

234350

Baxter Wellmon  
Applicant's Representative for  
RSL Railroad, LLC  
And  
Transport Handling  
Specialists, Inc.

June 3, 2013

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

ENTERED  
Office of Proceedings

JUN 3 2013

Part of  
Public Record

Re: Finance Docket No. 35726

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of the Submission of Supplemental Evidence for FD: 35726 containing Memorandum of Understandings assigning operating rights on The Line to RSL Railroad, LLC.

Please time and date stamp the extra copy of this letter of the Submission of Supplemental Evidence and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your assistance. If you have any questions, please call or email me.

Very truly yours,

Baxter Wellmon



Baxter Wellmon  
Applicant's Representative for  
RSL Railroad, LLC & Transport Handling  
Specialists, Inc.

**BEFORE THE SURFACE  
TRANSPORTATION BOARD**

**FD: 35726**

**RSL Railroad, LLC**

**AND**

**TRANSPORT HANDLING**

**SPECIALISTS, INC.**

ENTERED  
Office of Proceedings

JUN 3 2013

Part of  
Public Record

**SUBMISSION OF SUPPLEMENTAL  
EVIDENCE**

**NOTICE OF EXEMPTION  
FOR CONTINUANCE IN CONTROL**

Submitted By:

Baxter Wellmon  
1554 Paoli Pike #179  
West Chester, PA 19380  
Phone: (610)701-0629  
Fax: (610) 701-0659  
E-Mail: [bwellmon@geminc.com](mailto:bwellmon@geminc.com)

Dated: June 3, 2013

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
FINANCE DOCKET NO. 35726

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**SUBMISSION OF SUPPLEMENTAL EVIDENCE**

RSL RAILROAD LLC  
AND  
TRANSPORT HANDLING SPECIALISTS, INC.

NOTICE OF EXEMPTION FOR CONTINUANCE IN CONTROL

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RSL Railroad LLC (“RSL”), an Ohio domestic for profit LLC herewith submits supplemental evidence supporting FINANCE DOCKET NO. #35726.

Common carrier railroad and operate over its rail infrastructure in Stark County, OH (the “Line”) which is located at Massillon, OH.

RSL will operate the line under an agreement with the Massillon Energy & Technology Park.

In support of this Notice of Exemption For Continuance in Control, RSL submits the following supplemental information:

1. ASSIGNMENT OIF MEMORANDUM OF UNDERSTANDING (Exhibit 1)
2. CERTIFICATION OF SERVICE (§1104.12)
3. CERTIFICATION OF CONTINUANCE IN CONTROL (§1180.2(d))
4. ATTESTATION AND VERIFICATION (§1104.4)

ASSIGNMENT OIF MEMORANDUM OF UNDERSTANDING

On May 9, 2012, RSL acquired the ownership interest and the right to restore the reestablish The Line. See Exhibit “1” attached hereto and made part of the Exemption.

The Line of railroad is owned by PSR Development, Ltd. And is leased to First Street Development, LLC and then assigned to Massillon Energy & Technology Park, LLC, which in turn assigned operating rights on The Line to RSL. See Exhibit “1” attached hereto and made part of the Exemption.

RSL now plans to restore common carrier freight service over The Line and will provide that service using the name RSL Railroad LLC.

Respectfully submitted,



Baxter Wellmon

Majority Owner and Member of RSL Railroad LLC  
through Transport Handling Specialists Inc.

1554 Paoli Pike, #179

West Chester, PA 19380

[bwellmon@geminc.com](mailto:bwellmon@geminc.com)

610-701-0629

Applicant's Representative for

RSL Railroad LLC

1554 Paoli Pike, #179

West Chester, PA

[bwellmon@geminc.com](mailto:bwellmon@geminc.com)

610-701-0629

Dated: June 3, 2013

# EXHIBIT 1

# ***ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING***

This **ASSIGNMENT** is made and entered into on this 9<sup>TH</sup> day of MAY 2012 by and between **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member ("ME&TP") (hereinafter "Assignor") and **RSL RAILROAD LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("RSL") (hereinafter "Assignee")

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as "Exhibit A" and Assignment of Memorandum of Understanding which is marked as "Exhibit B" attached hereto and incorporated herein by this reference (MOU) and (AMOU).

## **BACKGROUND**

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as "Exhibit A" and Assignment of Memorandum of Understanding which is marked as "Exhibit B" attached hereto and incorporated herein by this reference (MOU) and (AMOU).

B. In connection with this **ASSIGNMENT**, Assignor desires to assign and warrants to Assignee, all of Assignor's right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached "Exhibit A" and "Exhibit B", including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

**EXHIBIT 1**

1. Assignment Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU) and (AMOU).
2. Assumption Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) and (AMOU) arising from and after the above date.
3. Binding Effect This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
4. Successor and Assigns This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.
5. Assignee Indemnification Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
6. Assignor Indemnification Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
7. Governing Law This Assignment will be governed by the laws of the State of Ohio.
8. Counterparts This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above ASSIGNMENT, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said ASSIGNMENT according to its terms and conditions stated herein.

**Massillon Energy & Technology Park, LLC,**  
an Ohio limited liability company

**RSL RAILROAD LLC,**  
an Ohio limited liability company

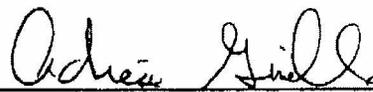
By:   
Steven DiPietro, Member, ASSIGNOR

By:   
David DiPietro, Member, ASSIGNEE

STATE OF OHIO    )  
                                  ) ss:  
STARK COUNTY    )

***Before me***, a Notary Public in and for said County and State, personally appeared the above-named, Steven DiPietro Member of **Massillon Energy & Technology Park, LLC, ASSIGNOR** and David DiPietro, Member of **RSL RAILROAD LLC, ASSIGNEE**, who acknowledged that the foregoing instrument was freely signed.

***In Testimony Whereof***, I have hereunto set my hand and official seal at Canton, Ohio this 9<sup>th</sup> day of MAY 2012.

  
Notary Public

This Instrument Prepared By:  
ANDY A. GINELLA, ESQ.  
4096 Holiday Street NW  
Canton, Ohio 44718  
Phone: 330.649.9600  
Facsimile: 330.649.9601



ANDREA A. GINELLA  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.

# EXHIBIT A

## MEMORANDUM OF UNDERSTANDING

~~March~~ <sup>may</sup> THIS Memorandum of Understanding ("MOU") is dated this 9<sup>TH</sup> day of ~~March~~ 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") and **PSR Development, LTD**, an Ohio Limited Liability Company, by and through R. Bitzel Holding Company LLC and it's managing Member, Lori Bitzel, the duly authorized managing member ("PSR").

### WHEREAS:

1. PSR is the owner of real property located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres ("Premises").
2. First Street is a developer doing business in Ohio.
3. The parties have entered into general discussions in order to explore business opportunities related to the Premises.
4. The parties have entered into a certain understanding regarding terms of First Street's' opportunity to develop the Premises.
5. The parties wish to evidence their agreement regarding the understanding in accordance with the terms and conditions hereinafter provided.

**NOW THEREFORE**, for good and valuable consideration, the parties, intending to be legally bound hereby, agree as follows:

The recitals given herein above form an integral part of this agreement. The parties agree to comply with the terms of this MOU as stated below:

### 1. CONFIDENTIALITY

The parties hereby confirm that the terms and conditions herein are Confidential. Said confidentiality shall apply to all information provided by or to any of the parties.

### 2. PREMISES

The Premises is located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres.

PSR will Lease to First Street the entire 400 acres without restrictions for the opportunity to develop said land provided the development does not interfere with any existing leases.

First Street acknowledges that the oil, gas, and mineral rights will remain with PSR and not transfer to First Street.

## MEMORANDUM OF UNDERSTANDING

### 3. TERM

This MOU shall commence upon its execution, and for a term of 5 years with Five (5) Five (5) year renewals at ("First Street") options.

### 4. RENT

After the property is developed and leased to third parties, First Street will pay to R. Bitzel Holding Company, LLC, a Member of PSR, an annual sum of \$500.00 per acre of the leased property due and payable upon mutual agreement of the parties.

### 5. REAL ESTATE TAXES, INSURANCE, AND UTILITIES

- a. Real Estate Taxes – PSR will be responsible for the real estate taxes of the Premises. However, as a result of the development of the Premises, First Street agrees to be responsible for any increase in real estate taxes from the commencement of this agreement.
- b. Insurance – First Street will be responsible to obtain general policy and a liability, property, fire and casualty insurance on the premises and equipment in an amount of not less than \$1,000,000.
- c. Utilities – First Street will be responsible for any and all costs associated with gas, electric, water, sewer and trash expenses as it relates to the construction and development of the Premises.

### 6. CONSTRUCTION, IMPROVEMENTS, AND MAINTENANCE

First Street is responsible for any and all construction, improvements, and maintenance of the Premises. First Street will be responsible for any and all costs associated with said construction, improvements, and maintenance of said Premises.

### 7. NOTICES

- a. All notices required to be given under this MOU shall be given in writing and shall be deemed to have been given:
  - i. When hand delivered during normal business hours of the recipient, with an acknowledgement of receipt.

## MEMORANDUM OF UNDERSTANDING

- ii. When transmitted by facsimile during normal business hours of the recipient, with a confirmation of receipt. All fax notices shall be followed by a copy sent by registered mail, first class courier, return receipt requested.
  - iii. When mailed by registered mail, first class courier, return receipt requested, within five (5) business days of posting.
  - iv. When emailed, with an acknowledgement of receipt.
  - v. When a copy of all notices are sent in the same manor above to Attorney Andy A. Ginella, Esq.
- b. All notices sent by mail shall be sent to the addresses shown on the signature page, unless a change in address has been previously communicated in writing.

### 8. TERMINATION

This MOU cannot be amended, modified, or terminated except in writing signed by all of the parties hereto or as otherwise provided in this MOU.

### 9. MISCELLANEOUS

- a. This MOU shall be governed by, and construed in accordance with, the laws of the State of Ohio (excluding conflicts of laws). Subject to Section 5 above, the parties agree that proper jurisdiction and venue for resolution of any and all disputes hereunder shall be in the Court of Common Pleas for Stark County, Ohio and/or the appropriate United States District Court in the State of Ohio.
- b. If any term or provision of this MOU or the application thereof to any person or circumstance shall to any extent be found by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- c. This MOU shall apply to, inure to the benefit of and bind each of the parties hereto and their respective heirs, personal

## MEMORANDUM OF UNDERSTANDING

representatives, devisees, successors and permitted assigns, if any; provided, however, that a party may assign this MOU without the express prior written consent of the other party. PSR will allow First Street to assign or sublease any part or all of the property without their express prior written consent; provided further, however, that PSR may assign its rights and delegate its responsibilities under this MOU.

- d. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- e. Time is of the essence with respect to matters of performance required under this MOU.
- f. This MOU may be executed in multiple counterparts, each of which may contain the signatures of one or more of the parties, all of which, taken together, shall constitute one and the same instrument.
- g. Neither party shall be deemed to have breached this MOU solely as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from any act of God, action of the elements, fire, accident, riot, strike, work stoppage or other labor disturbance, interruption of power or water, act of war, act of terrorism, invasion, civil commotion, enactment of laws or other casualty or cause, whether similar or dissimilar, arising in a manner beyond the reasonable control of the party required to perform and without such party's negligence or willful misconduct.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**MEMORANDUM OF UNDERSTANDING**

IN WITNESS WHEREOF the Parties hereto have caused this MOU to be executed by their duly authorized representatives on the day and date indicated below.

On behalf of First Street Development, LLC

4084 Holiday Street NW  
Canton, Ohio 44718  
Phone:  
Fax:  
Email:



Signature

MEMBER

Title

DAVID DIPIETRO

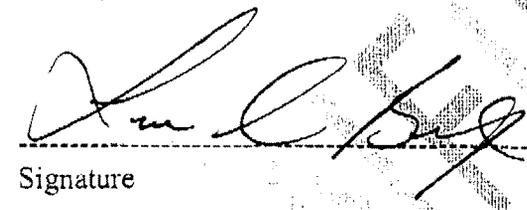
Print

5-9-12

Date

On behalf of PSR Development, LTD

4141 Southway Street SW  
Canton, Ohio 44706  
Phone:  
Fax:  
Email:



Signature

Partner

Title

LORIE A. BITZEL

Print

5-9-12

Date

# EXHIBIT B

## ***ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING***

This **ASSIGNMENT** is made and entered into on this 9<sup>TH</sup> day of ~~March~~<sup>MAY</sup> 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") (hereinafter "Assignor") and **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member ("ME&TP") (hereinafter "Assignee")

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as "Exhibit A" attached hereto and incorporated herein by this reference (MOU).

### **BACKGROUND**

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as "Exhibit A" and incorporated herein by this reference as (MOU).

B. In connection with this **ASSIGNMENT**, Assignor desires to assign and warrants to Assignee, all of Assignor's right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached "Exhibit A", including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

1. Assignment Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU).

2. Assumption Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) arising from and after the above date.

3. Binding Effect This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. Successor and Assigns This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.

5. Assignee Indemnification Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).

6. Assignor Indemnification Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).

7. Governing Law This Assignment will be governed by the laws of the State of Ohio.

8. Counterparts This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above **ASSIGNMENT**, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said **ASSIGNMENT** according to its terms and conditions stated herein.

**First Street Development, LLC,**  
an Ohio limited liability company

**Massillon Energy & Technology Park, LLC,**  
an Ohio limited liability company

By: [Signature]  
David DiPietro, Member, ASSIGNOR

By: [Signature]  
Steven DiPietro, Member, ASSIGNEE

STATE OF OHIO    )  
                          ) ss:  
STARK COUNTY    )

***Before me***, a Notary Public in and for said County and State, personally appeared the above-named David DiPietro, Member of First Street Development, LLC, ASSIGNOR and Steven DiPietro, Member of Massillon Energy & Technology Park, LLC, ASSIGNEE, who acknowledged that the foregoing instrument was freely signed.

***In Testimony Whereof***, I have hereunto set my hand and official seal at Canton, Ohio this 9<sup>th</sup> day of MAY 2012.

[Signature]  
Notary Public

This Instrument Prepared By:  
ANDY A. GINELLA, ESQ.  
4096 Holiday Street NW  
Canton, Ohio 44718  
Phone: 330.649.9600  
Facsimile: 330.649.9601



ANDREA A. GINELLA  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.



# CERTIFICATION OF CONTINUANCE IN CONTROL

State of Pennsylvania )  
 ) ss:  
County of Chester )

I, Baxter Wellmon, certify under oath on behalf of Transport Handling Specialists and RSL Railroad LLC (both controlled by me) that the following are true statements:

- The railroads (Big Spring Rail System Inc. and RSL railroad LLC controlled by Transport Handling Specialists Inc.) would not connect with each other or any railroads in their corporate family.
- The acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family.
- The transaction does not involve a class I carrier.



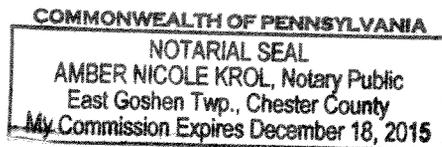
Baxter Wellmon  
1554 Paoli pike #179  
West Chester, PA 19380

Subscribed and sworn to before this 31 day of may, 2013



Notary Public

(SEAL)

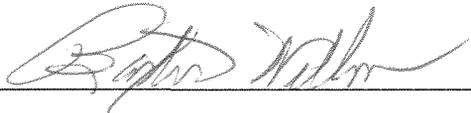


My Commission Expires: 12.18.15

# ATTESTATION AND VERIFICATION

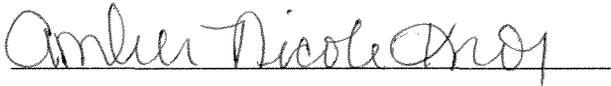
State of Pennsylvania )  
 ) ss:  
County of Chester )

I, Baxter Wellmon, being duly sworn, deposes and says that he is a Member of the RSL Railroad LLC a Ohio domestic for profit LLC and President of Transport Handling Services Inc. a Pennsylvania domestic for profit corporation. I declare, certify and verify under oath and under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this submission of supplemental evidence executed under oath this day.

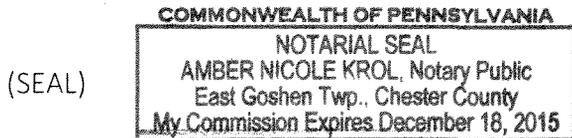


Baxter Wellmon  
1554 Paoli pike #179  
West Chester, PA 19380

Subscribed and sworn to before this 31 day of May, 2013



Notary Public



My Commission Expires: 12.18.15