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May 8, 2012

232288

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings
May 8, 2012
Part of
Public Record

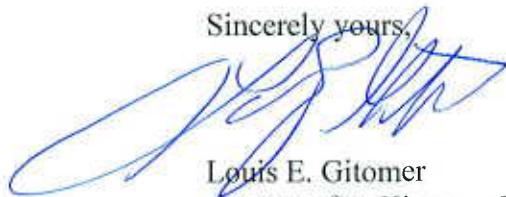
RE: Finance Docket No. 35618, *Kingman Terminal Railroad, LLC—Operation
Exemption—Kingman Airport Authority, Inc.*

Dear Ms. Brown:

Enclosed for e-filing is the executed Railroad License and Operating Agreement
between Kingman Airport & Industrial Park and Kingman Terminal Railroad, LLC.

Thank you for your assistance. If you have any questions, please call or email
me.

Sincerely yours,



Louis E. Gitomer
Attorney for: Kingman Terminal Railroad, LLC

Enclosures

RAILROAD LICENSE AND OPERATING AGREEMENT

Kingman Airport & Industrial Park Kingman, Arizona

This Railroad License and Operating Agreement (“**Agreement**”) is made and entered into as of the 20th day of April, 2012 (“**Effective Date**”), by and between **KINGMAN AIRPORT AUTHORITY, INC.** (“**Licensor**”) and **KINGMAN TERMINAL RAILROAD, LLC** (“**KTRR**” or “**Licensee**”).

RECITALS:

- A. Licensor has established the Kingman Airport & Industrial Park (the “**Park**”) within Mohave County, Arizona for the purpose of industrial development.
- B. Licensor has the right to enter into leases, licenses and other contracts with businesses and other enterprises for the development of the Park.
- C. Licensor desires to provide for common carrier rail service to customers of rail service located within the Park (“**Customers**”) to replace and improve the service previously provided by the BNSF Railway Company (“**BNSF**”).
- D. Licensor notified Licensee on February 2, 2012 that it had been chosen by Licensor to be the exclusive rail operator at the Park.
- E. **KTRR**, an indirect, wholly-owned subsidiary of Patriot Rail Corp. (“**Patriot**”), desires to provide such service and shall obtain appropriate authorization from the Surface Transportation Board (“**STB**”) to operate the railroad facilities at the Park commencing on or about June 30, 2012.
- F. Upon receipt of appropriate authority from the STB, Licensee will become a common carrier railroad and is willing to operate and maintain the trackage to provide rail service to Customers at the Park.
- G. Licensee will make such necessary agreements with BNSF and its successors or assigns, and such other railroads or users of the trackage as necessary (collectively, the “**Railroad Operators**”) so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices and the provisions of this Agreement.
- H. Licensor and Licensee desire to set forth the terms and conditions pursuant to which Licensee will operate the Railroad Facilities (as herein defined) at the Park.

AGREEMENT:

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. LICENSOR GRANTS RIGHT.

1.1 In consideration of the covenants and agreements contained herein to be performed, kept and observed by Licensee, Licensor hereby grants to Licensee an exclusive 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 designated on Exhibit A and the area within 15 feet of the centerline of each track, except where any roadways or buildings, as permitted by Licensor, reduce such distance to less than 15 feet, (ii) all railroad signs, switch mechanisms and other appurtenances associated with such trackage, and (iii) those areas and/or facilities otherwise described on Exhibit A.

1.2 Except as otherwise provided in this Agreement, commencing on the Effective Date and until the expiration or termination of this Agreement, Licensor shall not grant to any third party any rights which are materially competitive with the Railroad Services on the Railroad Facilities.

2. LICENSEE'S OBLIGATION'S UNDER THIS AGREEMENT.

2.1 During the Term of this Agreement, Licensee agrees, at Licensee's sole cost and expense, to perform the following services (collectively, the "**Railroad Services**"):

(a) Safe, consistent and reliable rail services, including but not limited to, timely responses to derailments, all of which shall be consistent with providing quality rail service as recognized in the rail service industry, to existing and potential customers located in the Park and assisting in developing economic growth within the Park, provided that such services shall be increased/modified as the volume of rail service at the Railroad Facilities increases. All fees charged to users of services offered by Licensee shall be reasonably competitive with similar services offered by rail service providers in the rail service industry.

(b) Maintain at least two locomotives at the Railroad Facilities. Licensee shall also (i) maintain adequate equipment to provide Railroad Services, and (ii) provide staffing consisting of at least one full operations crew and a general manager (such staffing may be adjusted by Licensee in its reasonable discretion) in order to maintain quality rail service and meet the goals established by the strategic plan agreed to by Licensor in accordance with this Section 2.1(c).

(c) Work closely with Licensor to develop a strategic plan for the future development and operation of the Railroad Facilities (and any other area identified by Licensor). Any extension of rail lines within the Park shall be subject to the sole discretion of Licensor (any such extension of rail service lines shall be included

within the definition of Railroad Facilities). Such planning shall be updated on an annual basis or as otherwise reasonably requested by Licensor. Any new or revised rail access to the Park must be approved in writing by Licensor.

(d) Develop the Railroad Facilities, with Licensee using its best commercial efforts, for (i) rail related services, which may include, but not be limited to, railcar switching, transload, bulk storage, warehouse and distribution services, container services, car cleaning, car storage, car repair, and locomotive repairs and remanufacture, and any other rail related services; and (ii) any other activity to which the parties agree. The parties shall meet on a monthly basis to assess such effort by Licensee.

(e) Work closely with Licensor to develop a marketing plan for increasing rail usage and attracting new rail served customers to the Park. During the Term, Licensee shall use its best commercial efforts to implement the approved marketing plan.

(f) Provide common carrier rail services to Customers located within the Park.

(g) Provide Licensor with monthly reports for (i) the number of carloads at the Railroad Facilities, (ii) number of switch moves at the Railroad Facilities, (iii) number of stored cars at the Railroad Facilities, (iv) the names of all users of the Railroad Facilities, (v) new business prospects and (vi) any other information reasonably requested by Licensor regarding the Railroad Services.

(h) Keep the Railroad Facilities in good repair and in a safe condition in accordance with applicable Federal Railroad Administration ("FRA") regulations, and all other applicable federal, state or local laws, codes or regulations. Such trackage will be maintained to FRA Class I standards or better. 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, Licensee shall keep the Railroad Facilities in a clean condition and keep all weeds mowed and trash and debris picked up and removed.

(i) Provide reasonable assistance to Licensor and participate in, as requested by Licensor, any efforts to obtain federal, state or municipal funding for rail and related services at the Park.

(j) Provide such notices to appropriate parties and conduct its operations so as to comply fully and completely with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority pertaining to the performance of the Railroad Services, including those relating to safety, hazardous materials and equal employment opportunities; upon the request of Licensor, obtain all permits and licenses necessary for performance of the Railroad Services; pay all local, state and federal taxes, except for property taxes pursuant to Section 14; and pay all benefits, insurance, taxes and contributions for railroad retirement, Unemployment and Workers' Compensation

and/or Federal Employers Liability Act, as applicable, which are measured by wages, salaries or any other remunerations paid to Licensee's employees. Upon Licensor's request, Licensee shall furnish evidence satisfactory to Licensor that any and all of the foregoing obligations have been fulfilled.

(k) Promptly remedy damages or losses caused in whole or in part by Licensee, its subcontractor, its sub-subcontractor, or anyone directly or indirectly employed by any of the aforementioned parties, or by anyone for whose acts they may be liable and for which Licensee is responsible, except damages or losses attributable to acts or omissions of Licensor (including other contractors, designers, and inspectors retained by Licensor, and their respective employees, subcontractors, and suppliers).

(l) The parties shall reasonably cooperate with each other on the location of stored railcars on the Railroad Facilities. Licensee acknowledges and agrees that such storage shall take into consideration Licensor's land development activities within the Park and that storage, to the extent reasonably possible, shall be in areas identified by Licensor which do not detract from such land development activities.

(m) The parties shall jointly collaborate to meet the contractual obligations owed to the Customers of the Park.

2.2 Payments under the Agreement.

(a) During the Term, Licensee agrees to pay Licensor, without notice or demand and without abatement, deduction, offset or set off, an amount equal to four percent (4%) of the Rail Operations Revenue (as defined herein) per Operation Period (as defined herein) (the "**License Fee**"); provided, however, that Licensee shall have the right to deduct, offset and set-off from the License Fee any and all Licensee Repair Costs (as defined in Section 4). For the purpose of this Agreement, "**Rail Operations Revenue**" shall mean any and all gross receipts generated, directly or indirectly, by the railroad freight operations at the Railroad Facilities conducted by Licensee which includes any receipts paid by the Railroad Operators for movement of loaded rail cars, into and out of the Park. For the purpose of this Agreement, "**Operation Period**" shall mean the three (3) month period following the Term Commencement Date (as defined below), and each three (3) month period thereafter. All Rail Operations Revenue for the first 120 days after the Term Commencement Date shall not be included in calculating the License Fee for the initial Operation Period.

(b) Licensee shall pay the License Fee to Licensor quarterly, on or before the 10th day of April, July, October and January of each year during the Term; provided, however, the first payment is due on or before the 10th day of January, 2013. If Licensee fails to pay the License Fee or any other sums due by Licensee to Licensor under this Agreement on or before the date when the same becomes due, then said amount shall be deemed past due, and Licensee shall pay to Licensor a late charge equal to Twenty-Five Dollars (\$25.00) per day for each day the License Fees are late after said grace period. Licensor and Licensee hereby agree that such late charge represents a fair and reasonable estimate of the cost that Licensor will incur by reason of

any such late payment by Licensee. Acceptance of any such late charge by Licensor shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder. Licensee agrees to furnish or cause to be furnished to Licensor simultaneously with the payment of the License Fee a statement of Rail Operations Revenue (the "**License Fee Statement**"). Licensee shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing its Rail Operations Revenue and Licensee shall record therein every revenue generating transaction associated with the Railroad Facilities. Such books of account, records, cash receipts, and other pertinent data shall be kept by Licensee for a period of three (3) years after the end of the Term. The receipt by Licensor of any statement shall not bind Licensor as to the correctness of the statement or the payment.

(c) Licensor may, at its sole cost and expense, conduct audits of Licensee's records to confirm the accuracy of the License Fee Statement; provided that if such an audit concludes that the actual License Fee due and payable to Licensor, as finally determined in connection with this Section 2.2(c), was more than 10% of the License Fee set forth on the License Fee Statement, Licensee shall reimburse Licensor for all reasonable and customary third party audit costs actually incurred with the challenge by Licensor; provided, further, that Licensee's reimbursement to Licensor for audit costs incurred shall be capped at the difference between the License Fee finally determined in the audit and the License Fee set forth on the License Fee Statement. Should Licensee disagree with the results of any audit conducted by Licensor, Licensee may engage an independent auditing firm to conduct an independent audit, with Licensor, in its reasonable discretion, approving Licensee's selection of such independent auditing firm. The findings of the independent auditor shall be binding on the parties. If such an independent audit determines that Licensee has underpaid the License Fee, Licensee shall pay such underpaid amount to Licensor within 30 days after such determination. The fees and disbursements of the independent auditing firm shall be allocated between Licensor and Licensee in the same proportion that the aggregate amount of such remaining disputed amounts submitted to the independent auditing firm that is unsuccessfully disputed by each party (as finally determined by the independent audit firm) bears to the total amount of such remaining disputed amounts so submitted.

3. **PREMISES FOR LICENSEE'S OFFICE.** During the Term of this Agreement, Licensor shall provide Licensee a designated space located within the Park, mutually agreeable to both parties, in order for Licensee to operate a modular office trailer (the "Licensee Office Space"). Any relocation of the Licensee Office Space from the initial Licensee Office Space shall require the prior written consent of the Licensee. As consideration for the Licensee Office Space, Licensee shall pay to Licensor Twenty-Five Dollars (\$25.00) annually, with such annual payments commencing on the first payment date of the License Fee and continuing each January thereafter pursuant to the terms and conditions set forth in Section 2.2(a).

4. **CONDITION OF THE RAILROAD FACILITIES; CAPITAL IMPROVEMENTS.** As of the Effective Date, Licensor and Licensee hereby acknowledge and agree that the Railroad Facilities are in the physical condition described

on the Track Needs Assessment (“**Track Assessment**”) attached hereto as Exhibit B. In accordance with the Track Assessment, the following capital improvements and/or repairs are to be made to the Railroad Facilities prior to a date mutually agreed upon by both parties (the “Railroad Improvements”): (i) the replacement of approximately 1,000 LF of 90 RA rail on the Southwire Lead, and (ii) the replacement of defective ties adjacent to the Contech facility and Laron Engineering. Licensor shall pay 50% of the costs of the Railroad Improvements and Licensee shall pay the remaining 50% of the costs of the Railroad Improvements. The costs of the Railroad Improvements are not to exceed \$72,500 in the aggregate, and in connection therewith, Licensee’s costs actually incurred with respect to the Railroad Improvements are not to exceed \$36,250 (the “Licensee Repair Costs”). Such Licensee Repair Costs shall be deducted, offset and set-off from the License Fees as previously set forth in Section 2.2(a) at a rate of no more than 50% of the License Fee due Licensor in any Operation Period. Both parties acknowledge that except for the Railroad Improvements, neither party shall have any obligation under this Agreement to make capital improvements to the Railroad Facilities; provided, however, that in the event capital improvements are required to provide industry standard rail service to Customers, Licensor and Licensee agree to negotiate in good faith regarding the scope and allocation of such capital expenditures. For the purpose of clarification, any repairs and/or capital improvements of the BNSF interchange shall be subject to future negotiation and agreement by and among BNSF, Licensor and Licensee.

5. TRACKAGE LEASED TO OTHER PARTIES BY LICENSOR.

5.1 Licensor may lease, from time to time, portions of other railroad track areas at the Park that are not part of the Railroad Facilities to third parties as part of a land or facility sale or lease. Such trackage leased to third parties shall (i) not be part of the Railroad Facilities as defined in this Agreement, and (ii) not interfere with Licensee’s ability to perform the Railroad Services required under the terms and conditions of this Agreement. All trackage specifically leased by Licensor to third parties shall be separated from the trackage subject to this Agreement by means of gates, fencing, signs, derrails or similar means that prevent operations by such other parties on trackage licensed to Licensee or operations by Licensee on trackage leased or licensed to such other parties, unless and except when such operations are conducted under a specific agreement between Licensee and such other party. As of the Effective Date, Licensor represents and warrants that it has not leased any track to any third party.

5.2 Subject to the terms and conditions of this Agreement, Licensee shall have the exclusive right to switch rail cars or other on-rail equipment of any type, and receive revenue therefore, between the Railroad Facilities and (a) any other railroad common carrier, and (b) any trackage leased by Licensor to a third party(ies) within the Railroad Facilities, to provide transload services in the Park, to offer space to store railcars within the Park and to provide other rail services as recognized to be customary in the rail industry. Any and all gross revenues generated by such activities conducted by Licensee shall be included in calculating Rail Operations Revenue.

6. RELOCATION OR REMOVAL OF RAILROAD FACILITIES.

6.1 The rights herein granted to Licensee pursuant to this Agreement are subject to the needs and requirements of the Licensor in the operation of the Park and in the improvement and use of that property, which determination is subject to Licensor's sole discretion. The Licensor, at its sole expense, may add to or remove any portion of the Railroad Facilities, or relocate them to such new location(s) as the Licensor may designate, whenever, in the furtherance of Licensor's needs and requirements. In the event of any removal or relocation of the Railroad Facilities or any part thereof, Licensee shall provide Licensor with a fixed price quote for performing such work, and Licensor shall have the option of accepting Licensee's quote and having Licensee perform such work, or having another rail contractor perform such work at a price equal to or less than Licensee's fixed priced quote.

6.2 In the event of any new lead track construction, the parties acknowledge that Licensor may use a bid process to select a contractor in accordance with either Licensor's ordinary course of business or as required by Licensor under applicable law. Provided Licensee complies with the bid procedures established by Licensor, Licensee shall have the option to submit a bid to Licensor to perform such lead track construction work; provided, however, that Licensor shall be precluded from giving any preferential consideration to Licensee's bid on account of this Agreement.

6.3 In the event that any railroad trackage is removed at the Park, Licensee 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, provided, however, that storage of such materials must be on the Railroad Facilities unless other land is leased from Licensor for that purpose. All such work performed by Licensee shall be in conformance with the requirements of the STB, the regulations of the FRA and all other applicable federal, state or local laws, codes or regulations. Fees for any work provided by Licensee or its affiliates to Licensor pursuant to either Section 6.1 or Section 6.2 shall not be included in the calculation of Rail Operations Revenue

6.4 If Licensor has designated new and/or relocated rail facilities at the Park within the definition of "Railroad Facilities" all the terms, conditions and stipulations herein expressed with reference to the Railroad Facilities shall apply to such new and/or relocated improvements.

7. MINIMIZE INTERFERENCE WITH LICENSOR'S CUSTOMERS. During the Term of this Agreement, Licensee shall use commercially reasonable efforts to operate the Railroad Facilities in such a manner as to minimize interference with the usage of the roadways or other facilities located within the Park, and Licensee shall refrain from taking any action, or omitting to take any action, that would impair the safety of any users of the roadways or other facilities located within the Park.

8. TEMPORARY USE OF LAYDOWN SPACE. Licensee may make arrangements from time to time with a shipper by rail for use of otherwise unused

laydown space (open space next to Railroad Facilities) for use in transloading operations and for bulk freight storage. Licensor must approve such use in advance, such approval not to be unreasonably withheld, but Licensor may condition such approval on Licensee or its customer paying the fair rental value of any laydown space to be used by Licensee. In any request for Licensor's approval of the use of any laydown space Licensee shall include the date on which the proposed use is to commence and end and the specific location of the affected laydown space. Licensee, without Licensor's prior written approval, shall not be permitted to store any Hazardous Materials (as defined in Section 17.1) in or on any laydown space. All fees received by Licensee pursuant to this Section 8 shall be included in the calculation of Rail Operations Revenue.

9. TERM, DEFAULT, AND TERMINATION.

9.1 The term of this Agreement (the "Term") shall be for an initial period of seven (7) years commencing on such date (the "Term Commencement Date") that the following conditions set forth in Section 9.1(a)-9.1(c) below (collectively, the "Conditions") have been satisfied. Thereafter, provided that (i) Licensee is not in material default under this Agreement as described in Section 9.2 below, and (ii) the number of carloads handled at the Railroad Facilities have increased from the BNSF Carloads (as defined below) by a simple, non-compounded rate of 70% during the initial Term, or a simple, non-compounded rate of 50% for each subsequent Term thereafter, Licensee shall have the right to extend the Term for three (3) consecutive periods of five (5) years each by delivery of written notice to Licensor not less than one hundred and eighty days (180) prior to the end of the then existing Term (and not earlier than one (1) year prior to the end of the then existing Term). "BNSF Carloads" for the initial term shall mean the number of carloads handled by BNSF at the Railroad Facilities for the year-long period of April 1, 2011 - March 31, 2012. Following the Effective Date, Licensee shall, as soon as practicable, provide to Licensor a calculation of the BNSF Carloads, with such calculation sent to Licensor via letter certified by an authorized representative of KTRR. For each subsequent term "BNSF Carloads" shall mean the number of carloads handled by KTRR at the Railroad Facilities for the last year of the previous term. The failure of Licensee to deliver such written notice within the specified time period shall be deemed a waiver of the extension rights set forth in this Section. If the Conditions for the initial Term have not been satisfied by Licensee prior to June 29, 2012 or at such a later date as is mutually agreed to in writing by the parties, Licensor may terminate this Agreement. The Conditions are as follows:

(a) Licensor and Licensee have jointly provided written notice to BNSF that Licensee will be providing Railroad Services on the Railroad Facilities, with such notice being provided to BNSF at least thirty (30) days prior to Licensee performing such Railroad Services,

(b) Licensee having received all necessary regulatory approvals to provide Railroad Services, and

(c) Licensee having entered into all necessary agreements with BNSF, including an Interchange Agreement and Commercial Marketing Agreement, in

order to transition rail services from BNSF to Licensee.

9.2 If Licensee defaults in the performance of any covenant or agreement required by this Agreement for a period of thirty (30) days (fifteen (15) days for any monetary default or any default regarding Hazardous Materials) after written notice from the Licensor to the Licensee specifying such default, Licensor may, at its option, in addition to any other legal and/or equitable rights, terminate this Agreement by written notice; provided, however, that if such default cannot reasonably be cured within thirty (30) days (excluding monetary defaults), Licensor shall not terminate this Agreement if Licensee begins to cure the default within the thirty (30) day notice period (a fifteen (15) day notice period shall apply to any default regarding Hazardous Materials) and proceeds diligently to complete such cure; provided in no event shall such cure period exceed one hundred and eighty (180) days (sixty (60) days for any default regarding Hazardous Materials) unless approved by Licensor, in writing. A notice of default, shall include a notice stating that the Agreement will be deemed terminated if the default is not cured within the required time period. Notwithstanding the foregoing, in the event Licensee defaults in the performance of any covenant or agreement required by this Agreement and such a Licensee default causes an imminent threat to the health or safety of Customers, Licensee shall use commercially reasonable efforts to cure such a default and shall provide prompt written notice to Licensor regarding same. In addition to the foregoing rights, and without limiting such rights, upon any non-monetary default by Licensee, upon not less than ten (10) days prior written notice (except in the case of an emergency) to Licensee, Licensor may elect to cure such default and Licensee shall reimburse Licensor for all expenses incurred to complete such cure, which reimbursement shall be due within ten (10) days following Licensee's receipt of written demand from Licensor. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Licensor may have, and to any remedies Licensor may have under bankruptcy laws or laws affecting creditors' rights generally. Acceptance of the License Fee by Licensor subsequent to any breach hereof shall not be deemed a waiver of any proceeding breach other than a failure to pay the particular License Fee so accepted, regardless of Licensor's knowledge of any breach at the time of such acceptance of amount. Licensor shall not be deemed to have waived any term, covenant or condition unless Licensor gives Licensee written notice of such waiver.

10. INSURANCE.

10.1 The Licensee shall, at its own cost and expense, provide and procure Railroad Liability insurance and, as applicable, Worker's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the Term. All insurance required to be carried by Licensee hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as A:VII or better and licensed or authorized to do business in the State of Arizona. Each policy shall name Licensor, the City of Kingman and any other party designated by Licensor as an additional insured, as their respective interests may appear. Each policy shall contain (i) a separation of insureds condition, and (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to

any policies carried by Licensor and that any coverage carried by Licensor shall be excess insurance for Licensor's interest only. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Licensor on the Term Commencement Date, and thereafter, within thirty (30) days after any demand by Licensor therefor. Licensor may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Licensee hereunder. No such policy shall be cancelable, materially changed or reduced in coverage except after thirty (30) days' written notice to Licensor and Licensor's lender, if applicable. Licensee shall furnish Licensor with a certificate of renewal of any such policy at least ten (10) days prior to the expiration thereof. Licensee agrees that if Licensee does not take out and maintain such insurance, Licensor may (but shall not be required to) procure said insurance on Licensee's behalf and charge the Licensee the premiums, which shall be payable upon demand.

10.2 The Railroad Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$15,000,000 for each occurrence or claim, and shall have at all times an unimpaired aggregate limit of at least \$30,000,000. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this Agreement, coverage for construction or demolition work on or near railroad tracks, and any other coverage requested by Licensor which is customarily required from a common carrier rail service provider in the railroad service industry.

10.3 Workers' Compensation or FELA insurance shall cover such statutory liability as determined by the compensation laws of the State of Arizona or FELA, as applicable, with a limit of at least \$1,000,000.

10.4 The Licensor shall, at its own cost and expense, provide and procure General Liability insurance to be kept in force during the Term. The General Liability insurance procured by the Licensor providing for bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$10,000,000 for each occurrence or claim, and at all times shall have an unimpaired aggregate limit of at least \$25,000,000.

11. NOTICES. All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown below or such successor addresses as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, with confirmed receipt, or by facsimile transmission, addressed to the officers and addresses shown below. All notices shall be effective on the day following confirmed receipt of the letter.

Kingman Terminal Railroad, LLC
c/o Patriot Rail Corp.
One Boca Place
2255 Glades Road, Suite 342W

Boca Raton, FL 33431
Tel: (561) 443-5300
Fax: (561) 443-5319
Attn: Vice President, Law

Kingman Airport Authority, Inc.
7000 Flightline Drive
Kingman, AZ 86401
Tel: (928) 757-2134
Fax: (928) 757-9871
Attn: Executive Director

12. CLAIMS AND LIENS FOR LABOR AND MATERIAL. Licensee shall fully pay, when due and before any lien shall attach to the Railroad Facilities, if the same may lawfully be asserted, for all materials joined or affixed to, and labor performed upon, the property of the Licensor in connection with the maintenance, repair, and operation of the Railroad Facilities, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee.

13. UTILITIES. Licensee shall arrange and pay for all utilities and services supplied to Licensee. All utilities and services will be separately metered and invoiced to Licensee. If not separately metered or invoiced, Licensee shall pay its proportionate share as reasonably determined by the parties.

14. PROPERTY TAXES. Licensee shall not be responsible or liable for any property, assessments or other taxes assessed on the real property of the Railroad Facilities by any governmental authority. Licensor shall indemnify, defend and hold Licensee harmless for any such property taxes on the Railroad Facilities that are assessed to and/or paid by Licensee.

15. INDEMNITY.

15.1 To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its consultants, subconsultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them ("Licensor Indemnified Parties"), against and from any and all claims, liabilities and damages arising under, by reason of, related, or incidental to this Agreement, the use, operation or control of the Railroad Facilities, the negligence or willful misconduct of Licensee, or any negligent performance of the Railroad Services, to the extent not caused by the negligence or willful misconduct of the Licensor Indemnified Parties. Such indemnification by the Licensee shall include, but not be limited to, the following:

(a) Liability or claims of liability arising by reason of injury or damage to persons (including death) and/or property (tangible or intangible) occurring as

a result of Railroad Services performed pursuant to the terms of this Agreement;

(b) Liability or claims resulting directly or indirectly from the negligence or carelessness of the Licensee, its employees, or agents in the performance of the Railroad Services, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Licensee, its employees, or agents;

(c) Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Licensee's, subcontractor's, or supplier's own employees or agents engaged in the Railroad Services resulting in actions brought by or on behalf of such employees against the Licensor Indemnified Parties;

(d) Liability or claims arising directly or indirectly from or based on the violation of any law or regulation, whether by the Licensee, its employees, or agents;

(e) Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Licensor Indemnified Parties or any other parties by the Licensee, its employees, or agents;

(f) Liability or claims arising directly or indirectly from the willful misconduct of the Licensee, its employees, or agents;

(g) Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the Licensee; and

(h) Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the Licensee, its subcontractors, suppliers, or any of their employees or agents.

15.2 To the fullest extent permitted by law, the Licensor shall indemnify, defend and hold harmless Licensee, its consultants, sub-consultants, related companies or agencies, and the officers, directors, partners, insurers, attorneys, shareholders, board members, employees, and agents of each and any of them ("Licensee Indemnified Parties"), from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney fees in any way arising out of or connected with the physical or environmental condition of the Park prior to the Effective Date hereof (including, without limitation, any contamination in, on, under or adjacent to the Park by any hazardous or toxic substances or materials and all such matters set forth on the Phase 1 Environmental Site Assessment attached hereto as Exhibit C), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, The Toxic Substances Control Act, The Comprehensive Environmental Response, Compensation and Liability Act, and The Resource Conservation and Recovery Act), including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of Licensee, Licensor or third parties, and damage to property of Licensee, Licensor or third parties arising from the

foregoing.

16. REMOVAL OF LICENSEE EQUIPMENT, PERSONNEL AND PROPERTY UPON TERMINATION OF LICENSE. Prior to or upon the termination of this Agreement, howsoever, the Licensee shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's premises and shall restore, to the reasonable satisfaction of the Licensor, such portions of such premises to as good a condition as set forth on the Track Assessment, excepting normal wear and tear.

17. HAZARDOUS SUBSTANCES AND WASTES.

17.1 For the purpose of this Agreement, "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. "Hazardous Materials Laws" shall mean 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.

17.2 Licensee shall comply with all applicable Hazardous Material Laws in performing its Railroad Services. Without first obtaining the Licensor's written permission, Licensee will not dispose of Hazardous Materials on the Railroad Facilities, and shall not transport by railcar, or transload to or from railcars, or bring any Hazardous Materials onto the Park, except such Hazardous Materials which have been approved by Licensor in accordance with Section 15. If such permission is granted the Licensee shall obtain any necessary permits and identification numbers and provide the Licensor the identification numbers and copies of the permits. Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with (i) a release or leak of any such Hazardous Materials caused by Licensee unless such event was caused by the negligence or willful misconduct of Licensor or Licensor's customers of the Park, or (ii) the violation of Hazardous Materials Law by Licensee.

17.3 In addition, Licensee shall not install any above ground or underground storage tanks without first obtaining the Licensor's written permission. If such permission is granted the Licensee shall obtain any necessary permits, notify the proper authorities, and provide the Licensor with copies of such permits and notifications. Furthermore, Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with a release or leak of any tank contents, unless such event was caused by the negligence or willful misconduct

of Licensor.

17.4 If Licensee knows, or has reasonable cause to believe, that a Hazardous Material which have not been approved by Licensor in accordance with this Section 15 have come to be located under or about the Park, other than as specifically provided herein or as previously consented to by Licensor, Licensee shall immediately give Licensor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

17.5 Licensee shall not be liable or responsible for any Hazardous Materials present on, under or appurtenant to the Park or the Railroad Facilities prior to the Effective Date.

18. INSPECTION RIGHTS. During the Term of this Agreement, Licensor (or its agents) shall have the right to inspect the Railroad Facilities annually and at such other times as Licensor reasonably deems necessary to monitor compliance with this Agreement. Licensor shall have the right to enter the Railroad Facilities to conduct such inspections during normal business hours upon five (5) business days written notice to Licensee. Nothing in this provision will prevent representatives of Licensor from informally going on the premises to observe operations; provided, however, that Licensor will comply with any instructions of Licensee reasonably designed to ensure the safety of the personnel and property of Licensee and Licensor. At Licensee's option, a representative of Licensee shall accompany Licensor (or its agent) during the inspection.

19. STATUS OF LICENSEE:

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

19.2 If, in the performance of this Agreement, any third persons are employed by Licensee, such persons shall be entirely and exclusively under the direction, supervision, and control of Licensee. All terms of employment, including hours, wages, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Licensee, and Licensor shall have no right or authority over such persons or the terms of such employment.

19.3 It is further understood and agreed that as an independent Licensee and not an employee of Licensor, neither the Licensee nor Licensee's assigned personnel

shall have any entitlement as a Licensor employee, nor the right to act on behalf of Licensor in any capacity whatsoever as agent, or to bind Licensor to any obligation whatsoever. Licensee, or its employees shall not be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by Licensor to employees of Licensor.

19.4 It is further understood and agreed that Licensee must issue W-2 and 941 Forms for income and employment tax purposes for all of Licensee's assigned personnel under the terms and conditions of this Agreement.

20. DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.

20.1 Upon the termination of this Agreement, Licensee shall comply with all applicable, federal, state and local laws, and shall file for necessary authorization from the STB or other regulatory authority, as may be appropriate, to obtain abandonment authority.

20.2 Licensee shall be solely responsible for any protective conditions or benefits imposed by any judicial, regulatory or governmental body, for the benefit of Licensee's employees or the employees of any subsidiary or affiliate of Licensee, or are otherwise required to be paid to such employees under Licensee's collective bargaining or other agreements, howsoever arising, including as a consequence of the approval of this Agreement, the exercise or performance by Licensor or Licensee of any rights or obligations hereunder, the termination of this Agreement, or Licensee's discontinuance of operations on the Railroad Facilities.

21. WAIVER OF BREACH. Except as set forth in this Agreement, the waiver by a party of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the first party to avail itself of any subsequent breach thereof.

22. CONSENT. Except as set forth in this Agreement, wherever the consent, approval, judgment or determination of a party is required or permitted under this License, that party shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

23. ENTIRE AGREEMENT. This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein. For the avoidance of doubt, Section 21 shall apply to that certain request for proposal previously submitted by Licensee to Licensor.

24. MODIFICATION TO AGREEMENT. The provisions of this Agreement,

including any update of Exhibit A, may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Agreement. Any agreement made after the Effective Date and related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed.

25. LICENSE NOT TO BE ASSIGNED. The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, which may be withheld in Licensor's sole discretion (Licensor agrees to not unreasonably withhold its consent to the collateral pledge of Licensee's interest in this Agreement to its lender as long as such pledge expressly excludes any fee interest or other ownership interest in the Railroad Facilities), and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement. No approved assignment of Licensee's rights under this Agreement shall operate as a release of Licensee's obligations hereunder, all of which shall remain in full force and effect after the effective date of such assignment, unless expressly otherwise agreed by Licensor in the written consent to the assignment.

26. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 22 hereof, this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

27. CHOICE OF LAW; WAIVER OF JURY TRIAL. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Arizona. Each party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any action, proceeding or counterclaim arising out of or in connection with this Agreement.

28. FORCE MAJEURE. In the event of Acts of God, war, insurrection, civil disorder or labor actions, each party shall be reasonably relieved of its obligations herein, provided that the affected party exercises reasonable efforts to, within its ability, mitigate the scope and duration of such force majeure. A party claiming force majeure under this Agreement must expeditiously notify the other party of the force majeure situation and any actions being taken toward mitigation.

29. LIMITATION ON LIABILITY. Each of the Licensee and the Licensor agrees that the obligations incurred by the other party under this Agreement shall not constitute personal obligations of the members, partners, joint venturers, directors, officers, trustees, employees, policyholders or any other principals or representatives of such other party. Licensee further agrees that its recourse against the Licensor under this Agreement (including, without limitation, with respect to Licensor's indemnity of Licensee) shall be strictly limited to the Licensor's interest in the Railroad Facilities, and that the Licensee shall have no recourse to any other asset of the Licensor, or of any member, partner, joint venturer, director, officer, trustee, employee, policyholder or any other principal or representative of the Licensor for the satisfaction of any of the

Licensors obligations hereunder.

30. CONDEMNATION

30.1 In the event that at any time after the Effective Date the whole or any part of the Railroad Facilities shall be taken under power of eminent domain by any public or private authority, or conveyed by Licensor to said authority in lieu of such taking then the provisions of this Section 28 shall be applicable.

30.2 If such proceeding shall result in the taking of the whole or a portion of the Railroad Facilities which materially interferes with Licensee's use of the Railroad Facilities for railroad purposes, Licensee shall have the right, upon written notice to Licensor, to terminate this Agreement in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Agreement shall terminate and expire on the date title to the Railroad Facilities vests in the condemning authority, and the rent and other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.

30.3 If such proceeding shall result in the taking of less than all of the Railroad Facilities which does not materially interfere with Licensee's use of the Railroad Facilities for railroad purposes, then this Agreement shall continue for the balance of its term as to the part of the Railroad Facilities remaining, without reduction, abatement or effect upon the rent or other sum or charge to be paid by Licensee under the provisions of this Agreement.

30.4 Except as otherwise expressly provided in this Section 28, Licensor shall be entitled to any and all funds payable for the total or partial taking of the Railroad Facilities without any participation by Licensee; provided, however, that nothing contained herein shall be construed to preclude Licensee from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its interest in the Railroad Facilities.

30.5 Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Railroad Facilities. Each party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other party, its attorneys and experts. Licensee and Licensor shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure Licensee's continued ability to use the Railroad Facilities for the conduct of rail services within the Park.

31. SEVERABILITY If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

32. HEADINGS Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

33. PERFORMANCE AND PAYMENT BOND Licensee shall provide Licensor with a Performance and Payment Bond in the amount of \$10,000 to secure Licensee's performance as required by this Agreement.

[the remainder of this page was intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Railroad License and Operating Agreement as of the date first above written.

LICENSOR:

**Kingman Airport Authority, Inc.,
An Arizona corporation**

By: [Signature]
Name: Thomas L. Clark
Its: President

LICENSEE:

Kingman Terminal Railroad, LLC

By: [Signature]
Name: GARY D. MARINO
Its: PRESIDENT

STATE OF ARIZONA)
) ss
COUNTY OF MOHAVE)

The foregoing License was acknowledged before me this 19th day of April, 2012, by Thomas L. Clark, as President of Kingman Airport Authority, Inc., an Arizona corporation, LICENSOR, on behalf thereof.

[Signature]
Notary Public

My Commission Expires:

September 13, 2014



STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss

The foregoing License was acknowledged before me this 20th day of APRIL, 2012, by GARY D. MARINO, as PRESIDENT of Kingman Terminal Railroad, LLC, a Delaware limited liability company, LICENSEE, on behalf thereof.

Sharon A. Hecker
Notary Public

My Commission Expires:
Nov. 29, 2015



EXHIBIT A
RAILROAD FACILITIES

[See attached]

KINGMAN AIRPORT & INDUSTRIAL PARK

ELEVATION 3,460 ABOVE SEA LEVEL

UNION PAC RAILROAD

KAA-Rail

