

BEFORE THE
SURFACE TRANSPORTATION BOARD

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FD 36489

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC
– OPERATION EXEMPTION –
IN EFFINGHAM COUNTY, GEORGIA

**PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502(a)**

FILED
May 11, 2021
SURFACE TRANSPORTATION
BOARD

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**ATTORNEYS FOR SAVANNAH
INDUSTRIAL TRANSPORTATION, LLC**

Dated: May 11, 2021

FEE RECEIVED
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SURFACE TRANSPORTATION BOARD

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Savannah Industrial Transportation, LLC (“SIT”), a noncarrier, hereby files this Petition for Exemption (the “Petition”) pursuant to 49 U.S.C. § 10502 for an exemption from the formal requirements of 49 U.S.C. § 10901 to commence common carrier operations on certain track (the “Track”) it leases from the Track’s owner, Savannah Industrial Logistics, LLC (“SIL”),¹ at or near Rincon, Effingham County, Georgia.² The Track, which has no mileposts, is approximately 11,404 feet in length (exclusive of connecting ancillary and yard trackage), extending from a connection with Norfolk Southern Railway Company (“NSR”) at approximately NSR milepost 16.6 to a connection with CSX Transportation, Inc. (“CSXT”) at approximately CSXT milepost S484.0. The length and limits of the Track and are depicted in green on Exhibit A, attached hereto, with ancillary tracks at the Facility shown in other colors.

The Track was constructed in the latter half of 2020, as an element of a larger project to construct a new industrial park (the “Facility”) at Rincon, Georgia, which is situated

¹ SIL, also a non-carrier, is an affiliate of SIT.

² The subject lease agreement as amended (the “Lease”) – redacted – is attached hereto as Exhibit B.

roughly 11 air miles northwest of the Port of Savannah, Georgia. The Facility's dual access to NSR and CSXT makes the location highly attractive to rail shippers. SIL, SIT and the developer of the Facility expect to be able to attract numerous railroad service-dependent customers to the Facility.

SIL and SIT originally planned for SIT to function as a private switching carrier within the Facility.³ SIT, as a startup, was amenable to serving as a private carrier within the Facility, in part because of the perceived cost and administrative advantages private carrier status afforded.⁴ NSR or CSXT, as appropriate, would appear on waybills as either the origin or destination carrier for traffic moving shipments to or from the Facility. Additionally, CSXT and NSR had each proposed to pay SIT a per-car private carriage switching allowance, pursuant to proposed service contracts, for SIT's placement and retrieval of cars within the Facility.

However, shortly after the Track project was completed in accordance with all applicable federal, state and local laws, regulations and permitting, SIT discovered that NSR and CSXT intended to pay SIT the subject switching allowances very infrequently, only once or twice annually, among other terms that SIT determined would make SIT's private carriage plans financially untenable.⁵ Having considered its options, SIT concluded that to remain a financially viable operation (to assure a consistent cash flow, among other things), it would need to become a common carrier registered on the Association of American Railroad's Interline Settlement System ("ISS"), administered by Railinc Corp.⁶ Accordingly, SIT now plans to operate as a

³ Verified Statement of Peter Touesnard ("V.S. Touesnard"), attached hereto as Exhibit C, 2.

⁴ Id., 2-3.

⁵ Id., 3-4.

⁶ Id., 3.

common carrier within the Facility.⁷ This was not intended under SIL's or SIT's plans for the Facility, and it will subject SIT to additional costs, compared to functioning as a private carrier as originally intended. Were it not for the terms upon which NSR and CSXT wanted to structure their respective private switching allowance contracts, SIT would not be invoking the Surface Transportation Board's (the "Board") individual petition for exemption procedures.

SIT recognizes that its Track was only recently constructed, which might, without explanation offered here, trigger the Board's concerns about whether the Track project should have been authorized under the Board's construction procedures at 49 U.S.C. § 10901. SIT, however, had no intention to evade Board processes, because both SIL and SIT intended for the Track to be operated as part of a private switching operation outside of the scope of the Board's jurisdiction, and would not be seeking common carrier authorization now but for the negative financial circumstances discussed herein. In addition, the Track was constructed, as indicated, in accordance with applicable federal, state and local laws and permitting.

Ordinarily, a non-carrier would invoke the Board's class exemption procedures at 49 C.F.R. Part 1150, Subpart D to commence common carrier operations over facilities that heretofore existed as private track. But, here, recognizing the non-routine circumstances under which SIT seeks to invoke Board jurisdiction to function as a common carrier, SIT believes that the appropriate course is to submit to the more searching process available to the Board under an individual petition for exemption under 49 U.S.C. § 10502 and the corresponding regulations at 49 C.F.R. Part 1121.

⁷ Id., 4.

INFORMATION ABOUT THE PROPOSED TRANSACTION

In furtherance of its Petition, and in accordance with the substantive requirements of 49 C.F.R. § 1121.3, SIT provides the following information:

The Petitioner

SIT is currently a noncarrier. SIT's address is 252 Clayton Street, Denver CO 80206. SIT was formed to provide private switching services on the Track owned by its affiliate, SIL, at Rincon, Georgia. SIT provides no other rail services at any other location.

The Proposed Transaction and Operational/Service Impact

SIT's Lease was executed in November 2020, and is in effect. The Track is approximately 11,404 feet in length, beginning at a connection with NSR at milepost 16.6 on NSR's Savannah District and extending to a connection with CSXT at approximately CSXT milepost S484.0 on CSXT's Columbia Subdivision. A map of the Track is included as Exhibit A. SIT is the only entity that will have common carrier status on the Track, although SIT expects to interchange traffic with NSR and CSXT on portions of the Track..

SIT, in becoming a common carrier as herein provided, does not intend materially to change its planned operations. Just as it would have done as a private carrier, SIT will exchange freight cars with both NSR and CSXT, and SIT will switch those cars to customers located within the Facility. SIT will control the movement of trains on the Track. Track maintenance will be governed by SIT's Lease with SIL regardless of SIT's legal status.

As previously referenced, SIT and SIL planned that the Facility would be owned by SIL, with the track operated by SIT in private carriage. SIT saw no reason why it should become a common carrier to operate the Facility, and plenty of reasons why it would be better

not to be one.⁸ SIT did not plan to hold itself out to provide service on reasonable request within the Facility, but would instead provide rail service to customers pursuant to the terms of contracts among itself and NSR and CSXT, and, would separately contract for the provision of ancillary services with Facility users as needed. The original commercial plan provided that SIT would not be shown in the routing of waybills, would not hold itself out as a common carrier, and would be providing strictly a private service within the Facility.⁹ As such, the benefits of common carrier status were outweighed by the advantages of functioning as a private carrier.¹⁰

That assessment changed by necessity, however, when it became clear that SIT, as a private switcher, would not receive income frequently enough for it to sustain its operation, since such income would only be received once or twice annually. SIT understands that NSR and CSXT are unwilling to provide more frequent payment due to the administrative hassle of calculating the per-car allowances manually (that is, in the absence of an interchange database, such as ISS, which provides an automated, real time means to track cars exchanged between carriers). Such an infrequent payment arrangement would present serious cash flow issues for SIT, and would force SIT to incur unsustainable operating deficits.

In view of the financial dilemma associated with NSR's and CSXT's unanticipated switching allowance payment terms, SIT realized that if it became a common carrier and engaged in formal interchange with NSR and CSXT, car counts and payments for switching (or line-haul) services would be made in much more regular intervals, and the record-keeping and accounting issues that NSR and CSXT had indicated were the premise for less frequent non-carrier switching allowance payments would be resolved.

⁸ V.S. Touesnard, 2-3.

⁹ Id.

¹⁰ Id.

Interchange Commitment

In accordance with 49 C.F.R. § 1121.3(d), SIT hereby certifies that the Lease does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. Accordingly, the balance of the information required under Section 1121.3(d) is not applicable here.

THE EXEMPTION STANDARDS AT 49 U.S.C. § 10502 HAVE BEEN MET

The acquisition of a railroad line by a noncarrier pursuant to a lease is governed by the provisions of 49 U.S.C. § 10901, which requires the filing of an application and the Board's approval of that application prior to commencement of common carrier operations. However, pursuant to Section 10502, the Board, "to the maximum extent consistent with this part, shall exempt" a transaction "whenever the Board finds that the application in whole or in part of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power."

As demonstrated below, the proposed installation of common carrier service on the Track pursuant to the Lease satisfies both Section 10502(a)(2)(A) and (B).

A. Detailed Scrutiny Under 49 U.S.C. § 10901 Is Not Necessary To Carry Out The Rail Transportation Policy of 49 U.S.C. § 10101

Granting SIT's Petition to operate the Track as a common carrier is clearly consistent with the goals articulated in the National Rail Transportation Policy ("RTP") set forth

in 49 U.S.C. § 10101. The RTP favors minimizing federal regulatory control over the rail transportation system; expediting regulatory decisions; and reducing barriers to entry and exit from the industry. 49 U.S.C. §§ 10101(2), (7), and (15). The individual exemption eliminates the need for expensive, unnecessary, and time-consuming processes attendant to preparing and reviewing a formal application to acquire a rail line by lease under Section 10901. Reliance here on the adequate and expeditious individual exemption procedures minimizes regulation and reduces the regulatory burden on SIT and the Board, thereby furthering important RTP policy considerations.

In addition, SIT's operation of the Track in common carriage will allow SIT to more efficiently operate its railroad system in furtherance of 49 U.S.C. § 10101(9). The revenue shortfall that SIT would have experienced in its first year of operation as a private carrier under the allowance terms that NSR and CSXT offered would be wholly untenable, and it is unclear how SIT would have been able to cover expenses incurred in the ordinary course under such a scenario.¹¹

Beyond the many RTP goals discussed above that would be advanced by granting the subject Petition, favorable Board action would not thwart any RTP objectives. For these reasons, granting the subject Petition would not only be consistent with the RTP, but denial of the Petition would run counter to the objectives of Sections 10101 and 10502.

B. The Proposed Acquisition Is of Limited Scope

The subject transaction involves SIT's operation of roughly 11,404 feet of existing railroad track located in one county in Georgia. The Track has been leased to SIT since last year. SIT's status as a common carrier will not significantly impact service, dispatching,

¹¹ *Id.*, 4.

maintenance, the environment, or historic resources. As such, the proposed acquisition clearly is of limited scope.

C. Regulation Is Not Necessary to Protect Shippers From Market Power Abuse

Since this operation of the Track as a common carrier demonstrably is of limited scope, SIT is not required to prove that regulation is not needed to protect shippers from market power abuse. Even so, operation of the Track as a common carrier will not subject shippers to any market power abuse. The proposed transaction would, in fact, offer customers competitive access to both NSR and CSXT line-haul service.

LABOR PROTECTION

Under 49 U.S.C. § 10901(c), the Board may not impose labor protection conditions on SIT's proposed commencement of common carrier operations over the Track.

ENVIRONMENTAL REVIEW

Except for the jurisdictional status of the operator of the Track, SIT does not anticipate any changes flowing from the proposed transaction. As pertinent here, 49 CFR § 1105.6(c)(1)(i) provides that transactions that would not result in operational changes exceeding the thresholds found at 49 C.F.R. § 1105.6(b)(4) and 1105.7(e)(4) or (5) normally require no environmental review. Since the proposed transaction will not have any such material operational changes at all, no environmental review should be required.

HISTORIC REVIEW

The Board's regulations provide that historic review normally is not required for a railroad line acquisition such as the one proposed here. Moreover, all of the structures involved here – essentially, the Track and ancillary trackage – are well less than 50 years old. Accordingly, the transaction that is the subject of this Petition requires no historic resources impact analysis.

CONCLUSION

For all of the foregoing reasons, SIT respectfully requests that the Board grant the exemption sought in this Petition, and permit the proposed commencement of common carrier operations on the Track to be consummated on or before August 9, 2021.

Respectfully submitted,

By: R. A. Wimbish

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**ATTORNEYS FOR SAVANNAH
INDUSTRIAL TRANSPORTATION, LLC**

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EXHIBIT A

MAP



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EXHIBIT B

LEASE

TRACK LEASE AGREEMENT

THIS TRACK LEASE AGREEMENT ("Agreement") shall be effective on the last date of signature set forth below (the "Effective Date"), by **Savannah Industrial Logistics, LLC** ("Lessor"), and **Savannah Industrial Transportation, LLC** ("Lessee"). Lessor and Lessee may sometimes be referred to as a "Party" or collectively as the "Parties."

1. TERM:

This Agreement shall take effect as of the Effective Date and, unless sooner terminated as provided below, shall remain in effect until either Party gives the other Party not less than thirty (30) days' advance written notice of termination for any reason or no reason whatsoever, as determined in that Party's sole discretion and regardless of (i) performance or non-performance of any covenants and agreements contained in this Agreement, or (ii) rental having been paid in advance for any period (subject to Section 17, below). Lessor shall not execute this Agreement, nor shall it be binding on the Lessor, until it receives a signed original from Lessee, and in no event is entry under this Agreement permitted until Lessor returns a fully-executed copy to Lessee.

2. LOCATION:

In consideration of the rental or other sums of money Lessee agrees to pay Lessor and of the covenants, agreements and undertakings of Lessee, as set forth in this Agreement, Lessor leases to Lessee, subject to the rights and uses excepted and reserved in this Agreement, the trackage owned by Lessor, which includes the track structure, drainage structures, grading, subgrade stabilization and the right-of-way under it and incident to it (collectively referred to as "Track"), at or near Rincon, County of Chatham, State of Georgia. The Track shall be shown on the attached Exhibit A, which is made a part of this Agreement by reference.

3. RENTAL:

3.1 Lessee shall pay Lessor as rental for the use of the Track **\$10,000.00** per annum, payable in advance, without demand, for each and every year, or fractional part, during the term of this Agreement, or any renewal of it. In addition, Lessee shall pay to Lessor a maintenance fee ("Maintenance Fee") of **\$1,500.00** per switch per annum, payable in advance, in an effort to partially defray Lessor's costs associated with maintaining Lessor's switches and trackage used to access the Track. Lessee shall pay to Lessor any and all sales tax ("Sales Tax"), if any and if applicable, which may occur as a result of the payment of the above rental or other fees payable under this Agreement, which payment will be made to Lessor at the same time as the rental or other fees are payable to the Lessor under this Agreement. The failure by Lessee to pay to Lessor the amount of any rental, other fees or Sales Tax owing and due under this Agreement will constitute a default by the Lessee under this Agreement and will entitle the Lessor to exercise any and all rights and remedies available to the Lessor for the recovery of the rental or other fees in arrears. In the event said rental or other fees are not received by Lessor within thirty (30) days from the date that they are due and payable, in addition to any other rights and remedies available to the Lessor, Lessee shall pay to Lessor an additional sum of money equal to eighteen percent (18%) per year calculated on a daily basis ("Finance Charges") of the total unpaid rental, other fees or Sales Tax payable under this Agreement, until such payments are current and all interest payments and finance charges have been paid.

3.2 After the first twelve (12) month period that this Agreement is in effect, Lessor reserves the right to reevaluate and adjust the rental and other fees at any time during the term of this Agreement, not more than

one time during each consecutive twelve (12) month period that this Agreement is in effect, by giving notice at any time of such adjustment to Lessee not less than thirty (30) days prior to the adjustment in rental rate taking effect. Lessee's occupation of the Track after such adjustment taking effect shall be at the adjusted rent.

3.3 If Lessor, at its sole discretion, uses a collection agency or attorneys to collect unpaid rental, other fees or Sales Tax payable under this Agreement including Finance Charges or other amounts owing by Lessee to Lessor, and Lessor is successful in collecting such charges, Lessee shall reimburse Lessor for all reasonable collection costs, including reasonable collection agency fees and reasonable legal expenses.

3.4 Payment of any rent in advance by Lessee to Lessor shall not create an irrevocable lease for the period for which the rent is paid. Failure of Lessee to receive any bill or invoice for periodic rent or receipt of a bill or invoice in an incorrect or unadjusted rent, shall neither override the terms of this Agreement nor excuse or release Lessee from liability or responsibility for the correct contract rent or other amounts payable under this Agreement.

4. USE, INSPECTION, AND MAINTENANCE:

4.1 Lessee shall use the Track for the purpose of switching and storing empty and/or loaded railcars which may only contain the commodities bearing Standard Transportation Commodity Code ("STCC") numbers as shown in the table below and for no other purpose whatsoever.

4.2 Lessee has thoroughly inspected the Track, is familiar with its condition and hereby accepts the Track in the present condition thereof.

4.3 Lessee shall be responsible for obtaining, without expense to Lessor, all necessary public authority and permission, including applicable permits, for the maintenance and operation of the Track. Lessee shall strictly comply with any and all law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, state or municipal government, government department, agency or regulatory authority or any court of competent jurisdiction, including, without limitation, those pertaining to environmental matters (collectively, "Laws") and other Lessor requirements relating to the use of the Track.

4.4 Unless otherwise agreed to in writing by Lessee and Lessor, Lessee shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Track in a safe and satisfactory condition and in compliance with all applicable Laws. Maintenance includes but is not limited to, providing proper drainage along the relevant portion of the Track, keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles, maintaining grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, Track drainage facilities, lighting, and Track signals. Without relieving Lessee from any of its obligations under this Agreement, Lessor may refuse to operate its trains over the Track whenever Lessor, in its sole discretion, determines that the same is unsatisfactory for Lessor's operation, entry or contact. If and when Lessee has remedied such condition to Lessor's sole satisfaction, Lessor may resume railroad operations over the Track. Lessor's operation over the Track with knowledge of an unsatisfactory condition is not a waiver of Lessee's obligations contained in this Agreement or of Lessor's right to recover for or be indemnified and defended against such damages to property or injury to or death of persons that may result therefrom. Notwithstanding the foregoing, Lessor, acting as the agent of Lessee, may perform such maintenance work as is necessary in the judgment of Lessor, and Lessee shall, on demand, promptly reimburse Lessor the cost of the work, plus fifteen percent (15%) on the cost as a charge for the supervision, accounting, and use of tools or Lessor may terminate this Agreement by giving Lessee not less than ten (10) days' advance written notice of its intention to do so.

4.5 Unless otherwise agreed to in writing by Lessee and Lessor, Lessee shall not foul or obstruct Lessor's tracks.

5. ACCEPTANCE OF RAILCARS:

5.1 Lessee agrees that railcars consigned to Lessee shall be considered as having been delivered to Lessee and in its custody and control as soon as said railcars shall have been placed on the Track and detached from the engine or train by which they are moved and Lessee shall hold Lessor harmless for any loss or damage to the railcars and their contents after said railcars have been so delivered to Lessee by Lessor, and Lessee shall reimburse Lessor for any costs Lessor incurs due to the damage, loss or destruction of railcars while in Lessee's custody and control on said Track.

5.2 Lessee agrees that railcars shipped by Lessee shall be considered to be received for shipment by Lessor when said railcars have been attached or coupled to the engine or train by which they are to be moved from said Track towards destination. Until said railcars are so attached or coupled, the railcars and their contents shall be deemed and held to be in the custody and control of Lessee so far as liability for them or from them is concerned.

6. CLEARANCES:

6.1 Lessee shall not place, permit to be placed or allow to remain any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction within eight and one-half feet (8½') laterally from the center (or ten feet (10') on either side of the centerline of curved Track) or within twenty-seven feet (27') vertically from the top of the rail of the Track ("Minimal Clearances"). If any Laws require greater clearances than those provided for in this Section 6.1, then Lessee shall strictly comply with such Laws. Lessee shall not place or allow to be placed any railcar within two hundred fifty feet (250') of either side of any at-grade crossings on the Track. Lessor's operation over the Track with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 6.1 or of Lessor's right to recover and be indemnified and defended against such damages to property or injury to or death of persons that may result from such operation.

6.2 Should either or both the vertical or lateral clearances required to be observed be permitted to be reduced by order of competent public authority, Lessee hereby agrees to strictly comply with the terms of any such orders and indemnify and hold harmless Lessor from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance and regardless of whether caused by Lessor's acts or omissions.

6.3 All doors, windows or gates of any building or enclosure shall be of a sliding type or shall, when opened, be swung away from the Track when such building or enclosure is so located such that said doors, windows or gates, if opened toward the Track would, when opened, be a clearance in violation of the clearances as specified above.

6.4 Notwithstanding anything contained in this Section, no structure, material, pole, cable, wire, conduit, opening, excavation or obstruction of any kind or character shall be erected, piled, made, stored or maintained by Lessee upon or over the premises of Lessor or beneath the Track, without the written consent of Lessor first having been obtained. Further, no pipe, conduit, underground structure, opening or excavation of any kind whatsoever shall be made or placed beneath any track, or within ten feet (10') of any such track, beyond the

premises of Lessor without the prior written consent of Lessor.

6.5 Lessee shall not construct or maintain any gate or other obstruction across the Track without the prior written consent of Lessor.

6.6 Lessee shall at all times keep the area between the rails and within the lateral clearance area defined in this Section free and clear of debris and/or other obstructions of any kind or nature, whether due to the operations of Lessee or Lessor or both or to the loading or unloading of railcars on said Track.

6.7 Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that it is Lessee's sole obligation to monitor its compliance with the requirements of this Section 6 and Lessee agrees to indemnify Lessor and save it harmless from and against any and all claims, demands, expenses, costs, and judgments arising or growing out of loss of or damage to property whatsoever, or injury to or death of persons whomsoever, including the Parties, their agents and employees, occurring directly or indirectly by any breach of the foregoing covenants to be kept by Lessee contained in this Section 6 and regardless of whether caused by Lessor's acts or omissions.

6.8 The indemnification provided for in this Agreement shall apply whether or not Lessor has notice or alleged notice of any violation by Lessee of Lessee's duty to keep said area clear of debris and obstructions.

7. SAFETY:

Lessee agrees to adopt and enforce reasonable rules and regulations for the conduct of Lessee's agents, invitees, and employees to protect them from injury while on the right of way or the Track or the adjoining premises or in railcars standing on such Track, and require such agents, invitees, and employees to use proper signals or flags to notify Lessor's employees when they are in or about any railcar on the Track.

8. GOVERNMENT REGULATIONS:

Lessee shall fully comply with all Laws relating to the use of the Track and Lessee shall indemnify and hold Lessor harmless from any and all fines or penalties or any other damages whatsoever assessed against Lessor resulting from Lessee's failure to comply with such Laws.

9. HAZARDOUS COMMODITY COMPLIANCE:

9.1 Except for those commodities allowed pursuant to Section 4.1, Lessee agrees not to receive, ship, load, unload, keep, use, store or place or permit the receiving, shipping, loading, unloading, keeping, using, storing or placing on the Track any commodity of any kind or nature having an explosive, dangerous, flammable or hazardous nature, as determined by the Department of Transportation, without the prior express written consent of Lessor.

9.2 Lessee agrees to protect, defend, and hold harmless Lessor from and against any and all claims, costs, fines, judgments, penalties, suits, and legal fees growing out of or in any manner connected to any violation of any Laws.

9.3 Lessee assumes all liability from and against any and all claims, fines, judgments, penalties, loss, damage, suits, expenses or legal fees in connection with injury to or death of any persons whomsoever, upon or about the Track, including officers, agents, employees, members, managers, directors, shareholders, owners

and/or contractors of the Parties, and in connection with any and all damage to property to whomsoever belonging, including property of the Parties, whether owned by, leased to or in the custody and control of the Parties, arising or growing out of or in any manner connected with the use of the Track by Lessee for storage, loading, unloading, and/or handling of hazardous commodities of an explosive, dangerous or flammable nature.

10. TRACK MODIFICATION:

In the event that a rearrangement, reconstruction or modification of the Track is required; or if a separation of the grade of the Track and any roadway or highway is required or the installation of any signals are required, by any reason of or as a result of any Laws then Lessee shall bear the expense thereof, including any paving, sidewalks, sewers, utilities or other public improvement work. Nothing contained in this Section shall in any way affect the right of Lessor to terminate this Agreement under the conditions set forth Section 1. Lessor may from time to time enter upon the Track in order to construct, extend or repair any side or switch track or to perform any duty required of it by Laws or to make any use of said Track not inconsistent with the use of the Track by Lessee as authorized in this Agreement.

11. RETURN OF TRACK TO LESSOR:

Upon any expiration or termination of this Agreement, Lessee agrees to release to Lessor the Track in at least the same condition as of the Effective Date, ordinary wear and tear excepted. If for any reason the Track is damaged, removed or destroyed, then Lessee agrees to pay to Lessor on receipt of an invoice or bill, Lessor's entire cost of repairing and restoring Track to a condition satisfactory to Lessor.

12. OPERATIONS DISCONTINUANCE:

Lessor may discontinue operation over the Track and remove it and ALL connections to it in the event Lessee fails to keep or perform any obligation or stipulation stated in or resulting under this Agreement or if Lessor is required or authorized by Laws to discontinue operation of Track or to change its tracks in such a manner as to render it impracticable, in the judgment of Lessor, to continue to operate the Track.

13. LIABILITY:

13.1 For purposes of this Agreement: (i) "**Indemnitees**" means Lessor and Lessor's affiliates, partners, successors, assigns, legal representatives, officers, directors, members, managers, owners, shareholders, employees, agents, invitees, contractors, and any third party railroad permitted by Lessor to use Lessor's facilities; (ii) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, legal fees, and costs of investigation, removal and remediation and governmental oversight costs), environmental or otherwise; and (iii) "**Lessee Parties**" means Lessee or Lessee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2

(a) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY CLAIM, INCLUDING WITHOUT LIMITATION, CLAIMS ARISING UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT, THAT IS ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF OR RELATED TO THE USE OF THE TRACK BY LESSEE PARTIES OR LESSOR,

EXCEPT TO THE EXTENT CAUSED BY THE SOLE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY SEEKING INDEMNIFICATION.

(b) IF ANY EMPLOYEE OF LESSEE CLAIMS HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, LESSEE SHALL INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH CLAIM INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATED TO PROCEEDINGS UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT AND ANY SIMILAR STATE OR FEDERAL STATUTE AND REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.

(c) UPON WRITTEN NOTICE FROM LESSOR, LESSEE AGREES TO ASSUME THE DEFENSE OF ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE BY ANY ENTITY, RELATING TO ANY MATTER COVERED BY THIS AGREEMENT FOR WHICH LESSEE HAS AN OBLIGATION TO ASSUME LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS ANY INDEMNITEE. LESSEE SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, LEGAL FEES, INVESTIGATORS' FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

(d) AS A PRECONDITION TO LESSEE'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION, THE INDEMNITEES WILL (A) FULLY COOPERATE WITH LESSEE IN ANY INVESTIGATION AND PROVIDE LESSEE WITH ALL INFORMATION IN THE POSSESSION OR CONTROL OF THE INDEMNITEES RELATING TO ANY MATTER FOR WHICH THE INDEMNITEES SEEK INDEMNIFICATION, AND (B) PROVIDE LESSEE WITH PROMPT NOTICE OF ANY MATTER OR INCIDENT FOR WHICH THE INDEMNITEES MAY MAKE A CLAIM FOR INDEMNIFICATION BY LESSEE.

(e) LESSEE ACKNOWLEDGES THAT THE TRACK IS IN DANGEROUS PROXIMITY TO RAILROAD OPERATIONS AND THAT PERSONS AND PROPERTY ON OR ABOUT THE TRACK ARE IN CONSTANT DANGER OF INJURY, DEATH OR DESTRUCTION INCIDENT TO THE RAILROAD OPERATIONS, WHETHER BY LESSOR OR OTHERS, AND LESSEE ACCEPTS THIS AGREEMENT SUBJECT TO SUCH DANGERS.

(f) LESSEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY CLAIM THAT BY VIRTUE OF LESSEE'S USE OF THE TRACK CONTEMPLATED IN THIS AGREEMENT, LESSOR IS CONSIDERED UNDER CERCLA OR OTHER ENVIRONMENTAL LAWS (I) AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" OF THE TRACK, OR (II) OTHER THAN A COMMON CARRIER WITH RESPECT TO THE TRACK.

(g) LESSEE'S ASSUMPTION OF LIABILITY UNDER THIS SECTION 15 INCLUDES LIABILITIES CAUSED OR RELATED TO (IN WHOLE OR IN PART) ACTS OF GOD OR THIRD-PARTIES, INCLUDING TRESPASSERS.

14. INSURANCE:

14.1 Lessee shall purchase and maintain insurance as specified below covering the Agreement, all the work, services, and obligations assumed or performed hereunder, from the Effective Date until termination, unless the duration is stated to be otherwise, with insurance companies assigned a current Financial Strength

Rating of at least A and Financial Size Category of X by A. M. Best Company:

(a) **Railroad Liability Insurance** subject to limit of [REDACTED] each accident and in the aggregate for bodily injury, property damage, contractual liability, completed operations, railroad accident pollution liability for risks assumed by Railroad, and employers' liability for bodily injury sustained by employees of Railroad in the course of their employment under the Federal Employers Liability Act. [Railroad Liability Insurance shall provide excess Business Automobile Liability Insurance.].

(b) **Workers' Compensation and Employers' Liability Insurance** providing statutory workers' compensation benefits mandated under applicable state law and Employers' Liability Insurance subject to a minimum limit of [REDACTED] each accident for bodily injury by accident, [REDACTED] each employee for bodily injury by disease and [REDACTED] policy limit for bodily injury by disease. If coverage is provided through a monopolistic state fund, a stop gap endorsement on either the Commercial General Liability or Workers' Compensation Policy is required to meet the Employers' Liability Insurance requirement.

(c) **Business Automobile Liability Insurance** subject to a minimum limit of [REDACTED] each accident for bodily injury and property damage. Policy coverage shall be based on Insurance Services Office policy forms referred to as Business Automobile Policy to cover motor vehicles owned, leased, rented, hired or used on behalf of Lessee. If applicable to this Agreement and applicable under federal law, Lessee shall provide an MCS 90 endorsement evidencing limits of coverage pursuant to the Motor Carrier Act of 1980.

(d) **Umbrella Liability Insurance** written on an occurrence basis subject to a limit of [REDACTED] each occurrence for bodily injury, property damage, personal injury, libel and/or slander. Policy coverage is to be at least as broad as primary coverages. Umbrella coverage is to be maintained for a period of not less than three (3) years after the termination or cancellation of this Agreement. Umbrella Liability shall apply to Commercial General Liability, Employers Liability, and Business Automobile Liability Insurances.

The required limits of insurance shall be satisfied by a combination of Primary and Umbrella or Excess Liability Insurance.

(e) **"All Risk" Property Insurance** for damage or other loss caused by fire or other reason, including but not limited to vandalism and malicious mischief, theft, water damage of any type, in an amount not less than the value of the railcars, and the commodities contained therein, stored on Railroad.

14.2 All insurance required of Lessee with the exception of Workers' Compensation and Employers' Liability and All Risk Property shall include Lessor and any subsidiary, owner, parent or affiliates of Lessor, and their respective partners, successors, assigns, legal representatives, officers, directors, members, managers, agents, shareholders and employees ("Required Parties") as additional insured and include wording which states that the insurance shall be primary and not excess over or contributory with any insurance carried by Lessor and its affiliates. With respect to Railroad Liability Insurance, Required Parties shall be included as additional insured for Ongoing Operations and for Completed Operations to the extent permitted by law.

14.3 All insurance shall provide Lessor a minimum of thirty (30) days' advance written notice of insurer's intent to cancel or otherwise terminate policy coverage.

14.4 If Lessee cannot obtain an occurrence-based policy for any required coverage, the policy may be written on a claims-made basis with a retroactive date on or before the Effective Date of this Agreement. Lessee

shall maintain such policy on a continuous basis. If there is a change in insurance companies or the policy is canceled or not renewed, Lessee shall purchase an extended reporting period of not less than three (3) years after the Agreement termination date.

14.5 Lessee shall file with Lessor on or before the Effective Date of this Agreement a valid certificate of insurance for all required insurance policies. Each certificate shall identify the Required Parties as additional insured as required and state that Lessor shall receive a minimum of thirty (30) days' advance written notice of insurer's intent to cancel or otherwise terminate policy coverage. Lessee shall supply updated certificates of insurance that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as required by this Agreement.

14.6 All insurance policies required of Lessee shall include a waiver of any right of subrogation written in favor of Required Parties.

14.7 Notwithstanding the foregoing, Lessee may self-insure for any of the above-required insurance coverages subject to the requirements specified in this paragraph. Lessee shall provide Lessor with audited financial statements and Lessor may, at its discretion, which shall not be unreasonably withheld, deem such financial statements acceptable prior to authorizing Lessee to self-insure. Lessee shall provide a letter of self-insurance to Lessor specifically stating which lines of coverage are self-insured and the amount of self-insurance maintained. The amount of any excess insurance that attaches to self-insurance below the required limits of insurance shall be identified in the letter and evidenced on a certificate of insurance. This letter of self-insurance shall be signed by Lessee's Risk Manager or another designated authorized signatory. With respect to Workers' Compensation, Lessee shall also provide state-issued self-insured authorization documents to Lessor where applicable by state law.

14.8 Lessee represents that this Agreement has been thoroughly reviewed by Lessee's insurance agent and/or broker who have been instructed by Lessee to procure the insurance coverage required by this Agreement. Upon signature of this Agreement and renewal of insurance, if Lessee fails to maintain or provide evidence to Lessor of any insurance coverage required under this Agreement, Lessor may terminate this Agreement effective immediately.

14.9 Lessee's compliance with obtaining the required insurance coverage shall in no way limit the indemnification rights and obligations specified in this Agreement.

15. WAIVER:

Lessee waives the right to question the validity of this Agreement or any of the terms and provisions of it or the right-of-way incident to it or to give or to defend Lessee in the peaceful possession of the Track and Lessee shall waive all right to claim damages in the event Lessee shall be evicted, ejected or required to surrender possession of the Track by anyone owning or claiming title to or any interest in the Track or by reason of failure of title of Lessor or for any other cause whatsoever.

16. OPERATIONS:

16.1 Lessor agrees to operate said Track for the purpose of serving Lessee, subject to any lawful charges that may be made by Lessor for such services, with the understanding, however, that Lessor shall not be obligated to operate the Track if it shall be prevented from doing so by acts of God, public authority, riots, labor disputes or any cause beyond its control, or, if in the opinion of Lessor, it becomes unsafe to operate over said Track.

16.2 Lessee agrees that Lessor, at any time, may move and cut railcars in and behind Lessee on the Track in case customers of Lessor require service on the Track beyond the leased portion.

16.3 Lessee agrees that no road crossing over the Track shall be constructed without the prior written consent of Lessor. Any road crossing of the Track or other tracks of Lessor and the right-of-way necessary or desired for any access to or from the Track must be covered by Lessor's standard Private Road Crossing License.

17. REFUND:

17.1 If and when this Agreement shall be terminated by either Party pursuant to Section 1, then Lessor shall refund to Lessee a prorated portion of any rental paid in advance, except that Lessor will retain from any said advance rental payments a minimum of ~~one hundred dollars (\$100.00)~~ to cover its administration and handling costs. In the event the unearned rental is less than the above-stated minimum, then Lessor shall retain the entire remaining unearned rental as reimbursement for its administration and handling costs.

17.2 Should this Agreement be terminated by Lessor, by reason of the default of or breach by Lessee, then Lessor shall refund no unearned rental and any such unearned rental shall be deemed liquidated damages to Lessor.

18. DEFAULT:

18.1 In the event Lessee shall default in the payment of any rental, tax or other payments or reimbursements provided for in this Agreement or late payment penalties, return check charges or other sums due by Lessee or upon breach or violation of any of Lessee's other covenants, agreements, undertakings, provisions, terms, applicable laws or conditions in this Agreement, Lessor may, at Lessor's option, either immediately terminate this Agreement and enter on and repossess the Track together with all Lessee's property on it, with or without process of law, and may remove Lessee and all persons occupying the Track or any part of it, using such force as may be necessary for that purpose or Lessor may require Lessee to remove all of Lessee's property from the Track within twenty (20) days following receipt of termination notice. Failure of Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be construed to constitute a waiver of such default. In addition, Lessor reserves the right to avail itself of any and all rights and remedies available to it by operation of law or equity and any proceeding by the appropriate court action to enforce performance by Lessee at anytime of the applicable covenants of this Agreement or to secure damages for the breach of it, including reasonable legal fees. Lessor may waive any default of Lessee at any time without affecting or impairing any rights arising from any subsequent default. Lessee agrees to reimburse Lessor for the costs of any claims, suits, judgments, costs, legal fees, court costs, and all other related expenses incurred by Lessor arising from or growing out of Lessee defaulting in any of the terms of this Agreement. No action or proceeding by Lessor under this Section shall in any manner release or discharge the covenants, agreements, and undertakings of Lessee of any of the obligations, risks or duties herein assumed by Lessee which may have accrued as of the date of any default.

18.2 Lessee understands and agrees that Lessor shall not be required to make formal demand or give notice for any due and unpaid rental or for the curing of any default under this Section 18 before declaring this Agreement terminated or before asserting its rights to avail itself of any remedies contained in this Section, either at law or equity, and Lessee expressly waives any rights to receive such demand or notice.

18.3 Lessor and Lessee either have entered or will enter into other agreements which, together with this Agreement, universally govern the business relationship between them (collectively, the "Related

Agreements"). As material consideration for Lessor to enter into this Agreement, the Parties hereby agree that a material default under this Agreement by Lessee, or a material default under any of the Related Agreements by Lessee, at the option of Lessor, shall be considered a default under this Agreement and all Related Agreements, in which event Lessor shall be entitled to enforce all rights and remedies pertaining to default under the terms of this Agreement or the Related Agreements, including where appropriate the right to terminate by reason of such default. It is the Parties' intent that this Section 18.3 be interpreted as hereby incorporated into all Related Agreements, whether currently in effect or subsequently entered into.

19. SEVERABILITY:

This Agreement is executed by all Parties under current interpretation of any and all applicable federal, state, county, municipal or other local statutes, ordinances, or laws. Further, each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination of them, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division or other combination thereof.

20. SUCCESSORS/ASSIGNS:

20.1 This Agreement and all of the provisions, covenants, and agreements contained in this Agreement shall be binding upon the Parties, their heirs, executors, administrators, successors and assigns, and Lessee agrees to supply in writing to Lessor notice of any name changes. Lessee shall not sublease the Track, or any part of it or assign this Agreement or interest therein or sell any of Lessee's improvements located on the Track without the prior written consent of Lessor expressed in writing and any and every attempted subletting or assignment without such prior written consent shall be void and of no effect.

20.2 In the event of any assignment or subletting consented to by Lessor, Lessee shall at all times remain fully responsible and liable for the payment of rental and for the compliance of all of its other obligations under the terms, provisions, and agreements of this Agreement.

20.3 This Agreement is personal to the Lessee and shall not inure to the benefit of any receiver, trustee or other officer or of any assignee for the benefit of any creditors, as an asset of Lessee, but shall cease and terminate upon the appointment of any such receiver, trustee or other officer or making of any such assignment pursuant to Section 1.

21. MISCELLANEOUS:

21.1 Lessee agrees and covenants to pay any and all applicable tariff and contract charges and fees to Lessor or to the connecting Class I railroad, as appropriate, on any shipments consigned to or from Lessee as required by any applicable tariff, contractor law and within the time period allowed by such tariff, contract or law.

21.2 In the event this Agreement is part of a package of agreements for Lessee, this Agreement and all other such documents shall be read as compatible parts of said package and not in contradiction to each other, such that in the event of apparent conflict in any duties under this Agreement or the package of agreements, Lessor shall designate which clause(s) shall survive or control any others.

21.3 The personal pronouns used as referring to Lessee shall be understood so to refer to Lessee whether Lessee is a natural person (one or more), a partnership, a corporation or any combination of them and all the covenants and agreements contained in this Agreement shall be the joint and several covenants and agreements of all such parties.

21.4 Except as otherwise specified in this Agreement, any notice or other communication required or permitted by this Agreement shall be in writing and (i) delivered by first class mail, postage prepaid, or (ii) deposited into the custody of a nationally recognized overnight delivery service, as follows:

If to Lessor:
Savannah Industrial Logistics, LLC
ATTN: Director, Real Estate
252 Clayton Street, 4th Floor
Denver, Colorado
80206

If to Lessee:
Savannah Industrial Transportation, LLC
ATTN: Contract Administration
252 Clayton Street
Denver, CO 80206

WITH A COPY TO:
ATTN: General Counsel
Savannah Industrial Logistics, LLC
252 Clayton Street, 4th Floor
Denver, Colorado 80206

21.5 No oral promises, oral agreements or oral warranties shall be deemed a part of this Agreement nor shall any alteration, amendment, supplement or waiver of any of the provisions of it be binding upon either Party hereto, unless same be supplemented, altered, changed or amended by an instrument in writing, signed by Lessor and Lessee.

21.6 Lessee shall not at any time own or claim any right, title or interest in or to the Track nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in or to the Track, other than the leasehold created in this Agreement.

21.7 This Agreement is made subject to the rights granted by or through Lessor for any surface, sub-surface or aerial uses antedating this Agreement, including but not limited to the construction, maintenance, operation, renewal and/or relocation of fences, pipelines, communication lines, power lines, railroad tracks and signals, and any and all applicable appurtenances. Lessor accepts and reserves the right to grant additional uses of the same or similar nature subsequent to the execution of this Agreement, without payment of any sum for damages, so long as such use does not unreasonably interfere with the use of Track by Lessee for the purpose stated in Section 1.

21.8 All rentals and applicable tax payments associated with this Agreement shall be paid in United States currency, sent directly to the address listed in Section 21.4, or as otherwise requested in writing by Lessor.

21.9 Lessee further indemnifies Lessor against any and all liens that may be placed against Lessor's property and Track and agrees to immediately satisfy any liens so placed.

21.10 All exhibits attached hereto are incorporated by reference as if fully set forth herein.

21.11 This Agreement shall be governed under the laws of the State of and venue shall be proper in the

federal or state courts of the State of for any action arising under the terms of this Agreement or performance of it.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the last date of execution set forth below:

Lessor: Savannah Industrial Logistics, LLC	Lessee: Savannah Industrial Transportation, LLC
By: DocuSigned by: <i>Kevin Shuba</i>	By: DocuSigned by: <i>John Spiegelman</i>
883337D9261C441... Name: Kevin Shuba	08BFB32DE56A470... Name: John Spiegelman
Title: CEO	Title: CLO and GC
Date: 09 November 2020	Date: 09 November 2020

Exhibit A

This Exhibit A is part of the Agreement and will be updated to include location details at a future date.

Lessor: Savannah Industrial Logistics, LLC		Lessee: Savannah Industrial Transportation, LLC	
By: DocuSigned by: <i>Kevin Shuba</i>		By: DocuSigned by: <i>John Spiegleman</i>	
Name: B83387D9251C441 Kevin Shuba		Name: 0BBFB52DE587A470 John Spiegleman	
Title: CEO		Title: CLO and GC	
Date: 09 November 2020		Date: 09 November 2020	



BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36489

SAVANNAH INDUSTRIAL TRANSPORTATION, LLC
– OPERATION EXEMPTION –
IN EFFINGHAM COUNTY, GEORGIA

**PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502(a)**

EXHIBIT C

**VERIFIED STATEMENT OF
PETER A. TOUESNARD**

**VERIFIED STATEMENT
OF
PETER A. TOUESNARD**

My name is Peter A. Touesnard. I am employed by OmniTRAX, Inc. ("OmniTRAX") in the capacity of Chief Commercial Officer. My office is in Denver, Colorado. I have been employed by OmniTRAX since April 8, 2013, and have occupied my present position since December 31, 2013. I have been in the rail industry since November 1996, and have held progressively more responsible positions in sales and operations with two other short line holding companies: Railtex, Inc., and RailAmerica, Inc. Between 2010 and 2013, I held the position of VP Sales for RailAmerica's 45 North American short lines. I earned my Bachelor of Commerce degree from Saint Mary's University, Halifax, Nova Scotia, Canada. The responsibilities of my present position include the oversight of all sales, Class I relations, customer service, and pricing and marketing activities for all railways and switching entities in the OmniTRAX portfolio. In the course and scope of my responsibilities for OmniTRAX, I provide these same services to Savannah Industrial Transportation, LLC ("SIT"), a noncarrier, and other OmniTRAX subsidiaries. I am presenting this Verified Statement based on my personal knowledge, on reliance on materials prepared by my staff, and corporate records.

I am familiar with the facts surrounding the establishment of a new, rail-supported logistics facility (the "Facility") including the creation of a private rail switching contractor therein, located in Rincon, Georgia, northwest of Savannah, Georgia. The Facility is located on land adjacent to a CSX Transportation, Inc. ("CSXT") main line on the east, and a Norfolk Southern Railway Company ("NSR") main line that roughly parallels the CSXT main line

approximately 1.5 miles to the west, and contains track ("Track") which connects the two lines as well as serves users of the Facility. Situating the Facility adjacent to two Class I main lines gives the Facility's customers the best possible rail access options in the eastern U.S. Nearby Interstate 95 provides access to markets up and down the Eastern Seaboard. OmniTRAX planned that the Facility would host a variety of tenants, and as it turns out, A&R Logistics is the first such tenant.

In order to purchase and own the extensive real estate necessary to accommodate the Track, OmniTRAX established a new subsidiary, Savannah Industrial Logistics, LLC ("SIL"). Because OmniTRAX did not want the Track owner also to provide rail services to the Facility's users, OmniTRAX created a second subsidiary, Savannah Industrial Transportation, LLC ("SIT"). OmniTRAX planned that SIT would lease the Track and provide private (contracted-for) switching services moving freight cars among the Facility's rail shipper tenants and NSR and CSXT.

Although OmniTRAX has a number of rail carrier subsidiaries, in this case, as indicated above, OmniTRAX determined that this Facility would be best operated by a private switching carrier. For that reason, we determined not to have SIT pursue authorization to construct and operate the Track within the Facility as a common carrier. There are always diverse factors that go into such a decision, but, in this instance, the decision was relatively straightforward: 1) neither SIL nor SIT needed the condemnation authority afforded to railroads under state law to assemble the required real estate parcels; 2) it was assumed that negotiations with NSR and CSXT would proceed on reasonable business terms, and, indeed, each of the Class I's was amenable to SIT functioning as a private carrier; 3) it was perceived that the Facility's rail-

dependent users would see little benefit from the insertion of an additional common carrier between their operations and the Class 1's; and 4) the administrative burdens and costs associated with being a common carrier - compliance with federal laws applicable only to common carriers, such as the Federal Employers Liability Act (45 U.S.C. § 51 *et seq.*) and the Railroad Retirement Act (45 U.S.C. § 231 *et seq.*), coupled with the greater scrutiny that common carriers typically receive from the Federal Railroad Administration – were unnecessary to incur, given the very limited scope of SIT's operation. All these considerations resulted in keeping SIT as a non-carrier.

While construction of the Track progressed, SIT engaged NSR and CSXT in commercial discussions regarding the business relationship that each envisioned with SIT. SIT was very comfortable setting itself up as a private switching carrier that would be paid by either NS or CSXT (depending on which carrier was involved in the movement outside of the Facility). As we believe all involved parties saw it, NSR and CSXT assess or collect the transportation charges from the shippers. SIT would not be shown in the routing for traffic moving into or out of the Facility nor would SIT have pricing arrangements with customers seeking rail service within the Facility.

Unfortunately, as construction of the Track concluded, it became evident that, due to administrative hurdles, neither NSR nor CSXT would agree to make switching allowance payments at intervals that would enable SIT to be a financially viable private carrier operation. Specifically, while each carrier was amenable to paying SIT a per-car switching allowance at a level that was acceptable to SIT, without SIT being a member in Railinc Corp.'s Interline Settlement System ("ISS") (requiring it to be a common carrier) they would not dispense

payments more than once or twice a year. Such conditions were not what we had anticipated, and present obvious cash-flow and operating cost deficit challenges that SIT cannot accept and survive. I do not believe that many businesses agree to be paid but once or twice a year for services that are provided throughout the year, and particularly for a startup, the cash flow situation was thoroughly untenable.

By this point, the Track construction was complete, and operations have commenced. OmniTRAX has already invested millions of dollars into acquisition, design, marketing and construction of the Track, only to see SIL's and SIT's intended business models (and the benefits of the original operating plan for the Track) severely impacted. Accordingly, we find ourselves now pursuing common carrier status to ensure payment on a more frequent interval, even if that means making other administrative and cost sacrifices associated with SIT not remaining a private carrier. As a common carrier, SIT will formally interchange with NSR and CSXT, and will participate in ISS, addressing the administrative and accounting issues that appear to have been the single most significant impediment to a more frequent switching allowance payment arrangement. And, while SIT's common carrier status gives SIT additional pricing flexibility, we are hopeful that NSR and CSXT will agree to terms that replicate the original switching allowance concept. Such considerations offset, somewhat, the other administrative, legal, and cost disadvantages of common carriage that SIT had planned to avoid.

OmniTRAX never intended, when planning and constructing the Track, for SIT to be a rail common carrier. OmniTRAX is a sophisticated short line holding company, familiar with the STB's requirements. If OmniTRAX had intended for SIT to function as a rail common carrier, we would have had SIT submit to the STB's railroad line construction processes. Circumstances

beyond our control require us to seek to have SIT authorized to function as a common carrier, despite our original plans.

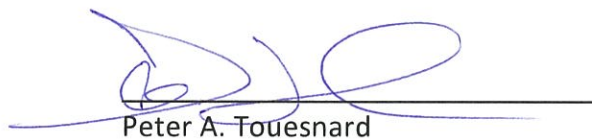
Given this background, I believe it is appropriate for the STB to authorize SIT to operate in the Facility on the track identified in this Petition as a rail common carrier.

(verification page follows)

Verification

I, Peter A. Touesnard, verify under penalty of perjury that I am Chief Commercial Officer for OmniTRAX, Inc., that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on May 10, 2021



Peter A. Touesnard