

PRIVATE SIDETRACK AGREEMENT

THIS AGREEMENT is made and effective as of November 15, 2022 by and between **CSX TRANSPORTATION, INC**, a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Railroad," and **HERNANDO COUNTY**, a political subdivision of the State of Florida, whose mailing address is 15470 Flight Path Drive, Brooksville Florida 34604, hereinafter called "Industry."

WITNESSETH:

1. PURPOSE:

1.1 The purpose of this Agreement is to detail the provisions of the maintenance and use of Private Sidetrack Rail Park Lead at Milepost SR 806.01, for the tender and receipt of rail freight traffic for the account of Industry. The private sidetracks, which consists of the track structure (rails, ties, and fastenings), ballast, grading, drainage structure, turnout, bumping post and other appurtenances (hereinafter, collectively, the "Sidetrack"), is located at or near Brooksville, in the County of Hernando, State of Florida, as shown on attached Exhibit ST-1, dated August 19, 2022 (hereinafter the "Plan").

2. OWNERSHIP AND CONSTRUCTION:

2.1 The Sidetrack, as shown on the Plan, has been constructed. Railroad owns that portion of Rail Park Lead from Point of Switch (hereinafter "P.S.") in connecting mainline track at Milepost SR 806.01, Track Station 0+00, to Track Station 1+50, (hereinafter called "Railroad's Segment"). Industry own and maintain the remainder of Rail Park Lead (hereinafter, collectively, called "Industry's Segment") (as shown on "Plan").

3. GOVERNMENTAL REQUIREMENT(S):

3.1 Industry agrees, at its sole expense, to comply with all applicable laws and regulations and to obtain all necessary governmental permits, authorizations, orders, and approvals (hereinafter collectively "Governmental Requirement(s)") necessary for the construction, maintenance, and use of the Sidetrack. Industry agrees to assume the cost of Railroad's defense and to otherwise indemnify and hold Railroad harmless from Industry's failure to comply with or to obtain the Governmental Requirement(s).

4. MAINTENANCE:

4.1 Railroad and Industry, at their own expense, shall inspect, maintain, and renew their respective Segments of the Sidetrack: (A) in accordance with the Federal Railroad Administration's Track Safety Standards, (49 C.F.R. Part 213); (B) Railroad Worker Safety Regulations (49 C.F.R. Part 214); and (C) in a safe condition, consistent with the operating circumstances and amount of use. Prior to each entry of Industry upon Industry's Segment of the Sidetrack for maintenance or renew purposes, Industry shall contact local representatives of Railroad's Operating and Engineering Departments and obtain the agreement from those

representatives for the dates and amount of time that Industry's Segment will be out of service for such maintenance or renewal purposes. Additionally, both Industry and Railroad agree to keep their respective Segments free from debris, weeds, potholes, ice or snow, poles, temporary or permanent structures, other obstructions (Example: parked vehicles), and/or excavations. Railroad shall have the right, but not the duty, to inspect Industry's Segment.

5. CLEARANCES:

5.1 Industry agrees to provide and maintain: (A) the lateral clearance requirements (at least eight feet, six inches [8'6"] from either side of the centerline of the Sidetrack, as increased for flat curves, superelevated curves and approaches thereto); and (B) the vertical clearance requirements (at least twenty-two feet [22'0"] above the top of the rail), both as detailed in the Railroad's document entitled "Standard Guidelines and Specifications for the Design and Construction of Private Sidetracks," as amended, supplemented or superseded (hereinafter the "Specifications"), for the entire length of the Sidetrack. Any clearance not in compliance with the foregoing is a "Close" clearance. Each party further agrees to provide and maintain increased lateral and/or vertical clearances, to the extent required by applicable statutes or regulations. Lateral and vertical clearances for power poles and lines must also comply with the National Electric Safety Code (NESC).

5.2 Notwithstanding the foregoing, Industry may maintain Close clearances if: (A) Industry obtains a waiver from any conflicting Governmental Requirement(s); and (B) plans for such Close clearances have been provided to Railroad and are not rejected within sixty (60) days after the date of receipt. Industry agrees to install, maintain and replace (at its sole expense) any warning signs or lighting or make other adjustments regarding such Close clearances as may be required by Railroad or any Governmental Requirement(s).

5.3 Any gate installed by Industry across the Sidetrack must provide an appropriate clearance, as provided in the Specifications, and must be equipped with a double-end bar hasp so that Railroad may install its own lock. If Railroad is unable to open the gate to deliver or retrieve railcars, Industry shall reimburse Railroad for its costs of making an additional trip to the Sidetrack.

6. RIGHT-OF-WAY:

6.1 Industry is responsible for obtaining all necessary right-of-way (through ownership, easement, permit or otherwise), for its Segment of the Sidetrack that is not located on Railroad's right-of-way. The width of such right-of-way must be, at a minimum, sufficient to provide for the Sidetrack and clearances, cuts, fills, drainage ditches, walkways, or roads, as determined by Railroad.

6.2 Industry may use Railroad's right-of-way for a portion of Industry's Segment, if shown on the Plan. Such use, not to exceed six and one-half feet (6 1/2') from either side of the centerline of the Sidetrack, is granted only for the Term of this Agreement. Industry acknowledges that such use is not adverse to Railroad's title, and does not constitute the granting of any right, title, easement, or license to Railroad's right-of-way.

6.3 Railroad may use Industry's right-of-way for a portion of Railroad's Segment, if shown on the Plan. Such use, not to exceed six and one-half feet (6 1/2') from either side of the centerline of the Sidetrack, is granted only for the Term of this Agreement. Railroad acknowledges that such use is not adverse to Industry's title, and does not constitute the granting of any right, title, easement, or license to Industry's right-of-way.

6.4 Industry shall ensure the construction, installation, removal, or abandonment of any pipeline or wireline facilities along, under or over any portion of Industry's Segment that is not located within Railroad's right of way, shall be in accordance with Railroad's applicable Design and Construction Standard Specifications. Industry shall contact local representatives of Railroad's Operating and Engineering Departments and obtain the agreement from those representatives for the dates and amount of time that Industry's Segment will be out of service for such the construction, installation, removal, or abandonment.

6.5 Industry shall not block or permit the blockage of the sight view area of any road crossing over the Sidetrack.

7. RAIL SERVICE:

7.1 Railroad agrees, pursuant to the provisions of this Agreement, its tariffs, circulars, rules, and rail transportation contracts, to operate over the Sidetrack in the delivery, placement and removal of railcars consigned to or ordered by Industry, at such times established by Railroad. Railroad may also use Industry's Segment of the Sidetrack for its own general or emergency operating purposes, so long as such purposes do not materially affect the use of the Sidetrack for rail service to Industry. Industry agrees to abide by all applicable provisions of this Agreement and Tariffs CSXT 8100/8200 Series, including, without limitation, those addressing responsibility for and payment of demurrage and other accessorial charges. Railroad reserves the right to cancel the Agreement for any breach of such provisions.

7.2 In the event Railroad delivers to Industry Segment a railcar which was neither ordered nor tendered by Industry, or Industry's invitee, Industry shall provide written notice to Railroad, and Railroad will use commercially reasonable efforts to remove such railcar. Railroad shall not be liable to Industry for any such delivery or removal.

7.3 Railroad shall be deemed to have delivered any railcar consigned to or ordered by Industry when such railcar has been placed on Industry's Segment, so as to allow access by Industry, and Railroad's locomotive has uncoupled from the railcar. At that time, Railroad shall be relieved of all liability as a common or contract carrier or as a bailee, and possession of the railcar and its contents shall be transferred to Industry. Similarly, any obligation of Railroad as a common or contract carrier or as a bailee shall not begin until it has coupled its locomotive to the loaded railcar and departed the Sidetrack.

7.4 Industry is responsible for all railcars and their contents while in Industry's possession and assumes all responsibility for payment of all damage to any railcar and its contents that may occur during that time, even if caused by third parties.

7.5 If Railroad is unable to deliver a railcar on the Sidetrack for loading or unloading due to the acts of Industry or any third party, then such railcar will be considered as constructively placed for demurrage purposes at the time of attempted delivery.

8. HAZARDOUS MATERIALS:

8.1 The following provisions apply when the Sidetrack is used for the delivery or tender of any dangerous, flammable, explosive, or hazardous commodity (hereinafter "Hazardous Materials"), as determined by the U.S. Department of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, et seq.) and the Hazardous Materials Regulations (49 C.F.R. Parts 170-179) issued thereunder, as amended from time to time.

8.2 No Hazardous Materials shall be placed: (A) on the Sidetrack (except railcar shipments); (B) within the clearance requirements established herein; or (C) within one hundred (100) feet of Railroad's connecting mainline track.

8.3 Industry shall comply with all recommended practices of the Association of American Railroads and all Governmental Requirement(s) regarding the loading, unloading, possession, transfer and/or storage of Hazardous Materials, including but not limited to the installation and use of pollution abatement and control structures and other equipment that is prudent or required under such practices and/or Governmental Requirement(s).

8.4 In the event of a Hazardous Materials leak, spill, or release, Industry shall immediately notify the appropriate Governmental Response Center and Railroad's Operations Center and, at its sole expense, take all appropriate steps to clean, neutralize and remove the spill.

9. ALTERATIONS:

9.1 Industry shall supply Railroad with construction plans of any addition, deletion, or modification (hereinafter jointly the "Alterations") to Industry's Segment of the Sidetrack and obtain Railroad's written consent (which will not be unreasonably withheld) prior to making any Alterations. The Alterations are also subject to the aforementioned Specifications.

10. SUSPENSION AND TERMINATION:

10.1 Railroad may temporarily suspend its operations over the Sidetrack if, in its sole opinion, the condition of Industry's Segment of the Sidetrack is unsafe or if such operations would interfere with its common carrier duties. Railroad may impose the suspension orally but shall also provide a written notice to Industry regarding such temporary suspension.

10.2 Either party may terminate this Agreement upon the default of the other party. The party claiming a default must provide the other party with notice. If the default is not

corrected within thirty (30) days of the date of such notice, the party claiming default may terminate this Agreement upon written notice. Use of the Sidetrack by Railroad during any notice period shall not be considered as a waiver of any default claimed by it.

10.3 Industry understands that it must tender and/or receive a sufficient number of railcar shipments over the Sidetrack in order for Railroad to continue to keep Railroad's Segment of the Sidetrack in place. Should Railroad determine that the number of railcar shipments is insufficient, Railroad may notify Industry and offer to continue to keep Railroad's Segment in place in exchange for payment of an annual continuation charge from Industry. The amount of the continuation charge may vary from year to year. Industry shall have a period of thirty (30) days from the date of notice from Railroad within which to either accept or decline payment of the continuation charge. Should Industry decline to pay the continuation charge or not respond during the thirty (30) day period, then Railroad shall have the right to suspend service over the Sidetrack or to terminate this Agreement upon notice to Industry.

10.4 This Agreement will terminate, without the necessity of further notice, upon the abandonment of Railroad's connecting mainline track.

10.5 Either party may terminate this Agreement by extending thirty (30) days' notice to the other party.

10.6 Upon the termination of this Agreement, each party may remove any portion of its Segment that rests upon the right-of-way of the other party. If not removed within sixty (60) days after such termination, title to that remaining Segment will pass to the other party, who may then remove it and restore the underlying right-of-way at the expense of the prior owner.

10.7 Railroad provides transportation service to Industry over the Sidetrack. Railroad may make changes in its signal and switching technology in response to changes in regulation. Railroad may invoice, and Industry shall pay, amounts Railroad deems necessary, in its reasonable discretion, for the installation of switch, signal and other upgrades associated with the Sidetrack which Railroad deems appropriate to meet Federal, State, or local laws or regulations. Railroad will have the right to discontinue shipments over the Sidetrack or terminate this Agreement upon thirty (30) days advance written notice if Industry does not pay any amount invoiced by Railroad for upgrades pursuant to this paragraph.

11. LIABILITY AND INSURANCE:

11.1 Except as otherwise provided herein, any and all damages, claims, demands, causes of action, suits, expenses, judgments and interest whatsoever (hereinafter collectively "Losses") in connection with injury to or death of any person or persons whomsoever (including employees, invitees and agents of the parties hereto) or loss of or damage to any property whatsoever arising out of or resulting directly or indirectly from the construction, maintenance, repair, use, alteration, operation or removal of the sidetrack shall be divided between the Railroad and Industry as follows:

(A) Each party shall indemnify and hold the other party harmless from all Losses arising from the indemnifying party's willful or gross negligence, its sole negligence and/or its joint or concurring negligence with a third party.

(B) The parties agree to jointly defend and bear equally between them all Losses arising from their joint or concurring negligence.

(C) Notwithstanding the foregoing, and irrespective of the sole, joint or concurring negligence of Railroad, Industry acknowledges that it is solely responsible for and agrees to indemnify and save Railroad harmless from all Losses arising from: (i) the failure of Industry to properly maintain its Segment of the Sidetrack; (ii) the construction, alteration or removal of the Sidetrack by Industry; (iii) the presence of a Close clearance on Industry's Segment; or (iv) the explosion, spillage and/or presence (not in a railcar) of Hazardous Materials on its properties, facility or on Industry's Segment, but only when such Losses would not have occurred but for the dangerous nature of the Hazardous Materials.

(D) Railroad may be the lessee/operator of the mainline track that connects with the Sidetrack. In that event, the indemnities from Industry to Railroad under this section shall also include the lessor/owner of such track.

11.2 Industry at its sole cost and expense must procure and maintain in effect during the continuance of this Agreement, a policy of Commercial General Liability Insurance (CGL), naming Railroad, and/or its designee, as additional insured and covering liability assumed by Industry under this Agreement. A coverage limit of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is required to protect Industry's assumed obligations. If said CGL insurance policy(ies) do(es) not automatically cover Industry's contractual liability under this Agreement, a specific endorsement adding such coverage shall be purchased by Industry. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Industry shall arrange for adequate time for reporting losses. Failure to do so shall be at Industry's sole risk. The evidence of insurance coverage shall be provided to Railroad and endorsed to provide for thirty (30) days' notice to Railroad prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com. Securing such insurance shall not limit Industry's liability under this Agreement but shall be security therefor.

11.3 RESERVED

11.4 Specifically to cover construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Industry shall: (a) notify Railroad; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100

U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Industry may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Agreement, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

12. ASSIGNMENT:

12.1 This Agreement may not be assigned without the written consent of either party but shall be assumed by their successors through merger or acquisition. Industry may sell or assign its Segment of the Sidetrack and right-of-way upon notice to Railroad, but such transactions shall not affect this Agreement or carry any rights regarding any rail service described in this Agreement.

12.2 Notwithstanding the provisions of Sections 12.1 or 10.4, Railroad may assign this Agreement to any new owner or operator of its connecting mainline track.

13. MISCELLANEOUS:

13.1 Each provision of this Agreement is severable from the other provisions. If any such provision is ruled to be void or unenforceable, the remaining provisions will continue in full force and effect.

13.2 Other documents may also describe and cover a portion of the rail service and other provisions of this Agreement. Should any conflict arise between such other documents and this Agreement, Railroad may designate which provision will control.

13.3 The section captions in this Agreement are for the convenience of the parties and are not substantive in nature. All words contained in this Agreement shall be construed in accordance with their customary usage in the railroad industry.

13.4 The failure of either party to enforce any provision of this Agreement or to prosecute any default will not be considered as a waiver of that provision or a bar to prosecution of that default unless so indicated in writing.

13.5 All notices shall be in writing, shall be sent to the address contained in the introductory section and shall be considered as delivered: (A) on the next business day, if sent by telex, telecopy, telegram, or overnight carrier; or (B) five (5) days after the postmark, if sent by first class mail.

13.6 The late payment of any charge due Railroad pursuant to this Agreement will result in the assessment of Railroad's then standard late fee and interest charges at the rate of eighteen percent (18%) per annum, or at the highest lawful rate, until payment in full is received.

13.7 Industry agrees to reimburse Railroad for all reasonable costs (including attorney's fees) incurred by Railroad for collecting any amount due under this Agreement.

14. ENTIRE UNDERSTANDING:

14.1 This Agreement constitutes the entire understanding of the parties, is to be construed under the laws of the state in which the Sidetrack is located, may not be modified without the written consent of both parties, and has been executed by their duly authorized officials.

(The Remainder of This Page Has Been Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Railroad:

CSX TRANSPORTATION, INC

David Nichols
David Nichols

By: Matthew R. Cangiolosi

Print/Type Name: Matthew R. Cangiolosi

Print/Type Title: Director Real Estate

Witness for Industry:

HERNANDO COUNTY

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Industry to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY _____
County Attorney's Office