

THE MARYLAND AND DELAWARE RAILROAD COMPANY
“PRIVATE TRACK LEASE” AND
RAILCAR STORAGE AGREEMENT
(Hazardous Material Loads)

This Agreement (the “Agreement”) is made as of the ____ day of June 2017, between **The Maryland and Delaware Railroad Company**, 106 Railroad Avenue, Federalsburg, MD 21632 (hereinafter called “Railroad Company”), and **[Lessee Name and Address]** (hereinafter called (“Industry”).

WITNESSETH:

WHEREAS, Railroad Company has approximately _____ feet of track between MP _____ of Railroad Company’s Line in _____, shown or described on Exhibit A hereto (the “Storage Track”) that Railroad Company is willing to make available for storage of rail cars; and

WHEREAS, Industry desires to store certain loaded LP Gas tank railcars (the “Cars”) on tracks owned or operated by Railroad Company and designated by Railroad Company hereunder as “private track” as shown or described on Exhibit A hereto (the “Storage Track”); and

WHEREAS, Railroad Company is willing to lease the Storage Track to Industry for the storage of Cars upon the terms, conditions and provisions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and the mutual undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lease and Storage

- a. Railroad Company agrees that Industry may store up to ____ Cars on the Storage Track identified on Exhibit A hereto, which are interchanged to Railroad Company from Norfolk Southern Railway Company (“NSR”) at _____ (the “Interchange Point”). No provision in this Agreement shall obligate Railroad Company to handle or move any Cars other than as expressly set forth in this Agreement.
- b. Railroad Company leases to Industry, subject to the rights, terms and conditions set forth herein, the Storage Track.
- c. Industry shall use the Storage Track for no purpose other than the storage and inspection of the Cars pending the switching of the Cars for outbound movement.

- d. This Agreement does not constitute permission for Industry's employees or agents or any other person to enter upon the premises of Railroad Company, except with notice and the permission of Railroad Company, which permission shall not be unreasonably withheld.
2. Rent.
- a. Industry will pay to Railroad Company an amount equal to \$_____ per Car per day (or portion thereof) for the duration of time that Railroad Company stores a Car. For purposes of this Agreement, a Car is deemed to be stored at the Storage Track from the time the Car is interchanged to Railroad Company by NSR through the pick-up date specified in the Movement Notice as defined in Section 4.a below. The Railroad Company's charges for storing Cars, as described in this Section 2, shall be referred to in this Agreement as the "Rent" or "Storage Charge."
3. Switching Charge
- a. Railroad Company will charge Industry to move Cars between the Storage Track and the rail siding of _____ ("Consignee") at such time as Industry issues a Movement Notice for the Cars. This charge will be \$_____ per Car outbound from the Storage Track. Railroad Company's charges for transporting the Cars, as described in this Section 3, shall be referred to in this Agreement as the "Switching Charge."
4. Pick-Up and Retrieval of Cars
- a. When Industry desires to have Cars moved from the Storage Track to Consignee's track for offloading, Industry shall provide Railroad Company with written notice (such notice may be electronic) requesting Railroad Company to pick up a specific number of Cars at the Storage Track ("Movement Notice"). The minimum number of Cars that Industry may request Railroad Company to move with a Movement Notice shall be four (4) Cars. The Movement Notice shall be received by Railroad Company at least two (2) business days prior to the requested "pick-up date" and shall specify the number of Cars Industry is requesting Railroad Company to deliver to Consignee's track for offloading. Railroad Company reserves the right to take railcars from Storage Track as first in / last out at Railroad Company's sole discretion. Additional switching charges of \$_____ will apply if Industry requests specific Cars.
- b. Except for Railroad Company's obligations as set forth in Section 4.a above, Railroad Company shall have no further obligations relative to said Cars while stored by Industry on the Storage Track, including, but not limited to, no obligation to secure the Cars or their contents from theft, loss or damage while stored, no obligation to protect the cars from any leakage or spillage while the Cars are stored and no obligation to protect the Cars from vandalism, weather or other acts of God. Industry acknowledges that during the period of time that the Cars are being stored, and until they are moved to Consignee's track for offloading, Railroad Company shall not be, and

Industry shall not assert that Railroad Company is, a common carrier, bailee or warehouseman with respect to such Cars or the contents thereof.

5. Right to Reject

- a. Railroad Company, in its discretion, shall have the right (but not the obligation) to reject, and to not store, any Car it believes is damaged, requires special handling, does not comply with Federal Railroad Company Administration standards for interchange or with Association of American Railroad Company's Interchange Rules, or is in a condition that raises safety and/or operational concerns. Industry shall use commercially reasonable efforts to tender Cars to Railroad Company for storage that are loaded, in good condition and free of cardable defects.

6. Taxes and Other Charges

- a. Industry is responsible for, and shall pay, all taxes (except for income taxes) and license fees which may be assessed or levied upon Industry or Railroad Company, arising out of or in connection with this Agreement.
- b. Industry shall be responsible for, and shall pay, or relieve Railroad Company from, all lease charges and car hire (per diem and mileage) applicable to the Cars while in storage hereunder.
- c. In the event Railroad Company is billed for one or more charges described in this Section 6, Railroad Company will timely forward such invoice to Industry for payment, and Industry agrees to pay timely such invoice in full.

7. Payment

- a. Each month, the Railroad Company shall provide Industry with an invoice for any and all Storage Charges and Switching Charges (together, the "Charges") for the immediately preceding month. Industry shall pay Railroad Company the Charges identified on such invoice within twenty (20) days after receipt by Industry.
- b. A charge equivalent to the lesser of eighteen percent (18%) per year (based on a year of 360 days) or the maximum allowable rate under Maryland law shall be assessed for late payment, calculated through the date payment is received by Railroad Company.
- c. Industry's obligation to pay the Charges shall not be affected by, and such payments shall be made without, abatement, suspension, deferment or diminution by reason of any circumstance or occurrence, including without limitation, any offset, counterclaim, recoupment, defense or other right that Industry may now or hereafter have against Railroad Company.

8. No Representations by the Parties

- a. EXCEPT TO THE EXTENT EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND UNDER

THIS AGREEMENT WITH RESPECT TO THE SUBJECT MATTER
HEREOF.

9. Liability and Indemnification

- a. INDUSTRY AGREES TO BE RESPONSIBLE FOR, AND RELEASE, INDEMNIFY, DEFEND AND SAVE HARMLESS RAILROAD COMPANY, ITS PARENT COMPANY AND AFFILIATES, IF ANY, AND ALL THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS FROM AND AGAINST, ANY AND ALL LIABILITIES, LOSSES, CAUSES OF ACTION, CLAIMS, DAMAGES, ASSESSMENTS, FINES, PENALTIES, FEES, COSTS AND EXPENSES OF ANY KIND, NATURE OR DESCRIPTION (INCLUDING WITHOUT LIMITATION, COSTS RELATED TO ENVIRONMENTAL REMEDIATION, LIABILITY FOR DEATH OR INJURY TO ANY AND ALL PERSONS, LOSS OR DAMAGE TO ANY AND ALL PROPERTY, CONTRACTUAL DAMAGES, AND REASONABLE ATTORNEYS' FEES AND EXPENSES) (TOGETHER, "LOSSES") TO THE EXTENT ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH, THE PRESENCE OF THE CARS ON THE STORAGE TRACK AND / OR THE CONTENTS THEREOF, REGARDLESS OF ANY GROSS NEGLIGENCE OR MISCONDUCT BY RAILROAD COMPANY OR THE RAILROAD COMPANY'S EMPLOYEES, AGENTS OR REPRESENTATIVES.
- b. In the event of any leakage, spillage or release of any Hazardous Substance (as defined in Section 11) from any Car, Industry shall promptly and fully reimburse and indemnify Railroad Company for any cost, charge, fine, penalty or reasonable attorney's fees incurred by Railroad Company as a result of such leakage, spillage or release, including costs to clean, neutralize, remove or remedy the release, unless such leakage, spillage or release results from the gross negligence of Railroad Company, or the Railroad Company's agents and/or its representatives, in which case Railroad Company will be responsible therefor solely to the extent caused by such gross negligence.
- c. Industry acknowledges that the Cars and/or contents thereof are not insured by Railroad Company against loss, injury, or damage, and Industry assumes the risk of loss and/or damage to the Cars and/or the contents thereof. Industry releases Railroad Company from any and all liability by reason of loss or damage to the railcars and/or railcar contents, except and to the extent caused by the gross negligence of Railroad Company, or the Railroad Company's agents and/or its representatives. Industry assumes all liability for any losses attributable to or associated with the storage or handling of these Cars and/or the contents thereof, except and to the extent caused by the gross negligence of Railroad Company, or the Railroad Company's agents and/or its representatives.

- d. LIMITATION OF DAMAGES. Notwithstanding any provision in this Agreement to the contrary and regardless of the nature of the cause of action, whether in tort, contract or otherwise, in no event shall any party to this Agreement be liable for any consequential, incidental, special, or indirect damages whatsoever (including but not limited to lost profits, cost of capital or interruption of business expenses) arising out of the services provided under this Agreement, even if advised of the possibility of such damages.

10. Indemnification Procedure

- a. If a suit or claim is made against one party hereto (the “Indemnitee”), the obligations of which under this Agreement are allocated to the other party (the “Indemnitor”), the Indemnitee promptly shall notify the Indemnitor in writing, and the Indemnitor shall bear all obligations in connection with such claim or suit; provided, that, the Indemnitee shall have the right to participate in the defense of the claim or suit at its sole expense. If the Indemnitor fails to acknowledge in writing its indemnification obligations (including its obligation to defend) with respect to a claim or suit within thirty (30) days after the Indemnitee has delivered notice of such claim or suit, the Indemnitee shall have the right to undertake the defense, settlement or compromise of such claim or suit on behalf of, and at the sole expense of, the Indemnitor.
- b. In performing its indemnification obligations under this Agreement, the Indemnitor shall not compromise or settle a claim or suit brought against the Indemnitee or consent to the entry of judgment, if such compromise, settlement or consent (1) does not include as an unconditional term thereof a release by the claimant or plaintiff of all liability of the Indemnitee related to such claim or suit, or (2) obligates the Indemnitee to prospectively take certain actions or to refrain from taking certain actions.

11. Hazardous Substances

- a. For purposes of this Agreement, the term Hazardous Substance shall mean one or more substances: (1) which are defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “pollutant,” “contaminant” or is regulated under any Environmental Law; (2) which contain gasoline, diesel fuel or other petroleum products or products containing petroleum hydrocarbons or volatile organic compounds; (3) which contain polychlorinated biphenyls (PCBs”) or asbestos or urea formaldehyde foam insulation; or (4) which contain or emit radioactive particles, waves or material, including radon gas. For purposes of this Agreement, the term “Environmental Law” shall mean Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, Hazardous Materials Transportation Uniform Safety Act of 1990, the Federal Insecticide, Fungicide, or Rodenticide Act and analogous state and local laws, all as amended from time to time, and

all other federal, state, local or other governmental statutes, regulations, rules, laws or ordinances addressing injury to or protection of real or personal property or human health, as such matters are related to the protection or pollution of the environment, now existing and hereafter enacted.

- b. Industry shall promptly notify Railroad Company and all appropriate governmental entities of any actual, suspected, potential or alleged (1) violation of one or more Environmental Laws, and (2) presence or release of one or more Hazardous Substance, which, in each case, affects or relates to, directly or indirectly, the storage, handling or movement of the Cars pursuant to this Agreement. In the event of such an actual, suspected, potential or alleged violation, presence or release, Industry shall provide Railroad Company with copies of all written documentation and summaries of all oral communications related thereto.
- c. In the event of a release (including without limitation any discharge, spill, leak, leaching, emission or injection) of a Hazardous Substance from one or more Cars (1) at the Storage Track, or (2) during the handling or movement of the Cars pursuant to this Agreement (a "Release Incident"), then Industry shall at its cost and expense, perform all cleanup, remediation and other measures required by all governmental entities, as well as all such measures that may reasonably be required by Railroad Company, with respect to the Release Incident; provided, however, Railroad Company shall, to the extent the Release Incident arises from the gross negligence of Railroad Company at its cost and expense, perform all cleanup, remediation and other measures including all measure required by all governmental entities, with respect to the Release Incident. In the event of joint liability, the cost and expense shall be apportioned to each party based on the portion of the liability caused by Railroad Company's gross negligence. Industry shall permit Railroad Company to participate in any and all investigations, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental entities related to the Release Incident. Industry shall take all actions necessary to ensure that any indemnification, release or similar action that benefits Industry, whether from a governmental entity or a private party, related to a Release Incident, also applies to Railroad Company. No provision of this Section 11 shall limit or impair the indemnification provisions of Section 9.

12. Term

- a. The term of this Agreement shall take effect on the day and year first written above and shall continue until terminated in accordance with Section 13 of this Agreement.

13. Termination

- a. This Agreement shall immediately terminate if any regulatory agency determines that the Storage Track cannot be leased by Railroad Company to Industry as "private track" as defined in Section 17.

- b. Notwithstanding any other provision in this Agreement, this Agreement shall terminate upon the earlier of:
- (1) thirty (30) days after the receipt by a party hereto of a written notice of termination by the other party; or
 - (2) at the Railroad Company's option, immediately upon the receipt by Industry of a written notice of termination by Railroad Company based on a breach by Industry of any of its obligations under this Agreement, including without limitation, the insurance requirements set forth at Section 15 of this Agreement or the payment requirements set forth at Section 7 of this Agreement, or
 - (3) at the Railroad Company's option, immediately upon receipt by Industry of a written notice of termination by Railroad Company based on Railroad Company's issuance of an embargo on all or a portion of the rail line operated by Railroad Company, or
 - (4) when all of the Cars have been removed from the Storage Track by Industry.
- c. The parties agree and acknowledge that termination of the Agreement shall not relieve either party from any liability that may result from an act, omission or circumstance that occurred prior to or at the date of termination of this Agreement, and shall not deprive either party of its rights to enforce any such liability or of the benefits of any covenants or obligations in this Agreement with respect to an act, omission or circumstance that occurred prior to or at the date of termination. The right of a party to terminate this Agreement shall be in addition to any other right at law or in equity arising by reason of any breach of this Agreement by the other party hereto, including without limitation any other right of the non-breaching party under this Agreement.
- d. Within five (5) days after either party has received a written notice of termination, Industry shall provide Railroad Company with a final Movement Notice for all Cars remaining at the Storage Track pursuant to this Agreement ("Final Notice"). Railroad Company agrees to deliver the Cars to the Interchange Point in a reasonably timely manner, taking into account the number of Cars subject to the Final Notice. The Charges shall apply to all Cars subject to the Final Notice. To the extent that this Agreement terminates prior to Railroad Company's delivery of the remaining Cars, Sections 6 through 11 of this Agreement and Sections 14 through 17 of this Agreement shall expressly survive termination of the Agreement until such delivery has been completed.
- e. Holding Over. In the event Industry fails to provide Railroad Company with Final Notice as outlined in Section 13(c), Industry agrees to pay Railroad Company Storage Charge plus 30% for such period of time until Final Notice is received for the Cars, or until such time as the Railroad Company delivers the Cars to the Interchange Point with reverse route billing.

- f. Attorney's Fees. In event of any action by Railroad Company to enforce its rights hereunder, Industry hereby agrees to pay Railroad Company reasonable attorney's fees incurred in such one or more event.

14. Force Majeure

- a. In the event that either party cannot perform its obligations under this Agreement as a result of an Act of God, war, insurrection, strike, derailment, or any cause beyond its reasonable control (each, a "Force Majeure Event"), then the obligations of either party shall be suspended for the duration of the Force Majeure Event. The Force Majeure Event shall not affect any rights accrued under this Agreement prior to the occurrence of the Force Majeure Event.

15. Insurance

- a. Industry shall procure, and maintain in effect, for the term of this Agreement, a policy or policies of insurance covering the liability to which it is or may be subject under this Agreement. Each policy of insurance Industry procures pursuant to this Agreement: (1) shall name Railroad Company as an additional insured with respect to liabilities arising out of Industry's obligations to Railroad Company under this Agreement, (2) shall not contain any exclusions related to doing business or performing operations on or near a Railroad Company right-of-way or Railroad Company facilities.
- b. The following minimum insurance coverage shall be kept in force by Industry: Comprehensive General Liability insurance, including contractual liability providing for bodily injury, including death, personal injury and property damage coverage, and Pollution Legal Liability Insurance covering all operations of Industry; Pollution coverage may be carried by separate standalone policy. Such policies shall provide coverage with (1) a combined single limit of at least Five Million Dollars (\$5,000,000) for each incident. Excess insurance carried by Industry shall be available to Railroad Company in the event of a covered loss of greater than the combined single limit CGL coverage required herein. Such insurance shall contain no exclusion with respect to Cars in the care, custody, or control of Railroad Company. Such policies shall be endorsed to provide Waiver of Subrogation in favor of Railroad Company and Railroad Company shall be named as an Additional Insured. The Additional Insured and Waiver of Subrogation requirements may be satisfied by utilizing blanket Additional Insured and Waiver of Subrogation endorsements.
- c. If the Insurance procured and maintained by Industry pursuant to this Section 15 takes the form of a Claims Made Policy, Industry agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, consistent with the requirements set forth in this Section 15, for a period of time at least five (5) years following the termination of this Agreement.

- d. The insurance policy(ies) described in this Section 15 shall be written on paper with a current Best's Insurance Guide Rating of A- and Class VII or better. All coverages shall be primary and non-contributory to any insurance coverages maintained by Railroad Company and may be on a primary and non-contributory basis utilizing a blanket endorsement, and must be endorsed to provide for coverage of incidents occurring within fifty (50) feet of a Railroad Company track. Each insurance company shall be authorized to transact business in the State of Maryland. Industry shall give Railroad Company notice in accordance with policy provisions, in writing, of any proposed policy cancellation or of any material modification of the terms and conditions of the policy. Industry will provide Railroad Company a Certificate of Insurance evidencing required coverage upon the execution of this Agreement and each year thereafter.
- e. Industry agrees that Railroad Company may, from time to time, upon thirty (30) days prior written notice to Industry, require a commercially reasonable increase in the amount of insurance coverage required by this Section 15 or commercially reasonable changes to the terms and conditions of the policy.
- f. Industry understands and agrees that the foregoing insurance coverage is not intended to, and shall not, relieve the Industry from, or serve to limit, modify or otherwise affect, Industry's liability under this Agreement.

16. Representations of the Parties

- a. Industry hereby represents and warrants as of the date hereof as follows:
 - (1) Industry has all requisite corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by Industry, and is the valid and binding agreement of Industry, enforceable against Industry in accordance with its terms. The signatory of this Agreement on behalf of Industry is fully authorized to bind Industry to perform all its obligations under this Agreement.
 - (2) Industry's execution of and performance under this Agreement do not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which Industry is bound.
- b. Railroad Company hereby represents and warrants as of the date hereof as follows:
 - (1) Railroad Company has all requisite corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by Railroad Company, and is the valid and binding agreement of Railroad Company, enforceable against Railroad Company in accordance with its terms. The signatory of this Agreement on behalf of Railroad

Company is fully authorized to bind Railroad Company to perform all its obligations under this Agreement.

- (2) Railroad Company's execution of and performance under this Agreement do not violate any rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or any contract to which Railroad Company is bound.
- c. Industry shall, at its expense, comply in all respects with all applicable laws, codes, rules, regulations and decisions of any legislative, administrative or judicial body exercising any power or jurisdiction over the Cars, or the subject matter of this Lease. Railroad Company shall, at its expense, comply in all respects with all applicable laws, codes, rules, regulations and decisions of any legislative, administrative or judicial body exercising any power or jurisdiction over the movement of the Cars, the Tracks or the subject matter of this Lease.

17. Private Track Lease

- a. For the purpose of compliance with governmental regulations, Railroad Company and Industry are agreeing to specifically designate in writing all or a portion of the Storage Track as "Private Track" as defined under 49 CFR 171.8.
- b. Notwithstanding any provision of this Agreement to the contrary, Railroad Company and Industry agree that (1) the use, control and responsibility for any portion of the Storage Tracks designated as Private Track shall be exclusive to Industry, and (2) no change or substitution in the specific location of any designated Private Track shall be valid unless agreed to in writing by Railroad Company and Industry.
- c. The parties agree to the use of the form of agreement attached hereto as Exhibit B, or such other form as may be subsequently agreed to in writing by the parties, for the designation of a Private Track under this Agreement.

18. Miscellaneous

- a. Except to the extent otherwise provided herein, any notice, election or other correspondence required or permitted hereunder shall be in writing and hand-delivered (receipt of which is confirmed), or sent by certified or registered mail, postage prepaid, or by a national overnight delivery service, prepaid, or by a facsimile transmission (receipt of which is confirmed by a transaction report or equivalent thereof), or by email, and, in each case, addressed to the party affected by the notice at the following addresses and facsimile numbers, as appropriate, or at such other addresses and facsimile numbers as the applicable party may furnish to the other by written notice:

RAILROAD COMPANY:

Cathrin B. O'Donnell
Vice President and General Counsel
PO Box 22
Ringoos, NJ 08551
Fax No. 833-752-1849
cathrin.odonnell@chesapeakeanddelaware.com

INDUSTRY:

All such written notices, elections or other correspondence shall be deemed to have been received on the date on which so hand-delivered, on the fifth business day following the date on which sent by certified or registered mail, on the first business day following the date on which sent by a national overnight delivery service or on the date on which faxed and confirmed, except for a notice of change of address or facsimile number, which shall be effective only upon actual receipt. However, matters of an emergency or operating nature may be communicated by telephone or other reasonable means and shall as soon as practicable be confirmed in writing.

- b. Waiver. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder. No waiver by a party hereto of any failure of, or refusal by, the other party to comply with any obligation under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.
- c. Amendment. No provision of this Agreement shall be amended except by written instrument executed by both parties hereto.
- d. Entire Agreement. This Agreement (and any attachments hereto) constitutes the entire agreement of the parties hereto and supersedes all prior agreements, understandings and representations by or between the parties, oral or written, with respect to the subject matter of this Agreement.
- e. Assignment. Industry shall not assign or in any manner transfer, voluntarily or involuntarily, by operation of law or otherwise, the Agreement or any rights or obligations thereunder, without the prior written consent of Railroad Company, and any such purported assignment without the consent of Railroad Company shall be null and void. Subject to the requirements of this Section 18.e, this Agreement shall inure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and assigns of the respective parties.

- f. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Maryland or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Maryland.
- g. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless to do so would deprive a party hereto substantially of the benefit of the bargain negotiated by such party.
- h. **Consent to Jurisdiction.** The parties hereto irrevocably submit to the jurisdiction of the courts of the State of Maryland and the federal courts of the United States of America located in the State of Maryland (a “Maryland Court”), and appropriate appellate courts therefrom, over any dispute or proceeding arising out of or relating to this Agreement, and each party hereto irrevocably agrees that all claims with respect to such dispute or proceeding may be heard and determined in such courts. The parties hereto irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any dispute or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in such courts, any defense of inconvenient forum for the maintenance of such dispute or proceeding, or any defense based on similar grounds; *provided, that* each party may move to remove the dispute or proceeding to a different Maryland Court. Each party hereto agrees that a judgment in any such dispute or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. This consent to jurisdiction is being given solely for purposes of this Agreement and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute or proceeding in which a party hereto is or may become involved. Each party hereto hereby consents to process being served by the other party to any dispute or proceeding of the nature specified in this Section 18.h by sending a copy thereof in a manner set forth in Section 18.a.
- i. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- j. **Strict Construction.** The language used in this Agreement should be deemed the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party hereto.
- k. **This Agreement is not intended and shall not be deemed to confer upon or give any person, except the parties hereto and, subject to Section 18.e hereof, their respective successors and assigns, any remedy, claim,**

liability, reimbursement, cause of action or other right under or by reason of this Agreement.

- l. Non-Disclosure: The existence and terms of this Agreement shall be confidential and shall not be disclosed by the Parties hereto to any third parties other than affiliates, legal and accounting advisors, and insurance carriers, without the prior written consent of the other Party hereto.
- m. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. By executing this Agreement in counterparts and sending such executed counterpart to the other party, the sending party intends to be bound by the terms, conditions and provisions of this Agreement. A facsimile or electronic signature shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument, in duplicate, as of the day and year first above written.

THE MARYLAND AND DELAWARE RAILROAD COMPANY

By: _____
John C. Paredes, President

Date: _____

INDUSTRY

By: _____

Title:

Date: _____

EXHIBIT A

MAPS OF STORAGE TRACKS

EXHIBIT B

PRIVATE TRACK DESIGNATION AGREEMENT

PRIVATE TRACK DESIGNATION

THIS PRIVATE TRACK DESIGNATION AGREEMENT, made the ____ day of _____, 20 ____, by and between **The Maryland and Delaware Railroad Company** (hereinafter “Lessor” or “Railroad Company”) with offices located at 106 Railroad Avenue, Federalsburg, MD 21632 and **[Name of Industry]** (hereinafter “Lessee” or “Industry”) with offices located at [Industry Address].

WITNESSETH:

WHEREAS, Railroad Company and Industry entered into a “Private Track Lease” and Railcar Storage Agreement which, together with any subsequent amendment agreement(s) thereto (the “Track Lease Agreement”), that covers the lease of certain track (the “Storage Tracks”); and

WHEREAS, Railroad Company and Industry, wish to specifically designate all or a portion of the Storage Tracks as a Private Track meeting the meaning and use as defined under 49 CFR 171.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree to the following:

A. All capitalized terms shall have the meaning set forth in the Track Lease Agreement unless otherwise defined herein.

B. The following specific Track(s) is hereby designated by Railroad Company and Lessee as Private Track:

Track	Location	Municipality, County, State
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C. The designated Private Track shall be under the exclusive use, control and responsibility of Lessee, and shall be used in conformity with 49 CFR 171.

D. Lessee agrees, to comply with all governmental regulations relative to the Private Track and use thereof, including without limitation those under 49 CFR 172 Subpart I pertaining to Security Plans. Railroad Company shall be provided a copy of any applicable Security Plan.

E. The Security Plan for the Private Track herein designated is maintained by:

F. Lessee's Emergency Phone Number is:

G. Railroad Company's Emergency Phone Number is: 443-521-5430 or 443-235-9240.

H. The effective date of this PRIVATE TRACK DESIGNATION AGREEMENT is _____, 20__.

IN WITNESS WHEREOF, the parties hereto have executed this PRIVATE TRACK DESIGNATION AGREEMENT as of the day and year first above written.

**The Maryland and Delaware Railroad
Company**

Date: ___/___/___

By: _____

John C. Paredes
President
106 Railroad Avenue
Federalsburg, MD 21632

[Industry]

Date: ___/___/___

By: _____