agreement, if any, and shall not include any implied duties or implied warranties, now or in the future. Lessee hereby waives any and all warranties, express or implied, with respect to the track or Leased Premises which may exist by operation of law or in equity, including, without limitation, any warranty of merchantability, habitability, or fitness for a particular purpose.

SECTION 9.02 – Lessor represents and warrants that to its knowledge:

- (a) Lessor has full statutory power and authority to enter into this Lease Agreement and to carry out the obligations of Lessor hereunder.
- (b) Lessor's execution of and performance under this Lease Agreement does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body which would have a materially adverse effect on Lessor's ability to lease the Leased Premises to Lessee under this Agreement.

SECTION 9.03 – Lessee represents and warrants that:

- (a) Lessee is a corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois and is qualified to do business in the State of Illinois.
- (b) As soon as reasonably practicable, Lessee shall (1) seek and obtain discontinuance of any and all existing trackage rights on the Kellar Branch, between milepost

(“MP”) 1.71 and MP 2.78 (“South Line”), and (2) acquire the right to conduct common carrier rail freight service over the Leased Premises from the STB, and obtain all judicial, administrative agency, or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

(c) In addition to terminating its trackage rights as specified in this Section, Lessee agrees that it, along with its parents and affiliates, will not seek to file any Offer of Financial Assistance under 49 U.S.C. § 10904 or 49 C.F.R. § 1152.27, or otherwise seek to acquire the South Line, except with the consent of Lessor. Lessee will support any STB filings by Lessor to terminate common carrier service over the South Line, so that it can be used as private industry track, and served, as necessary, by the Tazewell & Peoria Railroad, or used for other purposes.

(d) Lessee will support any STB filings by Lessor that will result in the formal discontinuation of service, and termination of any and all of CIRY’s operating rights over the Leased Premises.

(e) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Leased Premises for Lessee’s intended uses, and accepts the Premises in its condition as of the Commencement Date on an “AS IS, WHERE IS,” basis, subject to all faults and infirmities and the environmental condition of the Premises, whether now or hereafter existing, and without any express or implied warranties.

(f) Lessee does not intend to, and will not, use the Leased Premises for any purposes other than as set forth in Section 1.

(g) Lessee has full power and authority to enter into this Lease Agreement, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.

## **SECTION X – OBLIGATIONS OF THE PARTIES**

SECTION 10.01 – During the term hereof, Lessee will pay all bills for water, sewer, gas and electric service to the Lease Premises.

SECTION 10.02 – During the term of this Lease Agreement, and subject to the terms and conditions hereof, each party at its sole cost and expense will comply with all applicable federal, state and municipal laws, ordinances, and regulations related to this Agreement.

SECTION 10.03 – During the term of this Lease Agreement, Lessee will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of Hazardous Materials, substances, waste, or other pollutants, including, but not limited to, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. (collectively referred to as the “Environmental Laws”). For purposes of this Lease Agreement, Hazardous Materials shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive

or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as “hazardous chemicals,” “hazardous substances,” “hazardous materials,” “toxic substances,” or “hazardous wastes” in any Environmental Law.

Lessee shall not maintain a treatment, storage, transfer, or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Leased Premises. Lessee shall not release or suffer the release of oil, Hazardous Materials, or hazardous substances, as defined by Environmental Laws on or about the Leased Premises. Lessee recognizes and assumes all responsibility for all present and future environmental obligations imposed under applicable Environmental Laws, regulations or other such requirements relating to contamination of the Leased Premises or groundwater thereunder arising from or caused by Lessee’s operations on the Leased Premises. Lessee at its sole cost and expense will make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial action and cleanup of any contamination of the Leased Premises and groundwater thereunder which may be required under any such laws, rules, regulations, ordinances, or judgments arising from or caused by Lessee’s operations.

SECTION 10.04 – Lessee shall promptly furnish Lessor with written notice of any and all (i) releases of hazardous wastes or substances on, from, or affecting the Leased Premises of which it becomes aware which occur during the term of this Lease Agreement whether or not such releases are required to be reported to any federal, state, or local authority, and (ii) alleged water or air permit condition violations, (iii) any notification alleging any violation of Environmental Laws or any state, federal or local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or Hazardous Material, handling transportation or storage, and (iv) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee’s use of the Leased Premises. To the extent applicable and known, such written notice will identify the substance released, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, and will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation. Lessee shall use the best efforts to promptly respond to any release on, from, or affecting the Leased Premises.

SECTION 10.05 – Lessee shall not permit any liens or encumbrances on the Leased Premises unless such liens or encumbrances are approved in writing by Lessor. Lessee shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any activities done, suffered or permitted to be done by Lessee on the Leased Premises, and shall indemnify, defend and hold harmless Lessor from any such liens.

## **SECTION XI – EMINENT DOMAIN**

SECTION 11.01 – In the event that at any time during the Lease Term the whole, or any part of, the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

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

(b) If such proceeding shall result in the taking of less than all of the Leased Premises and the trackage rights granted herein which does not materially interfere with Lessee's use of the Leased Premises, then this Lease Agreement shall continue for the balance of its term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by the Lessee under the provisions of this Agreement.

(c) Except as otherwise expressly provided in this Section 11, Lessor shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

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

## **SECTION XII – INDEMNIFICATION AND INSURANCE**

**SECTION 12.01 – LESSEE, FOR ITSELF AND ON BEHALF OF ITS EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS, INVITEES, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AFFILIATES, SUCCESSORS, AND ASSIGNS (THE "LESSEE INDEMNITEES"), SHALL ACCEPT RESPONSIBILITY AND LIABILITY FOR AND SHALL INDEMNIFY, DEFEND AND HOLD LESSOR AND ITS RESPECTIVE EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS, OFFICERS, AND DIRECTORS, (THE "LESSOR INDEMNITEES"), HARMLESS TO THE FULLEST EXTENT PROVIDED BY LAW FROM AND AGAINST ANY AND ALL LOSSES, EXPENSES, CLAIMS, DEMANDS, JUDGMENTS, AWARDS, FINES, PENALTIES, OR ANY CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION**

**CLAIMS PURSUANT TO THE FEDERAL EMPLOYERS LIABILITY ACT (COLLECTIVELY, "LIABILITIES") FOR INJURY TO PERSONS, INCLUDING DEATH, OR FOR LOSS OF OR DAMAGE TO PROPERTY, ARISING FROM, OR RELATED TO (IN WHOLE OR IN PART) FROM LESSEE INDEMNITIES' ACTS OR OMISSIONS, ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE, INCLUDING WITHOUT LIMITATION LESSEE'S OCCUPATION AND/OR USE OF THE LEASED PREMISES, OR ANY OF ITS OPERATIONS OR MAINTENANCE WORK PERFORMED ON OR ABOUT THE LEASED PREMISES OR ANY OTHER PROPERTY OF LESSOR. THE LIABILITY ASSUMED BY LESSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LESSOR INDEMNITEE, OR TO LIABILITIES WHOLLY CAUSED BY THE NEGLIGENCE OF ANY LESSOR INDEMNITEE, HOWEVER, THE LIABILITY ASSUMED BY LESSEE WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DEATH, OR INJURY WAS CONTRIBUTED TO BY THE NEGLIGENCE OF ANY LESSOR INDEMNITEE. THE INDEMNIFICATION OBLIGATION ASSUMED BY LESSEE INCLUDES ANY CLAIMS, SUITS, OR JUDGMENTS BROUGHT AGAINST LESSEE UNDER THE FEDERAL EMPLOYEES LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED. THE LIABILITY AND INDEMNIFICATION REQUIRED BY THIS SECTION SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS, TERMS, OR CONDITIONS OF ANY INSURANCE POLICY.**

**SECTION 12.02 – UPON WRITTEN NOTICE FROM LESSOR TO LESSEE, LESSEE AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST LESSOR BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE LESSEE HAS AN OBLIGATION TO ASSUME LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS LESSEE. LESSEE SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.**

**SECTION 12.03 – NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.**

SECTION 12.04 – The provisions of this Section 12 are solely for the benefit of the parties to this Lease Agreement and shall not be construed for the benefit of any third parties. The provisions of this Section shall survive the termination of this Agreement.

SECTION 12.05 – Lessee shall, at its own sole cost and expense, procure, and keep in full force and effect and maintain the following kinds of insurance during the Lease Term, and promptly pay when due all premiums for that insurance:

Comprehensive Railroad Liability insurance (or its equivalent) insuring Lessee against any and all damages, costs, and expenses resulting from or arising in connection with bodily injury, including death to any person and loss, damage, or destruction of any property resulting from, growing out of, or incidental to this Agreement with combined single limit of at least \$15,000,000.00 each occurrence or claim and a general aggregate limit of at least \$30,000,000.00 with all rights of subrogation against Lessor waived. The policy must name Lessor as an additional insured. This insurance shall also contain contractual liability insurance coverage. If coverage is purchased on a "claims made" basis and Lessee ceases to purchase "claims made" coverage, Lessee shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time-period of this Lease be canceled, unless replaced with a policy containing the same Retro Anniversary Date as the policy being replaced.

SECTION 12.06 – Lessee shall furnish to Lessor certificates of insurance evidencing the required coverage and endorsements. Lessee shall notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 12.07 – The insurance policy(ies) shall be written by a reputable insurance company or companies reasonably acceptable to Lessor or with a current Best's Insurance Guide Rating of A- or better. Such insurance company shall be authorized to transact business in the State of Illinois.

SECTION 12.08 – Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve Lessee from liability hereunder in excess of such coverage, nor shall it preclude Lessee from taking such other action as is available to it under any other provision of this Lease Agreement or otherwise in law.

### **SECTION XIII – TAXES**

It is understood and agreed that Lessee shall pay all taxes, assessments, levies, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, general and special, or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease Term, even though such taxes, utilities, or other charges may not become due and payable until after termination of this Lease Agreement. Lessee reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

### **SECTION XIV – UTILITIES**

Lessee, at its sole cost and expense (including fees for permits and similar documents), shall obtain all utility services required or desired by Lessee, including the installation of meters and submeters if none exist. Lessee shall be responsible for all charges for utilities consumed by,

and supplied to, Lessee by the provider thereof. To the extent any existing utility services on the Leased Premises are used by Lessee with Lessor's prior, written consent, and are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion of the cost of the utility services.

## **SECTION XV – EASEMENTS, LEASES AND LICENSES**

SECTION 15.01 – Lessee's rights under this Lease Agreement shall include the right, during the Term hereof, to maintain and administer, consistent with all local ordinances, rules, and regulations, utility, pipeline, telecommunications, or other existing Reserve Facility easements or newly located easements on, over or under the Leased Premises to third parties, which shall not individually or in the aggregate materially and adversely impair the conduct of railroad operations on the Leased Premises (hereinafter "Permitted Encumbrances"). Lessor shall assign to Lessee all Reserved Facilities to manage during the Term.

SECTION 15.02 – Lessee's rights under this Lease Agreement shall include the right, during the Term hereof, with the written consent of Lessor, which shall not be unreasonably withheld or delayed, to maintain and administer signage on or over the Leased Premises to third parties, consistent with all local ordinances, rules, and regulations, which shall not individually or in the aggregate materially and adversely impair the conduct of railroad operations on the Leased Premises (hereinafter "Permitted Signage"). Any such signage shall be agreed to and in the name of the Lessor only on terms and conditions acceptable to Lessor.

SECTION 15.03 – Lessee shall pay Lessor thirty-five (35) percent of total revenues received from any such Permitted Encumbrances agreements or Permitted Signage agreements during the Term of this Lease, and within 30 days of receipt of payment. All revenues received following the Term of this Lease, or Lease termination, shall be paid to/received by Lessor. An accounting of all such Permitted Encumbrances agreements and Permitted Signage agreements and receipts received under such agreements shall be provided to Lessor on request, and on at least an annual basis.

## **SECTION XVI – TERMINATION**

SECTION 16.01 – In addition to any other remedies set forth elsewhere in this Lease, or available at law or in equity, this Lease Agreement may be terminated as follows:

- (a) The natural expiration of its Lease Term.
- (b) By mutual agreement of the parties.
- (c) By either party in the Event of Default under Section 19.

SECTION 16.02 – Lessor may, without incurring any liability to Lessor, terminate this Lease, effective immediately by written notice to Lessee, if any of the following events occurs:

(a) Lessee abandons or vacates the Leased Premises, or fails to provide railroad service to a rail user over the rail line or its connecting track, or any part thereof that is connected to the Leased Premises.

(b) Lessee is authorized by a competent public authority to discontinue service over the rail line or its connecting track, or any part thereof that is connected to the Leased Premises.

(c) Lessee is disposed of the right to operate over the rail line or its connecting track or any part thereof that is connected to the Leased Premises.

(d) Lessee fails to provide evidence of insurance as required by Section 12.

SECTION 16.03 – In the event of termination of this Lease Agreement, Lessee shall immediately, pursuant to the terms of this Agreement, vacate the Leased Premises in an orderly manner free of any personal property or equipment of Lessee or third parties placed by Lessee thereon. Upon any termination resulting from an Event of Default by Lessee, Lessor or its designee may immediately re-enter and take possession of the Leased Premises by providing written notice to Lessee that this Agreement has been terminated. Upon the expiration or earlier termination of this Agreement as provided herein, Lessor at its discretion shall have the right to require Lessee to remove, at Lessee's sole cost and expense, that portion any facilities, equipment or other Lessee improvements upon, over, or under the Leased Premises, and to restore the Premises to substantially the state in which they were on the Commencement Date of this Agreement. If Lessee fails within thirty (30) days after the date of such expiration or termination to make the removal and restoration, then Lessor may do so itself, at Lessee's sole cost and expense. Alternatively, Lessor shall have the right to own and possess that portion of any additions, modifications, and improvements made by the Lessee, or any personal property or equipment of Lessee or third parties placed by Lessee on the Leased Premises that remain on the property, which shall become a part of the Leased Premises to be owned by Lessor. Upon any termination resulting from an Event of Default, Lessor may immediately assign this Agreement to a new lessee and that new lessee may immediately begin operation over the Leased Premises pursuant to the terms of this Agreement.

SECTION 16.04 – In the event of termination of this Lease Agreement howsoever, Lessee and Lessor agree that Lessor and/or a new third party operator of Lessor's choice may immediately operate over the Leased Premises and Lessee and Lessor also agree that Lessee shall immediately file and prosecute in good faith and with full diligence any necessary formal request for assignment of Lessee's common carrier obligation to Lessor or the new third party operator selected by Lessor and Lessor will use its best efforts to require and facilitate such assignment to itself or any such third party, as applicable. If such assignment is prohibited by law, then Lessee shall immediately file and prosecute in good faith and with full diligence any necessary formal request for authorization for discontinuance of Lessee's operation over the Leased Premises. In the event of Lessee's failure to immediately comply with this requirement, Lessee agrees that (a) Lessor may make the necessary formal request for authorization for Lessee's assignment or discontinuance, as applicable, of operation, and (b) Lessee will not oppose such request filed by Lessor.

## **SECTION XVII – COMPLIANCE WITH LAW**

SECTION 17.01 – Lessee agrees to comply with all provisions of law, and Lessee will not knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law or ordinance. Lessee further agrees to secure all necessary governmental authority for its operation on the Leased Premises.

## **SECTION XVIII – DEFEASANCE**

SECTION 18.01 – Lessee shall not make any use of the Leased Premises inconsistent with Lessor's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than Lessor. So long as the Leased Premises are sufficient to permit Lessee to operate between the termini described in Section 1, this Lease Agreement shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of the Leased Premises is vested in a person other than Lessor or Lessee, and there shall be no abatement of rent on account of such determination. Lessor and Lessee shall make all reasonable efforts to defend Lessor's title to the Leased Premises against any adverse claims.

## **SECTION XIX – EVENTS OF DEFAULT**

SECTION 19.01 – The following shall be Events of Default:

(a) Failure by Lessee to make payments of rent or other amounts due and payable for any reason arising in connection with this Lease Agreement or Lessee's operation over the Leased Premises, and such failure continues for thirty (30) days following written demand therefore.

(b) The creation of a condition on the Leased Premises by Lessee that creates or contributes to Lessee or Lessor being cited or charged with a violation of the Environmental Laws.

(c) Filing of petition for bankruptcy, reorganization or arrangement of Lessee by Lessee pursuant to the Bankruptcy Reform Act or any similar proceeding, which petition is not dismissed within thirty (30) days.

(c) Lessor or Lessee defaults on any of its covenants or representations and warranties, or breaches any provision of this Lease Agreement other than for the payment of rent which is subject to subparagraph (a) above, and in the event such a breach is curable, fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the Lessor or if the breach is not of the type that is capable of cure within thirty (30) days, then the defaulting party fails to commence to cure such default within thirty (30) days, or, once commenced, fails to use due diligence to complete the cure.

(d) Any default on any of the covenants or agreements of Lessee or Lessor contained in the Track Use Agreement that persists beyond all applicable grace or cure periods.

## **SECTION XX – BREACHES; REMEDIES**

SECTION 20.01 – Upon the occurrence of any breach of any term hereof the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney’s fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Lease Agreement or at law or equity, including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

SECTION 20.02 – The failure of any party hereto to enforce at any time any of the provisions of this Lease Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Agreement or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

**SECTION XXI – MISCELLANEOUS**

SECTION 21.01 – Entire Agreement. This Lease Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

SECTION 22.02 – Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Lease Agreement shall be in writing and shall be deemed to have been properly given or sent by (i) mailing by registered or certified mail, return receipt requested, with postage prepaid, or (ii) depositing into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days’ advance written notice of such change in address.

If to Lessor: City of Peoria  
419 Fulton Street  
Peoria, Illinois 61602  
Attn: City Manager  
Email: \_\_\_\_\_

cc: City of Peoria  
419 Fulton Street  
Peoria, Illinois 61602  
Attn: Corporation Counsel

Email: \_\_\_\_\_

If to Lessee: General Counsel  
Pioneer Industrial Railway Co.  
5619 DTC Parkway, Suite 650  
Greenwood Village, CO 80111  
Email:kbevil@pioneerlines.com

SECTION 22.03 – Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 22.04 – This Lease Agreement shall be binding upon and inure to the benefit of Lessor and Lessee, and shall be binding upon the successors and assigns. Lessee may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations under this Agreement, without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, in the event Lessee elects to assign its interest in the Leased Premises, and Lessor consents to this assignment, Lessee will first secure the approval and authorization of the STB for its service discontinuance and for continuing service authority of the approved assignee, and/or, such other regulatory approvals as may be then required; and provided, however, that Lessor has approved the financial condition and operational ability of the new Lessee.

SECTION 22.05 – Neither termination nor expiration of this Lease Agreement will release either party from any liability or obligation under this Lease, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Lease, or, if later, the date when the Leased Premises are restored in accordance with the applicable provisions of this Agreement or any other written agreement between the parties.

SECTION 22.06 – Except as may be elsewhere specifically provided in this Lease Agreement, if either party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, a national health pandemic, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("Force Majeure"), such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

SECTION 22.07 – If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

SECTION 22.08 – Article headings used in this Lease Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

SECTION 22.09 – The parties hereto acknowledge that, in the event of a default or breach of any covenant hereunder, damages may not be an adequate remedy; and either party may seek the entry of decrees for equitable relief, such as specific performance, mandatory or other injunction in favor of such party or any third party entitled to enforce the performance of the covenants and restrictions herein contained. The parties agree that exclusive legal venue for any litigation arising under this Lease Agreement shall lie in Peoria County, Illinois. This Agreement shall be governed and construed in accordance with the laws of the United States and to the extent applicable, the laws of the State of Illinois.

SECTION 22.10 – No modification, addition or amendments to this Lease Agreement or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

SECTION 22.11 – This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be duly executed on their behalf, as of the date first herein written.

CITY OF PEORIA

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PIONEER INDUSTRIAL RAILWAY CO.

By: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

