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ENTERED
Office of Proceedings
November 15, 2019
Part of
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November 15, 2019

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

Re: **Docket No. FD 36363, CSX Transportation, Inc.—Corporate Family Merger
Exemption—The Home Avenue Rail-Road Company**

Dear Ms. Brown:

Enclosed is an executed Agreement and Plan of Merger to amend the Notice of Exemption. The Notice of Exemption filed earlier today contained an unexecuted Agreement in Exhibit 2.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

Louis E. Gitomer

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

AGREEMENT AND PLAN OF MERGER
OF
THE HOME AVENUE RAIL-ROAD COMPANY
(an Ohio corporation)
WITH AND INTO
CSX TRANSPORTATION, INC.
(a Virginia corporation)

This Agreement and Plan of Merger (this “Agreement”), which provides for the merger of The Home Avenue Rail-Road Company, an Ohio corporation (the “Merging Corporation”), with and into CSX Transportation, Inc., a Virginia corporation (the “Company”), was duly approved and adopted by the Board of Directors of the Merging Corporation on November 15, 2019, and by the Board of Directors of the Company on November 15, 2019.

There are 2,000 shares of the Merging Corporation’s common stock, par value \$50.00 per share (the “Common Stock”), issued and outstanding. The Common Stock is the only class of capital stock of the Merging Corporation that is issued and outstanding. The Company owns 1,601 shares of the Common Stock.

I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Ohio General Corporation Law (the “OGCL”) and the Virginia Stock Corporation Act (the “VSCA”), and subject to the approval and adoption of this Agreement by the affirmative vote of the holders of at least two-thirds of the voting power of the Merging Corporation at a special meeting of the shareholders of the Merging Corporation called for such purpose, the Merging Corporation shall be merged with and into the Company (the “Merger”) pursuant to the terms hereof. Upon the Merger, the separate existence of the Merging Corporation shall cease and the Company shall be, and is herein sometimes referred to as, the “Surviving Entity.” The name of the Surviving Entity shall remain unchanged as CSX Transportation, Inc., and from thereon the Merging Corporation and the Company shall be a single corporation.

1.2 Filing and Effectiveness. The Merger shall become effective on December 16, 2019 (the “Effective Date”), subject to the executed Certificate of Merger meeting the requirements of the OGCL and the Articles of Merger meeting the requirements of the VSCA being filed with the Ohio Secretary of State and the Virginia State Corporation Commission, respectively.

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of the Merging Corporation shall cease and the Company, as the Surviving Entity, shall succeed, without other transfer, to all of the rights and obligations of the Company, as more fully provided under the applicable provisions of the OGCL and VSCA.

1.4 Certificate of Merger. A Certificate of Merger executed by authorized officers of the Merging Corporation and the Company shall be filed with the Ohio Secretary of State in the manner required by Section 1701.81 of the OGCL.

1.5 Articles of Merger. Articles of Merger executed by authorized officers of the Merging Corporation and the Company shall be filed with the Virginia State Corporation Commission in the manner required by Section 13.1-720 of the VSCA.

II. CHARTER DOCUMENTS, DIRECTORS AND PRINCIPAL OFFICE

2.1 Certificate of Incorporation. The Articles of Incorporation of the Company as in effect immediately prior to and as of the Effective Date shall continue in full force and effect as the Articles of Incorporation of the Surviving Entity without any modification or amendment in the Merger until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of the Company as in effect immediately prior to and as of the Effective Date shall continue in full force and effect as the Bylaws of the Surviving Entity without any modification or amendment in the Merger until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors. The directors of the Company immediately prior to the Effective Date shall continue to be the directors of the Surviving Entity until their successors shall have been duly elected and qualified or as otherwise provided by law or the Articles of Incorporation of the Surviving Entity.

2.4 Principal Office. The location of the principal office of the Surviving Entity is 500 Water Street, Jacksonville, Florida 32202.

III. CANCELLATION OF STOCK

3.1 Merging Corporation Stock. Upon the Effective Date, by virtue of the Merger and without any action on the part of the any holders of the Common Stock:

(a) Except as set forth in Section 3.1(c), each issued and outstanding share of the Common Stock shall be cancelled and extinguished and converted automatically into the right to receive consideration of \$57.00 per share in cash without interest; provided, that each issued and outstanding share of the Common Stock owned by the Company or its affiliates or by the Merging Corporation shall be cancelled and extinguished without payment of any consideration therefor and shall cease to exist.

(b) All shares of the Common Stock converted in accordance with Section 3.1(a) shall no longer be outstanding and shall automatically be deemed cancelled and extinguished and shall cease to exist as of the Effective Date, and each holder of a certificate representing any such shares (each a "Certificate") shall cease to have any rights with respect thereto, except the right to receive amounts payable pursuant to Section 3.1(a) and Article IV, in each case without interest. From and after the Effective Date, there shall be no further registration of transfers effected on the stock transfer books of the Merging Corporation of shares of the Common Stock that were outstanding immediately prior to the Effective Date.

(c) (i) Notwithstanding any provision of this Agreement to the contrary, other than Section 3.1(c)(ii), any shares held by a shareholder of the Merging Corporation who, subject to and in accordance the OGCL, has duly and validly demanded appraisal of such shares pursuant to the OGCL and has complied with all of the provisions of the OGCL concerning the right of such shareholder to demand appraisal and who, as of the Effective Date, has not effectively withdrawn or lost such appraisal or dissenters' rights ("Dissenting Shares"), shall not be converted into or represent the right to receive the consideration, but instead shall be converted into the right to receive only such consideration as may be determined to be due with respect to such Dissenting Shares under the OGCL. From and after the Effective Date, a holder of Dissenting Shares shall not be entitled to exercise any voting rights or other rights of a shareholder of the Surviving Entity.

(ii) Notwithstanding the provisions of Section 3.1(c)(i), if any shareholder who demands appraisal of such shares under the OGCL shall effectively withdraw or lose (through failure to perfect or otherwise) such right to demand appraisal, then, as of the later of the Effective Date and the occurrence of such event, such shareholder's shares shall no longer be Dissenting Shares and shall automatically be converted into and represent only the right to receive, upon surrender of the Certificate representing such shares as provided in Article IV, the consideration as provided in Section 3.1(a), without interest thereon.

3.2 Transfer of Assets and Liabilities. Upon the Effective Date, all assets and property then owned by the Company or the Merging Corporation, shall immediately by operation of law and without any conveyance, transfer or further action become the property of the Surviving Entity. The Surviving Entity shall be deemed to be a continuation of the Merging Corporation and the Company, and shall succeed to the rights and obligations of the Merging Corporation and the Company and the duties and liabilities connected therewith.

IV. SURRENDER AND EXCHANGE OF CERTIFICATES.

4.1 Each holder of record has been mailed or delivered a Letter of Transmittal. As soon as practicable after the Effective Date, the Surviving Entity shall cause to be mailed or delivered to each holder of record who has not yet surrendered its Certificate representing the Common Stock an additional Letter of Transmittal. After the Effective Date and upon surrender of a Certificate to the Surviving Entity together with a Letter of Transmittal duly completed and validly executed in accordance with the instructions thereto and such other documents as may be required pursuant to such instructions, the holder of such Common Stock shall be entitled to receive in exchange therefor payment of the applicable consideration which such holder has the right to receive pursuant to Section 3.1(a) and this Article IV (without interest and less any required withholding under any applicable tax laws, rules or regulations). Until surrendered as contemplated by this Article IV, each Certificate shall be deemed at any time after the Effective Date to represent only the right to receive upon surrender thereof the applicable consideration (without interest and less any required withholding under any applicable tax laws, rules or regulations) which the holder of such security is entitled to receive hereunder.

4.2 If any portion of the applicable consideration is to be paid to a person other than the person in whose name the security surrendered in exchange therefor is registered, it will be a condition to such payment that (i) the Certificate so surrendered be properly endorsed and otherwise in proper form for transfer and (ii) the person requesting such exchange has paid any transfer or other taxes required by reason of such payment in a name other than the registered holder of the security surrendered or established to the satisfaction of the Surviving Entity that such tax has been paid or is not applicable.

4.3 Notwithstanding anything to the contrary in this Agreement, none of the Merging Corporation, the Surviving Entity or other affiliates of the Surviving Entity shall be liable to a holder of a Certificate for any amount delivered to a public official pursuant to and as required by any applicable abandoned property, escheat or similar law.

4.4 In the event any Certificates have been lost, stolen or destroyed, the Surviving Entity shall pay, in exchange for such lost, stolen or destroyed certificate and only upon the making of a satisfactory affidavit of that fact by the holder thereof and the delivery of such other documents reasonably requested by the Surviving Entity, the applicable consideration; *provided, however*, that the Surviving Entity may, in its sole discretion and as a condition precedent to the payment in respect thereof, require the owner of such lost, stolen or destroyed security to deliver an indemnity agreement or bond in such form as the Surviving Entity may reasonably request as indemnity or security against any claim that may be made against the Merging Corporation or the Surviving Corporation with respect to such Common Stock.

4.5 All transfer, sale and use, registration, documentary recording, value added, stamp and similar taxes and fees (including any penalties and interest) incurred, imposed, assessed or payable in connection with the transactions contemplated by this Agreement (collectively, the "Transfer Taxes") shall be borne by the holders of the Common Stock, and each such holder shall, at its own expense, properly file on a timely basis all necessary tax returns, reports, forms

and other documentation with respect to any Transfer Taxes. The Surviving Corporation shall be entitled to deduct and withhold from any amounts payable in respect of shares of the Common Stock such amount, if any, as the Surviving Corporation is required to deduct and withhold with respect to the making of such payment under United States federal, state, local or non-U.S. tax law and to collect any necessary tax forms, including Form W-9, or any similar information, from any holder of the Common Stock and any other recipient of any payment hereunder. To the extent that amounts are so withheld by the Surviving Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the former holder of the Common Stock in respect of which such deduction and withholding was made by the Surviving Corporation.

V. OHIO MATTERS

5.1 Consent. The Surviving Entity consents to be sued and served with process in Ohio and irrevocably appoints the Ohio Secretary of State as its agent to accept service of process in any proceeding in Ohio to enforce against the Surviving Entity any obligation of the Merging Corporation or to enforce the rights of a dissenting shareholder of the Merging Corporation.

5.2 Transact Business in Ohio. The Surviving Entity is a foreign (non-Ohio) for-profit corporation licensed to transact business in the state of Ohio under license number 715172.

VI. GENERAL

6.1 Abandonment. At any time before the Effective Date, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the board of directors of either the Merging Corporation or the Company.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Plan of Merger to be executed in its corporate name by an authorized representative on the 15th day of November, 2019.

CSX TRANSPORTATION, INC.,
a Virginia corporation

By: Nathan D. Goldman

Name: Nathan D. Goldman

Title: Executive Vice President and
Chief Legal Officer

THE HOME AVENUE RAIL-ROAD COMPANY,
an Ohio corporation

By: Sean Pelkey

Name: Sean Pelkey

Title: Vice President & Treasurer