

RAILROAD LICENSE AND OPERATING AGREEMENT

Craighead Technology Park City of Jonesboro, Arkansas

This RAILROAD LICENSE AND OPERATING AGREEMENT (hereinafter “**Agreement**”) is made and entered into on this the _____ day of _____ 2021 with an effective date of _____, 2021 (hereinafter “**Effective Date**”) by and between “NEW PATRIOT ENTITY,” LLC, a Delaware limited liability company (hereinafter “**NPE**”), and the CITY OF JONESBORO, ARKANSAS, a municipality (hereinafter “**Jonesboro**” and, together with NPE, the “**Parties**”).

WHEREAS, Jonesboro has established the Craighead Technology Park (hereinafter “**Park**”) for the purpose of industrial development; and

WHEREAS, Jonesboro has the right to enter into leases, licenses and other contracts with businesses and other enterprises for the development of the Park; and

WHEREAS, Jonesboro desires that NPE operate the Railroad Facilities (as herein defined) in the Park to provide common carrier rail service and rail-related services to certain current and future customers located within the Park (hereinafter “**Park Users**”); and

WHEREAS, Jonesboro and NPE desire to set forth the terms and conditions pursuant to which NPE will provide such services and operate the Railroad Facilities (as herein defined) at the Park; and

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein and the mutual benefits that will inure to them, the Parties agree as follows:

I. *MEANING OF WORDS; USAGE.*

1.1 All words or terms defined throughout this Agreement, as indicated by bolded text and offset by quotation marks, shall have the meanings ascribed to them and, in no case, shall a reading or interpretation thereof be made that conflicts with or otherwise frustrates that which the Parties have intended and agreed upon.

1.2 Any word or term used and defined herein in the singular, where the context so permits, shall be deemed to include, and possess the same meaning as the plural and vice versa.

II. *GRANT OF LICENSE.*

2.1 Subject to the terms and conditions herein, Jonesboro grants to NPE a license to provide Railroad Services (as herein defined) on the Railroad Facilities located within the Park. The “Railroad Facilities” are defined as: (i) the trackage owned by Jonesboro in the Park as designated on **Exhibit A (“Jonesboro Tracks”)** and all associated real property rights or interests, including rights-of-way and easements of record; (ii) all railroad signs, switch mechanisms and

other appurtenances associated with such trackage; (iii) those additional areas and/or facilities otherwise described on **Exhibit A**; and (iv) any new or relocated tracks and/or rail facilities that may be constructed by Jonesboro within the Park subject to the terms of this Agreement (together with the Jonesboro Tracks, the “**Tracks**”).

2.2 Jonesboro shall own the Jonesboro Tracks. This Agreement does not grant or convey to NPE any real property interest in any property of Jonesboro.

2.3 Jonesboro represents and warrants that it owns or controls both the land underlying the Railroad Facilities and the Railroad Facilities themselves and that there are no existing easements or encumbrances affecting such land that would interfere with NPE’s rights under this Agreement.

III. *NPE’S OBLIGATIONS UNDER THIS AGREEMENT.*

3.1 During the Term of this Agreement, NPE shall perform the following services at the Park (hereinafter collectively, “**Railroad Services**”):

- (i) provide safe, consistent and reliable common carrier rail services to existing and potential future Park Users, which shall be consistent with providing quality common carrier rail services as recognized in the rail industry;
- (ii) provide safe, consistent and reliable rail-related services, including, but not limited to, railcar switching, railcar cleaning, railcar storage, railcar repair, transloading, and any other activity to which the Parties agree, all of which shall be consistent with providing quality rail-related services as recognized in the rail-related services industry;
- (iii) charge fees to Park Users for rail and rail-related services in amounts reasonably competitive with similar services offered by rail providers in the industry;
- (iv) work closely with Jonesboro to develop an annual strategic rail plan in the form attached as **Exhibit B** for the future development and operation of the Railroad Facilities, including increasing rail usage, attracting new rail-served customers to the Park, capital improvements, and any other area identified by the Parties (hereinafter “**Annual Strategic Rail Plan**” or “**ASRP**”);
- (v) Provide annual reports to Jonesboro reflecting: (i) service metrics for all Park rail-served customers, including the number of carloads, switch moves, stored cars and car cleanings; (ii) potential new business prospects; and (iii) any other information reasonably requested by Jonesboro to facilitate its review of NPE’s Annual Strategic Rail Plan;
- (vi) Provide reasonable assistance to Jonesboro and participate in, as requested by Jonesboro, any efforts to obtain federal, state or municipal funding, credit support,

or other assistance to advance rail and related services at the Park, including the construction of any additional tracks or storage facilities at the Park.

3.2 In March of each year, Jonesboro and NPE shall review NPE's compliance with the applicable Annual Strategic Rail Plan for the prior year and approve the Annual Strategic Rail Plan for the following year. The Annual Strategic Rail Plan shall follow the template attached hereto as Exhibit B, and shall be delivered to Jonesboro no later than January 31 of each year. In the event that NPE is not meeting its obligations under the Annual Strategic Rail Plan, Jonesboro will provide written notice to NPE describing the failure. NPE shall be given sixty (60) days following written notice to initiate steps to correct the failure and bring itself into compliance, provided that any such failure shall be cured within (1) year following written notice. If NPE fails to do so, such failure will result in no further renewals of the Term of this Agreement as set forth in Section 11 below.

3.3 NPE's Railroad Services shall be in common with BNSF Railway Company ("BNSF") and shall not unreasonably interfere with any rights BNSF may have under the July 7, 1989 Jonesboro-BNSF Industrial Track Agreement and the February 29, 2012 First Amendment thereto (collectively "**Industry Track Agreement**").

3.4 NPE will make such necessary agreements with BNSF and its successors or assigns, and such other railroads or users of the Tracks as necessary so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices and the provisions of this Agreement.

IV. *PAYMENTS UNDER AGREEMENT.*

4.1 During the initial 10-year Term of this Agreement, NPE agrees to pay Jonesboro five percent (5%) of any Park Revenue (as defined herein), if any, for each twelve (12) month period following the commencement of the Term (hereinafter "**License Fee**"). If this initial term is extended in accordance with paragraph 11.2, herein, this License Fee will increase by one-half percent (0.5%) per year, beginning the eleventh (11) year, to a maximum of seven and one-half percent (7.5%) in year fifteen (15) through year twenty (20). The License Fee shall be renegotiated for additional years beyond the twentieth (20th).

4.2 For purposes of this Agreement, "**Park Revenue**" shall mean any and all gross receipts generated by NPE's Railroad Services at the Park.

4.3 NPE shall pay the License Fee, if any, to Jonesboro within 90 days of the end of each twelve (12) month period following the commencement of the Term (hereinafter "**Operation Year**").

4.4 NPE agrees to furnish or cause to be furnished to Jonesboro a statement of Park Revenue for the previous Operation Year simultaneously with the payment of any License Fee. NPE shall keep full and accurate books of account, records, cash receipts, and other pertinent data

showing any Park Revenue. Such books of account, records, cash receipts, and other pertinent data shall be kept by NPE for a period of three (3) years after the end of each Operation Year.

V. *CONDITION OF RAILROAD FACILITIES; CAPITAL IMPROVEMENTS.*

5.1 As of the Commencement Date of this Agreement, Jonesboro and NPE agree to the physical condition of the existing Railroad Facilities, per the track needs assessment (“**Track Assessment**”) jointly prepared by the Parties which is made part of this Agreement by reference. Any capital improvements and/or repairs identified in the Track Assessment shall be completed by NPE prior to the Commencement Date. Jonesboro shall pay 50% of the costs of any capital improvements and/or repairs identified in the Track Assessment and NPE shall pay the remaining 50% of such costs. Any future capital improvements to the Railroad Facilities shall be by separate agreement between NPE and Jonesboro, as applicable.

VI. *TRACK MAINTENANCE*

6.1 NPE and Jonesboro shall each maintain the Tracks consistent with Federal Railroad Administration Class 1 Standards, 49 Code of Federal Regulations 213-Track Safety Standards and 49 Code of Federal Regulations 214-Railroad Workplace Safety, and any such replacement standards that may be enacted, in accordance with their respective proportionate use of the Tracks.

6.2 The Parties further agree to pay their respective proportionate share of the above-referenced Track maintenance costs, with the cost share formula to be determined by the annual percentage of carloads moved on the Tracks attributable to each Party. By way of example only, if NPE moves 70% of the carloads in a given year and BNSF or other railroad or switching entity moves the remaining 30% of the carloads, NPE shall pay 70% of the annual maintenance costs, and Jonesboro shall pay the remaining 30% of the annual maintenance costs in accordance with Jonesboro’s obligation under the Industry Track Agreement to maintain the Tracks on BNSF’s behalf.

6.3 For purposes of this section, such repairs include, but are not limited to, tie replacements, joint bar replacements, replacements of bolts, spikes, broken tie plates and fittings, and repair or replacement of cracked or broken rails, frogs and/or switch parts. In addition, the Parties shall keep the Railroad Facilities in a clean condition and keep all weeds mowed and trash and debris picked up and removed.

6.4 NPE shall have no maintenance obligation or other liability with respect to the acts or omissions of BNSF, including its corporate parents and affiliates, and their respective officers, directors, employees, agents, representatives, and respective successors and assigns.

VII. *COMPLIANCE WITH LAWS*

7.1 The Parties shall comply with: (i) all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over the Tracks, the

Railroad Facilities, and/or this Agreement; and (ii) other NPE requirements relating to the construction, use, maintenance and operation of the Tracks and/or Railroad Facilities.

7.2 NPE may refuse to operate over the Tracks or use or enter the Railroad Facilities whenever NPE, in its discretion, determines that the same is unsatisfactory for NPE's operation, entry or contact. If and when such condition has been remedied to NPE's satisfaction, NPE may resume operation over the Tracks or use of or entry into the Railroad Facilities.

7.3 NPE may require Jonesboro and/or Park Users to use flaggers and otherwise implement all safety measures that NPE deems appropriate in connection with the use of the Tracks and/or Railroad Facilities by or for Jonesboro and/or Park Users.

VIII. *PROPERTY LICENSED TO OTHER PARTIES BY JONESBORO.*

8.1 As of the Effective Date, Jonesboro represents and warrants that it has not granted any property or operating rights to any portion of the Railroad Facilities in the Park to any third party, other than any rights granted to BNSF pursuant to the Industry Track Agreement.

8.2 Subject to any rights granted to BNSF pursuant to the Industry Track Agreement, NPE shall have the exclusive right to perform the Railroad Services on the Railroad Facilities and to receive revenue therefrom.

8.3 Jonesboro may sell or lease, from time to time, portions of the Park that are not part of the Railroad Facilities to third parties as part of a land or facility sale or lease, provided that such property leased to third parties shall not interfere with NPE's rights to perform the Railroad Services under the terms and conditions of this Agreement. All property specifically leased by Jonesboro to third parties shall be separated from the Railroad Facilities trackage subject to this Agreement by means of gates, fencing, signs, derails or similar means that prevent operations by such other parties on the Railroad Facilities or any other property used by NPE, unless and except when such operations are conducted under a specific agreement between NPE and such other party.

IX. *TEMPORARY USE OF LAYDOWN SPACE.*

9.1 NPE may make arrangements from time to time with a temporary shipper by rail for use of otherwise unused laydown space (open space next to Railroad Facilities). NPE shall notify Jonesboro of each such use. If Jonesboro reasonably objects to any specific use of laydown space by NPE or its shipper, NPE shall discontinue that use of such laydown space as soon as practicable.

X. *RELOCATION OR REMOVAL OF RAILROAD FACILITIES.*

10.1 In the event Jonesboro and NPE jointly agree to the removal or relocation of the Railroad Facilities or any part thereof (or any public authority having jurisdiction thereover orders such removal or relocation), NPE shall provide Jonesboro with a fixed price quote for performing such work, and Jonesboro shall have the option of accepting NPE's quote and having NPE perform such work, or having another rail contractor perform such work at a price equal to or less than NPE's fixed priced quote.

10.2 In the event of any new lead track construction, NPE shall have the option to submit a bid to Jonesboro to perform such lead track construction work.

10.3 Fees for any work provided by NPE or its affiliates to Jonesboro pursuant to either Section 9.1 or Section 9.2 shall not be included in the calculation of Park Revenue.

10.4 In the event that any portion of the Tracks are removed at the Park, NPE may designate and stockpile for future use all or a portion of such removed materials as is reasonably

necessary for repairs and maintenance of the Railroad Facilities. All such work performed by NPE shall be in conformance with the requirements of the Surface Transportation Board (“STB”), the regulations of the FRA and all other applicable federal, state or local laws, codes or regulations.

XI. *DEFAULT.*

11.1 The following events shall constitute defaults under this Agreement: (i) creating or allowing to remain any condition, including without limitation, any environmental condition, on, about or affecting the Railroad Facilities, which interferes with or endangers railroad operations; (ii) assigning or transferring the rights or obligations under this Agreement in violation of Section 17; or (iii) defaulting on any of the covenants or agreements contained in this Agreement.

11.2 The Parties acknowledge that in the event of a default or breach of any of the terms of this Agreement, damages may not be an adequate remedy, and the non-defaulting party may seek the entry of decrees for specific performance in favor of such party. The Parties further agree that their remedies under this Agreement shall be limited to actual direct damages and specific performance and specifically exclude consequential, exemplary, or punitive damages.

XII. *TERM AND TERMINATION.*

12.1 The Term of this Agreement shall be for an initial period of ten (10) years commencing on such date that the following conditions have been satisfied with respect to NPE (“**Commencement Date**”):

- a. NPE having received all necessary regulatory approvals to provide the Railroad Services; and
- b. NPE having entered into all necessary agreements with BNSF or such other railroads or users of the Railroad Facilities as necessary so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices and the provisions of this Agreement.

12.2 Upon expiration of the initial Term and each year on the anniversary of such 10-year Term thereafter, the Term will automatically extend for another term of ten (10) years provided that: (i) NPE is not in material default under this Agreement as set forth in Section 11.1 or any such default has been cured within one (1) year following written notice from Jonesboro; and (ii) the ASRP has been satisfied by NPE or NPE has cured any breach of the ASRP within one (1) year following written notice from Jonesboro.

12.3 In addition to all other remedies available at law or in equity, NPE may, without incurring any liability to other parties, terminate its obligations under this Agreement (including discontinuance of the maintenance and operation of the Tracks) effective immediately by written notice to Jonesboro, if any of the following events occurs:

1. any default as described in Section 11 occurs, other than a default under Section 11.1(iii);
2. any default as described in Section 11.1(iii) occurs and persists for sixty (60) days following written notice from NPE to cure;
3. all Park Users fail to utilize railroad and/or rail-related services for a period of three (3) months in any twelve (12) month period;
4. NPE is dispossessed of the right to operate over the Railroad Facilities, or any part thereof.

12.4 In addition to all other remedies available at law or in equity, Jonesboro may terminate NPE's rights and obligations under this Agreement effective immediately by written notice to NPE, if any of the following events occurs:

1. any default as described in Section 11.1(ii) occurs;
2. any default as described in Section 11.1(iii) occurs and steps to take corrective action are not initiated within sixty (60) days and cured within one (1) year following written notice from Jonesboro, including the failure by NPE to materially comply with the Annual Strategic Rail Plan.

XIII. *INSURANCE REQUIREMENTS.*

13.1 NPE shall secure, and maintain throughout the Term of this Agreement, insurance in the following types and amounts:

- a. Commercial general liability with per occurrence limits of at least five million and 0/100 dollars (\$5,000,000.00) for personal injury and property damage and ten million and 0/100 dollars (\$10,000,000.00) in the aggregate.
- b. Environmental liability with per occurrence limits of at least five million and 0/100 dollars (\$5,000,000.00).
- c. Business Automobile Coverage with per occurrence limits of at least one million and 0/100 dollars (\$1,000,000).
- d. All such policies obtained and held pursuant to this Agreement shall name Jonesboro as an additional insured and have exclusions for railroads removed, endorsed and indicated in a certificate of insurance provided to Jonesboro at Jonesboro's request.

XIV. *INDEMNIFICATION & LIMITATION OF LIABILITY.*

14.1 NPE shall defend, indemnify, and hold Jonesboro, its consultants, subconsultants, related agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them (hereinafter, collectively "**Jonesboro**

Indemnified Parties”) harmless from and against any and all claims, actions, damages, losses, liabilities, costs, and expenses, including reasonable attorney’s fees, to the extent not caused by the negligence or willful misconduct of the Jonesboro Indemnified Parties, arising under, by reason of, related, or incidental to: (i) NPE’s use, operation or control of the Railroad Facilities; (ii) the negligence or willful misconduct of NPE; and (iii) or any negligent performance of the Railroad Services by NPE.

14.2 Jonesboro shall, to the extent allowed by law, defend, indemnify, and hold NPE, its corporate parents and affiliates, and their respective officers, directors, employees, agents, representatives, and respective successors and assigns (hereinafter, collectively “**NPE Indemnified Parties**”) harmless from and against any and all claims, actions, damages, losses, liabilities, costs, and expenses, including reasonable attorney’s fees, arising under, by reason of, related, or incidental to: (i) the physical or environmental condition of the Park prior to the Effective Date of this Agreement; and (ii) BNSF’s use of the Tracks under the Industry Track Agreement and any future amendments thereto.

14.3 The obligations of this Section 14 shall survive termination of this Agreement.

XV. *HAZARDOUS SUBSTANCES & WASTES.*

15.1 For the purpose of this Section 15, “Hazardous Materials” shall mean any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

15.2 NPE acknowledges that it will comply with all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials in performing the Railroad Services.

XVI. *STATUS OF NPE.*

16.1 It is understood and agreed that NPE (including NPE’s employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. NPE’s assigned personnel shall not be entitled to any benefits payable to employees of Jonesboro. Jonesboro is not required to make any deductions or withholdings from the compensation payable to NPE under the provisions of this Agreement; and as an independent contractor, NPE hereby indemnifies and holds Jonesboro harmless from any and all claims that may be made against Jonesboro based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

16.2 If, in the performance of this Agreement, any third person(s) are employed by NPE, such person shall be entirely and exclusively under the direction, supervision, and control of NPE. All terms of employment, including hours, wages, Railroad Services conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by NPE, and Jonesboro shall have no right or authority over such persons or the terms of such employment.

16.3 It is further understood and agreed that as an independent contractor and not an employee of Jonesboro, neither NPE nor NPE's assigned personnel shall have any entitlement as a Jonesboro employee, right to act on behalf of Jonesboro in any capacity whatsoever as agent, nor to bind Jonesboro to any obligation whatsoever.

XVII. *ASSIGNMENT.*

17.1 This Agreement will inure to the benefit of and be binding upon the approved successors and assigns of the Parties hereto; provided, however, that Jonesboro may not sell, assign, transfer, or hypothecate this Agreement or any interest herein (either voluntarily or by operation of law) without the prior written consent of NPE, which shall not be unreasonably withheld. Any attempted assignment by Jonesboro in violation of this Section 16 shall be absolutely void. Either party hereto may assign any receivables due them under this Agreement; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Agreement.

17.2 NPE may not sell, assign, transfer, or hypothecate this Agreement or any interest herein without the prior written consent of the City of Jonesboro, which shall not be unreasonably withheld. Any attempted assignment by NPE in violation of this Section 17 shall be absolutely void. Upon such transfer, NPE shall be released from any further obligations hereunder, provided that the assignee accepts and assumes such rights and obligations in writing. Thereafter, Jonesboro agrees to look solely to the successor in interest of NPE for the performance of such obligations.

XVIII. *NOTICES.* Whenever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and delivered by a nationally-recognized overnight express delivery service, registered or certified, return receipt requested and postage prepaid to the Parties at the following addresses:

If to NPE:

New Patriot Entity LLC
Attn: President
10752 Deerwood Park Blvd., Suite 300
Jacksonville, FL 32256

Cc:

New Patriot Entity LLC

Attn: Legal Department
10752 Deerwood Park Blvd., Suite 300
Jacksonville, FL 32256

If to Jonesboro:

City of Jonesboro
Attn: Mayor Harold Copenhaver
300 S. Church Street
Jonesboro, AR 72401

XIX. *PROPERTY TAXES.* NPE shall not be responsible or liable for any property or other state or local taxes assessed on the Tracks or associated right-of-way by any governmental authority.

XX. *PUBLIC ASSESSMENTS.* Jonesboro shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating the Tracks, and shall not cause or permit any liens to be filed against the Tracks. In the event any such liens are filed, Jonesboro shall cause such liens to be released within fifteen (15) days.

XXI. *MODIFICATION.* This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by the Parties.

XXII. *FORCE MAJEURE.* Neither party shall be liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) pandemics and/or epidemics; and (i) strikes, labor stoppages or slowdowns, or other industrial disturbances, and (j) third-party vandalism or other criminal activity. The party suffering a Force Majeure event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure event are minimized.

XXIII. *ENTIRE AGREEMENT.* This Agreement, together with any Exhibits incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

XXIV. *Real Property Records.* It is understood and agreed that this Agreement shall not be recorded in the real property records in the county or counties in which the Tracks are located. The Parties further acknowledge that it is NPE’s position that Sections 4.1, 4.2, 5.2, 11, Exhibit B, and any Annual Strategic Rail Plan(s) would give advantage to NPE’s competitors if publicly disclosed, and therefore shall be redacted pursuant to Ark. Code Ann. § 25-19-105(b)(9) prior to this Agreement being placed of public record. In the event that an unredacted copy of this Agreement is requested by any individual or entity under Arkansas’ Freedom of Information Act, Jonesboro shall give NPE prompt and timely notice of such fact so that NPE may seek to obtain a protective order or other appropriate remedy precluding any such disclosure from a court of competent jurisdiction. To the extent permitted by law, Jonesboro shall cooperate reasonably with NPE in connection with NPE’s efforts to obtain a protective order or other appropriate remedy.

XXV. *COUNTERPARTS.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

XXVI. *CHOICE OF LAW.* This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Arkansas without giving effect to any choice or conflict of law provision or rule the application of which would result in the application of the laws of any state other than that of the State of Arkansas.

XXVII. *SEVERABILITY.* If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

XXVIII. *WAIVER.* No waiver by either party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by either party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first appearing above and to commence on the Effective Date.

NEW PATRIOT ENTITY LLC

CITY OF JONESBORO, ARKANSAS

By: _____

By: _____

Name: _____

Name: Harold Copenhaver _____

Title: _____

Title: Mayor _____

Date: _____

Date: _____

Attest By: _____

Name: April Leggett

Title: City Clerk

Exhibit A
Park Trackage Aerial

Exhibit B
Annual Strategic Rail Plan Template

- Service Standards – Section 3.1 (i) and (ii)
 - Operational Safety Goals
 - Injuries - FRA injury frequency ratio per 200,000 man hours at or below American Short Line Railroad Association (ASLRRA) average.
 - Human Factor Train Accidents -- Train accidents per million yard train miles at or below the ASLRRA average.
 - If NPE fails to achieve these safety goals for more than two (2) consecutive years, NPE will be in default as set forth in Section 11(a)(iii).
 - Transportation Service Plans (TSP)
 - Will be reviewed to ensure customer service requirements are being met, e.g., scheduling, days and hours of operation.
 - Annual Customer Surveys
 - NPE will conduct annual customer surveys—a score of "meets or exceeds all expectations" is expected. Results will be reviewed each year.
- Asset Standards - Section 3.1 (v) and (vii)
 - Track Maintenance
 - NPE will provide Jonesboro with copies of the applicable FRA monthly track inspection records and/or reports.
 - Capital and Operating Maintenance Plan
 - NPE will work with Jonesboro to develop a capital and maintenance plan, which will be updated as needed, and shall be subject to the approval of NPE and Jonesboro.

- Marketing Initiative Standards - Section 3.1 (vi)
 - Annual Opportunity Report
 - NPE will provide Jonesboro with a volume growth and loss report showing carload changes by customer as well as new customers who began shipments in the previous year.
 - NPE will provide Jonesboro with a confidential list of open and current opportunities that are being pursued for new business growth in the Park.