

PUBLIC VERSION

MIP GP-1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303243

Finance Docket No. 36566

ENTERED
Office of Proceedings
November 24, 2021
Part of
Public Record

**MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC
—ACQUISITION OF CONTROL EXEMPTION—
GRENADA RAILROAD, LLC AND FLORIDA, GULF & ATLANTIC RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

**Terence M. Hynes
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000**

*Attorneys for Macquarie Infrastructure Partners V GP, LLC, Macquarie Infrastructure
Partners V and MIP V Rail, LLC*

Dated November 24, 2021

Filing Contains Color Images

**FILED
November 24, 2021
SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
November 24, 2021
SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36566

**MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC
—ACQUISITION OF CONTROL EXEMPTION—
GRENADA RAILROAD, LLC AND FLORIDA, GULF & ATLANTIC RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Macquarie Infrastructure Partners V GP, LLC (“MIP GP”) submits this Verified Notice of Exemption (the “Verified Notice”) pursuant to 49 C.F.R. § 1180.2(d)(2) for the benefit of MIP Infrastructure Partners V fund vehicle (“MIP V”) and MIP V Rail, LLC (“MIP Rail”) to acquire control of two common carrier freight railroads that are currently owned by RailUSA, LLC (“RailUSA”): Grenada Railroad, LLC (“GRYR”) and Florida, Gulf & Atlantic Railroad, LLC (“FGA”).

Pursuant to a Purchase Agreement dated as of November 23, 2021, MIP Rail has agreed to acquire 100% of the equity interests of RailUSA from its parent, American Rail Partners, LLC (“ARP”). As a result of that transaction, MIP Rail will (indirectly) control GRYR and FGA.¹

As explained below, neither MIP Rail, MIP V, MIP GP nor any of their affiliates currently owns or controls any United States rail carrier. GRYR and FGA do not connect with one another today, and the transaction is not part of a series of anticipated transactions that would connect GRYR and FGA with one another or with any other railroad owned or controlled

¹ Because MIP Rail is wholly owned by MIP V, which is controlled by MIP GP, MIP GP may be deemed to (indirectly) control GRYR and FGA for purposes of 49 U.S.C. § 11323.

PUBLIC VERSION

MIP GP-1

by MIP Rail, MIP V, MIP GP or any other member of their corporate family. No Class I carrier is involved in the transaction. Accordingly, the transaction that is the subject of this Verified Notice is exempt under Section 1180.2(d)(2) of the Board's regulations.²

In support of this Verified Notice, MIP GP submits the following information as required by 49 C.F.R. § 1180.4(g).

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

49 C.F.R. § 1180.4(g) specifies certain information that must be included in a Verified Notice filed pursuant to 49 C.F.R. § 1180.2(d)(2). The required information is provided below, preceded by the subsection of the Board's regulations to which it is responsive.

1180.6(a)(1)(i) *A description of the proposed transaction, including . . . a brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.*

On November 23, 2021, MIP Rail, ARP and RailUSA entered into a Purchase Agreement pursuant to which MIP Rail will acquire 100% of the equity interests of RailUSA. Upon consummation of the transaction contemplated by the Purchase Agreement, MIP Rail, a non-carrier, will control RailUSA and its two common carrier railroad subsidiaries, GRYR and FGA. GRYR, a Class III carrier, operates a 228-mile rail line in Mississippi pursuant to a lease with the North Central Mississippi Regional Railroad Authority.³ FGA, a Class III carrier, owns and operates 430 miles of track (including a 373-mile main line) in Florida and Georgia.⁴

² 49 C.F.R. § 1180.2(d)(2).

³ See *Illinois Company Rail Road, LLC—Lease and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC*, STB Finance Docket No. 35940 (STB served July 9, 2015). Illinois Company Rail Road, LLC subsequently changed its name to Grenada Railroad, LLC. See *Letter from John D. Heffner to Cynthia T. Brown*, STB Finance Docket No. 35940 (filed July 14, 2015).

⁴ FGA acquired CSXT's former Panhandle Line in 2018. See *RailUSA, LLC and American Rail*

PUBLIC VERSION

MIP GP-1

MIP Rail, a Delaware limited liability company, is wholly-owned (indirectly) by MIP V.

MIP V is an Americas-focused \$6.9 billion infrastructure fund that is controlled by its general partner, MIP GP, a Delaware limited liability company.

As the foregoing description of the railroads that are the subject of this Verified Notice demonstrates, none of the lines of GRYR and FGA connect with each other – indeed, those carriers operate in entirely different states. Furthermore, the transaction is not part of a series of anticipated transactions that would connect GRYR and FGA with one another or with the lines of any rail carrier that is owned or managed by MIP Rail, MIP V, MIP GP or any of their affiliates. Finally, neither GRYR or FGA is a Class I carrier. Accordingly, this transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2), and is exempt from prior approval by the Surface Transportation Board.

The name and business address of Applicants are as follows:

Macquarie Infrastructure Partners V GP, LLC
125 W. 55th Street, Level 15
New York, NY 10019
Attention: Louis Paul
(917) 239-6091

MIP Infrastructure Partners V, LP
c/o Macquarie Infrastructure Partners V GP, LLC
125 W. 55th Street, Level 15
New York, NY 10019
Attention: Louis Paul
(917) 239-6091

Partners, LLC—Continuance in Control Exemption—Florida Gulf & Atlantic Railroad, LLC,
STB Finance Docket No. 36248 (STB served Dec. 21, 2018).

MIP V Rail, LLC
c/o Macquarie Infrastructure Partners V GP, LLC
125 W. 55th Street, Level 15
New York, NY 10019
Attention: Louis Paul
(917) 239-6091

Applicants' Counsel:

Terence M. Hynes
Marc Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8198

1180.6(a)(1)(ii) *The proposed time schedule for consummation of the proposed transaction.*

The parties intend to consummate the proposed acquisition transaction as soon as practicable after the effective date of this Verified Notice and the satisfaction of all other conditions precedent to closing set forth in the Purchase Agreement.

1180.6(a)(1)(iii) *The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.*

Pursuant to the transaction that is the subject of this Verified Notice, MIP Rail will acquire a 100% ownership interest in RailUSA. Upon consummation of the transaction, MIP Rail will control GRYR and FGA.

MIP Rail was selected by ARP from a number of interested purchasers due its ability to bring the significant financial strength and management expertise of MIP V and MIP GP to the future operation and business of GRYR and FGA. The current RailUSA management team will be supplemented with the managerial capabilities and resources of MIP V and MIP GP. MIP GP and its affiliates are experienced asset managers with a focus on infrastructure in the

transportation, communications, utilities, and energy sectors. The transaction will enhance RailUSA's access to capital and enable continued investment in GRYR and FGA.

GRYR and FGA will continue to serve customers located along their respective rail lines, and to interchange traffic with the carriers with which they connect. MIP GP's considerable infrastructure investment and operational experience will enable GRYR and FGA to maintain and grow their rail business.

1180.6(a)(5) *A list of the State(s) in which any part of the property of each applicant carrier is situated.*

GRYR's rail lines are located entirely in the State of Mississippi. FGA's rail lines are located in the States of Florida and Georgia.

1180.6(a)(6) *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.*

Color maps depicting the lines of GRYR and FGA are attached as Exhibit 1.

1180.6(a)(7)(ii) *Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

A copy of the Purchase Agreement between MIP Rail, ARP and RailUSA is attached as Exhibit 2.⁵

1180.4(g)(i) *Level of Labor Protection to be Imposed*

Both GRYR and FGA are Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the acquisition transaction that is the subject of this Verified Notice.

⁵ Applicants are filing simultaneously with this Verified Notice a Motion for Protective Order to protect commercially sensitive information in the Purchase Agreement from public disclosure.

1105.6 ***Environmental Impacts***

49 C.F.R. § 1105.6(c) provides that no environmental documentation will normally be prepared where a transaction will not result in a “significant change in carrier operations” and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5). The transaction that is the subject of this Verified Notice involves only a change in the ownership of the equity interests of RailUSA, and will not result in any change in the operations of GRYR or FGA.

Specifically, the transaction will not cause a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of those lines to motor carriage. Nor will the transaction result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activities of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic, or 50 vehicles a day. This corporate acquisition transaction will not exceed the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii). The transaction will not result in the transportation of any ozone depleting materials. Therefore, pursuant to the Board’s regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

This action will not affect either the quality of the human environment or energy conservation.

1150.8 ***Historic Impacts***

Prior Board approval or exemption would be required if, in the future, Applicants proposed to abandon or discontinue rail service over any of the rail lines of GRYR or FGA. Applicants have no plans to dispose of or alter any property that is subject to the Board’s jurisdiction and is 50 years old or older. Accordingly, pursuant to the Board’s regulations at 49 C.F.R. § 1105.8(b)(1), this Verified Notice does not require an historic report.

PUBLIC VERSION

MIP GP-1

* * *

For the foregoing reasons, Applicants respectfully request that the Board publish the requisite Notice of Exemption.

Respectfully submitted,

/s/ Terence M. Hynes
Terence M. Hynes
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

*Attorneys for Macquarie Infrastructure Partners V GP, LLC, MIP Infrastructure Partners V
and MIP V Rail, LLC*

Dated: November 24, 2021

PUBLIC VERSION

MIP GP-1

VERIFICATION

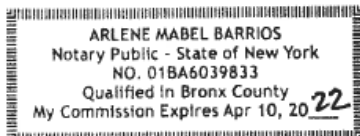
I, Karl Kuchel, being duly sworn, state that I am the Chief Executive Officer of Macquarie Infrastructure Partners V GP, LLC and that I am an officer duly authorized to execute, verify and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief.


Name: Karl Kuchel
Title: Chief Executive Officer

Subscribed and sworn to before me this 23 day of November, 2021.


Notary Public

My Commission expires: April 10, 2022



PUBLIC VERSION

MIP GP-1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36566

**MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC
—ACQUISITION OF CONTROL EXEMPTION—
GRENADA RAILROAD, LLC AND FLORIDA, GULF & ATLANTIC RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

**EXHIBIT 1
SYSTEM MAPS**

MIP GP-1

A detailed map of the Mississippi River basin, showing the river's course from Minneapolis, Minnesota, in the north to the Gulf of Mexico in the south. The river is highlighted in a thick blue line. Major cities along the river and in the surrounding region are labeled, including Minneapolis, St. Paul, St. Louis, Kansas City, Omaha, Lincoln, Chicago, New Orleans, and Houston. The map also shows state boundaries, major highways, and the Gulf of Mexico at the bottom.

FLORIDA GULF & ATLANTIC RAILROAD, LLC



PUBLIC VERSION

MIP GP-1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36566

**MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC
—ACQUISITION OF CONTROL EXEMPTION—
GRENADA RAILROAD, LLC AND FLORIDA, GULF & ATLANTIC RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

**EXHIBIT 2
PURCHASE AGREEMENT**

PURCHASE AGREEMENT
AMONG
AMERICAN RAIL PARTNERS, LLC,
RAILUSA, LLC
AND
MIP V RAIL, LLC
DATED AS OF NOVEMBER 23, 2021

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
1.1 Defined Terms.	1
1.2 Additional Defined Terms	15
1.3 Interpretation.....	17
ARTICLE II THE TRANSACTIONS.....	18
2.1 Purchase and Sale	18
2.2 Estimated Closing Statement	19
2.3 Closing; Seller Deliverables; Buyer Deliverables.	19
2.4 Post-Closing Statement.....	21
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE ACQUIRED COMPANIES	23
3.1 Organization; Authority.....	23
3.2 No Conflict.....	24
3.3 Capitalization	25
3.4 Investments.	25
3.5 Financial Statements.	25
3.6 Absence of Undisclosed Liabilities	26
3.7 Absence of Certain Changes.....	26
3.8 Tangible Personal Property	26
3.9 Real Property.	26
3.10 Sufficiency	28
3.11 Specified Contracts.....	28
3.12 Intellectual Property.....	30
3.13 Proceedings.....	30
3.14 Compliance with Laws; Specified Permits.	30
3.15 Benefit Plans.	31
3.16 Labor Matters.....	32
3.17 Tax Matters	34
3.18 Insurance	35
3.19 Environmental Matters.....	35
3.20 Material Customer; Material Vendor.....	36
3.21 Insider Transactions	37
3.22 Bank Accounts	37
3.23 Banker Fees.....	37
3.24 Certain Payments	37
3.25 Campaign Finance and Lobbying	38
3.26 No Other Representations or Warranties	38
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER.....	39
4.1 Organization.....	39
4.2 Authority of Seller	39

4.3	No Conflict.....	39
4.4	Title to Purchased Equity Interests	39
4.5	Proceedings	40
4.6	Banker Fees.....	40
4.7	Certain Payments	40
ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER		40
5.1	Organization.....	41
5.2	Authority	41
5.3	No Conflict.....	41
5.4	ECL	41
5.5	Proceedings	42
5.6	Investment.....	42
5.7	Control of Railroads.....	42
5.8	No Other Representations or Warranties	42
ARTICLE VI COVENANTS		43
6.1	Conduct of Business.	43
6.2	Access to Books and Records.....	45
6.3	Efforts to Close; STB Approval; FCC Applications.....	46
6.4	Investigation; No Additional Representations	48
6.5	Employee Matters.	49
6.6	Directors, Managers and Officers Indemnification.	49
6.7	RWI Policy.....	50
6.8	Confidentiality; Public Announcements	50
6.9	Further Assurances.....	50
6.10	Tax Matters.	51
6.11	Post-Closing Payments.	52
6.12	ECL	53
6.13	Exclusivity	53
ARTICLE VII CONDITIONS TO CLOSING; TERMINATION		54
7.1	Conditions to Obligation of Buyer.....	54
7.2	Conditions to Obligation of Seller	55
7.3	Frustration of Closing Conditions.....	55
7.4	Termination.....	55
7.5	Effect of Termination.....	56
ARTICLE VIII MISCELLANEOUS		56
8.1	Survival	56
8.2	Notices	57
8.3	Entire Agreement	58
8.4	Amendments and Waivers	59
8.5	Severability	59
8.6	No Third Party Beneficiaries	59
8.7	Assignment	59
8.8	Governing Law	59

8.9	Consent to Jurisdiction.....	59
8.10	Waiver of Jury Trial.....	60
8.11	Expenses	60
8.12	Counterparts.....	61
8.13	Disclosure Schedules	61
8.14	Captions	61
8.15	Specific Performance	61
8.16	Legal Representation.	62
8.17	No Recourse to Nonparty Affiliates.	63

Exhibits

<u>Exhibit A</u>	Sample Calculation
<u>Exhibit B</u>	Purchase Price Allocation Methodology

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “*Agreement*”), dated as of November 23, 2021, is entered into by and among American Rail Partners, LLC, a Delaware limited liability company (“*Seller*”), RailUSA, LLC, a Delaware limited liability company (the “*Company*”) and MIP V Rail, LLC, a Delaware limited liability company (“*Buyer*”). Seller, the Company and Buyer are sometimes referred to herein individually as a “*Party*”, and collectively as the “*Parties*”. Capitalized terms used herein and not otherwise defined herein have the meanings given to such terms in Article I.

RECITALS

A. Seller owns all of the issued and outstanding Equity Interests of the Company (the “*Purchased Equity Interests*”).

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Purchased Equity Interests, upon the terms and subject to the conditions set forth in this Agreement.

C. Concurrent with the execution and delivery of this Agreement, Buyer has delivered an Equity Commitment Letter (the “*ECL*”), dated as of the date hereof, by the Macquarie Funds (as defined below) in favor of Buyer.

AGREEMENTS

In consideration of the foregoing premises and the representations, warranties, and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon the terms and subject to the conditions set forth herein, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. When used in this Agreement, the following terms shall have the meanings assigned to them in this Section 1.1.

“*Accountant*” means the national office of the dispute resolution group of KPMG or, if KPMG declines to act as provided in Section 2.4, a nationally recognized firm of independent public accountants mutually acceptable to Buyer and Seller.

“*Accounting Methodology*” means GAAP as consistently applied using the same accounting policies, principles, practices, methods, judgments, classifications, categorization and estimation techniques as actually applied in the preparation of the Audited Financial Statements, provided that (i) if there is any inconsistency between GAAP and such accounting policies, principles, practices, methods, judgments, classifications, categorization and estimation techniques, GAAP shall prevail and (ii) if there is any conflict between the definitions of Closing Cash, Indebtedness, Net Working Capital, and Unpaid Transaction Expenses (together, the “*Definitions*”) and this definition of “Accounting Methodology,” the Definitions shall prevail.

“Acquired Companies” means each of the Company, Florida Gulf, and Grenada Railroad.

“Acquired Companies MAE” means any effect, event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, (i) materially adverse to the financial condition or results of operations of the Acquired Companies, taken as a whole or (ii) materially delay or materially impede the performance by each of Seller or the Company of its respective obligations under this Agreement or to consummate the Transactions; provided that none of the following shall be taken into account in determining whether there is an Acquired Companies MAE: any adverse effect, change, event, or development arising from or relating to: (a) general business, industry or economic conditions; (b) local, regional, national or international political or social conditions, including the engagement (whether new or continuing) by the United States in hostilities, whether or not pursuant to a declaration of a national emergency or war, or the occurrence of any military or terrorist attack, any natural or man-made disaster or acts of God; (c) changes in financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (d) any failure of any Acquired Company to meet any projections or forecasts (provided, that this clause (d) shall not prevent a determination that any effect, event, occurrence, fact, condition or change underlying such failure to meet projections or forecasts has resulted in an Acquired Companies MAE (provided, further, that any such effect, event, occurrence, fact, condition or change is not otherwise excluded from determining whether there is an Acquired Companies MAE)); (e) changes in GAAP; (f) changes in Laws; (g) the taking of any action expressly contemplated by this Agreement; (h) the announcement or pendency of the Transactions or the identity of the Parties and their respective Affiliates, including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, agents, distributors, employees or contractors of the Acquired Companies due to the announcement or pendency of the Transactions or the identity of the Parties and their respective Affiliates; (i) any actions by Buyer or any of its Affiliates; (j) COVID-19, any other epidemic, pandemic or outbreak of disease or any Public Safety Measures; or (k) any matter of which Buyer has knowledge on the date of the Agreement, except to the extent, with respect to clauses (a), (b), (c), (e), (f) and (j) that any such effect, change, event or development has a disproportionate impact on the Acquired Companies relative to the other Persons in the industries in which the Acquired Companies operate.

“Adjustment Escrow Amount” means an amount in cash equal to [REDACTED].

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person. For purposes of the immediately preceding sentence, the term “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise; provided, however, that, with respect to Buyer, the term “Affiliate” shall only include the Macquarie Funds and any alternative investment fund vehicle and special purpose vehicle created by the general partner of the Macquarie Funds in connection with the Transaction.

“Alternative Transaction” means an offer, proposal or inquiry from any Person (other than Buyer or any of its Representatives acting on Buyer’s behalf) regarding (i) an investment in or a sale of any of the Equity Interest of any Acquired Company or assets of any Acquired Company, (ii) any merger, reorganization, recapitalization, consolidation, or other business combination or disposition involving any Acquired Company, (iii) any third party financing of any Acquired Company (whether debt or equity) or (iv) any other transaction that would, or could reasonably be expected to, impair, interfere with, delay or prevent any of the Transactions.

“Ancillary Documents” means all agreements, documents, or certificates to be executed and delivered by a Party in connection with this Agreement, including the Assignment Agreement, the Escrow Agreement and the Mutual Release.

“Anti-Corruption Laws” means all applicable Laws relating to the prevention of corruption and bribery, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act of 2010, the anti-corruption and anti-bribery Laws of the European Union, as adopted and made applicable by its member states, and all Laws adopted in furtherance of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

“Assignment Agreement” means an assignment and assumption agreement to be dated as of the Closing Date, by and between Buyer and Seller in a form customary for transactions of this type to be agreed between the Parties in good faith prior to Closing.

“Attorney-Client Communication” means any communication occurring on or prior to the Closing between Katten and/or McLachlan, on the one hand, and Seller, the Acquired Companies, or any of their respective Affiliates or Representatives, on the other hand, that relates to any Transaction Matter.

“Banker” means Northborne Partners LLC, a Delaware limited liability company.

“Base Purchase Price” means [REDACTED].

“Benefit Plan” all written or unwritten benefit or compensation plans, policies, programs, arrangements or Contracts, including “employee benefit plans” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), “nonqualified deferred compensation” plans within the meaning of Section 409A of the Code, retirement, pension, employment (if applicable), individual consulting (if applicable), incentive, bonus or other incentive compensation, equity or equity-based, change in control, retention, severance, separation, health, welfare, paid time off, retiree or post-termination health or welfare, fringe or any other benefit or compensation plans (but excluding benefits maintained by a Governmental Entity), policies or programs, (i) sponsored or maintained by Seller or any of its Affiliates and covering Business Employees or (ii) sponsored, maintained, contributed to (or required to be contributed to) by any Acquired Company or with respect to which any Acquired Company is a party or has any Liability.

“Books and Records” means books of account, general, financial, and operating records, invoices and other documents, records and files of the Acquired Companies.

“**Business**” means the business engaged in by any Acquired Company as of the date of this Agreement and at any time during the twelve (12) month period immediately prior to the date hereof.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks located in New York, New York are authorized or required by Law to close.

“**Business Employees**” means all current employees employed by the Acquired Companies.

“**Buyer Fundamental Representations**” means the representations and warranties of Buyer set forth in: Section 5.2.

“**Buyer MAE**” means any effect, event, occurrence, fact, condition or change that would prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or to consummate the Transactions.

“**Buyer’s Knowledge**” or any similar phrase means the actual (and not constructive or imputed) knowledge of each of Louis Paul and Henry Blackford, and the actual knowledge which such Person would have obtained after making reasonable inquiry of such Person’s direct reports.

“**Campaign Finance Law**” means any applicable federal, state, and local Laws related to political activity and/or campaign finance in the United States of America, including, but not limited to, the Federal Election Campaign Act, regulations of the Federal Election Commission, pay-to-play Laws, and all state and local Laws related to political activity and/or campaign finance.

“**CARES Act**” means the Coronavirus Aid, Relief, and Economic Security Act of 2020.

“**Cash**” means all cash and cash equivalents of the Acquired Companies, calculated in accordance with GAAP, but without giving effect to the Transactions, including (without duplication) cash and checks received prior to the Measurement Time but less any checks, money orders, or similar instruments of or issued by such Person prior to the Measurement Time but not yet cleared; provided, however, that “**Cash**” shall not include any Restricted Cash.

“**Closing Cash**” means all Cash as of the Measurement Time.

“**Closing Indebtedness**” means all Indebtedness of the Acquired Companies as of the Measurement Time.

“**Closing Net Working Capital**” means the Net Working Capital as of the Measurement Time.

“**Closing Payment**” means

██████████.

“**Code**” means the U.S. Internal Revenue Code of 1986.

“Commercial Software License” means licenses of software programs that are generally commercially available to the public or businesses, which have been non-exclusively licensed to any Acquired Company pursuant to “click-wrap,” “click to download,” “browsewrap,” “shrink-wrap” or similar end-user licenses solely for their own internal use.

“Confidential Information” means all confidential and/or proprietary information regarding the Acquired Companies. Notwithstanding the foregoing, in no event shall “Confidential Information” include (a) any information that is, or thereafter becomes, available to and known by the public other than through a violation of the Confidentiality Agreement or Section 6.8(b) or (b) any information that is, or thereafter becomes, available to Seller, its Affiliates or any of their respective Representatives on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to Seller, its Affiliates or any of their respective Representatives by a legal, fiduciary, or contractual obligation.

“Confidentiality Agreement” means that certain confidentiality letter agreement, dated as of August 9, 2021, between Banker (as agent for Seller) and MIP V Holdings II, LLC.

“Consents” means any waiver, authorization, or approval from, or notification requirement to, any Person.

“Contract” means any written or oral agreement that constitutes a binding agreement under applicable Law.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions thereof.

“Current Assets” means only the current asset accounts of the Acquired Companies reflected in the line items set forth on the Sample Calculation, calculated as of the Measurement Time in accordance with the Accounting Methodology; provided, however, that “Current Assets” shall exclude Cash, Restricted Cash and any amounts to be paid pursuant to Section 6.11.

“Current Liabilities” means only the current liability accounts of the Acquired Companies reflected in the line items set forth on the Sample Calculation, calculated as of the Measurement Time in accordance with the Accounting Methodology; provided, however, that “Current Liabilities” shall exclude Closing Indebtedness and Transaction Expenses.

“Data Room” means the virtual data room for “Project Matteo” maintained by Banker on Donnelley Financial Solutions Venue® and to which Buyer, its Affiliates, and each of their respective Representatives have been given access in connection with the Transactions.

“Disclosure Schedules” or **“Schedules”** means those schedules numbered to correspond to the various sections of this Agreement setting forth certain exceptions to the representations and warranties contained herein and certain other information called for by this Agreement, delivered to Buyer pursuant to this Agreement concurrent with the execution hereof.

“Enforceability Exceptions” means, with respect to enforcement of the terms and provisions of a Contract, (a) the effect of any applicable Law of general application relating to

bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (b) the effect of general principles of equity, including general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

“Environmental Laws” means all applicable federal, state, local, and foreign Laws concerning emissions, discharges, Releases or threatened Releases, the manufacture, use, storage, disposal or transportation of Hazardous Materials, the protection of the environment, or (to the extent addressing human exposure to Hazardous Materials) worker health and safety.

“Equity Interests” means issued and outstanding capital stock, partnership interests, limited liability company interests or other indicia of equity ownership (including any profits interest or phantom stock).

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” of any entity means any trade or business that, together with such entity, is, was or would be deemed, at the relevant time, a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means the Escrow Agreement to be entered as of the Closing Date among Buyer, Seller, and the Escrow Agent, with respect to the Adjustment Escrow Amount in a form customary for transactions of this type to be agreed between the parties in good faith prior to Closing and that is acceptable to the Escrow Agent.

“Estimated Cash” means Seller's good faith estimate of Closing Cash.

“Estimated Indebtedness” means Seller's good faith estimate of Closing Indebtedness.

“Estimated Net Working Capital” means Seller's good faith estimate of Closing Net Working Capital.

“Estimated Purchase Price” means

[REDACTED]

“Estimated Unpaid Transaction Expenses” means Seller's good faith estimate of Unpaid Transaction Expenses set forth in the Estimated Closing Statement.

“Ex-Im Laws” means all applicable Laws relating to export, re-export, transfer or import controls (including the Export Administration Regulations administered by the U.S. Department of Commerce, the International Traffic in Arms Regulations, customs and import Laws administered by U.S. Customs and Border Protection and the EU Dual Use Regulation).

“*FCC*” means the Federal Communications Commission.

“*FCC Licenses*” means (a) the Radio Station Authorization, Registration Number 0027701911, for Call Signs WREY572, effective March 12, 2020, and WQKT998, effective August 24, 2019, granted by the Federal Communications Commission Wireless Telecommunications Bureau to Grenada Railroad and (b) the Radio Station Authorization, Registration Number 0028049468, for Call Sign WRD1471, effective May 6, 2019, granted by the Federal Communications Commission Wireless Telecommunications Bureau to Florida Gulf.

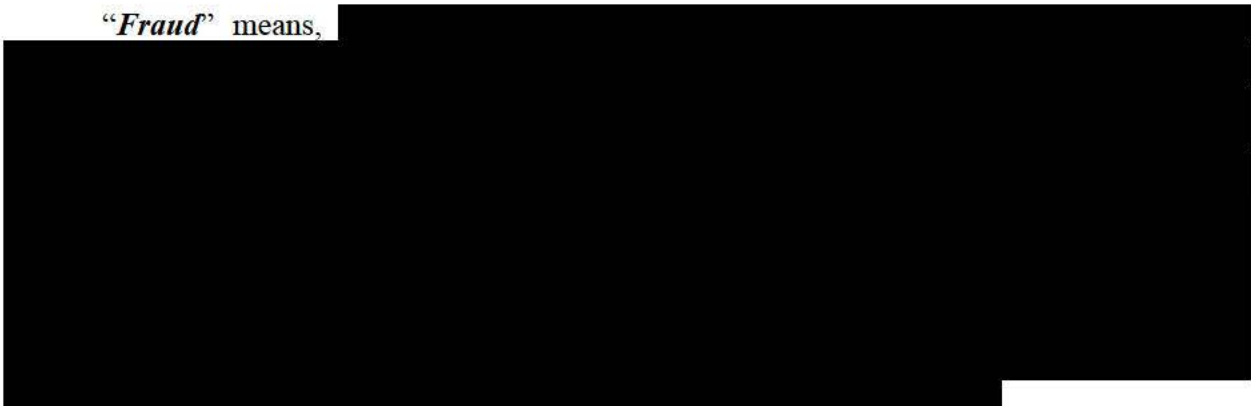
“*FELA*” means the Federal Employers' Liability Act, 45 U.S.C. § 51 et seq.

“*Final Purchase Price*” means



“*Florida Gulf*” means Florida Gulf & Atlantic Railroad, LLC, a Delaware limited liability company.

“*Fraud*” means,



“*Funded Indebtedness*” means



“*GAAP*” means United States generally accepted accounting principles, applied consistently.

“*Governmental Entity*” means any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of any United States federal, state or local government or any foreign, international, multinational or other government, including any

department, commission, board, agency, bureau, official or other regulatory, administrative or judicial authority thereof.

“Grenada Railroad” means Grenada Railroad, LLC, an Illinois limited liability company.

“Hazardous Materials” means any substance that is defined as a “hazardous substance,” “hazardous waste,” “hazardous material,” “pollutant” or “contaminant” under the Comprehensive Environmental Response Compensation and Liability Act; the Toxic Substances Control Act; the Resource Conservation Recovery Act; the Clean Water Act; the Safe Drinking Water Act; the Clean Air Act; or any analogous and applicable Environmental Law, including petroleum, asbestos, and radioactive material, or that is regulated under or gives rise to liability under any applicable Environmental Law, or that is per- or polyfluoroalkyl substances.

“Income Tax Return” means any Tax Return for Income Taxes.

“Income Taxes” means any Tax based upon or measured by gross or net receipts or gross or net income, including any Tax in the nature of minimum taxes, tax preference items and alternative minimum taxes, and Taxes on capital or net worth, membership interests or capital stock.

“Indebtedness” means





“Insider” means, with respect to any Acquired Company, (a) Seller or any Affiliate of Seller (excluding any such Acquired Company) and (b) any officer, director, manager, of Seller, any Affiliate of Seller or any Acquired Company.

“Intellectual Property” means: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents of the United States and all countries foreign thereto and all reissues, reexaminations, divisions, continuations, continuations-in-part and extensions thereof; (b) all trademarks, service marks, trade names, and Internet domain names, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all published and unpublished works of authorship (including databases and software), and all applications, registrations and renewals in connection therewith; (d) all mask works and all applications, registrations, and renewals in connection therewith; (e) all trade secrets and confidential business information (including confidential ideas, research and development, know how, methods, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); and (f) all copies and tangible embodiments of the foregoing (in whatever form or medium).

“Interim Period” means the period commencing on the date hereof and ending on the earlier of (a) the Closing Date and (b) the date on which this Agreement is terminated in accordance with Section 7.4.

“Investment” as applied to any Acquired Company means (a) any direct or indirect purchase or other acquisition by such Acquired Company of any Equity Interests of any other Person and (b) any capital contribution by such Acquired Company to any other Person.

“IRP Party” means .

“Katten” means Katten Muchin Rosenman LLP.

“Law” means any law (including common law), statute, code, ordinance, rule, regulation, treaty, decree, directive, convention or Order of any Governmental Entity.

“Leased Real Property” means all leasehold, sub-leasehold, license or other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real property used by an Acquired Company.

“Liability” means any payment, debt, obligation, deficiency, penalty, assessment, fine, claim, cause of action or other losses of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due and regardless of when asserted.

“**Lien**” means, with respect to any property or asset, any mortgage, lien, pledge, security interest, hypothecation, or any other similar encumbrance in respect of such property or asset; provided, however, that “**Liens**” shall exclude any restrictions on transfer of Equity Interests under federal and state securities Laws or Liens created by Buyer on consummation of the Transactions.

“**Lobbying Laws**” means all applicable federal, state, local, and foreign Laws concerning lobbying (including, but not limited to, grassroots lobbying), including, but not limited to, the federal Lobbying Disclosure Act, state and local lobbying laws, any ethics Laws related to the conduct of lobbying, and all applicable lobbying registration and reporting requirements.

“**Macquarie Funds**” means, collectively, Macquarie Infrastructure Partners V, L.P. and Macquarie Infrastructure Partners V, SCSp.

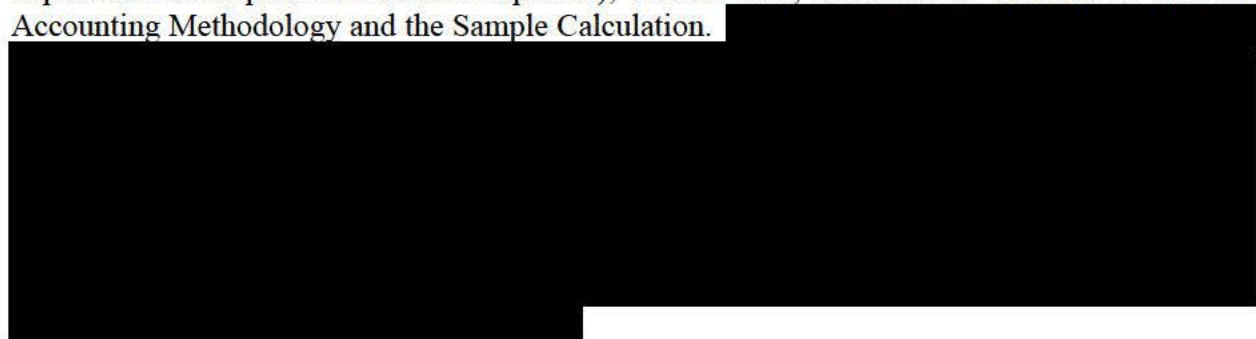
“**McLachlan**” means McLachlan, Rissman & Doll.

“**Measurement Time**” means 12:01 a.m. (Eastern) on the Closing Date.

“**Mutual Release**” means a mutual release agreement, to be dated as of the Closing Date, by and between Seller and the Company in the form in a form customary for transactions of this type to be agreed between the Parties in good faith prior to Closing.

“**NCMRRRA Capital Lease**” means the Lease/Purchase and Operating Agreement, dated as of June 23, 2015, by and among North Central Mississippi Regional Railroad Authority, Grenada Railway LLC, and Grenada Railroad (formerly known as Illinois Company Rail Road LLC), as amended by the First Amendment to Lease/Purchase and Operating Agreement, dated as of February 1, 2016, as further amended by the Second Amendment to the Lease/Purchase and Operating Agreement, dated as of December 1, 2018, and as further amended by the Third Amendment to the Lease/Purchase and Operating Agreement, dated as of July 25, 2018.

“**Net Working Capital**” means the difference between the book value of the Current Assets and the book value of the Current Liabilities (for the avoidance of doubt, without duplication of Unpaid Transaction Expenses), in each case, calculated in accordance with the Accounting Methodology and the Sample Calculation.



“**Order**” means any award, injunction, judgment, decree, ruling, subpoena, verdict, or other decision issued, promulgated or entered by any Governmental Entity of competent jurisdiction.

“Ordinary Course” means, with respect to any Acquired Company, an action that is consistent with the past custom and practices of such Acquired Company (including with respect to quantity and frequency) and is taken in the ordinary course of the normal day-to-day operations of such Acquired Company, including any Public Safety Measures adopted by the applicable Acquired Company as of the date hereof.

“Organizational Documents” means (a) in the case of a corporation, its certificate of incorporation (or analogous document) and bylaws (or analogous document); (b) in the case of a limited liability company, its certificate of formation (or analogous document) and limited liability company operating agreement; or (c) in the case of a Person other than a corporation or limited liability company, the documents by which such Person (other than an individual) establishes its legal existence or which govern its internal affairs (in each case of clauses (a), (b) and (c), as amended through the date of this Agreement).

“Owned Real Property” means all land, together with all buildings, structures, towers, improvements and fixtures located thereon, including all easements and other rights and interests appurtenant thereto, owned by any Acquired Company.

“Permit” means any material authorization, approval, certificate, license, or franchise of or from any Governmental Entity.

“Permitted Liens” means (a) Liens in respect of Taxes or other governmental charges (i) not yet due and payable or (ii) the amount or validity of which is being contested by appropriate Proceedings by the applicable Acquired Company, and for which adequate reserves have been maintained in accordance with, GAAP, (b) Liens of landlords and mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the Ordinary Course, (c) zoning, entitlement, building, environmental and other land use Laws imposed by a Governmental Entity having jurisdiction over any of the Real Property that are not violated in any material respect by the Acquired Company’s conduct of the Business as currently conducted or use of the Real Property for railroad purposes, (d) covenants, conditions, restrictions, easements and other similar matters of record or otherwise which do not materially impair the Acquired Company’s ability to conduct the Business as currently conducted or utilize the affected property for railroad purposes, (e) Liens that, individually or in the aggregate, do not materially and adversely impact the current use of the applicable Real Property for railroad purposes, (f) Liens arising under worker’s compensation, unemployment insurance, social security, retirement and similar legislation, (g) purchase money Liens and Liens securing rental payments under capital lease arrangements, (h) non-exclusive licenses of Intellectual Property granted in the Ordinary Course; (i) with respect to the Real Property, to the extent not subsumed within the foregoing clauses (a)-(h), inclusive and that do not materially impair the Acquired Company’s ability to conduct the Business as currently conducted or utilize the affected property for railroad purposes, (1) riparian and water rights; (2) claims to any portion of the Real Property which formerly or presently comprise the shores or bottom of navigable waters or to artificial accretions or fill or rights or claims of parties to such lands; (3) to the extent any portion of the Real Property is bounded or traversed by a public or private road, the rights of others in and to any portion of the Real Property that lies within said road; (4) discrepancies or conflicts in boundary lines, shortages in area, encroachments or any other facts which a survey, railroad valuation map or inspection of the Real Property would disclose; (5) oil, gas and other minerals as may have been previously

reserved by or conveyed to others and any mineral leases concerning the mineral estate of the Real Property, provided such do not affect the surface of the Real Property in such way that would materially impair the Acquired Company's ability to conduct the Business as currently conducted or utilize the affected property for railroad purposes; and (6) rights, if any, relating to the construction and maintenance of wires, poles, pipes, conduits and appurtenances thereto, on, under, above or across the Real Property; (7) servitudes, rights-of-way, flowage rights, restrictions, licenses, leases, reservations, covenants, agreements and other rights of third parties to the extent relating to or affecting the Real Property that would not, individually or in the aggregate have an Acquired Companies MAE; and (j) any Liens in respect of Indebtedness to be paid off at Closing.

"Person" means a natural person, a corporation, a partnership, a limited partnership, a limited liability company, a trust, an unincorporated association, a Governmental Entity, or any other entity.

"Pre-Closing Tax Period" means any Tax period that ends on or prior to the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Preamble" means the introductory paragraph and the Recitals of this Agreement.

"Proceeding" means any action, arbitration, audit, claim, complaint, charge, dispute, inquiry, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator or mediator.

"Public Safety Measures" means (a) any closures, "shelter-in-place," "stay at home," workforce reduction, social distancing, shut down, closure, curfew, or other restrictions or any other Laws, directives, guidelines or recommendations issued by any Governmental Entity, the Centers for Disease Control and Prevention, the World Health Organization, or any industry group in connection with COVID-19 or any other epidemic, pandemic or outbreak of disease, or in connection with or in response to any other global health conditions or (b) any restrictions that arise out of any local, national, or international political or social conditions, civil unrest, protests or public demonstrations and the response of any Governmental Entity thereto or any escalation or worsening thereof.

"Railroad Assets" means rail track, rail ties, rail bed, ballast, bridges, culverts, tunnels, locomotives, rail cars, maintenance of way equipment, and the buildings, plants and structures used for railroad operation or maintenance.

"Real Property" means, collectively, the Owned Real Property and the Leased Real Property.

"Rehabilitation Grant" means

[REDACTED]



“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the indoor or outdoor environment.

“Representatives” of any Person means the directors, officers, managers, employees, consultants, financial advisors, counsel, accountants, and other similar agents of such Person.

“Restricted Cash” means the cash amounts as of the Measurement Time included in the general ledger account numbers 1020 and 1004 of Florida Gulf (representing client deposits received in cash for capital projects).

“RWI Insurer” means Liberty Surplus Insurance Corporation.

“RWI Policy” means a buy-side representations and warranties insurance policy issued by the RWI Insurer to Buyer with respect to this Agreement and any excess representations and warranties insurance policies providing coverage in excess of the policy issued by the RWI Insurer.

“Sample Calculation” means the sample calculation of Net Working Capital as of July 31, 2021 set forth on Exhibit A, which was prepared in accordance with the Accounting Methodology.

“Sanctioned Country” means any country, territory or region that is the subject of comprehensive restrictive Sanctions Laws from time to time (which includes, as of the date of this Agreement, Cuba, Iran, North Korea, Syria and the Crimea region).

“Sanctioned Person” means any Person that is, at any time, the subject or target of sanctions or restrictions under Sanctions Laws or Ex-Im Laws, including any Person: (a) listed on any Sanctions Laws-related list of designated or blocked persons, including OFAC’s Specially Designated Nationals and Blocked Persons List and the EU Consolidated List; (b) that is a resident of or organized under the Laws of a Sanctioned Country; or (c) majority-owned or controlled, directly or indirectly, by any Person or Persons described in clauses (a) or (b).

“Sanctions Laws” means those trade, economic and financial sanctions Laws, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by (a) the United States of America (including the Department of Treasury, Office of Foreign Assets Control), (b) the European Union and enforced by its member states, (c) the United Nations, (d) Her Majesty’s Treasury or (e) any other Governmental Entities from time to time.

“Securities Act” means the Securities Act of 1933.

“Seller Fundamental Representations” means the representations and warranties of Seller or the Company set forth in: the first sentence of Section 3.1(a), Section 3.1(c), clause (i) of Section 3.2, Section 3.3, Section 3.23, Section 4.1 (as it relates to organization, existence and good standing), Section 4.2, clause (i) of Section 4.3, Section 4.4, and Section 4.6.

“Seller’s Knowledge” or any similar phrase means the actual (and not constructive or imputed) knowledge of each of Barbara Wilson, Patricia Bencivenga, Trevor Costilow and Scott McMillan, and the actual knowledge which such Person would have obtained after making reasonable inquiry of such Person’s direct reports.

“STB” means the Surface Transportation Board.

“STB Approval” means the final approval, authorization or exemption, as the case may be, of the Transactions pursuant to 49 U.S.C. § 11323 *et seq.* and the related regulations at 49 C.F.R. § 1180.

“Straddle Period” means any taxable period that begins before and ends after the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, limited partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, limited partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof.

“Target” means [REDACTED].

“Tax” means all U.S. federal, state, provincial, local and foreign income, profits, franchise, gross receipts, escheat, environmental, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, personal and real property, withholding, excise, production, transfer, alternative minimum, value added, occupancy and other taxes and charges in the nature of tax, including interest and penalties with respect to the foregoing.

“Tax Returns” means any return, declaration, report, claim for refund, or information return or statement supplied or required to be supplied to a taxing authority relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Threatened” means, in the case of a Proceeding, such Proceeding shall be deemed to have been **“Threatened”** if any demand or statement has been made or any notice has been received by the Person against whom such threat is to be enforced.

“Transaction Deductions” means all Tax deductions available to Seller or any Acquired Company as a result of or in connection with the Transactions (including deductions related to repayment of Indebtedness, the payment of Transaction Expenses and payments of amounts that

would have been Transaction Expenses but for the fact that they were paid prior to the Closing, and the payment of any fees or other costs and expenses associated with the Transactions).

“Transaction Expenses” means any of the following, without duplication, (a) all of the out-of-pocket fees and expenses payable to third-parties (including all fees, expenses, disbursements and other similar amounts payable to attorneys, financial advisors or accountants) incurred by Seller or any Acquired Company prior to the Closing solely to effect the negotiation, documentation and consummation of the Transactions which are unpaid as of the Closing, (b) fifty percent (50%) of costs and expenses in connection with establishing and maintaining the escrow account under the Escrow Agreement; and (c) all bonus, incentive and similar “single-trigger” change in control or retention payments or benefits payable to employees, officers, directors or other services providers solely or in connection with the Transactions (including the employer portion of any applicable payroll Taxes in connection with such payments); provided, however, that in no event shall Transaction Expenses include any fees or expenses related to the RWI Policy, the Tail Policy or STB Approval (including any STB Filings).

“Transaction Matters” means the negotiation, preparation, execution, and delivery of this Agreement, the Ancillary Documents, and any other related agreements, and the consummation of the Transactions, and the negotiation and preparation of documentation or other materials with respect to other potential transactions involving a sale of the Purchased Equity Interests or similar transaction.

“Transactions” means the purchase and sale of the Purchased Equity Interests and the other transactions contemplated by this Agreement and any Ancillary Document, including the performance by the Parties of their respective covenants and obligations under this Agreement and any Ancillary Document.

“Transfer Taxes” means sales, use, transfer, real property transfer, recording, documentary, stamp, registration and stock transfer Taxes and any similar Taxes.

“Treasury Regulations” means United States Treasury regulations promulgated under the Code.

“Unpaid Transaction Expenses” means any Liabilities of any Acquired Company for the Transaction Expenses to the extent not satisfied on or prior to the Measurement Time.

“U.S.” or ***“United States”*** means the United States of America.

“WARN Act” mean the Worker Adjustment and Retraining Notification Act, 29 U.S.C. Section 2101 *et. seq.*, the regulations and rules thereunder, and any similar provision of any federal, state, foreign or local Law, rule or regulation.

1.2 **Additional Defined Terms.** For purposes of this Agreement, the following additional terms have the meanings set forth in the Sections to this Agreement indicated below:

Term	Section
<i>“45G Tax Credit Transfer”</i>	Section 6.11(b)

Term	Section
<i>“Agreement”</i>	Preamble
<i>“Allocation”</i>	Section 6.10(d)
<i>“Allocation Methodology”</i>	Section 6.10(d)
<i>“Audited Financial Statements”</i>	Section 3.5(a)
<i>“Backup Expert”</i>	Section 6.10(d)
<i>“Balance Sheet Date”</i>	Section 3.5(a)
<i>“Business Intellectual Property”</i>	Section 3.12(a)
<i>“Buyer”</i>	Preamble
<i>“Buyer Nonparty Affiliates”</i>	Section 8.17
<i>“Buyer Parties”</i>	Section 8.17
<i>“Buyer’s Closing Certificate”</i>	Section 7.2(c)
<i>“CBA”</i>	Section 3.16(b)
<i>“Closing”</i>	Section 2.3(a)
<i>“Closing Date”</i>	Section 2.3(a)
<i>“Company”</i>	Preamble
<i>“Dispute Notice”</i>	Section 2.4(b)
<i>“Disputed Item”</i>	Section 2.4(b)
<i>“ECL”</i>	Recitals
<i>“Estimated Closing Statement”</i>	Section 2.2
<i>“Financial Statements”</i>	Section 3.5(a)
<i>“Insider Transactions”</i>	Section 3.21
<i>“Insurance Policy”</i>	Section 3.18
<i>“Interim Financial Statements”</i>	Section 3.5(a)
<i>“IP Licenses”</i>	Section 3.12(b)
<i>“Latest Balance Sheets”</i>	Section 3.5(a)
<i>“Leases”</i>	Section 3.9(b)
<i>“Listed IP”</i>	Section 3.12(a)
<i>“Material Customer”</i>	Section 3.20(a)
<i>“Material Vendor”</i>	Section 3.20(b)
<i>“MEWA”</i>	Section 3.15(f)
<i>“Outside Date”</i>	Section 7.4(e)
<i>“Owned Intellectual Property”</i>	Section 3.12(a)
<i>“Parties”</i>	Preamble
<i>“Party”</i>	Preamble
<i>“Payoff Letters”</i>	Section 2.3(b)(ii)
<i>“Post-Closing Statement”</i>	Section 2.4(a)
<i>“Pre-Closing Covenants”</i>	Section 8.1
<i>“Purchased Equity Interests”</i>	Recitals
<i>“Review Period”</i>	Section 2.4(b)
<i>“Seller”</i>	Preamble
<i>“Seller Nonparty Affiliates”</i>	Section 8.17
<i>“Seller Parties”</i>	Section 8.17
<i>“Seller’s Closing Certificate”</i>	Section 7.1(c)
<i>“Specified Contracts”</i>	Section 3.11(a)

Term	Section
<i>“Specified Permits”</i>	Section 3.14(b)
<i>“STB Filings”</i>	Section 6.3(b)
<i>“Tail Policy”</i>	Section 6.6(a)
<i>“VEBA”</i>	Section 3.15(f)

1.3 Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof. The Parties agree that any drafts of this Agreement or any Ancillary Document prior to the final fully executed drafts shall not be used for purposes of interpreting any provision thereof, and each of the Parties agrees that no Party or any of such Party’s Affiliate or Representatives shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any Proceeding among any of the foregoing. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires:

(a) the meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires;

(b) where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning;

(c) the terms “hereof,” “herein,” “hereunder,” “hereby” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Disclosure Schedules and the Exhibits hereto) and not to any particular provision of this Agreement;

(d) references to this “Agreement” include the Disclosure Schedules and the Exhibits hereto;

(e) when a reference is made in this Agreement to Articles, Sections, paragraphs, clauses, Exhibits, and the Preamble are references to articles, sections, paragraphs, clauses, exhibits, the preamble and recitals of this Agreement;

(f) the word “include,” “includes,” and “including” when used in this Agreement shall be deemed to be followed by the words “without limitation,” unless otherwise specified;

(g) all accounting terms used and not defined herein have the respective meanings given to them under GAAP;

(h) where used with respect to information, the phrases “delivered” or “made available” means that the information referred to has been physically or electronically delivered no later than one (1) Business Day prior to the date hereof to the relevant Parties or their

respective Representatives, including, in the case of “made available” to Buyer, if such document or information was posted to the Data Room on or before the date that is one (1) Business Day prior to the date hereof;

(i) references to “day” or “days” are references to calendar days, unless the defined term “Business Days” is used;

(j) whenever the last day for the exercise of any right or the discharge of any duty under this Agreement falls on a day other than a Business Day, the Party having such right or duty shall have until the next Business Day to exercise such right or discharge such duty;

(k) with respect to any determination of any period of time, the word “from” means “from and including,” the word “to” means “to but excluding” and the word “through” means “through and including”;

(l) references to “the date hereof,” “the date of this Agreement” and words of similar import refer to the date set forth in the preamble to this Agreement;

(m) references to any Contract (including this Agreement) or any Organizational Document refer to such Contract or Organizational Document as amended, modified, supplemented or replaced from time to time;

(n) references to any “copy” of any Contract or other document refer to a true and complete copy thereof;

(o) the word “or” includes both the conjunctive and disjunctive;

(p) the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”;

(q) any reference to any Law is a reference to the Law as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated under the statute) and any reference to any section of any statute, rule or regulation includes any successor to the section; and

(r) references to dollars or “\$” are references to United States of America dollars.

(s) Unless otherwise specified herein, undefined terms shall be given the meaning customarily applied to such terms in the railroad industry in the United States of America.

ARTICLE II

THE TRANSACTIONS

2.1 Purchase and Sale. At the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Purchased Equity Interests, free and clear of all Liens, and in exchange, Buyer shall pay, or cause to be paid, to Seller, the Closing Payment by wire transfer of

immediately available funds to the account set forth on the Estimated Closing Statement (as defined below).

2.2 Estimated Closing Statement. Within [REDACTED] following the date hereof, (x) Seller shall provide Buyer with a letter executed by Seller that provides the wire instructions for the account that Seller will designate for payment of the Closing Payment pursuant to Section 2.3(d)(i), and shall designate a responsible individual of Seller with familiarity with such account and provide such individual's contact information, including phone number and (y) the Company shall provide Buyer with a letter executed by the Company that provides the wire instructions for the account that the Company will designate for payment of the Estimated Unpaid Transaction Expenses pursuant to Section 2.3(d)(iv) to the extent available at such time, and shall designate a responsible individual of the Company with familiarity with such account and provide such individual's contact information, including phone number. Not less than [REDACTED] prior to the Closing Date, Seller shall deliver to Buyer a statement (the "*Estimated Closing Statement*") that sets forth Seller's calculation of (a) (i) Estimated Net Working Capital, (ii) Estimated Cash, (iii) Estimated Indebtedness and (iv) Estimated Unpaid Transaction Expenses, together with reasonably detailed supporting documents for the calculation thereof and (b) the Estimated Purchase Price and the Closing Payment. Seller shall consider in good faith any comments from Buyer with respect to the Estimated Closing Statement delivered no later than [REDACTED] prior to the Closing Date; provided, that Seller shall have no obligation to accept any of Buyer's comments.

2.3 Closing; Seller Deliverables; Buyer Deliverables.

(a) Closing Date. The closing of the Transactions (the "*Closing*") shall take place remotely via the electronic exchange of documents and signatures on the [REDACTED] following the date on which all the conditions to Closing in Sections 7.1 and 7.2 are satisfied or waived (other than those to be satisfied at the Closing, but subject to their satisfaction or waiver at the Closing), or on such other date as may be mutually agreed upon in writing by the Parties (the time and date on which the Closing occurs is hereinafter referred to as the "*Closing Date*"). [REDACTED]

(b) Seller Deliverables. At the Closing, Seller and/or the Company shall deliver, or cause to be delivered, to Buyer the following:

(i) Assignment Agreement. All certificates, if any, representing the Purchased Equity Interests duly endorsed in blank and accompanied by the Assignment Agreement, duly executed by Seller.

(ii) Payoff Letters. Customary payoff letters, Lien releases and other documentation in form and substance reasonably acceptable to Buyer evidencing the full payoff and release of Liens from each holder of Funded Indebtedness (collectively, the "*Payoff Letters*"), other than, to the extent constituting Funded Indebtedness, the NCMRRA Lease.

(iii) Escrow Agreement. The Escrow Agreement, duly executed by Seller.

(iv) Resignations. Written resignations, effective as of the Closing Date, of each of the directors, managers, and officers, as applicable, of each Acquired Company except those whom Buyer shall have specified in writing.

(v) Officer Certificate. A certificate, dated as of the Closing Date and signed by a duly authorized officer of Seller certifying (1) that attached thereto are true and complete copies of the authorizing resolutions of Seller with respect to the consummation of the Transactions and (2) as to the Organizational Documents of each Acquired Company.

(vi) Seller's Closing Certificate. Seller's Closing Certificate, duly executed by Seller.

(vii) W-9. A properly completed and duly executed IRS Form W-9 from Seller.

(viii) Mutual Release. The Mutual Release, duly executed by Seller.

(c) Buyer Deliverables. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) Assignment Agreement. The Assignment Agreement, duly executed by Buyer.

(ii) Escrow Agreement. The Escrow Agreement, duly executed by Buyer and the Escrow Agent.

(iii) Buyer's Closing Certificate. The Buyer's Closing Certificate, duly executed by Buyer.

(iv) Mutual Release. The Mutual Release, duly executed by the Company.

(d) Payment of the Purchase Price.

(i) Payment of the Closing Payment to Seller. On the Closing Date, Buyer shall pay [REDACTED]

(ii) Payment of the Adjustment Escrow Amount. On the Closing Date, Buyer shall pay [REDACTED]

(iii) Payment of Funded Indebtedness. On the Closing Date, Buyer shall pay [REDACTED]

(iv) Payment of Estimated Unpaid Transaction Expenses. On the Closing Date, the Buyer shall pay

2.4 Post-Closing Statement.

(a) As soon as practicable, but not later than [REDACTED] following the Closing Date, Buyer shall prepare in good faith and deliver to Seller a statement (the “**Post-Closing Statement**”) setting forth a calculation of each of (a) (i) Closing Net Working Capital, (ii) Closing Cash, (iii) Closing Indebtedness, and (iv) Unpaid Transaction Expenses, together with reasonably detailed supporting documents for the calculation of each of the foregoing and (b) the Final Purchase Price. The Post-Closing Statement shall become final and binding on the Parties pursuant to the terms of this Section 2.4. If Buyer fails to timely deliver the Post-Closing Statement within such [REDACTED] period, Seller shall have the right but not the obligation to disregard any Post-Closing Statement delivered by Buyer thereafter and deem the items set forth in the Estimated Closing Statement to be final and binding on the Parties for purposes of each of Closing Net Working Capital, Closing Cash, Closing Indebtedness, Unpaid Transaction Expenses, and the Final Purchase Price.

(b) During the [REDACTED] immediately following Seller’s receipt of the Post-Closing Statement (the “**Review Period**”), Seller and its Representatives shall be given reasonable access to the Books and Records and the working papers of Buyer’s and/or Acquired Companies’ accountants relating to the Post-Closing Statement. The Post-Closing Statement shall become final and binding upon the Parties unless Seller delivers to Buyer a written notice of disagreement (the “**Dispute Notice**”) prior to the expiration of the Review Period. The Dispute Notice shall (i) specify in reasonable detail the nature and amount of any dispute so asserted with respect to any item set forth in the Post-Closing Statement (each a “**Disputed Item**”), (ii) specify an alternative amount for each Disputed Item, and (iii) include a proposed recalculation of each of the Closing Net Working Capital, the Closing Cash, the Closing Indebtedness, the Unpaid Transaction Expenses, and the Final Purchase Price. Any items not disputed in the Dispute Notice shall be deemed to have been accepted by Seller.

(c) If a timely Dispute Notice is received by Buyer, then the Post-Closing Statement shall become final and binding upon the Parties on the earlier of (i) the date the Parties resolve in writing all Disputed Items specified in the Dispute Notice and (ii) the date all Disputed Items are finally resolved in writing by the Accountant pursuant to Section 2.4(d). During the [REDACTED] immediately following Buyer's receipt of the Dispute Notice, the Parties shall consult in good faith to resolve in writing any Disputed Items specified in the Dispute Notice. During such consultation period, Buyer shall have reasonable access to the working papers and any other materials used by Seller (and its Representatives) in connection with the preparation of the Dispute Notice.

(d) At the end of such [REDACTED] consultation period, if the Parties have not resolved all Disputed Items, the Parties, jointly, will engage the Accountant and thereafter will submit any remaining Disputed Items to the Accountant for final determination in accordance with the terms of this Section 2.4(d). The Accountant shall act as an expert (and not as an arbitrator) to resolve the Disputed Items. The Accountant's final determination of the remaining Disputed Items shall be solely based on (i) the definitions and other applicable provisions of this Agreement, (ii) a single written presentation submitted by each Party (which the Accountant shall be instructed to distribute to each Party upon receipt of both such presentations), (iii) a single written response of each Party to each such presentation so submitted (which the Accountant shall be instructed to distribute to each Party upon receipt of such responses), and (iv) the information contained in the Post-Closing Statement and the Dispute Notice. Any Disputed Item not specifically disputed in the Dispute Notice shall be deemed final and binding on the Parties and shall not be modified by the Accountant. The Parties shall use their respective commercially reasonable efforts to cause the Accountant to finally resolve all Disputed Items as soon as practicable, but in any event within [REDACTED] after the date the Disputed Items are first submitted to the Accountant. With respect to each Disputed Item, the Accountant may not assign a value to any Disputed Item greater than the greatest value claimed for such Disputed Item by either Party or lower than the lowest value claimed for such Disputed Item by either Party, in each case, as set forth in the Post-Closing Statement or the Dispute Notice, as applicable. Absent manifest error by the Accountant, the written determination of the Disputed Items by the Accountant shall be final and binding on the Parties. Following the Accountant's final determination with respect to the Disputed Items, the Accountant will also prepare and deliver to the Parties a calculation and statement of the finally determined Closing Net Working Capital, the Closing Cash, the Closing Indebtedness, the Unpaid Transaction Expenses, and the Final Purchase Price.

(e) The fees and expenses of the Accountant shall be allocated between Buyer, on one hand, and Seller, on the other hand, so that Seller's share of such fees and expenses shall be equal to the product of (i) the aggregate amount of such fees and expenses, and (ii) a fraction, the numerator of which is the aggregate amounts of Disputed Items that are ultimately unsuccessfully disputed by Seller (as determined by the Accountant), if any, and the denominator of which is the aggregate amounts of Disputed Items submitted to the Accountant. The balance of such fees and expenses shall be borne by Buyer. The Parties will otherwise each bear their own costs and expenses incurred in connection with the preparation of the Post-Closing Statement and the Dispute Notice, as the case may be.

(f) No later than [REDACTED] following final determination of the Post-Closing Statement and the components thereof:

(i) if the Estimated Purchase Price is greater than the Final Purchase Price, then the Parties shall direct the Escrow Agent to pay Buyer from the Adjustment Escrow Amount an amount equal to the lesser of (A) the excess of the Estimated Purchase Price over the Final Purchase Price and (B) the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account designated by Buyer in writing; or

(ii) if the Final Purchase Price is greater than the Estimated Purchase Price, then Buyer shall pay, or caused to be paid, to Seller an amount equal to the excess of the Final Purchase Price over the Estimated Purchase Price (not to exceed an amount equal to the Adjustment Escrow Amount) by wire transfer of immediately available funds to the account designated by Seller in writing; [REDACTED]

(iii) following any payments described in the Sections 2.4(f)(i) and 2.4(f)(ii), the Parties shall cause the Escrow Agent to pay to Seller the remainder, if any, of the Adjustment Escrow Amount, by wire transfer of immediately available funds to the account designated by Seller; [REDACTED]

(g) Notwithstanding anything to the contrary contained herein, (i) the process and adjustment set forth in this Section 2.4 shall be the sole and exclusive remedy of the Parties with respect to items required hereunder to be included or reflected in the calculation of the Final Purchase Price and (ii) the Adjustment Escrow Amount shall be Buyer's sole source of recovery in the event that the Estimated Purchase Price is greater than the Final Purchase Price.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE ACQUIRED COMPANIES

The representations and warranties contained in this Article III are made by the Company as of the date hereof and as of the Closing Date (except for those representations and warranties that speak as of a specific date, in which case such representations and warranties shall be true and correct as of such date).

3.1 Organization; Authority.

(a) Each Acquired Company is a limited liability company duly incorporated or organized, as applicable, validly existing and in good standing under the Laws of the jurisdiction of such Acquired Company's organization or formation. Each Acquired Company is licensed or qualified to conduct its Business and is in good standing in every jurisdiction where the property owned, leased or operated by it or the nature of the Business conducted by it makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have an Acquired Companies MAE. Each Acquired Company possesses all requisite power and authority that is necessary to own and operate its properties and to carry on its Businesses.

(b) Each jurisdiction in which each Acquired Company is qualified to do business is set forth on Schedule 3.1(b). Schedule 3.1(b) sets forth the officers, directors, and managers, as applicable, of each Acquired Company. Except as set forth on Schedule 3.1(b), since [REDACTED], no Acquired Company has operated under any other legal name or used any fictitious or trade name. Copies of each Acquired Company's Organizational Documents have been made available to Buyer.

(c) The Company has the requisite authority to execute and deliver this Agreement and any Ancillary Document to which the Company is a party, to perform the Company's obligations hereunder and thereunder, and to consummate the Transactions. Assuming that this Agreement and any Ancillary Document to which the Company is a party have been executed with the requisite authority, and delivered by each other party hereto and thereto, this Agreement and any Ancillary Document to which the Company is a party, when executed and delivered by the Company in accordance with the terms hereof and thereof, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as the enforceability may be limited by the Enforceability Exceptions.

3.2 No Conflict. Except as set forth on Schedule 3.2, and assuming all filings required to obtain STB Approval are made and any waiting periods thereunder have expired or been terminated, and all other actions, Consents, filings with or notifications contemplated in Section 6.3(b) will be made or obtained during the Interim Period, the execution, delivery, and performance of this Agreement and the consummation of the Transactions do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) constitute a default under (whether with or without the passage of time, the giving of notice or both), (c) result in the creation of any Lien upon any Equity Interests of the Acquired Companies or (except for Permitted Liens) any of the assets of the Acquired Companies pursuant to, (d) give any Person the right to modify, terminate, or accelerate any obligation under, (e) result in a violation of, or (f) require any Consent, Permit or other action by or notice or declaration to, or filing with, any Person pursuant to, in each case, any of the following: (i) the Organizational Documents of any Acquired Company, (ii) any Law to which the Business, any Acquired Company or any of its assets is subject or by which the Business, any Acquired Company or any of its assets is bound, or (iii) any Specified Contract to which any Acquired Company is party to or by which any Acquired Company or any of its assets is bound, except in the case of clauses (ii) and (iii) where the failure would not reasonably be expected to have an Acquired Companies MAE.

3.3 Capitalization. The authorized, issued, and outstanding Equity Interests of each Acquired Company and the holders and owners thereof are set forth on Schedule 3.3. The Equity Interests of each Acquired Company set forth on Schedule 3.3 constitute all of the issued and outstanding Equity Interests of such Acquired Company, are duly authorized, validly issued, and non-assessable, are free and clear of any Liens, preemptive or similar rights, and were issued in compliance with all applicable securities Laws. The holders and owners of the Equity Interests of each Acquired Company set forth on Schedule 3.3 have good and valid title to 100% of the total issued and outstanding Equity Interest of each applicable Acquired Company. Except as set forth on Schedule 3.3, no Acquired Company has any outstanding (a) convertible or exchangeable securities or rights for or exercisable into any of its Equity Interests or containing any profit participation features, nor any rights or options to subscribe for or to purchase its Equity Interests or (b) stock appreciation rights or phantom stock or similar plans or rights regarding any of its Equity Interests. There are no (i) outstanding obligations of any Acquired Company (contingent or otherwise) to repurchase or otherwise acquire or retire any Equity Interests or any warrants, options or other rights to acquire its Equity Interests or (ii) voting trusts, proxies or other agreements among any Acquired Company's equity holders with respect to the voting or transfer of such Acquired Company's Equity Interests. Except for Florida Gulf and Grenada Railroad as the wholly-owned Subsidiaries of RailUSA, no other Acquired Company has, and has ever had, any Subsidiaries.

3.4 Investments.

(a) The Acquired Companies have not made, and do not hold the right to make, an Investment in any other Person and the business of the Acquired Companies is not conducted through any Person other than the Acquired Companies.

(b) Immediately following the Closing, none of Seller nor any of its Affiliates (other than the Acquired Companies) shall (i) hold any rights in any tangible personal property or Business Intellectual Property or (ii) have any operations, in each case, that contribute to or were used in the conduct of the Business of the Acquired Companies during the periods set forth in the Financial Statements.

3.5 Financial Statements.

(a) True and complete copies of the following financial statements have been made available to Buyer (collectively, the "**Financial Statements**"): (i) the audited balance sheets for each of Florida Gulf, Grenada Railroad and Seller as of [REDACTED] and [REDACTED], and the related audited statements of cash flows and statements of operations and changes in member's equity for each of the twelve (12)-month periods then ended, together with the notes and other financial information included therewith (collectively, the "**Audited Financial Statements**"), and (ii) the unaudited balance sheet (collectively, the "**Latest Balance Sheets**") for each of Florida Gulf, Grenada Railroad and Seller as of September 30, 2021 ("**Balance Sheet Date**"), and the related unaudited statements of cash flows and statements of operations and changes in member's equity for the nine (9)-month period then ended (collectively, the "**Interim Financial Statements**").

(b) Except as set forth on Schedule 3.5(b), the Financial Statements (i) have been prepared from, and are in accordance with, the Books and Records of the applicable Acquired Companies or Seller, as applicable, which, in each case, are correct and complete in all material respects, (ii) fairly present in all material respects in accordance with GAAP the financial position of the applicable Acquired Companies as of the dates reflected therein and the operating results of the applicable Acquired Companies for the periods then ended, and (iii) have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered thereby, except, in the case of the Interim Financial Statements, for the absence of footnotes and supplementary information and subject to normal and customary year-end adjustments for recurring accruals which individually and in the aggregate are not material.

3.6 Absence of Undisclosed Liabilities. Except as set forth on Schedule 3.6, no Acquired Company has any Liabilities (including any off-balance sheet Liabilities) required to be disclosed on a balance sheet prepared in accordance with GAAP other than (a) Liabilities set forth on the face of the Latest Balance Sheets; (b) Liabilities which have arisen after the Balance Sheet Date in the Ordinary Course (none of which is a Liability resulting from breach of Contract, breach of warranty, tort, infringement, misappropriation, lawsuit or violation of Law and none of which is material, either individually or in the aggregate), (c) executory obligations entered into in the Ordinary Course under Contracts to which any Acquired Company is a party that do not relate to any breach or default of such Contract in the Ordinary Course, or (d) Unpaid Transaction Expenses.

3.7 Absence of Certain Changes.

(a) Except as set forth in Schedule 3.7(a), since the Balance Sheet Date, the Acquired Companies have conducted their respective businesses in the Ordinary Course and the Acquired Companies have not proposed, taken or failed to take any action, or permitted to occur, any matter listed in Section 6.1 that would have required Buyer's Consent if such proposal, action or failure to act, or occurrence, had occurred during the Interim Period.

(b) Since the Balance Sheet Date, there has not been an occurrence of an Acquired Companies MAE.

3.8 Tangible Personal Property. Each Acquired Company owns good and valid title to its respective tangible personal property owned by such Acquired Company (including all of the tangible personal property shown on the Latest Balance Sheets), free and clear of all Liens, except for (i) properties and assets disposed of in the Ordinary Course since the Balance Sheet Date and (ii) Permitted Liens. Each Acquired Company owns or has a valid leasehold interest in, or has valid license to use, all of the tangible personal property necessary for the conduct of its Business as presently conducted. Each Acquired Company, as lessee, has the right under valid leases to use, possess and control all tangible personal property used (and not owned) by such Acquired Company as now used, possessed and controlled by the Acquired Companies.

3.9 Real Property.

(a) Schedule 3.9(a) sets forth each parcel of Owned Real Property and indicates the applicable Acquired Company that owns such Owned Real Property. Except for

the Owned Real Property, no Acquired Company owns any other real property. A copy of all title policies, surveys, and any other material documentation in the possession the Acquired Companies that relate to the Owned Real Property has been made available to Buyer. Except as set forth on Schedule 3.9(a), the applicable Acquired Company has sufficient title to the relevant Owned Real Property, free and clear of any Liens, except for Permitted Liens, necessary for the applicable Acquired Company to operate its railroad as currently operated. Except as set forth on Schedule 3.9(a), (i) no Acquired Company has granted or is a party to any unrecorded outstanding options, rights of first offer, rights of first refusal, or other Contracts to purchase any Owned Real Property, or any portion thereof or interests therein; (ii) the applicable Acquired Company has not (1) mortgaged or granted a deed of trust or analogous Lien on any of its Owned Real Property or (2) subleased or licensed (other than track leases for storage or industrial use in the Ordinary Course) to a Person (other than another Acquired Company) any material portion of such Owned Real Property which materially adversely affects the use by the Acquired Company of any material portion of the remaining Owned Real Property of such Acquired Company as it is used on the date hereof, and (iii) such Acquired Company has not received written notification from any Governmental Entity of any pending, or, to Seller's Knowledge, Threatened, condemnation Proceedings or eminent domain Proceedings against such Owned Real Property.

(b) Schedule 3.9(b) sets forth each parcel of Leased Real Property and indicates the applicable Acquired Company that leases such Leased Real Property. Schedule 3.9(b) sets forth a list of all material Contracts (collectively, the "**Leases**"), pursuant to which the Acquired Companies have the right to use or occupy the Leased Real Property. No Acquired Company is a party to any Contract to purchase any Leased Real Property or interest therein relating to, or intended to be used in the operation of, the Business as currently conducted, except to the extent any such Contract to purchase may be set forth in any of the Leases or has otherwise been made available to Buyer. A copy of each Lease has been made available to Buyer.

(c) Except as set forth in Schedule 3.9(c), as of the date hereof, (i) the applicable Acquired Company has, or will on the Closing Date have, a valid leasehold interest in the applicable Leased Real Property, free and clear of all Liens (except for Permitted Liens) except as the enforceability thereof may be limited by the Enforceability Exceptions; (ii) there is no uncured default under any Lease by the Acquired Company who is the tenant thereunder or, to Seller's Knowledge, any other party thereto, nor has any Acquired Company received or delivered written notice of any claim of such default; (iii) no event has occurred that, with the passage of time or the giving of notice or both, would constitute a material default by the Acquired Company who is the tenant under any Lease or, to Seller's Knowledge, any other party thereto; (iv) to Seller's Knowledge, no security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default by the Acquired Company who is the tenant thereunder which has not been redeposited in full; (v) the other party to any Lease is not an Affiliate of, and otherwise does not have any economic interest in, Seller or the Acquired Company who is the tenant thereunder; and (vi) the Acquired Company who is the tenant under any Lease has not, and will not have as of the Closing Date, subleased, licensed, or otherwise granted (other than through track leases for storage or industrial use in the Ordinary Course) any Person (other than another Acquired Company) the right to use or occupy any material portion of such Leased Real Property which materially adversely affects the use by the Acquired Company

of any material portion of the remaining Leased Real Property of such Acquired Company as it is used on the date hereof.

3.10 Sufficiency. The Railroad Assets, fixtures, machinery, equipment, vehicles and other items of tangible personal property owned or leased by the Acquired Companies, together with all other properties and assets owned or leased by the Acquired Companies, including the Real Property, are or will be sufficient for the continued conduct of the Business immediately after the Closing in substantially the same manner as conducted immediately prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business.

3.11 Specified Contracts.

(a) Schedule 3.11(a) sets forth a complete and accurate list of all of the following Contracts (other than the Leases, IP Licenses, and Benefit Plans) to which any Acquired Company is a party or bound (such Contracts that are listed or required to be listed on Schedule 3.11(a), together with the IP Licenses, are herein referred to as the “*Specified Contracts*”):

(i) any Contract with any Material Customer (except for purchase orders) that provides for aggregate forecasted revenues to any Acquired Company in excess of [REDACTED] in the 2021 calendar year or any calendar year thereafter;

(ii) any Contract with any Material Vendor (except for purchase orders) that provides for aggregate purchases by any Acquired Company in excess of [REDACTED] in the 2021 calendar year or any calendar year thereafter;

(iii) any Contract not otherwise contemplated in the foregoing clauses (i) and (ii) that would, in each case, reasonably be expected to result in the receipt or making by an Acquired Company future payments in excess of [REDACTED] in the 2021 calendar year or any calendar year thereafter;

(iv) any Contract (1) with any Business Employee or former employee of any Acquired Company related to such Person’s employment or severance (excluding any offer letter of employment entered into in the Ordinary Course that does not contemplate severance benefits, employment that is not “at-will,” change in control or transaction benefits, commitments regarding equity or equity-based compensation or other benefits not generally provided to all similarly situated employees) or (2) providing for the engagement of individual independent contractors providing services to the Business that contains an obligation to pay more than [REDACTED] per calendar year;

(v) any Contract for the sale, transfer, purchase, acquisition or other disposition of any material assets or Equity Interests of a third party (other than an Insider) or for any right of first refusal or similar right or obligation to sell, transfer, purchase, acquire or otherwise dispose of any material assets or Equity Interest of a third party (other than an Insider), in each case, under which there are outstanding rights or obligations of any party thereto;

(vi) any Contract that involves the payment or receipt of any earn-out or similar contingent payment;

(vii) any Contract that is for or related to any Indebtedness (other than Indebtedness described in clause (f) of the definition thereof);

(viii) any Contract related to an Insider Transaction;

(ix) any Contracts that grant a leasehold interest, trackage rights, haulage rights or similar operating rights over any portion of the Acquired Companies' tracks, or that grant an Acquired Company and/or a third party railroad the right to use the other party's tracks for purposes of interchange, or provide for locomotive or railcar sharing or pooling;

(x) any other Contracts with a third party railroad or railroad operator;

(xi) any Contract that (1) requires the Business or any Acquired Company to deal exclusively with the counterparty with respect to marketing, sales, operations, franchising, or distribution or (2) prohibits or restricts any Acquired Company from competing in any jurisdiction or market, or participating in joint rail traffic movements with any third party railroad at any location;

(xii) any Contract pursuant to which any Acquired Company is a party or otherwise bound, and the contracting counterparty of which (1) is a Governmental Entity or (2) to Seller's Knowledge, has entered into such Contract in its capacity as prime contractor or other subcontractor of any Contract with a Governmental Entity and such Contract imposes upon such Acquired Company obligations or other Liabilities due to such Governmental Entity;

(xiii) any Contract that is a settlement, conciliation or similar Contract with any Governmental Entity or third party pursuant to which any Acquired Company will have any material outstanding obligation after the date of this Agreement; or

(xiv) any Contract for the settlement of any Proceeding or Threatened Proceeding to the extent that any such Contract has any continuing obligations following the Closing.

(b) Each Specified Contract has been made available to Buyer. Each Specified Contract is valid, binding, and enforceable against the applicable Acquired Company, and to the Seller's Knowledge, any other party thereto, in accordance with their respective terms except as the enforceability thereof may be limited by Enforceability Exceptions. Except as set forth on Schedule 3.11(b), no Acquired Company is in default or breach under, or in receipt of any written claim of default or breach under, any Specified Contract and, to the Seller's Knowledge, any other party thereto are not in default or breach thereunder. No event has occurred which (with the passage of time or the giving of notice or both) that would reasonably be expected to result in a default or breach by any Acquired Company, or to the Seller's Knowledge, any other party thereto, under any Specified Contract. Notwithstanding the foregoing, no representation or warranty is made under this Section 3.11(b) regarding the Leases (as to which no representation or warranty is made except as set forth in Sections 3.9(c)).

3.12 Intellectual Property.

(a) Schedule 3.12(a) sets forth a list of all (i) trademark and service mark registrations and pending registration applications, (ii) Internet domain name and social media account registrations and trade names, (iii) patents and pending patent applications, and (iv) copyright registrations and pending registration applications (collectively, “**Listed IP**”), in each case, which are owned by or registered to any Acquired Company, including to the extent applicable, the date of registration or application and name of registration body where the registration or application was made, the registration or application number, title, and owner(s). All renewal and maintenance filings and fees in respect of the Listed IP that are due (if applicable) has been made or paid, or shall be made or paid as of the Closing Date. The Acquired Companies exclusively own and possess all right, title and interest in and to all Listed IP and other Intellectual Property owned or purported to be owned by the Acquired Companies (collectively, the “**Owned Intellectual Property**”), free and clear of all Liens (other than Permitted Liens), and the Acquired Companies have valid, enforceable, and sufficient rights to all Intellectual Property used in or necessary for the operation of the Business (collectively, and together with the Owned Intellectual Property, the “**Business Intellectual Property**”).

(b) Schedule 3.12(b) sets forth a list of all written license agreements with respect to any Business Intellectual Property to which any Acquired Company is a party (other than Commercial Software Licenses) (collectively, the “**IP Licenses**”), and pursuant to which such Acquired Company is authorized or otherwise has the right to use, distribute, sell, resell, license or sublicense any of the Business Intellectual Property. All such IP Licenses are in full force and effect, subject to the Enforceability Exceptions and, to the Seller’s Knowledge, there is no material default or material breach thereunder by any third party thereto.

(c) None of the Acquired Companies is infringing, misappropriating or violating, the Intellectual Property of any third party and, to the Seller’s Knowledge, no third party is infringing, misappropriating or otherwise violating any Owned Intellectual Property, and no Proceeding against a third party with respect to the alleged infringement, misappropriation or other violation of any Owned Intellectual Property is pending or, to the Seller’s Knowledge, is Threatened. There is no Proceeding pending or, to the Seller’s Knowledge, Threatened against any Acquired Company challenging the ownership or the validity or effectiveness of any Owned Intellectual Property or alleging that the operation of the Business has infringed, misappropriated or violated the Intellectual Property of any third party.

3.13 Proceedings. Except as set forth on Schedule 3.13, since [REDACTED], there have not been any, and there are no Proceedings (a) pending or, to the Seller’s Knowledge, Threatened against any Acquired Company, or (b) pending or, to the Seller’s Knowledge, Threatened by any Acquired Company against any Person. No Acquired Company is subject to any Order to which such Acquired Company is a named party or has any future obligations.

3.14 Compliance with Laws; Specified Permits.

(a) Each Acquired Company has, since [REDACTED], complied with, and is currently in compliance with, in all material respects, all Laws applicable to the Acquired Companies and the Business. Since [REDACTED] no Acquired Company has received

written notice from any Governmental Entity claiming a violation of any applicable Laws by such Acquired Company which would reasonably be expected to have an Acquired Companies MAE that remains uncured, and there is no pending, or to the Seller's Knowledge, Threatened Proceeding concerning any Acquired Company's compliance with any such Laws. No representation or warranty is given pursuant to this Section 3.14(a) with respect to legal compliance of any Acquired Company with respect to Benefit Plans, labor, employment or Tax matters, each of which shall be exclusively governed by Sections 3.15 (Benefit Plans), 3.16 (Labor Matters) and 3.17 (Tax Matters), respectively.

(b) The Acquired Companies collectively hold all material Permits required for the conduct of its Business (as presently conducted) (collectively, the "*Specified Permits*"), and Schedule 3.14 sets forth a list of all such Specified Permits. Each Acquired Company has, since [REDACTED], complied with, and is currently in compliance with, in all material respects, the requirements of the Specified Permits. Each Specified Permit is in full force and effect as of the date hereof and, since [REDACTED], no Acquired Company has received any written notice from any Governmental Entity to the contrary.

3.15 Benefit Plans.

(a) Schedule 3.15(a) lists all material Benefit Plans and there are no Benefit Plans sponsored by any entity other than an Acquired Company. Seller has made available to Buyer correct and complete copies of (i) each written, material Benefit Plan, including any amendments thereto, (ii) the most recent determination, opinion or advisory letter, ruling or notice issued by any Governmental Entity with respect to each Benefit Plan, if applicable, (iii) the Form 5500 Annual Report (or evidence of any applicable exemption) for the two most recent plan years (to the extent such forms are required for any Benefit Plan), (iv) the most recent summary plan description (and any summaries of material modifications thereto) relating to any Benefit Plan, (v) any related trust agreements or other funding or financing arrangements applicable to any Benefit Plan, along with any amendments thereto, (vi) all non-routine correspondence received from or provided to any Governmental Entity regarding any Benefit Plan during the past two years and (vii) nondiscrimination, coverage and other annual testing results for any Benefit Plan to which such obligation applies for the two most recently completed plan years. A written description of the material terms of any unwritten Benefit Plan has been made available to Buyer.

(b) Each Benefit Plan has been, in all material respects, maintained, funded and administered in compliance with its terms and all applicable Laws (including the applicable requirements of ERISA and the Code). No audit, investigation, claim, suit or proceeding (other than routine claims for benefits) is pending or, to the Seller's Knowledge, Threatened with respect to any Benefit Plan, and there are not any facts or circumstances that would reasonably be expected to give rise to any such audits, investigations, claims, suits or proceedings.

(c) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and has received a currently-effective determination letter or is entitled to rely on an advisory or opinion letter, as applicable, from the IRS and, no fact or event has occurred that would reasonably be expected to adversely affect the ability to rely upon such letter with respect to any such Benefit Plan.

(d) Except as set forth on Schedule 3.15(d), neither the execution of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in combination with another event) will or can be reasonably expected to (i) entitle any current or former director, officer, employee or independent contractor of any Acquired Company to any payment (including severance pay or similar compensation), any cancellation of indebtedness, or any increase in compensation; (ii) result in the acceleration of payment, funding or vesting under any Benefit Plan; or (iii) result in any increase in benefits payable under any Benefit Plan. No amount paid or payable (whether in cash, in property, or in the form of benefits) in connection with the transactions contemplated hereby (either alone or in combination with another event) will be an “excess parachute payment” within the meaning of Section 280G of the Code. None of the Acquired Companies have any obligation to make “gross-up” or similar payments in respect of any Taxes that may become payable under Section 4999 of the Code.

(e) All contributions and premium payments that are due under any Benefit Plan have been made within the time periods prescribed by ERISA, the Code or by Contract, and all contributions and premium payments for any period ending on or before the Closing Date that are not yet due have been made to each Benefit Plan or shall be accrued on the Estimated Closing Statement.

(f) Since [REDACTED], none of the Acquired Companies or any of their respective ERISA Affiliates sponsors, has sponsored, maintains, has maintained, contributes to, has contributed to, or is required to contribute to or has any direct or indirect liability with respect to (A) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), (B) a plan subject to Title IV of ERISA, (C) a multiple employer plan subject to Section 4063 or 4064 of ERISA or Section 413 of the Code, or (D) a plan subject to Section 302 of ERISA or 412 of the Code. No Benefit Plan is a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA (a “*MEWA*”) or funded through a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Code (a “*VEBA*”) and none of the Acquired Companies have participated in, and do not have any direct or indirect liability with respect to, a MEWA or a VEBA.

(g) No Benefit Plan provides, and none of the Acquired Companies have any obligation to provide, medical, life insurance or other welfare benefits to any individual at a time when he or she is not a Business Employee (other than eligible beneficiaries and dependents of active employees), other than coverage mandated by Section 4980B of the Code, Part 6 of Subtitle B of Title I of ERISA or other applicable Law.

3.16 Labor Matters.

(a) Seller has made available to Buyer a list of all Business Employees as of [REDACTED] prior to the date hereof, including for each Business Employee, the (i) name or employee identification number, (ii) job title, (iii) date of hire, (iv) annual salary or hourly rate (as applicable), (v) exempt or non-exempt status, (vi) incentive or bonus compensation (as applicable), (vii) active or inactive status, (viii) employing entity, and (ix) work location or base.

(b) Except as set forth in Schedule 3.16(b), (i) no Acquired Company is a party to, or bound by, any collective bargaining agreement or other Contract with any labor union or labor organization (each a “**CBA**”), in each case, with respect to any Business Employees; (ii) there are no CBAs or any other labor-related agreements or arrangements that pertain to any Business Employee; and (iii) no Business Employee is represented by any labor union or other labor organization with respect to such Business Employee’s employment with any Acquired Company. Except as set forth in Schedule 3.16(b), there is no, [REDACTED] pending, or to Seller’s Knowledge, threatened, strike, walkout, slowdown, material unfair labor practice charge, material grievance, material labor-related arbitration or mediation, work stoppage, material labor dispute, law enforcement cases with respect to any employment or labor-related agreements, or union organizing effort (x) against or affecting the Acquired Companies or (y) by or respecting any current or former employees of the Business.

(c) Except as set forth in Schedule 3.16(c), to Seller’s Knowledge, the Acquired Companies are, and since [REDACTED], have been in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, including all laws respecting terms and conditions of employment, health and safety, wages and hours, exempt or non-exempt employee classification, independent contractor classification, meal and rest breaks, immigration, harassment, I-9 compliance and record-keeping, discrimination and retaliation, disability rights, COVID-19, equal opportunity (including compliance with any affirmative action plan obligations), plant closures and layoffs (including the WARN Act), workers’ compensation, FELA, labor relations, employee leave issues, affirmative action and affirmative action plan requirements, social security, and unemployment insurance.

(d) To the Seller’s Knowledge, no Business Employee is in any material respect in violation of any term of any employment agreement, nondisclosure agreement, noncompetition agreement or restrictive covenant agreement (i) owed to any Acquired Company; or (ii) owed to any third party with respect to such Business Employee’s right to be employed or engaged by the applicable Acquired Company.

(e) Since [REDACTED], no allegations of sexual harassment other misconduct have been made against any officer, executive or management level employee of an Acquired Company, and there have been no settlement agreements entered into by an Acquired Company regarding any such allegations.

(f) No material employee layoff, reduction-in-force, furlough, temporary layoff, plant closing, material work schedule change or reduction in hours, or reduction in salary or wages, or other material workforce changes affecting the Business Employees has occurred within [REDACTED] or is contemplated, planned or announced, including as a result of COVID-19 or any Law, Order, directive, guidelines or recommendations by any Governmental Entity in connection with or in response to COVID-19. To the Seller’s Knowledge, the Business has not otherwise experienced any material employment-related Liability with respect to Public Safety Measures. To the Seller’s Knowledge, no Acquired Company has any outstanding WARN Act liability.

3.17 Tax Matters. Except as set forth on Schedule 3.17:

- (a) Each Acquired Company has timely filed (or has had filed on its behalf) all Income Tax Returns and other material Tax Returns required by applicable Law to be filed by such Acquired Company (taking into account all applicable extensions of time to file), all Tax Returns that have been filed are true and complete in all material respects, and all material Taxes required to be paid by the Acquired Companies (whether or not reflected as due on Tax Returns) have been paid;
- (b) Each Acquired Company has timely withheld all Taxes from payments to employees, agents, contractors, nonresidents and others required by applicable Law to be withheld by such Acquired Company and timely remitted such amounts required to be remitted to the appropriate Governmental Entity;
- (c) No Proceedings related to any Tax Return of any Acquired Company is pending or, to the Seller's Knowledge, Threatened.
- (d) No Acquired Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency;
- (e) To the Seller's Knowledge, no Acquired Company has received a written claim to pay Taxes or file Tax Returns from a Governmental Entity in a jurisdiction where such Acquired Company has not filed Tax Returns that has not been resolved;
- (f) No Acquired Company is a party to any Tax-sharing Contract (other than any Contract entered into in the Ordinary Course, the principal purpose of which is not related to Taxes);
- (g) No Acquired Company is liable for (i) Taxes of any other Person (except for any Acquired Company) under Treasury Regulations Section 1.1502-6 (or the corresponding provision of state, local or non-U.S. Law) or (ii) Taxes of any other Person as a transferee or successor or by Contract (other than any Contract entered into in the Ordinary Course, the principal purpose of which is not related to Taxes);
- (h) No Acquired Company has been a party to a transaction that is classified as a "*reportable transaction*" within the meaning of Treasury Regulations Section 1.6011-4(b);
- (i) Each of the Acquired Companies is disregarded as separate within the meaning of Treasury Regulations Section 301.7701-2 and any applicable corresponding provision of state, local or non-U.S. Law. No election under Treasury Regulations Section 301.7701-3 (or any applicable corresponding provision of state, local or non-U.S. Law) has ever been made to treat any Acquired Company as a corporation for U.S. federal (or applicable state or local) income Tax purposes;
- (j) There are no Liens for Taxes on any assets of the Acquired Companies, other than Permitted Liens;

(k) No Acquired Company has, has ever had, or has ever applied for, any Indebtedness pursuant to Section 7(a) of the Small Business Act or Section 1102 of the CARES Act;

(l) There are no unpaid Taxes of an Acquired Company with respect to a Pre-Closing Tax Period that will not be reflected in Closing Net Working Capital or Closing Indebtedness;

(m) Except as provided on Schedule 3.17(m), each of the Acquired Companies is exempt from sales, use and property Taxes in each jurisdiction in which it operates;

(n) The representations and warranties in this Section 3.17 are the sole representations and warranties related to Tax; and

(o) The representations set out in Section 7.02 of that certain Track Maintenance Agreement, dated as of July 15, 2021, by and among Seller, the Company, Florida Gulf, Grenada Railroad, and ADM Transportation Company, and all other Contracts relating to Section 45G of the Code were at all times and remain true and correct in all material respects.

3.18 Insurance. Copies of all material insurance policies to which the Acquired Companies are a party, a named insured, or otherwise the beneficiary of coverage as of the date hereof, and which insure the Business and operations and assets of the Acquired Companies (each, an “**Insurance Policy**”) have been made available to Buyer. With respect to each Insurance Policy, except as set forth on Schedule 3.18, (a) such Insurance Policy provides insurance coverage adequate to comply in all material respects with all applicable Laws and the relevant requirements of any Specified Contract, except where the failure to comply would not have an Acquired Companies MAE, and (b) no written notice of cancellation has been received by any Acquired Company with respect to such Insurance Policy. There is no claim pending or, to the Seller’s Knowledge, Threatened, that would reasonably be expected to adversely affect the coverage limits under or otherwise adversely affect any Insurance Policy. No Acquired Company is in default with respect to its obligations under any Insurance Policy as of the date hereof, and no Acquired Company has ever been denied insurance coverage during the two (2) year period prior to the date hereof. There are currently no pending claims under any Insurance Policy as to which the respective insurer has denied, questioned or disputed coverage or reserved rights and there are no open claims with any insolvent insurer. No policy limit of any Insurance Policy has been exhausted or materially eroded or reduced, and policies providing substantially similar insurance coverage have been in effect continuously since [REDACTED]. The Company has not failed to give any notice or present any claims under any applicable Insurance Policy in a due and timely fashion as required by the applicable Insurance Policy. To Seller’s Knowledge, there has been no Threatened termination of, or material premium increase with respect to, any of the Insurance Policies.

3.19 Environmental Matters. Except as set forth on Schedule 3.19:

(a) The Acquired Companies are, and during [REDACTED] [REDACTED] have been in compliance in all material respects with all applicable Environmental Laws;

(b) The Acquired Companies currently possess, and during [REDACTED] [REDACTED] have possessed, all material Permits required under applicable Environmental Laws for their operations or the ownership or operation of the Real Property and are, and during [REDACTED] have been, in compliance in all material respects with the requirements of such Permits. All such Permits are in full force and effect, a timely renewal application has been filed for any such Permit that will expire within six (6) months after the date hereof, and the Acquired Companies have received no written notice Threatening to revoke, modify, cancel or terminate any such Permits;

(c) No Acquired Company has received any written notice from, or is subject to, any pending Proceeding, or to Seller's Knowledge Threatened Proceeding, of any Governmental Entity or other Person alleging that any Acquired Company (i) may be, or may have been, in material violation of any Environmental Law or (ii) may have any material Liability arising under applicable Environmental Laws or in connection with Hazardous Materials, the subject of which in each case is unresolved;

(d) No Acquired Company is subject to any outstanding Order of any Governmental Entity, or settlement agreement with any Person, with respect to which any Acquired Company has any current or future obligations in connection with Environmental Law or Hazardous Materials;

(e) No Acquired Company has (i) Released Hazardous Materials, or (ii) had Hazardous Materials generated by it come to be located at an offsite facility, which in the case of the foregoing (i) through (ii) would reasonably be expected to result in any material Liability to any Acquired Company;

(f) The Company has made available to Buyer all material audits, reports or assessments in its possession pertaining to compliance by any Acquired Company with, or liability of any Acquired Company under, Environmental Law;

(g) No Acquired Company has assumed any liability under Environmental Law or with regard to Hazardous Materials, or provided indemnification to any Person regarding liability under Environmental Law or with regard to Hazardous Materials, in connection with any transaction for which a claim would reasonably be expected to be made against any Acquired Company;

(h) No claims have been made against any Acquired Company during the past three (3) years by any Person in connection with alleged exposure to asbestos; and

(i) No facts or circumstances exist regarding Environmental Laws or Hazardous Materials that would reasonably be expected to result in an Acquired Companies MAE.

3.20 Material Customer; Material Vendor.

(a) Schedule 3.20(a) sets forth a consolidated list of the top ten (10) customers of each of Florida Gulf and Grenada Railroad by dollar amount of sales for (i) the fiscal year

ending on [REDACTED] and (ii) [REDACTED] (each, a “*Material Customer*”). Since [REDACTED] no such Acquired Company has received any written notice from any of their respective Material Customers that any such Material Customer will terminate its relationship with respect to the purchase of products or services from such Acquired Company.

(b) Schedule 3.20(b) sets forth a consolidated list of the top ten (10) vendors of each of Florida Gulf and Grenada Railroad by dollar amount of sales for (i) the fiscal year ending on [REDACTED], and (ii) [REDACTED] (each, a “*Material Vendor*”). Since [REDACTED], no such Acquired Company has received any written notice from any of their respective Material Vendors and, to Seller’s Knowledge, no facts exist to the effect that any such Material Vendor will terminate its relationship with respect to the purchase of products or services by such Acquired Company.

3.21 Insider Transactions. Except as set forth on Schedule 3.21, no Insider (other than any IRP Party) is or was (at any time since [REDACTED]) and no Insider that is an IRP Party, to the Seller’s Knowledge, is or was (at any time since [REDACTED]), (a) a party to any Contract with any Acquired Company, (b) an owner of a direct or indirect interest in any asset used or held for use by any Acquired Company, (c) other than the Organizational Documents of the applicable Acquired Company, party to any Contract for the sale, transfer, purchase, acquisition or other disposition of any material assets or Equity Interests of any Acquired Company or for any right of first refusal or similar right or obligation to sell, transfer, purchase, acquire or otherwise dispose of any material assets or Equity Interest of any Acquired Company, in each case, under which there are outstanding rights or obligations of any party thereto or (d) providing or has provided, services with respect to the operation of the Business (except, in the case such Insider who is an officer, director, manager, or Business Employee of any Acquired Company providing services pursuant to such office, directorship, managership or employment in the Ordinary Course) (collectively, the “*Insider Transactions*”).

3.22 Bank Accounts. Schedule 3.22 sets forth (a) all bank accounts, safety deposit boxes, or lock boxes maintained by any Acquired Company, (b) the name of the institution where such bank account, safety deposit box, or lock box is maintained, (c) the account number(s) related thereto, and (d) a list of the authorized signatories.

3.23 Banker Fees. Except for the fees and expenses of the Banker (all of which shall be Transaction Expenses), no Acquired Company has any Liability to pay any brokerage commissions, finders’ fees or similar compensation in connection with the Transactions, based on any Contract made by any Acquired Company prior to the Closing Date.

3.24 Certain Payments.

(a) During the [REDACTED] none of the Acquired Companies nor any director, officer, employee, stockholder, agent or other Representative of the foregoing, has:

(i) directly or indirectly offered, requested, agreed to receive, received, paid, promised to pay, or authorized the payment of value, including any contribution,

gift, bribe, rebate, payoff, influence payment, kickback or other payment of anything of value, in the course of their actions for, or on behalf of, the Business to any Person, private or public, regardless of what form, in violation of any Anti-Corruption Law; or

(ii) received any written notice or, to the Seller's Knowledge, any other communication from any Governmental Entity that alleges that any Acquired Company or any Representative violated any Anti-Corruption Laws, Sanctions Laws, or Ex-Im Laws.

(b) None of the Acquired Companies nor, to the Seller's Knowledge, any director, officer, employee, stockholder, agent or other Representative of the foregoing: (i) is, nor in the past two (2) years has been, a Sanctioned Person; (ii) has in the two (2) year period prior to the date hereof transacted any business directly or knowingly indirectly with any Sanctioned Person or otherwise violated Sanctions Laws; or (iii) has during the two (2) year period prior to the date hereof violated any applicable Ex-Im Laws.

(c) The Acquired Companies have implemented and maintain in effect the written policies, procedures and internal controls made available to Buyer with respect to Anti-Corruption Laws.

3.25 Campaign Finance and Lobbying. Except as set forth on Schedule 3.25:

(a) The Acquired Companies are, and during the [REDACTED] [REDACTED] have been in compliance in all material respects with all applicable Campaign Finance Laws and Lobbying Laws.

(b) No Acquired Company has received any written notice from, or is subject to, any pending Proceeding or to Seller's Knowledge Threatened Proceeding of any Governmental Entity alleging that any Acquired Company (i) is or was in material violation of any Campaign Finance Law or any Lobbying Law or (ii) has any material Liability arising under applicable Campaign Finance Law or Lobbying Law, the subject of which in each case is unresolved.

3.26 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III and Article IV (as qualified by the Disclosure Schedules), no Seller nor any other Person acting on behalf of Seller or any Acquired Company have made, makes, or shall be deemed to have made any other express or implied representation or warranty, either written or oral, with respect to Seller, any Acquired Company, the Business or the Transactions, including any representation or warranty as to the accuracy or completeness of any information regarding the Business, any assets thereof, or Seller or the Acquired Companies that is furnished or made available to Buyer, its Affiliates, and each of their respective Representatives by the Banker, Seller, the Acquired Companies, or any other Person, or any of their respective Representatives, including any information contained in any confidential information presentation (or similar document), any information, documents, or other materials made available in the Data Room, management presentations, or in any other form in expectation of the Transactions, or as to the future revenue, profitability or success of the Business or the Acquired Companies, or any representation or warranty arising from statute or otherwise in Law.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

The representations and warranties contained in this Article IV are made by Seller as of the date hereof and as of the Closing Date (except for those representations and warranties that speak as of a specific date, in which case such representations and warranties shall be true and correct as of such date).

4.1 Organization. Seller is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, with the requisite power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as now being conducted.

4.2 Authority of Seller. Seller has the requisite authority to execute and deliver this Agreement and any Ancillary Document to which Seller is a party, to perform Seller's obligations hereunder and thereunder, and to consummate the Transactions. Assuming that this Agreement and any Ancillary Document to which Seller is a party have been executed with the requisite authority, and delivered by each other party hereto and thereto, this Agreement and any Ancillary Document to which Seller is a party, when executed and delivered by Seller in accordance with the terms hereof and thereof, shall constitute valid and binding obligations of Seller, enforceable in accordance with their terms, except as the enforceability may be limited by the Enforceability Exceptions.

4.3 No Conflict. Assuming all filings required to obtain STB Approval are made and any waiting periods thereunder have expired or been terminated, and all other actions, Consents, filings with or notifications contemplated in Section 6.3(b) will be made or obtained during the Interim Period, the execution, delivery, and performance of this Agreement and the consummation of the Transactions do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) constitute a default under (whether with or without the passage of time, the giving of notice or both), (c) result in the creation of any Lien upon the Purchased Equity Interests pursuant to, (d) give any Person the right to modify, terminate, or accelerate any obligation under, (e) result in a violation of, or (f) require any Consent, Permit, or other action by or notice or declaration to, or filing with, any Person pursuant to, in each case, any of the following: (i) the Organizational Documents of Seller, (ii) any Law to which Seller or any of Seller's assets are subject or bound or (iii) any Contract to which Seller is party to or by which Seller's assets are subject or bound, except in the case of clauses (ii) and (iii) where the failure would not reasonably be expected to prevent, materially delay or materially impede the performance by Seller of its obligations under this Agreement or to consummate the Transactions.

4.4 Title to Purchased Equity Interests. Seller is the record holder and beneficial owner of, and has good and valid title to, the Purchased Equity Interests, free and clear of all Liens. The Purchased Equity Interests constitute all of the issued and outstanding Equity Interests of the Company. At the Closing, Seller will sell, transfer and convey to Buyer good title to the Purchased Equity Interests, free and clear of all Liens.

4.5 Proceedings. There is no Proceeding pending or, to Seller's Knowledge, Threatened against Seller which would restrict or limit the ability of Seller to perform fully Seller's obligations under this Agreement or any Ancillary Document to which Seller is a party, as applicable, or which seeks to prevent the consummation of the Transactions.

4.6 Banker Fees. Except for the fees and expenses of the Banker (all of which shall be Transaction Expenses), Seller has no Liability to pay any brokerage commissions, finders' fees or similar compensation in connection with the Transactions, based on any Contract made by Seller prior to the Closing Date.

4.7 Certain Payments.

(a) During the [REDACTED] none of the Seller nor any director, officer, employee, stockholder, agent or other Representative of the Seller, has:

(i) directly or indirectly offered, requested, agreed to receive, received, paid, promised to pay, or authorized the payment of value, including any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment of anything of value, in the course of their actions for, or on behalf of, the Business to any Person, private or public, regardless of what form, in violation of any Anti-Corruption Law; or

(ii) received any written notice or, to the Seller's Knowledge, communication from any Governmental Entity that alleges that any Acquired Company or any Representative violated any Anti-Corruption Laws, Sanctions Laws, or Ex-Im Laws.

(b) Neither the Seller nor, to the Seller's Knowledge, any director, officer, employee, stockholder, agent or other Representative of the Seller: (i) is, nor in the past two (2) years has been, a Sanctioned Person; (ii) has in the [REDACTED] transacted any business directly or knowingly indirectly with any Sanctioned Person or otherwise violated Sanctions Laws; or (iii) has during the [REDACTED] violated any applicable Ex-Im Laws.

(c) No part of the proceeds to be paid to the Seller by Buyer in connection with the Transactions will be used, directly or indirectly, in violation of Anti-Corruption Laws and none of Seller or its Affiliates, will directly or indirectly give, lend, contribute or otherwise make available all or part of such proceeds to any officer or employee of an applicable Governmental Entity or government-owned or controlled entity in violation of applicable Anti-Corruption Laws.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

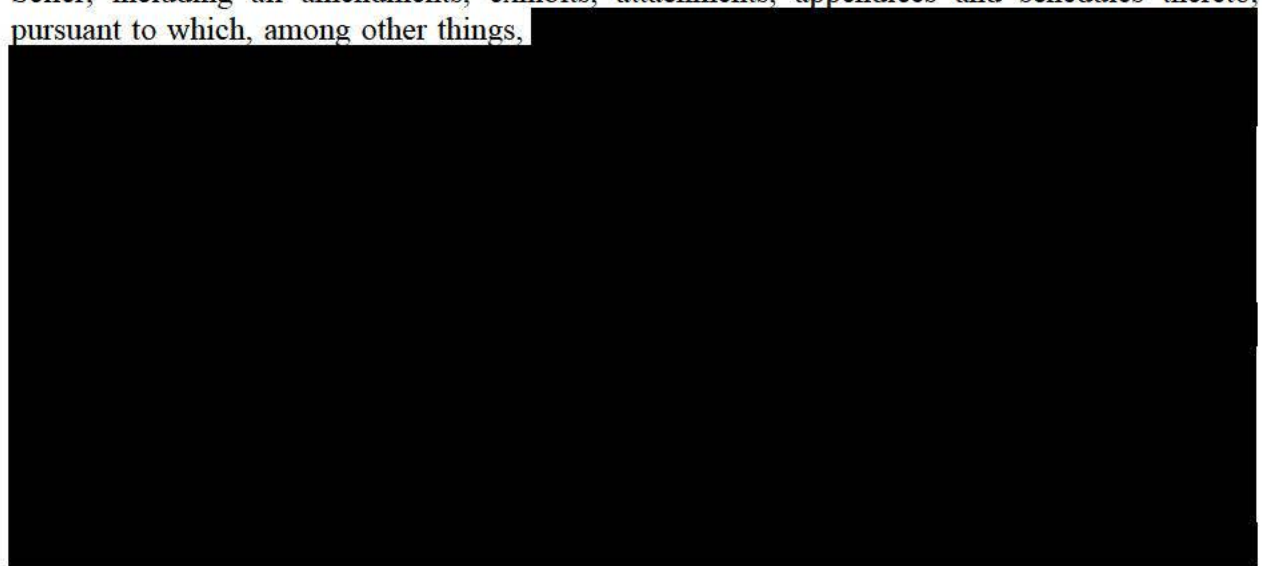
The representations and warranties contained in this Article V are made by Buyer as of the date hereof and the Closing Date (except for those representations and warranties that speak as of a specific date, in which case such representations and warranties shall be true and correct as of such date).

5.1 Organization. Buyer is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, with the requisite power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as now being conducted.

5.2 Authority. Buyer has the requisite authority to execute and deliver this Agreement and any Ancillary Document to which Buyer is a party, to perform its obligations hereunder and thereunder, and to consummate the Transactions. Assuming that this Agreement and any Ancillary Document to which such Buyer is a party have been executed with the requisite authority and delivered by each other party hereto and thereto, this Agreement and any Ancillary Document to which Buyer is a party, when executed and delivered by Buyer in accordance with the terms hereof and thereof, shall constitute valid and binding obligations of Buyer, enforceable in accordance with their terms, except as the enforceability may be limited by the Enforceability Exceptions.

5.3 No Conflict. Assuming all filings required to obtain STB Approval are made and any waiting periods thereunder have expired or been terminated, and all other actions, Consents, filings with or notifications contemplated in Section 6.3(b) will be made or obtained during the Interim Period, the execution, delivery, and performance of this Agreement and the consummation of the Transactions do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) constitute a default under (whether with or without the passage of time, the giving of notice or both), (c) result in the creation of any Lien upon any of the assets of Buyer pursuant to, (d) give any Person the right to modify, terminate, or accelerate any obligation under, (e) result in a violation of, or (f) require any Consent, Permit, or other action by or notice or declaration to, or filing with, any Person pursuant to, in each case, any of the following: (i) the Organizational Documents of Buyer, (ii) any Law to which Buyer or any of its assets is subject or by which Buyer or any of its assets is bound, or (iii) any Contract to which Buyer is party to or by which Buyer or any of its assets is bound, except in the case of clauses (ii) and (iii) where the failure would not reasonably be expected to have a Buyer MAE.

5.4 ECL. A true and complete copy of the fully executed ECL has been provided to Seller, including all amendments, exhibits, attachments, appendices and schedules thereto, pursuant to which, among other things,





5.5 Proceedings. There is no Proceeding pending or, to Buyer's knowledge, Threatened with respect to Buyer's business or against Buyer which would restrict or limit the ability of Buyer to fully perform its obligations under this Agreement or any Ancillary Document to which Buyer is a party, as applicable, or which seeks to prevent the consummation of the Transactions.

5.6 Investment. Buyer is acquiring the Purchased Equity Interests solely for the purpose of this investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Buyer acknowledges that the Purchased Equity Interests are not registered under the Securities Act or any applicable state securities Law or other Law, and that the Purchased Equity Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and pursuant to state securities Laws and regulations as applicable. Buyer is an "accredited investor" within the meaning of Rule 501(a) promulgated under the Securities Act. Buyer has such knowledge and experience in financial and business matters and investments in general that make it capable of evaluating the merits and risks of the Transactions. Buyer acknowledges that it has been afforded: (a) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, Representatives of Seller and the Acquired Companies concerning the merits and risks of investing in the Acquired Companies; (b) access to information about the Acquired Companies, their respective results of operations, financial condition and cash flow, and business, in each case sufficient to enable Buyer to evaluate whether to proceed with the execution and delivery of this Agreement and any Ancillary Document to which Buyer is a party, and the consummation of the transactions contemplated hereby and thereby; and (c) the opportunity to obtain such additional information that either Seller or the Acquired Companies possess, or can acquire without unreasonable effort or expense, that is necessary to make an informed investment decision with respect to the execution and delivery of this Agreement and the consummation of the Transactions.

5.7 Control of Railroads. Buyer and its Affiliates currently control no railroads operating in the United States under the jurisdiction of the STB.

5.8 No Other Representations or Warranties. Except for the representations and warranties contained in this Article V, neither Buyer nor any other Person acting on behalf of

Buyer have made, makes, or shall be deemed to have made any other express or implied representation or warranty, either written or oral, with respect to Buyer or the Transactions.

ARTICLE VI **COVENANTS**

6.1 Conduct of Business.

(a) Except as set forth on Schedule 6.1(a), as contemplated by this Agreement, or as Buyer may otherwise Consent to in writing (such Consent not to be unreasonably withheld, conditioned or delayed), during the Interim Period, the Company shall, and shall cause each other Acquired Company to conduct the Business in the Ordinary Course in all material respects. Without limiting the generality of the foregoing, except as set forth on Schedule 6.1(a), as contemplated by this Agreement, or as Buyer may otherwise Consent to in writing (except with respect to clause (xvii), such Consent not to be unreasonably withheld, conditioned or delayed), during the Interim Period, the Company shall not, and shall cause each other Acquired Company not to:

- (i) cancel, compromise, waive, or release any material right or claim;
- (ii) grant any material license or sublicense of any rights under or with respect to any Intellectual Property other than in the Ordinary Course;
- (iii) make or authorize any amendment to any of its Organizational Documents (other than any immaterial administrative amendment);
- (iv) the extent not already included in the Acquired Companies' applicable annual budget that has been made available to Buyer prior to the date of this Agreement, make capital expenditures in excess of [REDACTED] in the aggregate; provided, that the Acquired Companies shall be permitted to make capital expenditures in accordance with existing Contractual requirements;
- (v) issue, sell, or otherwise dispose of any of its Equity Interests, or grant any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its Equity Interests;
- (vi) (A) make any material increase in the compensation of any Business Employee with annual compensation in excess of [REDACTED] (B) adopt, terminate, modify or amend in any material respect or provide discretionary benefits under any Benefit Plan (or arrangement that would be a Benefit Plan if in effect on the date hereof), in each case, except as may be required by any Law or Contract, (C) increase the compensation of any Business Employee with annual compensation at or below [REDACTED] except in the Ordinary Course, (D) hire or terminate (other than for cause) any Business Employee whose annual compensation exceeds [REDACTED] or (e) grant any severance, termination, change of control or retention pay to any Business Employee except as required pursuant to any Benefit Plan or contract in effect as of the date hereof;

(vii) dispose of (whether by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any material assets of any Acquired Company or acquire (whether by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any Person or substantially all of the assets of any Person;

(viii) make any material loans, advances or capital contributions to, or material investments in, any other Person, other than the Acquired Companies;

(ix) make any change to its methods of financial accounting, except as required by changes in GAAP or applicable Law;

(x) adopt a plan or agreement of complete or partial liquidation or dissolution with respect to any Acquired Company;

(xi) except as required by applicable Law, grant voluntary recognition to any labor union or other labor organization for purposes of collective bargaining or enter a CBA with the Business Employees or their bargaining representatives;

(xii) make any Tax election (other than an initial election made in Ordinary Course) or change any Tax election or accounting method, not settle any Tax claim or controversy, enter into Contract relating to Tax (other than any Contract entered into in the Ordinary Course, the principal purpose of which is not related to Taxes), and amend any Tax Return;

(xiii) other than as set forth on Schedule 6.1(a)(xiii) and renewals of any railcar storage Contracts in the Ordinary Course that are on terms substantially similar to, or better (from the perspective of the Acquired Companies) than such existing railcar storage Contract, enter into any Contract that would be required to be a Specified Contract if entered into prior to the date of this Agreement or modify, amend or terminate any Specified Contract (other than upon any expiration of the term of any Specified Contract or a renewal thereof);

(xiv) incur any Indebtedness or grant any Liens (other than a Permitted Lien);

(xv) change in any material respect its practices in connection with the payment of payables or the collection of receivables;

(xvi) abandon or discontinue rail service over any track or facilities operated by any Acquired Company;

(xvii) grant to any Person any easement, license, trackage rights, haulage rights or other right of use or access to any track or facilities operated by any Acquired Company (other than a Permitted Lien);

(xviii) take any action, other than file bona fide claims, that would invalidate or would make an Insurance Policy void or voidable or might result in an increase in the premium payable under an Insurance Policy or prejudice the ability to effect equivalent

insurance in the future, or fail to cause each Insurance Policy or suitable replacements thereof, to be in full force and effect through the close of business on the Closing Date;

(xix) amend, modify, cancel, compromise, waive, or release any material right or claim to any Rehabilitation Grant; and

(xx) legally obligate itself to do any of the actions described in the foregoing clauses (i) through (xix).

(b) Notwithstanding anything to the contrary in this Agreement, (i) nothing shall prevent the Acquired Companies from taking or failing to take any action (including the establishment of any policy, procedure or protocol) that the Company reasonably determines is necessary or prudent in response to COVID-19, any other epidemic, pandemic or outbreak of disease or any Public Safety Measures that would otherwise potentially be deemed to violate or breach any representation, warranty, or covenant contained in this Agreement, or potentially serve as a basis for Buyer to terminate this Agreement or assert that any of the conditions to the Closing contained herein have not been satisfied, (ii) no Consent of Buyer shall be required with respect to any such action to the extent that the requirement of such Consent would violate applicable Law, such action is taken, or omitted to be taken, by the Acquired Companies in connection with any Public Safety Measures, or such action is otherwise taken, or omitted to be taken, the Acquired Companies to protect the Business in response to COVID-19 or any other pandemic, epidemic or outbreak of disease, as determined by Seller in its reasonable discretion and (iii) in making any determination as to whether the Acquired Companies have discharged their obligations to operate in the Ordinary Course in taking any action (or refraining from taking any action) that would otherwise deviate from the Ordinary Course, Ordinary Course shall be deemed to include, solely for purposes of this Section 6.1(b), any deviations from the past customs and practices of such Acquired Company as required to comply with Public Safety Measures so long as such deviations are generally consistent in all material respects with the then-current ordinary course operations of similarly-situated Persons operating in the industries and geographic locations in which the Acquired Companies operate; provided, however, that, prior to any Acquired Company undertaking to take any action contemplated by this Section 6.1(b) after the date hereof or materially expanding or modifying any previously taken action contemplated by this Section 6.1(b), Seller and the Company shall consult with Buyer and consider in good faith Buyer's suggestions or other recommendations with respect to such action to be undertaken, expanded or modified; provided, that neither Seller nor the Company shall have any obligation to follow such suggestions or recommendations.

(c) The Parties acknowledge and agree that nothing contained in this Agreement is intended nor shall it be interpreted to give, permit, or otherwise authorize Buyer or any of its Affiliates or Representatives, directly or indirectly, the right to control or direct the respective businesses or operations of the Acquired Companies prior to the Closing Date. Prior to the Closing Date, Seller shall retain the exclusive right to exercise, consistent with the terms and conditions of this Agreement and subject to applicable Law, complete control and supervision over the businesses and operations of the Acquired Companies.

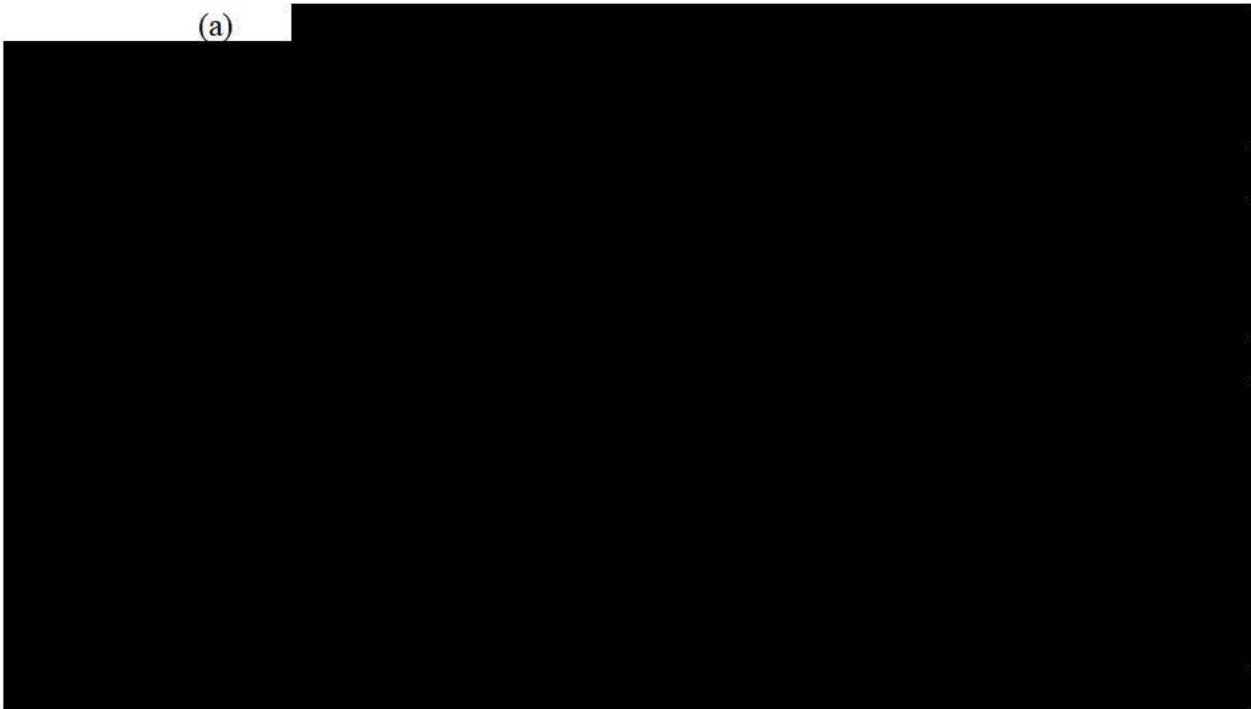
6.2 Access to Books and Records.

(a) During the Interim Period, at reasonable times without causing unreasonable disruption to the operations of the Acquired Companies, consistent with applicable Law (including any applicable Public Safety Measures), the Company shall provide Buyer and its Representatives reasonable access to the Books and Records as Buyer may from time to time reasonably request. Notwithstanding the foregoing, the Company may withhold (i) any document or information that is subject to the terms of a confidentiality agreement with a third Person or (ii) information that, if disclosed, would violate an attorney-client or other privilege or would constitute a waiver of rights as to attorney work product or attorney-client privilege, provided that the Company shall use commercially reasonable efforts to provide such information in a manner that will avoid such violation of an attorney-client or other privilege or waiver of rights as to attorney work product or attorney-client privilege. Notwithstanding anything herein to the contrary, in no event shall Buyer be permitted to speak to (x) any Business Employees (other than Patricia Bencivenga and Barbara Wilson) or (y) any customer, vendor, or service provider of the Acquired Companies, in each case, absent the prior written Consent of Seller.

(b) In order to facilitate the resolution of any claims made against or incurred by Seller (as it relates to the Acquired Companies or the Transactions), for a period of five (5) years after the Closing, Buyer shall (i) retain the Books and Records relating to periods prior to the Closing and (ii) afford Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours and on five (5) Business Days' prior written notice, to such Books and Records; provided, that such access shall only be in a manner that does not interfere with the normal business operations of the Acquired Companies and is permissible under applicable Law.

6.3 Efforts to Close; STB Approval; FCC Applications.

(a)



(b)

(c) Each Party shall promptly inform the other Party upon receipt of any substantive communication from the STB or any other Governmental Entity regarding the Transactions. If any Party (or any of their respective Affiliates or Representatives) receives a request for additional information or documentary material from any such Governmental Entity that is related to the Transactions, then such Party will endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Parties, an appropriate response to such request. The Parties agree not to participate, or to permit their Affiliates or Representatives to participate, in any substantive meeting or discussion with any Governmental Entity in connection with the Transactions unless such Party first consults with the other Parties in advance and, to the extent not prohibited by such Governmental Entity, gives the other Parties the opportunity to attend and participate duly represented by its external counsel. Each Party will advise the other Party promptly of any understandings, undertakings or agreements (oral or written) which the first Party proposes to make or enter into with the STB or any other Governmental Entity in connection with the Transactions. In furtherance and not in limitation of the foregoing, each Party will, unless the Parties otherwise agree in writing, use their respective commercially reasonable efforts to resolve any objections that may be asserted with respect to the Transactions under any Law promulgated by the STB or any other applicable Laws with respect to the STB Approval.

(d) Notwithstanding anything in this Agreement to the contrary, with respect to the matters covered in this Section 6.3, it is agreed that Buyer shall have the right and responsibility to direct and implement the strategy for obtaining the STB Approval, including by directing the timing, nature, and substance of any filings, forms, statements, commitments, submissions and communications contemplated by or made in accordance with this Section 6.3, as well as the manner in which to contest or otherwise respond, by litigation or otherwise, to objections to, or proceedings or other actions challenging, the consummation of the Transactions; provided, however, that Buyer shall consult in advance with Seller and in good faith take Seller's views into account regarding the overall strategic direction of obtaining the STB Approval and

consult with Seller prior to taking any material substantive position in any written position, or, to the extent practicable, discussions with any Governmental Entity.

(e) Neither Buyer nor the Company shall extend any waiting period under any Law or regulation related to the STB Approval or enter into any agreement with any Governmental Entity not to consummate the Transactions, except with the prior written Consent of the other Party (which shall not be unreasonably withheld, conditioned or delayed). Each of Buyer and the Company shall also refrain from taking, directly or indirectly, any action which would impair or frustrate any Person's ability to consummate the Transactions.

(f)



6.4 Investigation; No Additional Representations. Buyer acknowledges and agrees that, in connection with the decision to enter into this Agreement and consummate the Transactions, Buyer, its Affiliates, and each of their respective Representatives have inspected and conducted an independent review, investigation and analysis (financial, tax, legal and otherwise) of the Acquired Companies and their respective businesses as desired by Buyer, its Affiliates, and each of their respective Representatives. Buyer further acknowledges and agrees that, notwithstanding anything to the contrary contained herein, except for the specific representations and warranties expressly made in Article III and Article IV (in each case, as qualified or modified by the Disclosure Schedules), none of Seller, the Acquired Companies, the Banker, any Nonparty Affiliates (as defined below), or any of their respective Affiliates or Representatives has made, is making, or shall be deemed to have been made, and Buyer, its Affiliates, and their respective Representatives have not relied, are not relying and will not rely on, any representation or warranty, express or implied, at law or in equity, or any omission of a material fact, with respect to (a) any Acquired Company, (b) their respective businesses, assets, Liabilities, operations, prospects, or condition (financial or otherwise), (c) the Transactions, (d) the accuracy or completeness of any information regarding any of the foregoing, including any confidential information memorandum, management presentation, projections, budgets or any other information, document or material made available to Buyer, its Affiliates, or any of their respective Representatives in the Data Room, confidential information memorandums, management presentations, or in any other form, or (e) any other matter whatsoever. Without limiting the generality of the foregoing, Buyer further acknowledges and agrees that, with respect to any estimate, projection, forecast or other forward looking statement delivered by or on behalf of Seller or any of the Acquired Companies to Buyer, any of its Affiliates, and/or any of their respective Representatives, (i) there are uncertainties inherent in attempting to make such estimates, projections, forecasts and forward looking statements, (ii) Buyer is aware that actual

results may differ materially, and (iii) no Person shall have any claim against Seller, any Acquired Company, any Nonparty Affiliate or any other Person with respect to any such estimate, projection, forecast or forward looking statement.

6.5 Employee Matters.

(a) For a [REDACTED] (or until the termination of the relevant Business Employee if sooner), Buyer shall, or shall cause the Acquired Companies to, provide each Business Employee on the Closing Date with (i) a base salary or wage rate that is no less than the base salary or wage rate as in effect with respect to such Business Employee immediately prior to the Closing and (ii) employee benefits that are, in the aggregate, no less favorable than those provided to such Business Employees under the Benefit Plans immediately prior to Closing (including severance benefits that are no less favorable than those provided under the Benefit Plans immediately prior to Closing). Except as otherwise set forth in this Section 6.5 or as may be specifically required by this Agreement or by applicable Law, Buyer shall not be obligated to continue the employment of any Business Employee or to provide any particular type of employee benefits or compensation to any Business Employee. Buyer shall cause the Acquired Companies to pay all bonuses to the Business Employees accrued as of the Closing if and when due to such Business Employees to the extent that such bonuses were included in Indebtedness.

(b) Nothing contained in this Section 6.5 shall (i) confer any rights, remedies or claims (including third-party beneficiary rights) upon any Business Employee or any other Person, (ii) be considered or deemed an establishment or amendment or termination of any Benefit Plan or any other benefit or compensation plan, program, agreement, policy or arrangement, (iii) guarantee continued employment or service or any particular term or condition of employment or service for any Person or limit the ability of Buyer or any of its Affiliates (including, after the Closing, the Acquired Companies) to terminate the employment or service of any Person at any time and for any or no reason, or (iv) except as expressly provided in Section 6.5(a), limit the ability of Buyer or any of its Affiliates (including, after the Closing, the Acquired Companies) to amend, modify or terminate any benefit or compensation plan, program, policy, agreement or arrangement after the Closing.

6.6 Directors, Managers and Officers Indemnification.

(a) On or prior to the Closing Date, the Company shall obtain, at Buyer's sole cost and expense, a non-cancelable run-off insurance policy for directors' and officers' liability (which shall include employment practices liability and fiduciary liability coverages), for a period of six (6) years after the Closing Date to provide insurance coverage for events, acts or omissions occurring on or prior to the Closing Date, including in connection with this Agreement and the Transactions, for all persons who were directors, managers or officers of any Acquired Company on or prior to the Closing Date (the "**Tail Policy**"). Buyer shall cause any Acquired Company, as applicable, to maintain the Tail Policy in full force and effect, and continue to honor the obligations thereunder.

(b) Buyer, for itself and on behalf of its Affiliates (including, after the Closing, the Acquired Companies), successors, and permitted assigns, shall not institute any

Proceeding in any Governmental Entity or before any other tribunal against any of directors, managers, officers of any Acquired Company as of immediately prior to the Closing, in their capacity as such, with respect to any Liabilities to the extent resulting from their approval of either this Agreement or the Transactions.

6.7 RWI Policy. Following the Closing, Buyer shall not, and shall cause its Affiliates (including, after the Closing, the Acquired Companies) not to, amend, modify, or waive any of the subrogation provision of the RWI Policy in a manner that would have an adverse impact on Seller, any of Seller's Affiliates or any past, present or future equity holder, director, manager, officer, employee or advisor of any of the foregoing.

6.8 Confidentiality; Public Announcements.

(a) No Party shall, nor shall any of their respective Affiliates or Representatives, without the written approval of the other Party, issue any press release or otherwise make any public statement with respect to this Agreement or the Transactions, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange or stock market, in which case any Party may be required to make the release or announcement shall allow the other Party reasonable time to comment on such release or announcement in advance of such issuance; provided, however, that each Party may make internal announcements to their respective employees regarding the Transactions.

(b) Notwithstanding anything in the Confidentiality Agreement to the contrary, the Parties agree that, during the Interim Period, Buyer and the Macquarie Funds may disclose Confidential Information (as defined in the Confidentiality Agreement) to their respective direct and indirect equityholders, provided that such disclosures are made to Persons subject to an obligation of confidentiality with respect to such information. Upon the Closing, the Confidentiality Agreement shall automatically terminate in its entirety. From and after the Closing Date, except as otherwise consented to by the Company, Seller agrees that it will not, whether directly or indirectly through an Affiliate, disclose any Confidential Information for any reason or purpose whatsoever or, with respect to Seller, use any Confidential Information for any purposes other than in connection with the Transactions, except for disclosures: (a) to Affiliates of Seller (including its direct and indirect equityholders) and Seller's and its Affiliates' Representatives and as otherwise may be proper in the course of performing Seller's obligations, or enforcing Seller's rights, under this Agreement or any Ancillary Document; provided, however, that each such Person is informed of the confidential nature of such Confidential Information, agrees to hold such Confidential Information confidential and (b) required by applicable Law or any regulatory or supervisory body or the rules of any securities exchange to which Seller and its Affiliates are subject; provided further that Seller shall (to the extent permitted by applicable Law) provide the Company with prompt notice of any such requirement to enable the Company to seek an appropriate protective order or confidential treatment and shall disclose only that portion of such Confidential Information so required to be disclosed.

6.9 Further Assurances. Each Party will from time to time after the Closing, upon the reasonable request of the other Party, and at its own expense, deliver or cause to be delivered to the designated Party such further documents and other instruments necessary or desirable (but

excluding any additional representations or warranties) to effect, preserve, maintain or document the Transactions, in the manner and on the terms and conditions set forth herein.

6.10 Tax Matters.

(a) Allocation of Straddle Period Tax Liability. For all purposes under this Agreement (including, for the avoidance of doubt, the preparation of any pro forma Tax Return), the portion of Taxes (or any Tax refund and amount credited against any Tax) that are allocable to the portion of the Pre-Closing Tax Period ending on the Closing Date (based on an interim closing of the books as of the close of business on the Closing Date) shall be: (i) in the case of property Taxes and other Taxes imposed on a periodic basis without regard to income, gross receipts or sales, deemed to be the amount of such Taxes (or Tax refund or amount credited against Tax) for such entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such Straddle Period ending on the end of the Closing Date and the denominator of which is the number of calendar days in such entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of the Acquired Companies terminated at the end of the Closing Date. To the extent permitted by applicable Law, any and all Transaction Deductions shall be treated for Income Tax purposes as having been incurred by the Acquired Companies, and reflected as a deduction on the Tax Returns of the Acquired Companies for the taxable period or portion thereof ending on the day prior to the Closing Date.

(b) Post-Closing Actions. Buyer shall not, and shall not permit any of its Affiliates (including, after the Closing, the Acquired Companies) to, (i) without the prior consent of Seller (not to be unreasonably withheld, conditioned or delayed), file, re-file, supplement, or amend any Tax Return of any Acquired Company for any Pre-Closing Tax Period, (ii) voluntarily approach any taxing authority regarding any Taxes or Tax Returns of any Acquired Company that were originally due before the Closing Date, or (iii) make any Tax election for any Acquired Company that has a retroactive effect to a taxable period ending on or before the Closing Date, in each case, to the extent such action would reasonably be expected to either (x) increase Seller's obligation for Taxes as included in final calculation of Net Working Capital or Indebtedness or (y) negatively affect the liability of Seller (and/or its equity holders) for any period prior to the Closing.

(c) Transfer Taxes. Buyer shall pay all Transfer Taxes arising out of or in connection with the Transactions, and shall file all necessary documentation and Tax Returns with respect to such Transfer Taxes in accordance with applicable Law.

(d)



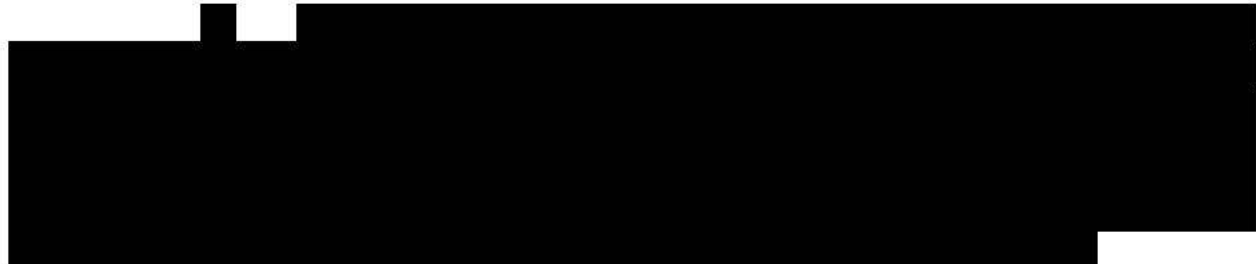
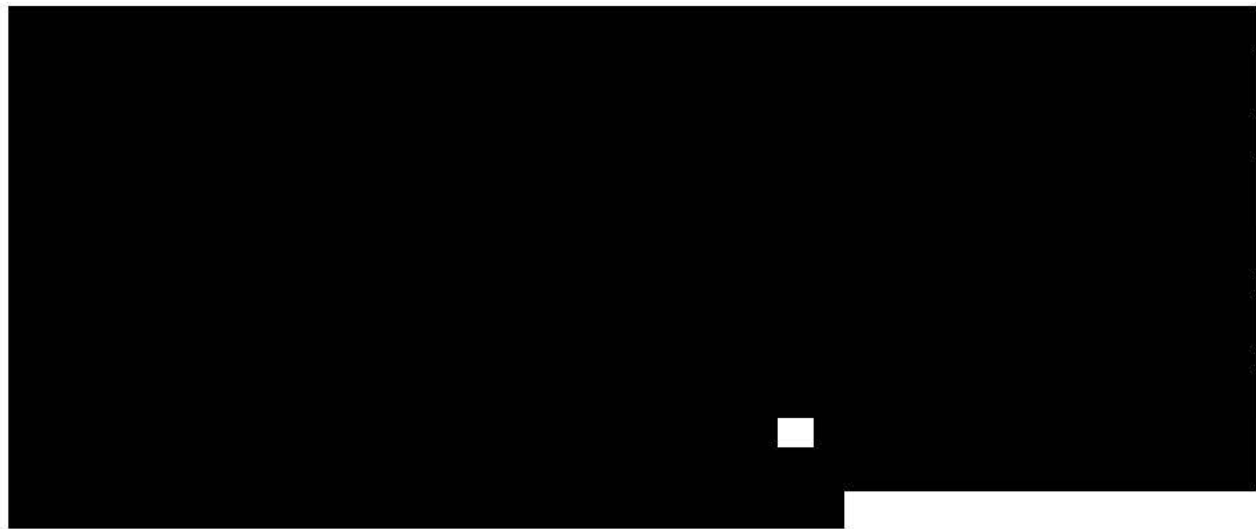
[REDACTED]

6.11

[REDACTED]

[REDACTED]

[REDACTED]



6.12 ECL. During the Interim Period, Buyer shall take (or cause to be taken) all actions and do (or cause to be done) all things necessary, proper or advisable to obtain the equity financing contemplated in the ECL, including to (a) maintain the ECL in effect, (b) comply with and perform the obligations applicable to Buyer pursuant to the ECL, and (c), draw down on and consummate the equity financing contemplated in the ECL, including enforcing Buyer's rights under the ECL against Macquarie Funds to fund such equity financing. Buyer shall not replace, amend or waive the ECL or any provision thereof without Seller's prior written consent if such replacement, amendment or waiver would, or would reasonably be expected to, when taken together with any other amendments, modifications, or waivers: (i) delay or prevent the Closing, (ii) impact the ability of Buyer to enforce its rights against Macquarie Funds pursuant to the terms of the ECL, or (iii) impose new conditions or expand, amend or modify any of the existing conditions to the consummation of the equity financing in any material respect, or otherwise add, expand, amend or modify in any material respect any other provision of the ECL in a manner that would reasonably be expected to delay or prevent the Closing.

6.13 Exclusivity. During the Interim Period, each of Seller and the Company shall (and shall direct their respective Affiliates and their respective Representatives to) not, directly or indirectly, through any representative or otherwise (a) continue, solicit, entertain, initiate, facilitate, respond to or participate in or encourage discussions or negotiations with, or the submission of bids, offers or proposals by, any Person with respect to, whether directly or indirectly, an Alternative Transaction by any means whatsoever, (b) enter into any agreement, arrangement or understanding regarding any Alternative Transaction or (c) provide any information to any other Person for the purpose of making, evaluating, or determining whether to make or pursue, any inquiries or proposals with respect to, any Alternative Transaction. Each of

Seller and the Company shall (and shall direct each of their respective Affiliates and their respective Representatives to) immediately cease and terminate any discussions or negotiations with any third party that are ongoing with respect to any Alternative Transaction and shall direct such third party to comply with the obligations of such third party's confidentiality agreement with respect to the return or destruction of any confidential information shared in connection with such discussions or negotiations, and terminate access to the Data Room by any Person and their representatives (other than Buyer or an Affiliate of Buyer and their respective Representatives). Each of the Company and Seller agree that in the event any Person expresses a bona fide interest in acquiring or investing in the any Acquired Company during the Interim Period, whether directly or through an intermediary, Seller shall inform the Buyer of the name of the Person submitting such inquiry promptly.

ARTICLE VII

CONDITIONS TO CLOSING; TERMINATION

7.1 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Transactions is subject to the satisfaction (or written waiver by Buyer) of the following conditions:

(a) Each of the representations and warranties (other than the Seller Fundamental Representations) set forth in Article III and Article IV (disregarding all qualifications contained therein relating to materiality or Acquired Companies MAE) shall be true and correct at and as of the Closing Date (other than such representations and warranties that refer specifically to an earlier date, which representations and warranties shall have been true and correct as of such earlier date), except where the failure of any such representation or warranty to be so true and correct has not had, individually or in the aggregate, an Acquired Companies MAE. The Seller Fundamental Representations shall be true and correct in all respects (except for *de minimis* inaccuracies) at and as of the Closing Date (other than such representations and warranties that refer specifically to an earlier date, which representations and warranties shall have been true and correct as of such earlier date).

(b) Each of Seller and the Company shall have performed or complied in all material respects with all of its respective obligations and covenants required by this Agreement to be performed or complied with by Seller or the Company, as applicable, at or prior to the Closing Date.

(c) Buyer shall have received a certificate dated as of the Closing Date executed by Seller to the effect that the conditions set forth in Sections 7.1(a) and 7.1(b) have been satisfied (the “***Seller’s Closing Certificate***”).

(d) The STB Approval shall have been obtained, and neither the STB nor any other Governmental Entity shall have imposed any conditions or obligations on the Buyer or the Acquired Companies (other than immaterial conditions or obligations) in connection with the STB Approval or consummation of the Transactions.

(e) No Law preventing the Transactions shall be in effect, and no Proceeding shall be pending which seeks to prohibit the Transactions (except for any Proceeding commenced by Buyer or any of its Affiliates).

7.2 Conditions to Obligation of Seller. The obligation of Seller to consummate the Transactions is subject to the satisfaction (or written waiver by Seller) of the following conditions:

(a) Each of the representations and warranties (other than the Buyer Fundamental Representations) of Buyer set forth in Article V shall be true and correct at and as of the Closing Date (other than such representations and warranties that refer specifically to an earlier date, which representations and warranties shall have been true and correct as of such earlier date), except where the failure of any such representation or warranty to be so true and correct has not had, individually or in the aggregate, a Buyer MAE. The Buyer Fundamental Representations shall be true and correct in all material respects at and as of the Closing Date (other than such representations and warranties that refer specifically to an earlier date, which representations and warranties shall have been true and correct as of such earlier date).

(b) Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Buyer at or prior to the Closing Date.

(c) Seller shall have received a certificate dated as of the Closing Date executed by an appropriate officer of Buyer in his or her capacity as such (and not in his or her individual capacity) to the effect that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied (the “*Buyer’s Closing Certificate*”).

(d) The STB Approval shall have been obtained, and neither the STB nor any other Governmental Entity shall have imposed any conditions or obligations on the Seller or the Acquired Companies (other than immaterial conditions or obligations) in connection with the STB Approval or consummation of the Transactions.

(e) No Law preventing the Transactions shall be in effect, and no Proceeding shall be pending which seeks to prohibit the Transactions (except any Proceeding commenced by Seller or any of its Affiliates or any Insider).

7.3 Frustration of Closing Conditions. No Party may rely on or assert the failure of any condition set forth in this Article VII if such failure results from or was caused by such Party’s failure to comply with any provision of this Agreement.

7.4 Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated, and the Transactions may be abandoned, prior to the Closing solely:

(a) by the mutual written Consent of the Parties;

(b) by Buyer or Seller, if (i) an Order enjoining or prohibiting the other Party from consummating the Transactions is in effect and such Order has become final and non-

appealable and (ii) the terminating Party has not materially breached any provision of this Agreement that remains uncured as of the date of determination;

(c) by Buyer, if (i) a breach of any representation or warranty contained in Article III or Article IV or a failure to perform any covenant on the part of Seller or the Company shall have occurred which is incapable of being cured or, if capable of being cured, shall not have been cured prior to the earlier of ten (10) days after written notice thereof and (y) three (3) Business Days prior to the Outside Date and renders impossible the satisfaction of one or more of the conditions set forth in Section 7.1 and (ii) Buyer has not materially breached any provision of this Agreement that remains uncured as of the date of determination;

(d) by Seller, if (i) a breach of any representation or warranty contained in Article V or a failure to perform any covenant on the part of Buyer shall have occurred which is incapable of being cured or, if capable of being cured, shall not have been cured prior to the earlier of ten (10) days after written notice thereof and (y) three (3) Business Days prior to the Outside Date and renders impossible the satisfaction of one or more of the conditions set forth in Section 7.2 and (ii) Seller and the Company have not materially breached any provision of this Agreement that remains uncured as of the date of determination;

(e) by Buyer, if the Closing shall not have occurred on or before [REDACTED] (the “*Outside Date*”); provided, however, that the right to terminate this Agreement under this Section 7.4(e) shall not be available if Buyer’s failure to fulfill any material obligation under this Agreement has been the cause of, or results in, the failure of the Closing to occur before the Outside Date; or

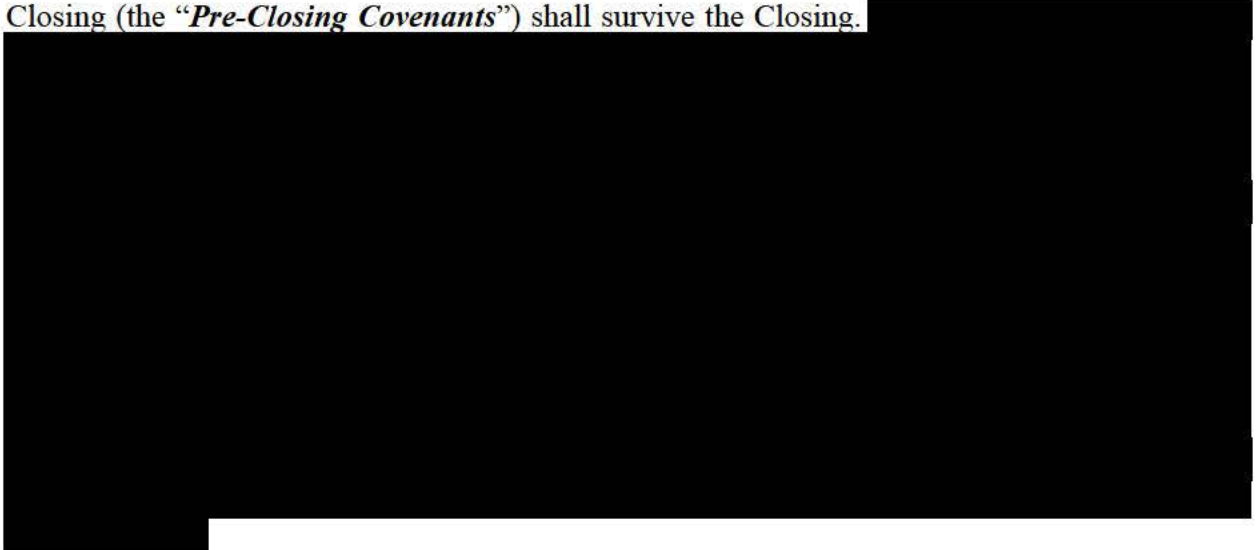
(f) by Seller, if the Closing shall not have occurred on or before the Outside Date; provided, however, that the right to terminate this Agreement under this Section 7.4(f) shall not be available if Seller’s or the Company’s failure to fulfill any material obligation under this Agreement has been the cause of, or results in, the failure of the Closing to occur before the Outside Date.

7.5 Effect of Termination. The valid termination of this Agreement in accordance with Section 7.4 shall terminate all rights and obligations of the Parties and none of the Parties shall have any Liability to any other Parties, except that (i) Sections 6.8, this Section 7.5, and Article VIII (and, in each case, any definitions used therein) shall survive any such termination and (ii) nothing herein shall relieve any Party from any Liability for any intentional or willful breach of this Agreement prior to such termination. In the event of termination of this Agreement, and regardless of the reason for the termination, the Confidentiality Agreement shall continue in full force and effect in accordance with their respective terms and any such termination shall not amend, modify, release, waive or otherwise limit any rights or obligations the Confidentiality Agreement.

ARTICLE VIII **MISCELLANEOUS**

8.1 Survival. None of the (a) representations and warranties contained in Articles III, IV and V or (b) covenants contained in this Agreement that require performance at or prior to the

Closing (the “*Pre-Closing Covenants*”) shall survive the Closing.



8.2 Notices. Any notice, request, demand, waiver, Consent or other communication which is required or permitted hereunder shall be in writing and shall be deemed given: (a) on the date established by the sender as having been delivered personally, (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier, (c) on the date sent by electronic mail, with confirmation of receipt, if sent prior to 5:00 p.m. (Eastern), or if sent later, then on the next Business Day, or (d) on the fifth (5th) Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to Buyer (or, if after the Closing, any Acquired Company), to:

MIP V Rail, LLC
c/o Macquarie Infrastructure and Real Assets Inc.
125 W 55th Street, 15th Floor
Attn: Louis Paul
Henry Blackford
E-mail: louis.paul@macquarie.com
henry.blackford@macquarie.com

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

E-mail: miralegalnotices@macquarie.com

and

Sidley Austin LLP
1000 Louisiana St., Suite 5900
Houston, TX 77002
Attn: Cliff W. Vrielink
E-mail: cvrielink@sidley.com

If to Company (prior to the Closing), to:

RailUSA, LLC
1515 South Federal Highway, Suite 308
Boca Raton, FL 33432
Attention: Barbara Wilson
E-mail: barbara.wilson@railusa.net

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

Newco SBS Holdings, LLC
2 North Riverside Plaza, Suite 600
Chicago, Illinois 60606
Attention: Evan Harwood
E-mail: eharwood@egii.com

and

Katten Muchin Rosenman LLP
525 West Monroe Street, Suite 1900
Chicago, Illinois 60661
Attention: Kimberly T. Smith
E-mail: kimberly.smith@katten.com

If to Seller (or, if prior to the Closing, any Acquired Company), to:

Newco SBS Holdings, LLC
2 North Riverside Plaza, Suite 600
Chicago, Illinois 60606
Attention: Evan Harwood
E-mail: eharwood@egii.com

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

Katten Muchin Rosenman LLP
525 West Monroe Street, Suite 1900
Chicago, Illinois 60661
Attention: Kimberly T. Smith
E-mail: kimberly.smith@katten.com

or to such other address or to the attention of such Person or Persons as the recipient Party has specified by prior written notice to the sending Party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain).

8.3 Entire Agreement. This Agreement (together with the Disclosure Schedules and the Exhibits hereto), the Ancillary Documents and the Confidentiality Agreement constitute the

sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

8.4 Amendments and Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the greatest extent possible. If any one or more of the provisions of this Agreement shall for any reason be held to be excessively broad as to time, duration, geographical scope, activity, or subject, each such provision shall be construed, by limiting and reducing it, so as to be enforceable to the extent compatible with applicable Law then in force.

8.6 No Third Party Beneficiaries. Except as provided in Sections 6.4 and 8.16, and 8.17, which are intended to benefit and may also be enforced directly by Katten, McLachlan and the Nonparty Affiliates, as applicable, no provision of this Agreement is intended to confer upon any Person other than the Parties any rights or remedies hereunder.

8.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any Party without the prior written Consent of the other Parties, and any such assignment without such prior written Consent shall be null and void *ab initio* and of no force or effect; provided, however, that Buyer may assign this Agreement prior to Closing to an Affiliate although Buyer shall not be relieved of any of its obligations hereunder as a result of such assignment. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

8.8 Governing Law. This Agreement and all disputes or controversies arising out of this Agreement or the Transactions shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware.

8.9 Consent to Jurisdiction. Each of the Parties irrevocably agrees that any Proceeding arising out of or relating to this Agreement or any dispute or controversy arising out

of this Agreement or the Transactions brought by any Party or its successors or assigns shall be brought and determined in the Court of Chancery of the State of Delaware, the courts of the United States of America for the District of Delaware, and appellate courts thereof, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Proceeding arising out of or relating to this Agreement and the Transactions. Each of the Parties agrees not to commence any Proceeding relating thereto except in the courts described above in Delaware, other than Proceeding in any court of competent jurisdiction to enforce any Order rendered by any such court in Delaware as described herein. Each of the Parties further agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each Party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Proceeding arising out of or relating to this Agreement or any dispute or controversy arising out of this Agreement or the Transactions, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) that (i) the Proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such Proceeding is improper, or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

8.10 **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT REGARDLESS OF FORM, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.11 **Expenses.** Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses in connection with the negotiation, documentation and consummation of the Transactions, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties, whether or not the Transactions are consummated; provided, however, that each of Buyer and Seller shall bear fifty percent (50%) of costs and expenses in connection with establishing and maintaining the escrow account under the Escrow Agreement.

8.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one agreement binding on the Parties. Electronic mail transmission, PDFs or other electronic instances of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, and such signatures shall be deemed original signatures for purposes of the enforcement and construction of this Agreement.

8.13 Disclosure Schedules. Except as otherwise provided in the Disclosure Schedules, all capitalized terms used therein shall have the meanings assigned to them in this Agreement. Matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be disclosed. No disclosure made in the Disclosure Schedules shall constitute an admission or determination that any fact or matter so disclosed is material, meets a dollar or other threshold set forth in this Agreement or would otherwise be required to be disclosed, and no Person shall use the fact of the setting of a threshold or the inclusion of such facts or matters in any dispute or controversy as to whether any obligation, amount, fact or matter is or is not material, is or is not in excess of a dollar or other threshold or would otherwise be required to be disclosed, for purposes of this Agreement. Information disclosed in any Disclosure Schedule will qualify any representation, warranty, covenant or agreement in this Agreement to the extent that, on the face such disclosure a reasonable buyer would infer the relevance or applicability of the information disclosed to any such representation, warranty, covenant or agreement, notwithstanding the absence of a reference or cross-reference to such representation, warranty, covenant or agreement on any such Disclosure Schedule or the absence of a reference or cross-reference to such Disclosure Schedule in such representation, warranty, covenant or agreement. No disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

8.14 Captions. All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

8.15 Specific Performance.

(a) The Parties agree that irreparable damage (for which monetary relief, even if available, would not be an adequate remedy) may occur in the event that any of the provisions of this Agreement were not performed by the Parties in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (a) Buyer, on the one hand, and Seller, on the other hand, shall be entitled to an injunction or injunctions or other equitable relief or remedies to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof and thereof in any court of competent jurisdiction without proof of damages or otherwise and that this shall include the right of Seller to cause Buyer to fully perform the terms of this to the fullest extent permissible pursuant to this Agreement and applicable Laws and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Party would have entered into this Agreement. Each of the Parties agrees that it will not oppose the granting of specific performance and other equitable relief on the basis that the other Parties have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity.

Each of the Parties hereby waives any requirement under any Law to post a bond or other security as a prerequisite to obtaining specific performance of other equitable relief. If any Party brings any Proceeding to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date shall be automatically extended for so long as the Party bringing such Proceeding is actively seeking an Order for an injunction or injunctions or to specifically enforce the terms and provisions of this Agreement *plus* five (5) Business Days.

(b) Notwithstanding anything to the contrary in Section 8.15(a), the Parties hereby further acknowledge and agree that prior to the Closing, Seller shall be entitled to specific performance of Buyer's obligations to cause the amounts committed to be funded under the ECL to be funded (whether under this Agreement or pursuant to the terms of the ECL) and consummate the Closing only in the event that (i) all of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied or irrevocably waived (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied at the Closing if the Closing were to occur) as of the time when Closing should have occurred pursuant to Section 2.3(a), (ii) Buyer has failed to consummate the Closing on the date that the Closing should have occurred pursuant to Section 2.3(a), and (iii) Seller has delivered to Buyer an irrevocable notice on or after the date that the Closing should have occur pursuant to Section 2.3(a) that all conditions set forth in Section 7.1 have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing were to occur) and if specific performance is granted pursuant to this Section 8.15(b) and the amounts contemplated to be funded under the ECL are funded in accordance with its terms, Seller stands ready, willing and able to consummate the Closing in accordance with Section 2.3(a).

8.16 Legal Representation.

(a) Each Party acknowledges that (i) each of the Acquired Companies have retained Katten and McLachlan to act as its counsel in connection with the Transaction Matters as well as other past and ongoing matters, (ii) Katten and McLachlan has not acted as counsel for any other Person in connection with the Transaction Matters, and (iii) no Person other than the Acquired Companies has the status of a Katten and/or McLachlan client for conflict of interest or any other purpose as a result thereof. Buyer (1) waives and will not assert, and will cause each of its Affiliates (including, after the Closing, the Acquired Companies) to waive and not assert, any conflict of interest relating to Katten's and/or McLachlan's representation after the Closing of Seller or any of its Affiliates in any matter, whether involving the Transaction Matters (including any Proceeding) or otherwise and (2) Consents to, and will cause each of its Affiliates (including, after the Closing, the Acquired Companies) to Consent to, any such representation, even though in each case (x) the interests of Seller and/or its Affiliates may be directly adverse to Buyer or the Acquired Companies, (y) Katten and/or McLachlan may have represented any Acquired Company in a substantially related matter, and/or (z) Katten and/or McLachlan may be handling other ongoing matters for Buyer or any of the Acquired Companies.

(b) Buyer agrees that, after the Closing, neither Buyer nor any of its Affiliates (including, after the Closing, the Acquired Companies) will have any right to access or control any of Katten's and/or McLachlan's records, work product, summaries, drafts or analyses in any medium (including electronic copies) relating to or affecting any Transaction Matter, which shall

be the property of (and be controlled by) Seller. In addition, Buyer agrees that it would be impractical to remove all Attorney-Client Communications from the records (including e-mails and other electronic files) of the Acquired Companies. Accordingly, (i) Buyer will not, and will cause each of its Affiliates (including, after the Closing, the Acquired Companies) not to, in any way, directly or indirectly, use or rely on any Attorney-Client Communication remaining in the records of any Acquired Company after Closing, and (ii) Buyer will, and will cause each of its Affiliates (including, after the Closing, the Acquired Companies) to, maintain the confidentiality of all such Attorney-Client Communication remaining in the records of any Acquired Company after Closing.

(c) Buyer agrees, on its own behalf and on behalf of its Affiliates (including, after the Closing, the Acquired Companies), that from and after Closing (i) the attorney-client privilege, all other evidentiary privileges, and the expectation of client confidence as to all Attorney-Client Communications are hereby assigned to and shall belong to Seller and will not pass to or be claimed by Buyer or any of its Affiliates (including, after the Closing, the Acquired Companies) and (ii) Seller will have the exclusive right to control, assert, or waive the attorney-client privilege, any other evidentiary privilege, and the expectation of client confidence with respect to such Attorney-Client Communications. Accordingly, Buyer will not, and will cause each of its Affiliates (including, after the Closing, the Acquired Companies) not to, (1) assert any attorney-client privilege, other evidentiary privilege, or expectation of client confidence with respect to any Attorney-Client Communication, except in the event of a post-Closing dispute with a Person other than Seller or any of its Affiliates; or (2) take any action which could cause any Attorney-Client Communication to cease being a confidential communication or to otherwise lose protection under the attorney-client privilege or any other evidentiary privilege, including waiving such protection in any dispute with a Person other than Seller or any of its Affiliates. Furthermore, Buyer agrees, on its own behalf and on behalf of each of its Affiliates (including, after the Closing, the Acquired Companies), that in the event of a dispute between Seller or any of its Affiliates, on the one hand, and any of the Acquired Companies, on the other hand, arising out of or relating to any matter in which Katten and/or McLachlan jointly represented both parties, neither the attorney-client privilege, the expectation of client confidence, nor any right to any other evidentiary privilege will protect from disclosure to Seller or any of its Affiliates any information or documents developed or shared during the course of Katten's and/or McLachlan's joint representation.

8.17 No Recourse to Nonparty Affiliates. Notwithstanding anything to the contrary contained herein, except in the case of Fraud committed by such Person, (a) all Liabilities or Proceedings (whether in Contract or in tort, in law or in equity, or granted by statute) of Buyer, any of its Affiliates (including, after the Closing, the Acquired Companies) or any Representatives of any of the foregoing (collectively, the “**Buyer Parties**”) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement or the Transactions, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are those solely of) Seller; (b) all Liabilities or Proceedings (whether in Contract or in tort, in law or in equity, or granted by statute) of Seller, any of its Affiliates or any Representatives of any of the foregoing (collectively, the “**Seller Parties**”) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement or the Transactions, or

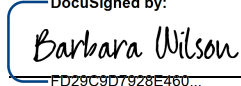
the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are those solely of) Buyer; (c) other than Seller, no Person, including any Affiliate or any incorporator, member, partner, stockholder or Representative of, or lender to, Seller or any of its Affiliates, or any incorporator, member, partner, stockholder, Affiliate or Representative of, or any lender to, any of the foregoing (collectively, the “***Seller Nonparty Affiliates***”), shall have any Liability (whether in Contract or in tort, in law or in equity, or granted by statute) to any Buyer Party for any Liabilities or Proceedings arising under, out of, in connection with, or related in any manner to this Agreement or the Transactions or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach or the Transactions; (d) other than Buyer, no Person, including any Affiliate or any incorporator, member, partner, stockholder or Representative of, or lender to, Buyer or any of its Affiliates, or any incorporator, member, partner, stockholder, Affiliate or Representative of, or any lender to, any of the foregoing (collectively, the “***Buyer Nonparty Affiliates***”), shall have any Liability (whether in Contract or in tort, in law or in equity, or granted by statute) to any Seller Party for any Liabilities or Proceedings arising under, out of, in connection with, or related in any manner to this Agreement or the Transactions or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach or the Transactions; (e) to the maximum extent permitted by law, each of Buyer, on behalf of itself and all other Buyer Parties, and Seller, on behalf of itself and all other Seller Parties, hereby waives and releases all such Liabilities and Proceedings against any Seller Nonparty Affiliates or Buyer Nonparty Affiliates, respectively; and (f) without limiting the foregoing, to the maximum extent permitted by law, each of Buyer, on behalf of itself and all other Buyer Parties, and Seller, on behalf of itself and all other Seller Parties, (i) hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of Seller or Buyer, respectively or otherwise impose Liability of any Seller Nonparty Affiliate or Buyer Nonparty Affiliate, respectively, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise and (ii) disclaims any reliance upon any Seller Nonparty Affiliates or Buyer Nonparty Affiliates, respectively, with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

* * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

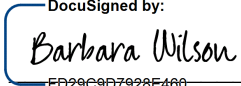
SELLER:

AMERICAN RAIL PARTNERS, LLC

By: 
Name: Barbara Wilson
Title: President and Chief Executive Officer

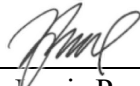
COMPANY:

RAILUSA, LLC

By: 
Name: Barbara Wilson
Title: President and Chief Executive Officer

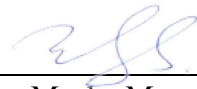
BUYER:

MIP V RAIL, LLC

By: _____

Name: Louis Paul

Title: Vice President

By: _____

Name: Mache Mouzakis

Title: Assistant Secretary

PUBLIC VERSION

MIP GP-1

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Verified Notice of Exemption to be served by first class mail, postage pre-paid, this 23rd day of November 2021, on

Secretary of US Department of Transportation
Docket Clerk, Office of Chief Counsel
Federal Railroad Administration
400 7th Street, S.W., Room 5101
Washington, D.C. 20590

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
CRC-240
Washington, D.C. 20580
The Office of the Governor of Georgia
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399-0450

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

The Office of the Governor of Georgia
206 Washington Street
111 State Capitol
Atlanta, GA 30334

The Office of the Governor of
Mississippi
550 High St.
Sillers Building, 19th Floor
Jackson, MS 39201

Georgia Public Service Commission
244 Washington St SW
Atlanta, GA 30312

Mississippi Public Service Commission
501 N West St.
Jackson, MS 39201

Georgia Department of Transportation
One Georgia Center
600 West Peachtree NW
Atlanta, Georgia 30308

Mississippi Department of
Transportation
401 North West St.
Jackson, MS 39201

The Office of the Governor of Florida
400 S Monroe St.
Tallahassee, FL 32399

/s/Marc Korman
Marc Korman