

- WORKING DRAFT – COUNTY DRAFT 2.
- 29.24
- FOR DISCUSSION PURPOSES ONLY

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into this _____th day of _____, 2024 (the "**Effective Date**"), by and between Columbia County, Florida, an agency of the State of Florida ("**County**") and "New Gulf & Atlantic Entity, LLC"¹, a Delaware limited liability company ("**NGA**" and, together with the County, the "**Parties**").

WHEREAS, the County is assisting with the development of the North Florida Mega Industrial Park ("**NFMIP**"), a planned industrial facility to be served by both trucks and rail located in the County east of Lake City, Florida, described on Exhibit A ("**Conceptual Site Plan**") attached hereto and incorporated herein by this reference; and

WHEREAS, the County owns the property and railroad track connecting the NFMIP to the Florida, Gulf & Atlantic Railroad ("**FGA**"), described on Exhibit A (track and underlying property is referred to herein as "**Existing Track**"); and

WHEREAS, to enhance the development of NFMIP, the County desires to secure rail service to and within NFMIP, and to establish efficient and economical rail connections providing future tenants of NFMIP ("**Tenants**") access to both CSX Transportation, Inc. ("**CSXT**") and Norfolk Southern Railway Company ("**NSR**"); and

WHEREAS, the County desires that NGA provide said rail access for Tenants to both CSXT and NSR by establishing interchange with FGA and performing common carrier rail and rail-related services to Tenants within NFMIP; and

WHEREAS, it is the County's intention to purchase from Weyerhaeuser Corporation ("**WC**") the right-of-way necessary within the NFMIP to allow NGA to operate on track to be constructed to affect rail service to Tenants ("**Facility Track**"); and

WHEREAS, it is the County's desire to lease to NGA and NGA's desire to lease from the County the Existing Track, and the right of way necessary to construct and operate the Initial NGA Track (as defined below) and the Facility Track; and

WHEREAS, NGA and the County wish to establish terms and conditions for the funding, construction, development, maintenance, and replacement of rail infrastructure within NFMIP, and for the establishment of sustainable rail service to Tenants within NFMIP.

NOW THEREFORE, in consideration of the premises and mutual undertakings set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and NGA, intending to be lawfully bound, agree as follows:

Article 1. Incorporation.

All definitions and all other provisions contained in the Whereas clauses stated above are

¹ Gulf & Atlantic Railways, LLC intends to form a subsidiary ("**NGA**") that will execute this Agreement and take regulatory action required to perform the contemplated railroad operations set forth herein. NGA is intended solely as a placeholder name pending final agreement.

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incorporated herein by reference as if more fully set forth herein.

Article 2. Land Lease, Track Design and Construction

2.1 Subject to the terms and conditions hereof, the County hereby leases for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Existing Track and right of way sufficient to operate the Existing Track, to NGA effective as of the Effective Date or approval by the Surface Transportation Board (“**STB**”), whichever occurs later, provided that the Existing Track shall be leased in “AS IS, WHERE IS” condition and without any express or implied warranties, including but not limited to any warranties of title, merchantability, habitability, or fitness for a particular purpose. NGA acknowledges that it has inspected the Existing Track and accepts it in its current condition and NGA deems it appropriate for all purposes, including NGA’s intended use. NGA leases the Existing Track and right of way sufficient to operate the Existing Track subject to the terms and conditions of this Agreement and all existing agreements, encroachments, easements, occupancies, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded.

2.2 **NGA** shall negotiate with the County a lease of real estate within NFMIP for construction and operation of the Facility Track (the “Facility Track Lease”). The Facility Track Lease shall be amended from time to time by NGA and the County to add additional right-of-way required to construct additional Facility Track for NGA provide rail service to new Tenants.

2.3 At its sole cost and expense, NGA will be responsible for the design and engineering of all Facility Track and Related Structures to be owned by NGA within NFMIP. “**Related Structures**” shall mean all structures and facilities on or related to the presence or operation of the Facility Track, including but not limited to all bridges, culverts, turnouts, signals, highway crossings and warning devices, switches, signage, and track and related facilities to be constructed within NFMIP. NGA shall be responsible for all expenses associated with design and engineering of Facility Track., NGA shall produce written plans (the “**Plans**”) for the Facility Track. The Plans will conform in all aspects with track design and constructions standards issued by CSXT, as updated and amended from time to time. Amendments to the Plans shall be proposed in writing by either the County or NGA, promptly reviewed by the County once prepared by NGA, and approved by mutual consent of the Parties. Any proposed amendments to the Plans shall include, but not be limited to, the materials to be used, the engineering specifications for the new track (including curvature and elevation), and a schedule for completion. Upon completion of construction of any new Facility Track, NGA shall advise the County of the completion of construction and provide “as built” Plans to the Parties.

2.4 The goal of the Parties is to ultimately (i) have NGA design, construct, own and operate the Facility Track and the Initial NGA Track, and to lease and operate the Existing Track (referred to collectively as “**NGA Track**”) extending from the connection to FGA to any Tenants of NFMIP, (ii) make rail service available to as many Tenants as possible, and (iii) construct the Facility Track sequentially to satisfy demand for rail service, under commercially reasonable terms. The initial NGA Track Plans are attached as Exhibit B hereto and incorporated herein by reference (“**Initial NGA Track Plans**”), and reflect the “Initial NGA Track”, which shall be constructed by NGA from the eastern edge of the Existing Track to the eastern edge of Tyre Road.

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The Initial NGA Track shall be constructed at NGA’s sole cost and expense (approximately one-million and three-hundred dollars (\$1,300,000.00), pursuant to the terms of this Agreement (“**NGA Initial Investment**”). Future Facility Track plans shall be created, and future Facility Track built, in the event a future Tenant commits to ship loaded rail cars in a quantity that generates the required revenue within a reasonable period to support NGA’s expense of building the future NGA Track. Future Facility Track also includes any siding or yard tracks required to serve the Tenants of NFMIP. For the avoidance of doubt, the Initial NGA Investment (i) is not supported by the revenue expected to be generated by the current Tenant’s expected rail car shipments, and (b) shall be included in Qualifying Costs (as defined below). Future Facility Track shall (a) only be built if, in NGA’s reasonable discretion, a complete recoupment of NGA’s out of pocket expenses for construction of that Future Track is expected to be realized within a reasonable period of time, and (b) shall be included in Qualified Costs (as defined below). The County should provide prompt notice to NGA of all opportunities described in Article 6 in order to permit NGA to perform an analysis of the opportunity and make a determination within sixty (60) days of learning of the opportunity. Notwithstanding the foregoing, NGA shall act in good faith to increase rail-served Tenants within NFMIP by making reasonable future investments in Facility Track.

2.5 At its sole cost and expense, NGA will review plans for, and approve if appropriate, all tracks to be constructed by rail-served Tenants within NFMIP to be built and maintained by third parties at their sole cost and expense and to be operated on property owned or leased by third parties (collectively, the “**Industry Track**”).

2.6 At its sole cost and expense, NGA will be responsible for securing all applicable permits, licenses, authorizations and permissions (collectively, the “**Permits**”) for construction of the Initial NGA Track and the Facility Track. NGA will construct the Initial NGA Track in a timely manner, which shall ensure that each Tenant has access to rail service on or about the date each Tenant completes construction of its facility within NFMIP. NGA shall construct new Facility Track to extend the Initial NGA Track serving NFMIP eastward, in compliance with the Plans, in advance of the completion of any tenant facility requiring rail service, and in time to provide such service to the tenant, in conformance with the terms of this Agreement. NGA agrees to perform certain land improvements located outside of the Facility Track Lease property, but within NFMIP as described in Exhibit E (“**Land Improvements**”), at NGA’s sole expense, but not to exceed two-million and two-hundred thousand dollars (\$2,200,000.00). In exchange for NGA’s Land Improvements, the County will quitclaim thirty (30) acres of land with a value equal to the expense of the Land Improvements, within NFMIP, to NGA, as identified in Exhibit F, attached hereto and incorporated herein by reference. Land Improvements shall not be included in Qualifying Costs. NGA will work diligently to further extend the scope of the Facility Track to the eastern boundary of NFMIP, in accordance with the terms of this Agreement and as agreed in writing by the Parties. Facility Track construction will conform with all recommended practices and specifications published from time to time by the American Railway Engineering and Maintenance-of-Way Association (“**AREMA**”).

2.7 NGA and its affiliates shall:

2.7.1 use reasonable commercial efforts to establish, at a cost and expense to be negotiated among NGA, the County, and interested third parties, a direct rail connection between

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NFMIP and NSR’s rail line located at or near Lake City, Florida;

2.7.2 if a direct rail connection is established from the NFMIP with NSR, assure that there are no operational or commercial restrictions or other conditions or impediments imposed by NGA on the interchange of rail traffic between NGA and NSR (whether utilizing FGA or otherwise);

2.7.3 if a direct rail connection is established from the NFMIP with NSR, establish efficient and economical interchange terms with NSR for traffic originating or terminating at NFMIP;

2.7.4 if a direct rail connection is established with NSR from the NFMIP, keep the new interchange with NSR open for the Term of this Agreement; and

2.7.5 support efforts for federal and state grant money to facilitate further rail-served development of NFMIP and a potential track connection between NFMIP and NSR.

Article 3. Track Inspection and Transfer of Ownership

3.1 The County shall have a right to inspect NGA Track upon at least forty-eight hours advance written notice. During the County’s inspection, the County and NGA shall prepare a “punch list” of items to be corrected, if any, which NGA shall correct at its sole cost and expense to the County’s reasonable satisfaction within fourteen (14) days after receipt of the County’s punch list.

3.2 NGA will own all components of the Facility Track when constructed by NGA, whether installed on the Facility Track or awaiting installation at NFMIP. NGA will own the Facility Track for the Term of this Agreement. Upon termination or expiration of this Agreement, NGA will transfer ownership of the NGA Track to the County, or to the County’s designee, through issuance of a bill of sale or other appropriate documentation substantially in the form of Exhibit C, attached hereto and incorporated herein by reference. NGA will promptly remove all liens placed upon the NGA Track and will provide the County with proof of removal of the liens upon transfer to the County of NGA Track ownership. **NGA WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM ALL COSTS AND EXPENSES INCURRED BY THE COUNTY IN REMOVING ANY LIENS PLACED UPON THE NGA TRACK.** In the event ownership of NGA Track is transferred to the County or its designee upon termination or expiration of this Agreement, and in any event other than termination for breach by NGA, the County will reimburse NGA for the NGA Initial Investment plus 12% less the Net Qualifying Revenue (as defined in Article 11) from the time of the Effective Date.

Article 4. Track Maintenance

4.1 During the Term of this Agreement, NGA shall remain solely responsible, at its sole cost and expense, for the Routine Maintenance of the NGA Track and all other rail-related infrastructure within NFMIP, including but not limited to at-grade road crossings and warning devices for same. “Routine Maintenance” shall mean those items that are maintained on a week-

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to-week basis as required in order to minimize or eliminate disruption of service. Routine Maintenance shall include, but not be limited to, maintenance of rail joints (including replacing loose or missing bolts, identifying thermal stresses, and correcting joint tie defects); identification and corrective suggestions for gauge and alignment problems, surface and elevation deviations, and visible rail defects; vegetation control; snow and ice removal; maintenance of turnouts, at-grade crossings and warning devices for same (including but not limited to active warning devices); replacement of a small number of ties (defined as fewer than 200 ties annually on the NGA Track); repair and inspection of all bridges, culverts, signals and switches; and replacement of rail in small sections (defined as less than 200 feet of rail on the NGA Track annually).

4.2 NGA and the County shall meet at NFMIP, on or near the Effective Date of this Agreement, and thereafter no less than every one (1) year thereafter (or more frequently, in the event of emergency), to discuss all needs identified by NGA subsequent to the prior on-site meeting for the performance of Out of Face Maintenance. "Out of Face Maintenance" shall include replacement of large numbers of ties (defined as more than 200 ties annually on the NGA Track); surface, alignment, and elevation problems; replacement of rail in large sections (defined as more than 200 feet of rail on the NGA Track annually); erosion and water control; and ultrasonic rail flaw detection. NGA and the County shall develop a plan for NGA's performance or supervision of Out of Face Maintenance to be completed over the following six (6) month period. NGA will bear all cost and expense for all labor, materials and related taxes to complete Out of Face Maintenance projects.

4.3 Tenants shall be responsible, at their sole cost and expense, for maintenance of railroad track and related structures (such as gates and derails) on property leased or owned by Tenants.

Article 5. Common Carrier Status

5.1 Subject to the terms and conditions herein, during the Term of this Agreement, the County grants NGA an exclusive license to provide common carrier rail and rail-related services to NFMIP. NGA shall secure all necessary authority or exemption from the STB to operate to and within NFMIP as a common carrier by rail, at its sole cost and expense. The Parties agree that NGA will operate the Existing Track as regulated main line track, and the Initial NGA Track and the Facility Track will be operated as ancillary track pursuant to 49 C.F.R. § 10906.

5.2 In all instances, NGA shall provide the County with a draft of any STB document it intends to file at least seven (7) days prior to filing the document at the STB and the County shall provide NGA with a draft of any STB document it intends to file at least seven (7) days prior to filing the document at the STB.

5.3 NGA will not seek abandonment or discontinuance authority on any NGA Track without the written approval of the County, which may be delayed, conditioned or denied in the County's sole discretion. NGA will not issue any embargo notice on NGA Track without the written approval of the County, which may be delayed, conditioned or denied in the County's sole discretion, except for where track, bridge or other physical impairments warrant an embargo.

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5.4 At its sole cost and expense, upon the termination or expiration of this Agreement for any reason, NGA shall promptly file and diligently prosecute an application, petition or notice for abandonment authority at the STB (or, at the County’s election, in lieu of NGA filing an abandonment, a third party may file a change of operator notice or petition at the STB, and NGA shall support such filing). Unless otherwise consented to by the County, which consent may be delayed, conditioned or denied in the County’s sole discretion, if the County does not elect that a third party file a change of operator notice or petition at the STB, and NGA does not file for abandonment authority or exemption within thirty (30) days of the expiration or termination of this Agreement, the County shall have power of attorney to act on NGA’s behalf to secure said authority or exemption, at the sole cost and expense of NGA.

5.5 In partial consideration for the County’s agreement to admit NGA to NFMIP, neither NGA nor any of its affiliates will make any claim that either the County or WC has or had any common carrier status at NFMIP.

Article 6. Cooperative Marketing

6.1 The Parties will jointly market the sites at the NFMIP to rail-served potential tenants and will share contacts and opportunities in order to secure the best outcomes for the NFMIP. Prior to responding to a request for proposal or other request for information from potential tenants, the Parties shall provide information related to the opportunity to the other Party.

Article 7. General Responsibilities and Prohibitions

7.1 NGA shall perform the following general responsibilities pursuant to this Agreement, at its sole cost and expense:

7.1.1 Provide the locomotives, tools and equipment necessary in order to provide rail service to Tenants;

7.1.2 Supply fully trained, qualified, and certified train crews, and clerical, administrative and support personnel (“**Employees**”) as necessary to provide rail service to the Tenants located at NFMIP. The Employees shall be and remain the sole employees of NGA, and NGA shall be responsible for the payment of salaries, payroll taxes, withholding taxes (including but not limited to Railroad Retirement taxes), health and welfare benefits, and all other payments to or on account of the Employees;

7.1.3 Respond to and provide common carrier rail service to Tenants upon reasonable request and in conformance with 49 U.S.C. 11101;

7.1.4 Enter into transportation contracts with Tenants in conformance with 49 U.S.C. 10709;

7.1.5 Publish tariffs providing for rates and charges for linehaul and ancillary services for Tenants as needed;

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7.1.6 Assure that all rates and charges assessed by NGA to all Tenants do not discriminate in any way between traffic to be interchanged to CSXT and traffic to be interchanged to NSR, once a new direct connection between the NFMIP and NSR is completed;

7.1.7 Issue bills of lading or waybills:

7.1.8 Collect any rates, demurrage, allowances, switch and accessorial charges, and all other charges;

7.1.9 Coordinate the interchange of rail cars with connecting carriers;

7.1.10 Meet with potential and existing Tenants, and market the rail services available at NFMIP on its own and in conjunction with the County and all other interested parties as identified by the County;

7.1.11 Inspect each rail car for AAR defects;

7.1.12 Promulgate written rules, regulations, and standards applicable to the provision of service on the NGA Track;

7.1.13 Provide office equipment (other than any equipment supplied by the County, if any) necessary for NGA's operations under this Agreement. Said equipment shall be maintained by NGA and it shall bear all risk of loss or damage to its equipment;

7.1.14 Extend credit to Tenants on reasonable and non-discriminatory commercial bases, consistent with its tariff and common carrier railroad practices;

7.1.15 Actively market rail service opportunities at NFMIP and the development of new rail movements with existing Tenants, cooperate in joint marketing efforts with the County, and provide in-person representation of NGA for marketing meetings at NFMIP.

7.1.16 Assist the County with investigating, applying for (including being the named applicant for, if required), and finalizing grants available for the development and expansion of NFMIP, on reasonable and mutually acceptable commercial terms.

7.1.17 NGA shall have the right and obligation to review any application by the County or a third party to install any permanent utility or other structure over or under the NGA Track or to utilize any portion of the property that is twenty-five (25) feet of the centerline of NGA Track. NGA shall have thirty (30) days from the date NGA receives an application to review and approve or deny same, and NGA's approval of any application shall not be unreasonably withheld, conditioned or delayed. NGA shall be entitled to reasonable and customary application, review and flagging fees..

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7.2 The following shall be prohibited for NGA to undertake during the Term of this Agreement, except in the event that the County gives its prior written approval of the activity, said approval to be conditioned, delayed or denied at the County’s discretion:

7.2.1 Causing or allowing any lien to be placed on any infrastructure within NFMIP;

7.2.2 Amending or terminating any contract governing addition, removal or alteration of improvements to the real estate within NFMIP, except as may be incidental to any industry track agreement executed by NGA and a Tenant;

7.2.3 Waiving or otherwise diminishing or discharging the responsibilities and obligations of third parties to the County;

7.2.4 Assigning or delegating NGA’s common carrier operating responsibilities under this Agreement to a third party;

7.2.5 Selling or otherwise disposing of any assets of the County;

7.2.6 Taking any action in the name of the County; or

7.2.8 Admitting any third party to NFMIP, other than (i) contractors to perform NGA’s obligations hereunder, and (ii) potential tenants of NFMIP to tour available facilities. Outside of such contractors, NGA shall have no right to grant easements, licenses, leases, rights of entry or any other form of permitted or allowed access to NFMIP.

7.3 The County shall perform the following functions pursuant to this Agreement, at its sole cost and expense:

7.3.1 Purchase from WC the right-of-way necessary within the NFMIP to allow NGA to operate on track to be constructed to affect rail service to Tenants;

7.3.2 Review NGA tariffs and other such public documents;

7.3.2 Review NGA’s operating rules and procedures, and amendments thereto;

7.3.3 Request an investigation at its option if NGA’s employee is alleged to have violated rules, regulations, orders, practices or instructions that presents a threat to the safety of persons or property at NFMIP. NGA will schedule the investigation. The County shall have the right to exclude from NFMIP any employee of NGA determined by NGA as the result of NGA’s investigation to be in violation of NGA’s rules, regulations, orders, practices or instructions. If a major offense is alleged including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, where County desires to bar NGA employee from service at NFMIP pending an investigation by NGA, proper notice will be provided to the employee. If the disciplinary action is appealed by the employee to the National

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Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service at NFMIP. ;

7.3.4 Actively market rail service opportunities at NFMIP and the development of new rail movements with existing Tenants, cooperate in joint marketing efforts with the NGA, provide in-person representation of the County for marketing meetings at NFMIP, and provide prompt notice to NGA of all requests for proposal, requests for information or opportunities from existing or potential Tenants; and

7.3.5 Be responsible and liable for any real property or other state or local taxes assessed on the Existing Track or associated right-of-way by any governmental authority.

7.4 The following shall be prohibited for the County to undertake during the Term of this Agreement, except in the event that NGA gives its prior written approval of the activity, said approval to be conditioned, delayed or denied at NGA's discretion:

7.4.1 Admitting any third party to operate rail service on the NGA Track during the Term of this Agreement.

Article 8. Operations

8.1 During the Term of this Agreement, NGA shall be the exclusive rail and rail-related services provider at NFMIP reflecting high service standards as recognized in the rail industry. NGA will be prompt and responsive to the service requests of all Tenants. NGA shall be the primary point of contact for all of the rail-related questions, concerns and complaints of Tenants.

8.2 NGA shall operate five (5) days a week if required by the service needs of the Tenants.

8.3 At its sole cost and expense, NGA will (i) establish a staffed, 24 hour per day, 365 days per year, call center for Tenants, emergency responders, and the public at large to contact NGA on any matter affecting or implicating rail service at NFMIP; (ii) notify Tenants annually of the existence of the call center, and (iii) place signs in prominent locations as agreed by NGA and the County advising all interested persons of the existence of the call center.

Article 9. Reporting, Audit and Record Keeping.

NGA will keep detailed records of all activities and transactions it undertakes pursuant to this Agreement. It will, upon reasonable notice and during normal business hours, permit the County to review and audit such records, at the County's sole cost and expense. NGA will provide the County with reports concerning NGA's operations (including but not limited to loaded and empty car counts and concerning the Routine Maintenance and Out of Face Maintenance of the NGA Track annually). In addition, NGA will promptly notify the County of any significant and material events related to the operation and maintenance of the NGA Track.

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Article 10. Insurance.

10.1 At its sole cost and expense, NGA will obtain Railroad Liability insurance (occurrence form), with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence, and Ten Million Dollars \$10,000,000.00 aggregate, with retained limits of not more than \$500,000.00, with endorsement CG 24 17 issued and effective, and with all rights of subrogation waived. The County shall be named as an additional insured on the Railroad Liability policy. The County may obtain any additional coverage it desires at its sole cost and expense, but the Railroad Liability policy secured by NGA shall be primary in all instances.

10.2 In addition, at its sole cost and expense, NGA shall secure, and maintain in place through the Term of this Agreement, the following additional coverages:

Automobile Liability (combined Single Limit):	\$1,000,000.00
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10.3 NGA will supply the County with a Certificate of Liability (Acord 25) naming the County as an additional insured (with said endorsement demonstrating that the County’s additional insured status is on a primary and non-contributory basis) attached to the Certificate of Liability) and other evidence of all of the above coverages as reasonably requested by the County prior to the commencement of operations under this Agreement and on the anniversary of the Effective Date of this Agreement, and will promptly notify the County of any changes affecting the coverage during the term of this Agreement.

10.4 No more frequently than every five (5) years, the County may adjust the required insurance coverages required of NGA to reflect market conditions. In addition, if at any time any Tenants request the movement of any commodity into or out of NFMIP by NGA that qualifies as a hazardous material, substance or waste under any federal, state or local law, rule, regulation or ordinance, the County may adjust the required insurance coverages to reflect reasonable market conditions.

Article 11. Compensation.

11.1 NGA shall keep detailed, itemized records of all costs and expenses related to NGA Initial Investment and construction of Future Facility Track, including but not limited to materials, labor, Permits, and taxes (collectively, “Qualifying Costs”) it incurs in constructing the NGA Track as specified herein, except for any costs and expenses incurred by NGA in constructing the Initial NGA Track, for which NGA shall be separately compensated. In the event NGA incurs expenses related to the anticipated connection between NFMIP and NSR in the vicinity of Lake City, Florida, said expenses shall be included in Qualifying Costs. NGA Initial Investment will not be included in the calculation of Qualifying Costs, Expenses associated with NGA construction that does not comply with the requirements of this Agreement shall not qualify as Qualifying Costs.

11.2 NGA shall also keep detailed, itemized records of all revenues, charges and assessments it is lawfully qualified to collect, from any source, for services performed for or in support of Tenants or NFMIP (“Qualifying Revenues”). The fact that NGA may not collect all revenues, charges and assessments that it is lawfully entitled to collect does not allow for reduction

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of said uncollected amounts from Qualifying Revenues. Taxes paid by NGA on amounts collected pursuant to this Section 10.2 shall not reduce Qualifying Revenues.

11.3 No less than once every twelve (12) months, commencing no later than one (1) year after the Effective Date, NGA shall compare all Qualifying Revenues earned after the Effective Date (“**Total Qualifying Revenues**”) with all Qualifying Costs incurred by NGA after the Effective Date (“**Total Qualifying Costs**”). The Qualifying Revenues less the Qualifying Costs shall be the “**Net Qualifying Revenue.**” Once the Net Qualifying Revenue exceeds the NGA Initial Investment plus a 12% annualized return, NGA shall begin making annual payments to the County in an amount equal to 10% of the annual Net Qualifying Revenue (“**County Entitlement**”). Under no circumstance will NGA’s calculation result in the County repaying to NGA any element of previously paid County Entitlement. Any County Entitlement due hereunder from NGA to the County shall be made within sixty (60) days after the anniversary of the Effective Date once the Initial Investment plus 12% is returned.

11.4 By way of illustration or explanation only, and not by way of projection or expectation, See Exhibit D, Sample Calculation, attached hereto and incorporated herein by reference.

11.5 In the event the Net Qualifying Revenue fails to exceed the NGA Initial Investment plus a 12% annualized return within ten (10) years of the Effective Date, NGA shall have the right to terminate the Agreement with one-hundred and eighty (180) days-notice, and NGA shall be entitled to reimbursement of the NGA Initial Investment plus 12%, less the Net Qualifying Revenue received since the Effective Date. The County shall remit payment within ninety (90) days of the date of notification.

Article 12. Real Property Rights

With the exception of all right of way to be leased by the County to NGA hereunder, NGA shall acquire other all real property rights and interests within NFMIP with third parties (including but not limited to industry track agreements with customers within NFMIP) necessary to allow NGA to safely and adequately perform all obligations assumed by it herein. NGA shall be solely responsible for (i) the terms of any real property rights it negotiates to operate within NFMIP; (ii) funding for such real property rights, if any is required, and (iii) compliance with the terms and conditions of all real property rights NGA secures within NFMIP.

Article 13. Term.

This Agreement shall be effective as of the date first above written and shall continue in force until December 31, 2072 (the “**Term**”), unless earlier terminated pursuant to the provisions of this Agreement. Thereafter, this Agreement shall be extended from year to year unless one party notifies the other in writing at least ninety (90) days in advance of the end of the Term or any extension of the Term that it does not desire to extend the then-current Term.

Article 14. Default.

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14.1 Any of the following events, if occurring during the Term of this Agreement, shall be considered an event of default by NGA:

14.1.1 Any material breach by NGA of its obligations under this Agreement and NGA's continuance in such breach for a period of ninety (90) days after NGA's receipt of written notice from the County of the date(s) and specifics of the breach, unless said breach cannot reasonably be remedied within ninety (90) days of NGA's receipt of notice of breach from the County, wherein NGA shall work continuously, diligently and in good faith to cure the breach, but in no event shall such time period be extended beyond one hundred eighty (180) days.

14.1.2 NGA becomes insolvent in whole or in part or makes assignment of property for the benefit of creditors; or is placed in bankruptcy or liquidation; or takes the benefit of any legislation relating to bankruptcy or insolvency or attempts to do so; or a receiver, trustee or liquidator is appointed for the property of NGA; or if a writ of execution or seizure is issued against NGA and such writ is not removed within thirty (30) days of written notification from the County.

14.1.3 NGA fails to provide common carrier rail service pursuant to 49 U.S.C. § 11101(a).

14.2 Any of the following events, if occurring during the term of this Agreement, shall constitute an event of default by the County:

14.2.1 Any material breach by the County of its obligations under this Agreement and the County's continuance in such breach for a period of ninety (90) days after the County's receipt of written notice from NGA of the occurrence of the breach, unless said breach cannot reasonably be remedied within ninety (90) days of the County's receipt of notice of breach from NGA, wherein the County shall work diligently and in good faith to cure the breach, but in no event shall such time period be extended beyond one hundred eighty (180) days.

14.2.2 The County becomes insolvent in whole or in part or makes assignment of property for the benefit of creditors; or is placed in bankruptcy or liquidation; or takes the benefit of any legislation relating to bankruptcy or insolvency or attempts to do so; or a receiver, trustee or liquidator is appointed for the property of the County; or if a writ of execution is issued against the County and such writ is not removed within thirty (30) days of written notification from NGA.

14.3 Failure to perform or comply with any covenant or condition of this Agreement that is due to strikes, Acts of God or other cause beyond the control of the defaulting party (“**Force Majeure**”) are excepted, so long as the party experiencing Force Majeure conditions provides prompt written notice to the other party of the Force Majeure conditions and an estimate of when the Force Majeure conditions will be eliminated, and thereafter said party works continuously and diligently to eliminate the Force Majeure conditions. Under no circumstance will the payment of any funds due hereunder from one party to the other be subject to an invocation of Force Majeure.

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14.4 Upon the occurrence of any event of default and after the cure period as specified in Article 14.1 or 14.2 has expired, the non-defaulting party may exercise of one or more of the following remedies:

14.5.1 Terminate this Agreement;

14.5.2 Perform any obligation of the defaulting party of which said party is in default for so long as the default shall continue. The non-defaulting party shall not, however, be required or obligated to perform any such obligation of the defaulting party. Any and all sums paid by the non-defaulting party to perform the obligations of the defaulting party together with interest on them at the rate of twelve percent (12%) per annum from the date of the submission of the bill for such sums (or such lesser amount as is allowed by Applicable Law) shall be paid by the defaulting party to the non-defaulting party upon demand.

14.5 The non-defaulting party shall have the right to exercise any and all rights or remedies provided to such party in law or equity on account of the default, including, without limitation, injunctive relief.

14.6 Either party entitled to allege default or failure may waive any such default or failure, but no action by such party in waiving such default or failure shall extend to or be taken to affect any subsequent defaults or failures or impair the rights of either party resulting therefrom.

Article 15. General Liability and Indemnity

15.1 "Losses" shall mean all costs, judgments, orders, expenses, fees or liabilities of any nature whatsoever (including reasonable attorneys' fees and disbursements) arising out of or in any way related to: (i) any violation of or non-compliance with Applicable Laws or regulations (including reporting requirements); (ii) any damage to property, the environment or natural resources; (iii) any bodily injury or death of any person; or (iv) the breach of any contract. Losses shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, remediation costs, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and reasonable attorney, consultant, and expert witness fees, and shall include cost recovery or contribution claims made pursuant to CERCLA, 42 U.S.C. 9601 et seq., or similar federal, state or local laws.

15.2 "Applicable Law" shall mean all present and future applicable Federal, state and local statutes, rules, regulations, ordinances, standards, and judicial decrees.

15.3 EACH PARTY ("INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTIES ("INDEMNIFIED PARTY") FULLY AGAINST ALL LOSSES WHICH: (I) ARE CAUSED BY OR ARISE OUT OF THE INDEMNIFYING PARTY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT; (II) RESULT FROM ANY BREACH BY THE INDEMNIFYING PARTY OF ANY REPRESENTATION, OBLIGATION OR RESPONSIBILITY UNDER THIS AGREEMENT; OR (III) RESULT FROM THE INDEMNIFYING PARTY'S VIOLATION OF ANY APPLICABLE LAW.

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15.4 No part of this Agreement shall be construed as a waiver or modification of any defense of sovereign immunity available to the County as a political subdivision of the State of Florida pursuant to Fla. Stat. Chapter 768 or s. 13, Art. X of the Florida State Constitution.

Article 16. Governing Law.

The parties agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

Article 17. Amendment.

No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by both parties.

Article 18. Confidentiality.

To the fullest extent that they are lawfully able, the Parties shall protect the confidentiality of information developed by either of them in connection with this Agreement (“**Confidential Information**”). Confidential Information shall not include information that (i) is, was or becomes available from a source other than the Parties, provided that such other source is not known after reasonable inquiry to be subject to any obligation of confidentiality or non-use with respect to such Confidential Information, (ii) was or becomes available to the public from a source other than the Parties, or (iii) is independently developed by a Party without the use of or reference to any Confidential Information. Neither Party shall, however, be precluded from revealing such terms or using such information in the following circumstances: (1) in-house use in the normal conduct of commercial activities; (2) in obtaining or attempting to obtain financing or refinancing; (3) in filing reports with or furnishing other information to the Securities and Exchange Commission or securities commissions of the various states; (4) in filing reports to a federal or state regulatory authority having jurisdiction over either party; (5) in filing reports to a holding company or affiliate of either party; or (6) in providing information to others when advised by legal counsel that disclosure is required. For purposes hereof, an “affiliate” of NGA shall include the Real Assets division of Macquarie Asset Management in the Americas, and its managed investment vehicles; and NGA is permitted to share confidential information developed in connection with this Agreement with personnel within the Macquarie Group who need to know said information in connection with legal, risk, regulatory, internal compliance and similar support groups or senior management roles related to evaluation, oversight and approval of the Agreement. Before disclosure upon advice of counsel, the Party advised that disclosure is required shall give prior notice to the other Party of the nature of the disclosure and the anticipated disclosure date. Either Party may use the limited information to the extent required in making public announcements required by securities law or stock exchange provisions but shall afford the other Party not less than five (5) business days to review and comment on same. When required, the Party may also submit information to consultants, contractors or agents performing work on or related to the subject matter of this Agreement who agree to protect the confidentiality of such information, but only to the extent such consultants, contractors or agents have a demonstrable need to know the Confidential Information in performance of their duties.

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Article 19. Notices

Unless otherwise agreed by the parties, all notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, or, if sent via email, by proof of receipt of same, addressed as follows:

If to the County:
County Manager
135 NE Hernando Avenue, Suite 203
Lake City, FL 32056

If to NGA:
President & Chief Executive Officer
245 N. Riverside Ave., Suite 250
Jacksonville, FL 32202

Article 20. Assignment

This Agreement is binding on the successors and assigns of the parties hereto; provided, however, in the event the Existing Track, the Initial NGA Track, or the Facility Track is purchased during the Term of the Agreement, the purchaser shall remain subject to the terms of this Agreement and shall assume all obligations of the Party from whom the property is purchased. NGA shall not sell, assign or transfer this Agreement or any interest herein without the prior written consent of the County, which consent shall not be unreasonably withheld, denied or conditioned.

Article 21. Representations and Warranties.

20.1 NGA hereby represents and warrants the following as of the date of this Agreement:

20.1.1 NGA is a limited liability company, duly organized, validly existing, and formed under the laws of the State of Delaware.

20.1.2 NGA is appropriately authorized to do business in the State of Florida.

20.1.3 NGA will obtain all authority under state and federal law to operate the NGA Track as a common carrier in interstate commerce, and to comply with all aspects of this Agreement.

20.2 The County hereby represents and warrants the following as of the date of this Agreement:

20.2.1 The County is an agency of the State of Florida.

20.2.2 The County is the owner of the Existing Track and underlying property being leased to NGA and there are no existing easements or encumbrances affecting such land that would interfere with NGA's rights under this Agreement.

Article 21. Independent Contractor

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It is understood and agreed that NGA is an independent contractor, and that no relationship of employer-employee exists between the Parties hereto. If, in the performance of this Agreement, any third person(s) or contractors are employed by NGA, such person shall be entirely and exclusively under the direction, supervision, and control of NGA except as otherwise provided for in this Agreement. All terms of employment, including hours, wages, rail services, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by NGA except as otherwise provided for in this Agreement. The County shall have no right or authority over such persons or the terms of such employment except as otherwise provided for in this Agreement.

Article 22. Taxes

This Agreement shall not preclude the Parties, or either of them, from petitioning for or obtaining economic development incentives, tax exemptions, tax rebates, or participation in any other grant or subsidy program to defray any costs associated with this Agreement. The County understands and agrees that NGA or any successor in interest to NGA may condition discretionary improvements on the availability of such incentives.

Article 23. Condemnation

In the event the property underlying the NGA Track becomes subject to a condemnation or eminent domain action and can no longer be reasonably used by NGA to perform rail service, the Agreement shall terminate subject to Article 14.4.

Article 23. Additional Provisions

23.1 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.

23.2 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.

23.3 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

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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.

23.4 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

**NEW GULF & ATLANTIC RAILWAYS
ENTITY LLC**

COLUMBIA COUNTY, FLORIDA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A

CONCEPTUAL SITE MAP

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EXHIBIT B

INITIAL NGA TRACK PLANS

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EXHIBIT C

BILL OF SALE

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EXHIBIT D

SAMPLE CALCULATION

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EXHIBIT E

DESCRIPTION OF EARTHWORK TO BE
PERFORMED AT FGA EXPENSE

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EXHIBIT F
THIRTY ACRES TO NGA