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ENTERED

Office of Proceedings
September 30, 2020

Part of
Public Record

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September 30, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: **FD 36440**
OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC,
and Jaguar Rail Holdings, LLC – Acquisition of Control Exemption –
Cimarron Valley Railroad, L.C.; Southwestern Railroad, Inc.; Texas
& Eastern Railroad, LLC; Washington Eastern Railroad, LLC; and
Wyoming and Colorado Railroad, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC Pursuant to 49 C.F.R. § 1180.2(d)(2)**, dated September 30, 2020. The sum of \$1,600, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

FILED
September 30, 2020
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for OPSEU Pension Plan Trust Fund,
Jaguar Transport Holdings, LLC, and Jaguar Rail
Holdings, LLC

RAW:ah

Attachment

FEE RECEIVED
September 30, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36440

OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT HOLDINGS, LLC, AND
JAGUAR RAIL HOLDINGS, LLC
-- ACQUISITION OF CONTROL EXEMPTION --
CIMARRON VALLEY RAILROAD, L.C.; SOUTHWESTERN RAILROAD, INC.; TEXAS &
EASTERN RAILROAD, LLC; WASHINGTON EASTERN RAILROAD, LLC; AND
WYOMING AND COLORADO RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION OF OPSEU PENSION PLAN TRUST FUND,
JAGUAR TRANSPORT HOLDINGS, LLC, AND
JAGUAR RAIL HOLDINGS, LLC PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Robert A. Wimbish
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**ATTORNEYS FOR OPSEU PENSION PLAN
TRUST FUND, JAGUAR TRANSPORT
HOLDINGS, LLC, AND JAGUAR RAIL
HOLDINGS, LLC**

Dated: September 30, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36440

OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT HOLDINGS, LLC, AND
JAGUAR RAIL HOLDINGS, LLC
-- ACQUISITION OF CONTROL EXEMPTION --
CIMARRON VALLEY RAILROAD, L.C.; SOUTHWESTERN RAILROAD, INC.; TEXAS &
EASTERN RAILROAD, LLC; WASHINGTON EASTERN RAILROAD, LLC; AND
WYOMING AND COLORADO RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION OF OPSEU PENSION PLAN TRUST FUND,
JAGUAR TRANSPORT HOLDINGS, LLC, AND
JAGUAR RAIL HOLDINGS, LLC PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

OPSEU Pension Plan Trust Fund (“OPTrust”), Jaguar Transport Holdings, LLC (“JTH”), and Jaguar Rail Holdings, LLC (“JRH,” and collectively with OPTrust and JTH, “Jaguar”), each a non-carrier, hereby file this notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Cimarron Valley Railroad, L.C. (“CVRR”); Southwestern Railroad, Inc. (“SWRR”); Texas & Eastern Railroad, LLC (“TERR”); Washington Eastern Railroad, LLC (“WERR”); and Wyoming and Colorado Railroad, Inc. (“WYCO”), each of which is a rail common carrier operating within the United States.¹ The subject transaction involves most, but not all, of the Class III rail carriers currently controlled by David L. Durbano (“Durbano”). See *David L. Durbano – Continuance in Control Exemption – Washington Eastern Railroad, LLC*, FD 36227 (STB served Oct. 11, 2018).

In accordance with the requirements of 49 C.F.R. § 1180.4(g), Jaguar submits the following information:

¹ Collectively, CVRR, SWRR, TERR, WERR, and WYCO will be referred to herein as the “Western Railroads.”

Description of Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

OPTrust invests and manages one of Canada's largest pension funds and administers the OPSEU Pension Plan, a defined benefit plan jointly sponsored by the Ontario Public Service Employees Union ("OPSEU") and the Government of Ontario. OPTrust is governed by a 10-member Board of Trustees, five of whom are appointed by OPSEU, and five by the Government of Ontario. OPTrust indirectly controls JTH, which, in turn, controls one U.S.-based Class III railroad, West Memphis Base Railroad, L.L.C. ("WMBR"), and JRH.

Pursuant to an as-yet-unexecuted and undated "Stock and Membership Interest Purchase Agreement" ("SMIPA") among Snowy Range Cattle Company, Inc., and David L. Durbano on behalf of the sellers and JRH as the buyer, JRH will acquire – (a) direct control of control of SWRR, TERR, and WYCO; and (b) through JRH's acquisition of control of WYCO, indirect control of CVRR and WERR (in addition to controlling interests in certain non-carrier entities also currently controlled by Durbano).

The full names and addresses of the Applicants herein are as follows:

OPSEU Pension Plan Trust Fund
1 Adelaide St. East
Suite 1200
Toronto, Ontario M5C 3A7
Canada
(416) 681-6181

Jaguar Transport Holdings, LLC
2501 N. Rangeline Road, Suite 4
Joplin, MO 64801
(417) 622 0384

Jaguar Rail Holdings, LLC
c/o Jaguar Transport Holdings, LLC
2501 N. Rangeline Road, Suite 4
Joplin, MO 64801
(417) 622 0384

Each of OPTrust, JTH and JRH is a non-carrier. OPTrust, through JTH, currently controls WMBR. This is not a transaction where: (a) WMBR would connect with any of the Western Railroads (and, for that matter, none of the Western Railroads happen to connect to each other); (b) Jaguar plans through the acquisition of control of the Western Railroads to connect those railroads to one another or with WMBR; or (c) a Class I carrier is involved. Accordingly, the proposed transaction satisfies the class exemption criteria at 49 C.F.R. § 1180.2(d)(2).

Any questions concerning this Notice should be sent to Jaguar's representative at the following address:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1504

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Jaguar intends to consummate the proposed transaction and acquire control of the Western Railroads on November 1, 2020, after the anticipated October 30, 2020 effective date of this exemption.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The exemption sought herein will allow Jaguar to acquire control of the Western Railroads, and, in the process, will allow OPTrust and JTH to continue in control of WMBR. The transaction will promote Jaguar's investment objectives, and sustain the Western Railroads' efficiency, financial strength, and ability to meet the needs of shippers.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

Each of the Jaguar parties is a non-carrier, and OPTrust, through JTH, controls one U.S. rail carrier – WMBR, which is located in Arkansas. CVRR is located in Kansas, Colorado, and Oklahoma. SWRR is located in New Mexico, Texas and Oklahoma.² TERR is located in Texas. WERR is located in Washington. WYCO is located in Oregon.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

Maps showing generally the location of WMBR and each of the Western Railroads are attached hereto as Exhibit 1.³

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A redacted copy of the draft SMIPA, is attached hereto as Exhibit 2. A non-redacted copy of the SMIPA is being submitted under seal pursuant to a Motion for Protective Order that has been filed simultaneously with this notice of exemption.

² In 2007, SWRR sought and obtained STB authorization to abandon a roughly 85.3-mile rail line (known as the Shattuck Subdivision) extending from milepost 0.10 at Shattuck, Oklahoma, to milepost 85.4 at Spearman, Texas. *See Southwestern Railroad Company, Inc. – Abandonment Exemption – In Ellis County, OK, and Lipscomb, Ochiltree, and Hansford Counties, TX*, AB-341 (Sub-No. 1X). Aside from the Shattuck Subdivision, SWRR has no railroad lines outside of New Mexico. Jaguar understands that SWRR has removed the track along the Shattuck Subdivision, acting upon its authorization to abandon the line. There are no legal impediments to the abandonment of the Shattuck Subdivision, but SWRR did not give timely notice of consummation of its abandonment under applicable Board regulations. Accordingly, although the Shattuck Subdivision is utterly inactive, devoid of track or shippers, and the corridor has been sold, SWRR has (pending remedial action), a common carrier obligation over this former SWRR line.

³ The map for SWRR does not depict the inactive Shattuck Subdivision.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

The proposed transaction involves the transfer of control of five Class III rail carriers, and involves no Class I or II rail carriers. Accordingly, this transaction is not subject to the imposition of labor protection conditions. *See* 49 U.S.C. § 11326(c).

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. Jaguar's acquisition of control of the Western Railroads will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed transfer of control transaction also is exempt from historic preservation reporting requirements. The proposed transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed transfer of control transaction does not involve the acquisition or operation of a rail line, and, thus, the provisions of 49 C.F.R. § 1180.4(g)(4) are inapplicable. The SMIPA does not include any provision that would limit the future interchange of traffic with a third-party connecting carrier. Relevant terms of existing agreements among the Western Railroads and third-party railroads will not be modified as a result of the proposed transaction.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR OPSEU PENSION PLAN
TRUST FUND, JAGUAR TRANSPORT
HOLDINGS, LLC, AND JAGUAR RAIL
HOLDINGS, LLC**

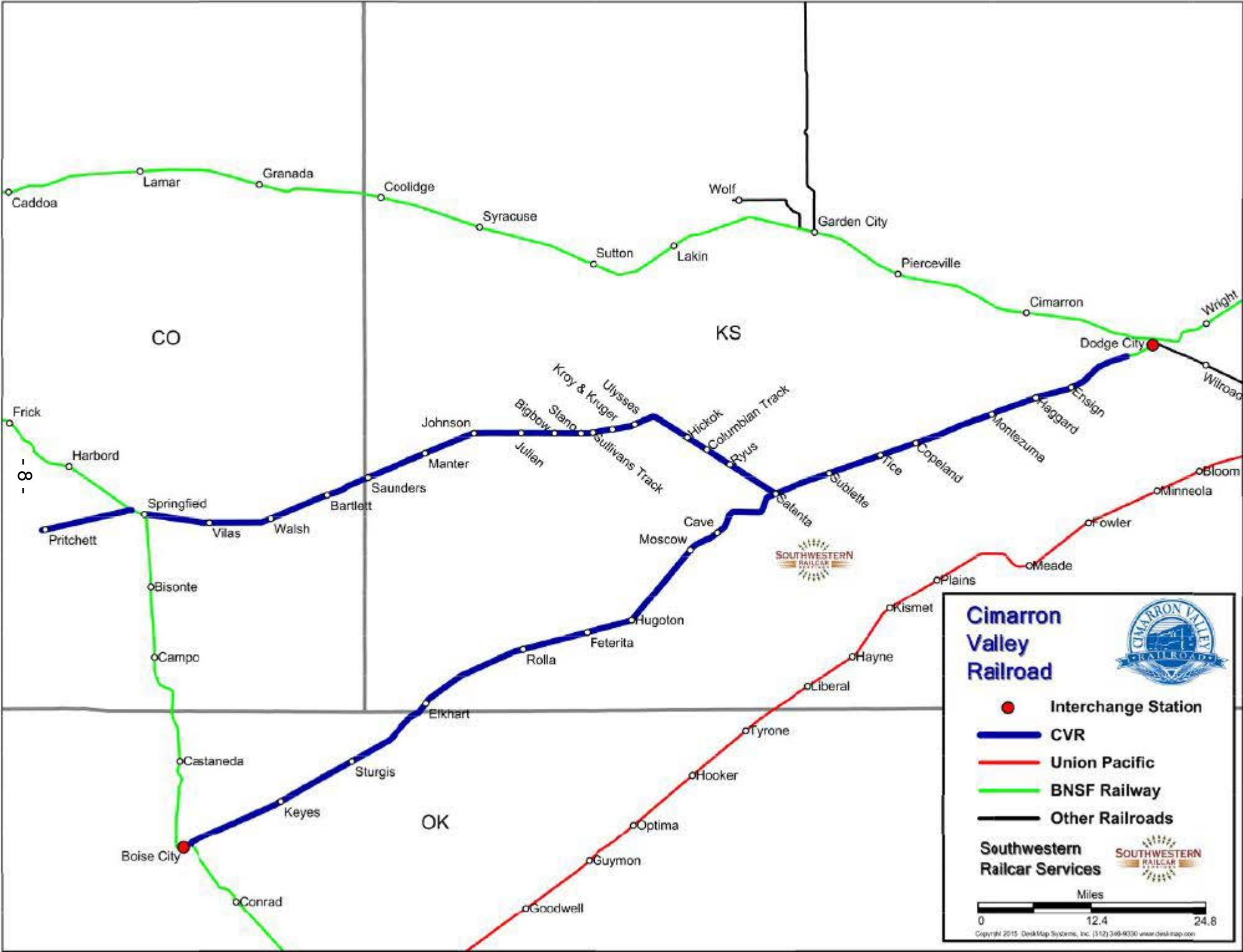
Dated: September 30, 2020

FD 36440

**OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT
HOLDINGS, LLC, AND JAGUAR RAIL HOLDINGS, LLC
-- ACQUISITION OF CONTROL EXEMPTION --
CIMARRON VALLEY RAILROAD, L.C.; SOUTHWESTERN RAILROAD, INC.;
TEXAS & EASTERN RAILROAD, LLC; WASHINGTON EASTERN RAILROAD, LLC;
AND WYOMING AND COLORADO RAILROAD, INC.**

EXHIBIT 1

**MAPS OF WESTERN RAILROADS AND
WEST MEMPHIS BASE RAILROAD, L.L.C.**



Southwestern Railroad

Whitewater Division



● Interchange Station

— SW

— Union Pacific

— BNSF Railway

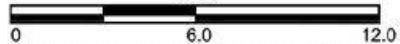
— Other Railroads

Southwestern
Railcar Services

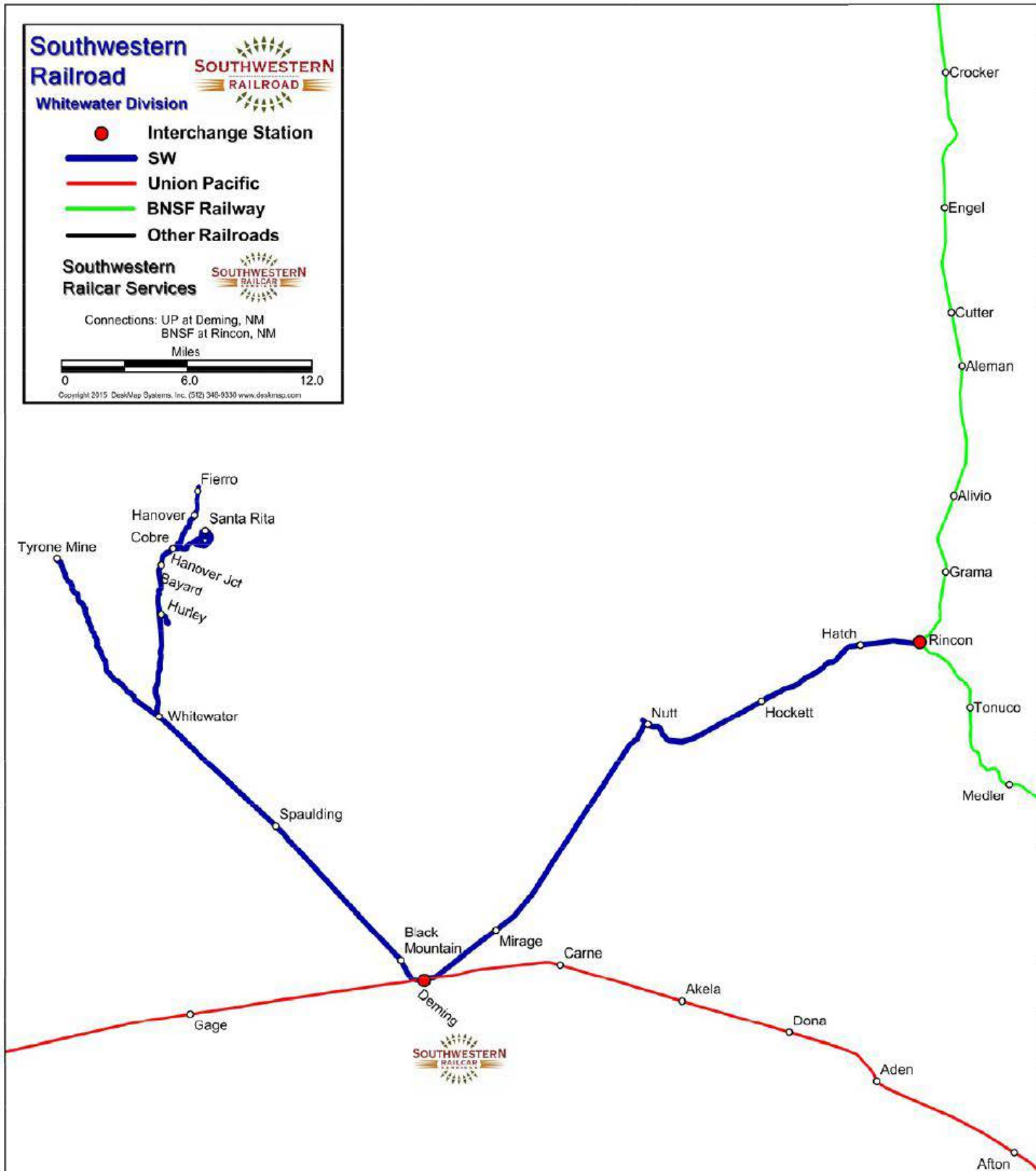


Connections: UP at Deming, NM
BNSF at Rincon, NM

Miles



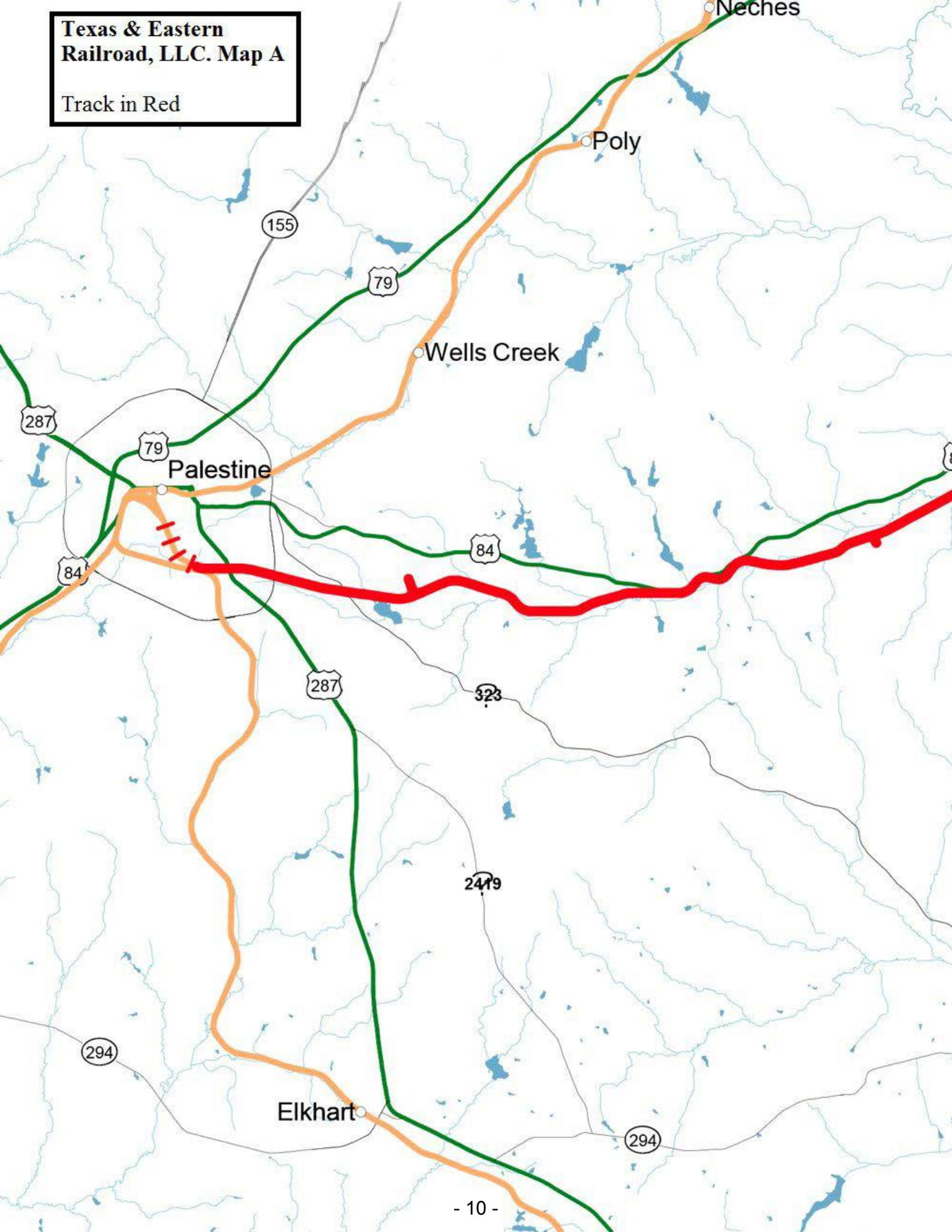
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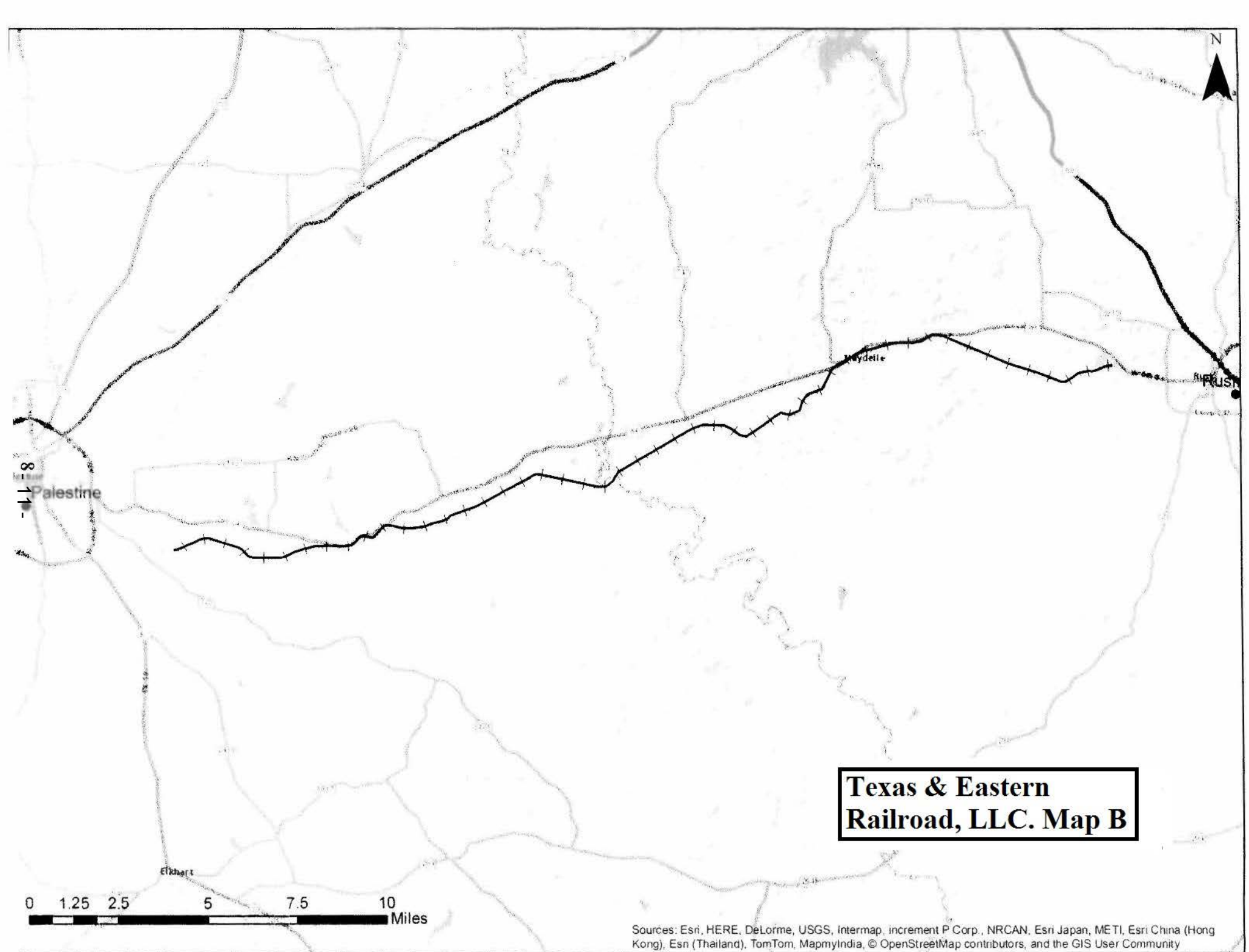


New Mexico

**Texas & Eastern
Railroad, LLC. Map A**

Track in Red





**Texas & Eastern
Railroad, LLC. Map B**

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Washington Eastern Railroad



● Interchange Station

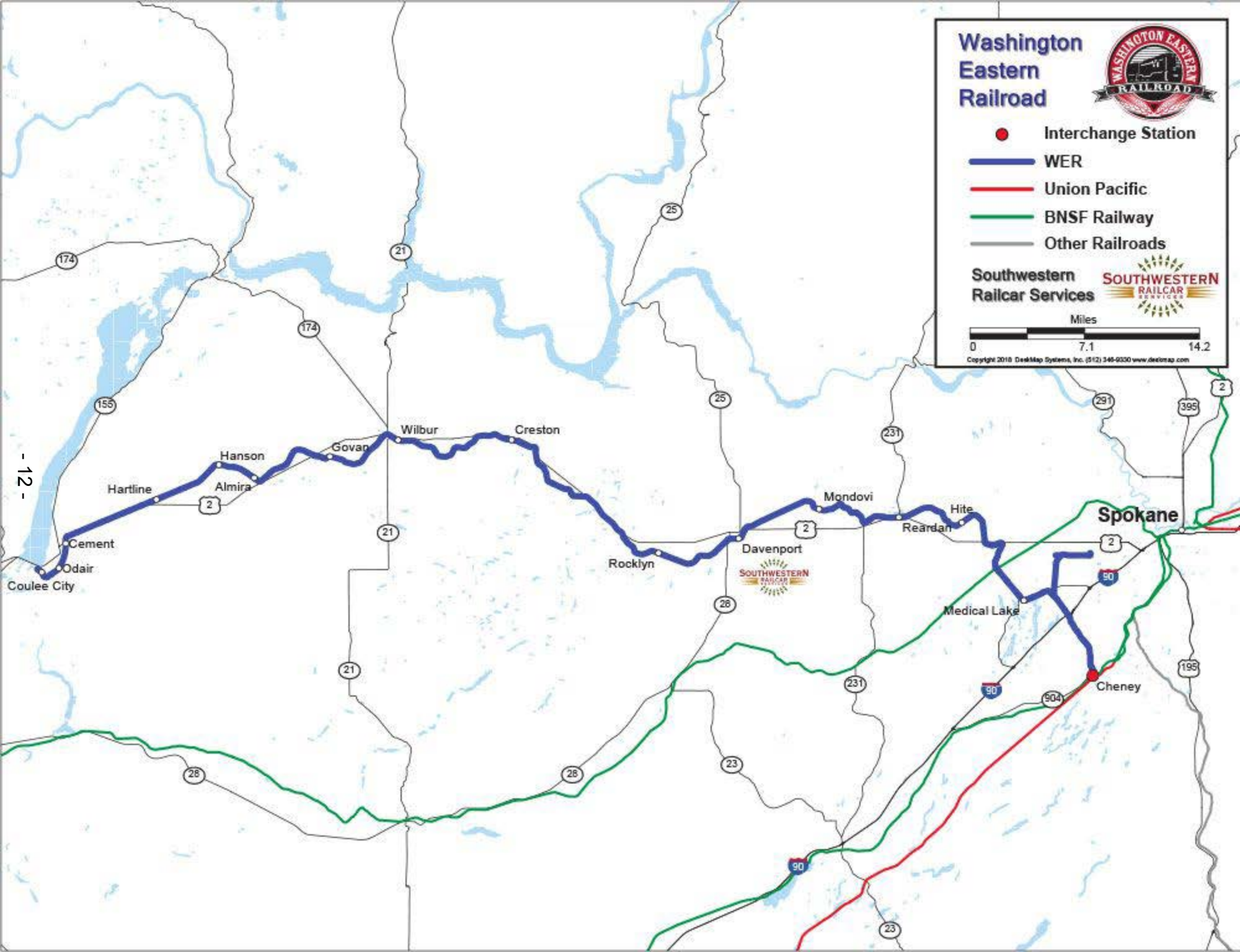
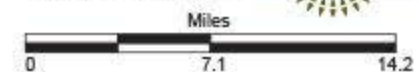
— WER

— Union Pacific

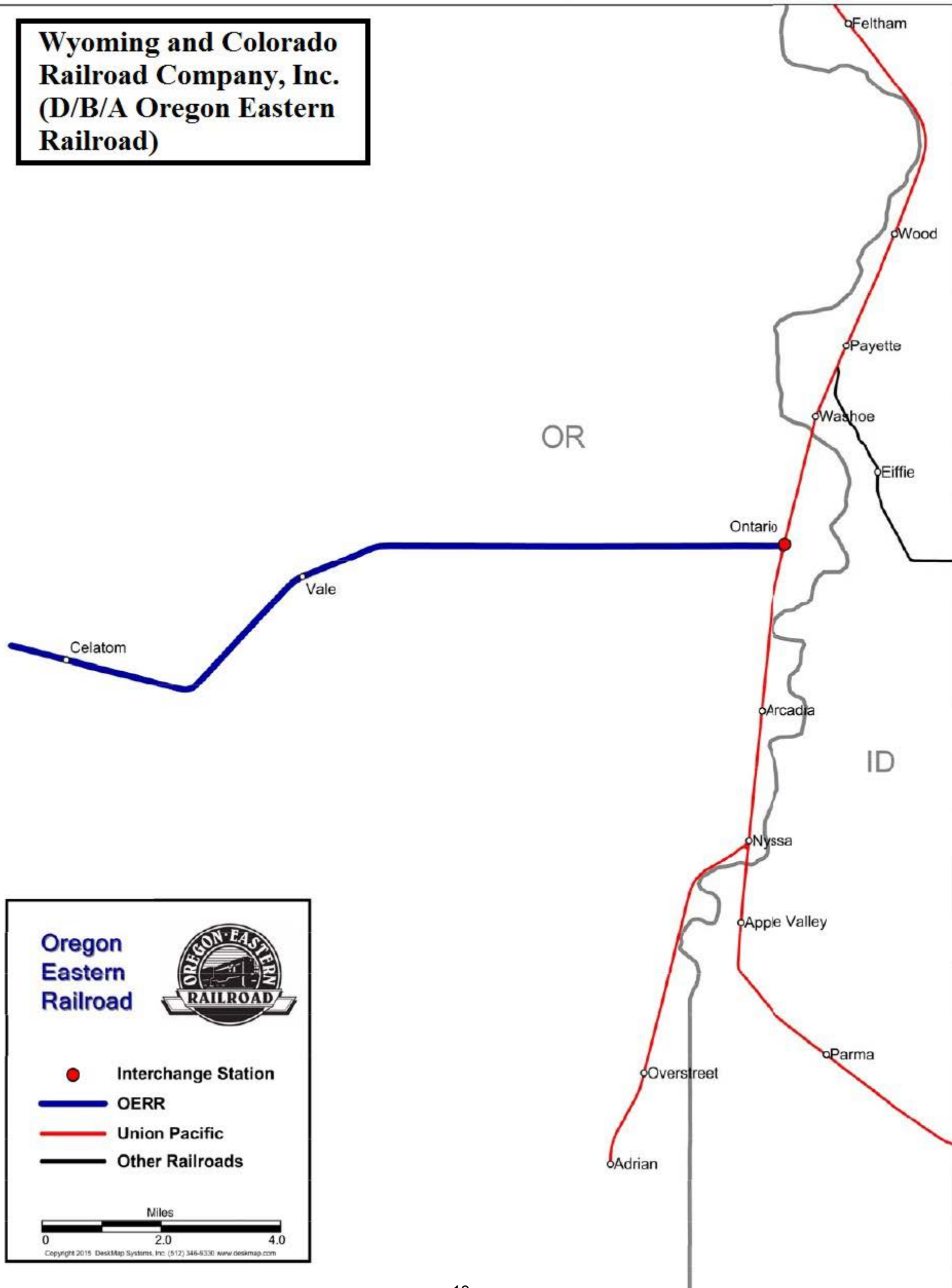
— BNSF Railway

— Other Railroads

Southwestern
Railcar Services

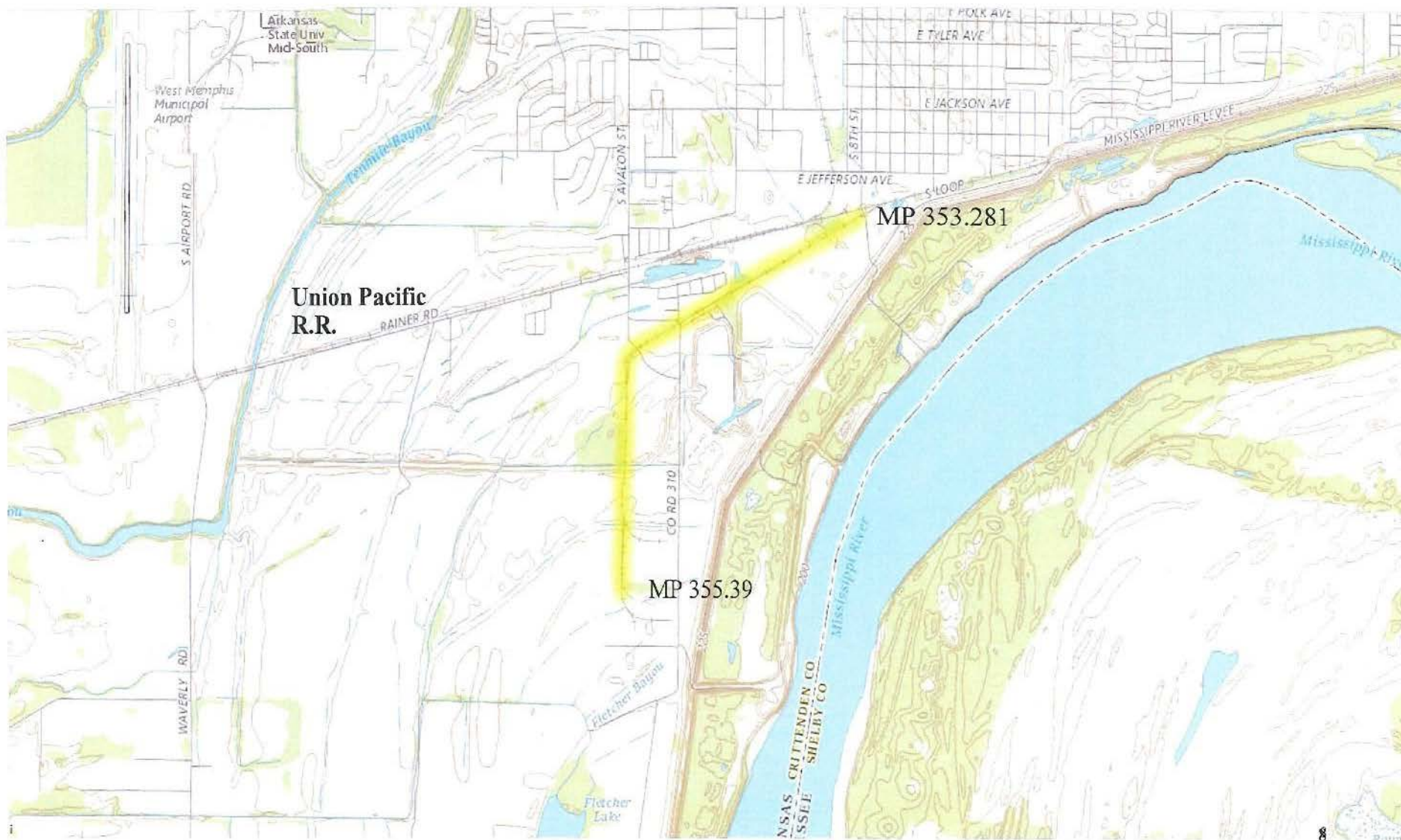


Wyoming and Colorado Railroad Company, Inc. (D/B/A Oregon Eastern Railroad)



West Memphis Base Railroad, L.L.C.

MP 353.281 to 355.539, highlighted portion, connecting with Union Pacific R.R. Co.



FD 36440

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TEXAS & EASTERN RAILROAD, LLC; WASHINGTON EASTERN RAILROAD, LLC;
AND WYOMING AND COLORADO RAILROAD, INC.**

EXHIBIT 2

**STOCK AND MEMBERSHIP
INTEREST PURCHASE AGREEMENT**

REDACTED

STOCK AND MEMBERSHIP INTEREST PURCHASE AGREEMENT

BY AND AMONG:

[REDACTED],

as Buyer,

[REDACTED]

AND

[REDACTED],

as Seller Parties,

AND

[REDACTED],

as Sellers' Representative

_____, 2020

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LIST OF EXHIBITS

- Exhibit A - Form of Buyer Release
- Exhibit B - Form of Escrow Agreement
- Exhibit C - Form of Restrictive Covenant Agreement
- Exhibit D - Form of [REDACTED]

STOCK AND MEMBERSHIP INTEREST PURCHASE AGREEMENT

This STOCK AND MEMBERSHIP INTEREST PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of the _____ day of _____, 2020, by and among _____, _____ (“Buyer”), _____ (“_____”), _____, individually _____, and _____ as Seller Parties’ representative (the “Sellers’ Representative”). Certain capitalized terms are defined in Article XI hereof.

Recitals

A. _____ owns of record and beneficially all of the issued and outstanding common shares of each of _____, _____, and _____.

B. _____ owns of record and beneficially all of the outstanding equity interests of _____ and _____.

C. _____ owns of record and beneficially all of the outstanding equity interests of _____, _____, and _____ collectively, the “Companies” and each, a “Company”).

D. At least one (1) Business Day prior to the Closing Date, (i) _____ will assign its membership interests that it owns in _____, to _____; (ii) _____ will declare a dividend and assign the membership interests that it owns in _____, to _____; (iii) _____ will declare a dividend and assign the membership interests that it owns in _____, to _____; (iv) _____ will declare a dividend and assign all of its right, title and interest in and to the real property set forth on Schedule 1 attached hereto to _____ (the “Land Distribution”); and (v) each of _____, _____, and _____ will declare a dividend and assign the membership interests that it owns in _____ (including the interest that _____ received pursuant to the _____) to _____ (the “_____”, and together with the _____, _____, the _____ and the Land Distribution, collectively, the “Distributions”).

E. On the Closing Date, Buyer desires to acquire from _____ (i) all of the issued and outstanding common shares of _____ (“_____”), (ii) all of the issued and outstanding common shares of _____ (“_____”), and (iii) all of the issued and outstanding common shares of _____ (“_____”, and together with the _____ and the _____, collectively, the “Stock”) and _____ desires to sell the Stock to Buyer; upon the terms and subject to the conditions set forth herein.

F. On the Closing Date, Buyer desires to acquire all of the outstanding equity interests of [REDACTED] (the “[REDACTED]”) and [REDACTED] (the “[REDACTED]”, and together with the [REDACTED], collectively, the “Interests”) from [REDACTED] and [REDACTED] desires to sell the Interests to Buyer, upon the terms and subject to the conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

ARTICLE I SALE AND PURCHASE OF INTERESTS AND STOCK

1.01 Sale and Purchase of Interests and Stock. On the terms and subject to the conditions of this Agreement, at the Closing referred to in Section 2.01 hereof, Seller Parties shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire and accept delivery of, all of such Seller Party’s respective Interests and Stock, free and clear of any and all Liens.

1.02 Transaction Consideration. As payment in full for the Interests and Stock being acquired by Buyer hereunder, Buyer shall provide consideration, in the manner set forth in this Section 1.02, as follows (the “Transaction Consideration”):

(a) On the Closing Date, Buyer shall deliver to the Sellers’ Representative, for the benefit of Seller Parties, by wire transfer (to an account which shall be specified by the Sellers’ Representative in a writing delivered to Buyer at least three (3) Business Days prior to Closing), of immediately available funds, an amount equal to the following (the “Closing Cash Consideration”):

(i) [REDACTED] in cash; *minus*

(ii) the amount of Indebtedness owed by the Companies, for which the Companies are otherwise responsible, in whole or in part, as primary obligor or otherwise, as of the Closing Date [REDACTED]

[REDACTED] (“Existing Indebtedness”); *minus*

(iii) the Seller Parties’ outstanding Transaction Expenses; *minus*

(iv) the [REDACTED]; *plus*

(v) the amount, if any, by which the Estimated Closing Working Capital is greater than the Target Working Capital; *minus*

(vi) the amount, if any, by which the Estimated Closing Working Capital is less than the Target Working Capital.

1.03 Working Capital Adjustments; Payoff Letters and Final Invoices.

(a) At least three (3) Business Days before the Closing, the Sellers' Representative shall deliver to Buyer a statement (the "Estimated Closing Working Capital Statement") setting forth his good faith estimate of the Closing Working Capital (the "Estimated Closing Working Capital"), calculated in accordance with U.S. generally accepted accounting principles ("GAAP") using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Financial Statements for the most recent fiscal year end (collectively, "GAAP Consistently Applied") as if such Estimated Closing Working Capital Statement was being prepared as of a fiscal year end.

(b) At least three (3) Business Days prior to the Closing Date, the Sellers' Representative will provide Buyer with payoff letters, in a form reasonably acceptable to Buyer, from all holders of Existing Indebtedness (the "Payoff Letters"), and make arrangements reasonably satisfactory to Buyer for such holders to provide to the Companies, simultaneously with the Closing, appropriate documentation, recordable and otherwise, evidencing satisfaction of such Indebtedness as set forth in Section 5.08 hereof. At least three (3) Business Days prior to the Closing Date, the Sellers' Representative will provide Buyer with (i) final invoices with respect to, and payment instructions for, all of the Seller Parties' Transaction Expenses (the "Final Invoices") and (ii) invoices with respect to, and payment instructions for, certain open or outstanding accounts payable of the Companies as reasonably requested by Buyer.

1.04 Post-Closing Adjustment.

(a) Within ninety (90) days after the Closing, Buyer shall prepare and deliver to the Sellers' Representative, on behalf of Seller Parties, a statement setting forth Buyer's calculation of the Closing Working Capital, which statement shall contain a balance sheet of each Company as of the Closing Date (without giving effect to the transactions contemplated herein) (the "Closing Working Capital Statement") and a certificate of a duly authorized officer of Buyer that the Closing Working Capital Statement was prepared in accordance with GAAP Consistently Applied as if such Closing Working Capital Statement was being prepared as of a fiscal year end. For the sake of clarity the Closing Working Capital Statement (and components thereof) (A) shall exclude the impact of any decisions made or actions taken or omitted by Buyer following the Closing that are not in accordance with GAAP Consistently Applied, shall not reflect changes made following the Closing in assets or liabilities as a result of purchase accounting adjustments, and (C) shall be based on facts and circumstances as they exist on or prior to the Closing. The Closing Working Capital Statement shall set forth in reasonable detail the basis for any differences between the Estimated Closing Working Capital Statement and the Closing Working Capital Statement. If Buyer fails to deliver the Closing Working Capital Statement to Sellers' Representative within 90 days after the Closing Date, the Estimated Closing Working Capital reflected in the Estimated Closing Working Capital Statement shall be deemed to have been accepted by Buyer and shall become the Closing Working Capital.

(b) Subject in all events to Sellers' Representative's right to dispute the Closing Working Capital Statement pursuant to Section 1.05 below, the post-closing adjustment shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working

Capital the (“Final Working Capital Adjustment”). If the Final Working Capital Adjustment is a positive number, Buyer shall pay to Sellers’ Representative, for the benefit of Seller Parties, an amount equal to the Final Working Capital Adjustment within ten (10) days of the final determination of the Final Working Capital Adjustment. If the Final Working Capital Adjustment is a negative number, Seller Parties shall be jointly and severally liable for, and shall pay to Buyer, an amount equal to the Final Working Capital Adjustment within ten (10) days of the final determination of the Final Working Capital Adjustment.

1.05 Disputes. The following clauses (a) and (b) set forth the procedures for resolving disputes among the parties with respect to the determination of the Final Working Capital Adjustment:

(a) Within forty-five (45) days (the “Review Period”) after delivery to the Sellers’ Representative, on behalf of the Seller Parties, of Buyer’s calculation of the Final Working Capital Adjustment pursuant to this Article I, the Sellers’ Representative, on behalf of Seller Parties, may deliver to Buyer a written report (the “Seller Parties’ Report”) prepared by Seller Parties’ accountants (the “Seller Parties’ Accountants”) setting forth Seller Parties’ Accountants’ calculation of the Final Working Capital Adjustment and describing in reasonable detail the basis for the determination of such different amount. During the Review Period, Seller Parties and Seller Parties’ Accountants’ shall have reasonable access to the books and records of the Buyer to the extent that such books and records relate to Buyer’s calculation of the Final Working Capital Adjustment as Seller Parties and Seller Parties’ Accountants’ may reasonably request for the purpose of reviewing the Final Working Capital Adjustment and to prepare the Seller Parties’ Report, provided, that such access shall be during normal business hours only and be in a manner that does not interfere with the normal business operations of Buyer. The costs and expenses of the services of Seller Parties’ Accountants shall be borne by Seller Parties. If Buyer shall concur with the adjustments proposed by Seller Parties’ Accountants, or if Buyer shall not object thereto in a writing delivered to the Sellers’ Representative, on behalf of Seller Parties, within fifteen (15) days after Buyer’s receipt of the Seller Parties’ Report, then the calculations of the Final Working Capital Adjustment set forth in such Seller Parties’ Report shall become final and shall not be subject to further review, challenge or adjustment absent fraud. If the Sellers’ Representative, on behalf of Seller Parties, does not submit a Seller Parties’ Report within the Review Period, then the Final Working Capital Adjustment as calculated by Buyer shall become final and shall not be subject to further review, challenge or adjustment absent fraud.

(b) In the event that the Sellers’ Representative, on behalf of Seller Parties, submits a Seller Parties’ Report and Buyer timely objects to such report in writing and Buyer and Seller Parties’ Accountants are unable to resolve the disagreements to all of the matters set forth in such report within thirty (30) days after the date of Seller Parties’ Report, then any amounts remaining in dispute (“Disputed Amounts”) shall be submitted to [REDACTED] or such other nationally recognized independent accounting firm mutually agreed to by Buyer and the Sellers’ Representative, on behalf of Seller Parties (the “Settlement Accountants”), for resolution. The Settlement Accountants’ determination shall be based solely on: (i) the provisions of this Agreement; (ii) presentations consisting of (A) a single written presentation from each of Buyer and the Sellers’ Representative (Buyer and the Sellers’ Representative shall instruct the Settlement Accountants to distribute to Buyer and the Sellers’ Representative both such

presentations upon receipt) and (B) a single written response from each of Buyer and the Sellers' Representative to each such presentation (Buyer and the Sellers' Representative shall instruct the Settlement Accountants to distribute to Buyer and the Sellers' Representative both such responses upon receipt) and/or (iii) any interrogatories promulgated by the Settlement Accountants (which the Settlement Accountants shall be instructed to distribute to both Buyer and the Sellers' Representative upon receipt), and not on independent review by the Settlement Accountants. Neither Buyer nor the Sellers' Representative shall have any ex parte communications with the Settlement Accountants relating to this Agreement, and the Settlement Accountants shall not conduct an independent investigation. The determination of the Settlement Accountants shall be final and shall not be subject to further review, challenge or adjustment absent fraud or manifest error. The Settlement Accountants shall only decide the Disputed Amounts and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Buyer's calculation of the Final Working Capital Adjustment and the Seller Parties' Report, respectively. The Settlement Accountants shall use their commercially reasonable efforts to reach a determination not more than forty-five (45) days after such referral. The fees and expenses of the Settlement Accountants shall be paid by the party whose calculation of the Final Working Capital Adjustment is farther from the Settlement Accountants' calculation thereof.

(c) The procedures set forth in this Section 1.05 for resolving disputes with respect to the Closing Working Capital Statement shall be the sole and exclusive method for resolving any such disputes; provided, however, that this provision shall not prohibit Buyer or the Sellers' Representative from instituting litigation in accordance with Section 10.04 to enforce any final determination of the Settlement Accountants, or to compel a party to submit any dispute arising in connection with this Section 1.05 to the Settlement Accountants pursuant to and in accordance with this Section 1.05.

1.06 Withholding. Buyer shall be entitled to deduct and withhold from the amounts otherwise payable by it, pursuant to this Agreement, to any Person, including to Seller Parties, such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any applicable provision of state, local or foreign Legal Requirement. In the event that any amount is so deducted and withheld, such amount will be treated for all purposes of this Agreement as having been paid to the Person to whom the payment from which such withheld amount was made. Prior to making any deduction or withholding (other than payroll withholding), Buyer will notify Sellers' Representative in writing and reasonably consider any comments from Sellers' Representative.

ARTICLE II SIGNING AND CLOSING

2.01 Closing. The closing of the transactions contemplated hereby (the "Closing") shall take place remotely via the electronic exchange of executed documents on the date hereof, or at such other time and in such other manner as the parties mutually agree. The date upon which the Closing occurs is hereinafter referred to as the "Closing Date."

2.02 Deliveries by Seller Parties. At or prior to the Closing, the Sellers' Representative, on behalf of Seller Parties, shall deliver to Buyer:

(a) original certificates representing each of the Interests and the Stock to the extent they are certificated, and membership interest and stock powers or assignments evidencing the conveyance of such Interests and the Stock to Buyer, duly executed in blank and otherwise in a form reasonably acceptable to Buyer for transfer on the books of the Companies; provided, that to the extent any such original certificates are lost, have been destroyed, or are otherwise unavailable, the Sellers' Representative, on behalf of Seller Parties, shall deliver an affidavit of such loss, destruction or unavailability reasonably satisfactory to Buyer;

(b) the [REDACTED] duly executed by each [REDACTED];

(c) resignations and releases in a form satisfactory to Buyer from all of the officers and the directors or managers, as applicable, of each Company;

(d) the corporate record book, ledger, minute books and seal of [REDACTED], [REDACTED] and [REDACTED];

(e) the limited liability company record book, ledger and minute books of [REDACTED] and [REDACTED];

(f) documentation, in form and substance reasonably acceptable to Buyer, from the Federal Railroad Administration confirming that all [REDACTED] Track determined by the Federal Railroad Administration as of [DATE] not to comply with applicable track gauge regulations has been remediated and that all such Track is now in compliance with applicable track gauge regulations;

(g) a certificate executed and delivered by the secretary or comparable representative of each Company and [REDACTED] attesting and certifying as to (i) the Governing Documents of such entity, and (ii) copies of resolutions of the shareholders, directors, members and managers of each entity, as applicable, adopting and authorizing this Agreement and the Related Agreements and the transactions contemplated hereby and thereby;

(h) a certificate of status or good standing for each Company and Seller Party that is an entity issued not more than five (5) days prior to the Closing Date by the Secretary of State of its jurisdiction of organization and each other jurisdiction where it is qualified to do business;

(i) possession of all originals and copies of agreements, instruments, documents, deeds, books, records, files and other data and information within the possession of a Company or [REDACTED] or any Affiliate of a Company or [REDACTED] pertaining to the business of the respective Company, if any (collectively, the "Records"); *provided, however*, that Seller Parties may retain (i) copies of any Tax Returns; (ii) copies of any and all Records; and (iii) any and all communications, including all attorney-client privileged communications, among the Seller Parties, Sellers' Representative, Companies, and their advisors, representatives and legal counsel occurring prior to the Closing in connection with the preparation for, for negotiation of and consummation of the transactions contemplated by this Agreement and the Related Agreements, whether or not the records of any such communications remain in the possession of a Seller Party or Company following the Closing;

(j) properly completed and executed Section 338(h)(10) Forms, prepared pursuant to Section 8.02(c) below;

(k) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) for each Seller Party and Company that such entity is not a foreign person within the meaning of Section 1445 of the Code;

(l) evidence of receipt of all Consents, each in form and substance reasonably acceptable to Buyer;

(m) the Payoff Letters and Final Invoices pursuant to Section 1.03(b);

(n) a Transition Services Agreement between [REDACTED] and Buyer, in form and substance reasonably satisfactory to Buyer and Sellers' Representative and duly executed by [REDACTED] (the "Transition Services Agreement");

(o) the Escrow Agreement duly executed by Seller Parties;

(p) All Contracts between the Companies and any Affiliate thereof (other than as set forth on Schedule 2.02(p)) shall have been terminated, and all obligations, claims or entitlements thereunder shall be unconditionally waived and released by such Affiliates in each case on terms satisfactory to Buyer;

(q) the Restrictive Covenant Agreement, signed by [REDACTED];

(r) [amendments, resolutions and other documentation necessary to terminate the participation of each of the Companies and the employees of the Companies in [REDACTED] Plan effective immediately prior to Closing, all in a form and substance reasonably satisfactory to Buyer (the "401(k) Plan Termination Documentation"); and]

(s) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

2.03 Deliveries by Buyer. At or prior to the Closing, Buyer shall deliver:

(a) to the Sellers' Representative, on behalf of Seller Parties:

(i) the Closing Cash Consideration by wire transfer of immediately available funds pursuant to Section 1.02(a);

(ii) the Buyer Release duly executed by Buyer;

(iii) the Transition Services Agreement duly executed by Buyer; and

(iv) the Escrow Agreement duly executed by Buyer;

(b) to the Escrow Agent, the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in

accordance with the Escrow Agreement, the “Indemnification Escrow Fund”) by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the indemnification obligations of Seller Parties set forth in Article VII and Article VIII; and

(c) the Seller Parties’ Transaction Expenses and the Existing Indebtedness to the parties indicated in the Final Invoices and Payoff Letters, respectively.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES

Seller Parties hereby jointly and severally represent and warrant to Buyer that as of the date hereof and as of the Closing Date:

3.01 Existence and Qualification. Each Company is a corporation or limited liability company, duly organized, validly existing and in good standing under the laws of the state of its formation, and has all requisite power and authority to own, operate, manage, lease and hold its Properties and to carry on its business as presently conducted. Each Company is qualified to do business in every jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to qualify, except where the failure to be so qualified would not have, or reasonably be likely to have, in the aggregate, a Material Adverse Effect.

3.02 Authority, Approval and Enforceability.

(a) This Agreement has been duly executed and delivered by Seller Parties, and Seller Parties have all requisite power and legal capacity to execute and deliver this Agreement and all Related Agreements executed and delivered or to be executed and delivered in connection with the transactions provided for hereby and thereby, to consummate the transactions contemplated hereby and by the Related Agreements, and to perform his or its obligations hereunder and under the Related Agreements.

(b) This Agreement and each Related Agreement to which a Seller Party is a party constitutes, or upon execution and delivery will constitute, the legal, valid and binding obligation of such Seller Party, enforceable in accordance with its terms, except as such enforcement may be limited by general equitable principles or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar Legal Requirements which affect creditors’ rights generally (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.03 Capitalization and Records.

(a) Schedule 3.03(a) sets forth a description of all of the authorized, issued and outstanding equity interests of each Company. Each Seller Party owns, beneficially and of record, all of the equity interests of each Company as set forth on Schedule 3.03(a), free and clear of any and all Liens. All of the outstanding equity interests of each Company are duly authorized, validly issued, fully paid and non-assessable and were not issued in violation of any preemptive or other rights of any Person to acquire any securities of any Company. There are no outstanding subscriptions, options, convertible securities, rights (preemptive or otherwise),

warrants, phantom rights, calls or Contracts relating to any equity interests of any Company. Upon delivery to Buyer of the documents set forth in Section 2.02(a) good and valid title to the Stock and the Interests will pass to Buyer, free and clear of all Liens.

(b) Seller Parties have provided true, accurate, and complete copies of all of the Governing Documents of the Companies, which reflect all amendments made through the date of this Agreement. Each Company's minute books made available to Buyer for review were correct and complete in all material respects as of the date of such review and no further entries have been made through the date of this Agreement or the Closing Date. All accounts, books, ledgers and official and other Records of each Company fairly and accurately reflect such Company's material transactions, Properties, assets and liabilities.

(c) Except as set forth on Schedule 3.03(c), no Company has any Subsidiaries nor owns, directly or indirectly, any outstanding voting securities of or other interests in any other corporation, limited liability company, partnership, joint venture or other entity.

3.04 No Defaults or Consents. Except as otherwise set forth on Schedule 3.04, neither the execution nor the delivery of this Agreement nor the consummation of any of the transactions contemplated hereby will:

(a) breach any of the terms, conditions or provisions of the Governing Documents of any Company or [REDACTED];

(b) breach any provision of any Legal Requirement or any judgment, award or decree to which any Company, or any Seller Party is a party, or by which any property or asset of any Company or any Seller Party is bound or affected;

(c) result in a material breach of, constitute a material default under (whether with or without notice or the lapse of time or both), or accelerate or permit the acceleration of the performance required by, or give any other party the right to terminate, any indenture, material Contract or other instrument or material Permit binding upon or applicable to any Company or any Seller Party;

(d) result in the creation of any Lien on any Properties; or

(e) require any Seller Party or any Company to obtain or make any waiver, consent, action, approval or authorization of, or registration, declaration, notice or filing with, any third party or any Governmental Authority.

3.05 No Proceedings. Except as otherwise set forth on Schedule 3.05, no Action is pending or, to Sellers' Knowledge, threatened in writing, seeking to restrain or prohibit any Company or any Seller Party from entering into this Agreement or any transactions contemplated hereby or prohibit the Closing, or seeking damages against any Company or its Properties as a result of the consummation of this Agreement.

3.06 Other Business Names. Schedule 3.06 is a complete list of the business names used by the Companies in the last five (5) years.

3.07 Equipment Leases. Schedule 3.07 contains an accurate and complete list and description of all material leased equipment or other personal property, including, locomotives and railcars, currently leased by any Company or otherwise currently Used in any Company's business. True and complete copies of all such material leases, including any amendments thereto, have been furnished to Buyer. All such material leases are in full force and effect. All such leases constitute legal, valid and binding obligations of the respective Company and, to Sellers' Knowledge, the other parties thereto, and are enforceable against such Company, and to Sellers' Knowledge, the other parties thereto, in accordance with their terms, except as stated on Schedule 3.07. No Company is in default in any material respect (and no event has occurred which, with the passage of time or the giving of notice or both, would constitute a material default) under any such lease. Except as described on Schedule 3.07 and to the Sellers' Knowledge, none of the parties contracting with any Company is in default in any respect under any such lease. No Company waived any material provision of any such lease.

3.08 Capital Equipment and Other Properties. Schedule 3.08 contains an accurate and complete list and description of Capital Equipment currently owned by each Company or currently Used in any Company's businesses. Except as set forth on Schedule 3.08 and except for the leased equipment and other tangible personal property on Schedule 3.07, each Company has good and merchantable title to all of its Capital Equipment, including all locomotives, railcars, vehicles, Track and railcar repair equipment, radios, and other equipment, and all of its fixtures and tangible personal property which such Company Uses, free and clear of all Liens. As of the Closing Date, the Companies shall have all rights, titles, interests, privileges, licenses, assets and properties (real, personal or mixed, tangible or intangible) necessary to operate their respective businesses in the same manner as such businesses were conducted during the twelve (12) months prior to the Closing Date.

3.09 Condition of Personal Property Other Than Tracks and Bridges. Except as otherwise described on Schedule 3.09, the operating condition of the material tangible personal property and all Capital Equipment owned or Used by each Company (other than Tracks and Bridges) is serviceable and suitable for railroad transportation services in the ordinary course of business. Except as set forth on Schedule 3.09, all of the Properties owned or operated by any of the Companies are maintained and operated in material compliance with all Legal Requirements.

3.10 Condition of Track and Bridges. True and complete copies of all periodic Track and bridge inspections and reports (or exemptions from such inspection and reporting requirements) in the possession, or under the control, of each Company as of [·]have been provided to Buyer. To the Sellers' Knowledge, the operating condition and repair of all of such Tracks and bridges of each Company are serviceable, suitable for railroad transportation services in the ordinary course of business, and have not changed materially since July 22, 2020, except as otherwise indicated on Schedule 3.10 (specified by mile posts). All of the Track and bridges owned or operated by each Company and currently in service are, as of the Closing Date, maintained and operated in material compliance with all Legal Requirements, requirements of grants, loan documents or any other Contracts.

3.11 Accounts Receivable; Accounts Payable and Inventory.

(a) Schedule 3.11(a) includes an aged account receivable list of all accounts receivable of each Company as of [_____]. Except as otherwise disclosed on Schedule 3.11(a), all such receivables are collectible in full except to the extent that proper reserves have been established on the Most Recent Balance Sheet. The accounts receivable of each Company arose from bona fide transactions in the ordinary course of business consistent with past practice. Except as set forth on Schedule 3.11(a), no such account has been factored, assigned or pledged to any other Person, all such accounts are owned by each such Company free and clear of any Lien and no defense or set-off to any such account has been asserted by the account obligor or, to Sellers' Knowledge, exists.

(b) All trade and interline accounts payable of each Company have originated in the ordinary course of business consistent with past practice. Schedule 3.11(b) includes an aged account payable list of all material accounts payable of each Company as of [_____]. Except as set forth on Schedule 3.11(b), no accounts payable are more than thirty (30) days past due.

(c) Schedule 3.11(c) includes a complete list of all material inventory of each Company as of [_____]. Each Company's material inventory is valued on such Company's books of account in accordance with GAAP Consistently Applied at the lower of cost (on a first in first out basis) or market.

(d) Schedule 3.11(d) includes a complete list of all railcars owned by a Person other than any Company that are stored by any such Person on the property of any Company as of [_____].

3.12 Real Estate.

(a) Schedule 3.12(a) lists all real estate currently owned, leased or otherwise Used by any Company (the "Real Estate"), including all real property owned in fee simple, all easements, rights of way, and all track leases, trackage rights and other rights of use.

(b) Except as set forth on Schedule 3.12(b), the Companies own and have good and valid title to, or have a good and valid leasehold, easement, right of way, trackage rights, license or other interest in, or otherwise has a valid right of possession, use or access to the Real Estate free and clear of any and all Liens.

(c) Except as set forth in Schedule 3.12(c), (i) each lease or sublease pursuant to which any Company has a leasehold interest in any Real Estate or any Company has granted a leasehold interest in any Real Estate (each such lease or sublease, a "Lease") (together with any amendment thereto) is valid and binding on the Company party thereto and, to the Sellers' Knowledge, each other party thereto, and is in full force and effect, (ii) no Company is in default under any Lease or has received notice of any asserted default by the Company party thereto, (iii) to the Sellers' Knowledge, no event or condition exists which constitutes, or after notice or lapse of time or both would constitute, a default on the part of any Company under any Lease, and (iv) as of the date of this Agreement, none of the Company or any Company Subsidiary has received written notice from any other party to a Lease that such other party intends to terminate, not renew, or renegotiate in any material respect the terms of, any such Lease. With respect to

any Lease pursuant to which any Company has granted a leasehold interest, the right to receive rent under such Lease has not been factored or otherwise sold or assigned to any Person. True, correct, and complete copies of (including, but not limited to) the Leases, deeds, agreements, amendments, and licenses have been delivered to Buyer prior to the Closing Date. Except for any parties in possession pursuant to, and any rights of possession granted under the Leases, there are no leases, subleases, occupancies or tenancies or parties in possession of any part of the Real Estate. No Seller Party or Company has granted to any party any option, rights of first refusal, license or other similar agreement with respect to a purchase or sale of the Real Estate or any portion thereof or any interest therein. The Seller Parties have not received from any tenant any notice to cancel, renew or extend any Lease.

(d) Except as set forth on Schedule 3.12(d), no notice from any Governmental Authority has been served upon, or received, by any Company or any Seller Party claiming any violation of any Legal Requirement with respect to the Real Estate. There are no pending and, since January 1, 2018, there have been no pending or, to Sellers' Knowledge, threatened, Actions for collection of Taxes or condemnation or eminent domain proceeding against any part of any Real Estate.

3.13 Grants. Schedule 3.13 contains an accurate and complete list of (a) each material Federal and state grant (the "Grants") awarded to each Company since January 1, 2018 (including the amount awarded); (b) the amount disbursed under each such awarded grant since January 1, 2018; and (c) the amount expected to be disbursed in the future to each Company under any such grant, and the basis for such future disbursement(s). Except as set forth on Schedule 3.13, all material conditions precedent to the receipt of funds under such Grants, including future payments, have been satisfied in full. True, correct and complete copies of each Grant and any written applications, notices, and/or other correspondence related to any Grant, including all amendments thereto, have been furnished to Buyer.

3.14 Labor and Employee Benefit Matters.

(a) Schedule 3.14(a) provides an accurate list, as of [_____], showing the names of all current employees or individual independent contractors of each Company, including any employee who is on a leave of absence of any nature, furlough or on layoff status, and sets forth for each such individual the following: (i) name; (ii) title or position; (iii) employer or Company for whom such individual provides services; (iv) location at which such individual is employed or provides services; (v) full-time or part-time; (vi) hire or retention date; (vii) designation as either exempt or non-exempt from the overtime requirements of the Fair Labor Standards Act and applicable state Legal Requirements; (viii) weekly salary rates of pay for salaried employees, hourly rates for hourly compensation employees, and agreed upon service remuneration or other payments for independent contractors; (ix) commissions, equity, bonus expectation, individual or incentive-based compensation; (x) any accrued but unpaid wages, commissions, bonuses, fees and other compensation payable to such individual for services performed on or prior to the date hereof; and (xi) accrued vacation or other paid time off. In addition, Schedule 3.14(a) also provides a complete list of the names of those individuals whose employment with any Company have been terminated (either voluntarily or involuntarily) during the past twelve (12) months. Except as listed on Schedule 3.14(a), no Company is indebted to, nor a creditor, of any employee, individual or independent contractor of any Company, except

for accrued wages or service remuneration payable by such Company. Except as listed on Schedule 3.14(a), all employees of each Company are employed on an “at-will” basis and may be terminated at any time by such Company without the payment of any severance or other penalty and without any requirement that any advance notice be given in connection with such termination. True, correct and complete copies of each material Contract between any Company and any employee, independent contractor or other service provider of such Company, including all material amendments thereto, have been furnished to Buyer. Except as listed on Schedule 3.14(a), no Company currently has any temporary or leased employees, and no Company has promised continued work or call back for subsequent assignment to any Person previously employed by any Company, any Person currently furloughed or through a leased employee arrangement.

(b) Each Company has complied in all material respects with its payment obligations to all employees in respect of all wages, salaries, commissions, employer contributions required under the Railroad Retirement Act and Railroad Unemployment Insurance Act, bonuses, sick pay, vacation pay and other compensation due and payable to such employees under any policy, practice, Contract, program or applicable Legal Requirements. No employee of any Company is receiving any long-term disability benefits. All Persons during the past three (3) years who have performed services for any Company who have been classified as independent contractors have satisfied the requirements of all federal and state Legal Requirements to be so classified in compliance with all applicable Legal Requirements, and each such Company has fully and accurately reported compensation paid to such Persons on IRS Forms 1099 or other applicable tax forms for independent contractors when required to do so. All current employees of any Company who have been classified as exempt from the overtime compensation requirements of the Fair Labor Standards Act and applicable state Legal Requirements have satisfied the requirements of all federal and state Legal Requirements to be so classified in compliance with all applicable Legal Requirements. Each Company has complied with any and all Legal Requirements for any former employees considered a leased employee or temporary employee providing services within the three (3) years prior to the Closing Date. For the period of three (3) years prior to the Closing Date, each Company maintains records containing evidence of all hours worked for each current and former non-exempt employee, together with accurate pay Records for all current and former employees in compliance with all applicable Legal Requirements.

(c) To the Sellers’ Knowledge, each of the Companies’ current employees, consultants and individual independent contractors have resided and worked in the United States while working for or engaged by the Companies (i) free of any restrictions or limitations on their ability to work in the United States and (ii) in compliance with all applicable Legal Requirements relating to immigration and naturalization. Each Company has completed and retained in material compliance with Immigration and Naturalization Service regulations a Form I-9 and any successor and related forms for all of its current employees.

(d) No Company is, or has ever been, a party to, bound in any manner, or otherwise subject to any labor union or collective bargaining Contract with a labor or trade union, labor organization, staff association or works council or similar grouping of employee representations (collectively, “Union”) or is operating under any such expired Contracts with any Union. No Company is subject to a Legal Requirement to bargain with any Union on behalf of

employees; no Union or collective bargaining Contract is currently being negotiated by or involving any Company; there is no pending or, to Sellers' Knowledge, threatened demand for recognition or certification by any Union and no representation or certification proceedings or petitions relating to any Company, nor has any been provided to any Company or filed with the relevant agency; and, to Sellers' Knowledge, there are no attempts to organize employees of any Company for collective bargaining or similar purposes. There are no pending or, to Sellers' Knowledge, threatened in writing, and in the past there have been no strikes, lockouts, work stoppages or slowdowns, pickets, boycotts, unfair labor practice charges, complaints, Actions, labor disputes, or to Sellers' Knowledge, organizing attempts (including Union organization campaigns or written requests for representation) with respect to the Companies' employees.

(e) Except as set forth on Schedule 3.14(e), each Company is operating and had been operating in material compliance with all Legal Requirements covering employment and employment practices, and terms and conditions of employment, including Legal Requirements relating to hiring, labor relations, equal employment opportunities, fair employment practices, equal pay, background checks, wages, compensation, termination of employment, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, hours of work, working conditions, breaks, sick, vacation and other paid time off, minimum wage compensation, overtime compensation, child labor, plant closings, mass layoffs, occupational health and safety, workers' compensation, uniformed services employment, whistleblowers, leaves of absence, and unemployment insurance.

(f) Except for those matters set forth on Schedule 3.14(f), there are no pending or threatened in writing, Actions or internal complaints brought by or on behalf of, or otherwise involving, any current or former employee of any Company, any Person alleged to be a current or former employee of any Company, any applicant for employment with any Company, any current or former independent contractor who is providing, or has provided, services to any Company, any Person who performs or performed any form of services for any Company, or any class of the foregoing, or any Governmental Authority, that involve the labor or employment relations and practices of such Company, or compliance with Legal Requirements as to such labor and employment relations and practices.

(g) Except as set forth in Schedule 3.14(g), there are no charges, appeals, Actions or proceedings against any Company pending or threatened in writing in the past twelve (12) months, before or by the Equal Employment Opportunity Commission, the Department of Labor, Occupational Safety and Health Administration, the National Labor Relations Board or any other comparable Governmental Authority. Except as set forth in Schedule 3.14(g), no Company has received any written notice during the last three (3) years of the intent of any Governmental Authority responsible for the enforcement of labor, employment, occupational health and safety or workplace safety and insurance/workers compensation Legal Requirements to conduct an investigation, inspection or audit of any Company and, to the Sellers' Knowledge, no such investigation, inspection or audit is in progress. There are no outstanding assessments, penalties, fines, Liens, charges, surcharges, or other amounts due or owing by any Company pursuant to any violation of child labor, meal and rest break, immigration, wage and hour, workplace safety, or insurance Legal Requirements.

(h) Schedule 3.14(h) sets forth a list of all concluded or settled Actions of any Company relating to any Company's employees, independent contractors, or labor or employment practices within the three (3) years prior to the Closing Date.

(i) No current or former employee has experienced an "employment loss," as defined by the Worker Adjustment and Retraining Notification Act of 1988 or similar state or local applicable (collectively, the "WARN Act"), termination of employment, layoff, and/or reduction in hours within the past ninety (90) days. There has been no "mass layoff" or "plant closing" as defined by the WARN Act with respect to any Company in the past five (5) years.

(j) Schedule 3.14(j) provides a complete and correct list of each material "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended and the rules, regulations, standards and guidelines publicly issued thereunder ("ERISA")), and any other material pension plans or employee benefit Contracts, arrangements, commitments, programs or payroll practices, whether or not subject to ERISA (including equity incentive plans or awards in whatever form (i.e., options, restricted stock, profits interests, etc.), bonus plan or arrangement, severance pay, other termination benefits or compensation, vacation pay, company awards, salary continuation for disability, sick leave, retirement, deferred compensation, other incentive compensation, stock purchase arrangements or policies, hospitalization, medical insurance, life insurance, scholarship programs and any employment or other service agreement) (whether or not reduced to writing, funded or unfunded, qualified or nonqualified) which is sponsored, maintained or contributed to by any of the Companies or by any trade or business of any of the Companies, whether or not incorporated, that together with any of the Companies would be deemed a "single employer" within the meaning of Section 4001 of ERISA (a "Company ERISA Affiliate") for the benefit of the employees, agents, leased employees, directors, officers, shareholders or independent contractors (in each case either current or former) of each Company or any Company ERISA Affiliate, which has been so sponsored, maintained or contributed by such Company within the last six (6) years and with respect to which each Company or any Company ERISA Affiliate has or may have any actual or contingent liability ("Employee Benefit Plans").

(k) Schedule 3.14(k) provides a complete and correct list of each Company ERISA Affiliate.

(l) Except as set forth on Schedule 3.14(l), true, correct, complete and executed copies of each of the Employee Benefit Plans, including all material amendments, applicable trust documents, investment management agreement(s), administrative service Contracts or insurance Contracts thereto or, if none of the aforementioned documents exist with respect to certain Employee Benefit Plans, summaries thereof, in Sellers' possession, have been furnished to Buyer. With respect to each such Employee Benefit Plan, there has also been furnished to Buyer: (i) with respect to each Employee Benefit Plan required to file such report and description, the three most recent reports on Form 5500 (including financial statements and schedules thereto as required to be filed pursuant to applicable Law); (ii) the most recent IRS determination, opinion or advisory letters, if applicable; (iii) the current summary plan description (including any summary of material modifications); (iv) the three most recent nondiscrimination testing reports, if applicable, and if any testing failure occurred for a given plan year, then proof of such correction, (v) the most recent actuarial valuation, if applicable, (vi)

copies of the two most recent ERISA Section 408(b)(2) disclosures, if applicable, (vii) the three most recent Forms 1094-C and 1095-C, if applicable; and (viii) any correspondence directly relating to the Employee Benefit Plans with any Government Authority (i.e., Internal Revenue Service, Department of Labor or Pension Benefit Guaranty Corporation) within the last six (6) years.

(m) To Sellers' Knowledge, no Company, Company ERISA Affiliate, officer of any Company or Company ERISA Affiliate or Employee Benefit Plan, or trust created thereunder, or trustee or administrator thereof, has engaged in, or permitted the assets of any such plan or trust to be involved in, a "prohibited transaction," as such term is defined in Section 4975 of the Code or Sections 406 and 407 of ERISA, for which no exemption is available, which could subject any such Person to any Tax or penalty on prohibited transactions imposed by Section 4975 of the Code or which could result in any liability to any of the Companies or any Company ERISA Affiliate.

(n) Each Employee Benefit Plan has been established and administered in all material respects in accordance with its terms and is materially in compliance (both in form and operation) with ERISA, the Code and all other applicable Legal Requirements and with applicable Statements of Financial Accounting Standards. Except as set forth on Schedule 3.14(n), to Sellers' Knowledge, there has been no violation of or failure to comply with ERISA or the Code with respect to the filing of applicable returns, reports, documents and notices regarding any of the Employee Benefit Plans with any Governmental Authority or the furnishing of such notices or documents to the participants or beneficiaries of the Employee Benefit Plans.

(o) With respect to each Employee Benefit Plan: (i) no Actions are pending, or threatened in writing within the past twelve (12) months; (ii) no audits, inquiries, reviews, proceedings, claims, or demands are pending with, or to Sellers' Knowledge threatened within the past twelve (12) months by, any Governmental Authority; (iii) all premiums, contributions, or other payments required to have been made pursuant to any Legal Requirement or under the terms of any Employee Benefit Plan as of the Closing Date have been made and any contributions or premium payments not yet due prior to the Closing Date has been properly accrued; and (iv) for each Employee Benefit Plan intended to qualify under Section 401(a) of the Code, the Internal Revenue Service has issued a favorable determination letter that such plan is qualified under Section 401(a) of the Code or a pre-approved plan sponsor's opinion or advisory letter has been issued with respect to such Employee Benefit Plan. Nothing has occurred that would materially adversely affect the qualified status of any such Employee Benefit Plan.

(p) To Sellers' Knowledge, no Company nor any Company ERISA Affiliate has ever maintained, sponsored, contributed to or participated in: (i) an employee benefit plan (as such term is defined in ERISA Section 3(3)) subject to Section 412 of the Code or Section 302 of ERISA; (ii) an employee benefit plan (as such term is defined in ERISA Section 3(3)) subject to Title IV of ERISA, (iii) a multiemployer plan as described in ERISA Section 3(37), (iv) a multiple employer plan (as described in Section 413 of the Code); (v) an employee welfare benefit plan (as described in Section 3(l) of ERISA) that provides for retiree medical and/or death benefits, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or applicable state law; or (vi) any multiple employer welfare arrangement (as defined in Section 3(40) of ERISA).

(q) Except as specified on Schedule 3.14(q), (i) no Company shall be obligated to pay any bonus, separation, severance, termination or other similar award or benefit to any Person as a result of any transaction contemplated by this Agreement, nor will any such transaction accelerate the time of payment or vesting, or increase the amount, of any equity, benefit or other compensation due to any Person; and (ii) the transactions contemplated by this Agreement will not result in the payment of any “excess parachute payment” within the meaning of Section 280G of the Code.

(r) Each Employee Benefit Plan or any other arrangement that is a “nonqualified deferred compensation plan” (as defined under Section 409A(d)(1) of the Code) has been operated and administered in operational and documentary compliance with Section 409A of the Code and applicable guidance (including notices, rulings and proposed and final regulations) thereunder. No Company has any contract or obligation to provide a gross-up with respect to excise Taxes, interest or penalties under Sections 409A of the Code.

(s) In the past twelve (12) months, the Companies have not made any announcements, promises or agreements to adopt any new Employee Benefit Plan prior to Closing or amend any current Employee Benefit Plan prior to Closing.

(t) To Sellers’ Knowledge, the Companies and all Company ERISA Affiliates have complied with the Patient Protection and Affordable Care Act and the guidance issued thereunder (“PPACA”), including, but not limited to, any reporting obligations under the PPACA. Further, neither the Companies nor any Company ERISA Affiliate is liable or could reasonably expect to be liable for any material excise tax or penalty under Section 4980H of the Code.

3.15 Financial Statements; Liabilities.

(a) Seller Parties have delivered to Buyer true and complete copies of the combined audited financial statements, with respect to each Company and its business as of and for the years ended December 31, 2018 and December 31, 2019, and the internally prepared financial statements of each Company and its business for the eight-month period ended August 31, 2020 (the “Financial Statements”). The Financial Statements are attached hereto as Schedule 3.15(a). The Financial Statements fairly present in all material respects the financial condition and results of operations of the Companies for the dates or periods indicated thereon, subject, in the case of the interim financial statements for the eight-month period ended August 31, 2020, to normal and recurring year-end adjustments and the absence of notes. Except as set forth on Schedule 3.15(a), all of such unaudited Financial Statements have been prepared in accordance with GAAP Consistently Applied.

(b) Except for (i) the liabilities reflected on the August 31, 2020 balance sheet included with the Financial Statements (the “Most Recent Balance Sheet”), (ii) ordinary course executory liabilities (not arising by virtue of breach) under any Company’s Contracts and (iii) the liabilities set forth on Schedule 3.15(b), no Company has any material liabilities or obligations (whether or not of a nature required to be reflected or reserved against in a balance sheet in accordance with GAAP).

3.16 Absence of Certain Changes.

(a) Except as otherwise set forth on Schedule 3.16(a), since the date of the Most Recent Balance Sheet, there has not been any event, circumstance, development, state of facts, occurrence, effect or change that had or reasonably could be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth on Schedule 3.16(b) and except in connection with the Distributions, this Agreement and the Related Agreements, since the date of the Most Recent Balance Sheet, none of the Companies has done any of the following:

(i) merged into or with or consolidated with, any other entity or acquired the business or assets of any Person;

(ii) purchased any securities of any Person;

(iii) created, incurred, assumed, guaranteed or otherwise become liable or obligated with respect to any Indebtedness, or made any loan or advance to, or any investment in, any Person, except in each case in the ordinary course of business consistent with past practice;

(iv) made, rescinded or changed any Tax election, changed an annual accounting period, adopted or changed any accounting method, filed any amended Tax Return, entered into any closing agreement or similar agreement with respect to Taxes, settled any Tax Claim or assessment, abandoned any ongoing proceedings relating to Taxes, surrendered any right to claim a refund of Taxes, consented to any extension or waiver of the limitation period applicable to any Tax Claim or assessment, incurred any liability for Taxes outside of the ordinary course of business consistent with past practice, or failed to pay any Tax when it becomes due and payable (including estimated payments);

(v) entered into, amended, modified, or terminated any Material Agreement;

(vi) sold, transferred, leased, mortgaged, encumbered, abandoned, or otherwise disposed of, or agreed to sell, transfer, lease, mortgage, encumber or otherwise dispose of, any Properties except (A) in the ordinary course of business consistent with past practice, or (B) pursuant to any Contract specified on Schedule 3.19;

(vii) settled any claim or litigation, or filed any motions, orders, briefs or settlement Contracts in any proceeding before any Governmental Authority or any arbitrator;

(viii) incurred or approved, or entered into any Contract to make, any expenditures in excess of [REDACTED] (other than those arising in the ordinary course of business consistent with past practice or those required pursuant to any Contract specified on Schedule 3.19);

(ix) maintained its books of account other than in the usual, regular and ordinary manner and in accordance with GAAP Consistently Applied or made any change in any of its accounting methods or practices, except as disclosed in the notes to the Financial Statements;

(x) adopted any other Contract or policies with respect to employment, or granted any increase in the compensation payable or to become payable to current or former directors, officers, employees, independent contractors or consultants (including any such increase pursuant to any bonus, or other plan or commitment), other than merit increases to non-officer employees in the ordinary course of business and consistent with past practice;

(xi) made any payment to any Affiliate or forgiven any Indebtedness due or owing from any Affiliate of the Companies, other than in the ordinary course of business consistent with past practices;

(xii) deviated from such Company's historical ordinary course practices in connection with the payment of payables and/or the collection of receivables;

(xiii) entered into any Contracts with an Affiliate or outside the ordinary course of business consistent with past practice;

(xiv) declared, set aside or paid any dividends, or made any distributions or other payments in respect of its equity securities, or repurchased, redeemed or otherwise acquired any such securities;

(xv) amended its Governing Documents;

(xvi) issued any equity or other securities, or granted, or entered into any Contract to grant, any options, convertible rights, other rights, warrants, calls or Contracts relating to its equity or other securities;

(xvii) split, combined or reclassified any shares of its capital stock or membership interests, as applicable;

(xviii) made any transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Intellectual Property Agreements;

(xix) abandoned or failed to maintain in full force and effect any of such Company's Intellectual Property registrations, or failed to take or maintain reasonable measures to protect the confidentiality or value of any trade secrets included in the Company Intellectual Property;

(xx) suffered the imposition of any Lien on any Properties;

(xxi) entered into any new line of business or abandoned or discontinued and existing line of business; or

(xxii) committed to do any of the foregoing.

3.17 Compliance with Laws. Except as otherwise set forth on Schedule 3.17, each Company since January 1, 2014, is and has been in compliance in all material respects with all applicable Legal Requirements including the Federal Employers Liability Act and all Legal Requirements promulgated by the Federal Railroad Administration, the Surface Transportation Board and the Railroad Retirement Board. Except as otherwise set forth on Schedule 3.17, since January 1, 2019, no Company (a) has received (i) any written citations, complaints, compliance schedules, or other similar enforcement orders, (ii) written notice of a requirement to pay or paid any fines or penalties to, or (iii) any other written notice from, any Governmental Authority, including the Federal Railroad Administration, the Surface Transportation Board or the Railroad Retirement Board, and (b) is in default under, and, to the Sellers' Knowledge, no condition exists (whether covered by insurance or not) that with or without notice or lapse of time or both would constitute a default under, or breach or violation of, any Legal Requirement or Permit applicable to the Companies. No Company is subject to any currently effective order, injunction, judgment, award, decree, ruling, writ, or assessment from any arbitrator or any Governmental Authority, including the Federal Railroad Administration, the Surface Transportation Board or the Railroad Retirement Board. Notwithstanding anything contained in this Section 3.17 to the contrary, this Section 3.17 shall not apply in any manner to the representations and warranties set forth in the last sentence of each of Sections 3.09 and 3.10, Section 3.14, the first sentence of Sections 3.21(b)(xiii) and 3.26, and the second sentence of Section 3.23.

3.18 Litigation. Except as set forth on Schedule 3.18, (a) there are no Actions pending or, to the Sellers' Knowledge, threatened in writing against any Company or any of its assets, and there has not been at any time during the past three (3) years any Action against any Company or its assets, (b) there are no unsatisfied judgments of any kind against any Company, and (c) no Company is subject to any judgment, order or decree of any Governmental Authority. No Action is pending and no claim has been made or, to the Sellers' Knowledge, threatened in writing in the past eighteen (18) months, against any current or former Affiliate, director, employee or agent of any Company which has resulted in or reasonably could be expected to result in a liability or an indemnification or expense advancement obligation with respect to any Company.

3.19 Commitments.

(a) Attached hereto as Schedule 3.19(a) is a list of the following Contracts under which a Company or any of its assets are bound (the "Material Agreements");

(i) Contracts containing covenants limiting the freedom of any Company, any equity holder of any Company or, to Sellers' Knowledge, any officer, manager or employee of any Company to compete in the business of providing common carrier or private railroad transportation services in any geographic area or to solicit any Person to enter into the short line railroad business or employment relationship, or enter into such relationship with any Person, or to solicit or hire any Person;

(ii) Contracts establishing any joint venture, partnership, strategic alliance or sharing of profits or Losses with any Person to which any Company is a party or by which any Company or any of its assets are bound;

(iii) Contracts of a Company in an amount, in each case, in excess of [REDACTED] of Indebtedness;

(iv) Contracts containing a “most favored nation” or similar provision requiring that a Person be offered terms or concessions at least as favorable as those offered to one or more other Persons, or any requirement to deal exclusivity with, or granting exclusive rights or rights of first refusal to, any customer, supplier, distributor, contractor or other Person;

(v) Contracts for the lease of real or personal property, which property is necessary for any Company to operate its business in substantially the same manner as operated as of the date of this Agreement;

(vi) Contracts pursuant to which any Company or [REDACTED] has granted any exclusive agency, marketing, sales representative relationship, franchising, consignment or distribution right to any third party;

(vii) Contracts that contain any put, call, right of first refusal, right of first offer or right of first negotiation;

(viii) Contracts that are terminable by, or require the consent of, the other party or parties thereto upon a change of control of any Company or the sale, disposition or acquisition of any of the Stock or Interests;

(ix) Contracts with respect to any (A) business combination or (B) the sale or purchase of all or substantially all of the assets or the equity interests of any Company or other Person whether by merger, consolidation, or otherwise;

(x) Contracts with respect to guarantees by any Company of any payment obligations of any other Person, in each case in an amount greater than [REDACTED];

(xi) Contracts requiring payments to or by any Company of [REDACTED] or more;

(xii) Contracts granting trackage rights, or governing (A) Track leases, (B) operating rights, or (C) terms of interchange among carriers;

(xiii) Contracts establishing handling line carrier, junction settlement carrier or switching carrier rates and terms of service;

(xiv) Railroad transportation services Contracts and railroad ancillary services Contracts (including, but not limited to car switching agreements, car hire agreements, rail car storage Contracts and industry or side track Contracts);

(xv) Contracts with other railroads or railroad operators;

(xvi) Contracts that provide for the indemnification by a Company of any Person or the assumption of any Tax or environmental liability of any Person;

(xvii) all broker, agency, sales promotion, market research, marketing consulting and advertising Contracts to which a Company is a party;

(xviii) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which a Company is a party and which are not cancellable without material penalty or without more than 90 days' notice;

(xix) Contracts with any Governmental Authority to which a Company is a party;

(xx) Contracts between a Company on the one hand and any Seller Party or Affiliate of any Company or Seller Party on the other hand; and

(xxi) Contracts or commitments to enter into any of the foregoing.

(b) Each Material Agreement is in full force and effect. All such Material Agreements constitute legal, valid and binding obligations of the respective Company and, to Sellers' Knowledge, the other parties thereto, and are enforceable against such Company, and to Sellers' Knowledge, the other parties thereto, in accordance with their terms, except as stated on Schedule 3.19(b). No Company is in default in any material respect (and no event has occurred which, with the passage of time or the giving of notice or both, would constitute a material default) under any Material Agreement. Except as described on Schedule 3.19(b), none of the parties contracting with any Company is in default in any material respect under any Material Agreement. No Company has waived any material right under any Material Agreement.

(c) True, correct and complete copies of each Material Agreement, including all amendments thereto, have been furnished to Buyer.

3.20 Insurance. Attached hereto as Schedule 3.20 is a list of all fire, liability, business interruption, railroad, property and health insurance policies and other material forms of insurance and all material fidelity bonds, in each case, currently held by or otherwise applicable to any Company at any time within the past three (3) years, which schedule sets forth in respect of each such policy the policy name, policy number, carrier, term, type of coverage, deductible amount or self-insured retention amount, limits of coverage and annual premium. Except as disclosed on Schedule 3.20, there has been no material change in the type of insurance coverage maintained by any Company during the past three (3) years that has resulted in any period during which such Company had no insurance coverage and during the past three (3) years there has not been any increase in the insurance premiums of any insurance policy of any Company. Excluding insurance policies which have expired and been replaced, no insurance policy of any Company has been canceled within the last three (3) years and, to Sellers' Knowledge, no threat has been made in writing to cancel any insurance policy of any Company within such period. True, correct and complete copies of each insurance policy or fidelity bond held by any Company, including all material amendments thereto, have been furnished to Buyer.

3.21 Intellectual Property.

(a) For purposes of this Agreement,

(i) “Intellectual Property” means (A) trademarks, service marks, trade names and other indications of origin, including all registration and applications for registration of the foregoing, and all the goodwill associated with the foregoing; (B) patents and patent applications; (C) trade secrets, know-how, ideas, inventions (whether or not patentable), discoveries, technology, designs, methods, processes, formulae, algorithms, techniques, business and technical information, technical data, databases, data compilations and collections, other confidential and proprietary information, and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other Persons who can obtain economic value from its disclosure or use, and all rights therein (collectively, the “Trade Secrets”); (D) copyrights and works of authorship, and all registrations and applications for registration thereof; (E) internet domain name registrations and social media accounts; and (F) any similar intellectual property and related proprietary rights .

(ii) “Company Intellectual Property” means the Intellectual Property owned by any Company and Used in connection with the Company’s current business, including the Company Registered Intellectual Property.

(iii) “Company Registered Intellectual Property” means all Company Intellectual Property that is subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

(iv) “Company Software” means computer software owned, licensed or Used by any Company, whether or not included in the Company Intellectual Property.

(v) “Company Systems” means all Company Software, firmware, hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology networks, equipment and related systems that are owned or currently Used by any Company.

(vi) “Intellectual Property Agreements” means all licenses, sublicenses and other agreements relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound.

(vii) “Data Room” means the virtual data room titled [REDACTED].

(viii) “Data Security Requirements” shall mean, collectively, all of the following to the extent relating to any Personal Data collected, processed, Used, stored, transferred or protected by any Company or otherwise relating to privacy, security, or security breach notification requirements and applicable to any Company: (A) all Legal Requirements; (B) the Payment Card Industry (PCI) Data Security Standards (if applicable); and (C) Contracts to which a Company is a party or by which it is otherwise bound.

(ix) “Personal Data” shall mean any information that identifies a specific natural person, including, without limitation: a natural person’s (A) first and last name; (B) social security number or tax identification number; (C) credit card number, bank account information and other financial account information, or financial customer or account numbers, account access codes and passwords; and (D) personal health information.

(b) Schedule 3.21 sets forth a correct, current and complete list of all Company Intellectual Property. Except as set forth on Schedule 3.21:

(i) Each Company is the sole and exclusive legal and beneficial, and with respect to its Company Registered Intellectual Property, record, owner of all right, title and interest in and to the Company Intellectual Property, and has the valid and enforceable right to use all other Intellectual Property Used or held for Use in connection with the Company’s current business, in each case, free and clear of any Liens or other Encumbrances. No Company has received any written notice or claim challenging the Company’s ownership of any of the Company Intellectual Property;

(ii) All Company Intellectual Property is valid and enforceable, and all Company Registered Intellectual Property is subsisting and in full force and effect, and each Company has taken all necessary steps to maintain and enforce the Company Intellectual Property and has not taken any action or failed to take any action, including action related to any and all required filings and fees related to its Company Registered Intellectual Property, that could reasonably be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation or unenforceability of any of the Company Registered Intellectual Property;

(iii) Each Company has implemented appropriate policies and procedures to protect and maintain its Trade Secrets and confidential information, consistent with industry standards;

(iv) Each Company has Used and maintained the Company Intellectual Property in compliance with all Legal Requirements;

(v) No royalties, honorariums or fees are payable by a Company to any Person by reason of a Company’s ownership or Use of any Intellectual Property;

(vi) Each Company is in material compliance with each Intellectual Property Agreement granting to a Company the right or license to Use Intellectual Property;

(vii) Neither the execution, delivery or performance of this Agreement and the Related Agreements to which it is a party, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, Buyer’s or any Company’s right to own or Use any Intellectual Property subject to any Intellectual Property Agreement;

(viii) The conduct of each Company's business as currently and formerly conducted, and the products, processes and services of the Company, have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. To Sellers' Knowledge, no Person has infringed, misappropriated, or otherwise violated any Company Intellectual Property;

(ix) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding) settled, pending or threatened in writing (including in the form of offers to obtain a license): (A) alleging any infringement, misappropriation, or other violation by any Company of the Intellectual Property of any Person; (B) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property; or (C) by any Company or any other Person alleging any infringement, misappropriation, or violation by any Person of Company Intellectual Property. Seller is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. No Company is subject to any outstanding or prospective order from any Governmental Authority (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the Use of any Company Intellectual Property;

(x) No Company has received any written notice in the last six (6) years that it is in conflict with or infringing upon the Intellectual Property rights of others;

(xi) Company Systems are reasonably sufficient for the immediate needs of each Company's business. To Sellers' Knowledge, in the past eighteen (18) months, there has been no unauthorized access, use, intrusion, or breach of security, or failure, breakdown, performance reduction, or other adverse event affecting any Company Systems, that has caused: (A) substantial disruption of or interruption in or to the Use of such Company Systems or the conduct of the Company's business; (B) loss, destruction, damage, or harm of or to any Company or its operations, personnel, property, or other assets; or (C) liability of any kind to any Company. Each Company has taken all reasonable actions, consistent with industry best practices to protect the integrity and security of such Company's Company Systems and the data and other information stored or processed thereon. Each Company (D) maintains commercially reasonable backup and data recovery, disaster recovery, and business continuity plans, procedures, and facilities; (E) acts in compliance therewith; and (F) tests such plans and procedures on a regular basis, and such plans and procedures have been proven effective upon such testing;

(xii) To Sellers' Knowledge, there are no defects in any Company Software that would prevent the same from performing in accordance with its user specifications or to meet the immediate needs of each Company's business, and, to Sellers' Knowledge, there are no viruses, Trojan horses or similar disabling codes or programs in any of the Company Software. All Company Software is owned by the applicable Company or currently Used pursuant to a valid license or other enforceable right and is not a "bootleg" version or unauthorized copy. The Company Software is in commercially reasonable working order for the purpose for which it is currently Used;

(xiii) Each Company has complied and is in compliance in all material respects with all applicable Data Security Requirements and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of Personal Data Used in connection with the Company's business. In the past three (3) years, no Company has (A) had any Action asserted against it, or (B) been subject to or received any notice of any audit, investigation, complaint, proceeding, or other Action by any Governmental Authority or other Person concerning any actual, alleged, or suspected violation of any Data Security Requirements or the Company's collection, Use, processing, storage, transfer, or protection of Personal Data, and, to Sellers' Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

(xiv) Each Company has the right to use such Company's Personal Data in its business for the purpose such information is currently Used. Each Company has taken commercially reasonable steps consistent with industry standards to protect and preserve the privacy and security of all Personal Data in the possession of such Company, whether in written or electronic form;

(xv) Each Company has commercially reasonable safeguards consistent with industry standards in place to protect Personal Data in such Company's possession or control from unauthorized access by third persons. No Person has withdrawn their consent to any use or processing of their Personal Data or requested erasure of their Personal Data by any Company, where such Company has not complied with such request or otherwise responded in accordance with applicable Data Security Requirements. To the Sellers' Knowledge: (A) no Person has made any illegal or unauthorized use of Personal Data that was collected by or on behalf of a Company, and (B) no Company has made or suffered any unauthorized acquisition, access, Use or disclosure of any Personal Data that, individually or in the aggregate, materially compromises the security or privacy of such Personal Data. No Company has notified, either voluntarily or as required by a Law or order, any affected individual, any Governmental Authority, or the media of any breach of Personal Data, and no Company is currently planning to conduct any such notification or investigating whether any such notification is required; and

(xvi) Upon the execution, delivery, and performance by Seller of this Agreement and the Related Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, the Buyer shall have the same rights and privileges in all Company Intellectual Property, Company Software and Company Systems as each Company had in such Company Intellectual Property, Company Software and Company Systems prior to Closing.

3.22 Environmental Matters.

(a) Except as set forth on Schedule 3.22(a), each Company (i) is, and since January 1, 2014 has been, in compliance in all material respects with all Environmental Laws and Environmental Permits; (ii) possesses all Environmental Permits which are required for the operation of its business, (iii) is in compliance in all material respects with the provisions of all

such Environmental Permits, and (iv) is not required to incur any capital expenditures to maintain compliance with Environmental Laws. A copy of any written notice, citation, inquiry or complaint which any Seller Party or any Company has received since January 1, 2014 of any alleged violation of any Environmental Law or Environmental Permit is set forth on Schedule 3.22(a).

(b) Except as set forth on Schedule 3.22(b), none of the Companies have engaged in or permitted any operations or activities upon the Real Estate or any portion thereof (collectively, the “Real Property”), for the purpose of or in any way involving the manufacture, treatment, remediation, removal, generation, Release, discharge, processing, transportation, disposal, refining or dumping of any Hazardous Materials (whether legal or illegal, accidental or intentional) or the illegal or improper handling, storage, treatment or use of any Hazardous Materials, nor has any Company caused any Hazardous Materials to be constructed, deposited, Released, stored, handled, treated, disposed, leached or otherwise located on or under the Real Property, onto or underneath other properties, nor to Sellers’ Knowledge has any Hazardous Material migrated from other properties onto or under the Real Property,

(c) The Real Property is not listed or proposed for listing on the NPL pursuant to CERCLA, or listed on the CERCLIS list or any similar state or local list of sites, and to Seller’s Knowledge, there do not exist any conditions at the Real Property which, if known to a Governmental Authority, would qualify the Real Property for inclusion on any such list.

(d) To Sellers’ Knowledge, all the third Persons with which each Company has arranged, engaged or contracted to accept, treat, transport, store, dispose or remove any Hazardous Material generated or present at the Real Property, were properly permitted at the relevant time to perform the foregoing activities or conduct and no Seller Party, nor any Company has received any notice that any Company is liable for any for the foregoing activities or conduct at any property.

(e) To Sellers’ Knowledge, no Company has transported or arranged for the transport of any Hazardous Material to any facility or site for the purpose of storage, handling, treatment or disposal which (i) is or was, at the time of disposal, subject to a Remedial Action requirement issued under any solid or hazardous waste regulatory Legal Requirement, (ii) at the time of the disposal had received a notice of violation or was otherwise subject to an enforcement Action (whether in Contract, tort or otherwise), litigation (whether at law or in equity, whether civil or criminal), from, by or before any Governmental Authority, with respect to alleged violations of any Environmental Law or (iii) is listed or proposed for listing on the NPL pursuant to CERCLA, or listed on the CERCLIS list or any similar state list of sites. As used herein, “Remedial Action” means any action required to (i) clean up, remove, treat or in any other way address Hazardous Materials in the indoor or outdoor environment; (ii) prevent the Release or minimize the further Release of Hazardous Materials; or (iii) investigate and determine if a remedial response is needed, design such a response and perform post-response investigation, monitoring, operation, maintenance and care.

(f) To Seller’s Knowledge, there is not constructed, placed, deposited, stored, disposed of nor located on the Real Property any asbestos in any form which has become or threatens to become friable.

(g) Except as set forth on Schedule 3.22(g), to Sellers' Knowledge, there are no underground or surface structures, including storage tanks, landfills, impoundments, waste piles, sumps, or gas or oil wells, or associated piping, located on the Real Property.

(h) To Seller's Knowledge, there is not constructed, placed, deposited, released, stored, disposed, leaching nor located on the Real Property any polychlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts or other equipment which contain dielectric fluid containing PCBs, or any other insulating material containing urea formaldehydes.

(i) Except as set forth on Schedule 3.22(i), since January 1, 2014, none of the Companies, is, or has been, subject to any pending, or threatened in writing, investigation, judicial or administrative proceeding, notice, order, judgment, decree or settlement alleging or addressing in connection with its business or the Real Property concerning (i) any actual or alleged violation of any Environmental Law, (ii) any Remedial Action, (iii) any liabilities arising from the Release or threatened Release of any Hazardous Materials at the Real Property, (iv) any liabilities for personal injury or threatened personal injury, or injury or threatened injury to property or natural resources or (v) any liabilities or costs arising out of or under any Environmental Law.

(j) Each Company complies in all material respects and is not in violation of or liable for any failure to comply with applicable Environmental Laws.

(k) To Sellers' Knowledge and except as set forth on Schedule 3.22(k), there have been no Releases of any Hazardous Materials on, at, under, to or from the Real Property.

(l) Except for the remediation contemplated by Section 5.18, none of the Companies has any material contingent liability in connection with any Release or threatened Release.

(m) Each Company has reported all material violations of Environmental Laws and all Releases of Hazardous Materials in accordance with applicable Legal Requirements.

(n) Neither this Agreement nor the consummation of the transactions contemplated herein will result in any obligation for site investigation or cleanup, or notification to or consent of any Governmental Authority or third party, pursuant to any of the so-called "transaction triggered" or "responsible property transfer" Environmental Laws.

(o) Seller Parties have delivered to Buyer true and complete copies of, and listed on Schedule 3.22(o), all Environmental Reports in the possession or control of Seller Parties or any representative thereof.

(p) Schedule 3.22(p) sets forth a complete list of all Containers with a volume of 55 gallons or greater that are, as of September 30, 2020, present at the Properties. To Seller's Knowledge, all Containers which have been heretofore removed from the Properties have been removed in accordance with all applicable Environmental Laws.

(q) To Seller's Knowledge, no Company has assumed, either by contract or operation of law, the liability for any violation of Environmental Law or liability for any Release of Hazardous Material that is the responsibility of any third Person.

3.23 Licenses and Permits. Attached hereto as Schedule 3.23 is a list of all Permits held by each Company. Except as set forth on Schedule 3.23, (a) each Company is in material compliance with the terms and conditions of all such Permits; (b) each Permit is in full force and effect and all fees and charges with respect to each Permit have been paid in full; and (c) no material violation of any Permits is currently outstanding and no violation of the Legal Requirements governing the issuance or continued validity thereof has occurred. Except as set forth on Schedule 3.23, to the Sellers' Knowledge, no additional Permit is required from any Governmental Authority in connection with the conduct of the business of any Company in substantially the same manner as such business is currently conducted. Except as set forth on Schedule 3.23, no written claim has been made by any Governmental Authority to the effect that a Permit is necessary in respect of the business conducted by the Companies.

3.24 Banks. Schedule 3.24 sets forth (a) the name of each bank, trust company or other financial institution and stock or other broker with which each Company has an account, credit line or safe deposit box or vault, (b) the names of all Persons authorized to draw thereon or to have access to any safe deposit box or vault, and (c) the purpose of each such account, safe deposit box or vault.

3.25 Customers and Suppliers. Except as set forth on Schedule 3.25, since January 1, 2019, no material customer, supplier or interchange partner of any Company has notified any Company that it will, as a result of the transactions contemplated hereby or otherwise, cease to do business or that it will or anticipates it will materially reduce the amount of business that it does with any Company after the consummation of the transactions contemplated hereby. With respect to any Company, except as set forth on Schedule 3.25, there has been no disruption (including delayed deliveries) of the services, materials or products supplied by suppliers of the Company since January 1, 2020.

3.26 Absence of Certain Payments. No Company or any of the Companies' Affiliates, officers, directors, managers, members, employees or agents or other Persons acting on behalf of any of them have (a) engaged in any activity prohibited by the United States Foreign Corrupt Practices Act of 1977 or any other similar Legal Requirements of any other country, and (b) without limiting the generality of the preceding clause (a), used any company or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to government officials or others. No Company or any of the Companies' Affiliates, directors, officers, employees or agents of other Persons acting on behalf of any of them, has accepted or received any unlawful contributions, payments, gifts or expenditures.

3.27 Transactions with Affiliates. Except as set forth on Schedule 3.27, since January 1, 2019, no Company has purchased, acquired or leased any property or services from, or sold, transferred or leased any property or services to, or loaned or advanced any money to, or borrowed any money from, or entered into or been subject to any management, consulting or similar Contract with, or engaged in any other transaction with any Seller Party, any other

Company or any other officer, director, manager, member or shareholder of any Seller Party or any Company or any of their respective Affiliates. Except as set forth on Schedule 3.27, neither any Seller Party nor any other Affiliate of the Companies are indebted to any Company for money borrowed or other loans or advances, and none of the Companies are indebted to any such Affiliate.

3.28 Seller Parties' Brokers' Fees. Except as set forth on Schedule 3.28, no Seller Party or any Company has any liability or obligation to pay any fees or commissions to any investment banker, broker, finder or agent with respect to the transactions contemplated by this Agreement.

3.29 [Paycheck Protection Program].

(a) Schedule 3.29 contains a true and correct list of each contract for Indebtedness or other assistance (whether or not forgivable or characterized as a grant or an advance) to which any Company is a party or to which the Stock or Interests or any assets of any Company are subject (including by granting of a Lien or other Encumbrance) under the Paycheck Protection Program, the EIDL Program, or any other federal, state or local Governmental Authority's stimulus program or economic relief plan in connection with the COVID-19 global pandemic (collectively, "Stimulus Loans"), including the program pursuant to which any Stimulus Loan was obtained, the obligor thereunder, the lender thereof, the initial principal balance, date of disbursement, interest rate, balance as of the date hereof, any security interests or guarantees granted thereunder, and such other relevant identifying information with respect to each such Stimulus Loan. Seller Parties have provided to Buyer true, correct and complete copies of all definitive documents, applications, supporting materials and any other materials provided to the lender or any Governmental Authority in connection with the application or receipt of each such Stimulus Loan, including any amendments and corrections thereto.

(b) With respect to any Stimulus Loan under the Paycheck Protection Program (a "PPP Loan"), each of [REDACTED] was eligible for, and received, a PPP Loan (each a "Company PPP Loan") under the Paycheck Protection Program and the rules regulations and interpretations issued by the U.S. Small Business Administration and the U.S. Department of Treasury implementing the Paycheck Protection Program (the "PPP Laws and Regulations") in effect at the time such Company's application was submitted. The aggregate principal amount of all such PPP Loans was [REDACTED] (the "Company PPP Loan Amount"). Such Company was, at the time of submitting such application and as of the date of the applicable Company PPP Loan, eligible to receive such Company PPP Loan under the PPP Laws and Regulations in the amount applied for and the amount actually funded. At the time of submitting such application, each of [REDACTED] had a good faith belief that: (i) current economic uncertainty made the application for a PPP Loan necessary to support the ongoing operations of the Company taking into account the Company's current business activity and its ability to access other sources of liquidity sufficient to support its ongoing operations in a manner not significantly detrimental to the Company; (ii) the information provided in such application and the information provided in all supporting documents and forms was true and accurate in all material respects; and (iii) in connection with obtaining the PPP Loan, none of the Companies nor Seller Parties nor, to Sellers' Knowledge, any representative of any of the

foregoing, made any misstatement or omission of fact (whether intentional or unintentional) to any Governmental Authority or any other third party. The certifications contained in each Company PPP Loan application were made in good faith by an authorized representative of such Company.

(c) Each of [REDACTED] utilized its PPP Loan funds in accordance with the PPP Laws and Regulations. No Company used the PPP Loan funds for purposes not authorized under the PPP Laws and Regulations.

(d) If, prior to the Closing, any Company has applied for forgiveness of any portion of the Company PPP Loan Amount, such Company certified in good faith that: (i) the dollar amount for which forgiveness was requested was used to pay costs that are eligible for forgiveness under and in accordance with the PPP Laws and Regulations; (ii) it accurately verified the payments for the eligible payroll and nonpayroll costs for which it requested forgiveness; and (iii) the information provided in the forgiveness application and in all supporting documents and forms was true and correct in all material respects.]

3.30 No Other Representations and Warranties. Except for the representations and warranties contained in this Article III and Article VIII (including in each case the related portions of the Schedules), and the Related Agreements, none of Seller Parties, or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of or with respect to the Companies, including any representation or warranty as to the accuracy or completeness of any information regarding the Companies furnished or made available to Buyer and its managers, directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents and representatives (including any information, documents or material made available to Buyer in any data room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Companies, or any representation or warranty arising from statute or otherwise in law. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE III AND ARTICLE VIII (INCLUDING IN EACH CASE THE RELATED PORTIONS OF THE SCHEDULES), AND THE RELATED AGREEMENTS, SELLER PARTIES EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF THE BUSINESSES AND ASSETS OF THE COMPANIES, AND SELLER PARTIES SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS OF THE COMPANIES, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE III AND ARTICLE VIII (INCLUDING IN EACH CASE THE RELATED PORTIONS OF THE SCHEDULES), AND THE RELATED AGREEMENTS, SUCH SUBJECT ASSETS ARE BEING INDIRECTLY ACQUIRED “AS IS, WHERE IS” ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND BUYER SHALL RELY SOLELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller Parties that as of the date hereof and as of the Closing Date:

4.01 Existence and Qualification. Buyer is a limited liability company duly organized, validly existing and in good standing under the Legal Requirements of the State of Delaware, has the requisite power to own, manage, lease and hold its properties and to carry on its business as and where such properties are presently located and such business is presently conducted.

4.02 Authority, Approval and Enforceability.

(a) Buyer has all requisite power and legal capacity to execute and deliver this Agreement and all Related Agreements executed and delivered or to be executed and delivered by Buyer in connection with the transactions provided for hereby, to consummate the transactions contemplated hereby and by the Related Agreements, and to perform its obligations hereunder and under the Related Agreements. This Agreement and each Related Agreement to which Buyer is a party have been or will be duly executed by the Buyer.

(b) This Agreement and each Related Agreement to which Buyer is a party constitutes, or upon execution and delivery will constitute, the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as such enforcement may be limited by general equitable principles or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar Legal Requirements which affect creditors' rights generally (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.03 No Proceedings. No Action is pending or, to Buyer's knowledge, threatened in writing in the past twelve (12) months, seeking to restrain or prohibit the Buyer from entering into this Agreement or any transactions contemplated hereby or prohibit the Closing, or seeking damages against the Buyer as a result of the consummation of this Agreement. Neither Buyer nor any of its material assets is or are subject to any order, writ, judgement, injunction, decree or award.

4.04 Investment Intent. The Buyer is acquiring the Stock and Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof.

4.05 [RESERVED]

4.06 No Knowledge of Misrepresentations or Omissions. None of [REDACTED], [REDACTED] or [REDACTED] has actual knowledge of a fact or circumstance that makes any representation or warranty of the Seller Parties in this Agreement or the Schedules hereto untrue or incorrect in any material respect. None of [REDACTED], [REDACTED] or [REDACTED] shall be deemed to have actual knowledge of a fact or circumstance simply because it is contained in a document, agreement, writing or otherwise in the Data Room.

4.07 Buyer's Reliance. Buyer is not relying on any statement, representation or warranty, oral or written, express or implied, made by the Seller Parties, except as expressly set

forth in this Agreement as qualified or limited by the Schedules and acknowledges that (a) neither the Seller Parties nor any of their respective Affiliates shall have any liability to the Buyer or any of its Affiliates resulting from the use of any information, documents or materials made available to the Buyer, whether orally or in writing, in any confidential information memoranda, data rooms, management presentations, due diligence discussions or in any other form in expectation of the transactions contemplated by this Agreement, unless such information, documents or materials are specifically referred to in this Agreement or the Schedules; and (b) neither the Seller Parties nor any of their respective Affiliates is making, directly or indirectly, any representation or warranty except as set forth in this Agreement and as qualified or limited by the Schedules, including, without limitation, with respect to any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of any Company heretofore delivered to or made available to Buyer or any of its equityholders, managers, officers, employees, agents, representatives, lenders or Affiliates. Notwithstanding the foregoing, this Section 4.07 shall not apply in the event of Fraud by a Seller Party.

4.08 No Defaults or Consents. Except as set forth on Schedule 4.08, neither the execution and delivery of this Agreement nor the consummation of any of the transactions contemplated hereby will: (a) breach any of the terms, conditions or provisions of the Governing Documents of the Buyer; (b) breach any provision of any Legal Requirement, award, or decree to which the Buyer is a party, or by which any property or asset of Buyer is bound or affected; or (c) require Buyer to obtain or make any waiver, consent, action, approval or authorization of, or registration, declaration, notice or filing with, any third party or any Governmental Authority.

4.09 Buyer Brokers' Fees. Except as set forth on Schedule 4.09, Buyer has no liability or obligation to pay any fees or commissions to any investment banker, broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE V COVENANTS

5.01 [RESERVED]

5.02 [RESERVED]

5.03 [RESERVED]

5.04 [RESERVED]

5.05 [RESERVED]

5.06 Employee Matters.

(a) At or prior to Closing, the Seller Parties shall cause the Companies to terminate the employment of the individuals set forth on Schedule 5.06. Except as contemplated by the 401(k) Plan Termination Documents, Seller Parties shall cause each Company to take commercially reasonable actions necessary or appropriate to cause each Employee Benefit Plan

or other Contract with respect to employees in effect on the date of this Agreement (as described or required to be described on Schedule 3.14(j)) to remain in full force and effect.

(b) At or prior to Closing, the Seller Parties shall cause the Companies to terminate the employment of the individuals set forth on Schedule 5.06, and the Companies shall be responsible for paying all amounts due to such individuals in connection with their termination, including payments for all wages, benefits and other liabilities and for obtaining appropriate releases from such individuals on or prior to Closing. To the extent such amounts are not actually paid prior to Closing, they shall be included as a Current Liability and included in the calculation of Estimated Closing Working Capital and Closing Working Capital.

5.07 [RESERVED]

5.08 Payoff of Existing Indebtedness. At Closing, Seller Parties shall provide Buyer with (a) evidence of satisfaction in full or release of all notes, or obligations of each Company to or on behalf of any Seller Party or any other Affiliate of each Company; or (b) Payoff Letters with respect to all Existing Indebtedness, which Payoff Letters shall contain payoff amounts, per diems, wire transfer instructions and an agreement to deliver, upon full payment, UCC-3 termination statements, other appropriate releases and any original promissory notes or other evidences of Indebtedness marked canceled.

5.09 [RESERVED]

5.10 Further Assurances. From time to time, as and when requested by any party hereto and at such party's expense, any other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

5.11 Publicity. No party hereto shall issue or make, or cause to have issued or made, any public release or announcement concerning this Agreement or the transactions contemplated hereby, without the advance approval in writing of the form and substance thereof from the other party which approval shall not be unreasonably withheld, conditioned or delayed.

5.12 Business Names. Following the Closing, Seller Parties and their Affiliates shall refrain from using any of the business names included on Schedule 3.06 or any derivation thereof.

5.13 Distributions. At least one (1) Business Day prior to the Closing Date: (a) [REDACTED] shall effectuate the [REDACTED]; (b) [REDACTED] shall effectuate or cause to be effectuated the [REDACTED]; (c) [REDACTED] shall effectuate or cause to be effectuated the Land Distribution; (d) [REDACTED] shall effectuate or cause to be effectuated the [REDACTED]; and (e) each of [REDACTED] shall effectuate or cause to be effectuated the [REDACTED].

5.14 Director, Officer and Manager Indemnification.

(a) Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by the Companies now existing in favor of each Person who is now, or has been at

(b) For a period of six (6) years after the Closing Date, the obligations of Buyer and the Companies under this Section 5.14 shall not be terminated or modified in such a manner as to adversely affect any officer, director or manager to whom this Section 5.14 applies without the consent of such affected officer, director or manager (it being expressly agreed that the officers, directors or managers to whom this Section 5.14 applies shall be third party beneficiaries of this Section 5.14, each of whom may enforce the provisions of this Section 5.14).

(c) If prior to the sixth anniversary of the Closing Date, Buyer, any of the Companies or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Buyer or the Companies, as the case may be, shall assume all of the obligations set forth in this Section 5.14.

(d) Notwithstanding anything in this foregoing Section 5.14 to the contrary, this Section 5.14 shall not be deemed to limit in any respect the indemnification obligations of any Seller Party as set forth in Article VII and Article VIII.

[REDACTED]

1. **Identify the main components of the system.**
 2. **Define the scope and objectives of the project.**
 3. **Develop a detailed project plan.**
 4. **Implement the plan and monitor progress.**
 5. **Evaluate the results and provide feedback.**

[REDACTED]

[REDACTED]

[REDACTED]

(f)

[REDACTED]

5.16 Cooperation on PPP Loan Matters. Buyer shall, at Seller Parties' sole expense, use commercially reasonable efforts to cooperate, as and to the extent reasonably requested by Seller Parties, the applicable PPP Loan lender or any Governmental Authority, in connection with obtaining forgiveness of all or a portion of the Company PPP Loans, and any audit, litigation or other proceeding related thereto. Notwithstanding the foregoing, nothing in this Section 5.16 shall require, or be construed to require, Buyer to, or permit any Seller Party to, (x) take any action that would reasonably be expected to materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement, or (y) pay any fines or

penalties related to any Company PPP Loan. For the avoidance of doubt and except as expressly set forth in the preceding sentence, the Seller Parties shall be entitled to solely control the PPP Loan forgiveness process, the entry into definitive documentation thereof, and all communications with respect thereto; provided, that the Seller Parties shall, in good faith, consider the input of Buyer and its Affiliates with respect to such PPP Loan forgiveness process; and provided further, that no Seller Party shall take any action with respect to the PPP Loan that would reasonably be expected to materially and adversely impact any Company or the economic or business benefits to Buyer of the transactions contemplated by this Agreement.

5.17 Non-Solicitation.

(a) For a period of eighteen (18) months commencing on the Closing Date, Seller Parties shall not, and shall not permit any of their Affiliates to, directly or indirectly, hire or solicit any employee of Buyer or any Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; provided, that nothing in this Section 5.17 shall prevent a Seller Party or any of its Affiliates from hiring (i) any employee whose employment has been terminated by a Company or Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(b) Each Seller Party acknowledges that a breach or threatened breach of this Section 5.17 would give rise to irreparable harm to Buyer and the applicable Company for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by a Seller Party of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(c) Each Seller Party acknowledges that the restrictions contained in this Section 5.17 are reasonable and necessary to protect the legitimate interests of Buyer and the Companies and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement.

Remediation.

(a) Seller Parties covenant and agree that each shall diligently complete, at the sole cost and expense of the Seller Parties, all Remedial Actions required by the [REDACTED] in response to the [REDACTED] to address any Hazardous Material Released in soil, soil vapor, groundwater or surface water at the [REDACTED] facility in [REDACTED], until each [REDACTED] responsible for some aspect of the Remedial Action has issued a written notification that no further Remedial Action is necessary (“Remedial Action Completion”).

(b) Buyer shall provide Seller Parties and their employees, agents, representatives and contractors (collectively, “Seller Agents”) reasonable access to the [REDACTED] to perform the Remedial Action upon the following terms:

(i) Seller Parties and Seller Agents shall undertake the Remedial Action in a commercially reasonable manner and shall promptly repair and Restore any damage caused by any Remedial Action and, as soon as permitted or required by [REDACTED] shall properly close and remove, at the sole cost and expense of Seller Parties, all monitoring and groundwater extraction wells, if any, and all other Remedial Action structures, if any, in accordance with all Legal Requirements. Seller Parties shall give Buyer at least two weeks’ notice of any Remedial Action work to be performed at the [REDACTED] and shall cooperate with Buyer with scheduling any intrusive work at the [REDACTED], including agreeing to work in evenings and weekends if necessary to avoid interference with Buyer’s activities. For purposes of this Section 5.18(b)(i) the term “Restore” shall mean, with respect to the [REDACTED] filling all open excavations, reinstalling the removed portion of track [REDACTED] reinstalling engine tie up track [REDACTED] and repairing any and all damages to structures, roads or equipment. No other removed tracks will be reconstructed or reinstalled and other removed site features, including but not limited to, the sand tower and the inspection pit will not be restored.

(ii) No Seller Party or Seller Agent shall unreasonably interfere with Buyer’s activities at the [REDACTED]. Seller Parties shall be solely responsible for, and jointly and severally liable for, the safety of Seller Parties and Seller Agents. Notwithstanding that Seller Parties are solely responsible for the safety of the Remedial Action, Seller Parties shall and shall cause Seller Agents to comply with Buyer’s reasonable safety rules.

(iii) Seller Parties shall defend, indemnify and hold Buyer harmless from and against any and all Losses and damages arising out of the death or injury of any person or damages to any property to the extent caused by any negligent act or omission or intentional misconduct at the [REDACTED] by Seller Parties or any Seller Agent. Seller Parties shall at all times during the Remedial Action, maintain in full force and effect, at their own expense, a policy of comprehensive general liability insurance with respect to injury, loss, death and property damage arising in connection with Seller Parties’ Remedial Action at the [REDACTED]. Such insurance shall be in an amount of at least [REDACTED] combined single limit per occurrence, which may be satisfied with any combination of primary and umbrella coverage. The policies shall have a contractual liability rider and shall name Buyer as an additional insured and shall not be terminable except upon at least thirty (30) days’ prior written notice. Upon Buyer’s request, Seller Parties shall give to Buyer a certificate evidencing such insurance coverage.

(c) Seller Parties and Buyer shall reasonably cooperate in the performance of the Remedial Action. Seller Parties shall have exclusive control of the Remedial Action provided however, that Seller Parties shall consult with Buyer in the conduct of the Remedial Action and shall promptly provide Buyer with copies of all correspondence with [REDACTED] pertaining to the Remedial Action. Seller Parties shall provide any submittals to [REDACTED] to Buyer for Buyer’s review reasonably in advance of submittal and Buyer may comment on such

submittal. Seller Parties shall consider all comments and shall integrate any comments pertaining to actions interfering with or affecting Buyer's or any Company's operations. Buyer shall have no obligation to consent to any deed restriction or covenant restricting the Buyer's use of the [REDACTED], except that Buyer shall consent to a restriction limiting the use of the [REDACTED] to nonresidential uses.

(d) Notwithstanding the provisions of Section 5.18(a), above, Seller Parties' obligations under this Section 5.18 shall not extend to any contamination (other than as described in Section 5.18(a), above) or environmental investigation, remediation or remedial action found to have been or to be required because of Buyer's acts or omissions or as a result of the acts or omissions of Buyer's agents, employees, or invitees. Nothing in this Agreement shall require the Seller Parties to indemnify Buyer under this Section 5.18 for any claims, administrative actions, losses, damages, response costs and reasonable and necessary expenses brought or claimed by any party which does not relate to the events identified in Section 5.18(a) or which was identified after the date of this Agreement and not part of the [REDACTED] Remediation. Seller Parties' obligation to indemnify Buyer pursuant to Section 5.18(b)(iii), above, shall terminate upon receipt of Remedial Action Completion from [REDACTED].

ARTICLE VI

[RESERVED]

ARTICLE VII

INDEMNIFICATION

7.01 Survival. All representations and warranties made by each party in this Agreement and in any certificate delivered in connection herewith (other than any representations or warranties contained in Section 8.01 and elsewhere related to Taxes which are subject to Article VIII) shall survive the Closing Date for a period of eighteen (18) months after the Closing; *provided, however*, that the representations and warranties set forth in Section [REDACTED] shall survive indefinitely and the Fundamental Representations and Extended Representations shall survive until the expiration of the applicable statute of limitations. All representations and warranties related to any claim asserted in writing and specifying the factual basis and amount of the claim in reasonable detail (to the extent then known) by Buyer prior to the expiration of the applicable survival period shall survive (but only with respect to such claim) until such claim shall be resolved and payment in respect thereof, if any is owing, shall be made. Notwithstanding anything to the contrary contained herein, any claim that a party committed Fraud regarding the representations and warranties made in this Agreement shall survive until the expiration of the applicable statute of limitations. The survival periods set forth above in this Section 7.01 are intended to replace and supersede any applicable statute of limitations to bring a claim, lawsuit, arbitration or other proceeding even though the survival period may be shorter or longer than otherwise provided by applicable Legal Requirements. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in Article VIII which are subject to Article VIII) shall survive the Closing indefinitely or, if specified, for the period explicitly specified herein with respect to a particular covenant or agreement.

7.02 Indemnification.

(a) Seller Parties shall, jointly and severally, subject to the limitations set forth in this Article VII, indemnify and defend and hold harmless Buyer and its officers, directors, managers, members, employees, agents, representatives, Affiliates, and their respective successors and assigns (the “Buyer Indemnified Parties”) against and with respect to any and all Losses arising from, in connection with or with respect to the following items:

- (i) any breach or misrepresentation of a representation or warranty by any Seller Party contained in this Agreement or any certificate delivered in connection herewith;
- (ii) any breach or failure to fulfill any agreement or covenant on the part of any Company or any Seller Party;
- (iii) any Existing Indebtedness;
- (iv) any of the Seller Parties’ Transaction Expenses;
- (v) any items set forth on Schedule 7.02(a); and
- (vi) any and all Actions, suits, proceedings, judgments, settlements, costs, penalties and legal and other expenses incident to any of the foregoing.

(b) Buyer shall, subject to the limitations set forth in this Article VII, indemnify, defend and hold harmless Seller Parties and their employees, agents, representatives, shareholders, officers, directors, Affiliates and assigns (the “Seller Indemnified Parties”) against and with respect to any and all Losses arising from, in connection with or with respect to the following items:

- (i) any breach or misrepresentation of a representation or warranty by Buyer contained in this Agreement or a certificate delivered in connection herewith;
- (ii) any breach or failure to fulfill any agreement or covenant on the part of Buyer; and
- (iii) any and all Actions, suits, proceedings, judgments, settlements, costs, penalties and legal and other expenses incident to any of the foregoing.

(c) Notwithstanding anything to the contrary contained in this Agreement, (i) Seller Parties shall not have an obligation to indemnify any Buyer Indemnified Parties pursuant to Section 7.02(a)(i) unless the aggregate amount of Losses incurred by any Buyer Indemnified Party exceeds [REDACTED] (the “Deductible”) at which point, Seller Parties shall, jointly and severally, indemnify Buyer Indemnified Parties only for the amount of such Losses that exceed the Deductible but which such amount shall not in any event, except as provided in (iii) below, exceed [REDACTED] (the “Cap”), (ii) Buyer shall have no obligation to indemnify any Seller Indemnified Parties pursuant to Section 7.02(b)(i) unless the aggregate amount of Losses incurred by any Buyer Indemnified Parties exceeds the Deductible, at which point Buyer shall indemnify Seller Indemnified Parties only for the amount of such Losses that exceed the Deductible, but which such amount shall not exceed the Cap, (iii) the parties acknowledge that

the Deductible and the Cap shall not apply to any Losses resulting from (A) Fraud solely regarding the representations and warranties expressly made in this Agreement, (B) breaches or misrepresentations of the Fundamental Representations, (C) any Working Capital Adjustment, (D) Section 3.03(a), or (E) breaches or misrepresentations of the representations or warranties contained in Article VIII and elsewhere related to Taxes.

(d) Any Seller Indemnified Party or Buyer Indemnified Party seeking indemnification hereunder (the “Indemnified Party”) promptly shall give to the party obligated to provide indemnification to such Indemnified Party (the “Indemnitor”) a written notice (a “Claim Notice”); provided, however, that the failure of any Indemnified Party to give the Claim Notice promptly as required by this Section shall not affect such Indemnified Party’s rights under this Section 7.02 except and only to the extent such failure actually prejudices the Indemnitor. The Claim Notice shall provide reasonable detail of the claims being asserted.

(e) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section 7.02 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final non-appealable determination of a court of competent jurisdiction pursuant to Section 10.04; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree (a “Final Determination”). Subject to Section 7.03, all amounts due to the Indemnified Party shall be paid, either directly or indirectly by the Indemnitor or through the release of Indemnification Escrow Funds pursuant to the terms of the Escrow Agreement, by wire transfer within ten (10) Business Days after such Final Determination.

(f) An Indemnified Party shall notify the Indemnitor in writing, and in reasonable detail, of any Action made by any third Person against the Indemnified Party (a “Third Party Claim”) promptly after receipt by such Indemnified Party of written notice of the Third Party Claim. Notwithstanding the foregoing, should a party be physically served with a complaint with regard to a Third Party Claim, the Indemnified Party must deliver such complaint to the Indemnitor within ten (10) days after the receipt of such complaint; provided, however, that the failure of any Indemnified Party to give such notice shall not affect such Indemnified Party’s rights under this Section 7.02 except and only to the extent such failure actually prejudices the Indemnitor.

(g) In the event of the initiation of any legal proceeding with respect to a Third Party Claim (in which the only relief sought is monetary damages), the Indemnitor may elect, at its own expense, to be represented by counsel of its choice (reasonably acceptable to the Indemnified Party) and to control and defend such Third Party Claim; provided, that if the Indemnitor is a Seller Party, such Indemnitor shall not have the right to control the defense of any such Third Party Claim and the Indemnified Party shall control the defense of such Third Party Claim if (1) the claim for indemnification relates to or arises in connection with any criminal proceeding, (2) Losses resulting from such claim would reasonably be expected to exceed the Cap or remaining amount of indemnification available to the Indemnified Party under this Agreement or (3) in the reasonable judgment of the Indemnified Party’s counsel, a conflict of interest between the Indemnified Party and the Indemnitor exists as a result of such claim. In the event a Third Party Claim for which a Seller Party is the Indemnitor involves a material customer or material vendor of any Company, Buyer shall have the right to control such claim to

the full extent contemplated by this Section 7.02, but it shall reasonably consider the Indemnitor's interests in resolving such Third Party Claim. The Indemnified Party shall have the right to participate (and to retain legal counsel to participate) in any such defense at its sole cost and expense. The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, claim or demand. Such cooperation shall include the retention and the provision of records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnitor shall not settle, or agree to the entry of a final order in, any such proceeding without the prior written consent of the Indemnified Party unless (i) the sole recourse under such settlement or final order is payment by the Indemnitor of monetary damages and (ii) such settlement or final order does not obligate the Indemnified Party to admit any liability and includes a full and unconditional release of the Indemnified Parties.

(h) Any indemnification payment under this Agreement shall be considered an adjustment to the Transaction Consideration.

(i) All Tax Proceedings shall be subject to the provisions contained in Article VIII and not in this Article VII.

(j) This Section 7.02 constitutes the Buyer Indemnified Parties' and Seller Indemnified Parties' sole and exclusive remedy for any and all Losses or other claims relating to or arising from breaches of representations and warranties contained in Articles III and IV of this Agreement, except for (i) claims based on Fraud regarding the representations and warranties expressly made in this Agreement, and (ii) claims based on breaches or misrepresentations of the representations or warranties contained in Section 8.01 and elsewhere related to Taxes, which are subject to Article VIII.

(k) For purposes of this Article VII, any Losses shall be calculated without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to the relevant item set forth in Section 7.02(a) or 7.02(b), as applicable.

(l) From and after the Closing, none of the Seller Parties nor the Sellers' Representative on their behalf, shall seek, or have any right to seek, indemnification or contribution from any Buyer Indemnified Party with respect to any proceeding, claim or demand brought by any Buyer Indemnified Party (whether such proceeding, claim or demand is pursuant to this Agreement, any Related Agreement, applicable Legal Requirements or otherwise) for any amount for which any Seller Party is otherwise expressly responsible pursuant to this Agreement or any Related Agreement.

(m) Any Losses payable to a Buyer Indemnified Party pursuant to this Article VII shall be satisfied: (i) from the Indemnification Escrow Fund in accordance with the terms of the Escrow Agreement; and (ii) to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnified Party in the Indemnification Escrow Fund, directly from the Seller Parties.

7.03 Expiration of Claims. The ability of any Person to receive indemnification under Section 7.02, shall terminate on the applicable survival termination date (as set forth in Section 7.01), unless such Person shall have made a good faith claim for indemnification pursuant to Section 7.02, prior to such termination date. If a Person has made a good faith claim for indemnification pursuant to Section 7.02 prior to such termination date, such claim, if then unresolved, shall not be extinguished by the passage of the deadlines set forth in Section 7.01.

7.04 Determination of Loss Amount. The amount of any Loss subject to indemnification hereunder or of any claim therefor shall be calculated net of and shall be limited to the amount of such Loss that remains after deducting therefrom any insurance proceeds, Tax benefit realized (after taking into account any tax cost attributable to any payment, event or circumstance related to the Loss and the indemnification with respect to such Loss) in the taxable year of such Loss or for which a carryback Tax benefit is realized, and any other indemnity, contribution or similar payment realized by and paid to the applicable Indemnified Parties in respect of any such claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims. The Indemnified Parties shall use commercially reasonable efforts to seek full recovery under all insurance policies or other such indemnity, contribution or similar agreements or sources of payment covering any Loss to the same extent as they would if such Loss were not subject to indemnification hereunder; provided, however, no Indemnified Party shall be required to pursue recovery under an insurance policy or otherwise if it is reasonably likely that pursuing such recovery would result in the cancelation of such insurance or agreement. Promptly after the realization of any such insurance proceeds, or other indemnity, contribution or similar payment, the Indemnified Parties shall reimburse the applicable Indemnitor for such reduction in Losses for which the Indemnified Parties were indemnified prior to the realized reduction of such Losses.

7.05 Mitigation. Each Person entitled to indemnification hereunder and pursuant to Article VIII shall take all reasonable steps to mitigate all Losses after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

ARTICLE VIII TAX MATTERS

8.01 Representations and Obligations Regarding Taxes. Seller Parties hereby jointly and severally represent and warrant to Buyer as of the date hereof and as of the Closing Date as follows, in each case except to the extent set forth on Schedule 8.01:

(a) Each Company has duly and timely filed all Tax Returns that it was required to file and each of such Tax Returns were true, correct and complete in accordance with applicable Legal Requirements. Each Company has delivered to Buyer correct and complete copies of all Federal income Tax Returns and all state and local income and franchise Tax Returns for any taxable period since the tax period ending December 31, 2013. All elections with respect to Taxes affecting each Company are disclosed on or attached to a Tax Return of such Company.

(b) All Taxes owed by each Company (whether or not shown or required to be shown on any Tax Return and whether or not any Tax Return was required) have been timely paid. Each Company has made adequate accrual in its Financial Statements for all Taxes through the date of such Financial Statements whether or not yet due and payable and will have made adequate accrual in its financial statements for all Taxes through the Closing Date whether or not yet due and payable as of the Closing Date. Each Company has timely withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. The unpaid Taxes of each Company (i) did not, as of the most recent fiscal month end, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto).

(c) No Company is currently the beneficiary of any extension of time within which to file any Tax Return or pay any Tax. No Company has received, been the subject of, or requested a written ruling of a Governmental Authority relating to Taxes (including private letter rulings, technical advice memoranda or similar rulings), and none are currently pending or, to Sellers' Knowledge, anticipated, and no Company has entered into an agreement or contract with a Governmental Authority relating to Taxes that would have a continuing effect after the Closing Date. There is no power of attorney with respect to any Tax executed or filed with any Governmental Authority with respect to any Company.

(d) There are no Liens on any of the assets of any Company that arose in connection with any failure (or alleged failure) to pay any Tax. No Company has waived or extended any statute of limitations in respect of Taxes or agreed to any waiver or extension of time with respect to a Tax assessment or deficiency which waiver or extension has not since expired.

(e) There is no audit, dispute, claim, contest, proceeding, lawsuit, investigation, request for information, controversy or judicial proceeding, Action or order with respect to a Tax or Tax Return ("Tax Proceeding") of any Company, ongoing, pending or proposed by the Internal Revenue Service or other Governmental Authority, no written notice of a Tax Proceeding has been received by any Company. Schedule 8.01(e) lists those Tax Returns filed with respect to each Company for taxable periods ended on or after December 31, 2013 that have been audited or that have been the subject of any written or unwritten notice of any audit, examination, investigation or other proceeding. Each Company has delivered to Buyer correct and complete copies of all audit, examination, revenue agent's and other reports of, and any closing Contract with, any Governmental Authority with respect to taxable periods ended on or after December 31, 2013. Since December 31, 2013, no written claim has been made by a Governmental Authority in a jurisdiction where such Company did not file Tax Returns that it is or may be subject to taxation by that jurisdiction or that it satisfies or may satisfy the nexus requirements to be subject to taxation by that jurisdiction.

(f) No Company has made any payments, is obligated to make any payments nor is a party to any Contract that obligates it to make any payments that will not be fully deductible under section 280G of the Code or that would give rise to any obligation to indemnify any Person for any excise Tax payable pursuant to section 4999 of the Code. No Company has

entered into any sale leaseback or leveraged lease transaction that fails to satisfy the requirements of Revenue Procedure 75-21 or Revenue Procedure 2001-28 (or similar provisions of foreign Legal Requirements) or any safe harbor lease transaction, and no Company is a lessor or lessee of any tangible property located outside the United States. None of the property of any Company is tax-exempt use property within the meaning of section 168(h) of the Code, is property that is required to be treated as being owned by any other Person pursuant to the safe harbor lease provisions of former Section 168(f)(8) of the Code or is property that directly or indirectly secures any debt the interest on which is exempt from federal income Tax pursuant to Section 103 of the Code. No Company is a controlled corporation or a distributing corporation in respect of a distribution to which Section 355(e) of the Code could apply by reason of the acquisition of the Interests or Stock pursuant to this Agreement. No Indebtedness of any Company consists of “corporate acquisition indebtedness” within the meaning of Section 279 of the Code. Since January 1, 2016, no Company has distributed stock of another Person, or has had its ownership or membership interests distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(g) No Company has been nor currently is a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. No Company has or has had, a permanent establishment in any foreign country, as defined in any applicable income tax treaty to which the United States and the foreign country are parties or under the Legal Requirements of the foreign country. No Company has an overall foreign loss within the meaning of Section 904(f) of the Code.

(h) No Company is a party to any Tax allocation, Tax sharing or Tax indemnity agreement or obligation, or similar agreement, arrangement, understanding, or practice, oral or written, nor does any Company have any liability or potential liability to another party under any such agreement. No Company (i) has been a member of an Affiliated Group nor has been part of a consolidated Federal income Tax Return, and (ii) has liability for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Legal Requirements), as a transferee or successor, by contract or otherwise. No Company is a party to any joint venture, partnership or other Contract that could be treated as a partnership or entity for Federal income Tax purposes or the beneficiary of any trust or other arrangement that could be treated as a trust for Federal income Tax purposes. No Company owns or has ever owned any interest in any foreign corporation within the meaning of Section 7701 of the Code, including any “controlled foreign corporation” within the meaning of Section 957 of the Code, or a “passive foreign investment corporation” within the meaning of Section 1297 of the Code.

(i) Each Company has disclosed on its Federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of Federal income Tax within the meaning of Section 6662 of the Code. No Company has engaged in any “listed transaction” or “reportable transaction” within the meaning of section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b) or any transaction (i) that was marketed to the Company in writing as a transaction that is intended to generate substantial Tax benefits and (ii) with respect to which any Company has paid a promoter of the transaction total fees in excess of [REDACTED]

(j) No Company will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting or improper use of a method of accounting, in each case that was used for a taxable period ending on or prior to the Closing Date, (ii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision under any state, local or foreign Legal Requirement), which in each case occurred on or prior to Closing, (iii) installment sale or open transaction disposition made on or prior to the Closing Date (iv) prepaid amount received on or prior to the Closing Date, (v) any closing agreement pursuant to Code Section 7121 (or any corresponding or similar provision under any state, local or foreign Legal Requirement), (vi) Code Section 263A, (vii) any election under Code Section 108(i), (viii) any gain recognition agreement under the Code or otherwise, and (ix) any debt forgiveness with respect to the Paycheck Protection Program.

(k) No Company and no Seller Party is a “foreign person” as defined in Section 1445 of the Code.

(l) Each Company has consistently classified for Tax purposes individuals who have provided services to such Company as either an employee or independent contractor in accordance with applicable Legal Requirements.

(m) Each of [REDACTED] has been at all times since January 1, 2000, eligible to be treated as, and properly classified for Tax purposes (including federal and applicable state and local Tax purposes) as an S corporation within the meaning of Section 1361(a)(1) of the Code, and was eligible to make and made on a timely basis, an election under Section 1362(a) of the Code. Each such election was effective on the election date and has remained in effect continuously from such election date, and such election has not been terminated, whether by revocation, disqualification or any other reason, at any time during the period beginning on the election date through and including the Closing Date. No actions have been taken and no omissions have occurred which would cause such election to terminate or to be revoked at any time.

(n) No Company is currently, nor will at any time through and including the Closing Date, be liable for any Tax under Section 1374 of the Code or any analogous or similar state, local or foreign Legal Requirement (whether prior to the Closing Date, as a result of the transactions contemplated by this Agreement, or otherwise). No Company has, since December 31, 2013 (i) acquired assets from another corporation in a transaction in which its Tax basis for the acquired assets was determined, in whole or in part, by reference to the Tax basis of the acquired assets (or any other property) in the hands of the transferor or (ii) acquired the stock of any corporation which is a qualified subchapter S subsidiary.

(o) Each of [REDACTED] currently are, and have at all times since formation, been duly classified for income Tax purposes (including federal and applicable state and local income Tax purposes) as disregarded as an entity separate from its owner (also known as a “disregarded entity”) within the meaning of Treasury Regulation Section 301.7701-3.

8.02 Covenants With Respect To Taxes.

(a) Seller Parties shall cause each Company to grant to Buyer or its designees access at all reasonable times to all of such Company's books and Records (including Tax work papers and Tax Returns and correspondence with Tax authorities), including the right to take extracts therefrom and make copies thereof. Buyer shall (i) grant to Sellers' Representative access at all reasonable times to each of the Company's books and Records (including Tax work papers and Tax Returns and correspondence with Tax authorities), including the right to take extracts therefrom and make copies thereof, to the extent that the books and Records relate to the operations of a Company with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, and (ii) otherwise cooperate with Seller Parties in connection with any audit of Taxes that relate to the business of a Company with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, in each case to the extent relevant to Seller Parties' indemnification obligations under Section 8.03 hereof. Seller Parties and the Companies shall ensure that all Tax-sharing agreements, Tax allocation agreements, Tax indemnity agreements or similar agreements with respect to or involving each Company shall be terminated as of the Closing Date and, after the Closing Date, each such Company shall not be bound thereby or have any liability thereunder.

(b) Each Seller Party shall pay or cause to be paid all Taxes of any Company due on or prior to the Closing Date, and file or cause to be filed all Tax Returns of such Company due on or prior to the Closing Date on a basis consistent with past practice and in accordance with applicable Legal Requirements. In addition to the preceding sentence, the Seller Parties shall file or cause to be filed all required income Tax Returns of each Company for any taxable period ending on or prior to the Closing Date. For purposes of computing the deductions in such Tax Returns, the Seller Parties shall not deduct any amounts with respect to amounts forgiven under the Paycheck Protection Program, consistent with Notice 2020-32. Buyer shall file or cause to be filed all other Tax Returns for each of the Companies. With respect to Tax Returns of a Company to be filed by Buyer pursuant to the preceding sentence that relate to a taxable period (or portion thereof) ending on or prior to the Closing Date, (x) such Tax Return shall be filed in a manner consistent with past practice and no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made, or methods used in prior periods in filing such Tax Returns to the extent in compliance with Legal Requirements and (y) such Tax Returns shall be submitted to the Sellers' Representative not later than 30 days prior to the due date for filing such Tax Return (or if such due date is within 45 days following the Closing Date, as promptly as practicable following the Closing Date) for review and approval by the Sellers' Representative, which approval shall not be unreasonably withheld, conditioned or delayed, but may in all cases be withheld if such Tax Returns were not prepared in accordance with clause (x) of this sentence. Buyer shall not assume or be responsible for any Taxes of any Seller or any of the shareholders, members or other equity holders or Affiliates of any Seller. Seller Parties shall be responsible for the payment of all Taxes of each Company attributable to any taxable period (or portion thereof) ending on or prior to the Closing Date. With respect to Taxes for which a Company is liable that are payable after the Closing Date and that are attributable to any taxable period (or portion thereof) ending on or prior to the Closing Date, Seller Parties shall pay to the applicable Company or to the Buyer or other Person, in the time and manner directed by Buyer, the amount of such Taxes, or as soon as reasonably practicable thereafter. In addition to the preceding sentence, the Seller Parties shall file or cause

to the filed all required income Tax Returns of each Company for any taxable period ending on or prior to the Closing Date. For purposes of this Article VIII, with respect to a taxable period beginning on or prior to the Closing Date and ending after the Closing Date (a “Straddle Period”), the portion of Taxes attributable to any taxable period (or portion thereof) ending on or prior to the Closing Date shall be determined as follows: (i) in the case of Taxes based upon or related to income, sales, use, receipts, levels of activity, transfers or assignments of property, payments or accruals to other Persons (including, without limitation payroll and withholding Taxes), on the basis of a deemed closing at the end of the Closing Date of the books and Records of the Companies provided that any Tax exemption or allowance with respect to an annual period shall be pro-rated on an equal daily basis; and (ii) in the case of any Taxes not apportioned under clause (i) above, such as, without limitation, Real Property Taxes, personal property Taxes and similar ad valorem Taxes or obligations, and similar Taxes imposed on a periodic basis, the portion of Taxes attributable to any taxable period (or portion thereof) ending on or prior to the Closing Date shall be equal to the product of all such Straddle Period Taxes multiplied by a fraction the numerator of which is the number of days in the Straddle Period from the beginning of the Straddle Period through and including the Closing Date and the denominator of which is the total number of days in the entire Straddle Period.

(c) The Buyer and Seller Parties shall join in making an election under Code Section 338(h)(10) (and any corresponding elections under state, local, or foreign tax law) (collectively, a “Section 338(h)(10) Election”) with respect to the purchase and sale of the Stock hereunder. The Parties shall mutually prepare Internal Revenue Service (“IRS”) Forms 8023 (with all required attachments), 8883, and any corresponding forms under comparable provisions of applicable state or local law (the “Section 338(h)(10) Forms”), the Parties shall execute such Section 338(h)(10) Forms, and following the Closing, Buyer shall promptly and timely file or cause to be filed such executed Section 338(h)(10) Forms and provide written evidence of such filing to the Seller Parties. The Parties shall report the purchase of the Stock pursuant to this Agreement consistent with the Section 338(h)(10) Election, and no person shall take any position to the contrary thereto in any Tax Return, any proceeding before any taxing authority or otherwise, unless required to do so by applicable law or pursuant to a “determination” as defined in Code Section 1313(a).

(d) Attached as Schedule 8.02(d) is an allocation of the Transaction Consideration among the assets of each of the Companies. Any subsequent adjustments to the Purchase Price shall be made consistent with such allocation. Buyer and Seller Parties agree to file Federal tax Form 8594 in accordance with the agreed allocation and no party shall take a position on any Tax Return, before any Tax authority or in any judicial proceeding that is, in any manner, inconsistent with such allocation schedule. Buyer and Seller Parties shall use such allocation for all tax reporting purposes. If, contrary to the intent of the Parties as expressed in Schedule 8.02(d), any taxing authority makes or proposes an allocation different from that contemplated in Schedule 8.02(d), Buyer and Seller Parties shall cooperate with each other in good faith to contest such taxing authority’s allocation (or proposed allocation); provided, however, that, after consultation with the party adversely affected by such allocation (or proposed allocation), the other party may file such protective claims or returns as may reasonably be required to protect its interest.

(e) Notwithstanding anything to the contrary, none of Buyer or any of its Affiliates shall (or shall cause or permit any Company to) amend, refile or otherwise modify (or grant an extension of any statute of limitations with respect to any) Tax Return relating in whole or in part to any Company with respect to any taxable period ending on or prior to the Closing Date (or with respect to any Straddle Period) without the prior written consent of the Sellers' Representative, which consent shall not be unreasonably withheld, conditioned, or delayed.

8.03 Indemnification for Taxes.

(a) Seller Parties hereby agree to indemnify, jointly and severally, Buyer and its Affiliates, including, after the Closing, each of the Companies (each herein sometimes referred to as an "Indemnified Taxpayer") against, and agree to protect, save and hold harmless each Indemnified Taxpayer from, any and all Taxes, claims, damages, deficiencies and losses and all expenses, including attorneys', accountants' and experts' fees and disbursements, consisting of, related to, or resulting from, the following:

(i) all Taxes incurred by, imposed on, or attributable to any Company for any taxable period (or portion thereof) ending on or prior to the Closing Date;

(ii) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which any Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any analogous or similar state, local or non-U.S. Legal Requirement;

(iii) all Taxes of any Person imposed on any Company as a transferee or successor, by contract, Legal Requirements, indemnification agreement or otherwise;

(iv) all Taxes arising from or occasioned by the sale of the Interests or the Stock pursuant to this Agreement, including all Taxes incurred or caused by reason of Distributions, including Taxes by or imposed on any Company pursuant to Section 1374 of the Code (or any analogous or similar state, local or foreign Legal Requirement), or any state, local, or non-U.S. Tax imposed on any Company, and including any Transfer Taxes and the employer's share of payroll Taxes attributable to any compensatory payments made, or to be made, in connection with the transactions contemplated by this Agreement;

(v) any Taxes of any Seller Party or any of the equity holders or Affiliates of any Seller Party; and

(vi) any misrepresentation or breach of any representation, warranty or covenant or obligation set forth in this Agreement related to Taxes, including those set forth in this Article VIII.

(b) If an Indemnified Taxpayer shall receive notice of the fact that a claim with regard to a Tax Proceeding shall be made by any Governmental Authority that, if successful, would result in the indemnification of an Indemnified Taxpayer (hereinafter, a "Tax Claim"), the Parties shall provide the notice and have the rights with respect to any legal

proceeding relating to such Tax Claim consistent with the provisions applicable to a Third Party Claim set forth in Sections 7.02(f) and (g).

(c) Any amounts payable to Buyer pursuant to this Article VIII shall be satisfied: (i) from the Indemnification Escrow Fund in accordance with the terms of the Escrow Agreement; and (ii) to the extent such amounts exceed the amount available to Buyer in the Indemnification Escrow Fund, directly from the Seller Parties.

8.04 Survival. Anything to the contrary in this Agreement notwithstanding, the indemnification obligations of Seller Parties under this Article VIII shall survive the Closing until ninety (90) days after the end of the applicable statutes of limitations as the same may be extended and shall not be subject to the Deductible or the Cap; provided, however, if an Indemnified Taxpayer makes a claim prior to the expiration of such survival, the indemnification obligations of the Seller Parties under this Article VIII shall survive until such claim is finally resolved. With respect to any indemnification obligation for any Tax for which a Governmental Authority or other Person asserts a claim within ninety (90) days before the end of the applicable statute of limitations, an Indemnified Taxpayer shall be treated as having provided timely notice to Seller Parties by providing written notice to Seller Parties on or before the thirtieth (30th) day after the Indemnified Taxpayer's receipt of a written assertion of the claim by the Governmental Authority or other Person and the Seller Parties' indemnification obligations with respect to such claim shall survive until such claim is finally resolved.

8.05 Transfer Taxes. All transfer, documentary, recording, sales, use, stamp, registration, bulk sale, and other similar Taxes and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) (collectively, "Transfer Taxes") incurred or arising in connection with this Agreement or the transactions contemplated hereby shall be paid by the applicable party when due, and the party required by applicable Legal Requirements to file the necessary Tax Returns and other documentation will, at its own expense, file such items with respect to all such Transfer Taxes and, if required by applicable Legal Requirements, the other Parties will, and will cause its Affiliates to, join in the execution of any of those Tax Returns and other documentation. Each of the Seller Parties on one hand and Buyer on the other will bear fifty percent (50%) of any such Transfer Tax and timely provide reimbursement for any such Transfer Tax paid by the other party in excess of such amount.

ARTICLE IX

[RESERVED]

ARTICLE X

MISCELLANEOUS

10.01 Confidentiality.

(a) After Closing, each Seller Party shall, and shall cause its Affiliates and its and their employees, agents, accountants, legal counsel and other representatives and advisers to, hold in strict confidence all, and not divulge or disclose any, information of any kind concerning the transactions contemplated by this Agreement, any Company, Buyer or their respective businesses; provided, however, that the foregoing obligation of confidence shall not apply to

(i) information that is or becomes generally available to the public other than as a result of a disclosure by a Company, or any of its Affiliates or any of its or their employees, agents, accountants, legal counsel or other representatives or advisers, (ii) information that is or becomes available to any Company or its Affiliates or any of its or their employees, agents, accountants, legal counsel or other representatives or advisers after the Closing from a source not bound by a confidentiality agreement or arrangement (written or oral) with Buyer that is known by Seller Parties, and (iii) information that is required to be disclosed by any Company or any of such Company's Affiliates or any of its employees, agents, accountants, legal counsel or other representatives or advisers as a result of any applicable Legal Requirement of any Governmental Authority; and provided further that Seller Parties shall promptly notify Buyer of any disclosure pursuant to clause (iii) of this Section 10.01(a).

(b) The obligations set forth in Sections 10.01(a) above shall supersede any existing confidentiality agreements among the parties.

10.02 Costs and Expenses. Each of the parties to this Agreement shall bear his or its own expenses incurred in connection with the negotiation, preparation, execution and closing of this Agreement and the transactions contemplated hereby (the "Transaction Expenses"). For the avoidance of doubt, the Seller Parties shall be responsible for all of the Companies' Transaction Expenses.

10.03 Notices. Any notice, request, instruction, correspondence or other document to be given hereunder by any party hereto to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by registered or certified mail, postage prepaid and return receipt requested, or by email, as follows:

IF TO BUYER:

[REDACTED]

With a copy to (which shall not constitute notice):

[REDACTED]

IF TO SELLER PARTIES:

[REDACTED]

With a copy (which shall not

constitute notice) to each of:

[REDACTED]

[REDACTED]

Each of the above addresses for Notice purposes may be changed by providing appropriate Notice hereunder. Notice given by personal delivery or registered mail shall be effective upon actual receipt. Notice given by email shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next normal Business Day after receipt if not received during the recipient's normal business hours. All Notices by email shall be confirmed by the sender thereof promptly after transmission in writing by registered mail or personal delivery.

10.04 Governing Law. The provisions of this Agreement and the documents delivered pursuant hereto shall be governed by and construed in accordance with the Legal Requirements of the [REDACTED] (excluding any conflict of law rule or principle that would apply to the Legal Requirements of another jurisdiction). Each party hereto irrevocably submits to the jurisdiction of the state or federal courts of competent subject matter jurisdiction located in [REDACTED] in any Action arising out of or relating to this Agreement or any of the Related Agreements, and each party hereby irrevocably agrees that all claims in respect of any such Action must be brought and/or defended in such court. Each party hereto consents to service of process by any means authorized by the applicable Legal Requirements of the forum in any Action brought under or arising out of this Agreement or any of the Related Agreements, and each party irrevocably waives, to the fullest extent each may effectively do so, the defense of an inconvenient forum to the maintenance of such Action in any such court. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION ARISING HEREUNDER.

10.05 Entire Agreement; Amendments and Waivers. This Agreement, together with the Related Agreements and all exhibits and schedules attached hereto and thereto, constitutes the entire agreement between and among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as set forth specifically herein or contemplated hereby. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all of the parties to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other

provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

10.06 Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns; but neither this Agreement nor any of the rights, benefits or obligations hereunder shall be assigned, by operation of law or otherwise, by any Seller Party without the prior written consent of Buyer or by Buyer, other than to an Affiliate or a lender, without the prior written consent of Seller Representative. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

10.07 Specific Performance. Without limiting the rights of a party hereto to pursue all other legal and equitable rights available to such party for another party's failure to perform its obligations under this Agreement, the parties hereto acknowledge and agree that the remedies at law for any failure to perform their respective obligations hereunder may be inadequate and that each party shall be entitled to seek specific performance, injunctive relief or other equitable remedies in the event of any such failure.

10.08 Remedies. Except as otherwise provided in this Agreement, (a) the rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by any party hereto shall not preclude or constitute a waiver of its right to use any or all other remedies, and (b) such rights and remedies are given in addition to any other rights and remedies a party may have by Legal Requirements or otherwise.

10.09 Exhibits and Schedules. Any exhibits and Schedules referred to herein are attached hereto and incorporated herein by this reference.

10.10 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A manual signature exchanged electronically (by email in .pdf format) shall be deemed an original for this Agreement and for all documents to be delivered at Closing.

10.11 References and Construction.

(a) Whenever required by the context, and is used in this Agreement, the singular number shall include the plural and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification the Person may require. References to monetary amounts, specific named statutes and generally accepted accounting principles are intended to be and shall be construed as references to United States dollars, statutes of the United States of the stated name, including amendments thereto, and United States generally accepted accounting principles, respectively, unless the context otherwise requires. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." As used herein, words in the singular will be held to include the plural and vice versa (unless the context otherwise requires), words of one gender shall be held to include the other gender (or the neuter)

as the context requires, and the terms “hereof”, “herein”, and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The provisions of this Agreement shall be construed according to their fair meaning and neither for nor against any party hereto irrespective of which party caused such provisions to be drafted. Each of the parties acknowledges that it has been represented by an attorney in connection with the preparation and execution of this Agreement.

(c) Except as otherwise set forth herein, time is of the essence with regard to all dates and time periods set forth herein.

10.12 Attorneys’ Fees. In the event any suit or other legal proceeding is brought for the enforcement of any of the provisions of this Agreement, the parties hereto agree that the prevailing party or parties shall be entitled to recover from the other party or parties upon final judgment on the merits reasonable attorneys’ fees (and sales Taxes thereon, if any), including attorneys’ fees for any appeal, and costs incurred in bringing such suit or proceeding.

10.13 Attorney-Client Privilege. Buyer acknowledges that, following the Closing Date, the Seller Parties shall retain all right, title and interest they may have in and to any attorney-client privilege with respect to communications among the Seller Parties and their counsel occurring prior to the Closing Date in connection with the preparation for, negotiation of and consummation of the transactions contemplated by this Agreement, whether or not records of any such communications remain in the possession of the Seller Parties following the Closing Date.

ARTICLE XI DEFINITIONS

Capitalized terms used in this Agreement are used as defined in this Article XI or elsewhere in this Agreement.

11.01 Action. The term “Action” means any claim, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, citation, summons, or subpoena of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, threatened, initiated or before any Governmental Authority, arbitrator or mediator.

11.02 Affiliate. The term “Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. The term “control” as used in the preceding sentence means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by Contract, credit arrangement or otherwise, provided that any Person that owns more than 25% of the interests in another Person shall be deemed to have control. For the avoidance of doubt, with respect to each Seller Party and, prior to Closing, any Company, the term “Affiliate” includes [REDACTED]

████████████████████ and any other entity which ██████████ controls but that Buyer is not purchasing under the terms of this Agreement.

11.03 Affiliated Group. The term “Affiliated Group” means any affiliated group within the meaning of section 1504(a) of the Code or any similar group or other group of Persons pursuant to any provision of state, local or foreign Legal Requirements.

11.04 Business Day. The term “Business Day” means any day that is not a Saturday, Sunday, legal holiday or other day on which banks are required to be closed in ██████████.

11.05 Buyer Release. The term “Buyer Release” means the release substantially in the form attached hereto as Exhibit A.

11.06 Capital Equipment. The term “Capital Equipment” means equipment owned by a Company with an original purchase price of at least ██████████ and listed on such Company’s depreciation schedule.

11.07 CERCLA. The term “CERCLA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980.

11.08 CERCLIS. The term “CERCLIS” means the Comprehensive Environmental Response Compensation and Liability Information System and the Superfund Enterprise Management System.

11.09 Closing Working Capital. The term “Closing Working Capital” means (a) the aggregate amount of Current Assets *minus* (b) the aggregate amount of Current Liabilities.

11.10 Code. The term “Code” means the Internal Revenue Code of 1986, as amended, and the administrative interpretations thereof.

11.11 Consent. The term “Consent” means any consent, action, approval or authorization of, any third party or any Governmental Authority (a) that is required under any Legal Requirements or Material Agreement to consummate the transactions contemplated hereunder or (b) which Buyer requires in connection with the consummation of the Transactions contemplated hereunder.

11.12 Containers. The term “Containers” means above-ground and under-ground storage tanks, vessels and related equipment and containers.

11.13 Contracts. The term “Contracts”, when described as being those of or applicable to any Person, means any and all contracts, obligations, agreements, franchises, understandings, arrangements, leases, licenses, commitments, easements, servitudes, rights of way, mortgages, bonds, notes, guaranties, liens, or other instruments or undertakings to which such Person is a party or to which or by which such Person or the property of such Person is subject or bound, except such term shall exclude any tariffs, regulations, or obligations Seller is required to undertake by virtue of being a common carrier railroad subject to the jurisdiction of various Governmental Authorities.

11.14 Current Assets. The term “Current Assets” means the total accounts receivable (net of allowance for doubtful accounts), inventory, prepaid expenses and deposits of the Companies as of the Closing Date, in each case calculated in accordance with GAAP Consistently Applied plus an amount of cash equal to the liabilities recorded as unearned revenue and billings in excess as of the Closing Date in each case calculated in accordance with GAAP Consistently Applied.]

11.15 Current Liabilities. The term “Current Liabilities” means the total accounts payable, accrued interest payable, accrued wages and salaries, accrued payroll, accrued payroll taxes, payroll taxes payable, sales and use taxes payable, accrued property taxes and railroad unemployment (RUI) payable, as of the Closing Date, in each case calculated in accordance with GAAP Consistently Applied.]

11.16 EIDL Program. The term “EIDL Program” means the Economic Injury Disaster Loan program administered by the U.S. Small Business Administration under 15 U.S.C. §636(b)(2) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof.

11.17 Environmental Laws. The term “Environmental Laws” means all statutes, regulations, ordinances, rules, and regulations, all court orders and binding decrees and arbitration awards, and the common law, which pertain to environmental matters or environmental contamination. Environmental Laws include those relating to: manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Materials; air, land, surface or ground water or noise pollution; Releases; protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other Persons relating to Hazardous Materials; and notification requirements relating to the foregoing.

11.18 Environmental Report. The term “Environmental Report” means any report, study, assessment, audit or other similar document that addresses any issue of actual or potential noncompliance with, actual or potential liability under or cost arising out of, or actual or potential impact on business in connection with, any Environmental Law or any proposed or anticipated change in or addition to any Environmental Law, or regarding any Hazardous Materials or Hazardous Materials Releases, that may affect any such Company, including any Person for which any such Company may be liable.

11.19 Environmental Permits. The term “Environmental Permits” means any material Permits which are required under or are issued pursuant to Environmental Laws.

11.20 Escrow Agent. The term “Escrow Agent” means [REDACTED].

11.21 Escrow Agreement. The term “Escrow Agreement” means the Escrow Agreement to be entered into by Buyer, Seller Parties and the Escrow Agent at the Closing, substantially in the form of Exhibit B. The Escrow Agreement will provide for four different escrow accounts (a) to secure general indemnification obligations with any residual being released after [REDACTED]; (b) to secure environmental indemnification obligations with any residual being released after a no further action letter is secured with respect to [REDACTED]; (c) to secure the forgiveness of the Company PPP Loan Amount with any residual

being released after all audits are conducted and the forgiveness amount is final; and (d) to secure the sales and use tax issue with any residual being released once a final determination is made with respect to the sales and use taxes.

11.22 Extended Representations. The term “Extended Representations” means the representations and warranties set forth in [REDACTED]

11.23 Fraud. The term “Fraud” means actual common law fraud under [REDACTED] law (which, for the avoidance of doubt, shall not include any extrinsic omissions, equitable fraud, constructive fraud or negligent fraud) regarding the transactions contemplated by, or the representations or warranties expressly contained in, this Agreement.

11.24 Fundamental Representations. The term “Fundamental Representations” means the representations and warranties set forth in [REDACTED]

11.25 Governing Documents. The term “Governing Documents” means, (a) with respect to any particular entity: (i) if a corporation, the articles or certificate of incorporation and the bylaws; (ii) if a general partnership, the partnership agreement and any statement of partnership; (iii) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (iv) if a limited liability company, the articles of organization or certificate of formation and operating agreement or limited liability company agreement; (v) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (b) all material equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or relating to the rights, duties and obligations of the equity holders of any Person; and (c) any amendment or supplement to any of the foregoing.

11.26 Governmental Authority. The term “Governmental Authority” means any nation or country (including the United States) and any state, commonwealth, territory or possession thereof and any political subdivision of any of the foregoing, including courts, departments, regulatory agencies, administrative agencies, taxing agencies or authorities, commissions, boards, bureaus, agencies, ministries or other instrumentalities, and any other entity exercising law or rule making power (whether or not self-regulating).

11.27 Hazardous Materials. The term “Hazardous Materials” means pollutants, contaminants, radioactive substances, solid wastes or hazardous or extremely hazardous, dangerous or toxic wastes, substances, chemicals or materials, biohazard materials, mold, viruses and fungi within the meaning of any Environmental Law and all pollutants, contaminants,

hazardous, dangerous or toxic chemical materials, wastes or any other substances, including fuel, lubricating oil and other petroleum substances, PCB's, any per- and polyfluoroalkyl substances, and any industrial process or pollution control waste which poses a hazard to the environment or the health and safety of any Person.

11.28 Indebtedness. The term “Indebtedness” means, with respect to any Person at any date, without duplication, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital and operating lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) guarantees made by the Person on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g); **provided, however, that the term “Indebtedness” shall not include Intercompany Indebtedness to the extent such Intercompany Indebtedness is reflected as a receivable on the books and records of a Company**].

11.29 Indemnification Escrow Amount. The term “Indemnification Escrow Amount” means [REDACTED].

11.30 Intercompany Indebtedness. The term “Intercompany Indebtedness” means (a) any loan or advance of money to any Company or Affiliate thereof by any other Company or Affiliate thereof; and (b) any borrowing of money by any Company or Affiliate thereof from any other Company or Affiliate thereof.

11.31 Legal Requirements. The term “Legal Requirements” means any and all applicable local, state and federal laws, rules, codes, constitutions, treaties, common law, ordinances, regulations, judgments, interpretations, orders, directives, injunctions, writs, decrees or awards of, and any Contracts with, any Governmental Authority.

11.32 Lien. The term “Lien” means any lien, security interest, pledge, bailment, mortgage, hypothecation, deed of trust, conditional sales and title retention agreement (including any lease in the nature thereof), charge, encumbrance, adverse claim, charge, restriction or other similar arrangement or interest in real or personal property (“Encumbrance”), other than Permitted Encumbrances.

11.33 Loss(es). The term “Loss(es)” means all losses, liabilities, penalties, fines, damages and expenses, including reasonable legal fees and expenses, but excluding, in each case, punitive damages (unless payable to a third party). Losses shall be calculated to avoid any double recovery with respect to any matter including in the calculation of Closing Working Capital.

11.34 Material Adverse Effect. The term “Material Adverse Effect” shall mean a material adverse effect on (a) the Companies in the aggregate, the business of the Companies in the aggregate, or their assets, liabilities, results of operations or financial condition, taken as a whole, (b) the ability of Seller Parties or Buyer to operate the Companies in the manner consistent

with past practices, or (c) the ability of Seller Parties to perform their respective obligations hereunder or to consummate the transactions contemplated hereby. Material Adverse Effect shall not include any adverse change, event, circumstance or effect resulting solely from, or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Companies operate; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any changes in applicable Laws; (vi) any epidemic, pandemic, disease outbreak (including Covid-19) or other health crisis or public health event, or the worsening of any of the foregoing; or (vii) the transactions contemplated in this Agreement and the public announcement thereof unless the change, event, circumstance or effect disproportionately impacts the Companies in the aggregate or their assets, liabilities, results of operations or financial condition, taken as a whole, the ability of Seller Parties or Buyer to operate the Companies in the manner consistent with past practices or the ability of the Seller Parties to perform their respective obligations hereunder or to consummate the transactions contemplated hereby.

11.35 NPL. The term “NPL” means the list of national priorities among the known Releases or threatened Releases of Hazardous Materials throughout the United States and its territories.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.38 Paycheck Protection Program. The term “Paycheck Protection Program” means the loan program administered by the U.S. Small Business Administration under 15 U.S.C. §636(a)(36) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof.

11.39 Permits. The term “Permits” means any and all material permits, registrations, approvals, licenses, authorizations, legal status, orders, or certificates under any Legal Requirement and granted by any Governmental Authority.

11.40 Permitted Encumbrances. The term “Permitted Encumbrances” means (a) Liens for Taxes or other monetary charges, assessments and fees not yet due and payable; (b) mechanic's, carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business consistent with past practice relating to amounts that are not yet due and payable; (c) easements, rights of way, zoning ordinances, leases, covenants, restrictions, imperfections, irregularities of title and other similar encumbrances affecting the Real Property, none of which materially and adversely affect the railroad operations of the Companies as historically conducted; (d) Liens granted in connection with Contracts entered into in the ordinary course of business; (e) those Encumbrances arising from acts or omissions of Buyer; and (f) with respect to the Leased Real Estate or any other non-owned assets of the Seller Parties, Encumbrances that do not arise through Seller Parties.

11.41 Person. The term “Person” means an individual, a partnership (limited, general or otherwise), a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or enterprise, a Governmental Authority or any other entity.

11.42 Properties. The term “Properties” means any and all properties and assets (real, personal or mixed, tangible or intangible) owned or currently Used by any of the Companies.

11.43 Release. The term “Release” means any spill, seepage, discharge, leak, migration, emission, escape, injection, pouring, pumping, emptying, dumping, disposal or other release of any Hazardous Materials into the environment.

11.44 Related Agreements. The term “Related Agreements” means any or all of the exhibits to this Agreement, the Escrow Agreement, and any and all other agreements, instruments or documents required or expressly provided under this Agreement to be executed and delivered in connection with the transactions contemplated by this Agreement.

11.45 Restrictive Covenant Agreement. The term “Restrictive Covenant Agreement” means the restrictive covenant agreement dated as of the Closing Date in the form attached hereto as Exhibit C.

11.46 Railroad Retirement Board Obligations. The term “Railroad Retirement Board Obligations” means the amount of any obligation due to the Railroad Retirement Board from or with respect to any Company as of the Closing Date.

11.47 Schedules. The term “Schedules” means the schedules accompanying this Agreement.

11.48 Seller; Seller Parties. The terms “Seller” and “Seller Parties”, as applicable, shall mean [REDACTED] and [REDACTED]

11.49 Sellers’ Knowledge. The term “Sellers’ Knowledge” or any other similar knowledge qualification, means the actual knowledge of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] or [REDACTED], and what a reasonable person in such individual’s respective position would know after due inquiry.

11.50 Subsidiaries. The term “Subsidiaries” means such Persons of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by the Companies.

11.51 Target Working Capital. The term “Target Working Capital” means [REDACTED].

11.52 Tax. The term “Tax” means any foreign (i.e. non-U.S.) or U.S., federal, state or local income, gross receipts, gross income, profits, gross margin, margin, franchise, estimated, alternative minimum, production, add-on minimum, sales, use, transfer, registration, withholding, value added, excise, natural resources, severance, stamp, occupation, occupancy, ad valorem, goods and services, premium, windfall profit, capital, gain, capital gain, environmental, customs,

duties, Real Property, personal property, escheat, unclaimed property, capital stock, social security, railroad retirement, unemployment, disability, payroll, employment, self-employment, FICA obligations, FUTA obligations, Railroad Retirement Tax Act obligations, Railroad Retirement Act obligations, Railroad Unemployment Insurance Act obligations, Medicare, Medicaid, license or recapture license, employee or other withholding, or other tax of any kind whatsoever, or any assessments, reassessments and other governmental charges, fees, duties, impositions and liabilities including unemployment insurance contributions and employment insurance contributions, and worker's compensation and deductions at source, of any kind whatsoever, including any interest, penalties or additions to Tax or additional amounts (whether disputed or not) in respect of the foregoing; the foregoing shall include any transferee, successor or secondary Liability for a Tax, and any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person, any liability to make Tax distributions and any liability assumed by agreement or arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included or required to be included) in any Tax Returns relating thereto, including pursuant to Treasury Regulation 1.1502-6 or any similar provision of state, local or non-U.S. Law. The terms "Tax" and "Taxes" shall have the same meaning.

11.53 Tax Return. The term "Tax Return" means any return, declaration, report, claim for refund or information return or statement relating to any Tax, including any schedule or attachment thereto and including any amendment of any of the foregoing.

11.54 Track. The term "Track" means any railroad track whether regulated by the Surface Transportation Board as a line of railroad or ancillary thereto and falling under the provisions of 49 U.S.C. § 10906, or private track over which any Company has a possessory interest, any other track materials including all rails, ties, tie plates, spikes, angle bars, bolts, fasteners, switches, switch control devices, ballast, signals, other support structures Used in the operation of a railroad and any right of way or land, including land held in rails to trails.

11.55 Treasury Regulations. The term "Treasury Regulations" means any and all regulations promulgated by the Department of the Treasury pursuant to the Internal Revenue Code.

[REDACTED]

11.57 [REDACTED]. The term "[REDACTED]" means, collectively, [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

11.58 [REDACTED]. The term "[REDACTED]" means the release substantially in the form attached hereto as Exhibit D.

11.59 Used. The term “Used” or “Uses” means, with respect to the Properties, Contracts or Permits of the Companies, those necessary for Companies’ respective business and operations, whether or not reflected on the Companies’ books of account.

11.60 Other Defined Terms. Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
401(k) Plan Termination Documentation	Section 2.02(r)
Agreement	Preamble
Buyer	Preamble
Buyer Indemnified Parties	Section 7.02(a)
Cap	Section 7.02(c)(i)
Claim Notice	Section 7.02(d)
██████████	Section 11.02
Closing	Section 2.01
Closing Cash Consideration	Section 1.02(a)
Closing Date	Section 2.01
Closing Working Capital Statement	Section 1.04(a)
Companies	Recital C
Company	Recital C
Company ERISA Affiliate	Section 3.14(j)
Company Intellectual Property	Section 3.21(a)(ii)
Company PPP Loan	Section 3.29(b)
Company PPP Loan Amount	Section 3.29(b)
Company Registered Intellectual Property	Section 3.21(a)(iii)
Company Software	Section 3.21(a)(iv)
Company Systems	Section 3.21(a)(v)
██████████	Recital C
████████████████████	Recital D
Data Room	Section 3.21(a)(vii)
Data Security Requirements	Section 3.21(a)(viii)
Deductible	Section 7.02(c)(i)
Disputed Amounts	Section 1.05(b)
Distributions	Recital D
██████████	Recital D
████████████████████	Recital D
██████████	Preamble
Employee Benefit Plans	Section 3.14(j)
Encumbrance	Section 11.32
ERISA	Section 3.14(j)
Estimated Closing Working Capital	Section 1.03(a)
Estimated Closing Working Capital Statement	Section 1.03(a)
Existing Indebtedness	Section 1.02(a)(ii)
Final Determination	Section 7.02(e)(iii)

<u>Term</u>	<u>Section</u>
Final Invoices	Section 1.03(b)(i)
Final Working Capital Adjustment	Section 1.04(b)
Financial Statements	Section 3.15(a)
GAAP	Section 1.03(a)
GAAP Consistently Applied	Section 1.03(a)
Grants	Section 3.13
Indemnification Escrow Fund	Section 2.03(b)
Indemnified Party	Section 7.02(d)
Indemnified Taxpayer	Section 8.03(a)
Indemnitor	Section 7.02(d)
Intellectual Property	Section 3.21(a)(i)
Intellectual Property Agreements	Section 3.21(a)(vi)
Interests	Recital F
IRS	Section 8.02(c)
Land Distribution	Recital D
Lease	Section 3.12(c)
[REDACTED]	Recital B
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Material Agreements	Section 3.19(a)
Most Recent Balance Sheet	Section 3.15(b)(i)
[REDACTED]	Section 5.18(a)
[REDACTED] Remediation	Section 5.18(a)
Notice	Section 10.03
[REDACTED]	Section 5.15(b)(i)
Payoff Letters	Section 1.03(b)
PCBs	Section 3.22(h)
Personal Data	Section 3.21(a)(ix)
PPACA	Section 3.14(t)
PPP Laws and Regulations	Section 3.29(b)
PPP Loan	Section 3.29(b)
Real Estate	Section 3.12(a)
Real Property	Section 3.22(b)
Records	Section 2.02(i)
Remedial Action	Section 3.22(e)
Remedial Action Completion	Section 5.18(a)
Restore	Section 5.18(b)(i)
Review Period	Section 1.05(a)
[REDACTED]	Section 5.15(c)
[REDACTED]	Section 5.15(b)(ii)
[REDACTED]	Section 5.15(a)(ii)
[REDACTED]	Recital D
[REDACTED]	Recital D

<u>Term</u>	<u>Section</u>
Section 338(h)(10) Election	Section 8.02(c)
Section 338(h)(10) Forms	Section 8.02(c)
Seller Agents	Section 5.18(b)
Seller Indemnified Parties	Section 7.02(b)
Seller Parties' Accountants	Section 1.05(a)
Seller Parties' Report	Section 1.05(a)
Sellers' Representative	Preamble
Settlement Accountants	Section 1.05(b)
[REDACTED]	Preamble
[REDACTED]	Section 5.15(a)(ii)
[REDACTED]	Section 5.15(a)(i)
Stimulus Loans	Section 3.29(a)
Stock	Recital E
Straddle Period	Section 8.02(b)
[REDACTED]	Recital A
[REDACTED]	Recital E
Tax Claim	Section 8.03(b)
Tax Proceeding	Section 8.01(e)
[REDACTED]	Recital B
[REDACTED]	Recital F
Third Party Claim	Section 7.02(f)
Trade Secrets	Section 3.21(a)(i)(C)
Transaction Consideration	Section 1.02
Transaction Expenses	Section 10.02
Transfer Taxes	Section 8.05
Transition Services Agreement	Section 2.01(n)
[REDACTED]	Recital D
[REDACTED]	Recital D
Union	Section 3.14(d)
[REDACTED]	Section 11.02
WARN Act	Section 3.14(i)
[REDACTED]	Recital C
[REDACTED]	Recital A
[REDACTED]	Recital E
[REDACTED]	Recital A
[REDACTED]	Recital E

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date first written above.

BUYER:

[Redacted]

By: _____

Name: _____

Its: _____

SELLER PARTIES:

[Redacted]

By: _____

Name: _____

Its: _____

[Redacted]

SELLERS' REPRESENTATIVE:

[Redacted]

[Signature Page to Stock and Membership Interest Purchase Agreement]

Exhibit A

Form of Buyer Release

Exhibit B

Form of Escrow Agreement

Exhibit C

Form of Restrictive Covenant Agreement

Exhibit D

Form of [REDACTED]

FD 36440

**OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT
HOLDINGS, LLC, AND JAGUAR RAIL HOLDINGS, LLC
-- ACQUISITION OF CONTROL EXEMPTION --
CIMARRON VALLEY RAILROAD, L.C.; SOUTHWESTERN RAILROAD, INC.;
TEXAS & EASTERN RAILROAD, LLC; WASHINGTON EASTERN RAILROAD, LLC;
AND WYOMING AND COLORADO RAILROAD, INC.**

VERIFICATIONS

VERIFICATION

I, Gavin Ingram, hereby verify under penalty of perjury under the laws of the United States that I am the Co-Head Private Markets Group, Managing Director and Global Head of Infrastructure of OPSEU Pension Plan Trust Fund (“OPTrust”), and that I am an officer duly designated to verify this Notice of Exemption on behalf of OPTrust. I have knowledge of the matters contained herein as they pertain to OPTrust, and the statements made herein with respect to OPTrust are true and correct to the best of my knowledge, information and belief.

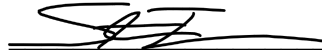
A handwritten signature in blue ink, appearing to read 'Gavin Ingram', is positioned above a horizontal line.

Gavin Ingram
Co-Head Private Markets Group, Managing
Director and Global Head of Infrastructure of
OPSEU Pension Plan Trust Fund

Dated: September 30, 2020

VERIFICATION

I, J. Stuart Towner, hereby verify under penalty of perjury that I am the Chief Executive Officer of Jaguar Transport Holdings, LLC (“JTH”), and am President of Jaguar Rail Holdings, LLC (“JRH”), and that I am an officer duly designated to verify this Notice of Exemption on behalf of JTH and JRH. I have knowledge of the matters contained herein as they pertain to JTH and JRH, and the statements made herein with respect to JTH and JRH are true and correct to the best of my knowledge, information and belief.



J. Stuart Towner
Chief Executive Officer of
Jaguar Transport Holdings, LLC
and
President of
Jaguar Rail Holdings, LLC

Dated: September 30, 2020