

PRIVATE SIDETRACK AGREEMENT

THIS PRIVATE SIDETRACK AGREEMENT (hereinafter "Agreement"), Made as of April 11, 1996, is by and between CSX TRANSPORTATION, INC. (hereinafter "Railroad"), whose mailing address is: 500 Water Street, Jacksonville, FL 32202; Attention: Contract Administration (J-180); and CITY OF FT. LAUDERDALE (hereinafter "Industry"), whose mailing address is: 100 North Andrews Ave., 6TH Floor, Ft. Lauderdale, FL 33301.

1. PURPOSE:

The purpose of this Agreement is to detail the provisions of the maintenance and use of Private Sidetracks No's. 102 and SV-4, including 300 foot spur track for the tender and receipt of rail freight traffic for the account of Industry. The Private Sidetrack, which consists of the track structure (rails, ties and fastenings), ballast, grading, drainage structure, turnout, bumping post and other appurtenances, (hereinafter jointly the "Sidetrack"), is located at or near Fort Lauderdale, in the County of Broward, State of Florida, as shown on the attached Plan No. M-833, dated March 11, 1966 and last revised as of April 11, 1996, (hereinafter the "Plan").

2. OWNERSHIP AND CONSTRUCTION:

The Sidetrack, as shown on the Plan, has been constructed. Railroad owns that portion of the Sidetrack No. 102 from Point of Switch (hereinafter "P.S.") in Railroad's connecting mainline track at Track Station 9+18=0+00 to Track Station 1+93 and that portion of SV-4 in Railroad connecting mainline track at Track Station 8+63=0+00 to Track Station 2+49, (hereinafter "Railroad's Segment"). Industry owns the remainder of the Sidetrack No's 102 and SV-4, including 300 foot spur track diverging therefrom, (hereinafter "Industry's Segment").

3. GOVERNMENTAL REQUIREMENT(S):

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 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 Track Safety Standards and (B) in a safe condition, consistent with the operating circumstances and amount of use. 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.

4.2 The Industry shall, during the tenure of this agreement, pay to the Railroad, in advance, a maintenance charge of \$2,255.00 per annum, plus sales tax if applicable, for the maintenance of the first 193 feet of the said sidetrack, the first of which payments shall become due on April 11, 1996, unearned maintenance charge to be refunded on termination of this agreement as herein provided. It is distinctly understood and agreed that the Railroad reserves the right to periodically amend this charge to reflect the then current cost of labor and materials.

5. CLEARANCES:

5.1 Industry agrees to provide and maintain: (A) the lateral clearance requirements (at least eight feet [8'0"] 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 Specifications, for the entire length of its Segment of the Sidetrack. Any clearance not in compliance with the foregoing is a "Close" clearance. 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 Industry shall not construct or allow the construction of any road (public or private), gate, tunnel, bridge, culvert, pit, gasline, pipe or similar items on, over, under or along the entire Sidetrack or right-of-way without the written permission of Railroad. If Railroad's permission is granted, Industry understands that a separate agreement might be necessary and that Industry shall be responsible for the construction, maintenance, repair and removal costs of the foregoing items and ancillary structures, unless otherwise stated therein.

6.4 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.

7.2 Industry shall not permit the use of the Sidetrack by or for the account of third parties without the written consent of Railroad. If such use occurs without such consent, Industry assumes the same responsibilities, as stated in this Agreement for such use as if for its own account. Railroad shall not be required to provide rail service to such third parties.

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:

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 provisions of Railroad's document entitled "Design and Construction of Industrial Sidetracks", as amended, supplemented or superseded (hereinafter the "Specifications"). A current copy of the Specifications shall be furnished upon written request.

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 If the roadhaul revenue traffic handled over the Sidetrack is insufficient to meet Railroad's costs in maintaining and replacing its Segment, Railroad may notify Industry and request that Industry agree to pay an annual maintenance fee regarding Railroad's Segment. If Industry does not agree to pay the fee within thirty (30) days from the date of such notice, then Railroad has the right to refuse to provide service to Industry over the Sidetrack, and/or to terminate this Agreement.

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 at any time 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 Industry represents that it now owns or controls the property served by the Sidetrack, formerly covered by Agreement(s) No. SAL 065550, dated June 28, 1967, between Seaboard Air Line Railroad Company and City of Fort Laugerdale, and that Industry now owns or controls all tracks and materials in the Sidetrack which are not herein specified as owned by Railroad. Upon execution of this Agreement, the aforesaid Agreement(s) dated June 28, 1967 is(are) hereby superseded and cancelled.

11. LIABILITY AND INSURANCE:

11.1 Except as otherwise provided herein, any and all damages, claims, demands, causes of action suits, expenses (including attorney's fees and costs), 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 parties 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 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 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 insuring liability assumed or contracted under this Agreement with a limit of not less than \$3,000,000 Combined Single Limit for personal injury and property damage per occurrence. The policy must contain a Contractual Liability Coverage Endorsement, referring to this Agreement by date, name of Railroad, description of Agreement, and location covered. Industry must provide Railroad with an appropriate certificate of insurance reflecting the foregoing obligations, at least fifteen (15) days prior to any construction or use of the Sidetrack. Failure of Industry to comply with such demand shall be an event of default as provided in Section 10.2, except that the time period to correct the default is five (5) days.

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.

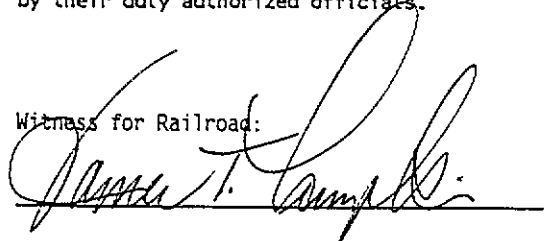
13.4 The failure of either party to enforce any provision of this Agreement or to prosecute any default will not be considered as a waiver of that provision or a bar to prosecution of that default unless so indicated in writing.

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.

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.

Witness for Railroad:



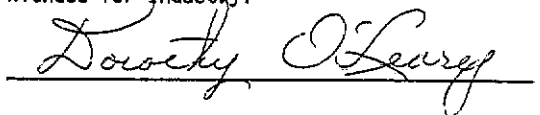
CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: Sheila W. Bazar

Print/Type Title: Director Property Services

Witness for Industry:



CITY OF FT. LAUDERDALE

By: _____

Print/Type Name: George L. Hanbury

Print/Type Title: City Manager

Social Security Number: _____

596000319

Tax Identification Number: _____