

**NOW, THEREFORE, LET IT BE KNOWN TO ALL THAT IN CONSIDERATION OF THE COMMITMENTS HEREIN SET FORTH THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE I  
RIGHTS AND OBLIGATIONS OF PARTIES**

**Section 1.1. County's Commitments.** In consideration of SCRM providing access to a portion of its Rail Line between the Norfolk Southern main line switch and the Guardian switch adjacent to the Property, all of which are located along the Rail Line ("**Subject Track**"), and Guardian occupying and operating the Property, County hereby commits to:

- a. Pay for upgrades to the Subject Track necessary to provide Rail Service for Guardian's purposes on the Subject Track, as set forth more fully on **Appendix A ("Track Upgrades")**, as requested by SCRM, pursuant to a "Track Upgrade Fund Requisition Request" substantially in the form of **Exhibit A** to this RUMA, PROVIDED HOWEVER, County is not responsible for selecting, hiring, or overseeing the persons or entities responsible for performing the Track Upgrades, which responsibility is solely that of SCRM, as set forth more fully in Section 1.2, and PROVIDED FURTHER HOWEVER, County's financial liability in connection with the Track Upgrades is expressly limited to the actual amount of the proceeds of a grant, expected to be in the amount of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00), from the State of South Carolina to County, which has been designated expressly for the purpose of the Track Upgrades; and
- b. Set aside, in a track maintenance sinking fund ("**Fund**"), \$15,000 per year for the term of this RUMA. The Fund is established by County with the understanding that maintenance costs may vary from year to year with some years requiring no maintenance expenditures and other years requiring expenditures exceeding the annual funding. As a result, the money placed in the Fund each year is intended to be cumulative of money placed in the Fund, and not reduced by any existing balance in the Fund, during any prior year(s). It is believed this Fund is adequate to handle average annual maintenance costs, and Guardian does not foresee increased rail traffic would result in increased maintenance costs; and
- c. Pay for ongoing maintenance, as set forth more fully on **Appendix B ("Track Maintenance")**, of the Subject Track from the Fund, as requested by SCRM, pursuant to a "Track Maintenance Fund Requisition Request" substantially in the form of **Exhibit B** to this RUMA, PROVIDED HOWEVER, County is not responsible for selecting, hiring, or overseeing the persons or entities responsible for performing the maintenance, which responsibility is solely that of SCRM, as set forth more fully in Section 1.2; and
- d. Permit SCRM to keep all reusable materials removed from the Subject Track as part of the Track Upgrades; notwithstanding the foregoing, it is SCRM's responsibility to coordinate transfer of these materials from the persons or entities responsible for performing the Track Upgrades and



County bearing no responsibility for the removal or transfer of those materials.

**Section 1.2. SCRM's Commitments.** In consideration of County providing funds for the Track Upgrades and Track Maintenance for the Subject Track and Guardian occupying and operating the Property, SCRM hereby commits to:

- a. With funds provided by County, pursuant to Section 1.1, select, hire, and oversee the persons or entities responsible for performing the Track Upgrades and Track Maintenance on the Subject Track so that SCRM upgrades and maintains the Subject Track in good condition and repair in accordance with the requirements of law, ordinance, regulation or permit of any government authority having jurisdiction over the Subject Track and in accordance with the reasonable requirements of Norfolk Southern for the safe and convenient operation of rail engines and cars over the Subject Track as described in the "Lead Track Agreement," or any other reasonable requirements of any other rail carrier, PROVIDED HOWEVER, SCRM's financial liability in connection with the Track Upgrades and Track Maintenance is expressly limited to those funds, as are from time to time, available in Fund, PROVIDER FURTHER HOWEVER, if Fund, from time to time, contains insufficient funds to provide for Track Maintenance then currently necessary, and the balance of costs for Track Maintenance is more than SCRM's average annual maintenance cost prior to the date of this RUMA, SCRM will negotiate, in good faith, with Guardian for payment of those excess costs; and
- b. Request Track Upgrade funds, as needed for the Track Upgrades as described in **Appendix A**, in accordance with Section 1.1 and in the form of **Exhibit A**; and
- c. Request Track Maintenance funds, as needed for Track Maintenance as described in **Appendix B**, in accordance with Section 1.1 and in the form of **Exhibit B**; and
- d. As part of Track Maintenance, provide for rail inspections of the Subject Track as required by the Federal Railroad Administration, for which the funds are provided as part of Fund, as provided in Section 1.1; and
- e. Permit Norfolk Southern, or any other rail carrier, to use the Subject Track to provide Rail Service to Guardian, as set forth more fully in the Lead Track Agreement and Siding Agreement, and any other subsequent agreements of similar character as negotiated in good faith, by SCRM, Guardian, Norfolk Southern, or any other rail carrier, as appropriate, and to otherwise make all reasonable efforts to accommodate Norfolk Southern's, or other rail carrier's, use of the Subject Track to provide Rail Service to Guardian, consistent with Guardian's recognition SCRM's use of the Rail Line to carry out SCRM's eleemosynary mission is primary; and
- f. In the event of an act of God or other similar catastrophic injury of, damage to or failure of the Rail Line, which would in any way affect Rail



Service, SCRM agrees to apply any insurance, grant, or other similar proceeds it receives to provide for the replacement and repair of the Rail Line so as to restore Rail Service to its prior operation as quickly as possible; and

- g. Execute and deliver to Guardian concurrently with this RUMA a License and Right of First Refusal.

**Section 1.3. Guardian's Commitments.** In consideration of County providing funds for the Track Upgrades and Track Maintenance for the Subject Track and SCRM providing access to a portion of its Rail Line between the Norfolk Southern main line switch and the Guardian switch adjacent to the Property, Guardian hereby commits as follows:

- a. According to the terms of the Performance Agreement executed, or to be executed, among County, Guardian and the State of South Carolina:
  - i. Make a capital investment at Property of not less than \$35,000,000.00; and
  - ii. Create no less than 100, new, full-time jobs at Property; and
- b. Reimburse County for Track Maintenance expenses paid from the Fund by County related to the Subject Tract if Guardian fails to perform sub-item a of this Section, by repaying the Fund for any amounts expended from the Fund, during Guardian's investment period as set forth in sub-item a of this Section; and
- c. If additional Track Maintenance costs are incurred by SCRM, which, in the professional opinion of a consultant experienced in such matters and reasonably acceptable by Guardian, are the result of increased monthly traffic by Guardian, then Guardian will negotiate, in good faith, with SCRM at that time to provide for a sharing arrangement of the maintenance costs; and
- d. Guardian remains responsible for all costs related to the rail spur serving the Property exclusively from the switch connecting the spur to the Rail Line ("*Guardian Spur*"), and Guardian reserves the right to contract construction of the Guardian Spur jointly or independently of the Track Upgrades at its option.

**Section 1.4. Parties' Mutual Commitments.** Parties agree to cooperate, execute and deliver, in good faith, whatever additional documents are reasonably necessary to effect and implement the terms of this RUMA.

**Section 1.5. Parties' Respective Liability.** Except as otherwise provided in this RUMA, the responsibility of the Parties, among themselves, for death, personal injury and property loss and damage is to be determined and borne as follows:

- a. County, to the extent permitted by law and without waiving, with respect to these Parties or third-parties, any right to claim immunity or other defenses pursuant to the South Carolina Tort Claims Act, or any other



similar act or protection, is responsible for and must indemnify and hold harmless, Guardian and SCRM from all claims, demands, suits, judgments, liabilities, costs, including reasonable expenses, excluding attorneys' fees, arising out of, relating to, or incidental to County's own actions or omissions with respect to the Track Upgrades to or Track Maintenance of the Subject Track, but only to the extent County's own actions or omissions form a cause of the relevant claim, demand, suit, judgment, liability, cost or expense; and

- b. SCRM is responsible for and must indemnify and hold harmless County and Guardian from all claims, demands, suits, judgments, liabilities, costs, including reasonable expenses, excluding attorneys' fees, arising out of, relating to, or incidental to SCRM's own actions or omissions with respect to the Track Upgrades to or Track Maintenance of the Subject Track, but only to the extent SCRM's own actions or omissions form a cause of the relevant claim, demand, suit, judgment, liability, cost or expense; and
- c. Guardian is solely responsible for and must indemnify and hold harmless County and SCRM from all claims, demands, suits, judgments, liabilities, costs, including reasonable expenses, excluding attorneys' fees, arising out of, relating to, or incidental to Guardian's own actions or omissions with respect to the Track Upgrades to or Track Maintenance of the Subject Track, and the operation or use of the Subject Track or the Property, but only to the extent Guardian's actions or omissions form a cause of the relevant claim, demand, suit, judgment, liability, cost or expense; and
- d. Knowledge on the part of County, Guardian or SCRM, respectively, of any violation of any of the terms of the Track Agreements by Norfolk Southern is not negligence or acquiescence on the part of County, Guardian or SCRM, respectively, and in no event relieves Norfolk Southern of any of the responsibilities and indemnity obligations assumed by Norfolk Southern.

**Section 1.6. *Maintenance Default.***

- a. The Fund is intended to provide SCRM and Guardian with financial security for SCRM's maintenance obligations as set forth in the Track Agreements ("**Maintenance Obligations**"); and
- b. If SCRM is in default of its Maintenance Obligations, then any party to the Track Agreements is entitled to provide written notice of SCRM's default to all parties to the Track Agreements; and
- c. SCRM has five (5) days following notice of its default to cure that default; and
- d. Following the 5-day cure period, if SCRM has not cured its alleged default, the party claiming a default may proceed to perform SCRM's Maintenance Obligations ("**Performing Party**"), and seek



reimbursement from the Fund for the Performing Party's performance by invoicing its expenses under this Section to the County along with an executed "Track Maintenance Fund Requisition Request" substantially in the form of **Exhibit B** to this RUMA in the same manner as if SCRM submitted the reimbursement request, in accordance with Section 1.2 of this RUMA, PROVIDED HOWEVER, County is not responsible for selecting, hiring, or overseeing the persons or entities performing the Maintenance Obligations; and

- e. If, prior to the expiration of the 5-day cure period, SCRM denies it has defaulted in the manner claimed under sub-item (b) of this Section, SCRM may provide written notice of its denial to all parties to the Track Agreements; and
- f. If a licensed contractor, familiar with railroad maintenance, and agreed to by the parties to the current-dispute, later determines SCRM is not in default of its Maintenance Obligations, the Performing Party must return any amounts obtained from the Fund, PROVIDED HOWEVER, if the licensed contractor determines the Performing Party performed necessary maintenance, then the Performing Party is not required to return any amounts obtained from the Fund.

The foregoing notwithstanding, following receipt of the written notice and executed Track Maintenance Fund Requisition Request, County is entitled to rely on the written notice and executed Track Maintenance Fund Requisition Request as conclusive proof the Performing Party is entitled to reimbursement pursuant to this RUMA, regardless of the eventual resolution of any dispute between any Party with any other Party or third-parties regarding SCRM's performance of or failure to perform its Maintenance Obligations. To the greatest extent permitted by law, SCRM and Guardian agree jointly and severally to indemnify and hold harmless County against any and all liabilities, of whatever nature, arising or relating to County's acts or omissions under this Section, except and excluding liability resulting from County's own willful misconduct or gross negligence.

## ARTICLE II MISCELLANEOUS

**Section 2.1. *Applicable Law.*** This RUMA has been entered into in the State of South Carolina and is governed by and construed in accordance with South Carolina law.

**Section 2.2. *Binding Effect of Agreement.*** This RUMA represents binding and enforceable commitments among the Parties. This RUMA does not take effect for any purpose or in any way unless and until executed by all Parties.

**Section 2.3. *Severability.*** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this RUMA is held invalid or unenforceable by any court of competent jurisdiction, that holding does not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this RUMA.

**Section 2.4. *Complete Agreement, Amendment.*** The Track Agreements along with their respective Appendices and Exhibits and the License and Right of First Refusal constitute the entire agreement among the Parties and supersede all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter of those



agreements, and no Party is bound by any oral or written agreements, statements, promises, or understandings not specifically set forth in those agreements.

**Section 2.5. Counterpart Execution.** This RUMA may be executed in multiple counterparts with the same effect as if the signature of each were on the same document, each of which is deemed an original, but all of which, together, constitute one and the same document.

**Section 2.6. Jury Trial Waiver.** **THE PARTIES FULLY, KNOWINGLY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY RIGHT TO A JURY TRIAL NOW OR HEREAFTER EXISTS WITH REGARD TO THIS RUMA OR ANY RELATED CLAIM OR ACTION.**

**Section 2.7. Choice of Law.** This RUMA is executed and intended to be performed entirely in the State of South Carolina. As a result, the law of the State of South Carolina, except and excluding its choice of law provisions, is to govern this RUMA's construction, performance, breach and remedies.

**Section 2.8. Jurisdiction and Choice of Venue.** Individually and mutually, the Parties waive any objection and consent to the exercise of jurisdiction and venue over them by the State and Federal Courts of the State of South Carolina for the resolution of all disputes or controversies arising out of or relating to this RUMA. Further, the State and Federal Courts of the State of South Carolina constitute the exclusive forum for the resolution of all disputes or controversies arising out of or relating to this RUMA, and the Parties waive any right to object to this venue for any reason.

**Section 2.9. Benefit.** This RUMA inures to the benefit of the Parties, and their respective heirs, administrators, successors and assigns, PROVIDED HOWEVER, a non-signatory to this RUMA, other than the Parties' respective heirs, administrators, successors and assigns, has no right to seek its enforcement.

**Section 2.10. Term of Agreement.** This RUMA continues in full force and effect for so long as Guardian, or any of its successors or assigns, as may be approved by County, continues to occupy and operate a manufacturing facility at the Property.

**Section 2.11. No Construction Against Drafting Party.** The Parties acknowledge that each of them and their counsel have had an opportunity to review this RUMA, and this RUMA may not be construed against any Party merely because that Party has been deemed to have prepared it.

**Section 2.12. No Waiver.** No delay, omission or failure of any Party to exercise any right or power under this RUMA or to insist on strict compliance by any other Party of any obligation of this RUMA, and no custom or practice of the Parties at variance with the terms and provisions of this RUMA constitutes a waiver of a Party's rights to demand exact compliance with the terms of this RUMA; and the same does not affect or impair the rights of that Party with respect to any subsequent default of any other Party of the same or different nature. No failure of any Party to exercise, and no delay by any Party in exercising, any right or remedy under this RUMA constitutes a waiver of that right or remedy. No waiver by any Party of any right or remedy under this RUMA is effective unless made in writing to that Party.

**Section 2.13. Notices.** Unless otherwise provided in this RUMA, any agreement, notice, request, instruction or other communication to be given pursuant to this RUMA by any Party to any other Party must be in writing and (i) delivered personally (effective on the date delivered); (ii) mailed by certified mail, postage prepaid (effective four days after the date mailed); or (iii) sent by recognized overnight courier (effective one day after the date delivered to the courier), addressed to the Party for which it is intended at the following addresses:



If to Guardian: Guardian Fiberglass, Inc.  
979 Batesville Road  
Greer, South Carolina 29651  
Attention: David Love

with a copy to: Guardian Industries Corp.  
2300 Harmon Road  
Auburn Hills, Michigan 48326  
Attention: General Counsel

If to the County: Fairfield County  
Post Office Drawer 60  
Winnsboro, South Carolina 29180  
Attention: County Administrator

with a copy to: Ray E. Jones, Esquire  
Parker Poe Adams & Bernstein LLP  
Post Office Box 1509  
Columbia, South Carolina 29202

If to SCRM: South Carolina Railroad Museum, Inc.  
110 Industrial Blvd.  
Winnsboro, South Carolina 29180  
Attention: President

With a copy to: William H. White  
Post Office Box 7246  
Columbia, South Carolina 29202-7246

With a copy to: James B. Richardson, Jr., Esquire  
1229 Lincoln Street  
Columbia, South Carolina 29201

or to such other address(es) as any Party from time to time may specify by written notice to the other Parties.

. **Section 2.14. Authority.** Each Party represents and warrants to all other Parties that (i) it has full power and authority to enter into this RUMA and perform and carry out all of this RUMA's obligations, covenants and provisions and (ii) this RUMA constitutes the legal, valid and binding obligations of each Party in accordance with its terms and has been duly authorized by the appropriate action(s) of all necessary boards, directors, shareholders, partners, managers, members, legislative bodies, executives or executive bodies, committees or agencies of each Party.

*[Signature Pages Follow]*