



## GARDENDALE RAILROAD

5585 N IH 35 / PO Box 619 | Cotulla, TX 78014

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### TEAM TRACK LICENSE

THIS AGREEMENT, MADE AND ENTERED INTO THIS \_\_\_\_TH DAY OF \_\_\_\_\_20\_\_\_\_, BY AND BETWEEN THE, GARDENDALE RAILROAD, A MISSOURI CORPORATION, HEREINAFTER REFERRED TO AS "RAILROAD," AND \_\_\_\_\_WHOSE ADDRESS IS \_\_\_\_\_HEREINAFTER REFERRED TO AS "LICENSEE" WITNESSETH, THAT THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. The Railroad hereby grants to the Licensee the non-exclusive license to use, as long as this contract remains in effect, Railroad's track and the immediate area surrounding such track, such track being known as and Track No. \_\_\_\_\_, or such other location as Railroad may designate from time to time (the "Team Track") located at or near the City of Gardendale in LaSalle County, Texas for the purpose of delivering to and receiving from the Railroad and the loading and unloading of the Licensee's carload rail shipments, said Team Track being located as shown in red on the sketch attached hereto and incorporated herein as Exhibit A. If Licensee becomes aware of any damage to or defects in the Team Track or any other property of Railroad, Licensee shall promptly notify Railroad specifying the location and nature of such damage or defect.

2. The Licensee will pay to the Railroad, upon receipt of an invoice therefore, for the use of the Team Track, a per car Team Track Fee as detailed below, and the applicable tariff charges published by Railroad from time to time, which tariff may be changed by Railroad at its discretion. Free time and demurrage charges shall be calculated based upon the time of placement by Railroad of a car on the Team Track for Licensee.

Commodity Team Track Fee

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

3. The Licensee will pay the Railroad a security deposit of One Thousand Dollars and 0/100 cent (\$1000.00) prior to the use of the Team Track. The Railroad reserves to right to increase the amount of the security deposit in its sole discretion. This security deposit is due for all Team Track customers unless waived in writing by the Railroad. This deposit must be made using an irrevocable financial instrument. The deposit will be refunded once all online railcars are released and applicable charges and any current receivables, if any, are deducted. If this deposit is not received before the arrival of the railcar, the railcar will be Constructively Placed per the Railroad's tariff at a separate location and not placed at the Team Track siding. As a result of this Constructive Placement, the Licensee will be responsible for switch fees and demurrage associated with the delay of the receipt of the deposit.

4. This Agreement shall remain in full force until terminated, by either party, upon giving thirty (30) days' notice in writing to the other party at its last known address.

5. Whenever Licensee is not loading or unloading a car, the car must be secured for movement by Railroad. Whenever any movement of cars is necessary in order for the Railroad to carry on its business on said Team Track, the Railroad shall have the right to move any cars which may be located on the Team Track.

6. Licensee does hereby assume and shall be liable for any damage to any car and/or any damage to or loss of the contents thereof from and after the time such car is placed on the Team Track by Railroad for Licensee and Licensee's liability therefore shall continue until the car is released by Licensee and attached to Railroad's locomotive. Railroad will use its best efforts to promptly notify Licensee of the placement of a car, but Licensee shall nonetheless have the responsibility to verify the placement of any car delivered to the Team Track for Licensee and Licensee shall not be relieved of its liability for any car or its contents regardless of whether Railroad has given Licensee notice of the placement of such car. The Licensee agrees while on or around the Team Track: (a) at all times to observe all federal and state laws and all rules and orders of federal and state commissions now in force or which may hereafter be enacted; (b) as concerns vehicles, equipment and temporary structures, to maintain on each side of the Team Track, between the ground line and a horizontal line twenty-two (22) feet above the top of rail, a horizontal clearance of eight (8) feet, measured from and at right angles to the center line of track; provided, however, that the horizontal clearance of eight (8) feet shall, at every point on every curve, be increased one (1) inch for every degree of curvature at such point; and (c) to exercise reasonable care to keep the clearance area, and the environs thereof which the Railroad's train service employees may reasonably be expected to use in serving the Licensee, free of obstructions that may endanger the safety of the Railroad's employees or interfere with the safe operation of engines or cars. Licensee shall not store on the Team Track any vehicles, equipment, temporary structures or any other materials without the Railroad's prior written consent. Knowledge of or notice to the Railroad of a breach of any of the foregoing covenants and its continued operation of the Team Track thereafter shall not constitute a waiver of either of them.

7. It is understood that the movement of railroad locomotives involves some risk of fire, and except in case of the Railroad's negligence, the Licensee assumes all responsibility for, and agrees to release, defend and indemnify the Railroad from and against, any and all claims for injury or loss of life or for damage to property of the Licensee from fire caused by locomotives operated by the Railroad on the Team Track or in its vicinity for the purpose of serving said Licensee, except the premises of the Railroad and rolling stock belonging to the Railroad or for which it is responsible and shipments in the course of transportation by the Railroad.

8. In case it is necessary for the Licensee to move cars from place to place on the Team Track, it will delegate for that purpose only employees of the Licensee experienced in the handling of cars; and if any cars belonging to the Railroad, or for the safe condition of which it is responsible, are damaged or destroyed, or the lading thereof be damaged or destroyed, or damage results to the Team Track or equipment or structures or other property of the Railroad or anyone else, or any injury to person or loss of life occur as a consequence of such movement, then if such damage to or loss of property or injury to person or loss of life shall result from the inexperience of the Licensee's employees or from improper or negligent handling of said cars on the part of the Licensee's employees, the Licensee will, on demand, reimburse the Railroad for all such damage to or loss of its property or property for which it is responsible. In no event shall the Licensee enter or cause any car to enter any other tracks or property of Railroad. the part of the Licensee's employees, the Licensee will, on demand, reimburse the Railroad for all such damage to or loss of its property or property for which it is responsible. In no event shall the Licensee enter or cause any car to enter any other tracks or property of Railroad.

9. The Licensee agrees to indemnify, defend and save harmless the Railroad, its directors, officers, employees and agents from and against any and all claims for loss, damage, injury or death to the person or property of the parties hereto, their officers, agents, employees, invitees, licensees and independent contractors, and to the person or property of any other person or corporation, while on or about said Team Track, resulting from any act or omission of the Licensee, its officers, agents, employees, invitees, licensees or independent contractors, and the Licensee agrees to assume all liability for death of or injury to any person or persons resulting

from any act or omission of the Licensee, its officers, agents, employees, invitees, licensees or independent contractors, including, but not limited to, the death of or injury to any directors, officers, employees, agents, patrons, grantees, lessees, independent contractors and licensees of the parties hereto. The Licensee further agrees to indemnify, defend and save harmless the Railroad, its directors, officers, employees and agents from and against any and all loss of or damage or injury to any property, including, but not limited to, property of the parties hereto and any property which Railroad is responsible for its safekeeping, including all incidental expenses, attorneys' fees and costs incurred or sustained by the Railroad, in any manner or degree caused by, attributable to, or resulting from, the exercise by Licensee of the rights herein granted, the failure of the Licensee to conform to the terms and conditions of this Agreement or any activity by Licensee or its employees, agents, invitees, licensees or independent contractors on the Team Track, regardless of any negligence of the Railroad, its directors, officers, employees or agents. At the election of the Railroad, the Licensee, upon receipt of notice to that effect, shall assume or join in the defense of any claim or suit based upon allegations of any such liability of the Railroad.

10. The Licensee further covenants and agrees that it shall not load or unload, without Railroad's prior written consent, nor shall it use, store, generate, disperse, discharge, release or allow to escape on or from the Team Track any Hazardous Substance (defined below) and Licensee will indemnify, defend, protect and save and keep Railroad and its directors, officers, employees and agents forever harmless and indemnified against and from any judgment, order, administrative order, consent, agreement, decree, claim, liability, fine, penalty, loss, cost or expense of any kind whatsoever (including attorney's fees and expenses and costs of investigation and removal of any Hazardous Substance) arising out of or attributable, in whole or in part, to Licensee's loading, unloading, usage, storage, generation, dispersal, discharge or release of any Hazardous Substance on or from the licensed area. Hazardous Substance shall mean any asbestos, petroleum-based products, flammable substances, explosives, radioactive materials, PCB-laden oil or material, hazardous materials, hazardous waste, pollutants, contaminants, toxic substances, pollution or related materials specified as such in, or regulated under any federal, state or local statutes, regulations, laws, orders or ordinances now or hereafter governing the use, storage, transportation, handling, production or disposal of such materials.

11. The Licensee, for the additional protection of the Railroad and naming Railroad as an additional insured, shall carry at Licensee's cost and expense for the duration of this Agreement commercial general liability insurance with limits of \$5,000,000 as to public liability, and \$1,000,000 as to property damage liability, such insurance to be in such forms and issued by a carrier acceptable to Railroad in its sole discretion. Licensee shall furnish the Railroad with a certificate evidencing that such insurance is in full force and effect and that the same will not be canceled without at least thirty (30) days' advance written notice by the insurance carrier to the Railroad.

12. If the licensed area is used for loading or unloading of flammable liquids or other products of a corrosive nature, the Licensee at its cost and expense shall procure and during the continuance of this Agreement shall maintain in effect a policy of insurance in such forms and with such carriers as shall be acceptable to the Railroad naming Railroad as an additional insured and insuring Licensee's liability under this Agreement, in the amounts of not less than \$2,000,000 for injury to or death of one person and not less than \$3,000,000 for anyone accident, and not less than \$3,000,000 for damage to property in anyone accident. The Railroad shall be furnished with a certified copy of said policy, which shall be endorsed to provide for thirty (30) days' written notice to said Railroad prior to termination of the policy and before any changes are made therein. The furnishing of said insurance shall not be deemed a limitation of the liability of Licensee as provided in this Agreement, but shall be additional security therefor.

13. Licensee shall not create or permit to be created or to exist upon the Team Track any nuisance, public or private, during the continuance of this Agreement, and shall indemnify, defend, save and keep harmless Railroad, its directors, officers, agents and employees, from any liability, suit or claim growing out of any nuisance thereon or Licensee's violation of any applicable law, ordinance or governmental regulation, including, without limitation, laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution.

14. Licensee shall not be relieved by the termination of this Agreement of any obligation, including, without limitation, any indemnification obligations which shall have accrued thereunder prior to such termination.

15. This Agreement shall not be assigned or in any manner transferred, nor shall the Team Track or any part thereof be used or occupied by any party other than the Licensee, nor for any purpose other than specified herein without the prior written consent of the Railroad.

16. Until terminated as hereinabove provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

17. As a part of the consideration hereof, the Licensee hereby agrees that each and all of its indemnity commitments in this Agreement in favor of Railroad also shall extend to and indemnify the parent, Subsidiaries and affiliated companies of Railroad and their directors, officers, agents, employees, contractors and invitees. This Agreement does not grant and should not be construed to grant to Licensee any ownership of the track or land comprising the Team Track. Licensee is not an agent of Railroad.

18. This Agreement shall be controlled and construed in accordance with the law of the State of Texas. WITNESS the signatures of the parties hereto, the day and year first above written.

**GARDENDALE RAILROAD, INC.**

("RAILROAD")

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

("LICENSEE")

By: \_\_\_\_\_

Title: \_\_\_\_\_