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ENTERED
Office of Proceedings
November 18, 2022
Part of
Public Record

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November 18, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36650**
3i RR Holdings GP LLC, et al. and Regional Rail, LLC – Control
Exemption – Effingham Railroad Company, Illinois Western
Railroad Company and South Point & Ohio Railroad, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of 3i RR Holdings GP LLC, 3i RR Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC, Regional Rail Sub Holdings LLC and Regional Rail, LLC Pursuant to 49 C.F.R. § 1180.2(d)(2)**, dated November 18, 2022. The sum of \$1,600, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

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

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for 3i RR Holdings GP LLC, et al.
and Regional Rail, LLC

FILED
November 18, 2022
SURFACE
TRANSPORTATION BOARD

TJL:tl

Attachment

FEE RECEIVED
November 18, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36650

3i RR HOLDINGS GP LLC, ET AL. AND REGIONAL RAIL, LLC
-- CONTROL EXEMPTION --
EFFINGHAM RAILROAD COMPANY,
ILLINOIS WESTERN RAILROAD COMPANY
AND SOUTH POINT & OHIO RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION OF
3i RR HOLDINGS GP LLC, 3i RR HOLDINGS PARTNERSHIP L.P.,
3i RR INTERMEDIATE HOLDINGS LLC, 3i RR LLC,
REGIONAL RAIL HOLDINGS, LLC, REGIONAL RAIL
SUB HOLDINGS LLC AND REGIONAL RAIL, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

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

**ATTORNEYS FOR
3i RR HOLDINGS GP LLC, ET AL.
AND REGIONAL RAIL, LLC**

Dated: November 18, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36650

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SUB HOLDINGS LLC AND REGIONAL RAIL, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

3i RR Holdings GP LLC, 3i RR Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC and Regional Rail Sub Holdings LLC (collectively, “3i RR”) and Regional Rail, LLC (“Regional Rail”), each a non-carrier, hereby file this notice of exemption under 49 C.F.R. § 1180.2(d)(2) to obtain control of Effingham Railroad Company (“EFRR”), Illinois Western Railroad Company (“ILW”) and South Point & Ohio Railroad, Inc. (“SPOR” and, collectively with EFRR and ILW, the “Target Railroads”), each a current or prospective Class III rail carrier, through the purchase of the stock of the Target Railroads from their respective owners. Regional Rail currently directly controls, and 3i RR indirectly controls, eight other Class III rail carriers in the eastern United States.

The rail lines of the Target Railroads do not connect with the lines of the other rail carriers controlled by 3i RR and Regional Rail, and this control transaction is not part of a series of anticipated transactions that would result in such a connection. Nor does this proposed control

transaction involve a Class I carrier. 3i RR/Regional Rail's acquisition of control of the Target Railroads is accordingly exempt under 49 C.F.R. § 1180.2(d)(2).

In accordance with the requirements of 49 C.F.R. § 1180.4(g), 3i RR and Regional Rail submit the following information:

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

Regional Rail is a non-carrier holding company which currently directly controls the following eight Class III rail carriers:¹

Carolina Coastal Railway, Inc. ("CLNA")
East Penn Railroad, LLC ("ESPN")
Florida Central Railroad Company, Inc. ("FCEN")
Florida Midland Railroad Company, Inc. ("FMID")
Florida Northern Railroad Company, Inc. ("FNOR")
Middletown & New Jersey Railroad, LLC ("MNJ")
Port Manatee Railroad LLC ("PMR")
Tyburn Railroad LLC ("Tyburn")

Regional Rail, in turn, is controlled by the 3i RR entities, with ultimate control residing in 3i RR Holdings GP LLC.²

EFRR is a Class III rail carrier which operates several miles of trackage providing service to a large industrial park in Effingham, Illinois.³ EFRR is controlled by Charles W.

¹ See *3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC – Continuance in Control Exemption – Port Manatee Railroad LLC*, Docket No. FD 36553 (STB served Nov. 12, 2021).

² Thus, Regional Rail is directly controlled by Regional Rail Sub Holdings LLC, which is controlled by Regional Rail Holdings, LLC, which is controlled by 3i RR LLC, which is controlled by 3i RR Intermediate Holdings LLC, which is controlled by 3i RR Holdings Partnership L.P., which finally is controlled by 3i RR Holdings GP LLC.

³ See *Effingham Railroad Company – Operation Exemption – Line Owned by Agracel Corporation*, Docket No. FD 33468 (STB served Sep. 24, 1997, Oct. 22, 1997 and Sep. 18, 1998); *Effingham Railroad Company – Operation Exemption – Line Owned by Total Quality Warehouse*, Docket No. FD 33528 (STB served Dec. 30, 1997 and Sep. 18, 1998); *Effingham R. Co. – Pet. For* (. . . continued)

Barenfanger, Jr. (“Barenfanger”), who owns 51% of the outstanding capital stock of the company. The remaining 49% of the outstanding capital stock of EFRR is owned by Agracel, Inc. (“Agracel”).

ILW is a rail operator which provides service to a large industrial park in Greenville, Illinois. While ILW has at times been treated as if it were subject to STB jurisdiction, ILW is not, in fact, currently an STB-authorized rail carrier.⁴ Concurrently with this notice, ILW is filing a notice of exemption pursuant to 49 C.F.R. § 1150.31, *et. seq.* in Docket No. FD 36649, *Illinois Western Railroad Company – Operation Exemption – In Greenville, Illinois* to address that situation and obtain requisite operating authority as a rail common carrier. ILW is controlled by Barenfanger, who owns 72.73% of the outstanding capital stock of the company. The remaining 27.27% of the outstanding capital stock of ILW is owned by Agracel.

SPOR is a Class III rail carrier which operates a quarter-mile of rail line and connecting ancillary trackage providing service to an industrial park in South Point, Ohio.⁵ Agracel is the largest of six shareholders in SPOR.

Declaratory Order, 2 S.T.B. 606 (1997) (“*Effingham Status*”), *reconsideration denied* (STB served Sep. 18, 1998), *aff’d sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, 183 F.3d 606 (7th Cir. 1999); *see also Illinois Western Railroad Company – Operation Exemption – Line Owned by Total Quality Warehouse*, Docket No. FD 34081 (STB served Apr. 10, 2002).

⁴ Compare *Illinois Western Railroad Company – Operation Exemption – City of Greenville, IL*, Docket No. FD 32853 (STB served Jan. 30, 1996) (finding ILW operations not subject to the agency’s jurisdiction) with *Charles Barenfanger – Continuance in Control Exemption – Effingham Railroad Company*, Docket No. FD 33480 (STB served Oct. 22, 1997) (authorizing Barenfanger to commonly control ILW and EFRR) and *Charles Barenfanger – Acquisition of Control Exemption – Vandalia Railroad Company*, Docket No. FD 35744 (STB served July 11, 2013), slip op. at 1-2, n.3. This ambiguity may largely have stemmed from the STB’s 1997 decision in *Effingham Status* determining that EFRR would be a rail carrier under circumstances essentially identical to those found to not qualify ILW as a rail carrier the previous year.

⁵ See *South Point & Ohio Railroad, LLC – Operation Exemption – Lawrence Economic Development Corporation*, Docket No. FD 36528 (STB served July 30, 2021).

Pursuant to a Stock Purchase Agreement dated as of November 10, 2022 between Agracel, Barenfanger and Regional Rail (with respect to EFRR and ILW) and a Stock Purchase Agreement to be entered into between SPOR, SPOR's shareholders, Agracel as the sellers' representative and Regional Rail (with respect to SPOR), Regional Rail proposes to acquire all of the stock of the Target Railroads and assume direct control of those rail carriers. 3i RR would assume indirect control of the Target Railroads. No significant changes in the rail service currently provided by the Target Railroads are anticipated as a result of the proposed transaction.

The Target Railroads do not connect with the lines of any existing Regional Rail carrier subsidiaries. Regional Rail subsidiaries do not currently conduct rail operations in the states of Illinois (where EFRR and ILW are located) or Ohio (where SPOR is located).

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

Regional Rail, LLC
505 South Broad Street
Kennett Square, PA 19348
(610) 925-0131

3i RR Holdings GP LLC
3i RR Holdings Partnership L.P.
3i RR Intermediate Holdings LLC
3i RR LLC
Regional Rail Holdings, LLC
Regional Rail Sub Holdings LLC
One Grand Central Place
60 East 42nd Street, Suite 4100
New York, NY 10165

Any questions concerning this Notice should be sent to 3i/Regional Rail's representative at the following address:

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

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

Regional Rail and 3i RR intend to consummate the proposed transaction and acquire control of the Target Railroads on or shortly after December 18, 2022. It is anticipated that ILW will consummate the operating authority sought in Docket No. FD 36649 and assume STB rail common carrier status concurrently with consummation of the control exemption in this proceeding.

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

The exemption sought herein will allow Regional Rail and 3i RR to assume direct and indirect control, respectively, of the Target Railroads. The transaction will promote Regional Rail's strategic and growth objectives, and help sustain the Target Railroads' efficiency, financial strength, and ability to meet the needs of shippers.

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

Regional Rail and 3i RR are non-carriers, and do not directly own or operate rail property. EFRR and ILW operate over rail properties located in Illinois, and SPOR operates over rail property located in Ohio. With respect to Regional Rail's existing carrier subsidiaries, CLNA operates in North Carolina and South Carolina; ESPN operates in Delaware and Pennsylvania; FCEN, FMID, FNOR and PMR operate in Florida, MNJ operates in New York; and Tyburn operates in Pennsylvania.

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

Maps showing the rail lines of the Target Railroads are attached hereto as Exhibit 1A. Maps showing generally the location of each of the existing rail carrier subsidiaries of Regional Rail are attached hereto as Exhibit 1B.

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

A redacted copy of the executed Stock Purchase Agreement with respect to EFRR and ILW is attached hereto as Exhibit 2A. A redacted copy of the nearly-finalized draft Stock Purchase Agreement with respect to SPOR is attached hereto as Exhibit 2B. Non-redacted copies of both Stock Purchase Agreements are being submitted under seal pursuant to a Motion for Protective Order that has been filed concurrently with this notice of exemption.

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

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

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

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. 3i/Regional Rail's acquisition of control of the Target Railroads will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

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

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

The proposed control transaction does not involve the acquisition or operation of a rail line, and, thus, the provisions of 49 C.F.R. § 1180.4(g)(4) are inapplicable. The Stock Purchase Agreements do not themselves include any provision that would limit the future interchange of

traffic with a third-party connecting carrier. Terms of existing agreements between the Target Railroads and third-party rail carriers will not be modified in connection with the proposed transaction.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

By: _____

Thomas J. Litwiler

Thomas J. Healey

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR
3i RR HOLDINGS GP LLC, ET AL.
AND REGIONAL RAIL, LLC**

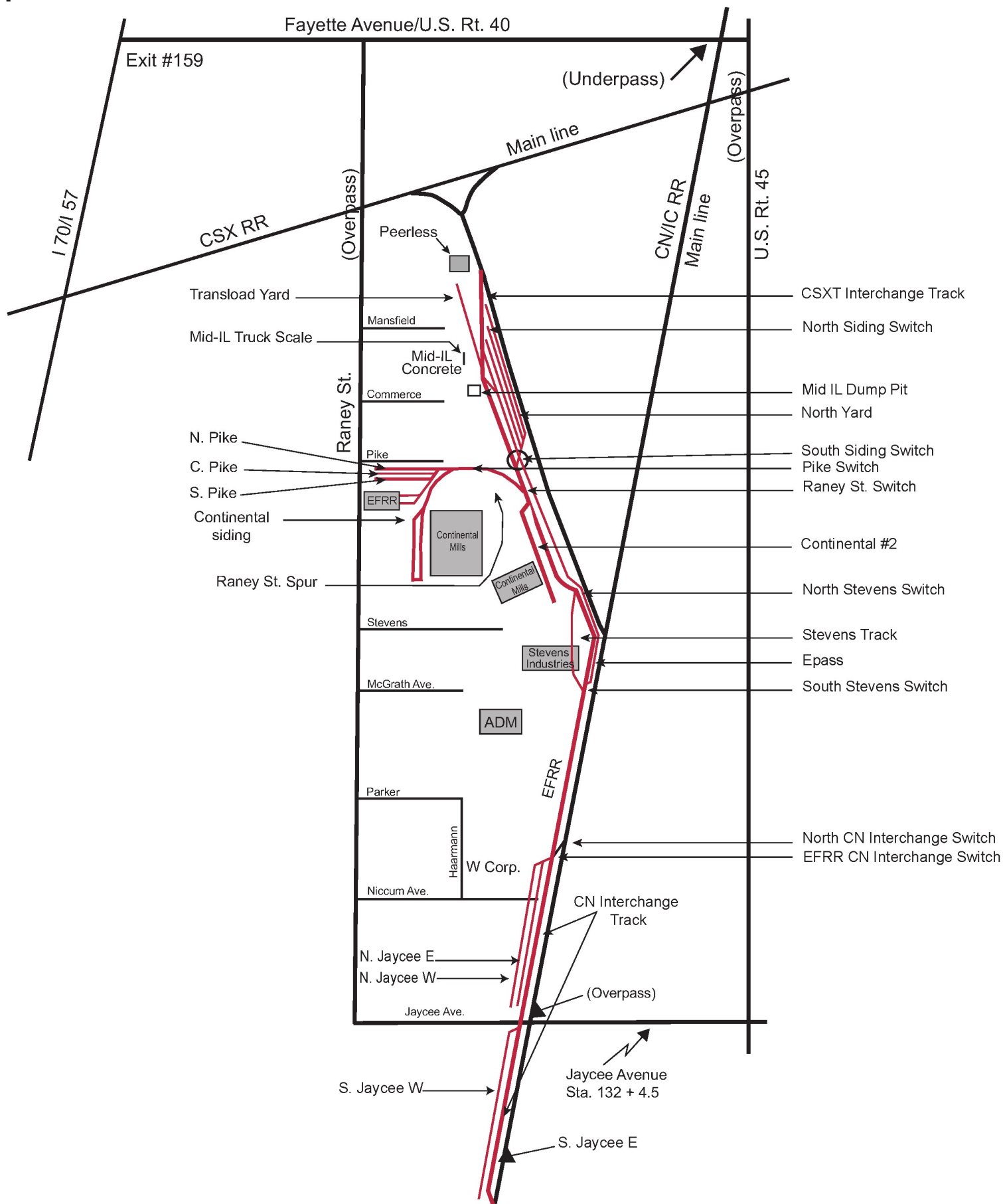
Dated: November 18, 2022

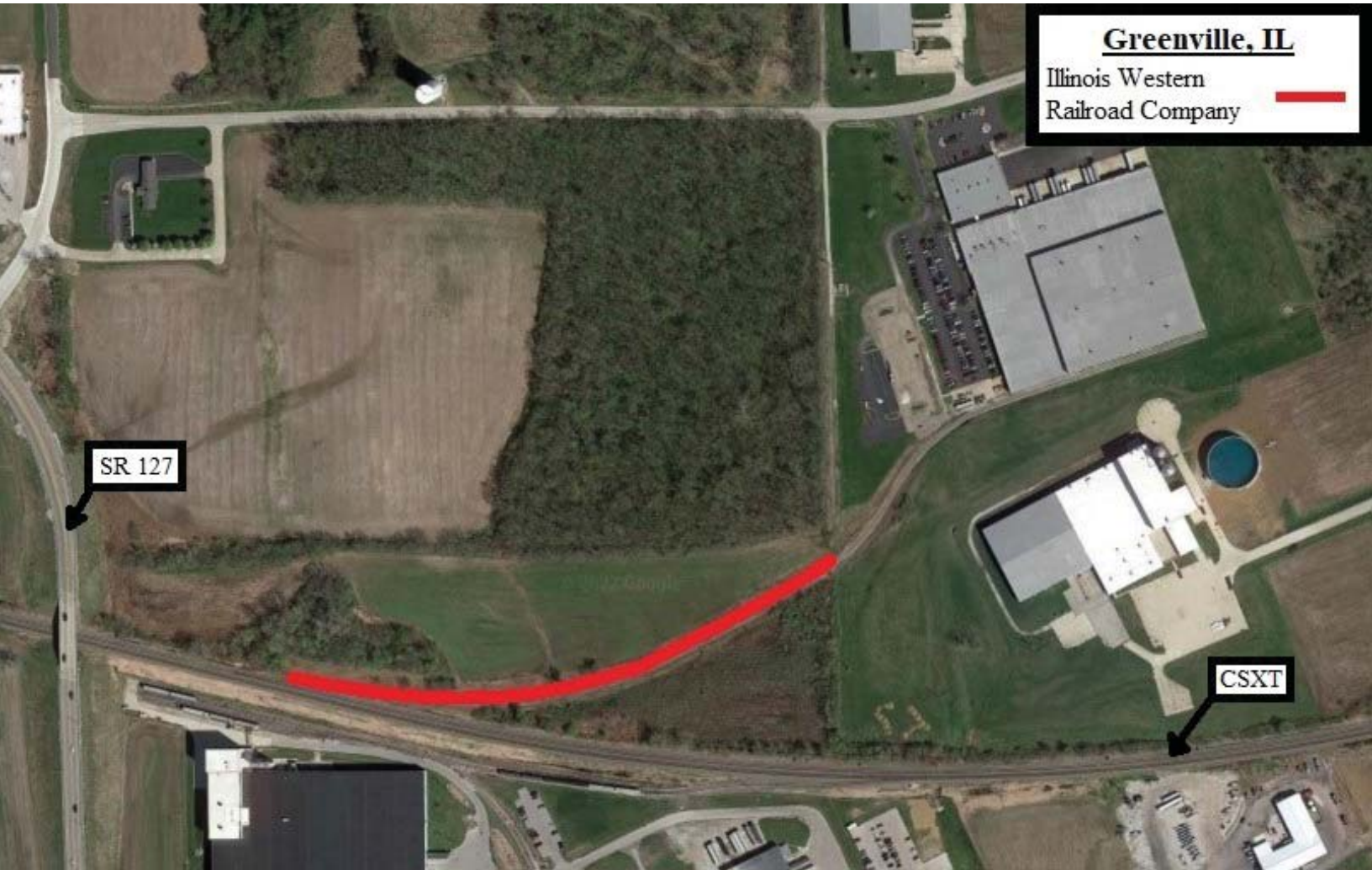
EXHIBIT 1A

TARGET RAILROAD MAPS



EF fingham
RailRoad
company





Greenville, IL

Illinois Western
Railroad Company

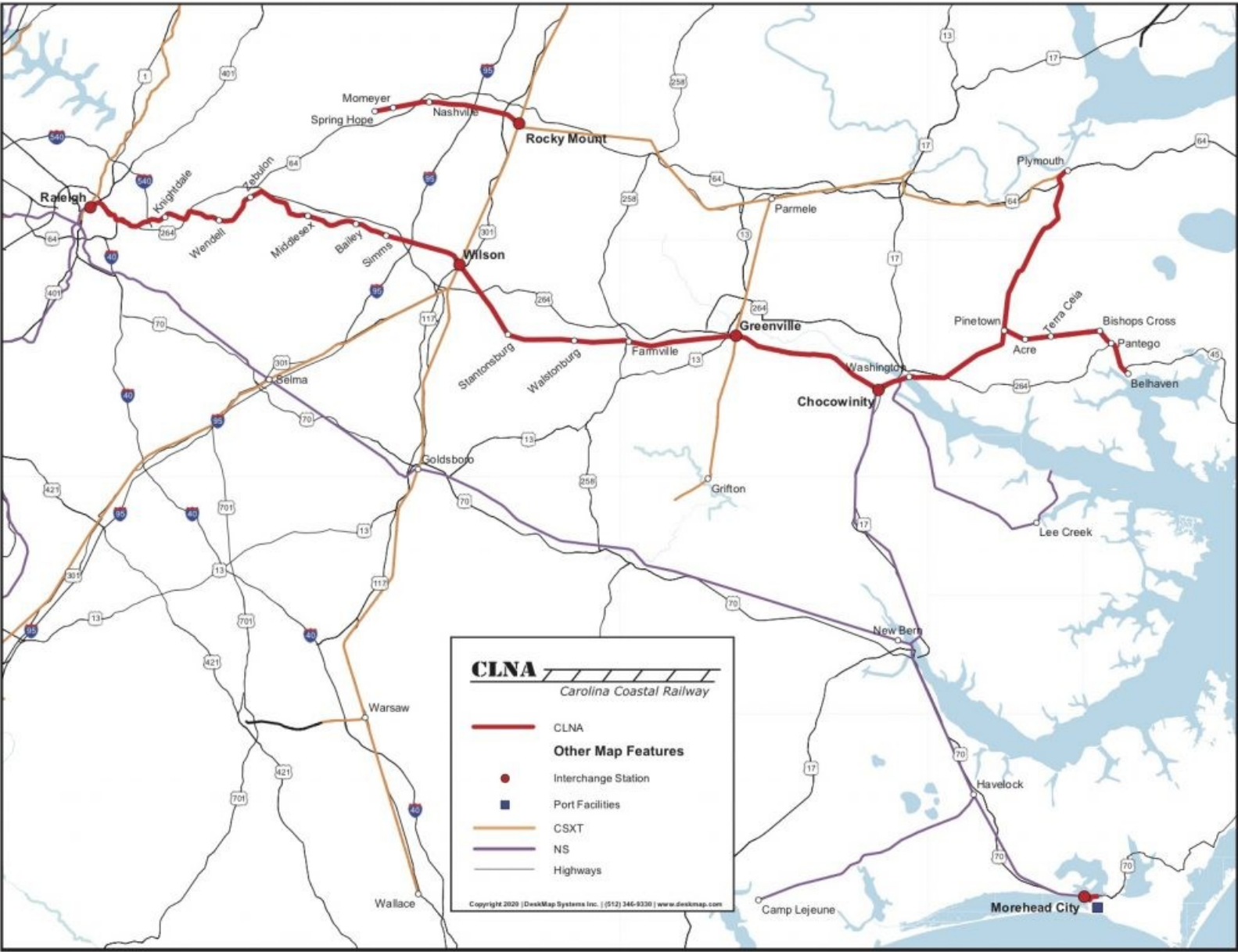
SR 127

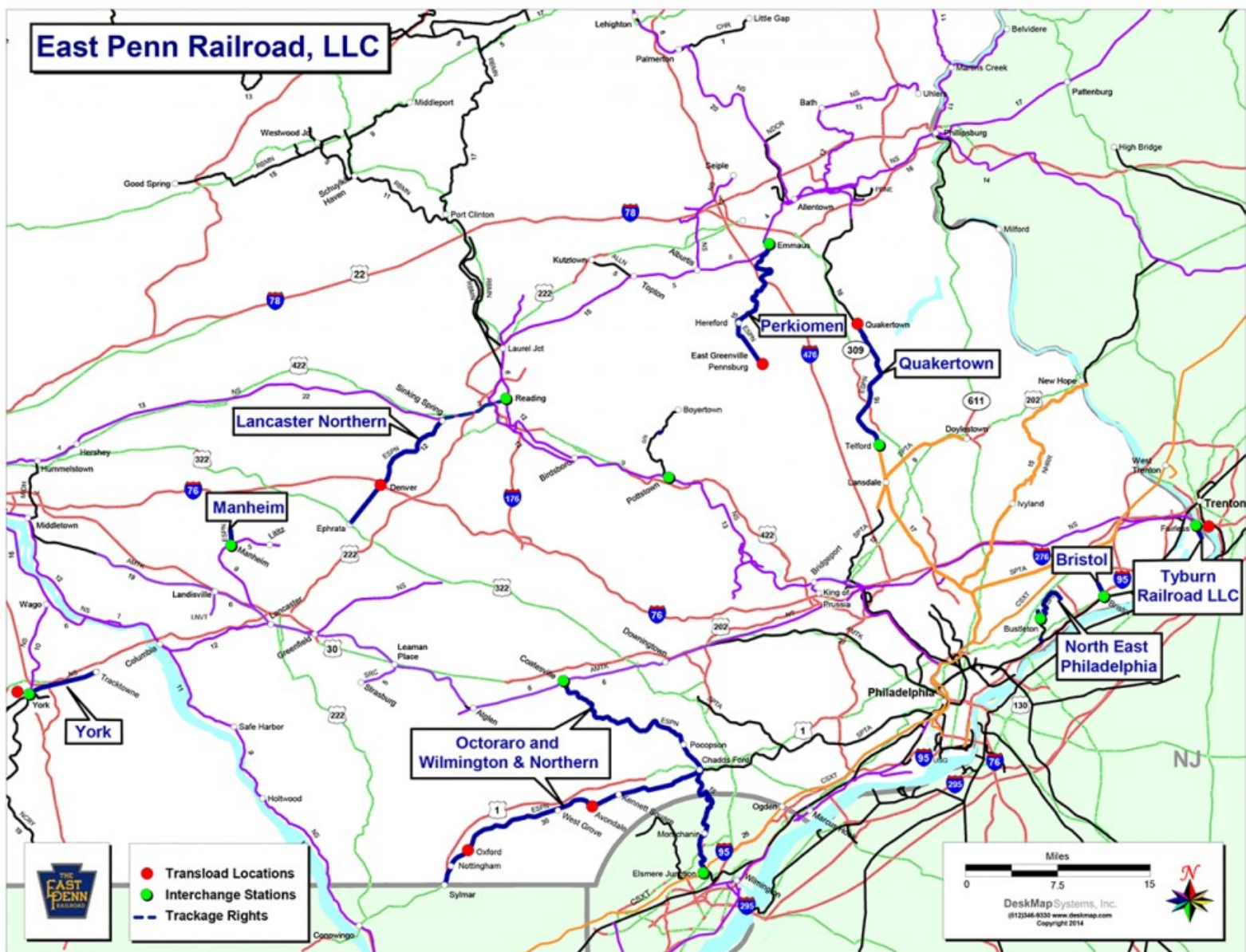
CSXT



EXHIBIT 1B

REGIONAL RAIL EXISTING SUBSIDIARY MAPS







**Florida
Central
Railroad**

— FCEN

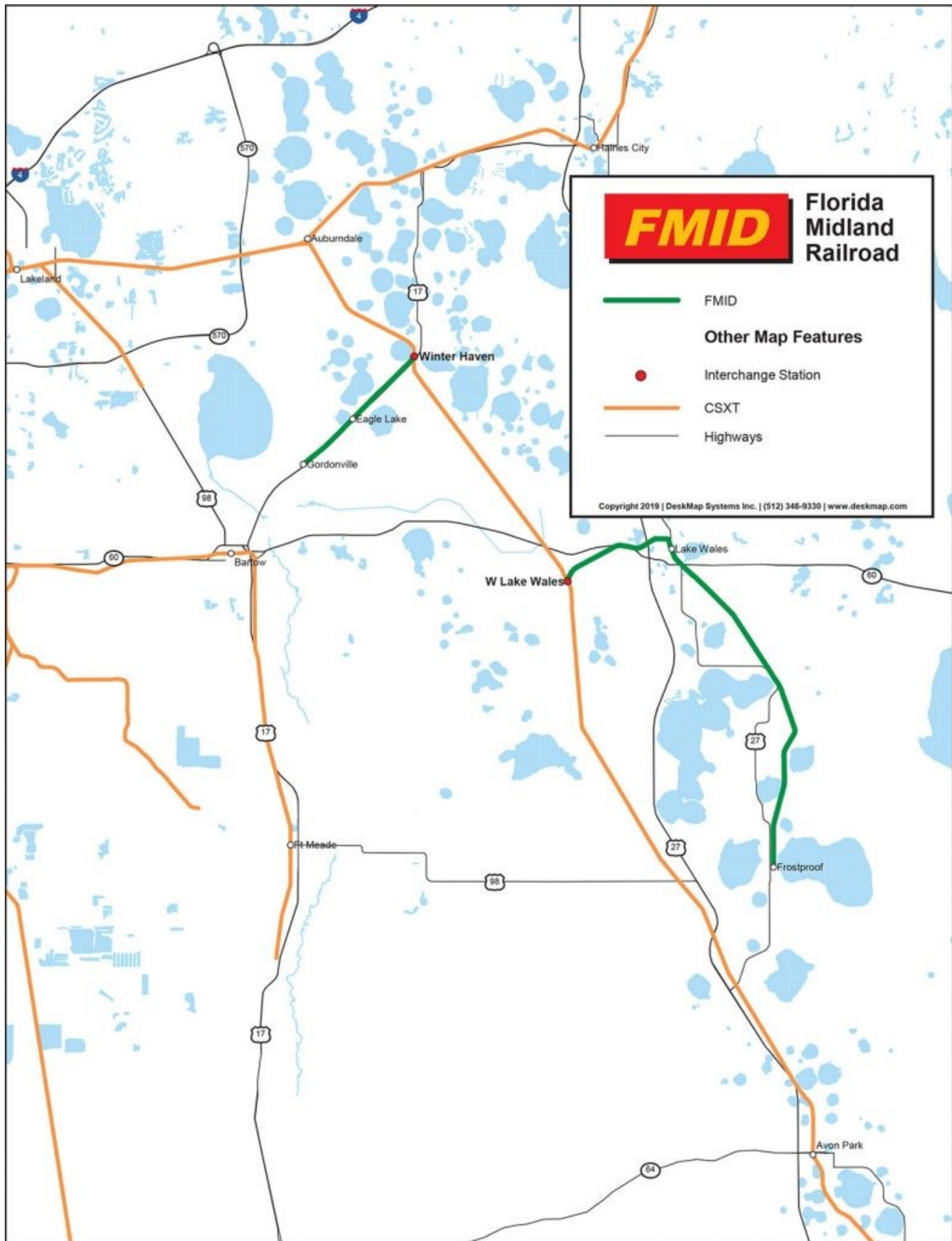
Other Map Features

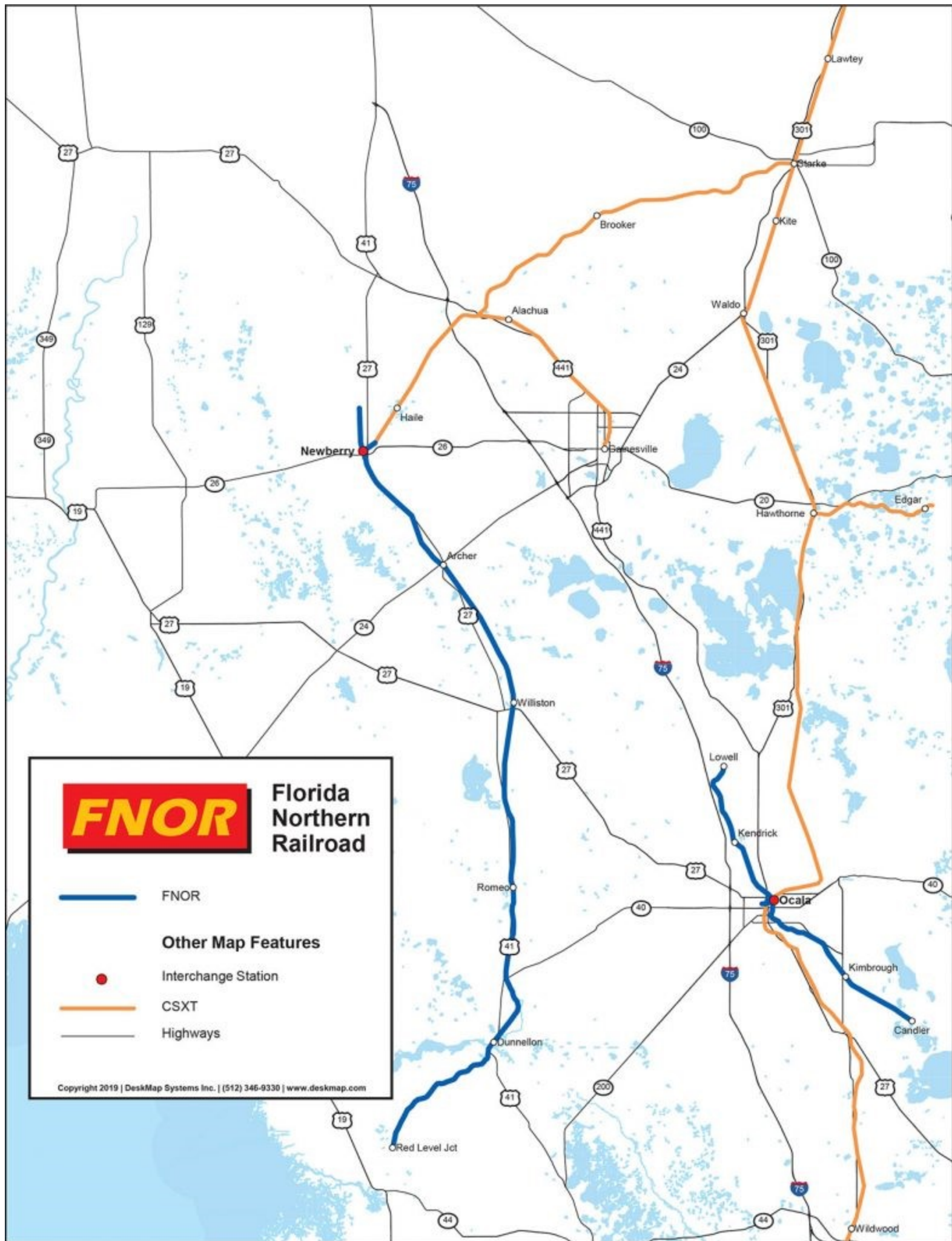
● Interchange Station

— CSXT

••••• SunRail

— Highways





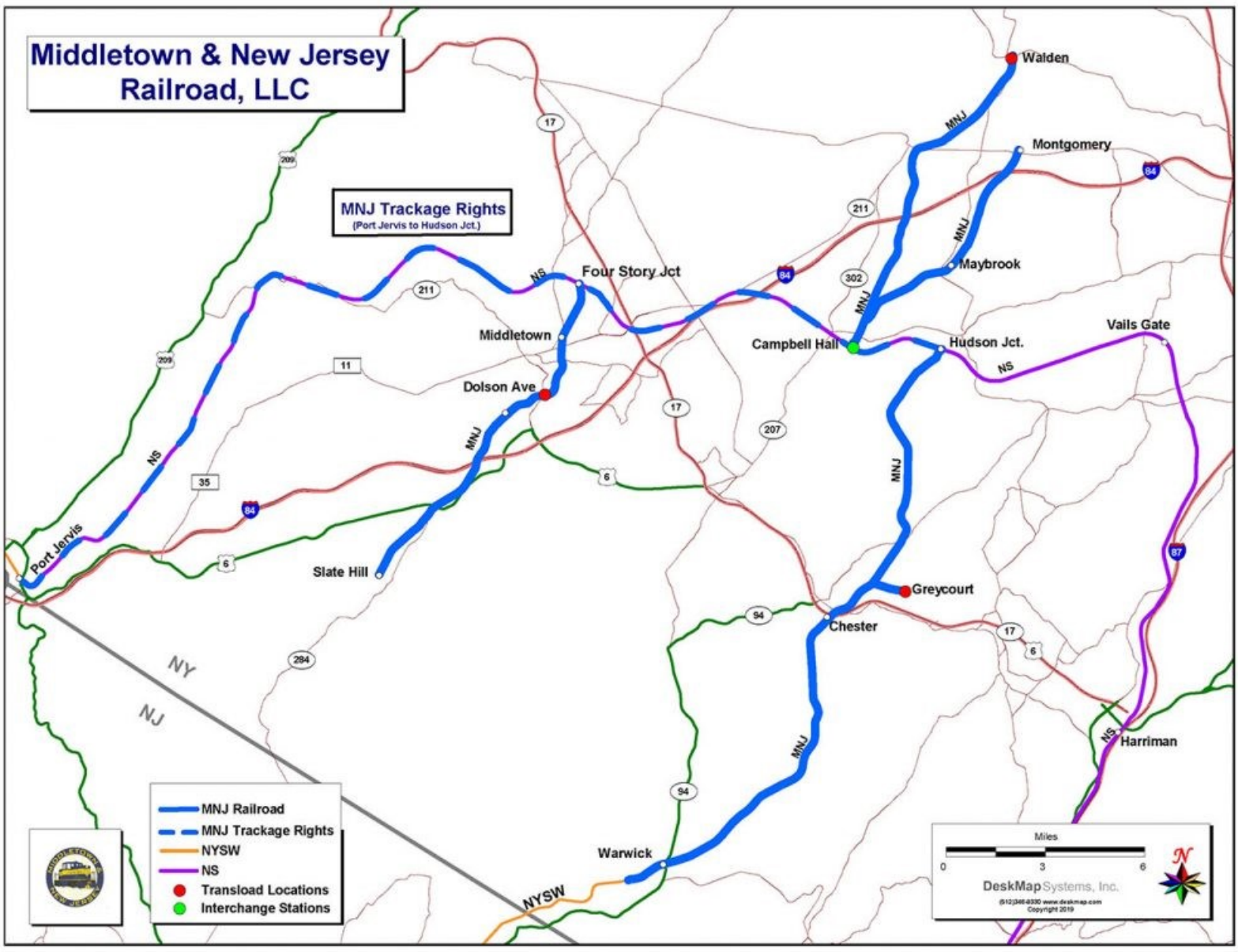
Middletown & New Jersey Railroad, LLC

MNJ Trackage Rights
(Port Jervis to Hudson Jct.)

- MNJ Railroad
- MNJ Trackage Rights
- NYSW
- NS
- Transload Locations
- Interchange Stations

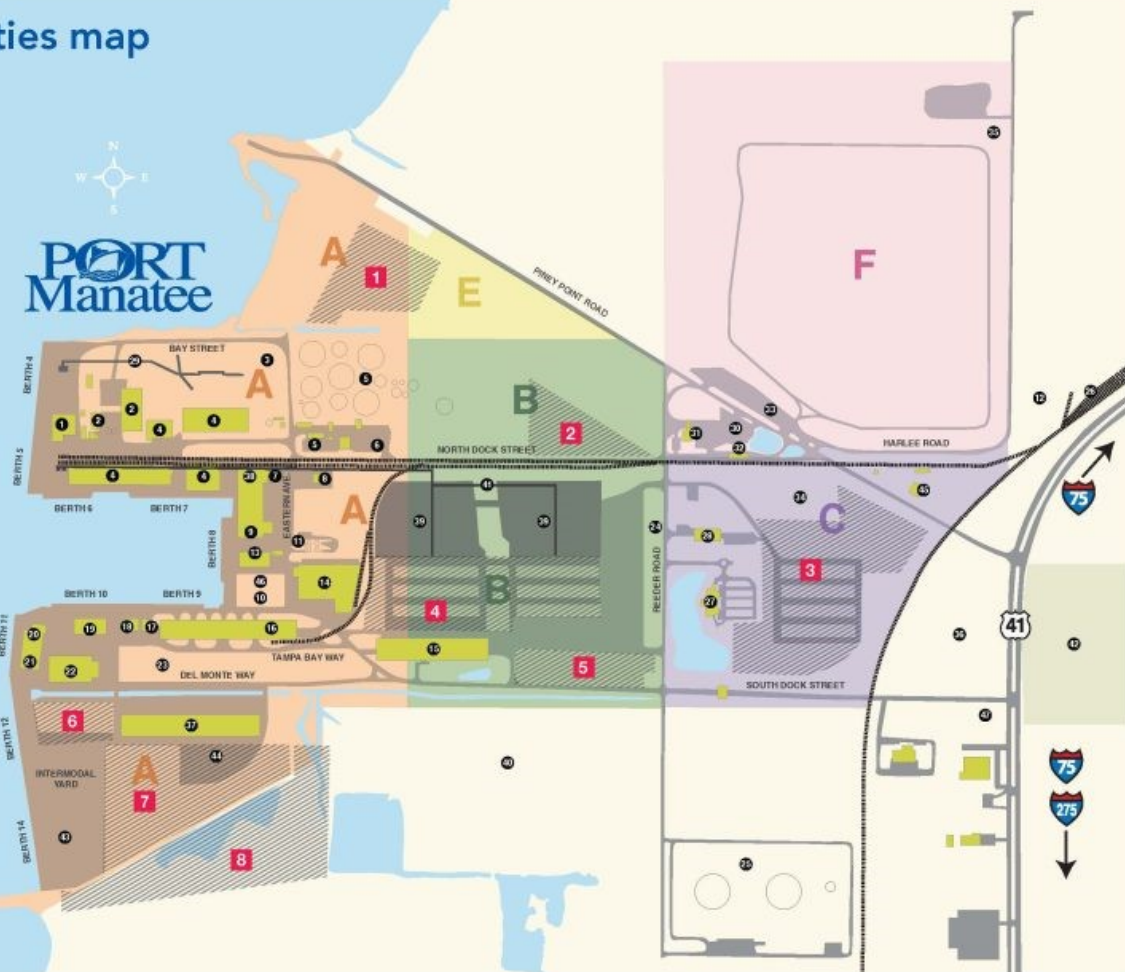
Miles
0 3 6

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Facilities map

PORT
Manatee



Tenants & facilities

- 1 Transit Shed #3
- 2 Argos
- 3 Carver Maritime
- 4 Kinder Morgan
- 5 TransMontaigne Product Services Inc.
- 6 TransMontaigne Laboratories
- 7 Anchor House Mission
- 8 FMT Shop
- 9 Transit Shed #2 - Chill
- 10 Berth 8 Pad
- 11 Suwannee American Cement
- 12 Port Manatee Scrap Metal
- 13 Transit Shed #1
- 14 Alenco International
- 15 Transit Shed #7 • Harris Intermodal Complex
- 16 Port Manatee Forestry Terminal (PMFT) - Arrow Terminals
- 17 Transit Shed #10
- 18 Transit Shed #9
- 19 World Direct Shipping Office / FMT
- 20 US Customs and Border Protection
- 21 US Department of Agriculture • Cruise Terminal
- 22 Port Manatee Administration Offices
- 23 Logistics USA Inc. • Chill Transit Shed #4
- 24 Del Monte Fresh Produce Office
- 25 Del Monte Fresh Produce
- 26 Chill Transit Shed #6
- 27 Chill Transit Shed #8
- 28 Container Yard w/Reefer Plugs
- 29 Port Manatee Open Storage
- 30 Zone B Truck Queuing/Storage
- 31 FPU/Transstate Pipeline
- 32 CSX Interchange Tracks
- 33 Intermodal Building • MCPA Chambers
- 34 International Trade Hub at Port Manatee
- 35 AME Salt • DMT
- 36 Operations & Maintenance Building
- 37 Carver Maritime Conveyor
- 38 Truck Queuing Facilities
- 39 Access Control Center
- 40 Scale House
- 41 Supplemental Parking
- 42 Logistics Gulf Coast Cargo Pad
- 43 Florida Fish and Wildlife Conservation
- 44 Port Manatee Commerce Center
- 45 Transit Shed #11
- 46 Transit Shed #2 - Dry
- 47 Martin Manetta Materials Aggregate Yard
- 48 Vecenergy
- 49 Martin Manetta Conveyor System
- 50 Air Products
- 51 Intermodal Yard
- 52 Laydown Area w/Reefer Plugs
- 53 Manatee Ship Repair and Fabrication
- 54 Manatee Truck and Trailer Wash
- 55 Port Plaza

Available lots

1. 10 acres, 0.37 mile from the dock
2. 6.5 acres, 0.45 mile from the dock
3. 26 acres, 0.76 mile from the dock
4. 21 acres, 0.22 mile from the dock
5. 6.5 acres, 0.45 mile from the dock
6. 5 acres, 130 feet from the dock
7. 21 acres, 520 feet from the dock
8. 24 acres, 130 feet from the dock
9. 52 acres, 1 mile from the dock, located off port
10. 10 acres, 1.7 miles from the dock, located off port

Tyburn Railroad, LLC

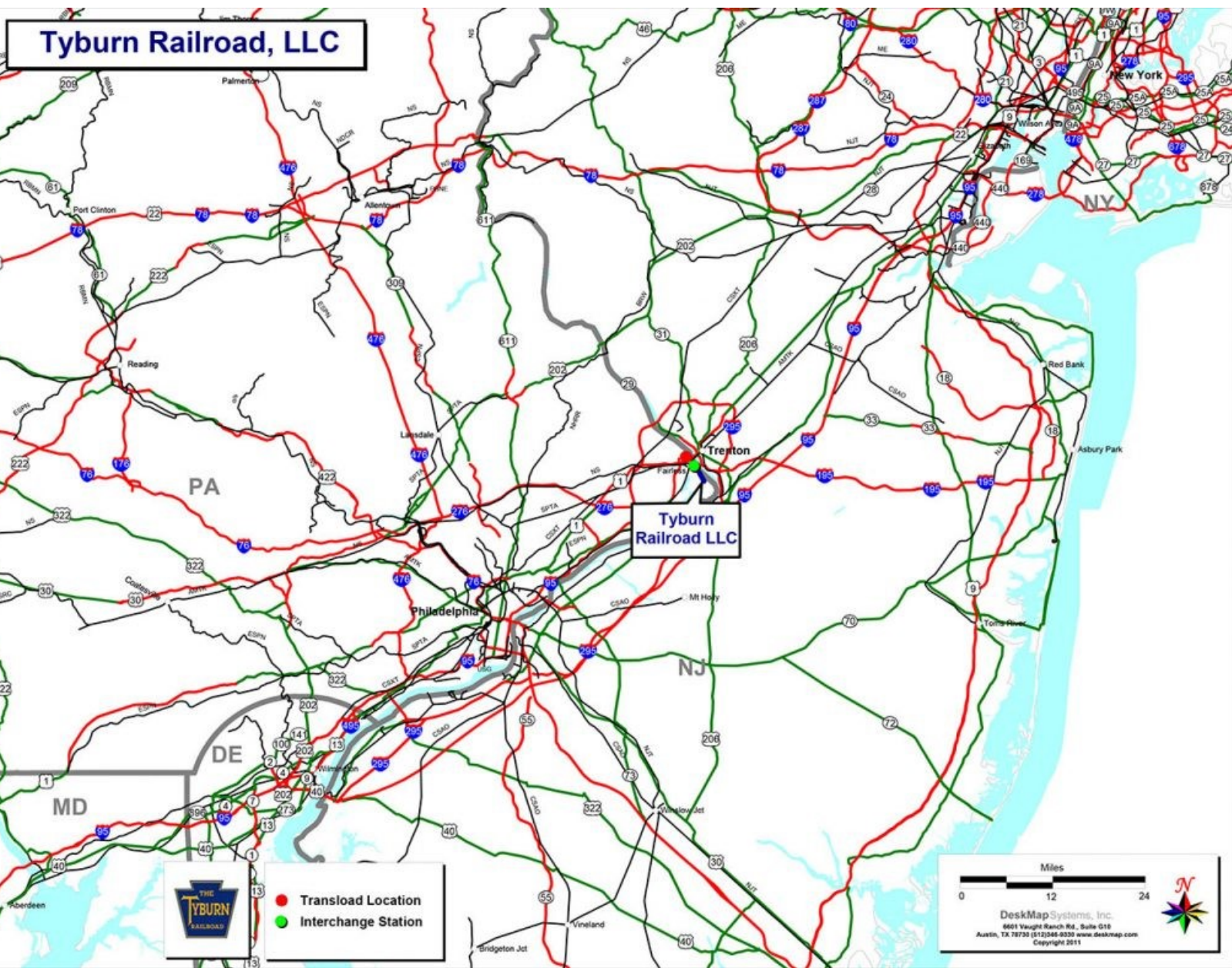


EXHIBIT 2A

**STOCK PURCHASE AGREEMENT
[EFRR AND ILW]**

REDACTED

STOCK PURCHASE AGREEMENT

by and among

AGRACEL, INC,

CHARLES W. BARENFANGER, JR.

and

REGIONAL RAIL, LLC

Dated as of November 10, 2022

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STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is entered into as of November 10, 2022 (this “Agreement”), by and among Agracel Inc., an Illinois corporation (“Agracel”), Charles W. Barenfanger, Jr., an individual (“Barenfanger”, together with Agracel, each a “Seller” and collectively, “Sellers”), and Regional Rail, LLC, a Delaware limited liability company (the “Buyer”). Buyer and Sellers are each sometimes referred to in this Agreement as a “Party”, and collectively as the “Parties”.

W I T N E S S E T H:

WHEREAS, Sellers are the owners of all of the issued and outstanding capital stock of each of (i) Effingham Railroad Company, an Illinois corporation (such entity, “Effingham” and such capital stock, the “Effingham Equity Interests”) and (ii) Illinois Western Railroad Company, an Illinois corporation (such entity, “Illinois Western” and such capital stock, the “Illinois Western Equity Interests”);

WHEREAS, (a) Agracel owns (i) _____ of the Effingham Equity Interests and (ii) _____ of the Illinois Western Equity Interests and (b) Barenfanger owns (i) _____ of the Effingham Equity Interests and (ii) _____ of the Illinois Western Equity Interests (all of the foregoing equity interests, collectively, the “Effingham-IW Equity Interests”);

WHEREAS, the Companies are engaged in the business of operating short line railroads and distribution and transportation services (the “Business”);

WHEREAS, the Buyer desires to purchase from Sellers, and Sellers desire to sell to the Buyer (or its designee), 100% of the Effingham-IW Equity Interests, all in accordance with and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, a portion of the purchase price payable by Buyer to Seller shall be placed in escrow by Buyer, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements hereinafter contained, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following meanings:

“Action” shall mean any claim, action, cause of action, suit, demand, citation, summons, subpoena, complaint, proceeding, labor dispute, inquiry, audit, notice of violation, arbitration, investigation of any nature or audit by or before any court, tribunal or other Governmental Entity or arbitral body;

“Adjustment Amount” – _____ ;

“Affiliate” shall mean any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another Person with the term “control” meaning, for this purpose, the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities or partnership, membership or other ownership interests, or by contract or otherwise;

“Agreement” – See Preamble hereto;

“Ancillary Agreements” means

;

“Balance Sheet” shall mean the unaudited balance sheet of each Company as of as set forth in Section 3.6 of the Disclosure Schedules;

“Basket” –

;

“Bonus Payments” shall mean

;

“Business” – See Recitals hereto;

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York, New York, are closed generally;

“Buyer” – See Preamble hereto;

“Buyer Indemnitees” –

;

“Cap” –

;

“Cash” means, with respect to the Companies, all cash, cash equivalents and marketable securities held by the Companies as of the Determination Time, determined in accordance with GAAP. For the avoidance of doubt, Cash shall (i) be calculated net of issued but uncleared checks and drafts and (ii) include checks and drafts deposited for the account of the Companies but not yet reflected as available proceeds in either Company’s bank account;

“Closing” –

;

“Closing Date” –

;

“Closing Date Net Working Capital” means the Net Working Capital as of the Determination Time;

“Closing Payment Amount” –

;

“Closing Working Capital Report” –

;

“Closing Working Capital Statement” – ;

“Code” shall mean the Internal Revenue Code of 1986, as amended;

“Companies” means, collectively, Effingham and Illinois Western. Each of Effingham and Illinois Western are referred to individually as a “Company”.

“Company Benefit Plans” – ;

“Company Intellectual Property” means all Intellectual Property that is owned or purported to be owned by each Company;

“Company IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other contracts, whether written or oral, relating to Intellectual Property to which each Company is a party, beneficiary or otherwise bound;

“Company IP Registrations” means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Entity or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing;

“Confidential Information” shall include confidential and proprietary information, including any such information relating to technology, products, services, finances, business plans, marketing plans, legal affairs, suppliers or customers, but shall not include information that (i) can be demonstrated in writing was already known by the recipient when received, (ii) is or after the date of this Agreement becomes obtainable from other sources other than pursuant to a violation of Law or breach of any Contract, (iii) is required to be disclosed to a Governmental Entity, or (iv) can be demonstrated in writing that it was independently developed by the receiving Person;

“Confidentiality Agreement” shall mean that certain Confidentiality Agreement entered into by and among the Sellers and the Buyer dated March 8, 2022;

“Contracts” shall mean any written or oral legally binding contract, agreement, subcontract, lease, license or purchase order;

“Current Assets” shall mean accounts receivable, net, materials and supplies and prepaid expenses and other current assets of each Company, but excluding (a) Cash, (b) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (c) deferred tax assets (e.g., refunds or credits) and (d) receivables from any of the Sellers or their Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, all as determined in accordance with GAAP. Current Assets shall be calculated in accordance with the Net Working Capital Methodology;

“Current Liabilities” shall mean accounts payable, accrued Taxes and accrued expenses, but excluding (a) payables to or accruals with respect to any of the Sellers or their Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (b) current or deferred income Tax liabilities, (c) the current portion of any Indebtedness of each

Company, and (d) Transaction Expense, all as determined in accordance with GAAP. Current Liabilities shall be calculated in accordance with the Net Working Capital Methodology;

“Deficit Amount” – ;

“Determination Date” – ;

“Determination Time” means 12:01 a.m. Eastern time on the Closing Date;

“Direct Claim” – ;

“Disclosure Schedules” – ;

“Employees” shall mean all employees of each Company that are employed by such Company as of the date of this Agreement and as updated as of the Closing;

“Environmental Laws” shall mean any and all Laws regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or natural resource damages, including Laws relating to the manufacture, processing, distribution, use, handling, generation, labeling, transportation, storage, treatment, disposal, emission, discharge, presence, release, or threatened release of, or exposure to, any harmful or deleterious substance, chemical, petroleum, pollutant, contaminant, or hazardous or toxic material, substance or waste;

“Environmental Permits” shall mean any and all Licenses and Permits pursuant to or required under any Environmental Law;

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder;

“ERISA Affiliate” means with respect to any entity, any other entity which, together with such first entity, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code;

“Escrow Agent” means Citibank, N.A.;

“Escrow Agreement” means the Escrow Agreement to be entered into by Buyer, Seller and Escrow Agent at the Closing, substantially in the form of Exhibit B;

“Estimated Cash” – ;

“Estimated Closing Date Net Working Capital” – ;

“Estimated Closing Working Capital Statement” – ;

“Estimated Indebtedness” – ;

“Estimated Net Working Capital Adjustment Amount” which may be positive or negative, means (i) the Estimated Closing Date Net Working Capital *less* (ii) an amount ;

“Estimated Sellers’ Transaction Expenses” – ;

“Excluded Liabilities” – ;

“Existing Policies” – ;

“FCC” – ;

“Final Cash” – ;

“Final Closing Date Net Working Capital” – ;

“Final Indebtedness” – ;

“Final Sellers’ Transaction Expenses” – ;

“Financial Statements” – ;

“GAAP” shall mean U.S. generally accepted accounting principles as in effect from time to time;

“Governmental Entity” shall mean any national, federal, state, provincial, local or international governmental or public body, political subdivision thereof, arbitrator, court, tribunal of competent jurisdiction, agency or regulatory authority or commission, or other governmental authority or instrumentality or quasi-governmental authority or any self-regulated organization or other non-governmental regulatory authority or any arbitrator, including the Federal Railroad Administration, the STB and the Railroad Retirement Board;

“Governmental Order” shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity;

“Grants” – ;

“Increase Amount” – ;

“Indebtedness” shall mean,

“Indemnification Escrow Amount” means

;

“Indemnification Escrow Fund”

.

“Indemnified Party” –

;

“Indemnified Taxes” means (i) all Taxes (or the non-payment thereof) of each Company for all Pre-Closing Tax Periods

that will not previously have been included in income by such Company) or otherwise attributable to the difference between the cash receipts and disbursements method and the accrual method of accounting, (ii) all Taxes of any

(iii) all Taxes of any Person

(iv)

“Indemnifying Party” –

;

“Independent Accounting Firm” – ;

“Information Laws” means all applicable Laws concerning or relating to privacy, electronic communications, electronic marketing, data protection and/or data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), use, processing, disclosure, breach notification, unauthorized access, destruction, encryption, confidentiality, security, safeguarding, and loss of Personal Information (including Personal Information of employees, contractors, customers, patients, and third parties), and telephone, email and mobile communications, including any approvals or notices required in connection therewith. Information Laws include any rules, rulings, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and official releases of or by any government, or any authority, department or agency thereof. Information Laws include, to the extent applicable to each Company or the information it collects, HIPAA, the GDPR, the American Recovery and Reinvestment Act of 2009, state data breach notification Laws, state social security number protection Laws, the FTC Act, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act and state consumer protection Laws, and as such Information Laws may be amended, replaced or superseded from time to time;

“Intellectual Property” shall mean all of the following owned or licensed by each Company, as licensee or licensor, or used in the Business:

;

“IT Assets” means Software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and all other information technology equipment, in each case, used in the operation of the businesses of each Company, ;

“Law” shall mean any law, common law, constitution, statute, treaty, ordinance, rule, regulation, order, writ, judgment, injunction, settlement agreement, guideline, code, decree, edict or other legally enforceable requirement of any Governmental Entity, and includes rules and regulations of any regulatory or self-regulatory authority;

“Lease” and “Leases” – ;

“Leased Real Property” – ;

“Liability” means any liability, debt, claim or obligation of any nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether direct or indirect, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due);

“Licenses and Permits” – ;

“Lien” shall mean any mortgage, pledge, security interest, adverse ownership claim, encumbrance, lien (statutory or other), deed of trust, conditional sale agreement, claim, charge, lease, license

easement, restrictive covenant, limitation, restriction, assessment or defect in title;

“Listed Intellectual Property” – ;

“Losses” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers;

“Material Adverse Effect” shall mean any event, development, circumstance, effect or change that either (a) has had a material adverse effect on the Business, operations, rights, properties, assets, liabilities, condition (financial or otherwise), or results of operations of any Company, or (b) would materially impair the ability of the Sellers to perform any of their obligations under, and to consummate the transactions contemplated by, this Agreement or any other related agreements, except any of the foregoing attributable to:

(iii) compliance with, or taking action required by, this Agreement; (iv) matter ; (v) any change in (A) applicable Law or the enforcement, implementation or interpretation thereof, (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (C) ; (vi) any change or absence of anticipated change in (A) applicable Law or the enforcement, implementation or interpretation thereof, (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (C) ; (vii) national or international political or social conditions, such as (A) the commencement, continuation or escalation of war (in each case, whether or not declared), (B) calamities, or (C) acts of terrorism; (viii) ; (ix) any matter of which the Buyer is aware on the date hereof; (x) any natural or manmade disasters or acts of God; or (x)

“Material Contracts” – ;

“Net Working Capital” – ;

“Net Working Capital Methodology” means

;

“Owned Real Property” – ;

“Percentage Interests” means, with respect to any Seller, the percentage set forth opposite such Seller’s name on Exhibit A.

“Permitted Liens” shall mean (i) Liens for Taxes not yet due and payable, (ii) Liens imposed by Law and incurred in the ordinary course of business for obligations not yet due to carriers, warehousemen, laborers, materialmen and the like, it being understood that such Liens do not include Liens arising under any applicable Environmental Law and (iii) Liens in respect of pledges or deposits under workers’ compensation Laws;

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or Governmental Entity;

“Personal Information” – ;

“Personal Property” means all furniture, fixtures, equipment and machinery and other items of tangible personal property;

“Plans” –

“Post-Signing Returns” – ;

“Pre-Closing Period” shall mean any period (or portion of a period) ending on or before the Closing Date;

“Pre-Closing Tax Period” shall mean any taxable period (or portion of a taxable period) ending on or before the Closing Date,
;

“Privacy Contracts” means

;

“Privacy Laws” means any Laws that relate to and/or address privacy, security, data use, consumer tracking, consumer targeting, data protection and destruction, data breach notification or data transfer issues, including, without limitation, HIPAA, the CAN-SPAM Act

and all current and former implementing Laws, rules, regulations, and all guidelines and industry standards applicable to each Company and the businesses of each Company;

“Privacy Policies” means all written policies applicable to each Company relating to the collection, use, storage, processing, transfer, disclosure, and protection of Personal Information, including all website and mobile application privacy policies;

“Purchase Price” – ;

“Purchase Price Adjustment Escrow Amount” means ;

“Purchase Price Adjustment Escrow Fund” ;

“Real Property” – ;

“Regulations” shall mean the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes;

“Releasing Person” – ;

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Restricted Business” – ;

“Securities Act” shall mean the United States Securities Act of 1933, as amended, and all rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;

“Security Breach” means breach, security breach, breach of personal information and all similar terms as defined under any relevant Laws, including without limitation Privacy Laws;

“Security Incident” means any material unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of IT Assets;

“Seller” – See Preamble hereto;

“Seller Benefit Plans” means ;

“Seller Indemnitees” – ;

“Shares” – See Recitals hereto;

“Software” means any and all (i) computer programs, including any and all software implementation of algorithms, models and methodologies, development tools, user

interfaces and application programming interfaces, whether in source code or object code, (ii) databases and computations, including any and all data and collections of data, whether machine readable or otherwise, (iii) documentation, including user manuals, training materials, design notes and programmers' notes relating to any of the foregoing and (iv) the content and information contained in any web site;

“STB” shall mean the United States Surface Transportation Board;

“Stock Sale” – ;

“Straddle Period” shall mean any taxable period beginning on or before, and ending after, the Closing Date;

“Subsidiary” shall mean, with respect to any Person, any other Person

;

“Tax Return” shall mean any report, return, declaration, statement, information return, filing, election, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied in connection with Taxes;

“Taxes” shall mean all United States federal, state, local and foreign taxes, including net income, gross income, gross receipts, production, excise, employment, sales, use, transfer, ad valorem, profits, license, capital stock, capital gains, franchise, severance, stamp, withholding, Social Security, railroad retirement, employment, unemployment, disability, worker's compensation, payroll, utility, windfall profits, Personal Property, real property, intangible property, value added, escheat, unclaimed property, registration, alternative or add-on minimum, estimated and other taxes, customs, duties, governmental fees or like charges of any kind whatsoever, including any interest, penalties, fines, related liabilities or additions thereto, and “Tax” shall mean any one of them;

“Third Party Claim” – ;

“Top Customers” – ;

“Top Suppliers” – ;

“Track” means any railroad track and any other track materials (OTM) including all rails, ties, tie plates, spikes, angle bars, bolts, fasteners, switches, switch control devices, ballast, signals and other support structures used in the operation of a railroad;

“Transaction Bonuses” shall mean

;

“Transaction Expenses” – ;

“Transferred IP” – ;

“Unauthorized Code” means any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, hardware or data;

“Waived Payments” – .

ARTICLE 2. PURCHASE AND SALE.

SECTION 2.1 Purchase Price. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Sellers set forth below, at the Closing:

(a) The Buyer shall purchase from Sellers, and Sellers shall sell, transfer, convey and deliver to the Buyer (or the Buyer’s designee), the Effingham-IW Equity Interests, free and clear of all Liens (such transaction, the “Stock Sale”);

(b) The aggregate purchase price for the Effingham-IW Equity Interests shall be

;

(c) The Stock Sale shall be effected at the Closing by Sellers delivering to the Buyer (or the Buyer’s designee) stock certificates or another appropriate delivery evidencing all of the Effingham-IW Equity Interests, duly endorsed in blank or accompanied by stock powers duly executed in blank, in each case, in a form satisfactory to the Buyer, such shares being delivered free and clear of all Liens, and accompanied by any assignments, authorizations, endorsements or any other instruments and documents as shall be effective (or as required by any provision of the Certificate of Incorporation or By-laws to vest in the Buyer (or the Buyer’s designee)), at the Closing,

in exchange for which the Buyer shall deliver (or cause to be delivered) to each Seller at the Closing an amount equal to

. Payment shall be made by wire transfer of immediately available funds to such account as each Seller shall designate in writing to the Buyer at least three Business Days prior to the Closing Date. At the Closing, Buyer shall deliver the (i)

; and

(d) The Buyer and the Companies, as applicable, shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement

SECTION 2.2 Closing. Subject to the satisfaction or waiver of the terms and conditions set forth in this Agreement, the closing of the Stock Sale and the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place

.

SECTION 2.3 Purchase Price Adjustment.

(a)

.

(b) As soon as reasonably practicable following the Closing Date, and in any event within one hundred twenty (120) days thereof,

(c)

(d) The “Adjustment Amount,” which may be positive or negative, shall mean

(e)

SECTION 2.4 Net Working Capital. For purposes of this Article 2, “Net Working Capital” as of any date means the amount equal to Current Assets *less* Current Liabilities, of each Company (on a consolidated basis), each determined in accordance with the Net Working Capital Methodology.

SECTION 2.5 Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, (i) any and all payables of each Company owed to Sellers or any of its Affiliates, (ii) any liability under or relating to any Plan as a result of the execution of this Agreement, shareholder approval of this Agreement or the transactions contemplated by this Agreement, , (iii) any Liabilities arising or relating to a Pre-Closing Period, (iv) any Indemnified Taxes and (v) the Sellers’ Transaction Expenses (collectively, the “Excluded Liabilities”), in each case, shall not be liabilities or obligations of the Buyer or the Companies at or after the Closing.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLERS.

Each Seller, severally but not jointly, and solely with respect to such Seller, hereby represents and warrants to the Buyer, as of the date hereof and as of the Closing Date or, if a representation or warranty is made as of a specific date, as of such date, subject to such information as is disclosed in the corresponding section of the disclosure schedules to this Agreement (the “Disclosure Schedules”), as follows:

SECTION 3.1 Sellers.

(a) Validity. Each Seller has all requisite capacity and authority to enter into and deliver this Agreement, to consummate the transactions contemplated hereby and thereby and to carry out its obligations hereunder and thereunder. The execution and delivery by such Seller of this Agreement and the performance by such Seller of its obligations hereunder and thereunder have been duly authorized by all necessary action of such Seller. This Agreement have been duly executed and delivered by such Seller and, assuming the due authorization, execution and delivery of this Agreement by the other parties thereto, this Agreement constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with their respective terms.

(b) Ownership of Interests. The Effingham Equity Interests and the Illinois Western Equity Interests comprise all of the issued and outstanding capital stock or other ownership interests of Effingham and Illinois Western, respectively. The Effingham-IW Equity Interests are owned, beneficially and of record, by Sellers, free and clear of any Liens other than such as may be created by or on behalf of the Buyer, and has been duly authorized and validly issued and is fully paid, nonassessable and was not issued in violation of any preemptive rights, rights of first refusal or any similar rights. There are no outstanding or authorized obligations, warrants, convertible or exchangeable securities, subscriptions, equity appreciation rights, options or other rights (including preemptive rights), to subscribe for or purchase from the Companies, or other Contracts, commitments of any character, or agreements providing for the issuance of or granting any Person the right to acquire any shares of any class of capital stock or other ownership interests of the Companies, or any securities or other instruments convertible into or exchangeable or exercisable for any shares of any class of capital stock or other ownership interests of the Companies, and neither Company is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of its capital stock. There are no proxies, voting agreements, stockholder agreements or other agreements with respect to the voting or transfer of any shares of capital stock or other ownership interests of the Companies. Neither Company has any outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. At Closing, the Buyer shall have good and valid title to all of the capital stock and other ownership interests of the Companies, free and clear of any Liens, other than such Liens as may be created by or on behalf of the Buyer. Other than this Agreement, Sellers are not bound by any Contract restricting their right to transfer the Effingham-IW Equity Interests. Other than this Agreement, Sellers are not bound by any Contracts except as set forth on Section 3.16(a) of the Disclosure Schedule.

(c) There are no securities or rights of each Company or contracts, commitments, understandings or arrangements by which each Company is bound, obligating such Company to redeem or otherwise acquire any Effingham Equity Interests, Illinois Western Equity Interests or other equity interests of each Company. Neither Company has any outstanding bonds, debentures, notes or other similar obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of such Company. None of the issued and outstanding shares, capital stock, equity interests or other equity securities of the Companies was issued, sold or transferred in violation of the Securities Act of 1933, as amended, or any other applicable securities Law.

(d) There are no (i) preemptive rights, rights of first refusal, options, put or call rights or obligations or anti-dilution rights related by or to which each Company is subject with respect to the issuance, sale or redemption of any shares, capital stock, equity interests, assets or other equity securities of either Company or (ii) rights to have any shares, capital stock, equity interests or other equity securities of either Company registered for sale to the public in connection with the Laws of any jurisdiction.

SECTION 3.2 Corporate Organization, Authority and Qualification of the Companies.

(a) Each Company is a corporation, duly organized, validly existing and in good standing under the Laws of the state of Illinois and has all requisite power and authority to own, operate or lease the assets, rights or properties now owned, licensed or leased by it, and to conduct its business as now conducted, and is duly licensed or qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except that the failure to be so licensed or qualified and in good standing would not reasonably be expected to have a Material Adverse Effect. All corporate actions taken by each Company have been duly authorized, and each Company has not taken any action that in any respect conflicts with, constitutes a default under, or results in a violation of, any provision of its Certificate of Incorporation (or similar organizational documents). Each Company has all requisite power and authority to enter into, and deliver to which it is a party, to consummate the transactions contemplated thereby and to carry out its obligations thereunder. The execution and delivery by each Company and the performance by each Company of its obligations hereunder and thereunder have been duly authorized. Each has been duly executed and delivered by such Company, assuming the due authorization, execution and delivery by each of the parties thereto, enforceable against such Company in accordance with their respective terms.

(b) Section 3.2(b) of the Disclosure Schedules sets forth each Company's name, type of entity, the jurisdiction and date of its incorporation, its authorized capital stock, the number and type of its issued and outstanding shares of capital stock, and the current ownership of such shares. Copies of the Certificate of Incorporation (or comparable organizational documents, as applicable) of each Company, each as amended to date and currently in full force and effect, have been furnished to the Buyer and its representatives, and such copies are accurate and complete and no other organizational or governing documents are applicable to, or binding on such Company.

(c) There are no corporations, partnerships, joint ventures, associations or other entities in which any Company owns, of record or beneficially, any direct or indirect equity interest or any right (contingent or otherwise) to acquire the same, , neither Company is a member of (nor is any part of the Business conducted through) any partnership nor a participant in any joint venture or similar arrangement.

SECTION 3.3 No Conflict or Violation.

(a) The execution, delivery and performance by each Seller of this Agreement, and the transactions contemplated hereby and thereby do not and will not (i) violate or breach any Law, order, judgment or decree of any Governmental Entity applicable to such Seller or any Company or any of their respective assets or business, or (ii) , violate, conflict with or result in a breach of or constitute (with or without due notice or lapse of time or both) a default, require consent or notice under, or give to others any rights of termination, acceleration, amendment, vesting, suspension, modification, revocation or cancellation of, or result in the creation or imposition of any Lien upon each Company's assets, properties or rights of such Company under any Contract to which such Company is a party or by which such Company is bound or to which any of its assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to (or accelerate) a right thereunder to require any payment to be made by each Company.

(b) There is no pending Action or, to the knowledge of each Seller, threatened Action before any Governmental Entity by or against each Seller or each Company relating to (i) each Seller's ownership of the Effingham-IW Equity Interests or (ii) any actual or potential bankruptcy or insolvency of each Seller or each Company.

SECTION 3.4 Consents and Approvals.

, the execution, delivery and performance of this Agreement by each Seller the consummation of the transactions contemplated hereby and thereby by each Seller do not and will not require any consent, waiver, approval, license, authorization or permit of, or order of, action by, filing with or notification to, any Governmental Entity or Person,

SECTION 3.5 Indebtedness.

, neither Company has any Indebtedness.

SECTION 3.6 Financial Statements; Undisclosed Liabilities.

(a)

(i) the Balance Sheet and related statement of income for the period then ended; and (ii) the unaudited balance sheet

The Financial Statements referred to in the foregoing clause (ii) have been based upon the information contained in each Company's books and records, have been prepared on a cash basis on a consistent basis throughout the period involved, and present fairly in all material respects the financial condition, results of operations and income of each Company as of the times and for the periods referred to therein.

(b) Each Company maintains books and records accurately reflecting, in all material respects, their respective assets and liabilities and maintain proper and adequate internal accounting controls that provide assurance that (i) transactions are executed with such Company management's authorization; (ii) transactions are recorded as necessary to permit preparation of the Financial Statements and to maintain accountability for such Company's assets, as applicable;

(iii) access to such Company's assets is permitted only in accordance with such Company's management's authorization; (iv) the reporting of such Company assets is compared with existing assets at regular intervals; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(c) The accounts receivable reflected on the Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by each Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute valid claims of each Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice and (c) is fully collectable.

(d) Neither Company has any Liabilities, except (i) Liabilities that are accrued or reserved against in the Financial Statements, (ii) Liabilities which have arisen since the date of the Balance Sheet that were incurred in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of or was caused by any breach of contract, breach of warranty, tort, infringement, misappropriation or violation of or Liability under any Law) or (iii) Liabilities otherwise disclosed on Section 3.6(d) of the Disclosure Schedules.

SECTION 3.7 Conduct in the Ordinary Course; Absence of Certain Changes, Events and Conditions.

(a) _____, since the date of the Balance Sheet, neither Company has suffered any effects, changes, events or developments which have had or would reasonably be expected to have a Material Adverse Effect.

(b) Since the date of the Balance Sheet, each Company has operated and conducted the Business in the ordinary course of business consistent with past practice and, _____, has not taken any action that if taken after the date hereof would be prohibited _____.

SECTION 3.8 Tax Matters.

(a) Each Company has filed all Tax Returns required to have been filed by it (taking into account any extensions of time to file)

_____. Each Company has paid or properly accrued all Taxes (whether or not shown as due on such Tax Returns) except those that are being contested in good faith and that have been provided for in accordance with GAAP. All Taxes that each Company is obligated to withhold from amounts owing to any employee, creditor or third party have been fully paid or properly accrued.

(b) No Tax audits or administrative or judicial Tax proceedings are presently being conducted with respect to each Company. Neither Company has received any written notice of deficiency or proposed adjustment for any amount of Tax that has not been fully paid or settled from any taxing authority.

(c) Neither Company (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which is the Seller) or (ii) has liability for the Taxes of any Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract or pursuant to any Law (other than ordinary course agreements, such as leases or loans, the primary focus of which is not Taxes).

(d) Neither Company has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction within the two (2)-year period ending on the date of this Agreement that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(e) There are no Liens for material Taxes (other than Permitted Liens) upon any of the assets of each Company.

(f) Neither Company is a party to, or is bound by, any Tax sharing, allocation or indemnity agreement, arrangement or similar Contract.

(g) Each Company has properly collected and remitted sales, use, property, value-added, goods and services and similar Taxes with respect to sales, services and similar transactions.

(h) No claim or assertion has been made, or has been threatened, by any Governmental Entity against any Company in any jurisdiction where such Company does not currently file a Tax Return that it is or may be subject to Tax by such jurisdiction.

(i) Neither Company has been a party to any “reportable transaction,” as defined in Code Section 6707A(c)(1) and Treasury Regulations Section 1.6011-4(b).

(j) Neither Company will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting made prior to the Closing Date for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Code Section 7121 (or any corresponding or similar provision of state, local, or non-U.S. tax Law) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in the Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or non-U.S. income tax Law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) prepaid amount received on or prior to the Closing Date; or (vi) election under Code Section 108(i).

(k) Each Seller is a “United States person” as such term is used in Section 1445 of the Code, and each Company is not, and has not been, a “U.S. real property holding corporation” within the meaning of Section 897 of the Code.

(l) As of the Closing, each Company is, and has been since its formation, taxed as a C corporation for U.S. federal income Tax purposes.

SECTION 3.9 Owned Real Property.

(a)

Each Company has good and marketable fee title to the Owned Real Property owned by it free and clear of all Liens except for (i) Permitted Liens or (ii) minor title defects, recorded easements or Liens that do not, individually or in the aggregate, impair the continued use, occupancy, value or marketability of title. Each Seller has made available to Buyer true and correct copies of (A) all deeds and other instruments (as recorded) by which each Company acquired its respective interests in the Owned Real Property and (B) all surveys with respect to the Owned Real Property, in the case of clauses (A) and (B), to the extent in such Company's possession or control. There are no outstanding options, rights of first offer or rights of first refusal to purchase or lease any Owned Real Property or any portion thereof or interest therein.

(b) None of the Sellers or the Companies has knowledge of or received any written notice of, any pending or contemplated rezoning, eminent domain or condemnation proceeding affecting the Owned Real Property.

SECTION 3.10 Leased Real Property.

(a) a list of all material leases, subleases, licenses, easements, rights of way, trackage rights, or similar agreements, together with all amendments and supplements thereto, with respect the use or occupancy of real properties in which each Company is a party (each, a "Lease" and collectively, the "Leases"; the property covered by Leases is referred to herein as the "Leased Real Property"). Complete and accurate copies of each Lease have been made available to Buyer prior to the date hereof, together with all amendments and supplements thereto.

(b) Each Lease is in full force and effect and valid and binding on the applicable Company, and such Company holds a valid and enforceable leasehold interest in the Leased Real Property to which each Lease relates, subject to proper authorization and execution of such Lease by any other party thereto and the application of any bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies. Neither Company is, and to the Seller's knowledge, no other party is, in material default under any Lease. Each Company, and, to the knowledge of each Seller, each of the other parties thereto, has performed in all material respects all material obligations required to be performed by it under each Lease. Neither Company has collaterally assigned or granted any security interest in any Leased Real Property or any interest therein. With respect to each Leased Real Property, neither Company has knowledge of or has not received any written notice of, any pending or contemplated rezoning, eminent domain or condemnation proceeding affecting any Leased Real Property.

(c) The Leased Real Property and the Owned Real Property (collectively, the “Real Property”) constitute all of the real property used in or necessary to conduct the Business and all railroad rights-of-way are contiguous and continuous. Each Company has such consents, easements, rights-of-way, permits and licenses as are necessary and sufficient to conduct the Business. There are no violations or alleged violations of any Law with respect to the Real Property, including zoning Law, which would, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect. There are no material inquiries, complaints, proceedings or investigations (excluding routine, periodic inspections) pending (or, to the best of Sellers’ knowledge, threatened) regarding compliance of the Real Property with any such Law. All material improvements located on, under, over or within the Real Property (i) are in good operating condition and repair and are structurally sound and free of any material defects and are sufficient for purposes of running a railroad and substantially in compliance with applicable Law and (ii) are in material compliance with building, zoning and other applicable land use Law for their current use, except where the failure to be so, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect.

SECTION 3.11 Intellectual Property.

(a) If applicable,

(b) If applicable and to the best of Sellers’ knowledge, each Company has taken all reasonable and necessary steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all trade secrets included in the Company Intellectual Property.

(c) If applicable, each Company owns or has a valid and enforceable license or otherwise has the right to use all of its Listed Intellectual Property used in the Business as currently conducted and such use and the conduct of the Business have not, to the best of Sellers’ knowledge, infringed, violated or conflicted with, or misappropriated the rights of any third party. To the knowledge of each Seller, no third party is infringing, violating or misappropriating any Listed Intellectual Property in any material respect. Each Company has taken commercially reasonable steps to maintain the confidentiality of its Confidential Information in connection with the Business. If applicable, all Listed Intellectual Property of each Company (and as of the Closing the Transferred IP) is owned solely and exclusively by such Company, free and clear of all Liens, other than Permitted Liens, and free and clear of any rights of each Seller or its other Affiliates (other than such Company). There has not been communicated to any Seller or its Affiliates the threat of any claim that the holder of such Listed Intellectual Property or any Company is violating or infringing any Intellectual Property right of any third-party, or challenging any Company’s ownership or use of, or the validity or enforceability of, any of the Listed Intellectual Property.

(d) correct, current and complete list of all Company IP Agreements which are material to the Business, including those agreements under which: (i) each Company is a licensee or has licensed or otherwise has been

granted any rights, immunity from suit or covenant not to sue with respect to any Intellectual Property by any Person

; and (ii) any Person is a licensee or has licensed or otherwise has been granted any rights, immunity from suit or covenant not to sue with respect to any Intellectual Property by any Company. If applicable, each Company IP Agreement is valid and binding on the applicable Company in accordance with its terms and is in full force and effect. Neither the Companies nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

SECTION 3.12 Information Technology; Privacy and Security.

(a) In connection with their collection, storage, transfer (including, without limitation, any transfer across national borders) and/or use of any personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees and/or other third parties (collectively “Personal Information”), each Company is and has been, in compliance with all applicable laws in all relevant jurisdictions, such Company’s privacy policies and the requirements of any contract or codes of conduct to which each Company is a party. Each Company has commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use and/or disclosure. Each Company is and has been in compliance in all material respects with all laws relating to data loss, theft and breach of security notification obligations.

(b) The IT Assets (A) are in operating order and are fulfilling the purposes for which they were acquired, licensed or established in an efficient manner without material downtime or errors, (B) have not, in the past five (5) years, experienced any material errors and/or breakdowns, (C) to the Sellers’ knowledge, do not contain Unauthorized Code, (D) have not experienced any Security Incidents or Security Breaches, and (E) are considered by each Company to effectively perform all information technology operations necessary to conduct the Business as it is currently conducted. Each Company has commercially reasonable disaster recovery plans, technologies, procedures and facilities for their respective IT Assets and have taken reasonable steps to maintain and safeguard the IT Assets from Security Incidents or Security Breaches. In the past five (5) years, the IT Assets or disaster recovery plans, technologies, procedures or facilities have not experienced a shutdown for a continuous period of twenty-four (24) hours or more.

(c) Neither Company has experienced any material Security Breaches or material Security Incidents affecting Personal Information, and each Company is not aware of any written notices or complaints from any Person regarding such a Security Breach or material Security Incident. Neither Company has received (nor, to the best of Sellers’ knowledge, has any Company been threatened with) any written complaints, claims, demands, inquiries or other notices, including a notice of investigation, or any other written notices from any Person (including any Governmental Entity or self-regulatory authority or entity) (A) regarding such Company’s collection, processing, use, storage, transfer or disclosure of Personal Information, (B) alleging that such Company’s collection, processing, use storage, security, transfer of disclosure of Personal Information is in violation of any applicable Privacy Laws, Privacy Policies or Privacy Contracts or otherwise constitutes an unfair, deceptive, or misleading trade practice, or (C)

regarding such Company's failure to comply in any material respect with any applicable Privacy Laws.

(d)

Each Company has delivered to the Buyer true, correct and complete copies of the effective Privacy Policy included in the Human Resources manual.

(e) Each Company has implemented reasonable physical, technical and administrative safeguards designed to protect Personal Information in their possession or control from material unauthorized access by any Person, including such Company's employees, contractors, and vendors, and to ensure material compliance in all respects with all applicable Privacy Laws, Privacy Contracts and Privacy Policies.

(f) Each Company has a valid and legal right (whether contractually, by applicable Law or otherwise) to access or use all Personal Information and any other information of any Person that is accessed and used by or on behalf of such Company in connection with the sale, use and/or operation of their products, services and businesses. Neither the execution, delivery or performance of this Agreement, nor the consummation of any of the transactions contemplated by this Agreement (including any transfer of any Personal Information from either Company to the Seller), will violate in any material respect any Privacy Policies, Privacy Contracts or any applicable Law (including any Information Laws) governing each Company's collection, use, access to, transmission, disclosure, alteration or handling of Personal Information, or result in or give rise to any right of termination or other right to impair or limit each Company's rights to own or use any Personal Information used in or necessary for the conduct of its businesses.

(g)

SECTION 3.13 Licenses and Permits.

, each Company holds all licenses, permits, variances, certifications, exemptions, franchises, authorizations and approvals (the "Licenses and Permits") of all Governmental Entities necessary to own, lease or operate their respective properties and to permit

the continued lawful conduct of the Business in the manner now conducted

and all

Licenses and Permits are valid and in full force and effect.

. The consummation of the transactions contemplated by this Agreement will not result in the cancellation, modification, termination or suspension of any License and Permit.

SECTION 3.14 Compliance with Law.

(a) , each Company is and for the past five (5) years has been in compliance in all material respects with all applicable Laws of all applicable Governmental Entities.

(b) neither Company (x) has received (i) any citations, complaints, compliance schedules, or other similar enforcement orders, (ii) notice of a requirement to pay or paid any fines or penalties to, or (iii) any other notice from, any Governmental Entity, and (y) is not in default under, and no condition exists (whether covered by insurance or not) that with or without notice or lapse of time or both would constitute a default under, or breach or violation of, any Law or permit applicable to such Company. Neither Company is subject to any order, injunction, judgment, award, decree, ruling, writ, or assessment from any arbitrator or any Governmental Entity.

SECTION 3.15 Litigation.

, there are no Actions pending or, to the knowledge of each Seller, threatened, of any nature, brought by or against any Seller (to the extent related to the Business) or any Company, the assets, properties or rights of any Company or the transactions contemplated by this Agreement, and there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting any Company or any of its properties or assets.

SECTION 3.16 Contracts.

(a)

each Company is not a party to any written:

(i)

;

(ii)

;

(iii) agreement or indenture relating to Indebtedness, mortgaging, pledging or otherwise placing a Lien (other than Permitted Liens) on any assets of any Company;

(iv)

(v)

;

(vi)

(vii)

;

(viii)

;

(ix) Contract or group of related contracts with the same party or customer, that cannot be cancelled by any Company without penalty or without more than ninety (90) days' notice;

(x) agreement relating to any business acquisition or disposition by any Company, related to the sale or purchase of stock, assets or any real property
;

(xi) agreements or Contracts that relate to any acquisition of a business by any Company pursuant to which such Company has any material continuing "earn out" or other contingent or fixed payment obligations;

(xii) Contract which (A) prohibits or purports to prohibit any Company from freely engaging in business anywhere in the world, (B)

(C) contains any restrictions on soliciting customers or suppliers anywhere in the world, or (D) contains any restrictions on soliciting or hiring any employee or consultant, other than restrictions that are part of the terms and conditions of any "requirements" or similar agreement under which any Company has agreed to procure goods or services exclusively from any Person;

(xiii)

(xiv) agreements between or among either Company on the one hand and either Seller or any Affiliate of any Seller (other than any Company) on the other hand;

(xv)

;

(xvi) Contracts with any Governmental Entity;

(xvii) any Contract that prohibits the pledging of the equity interests of any Company or prohibits the issuance of guarantees by any Company;

(xviii) any Contract that grants any right of first refusal or right of first offer or similar right with respect to any Company to third parties or that limits or purports to limit the ability of any Company to pledge, sell, transfer or otherwise dispose of any material amounts of assets other than in the ordinary course of business; and

(xix) any other Contracts, agreements or understandings of any Company that is material to or critical to the Business.

(b) With respect to each Material Contract: (i) such contract is a valid and binding agreement of each Company, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies; (ii) each Company is not in breach or default in any material respect, nor has such Company taken any action which, with notice or lapse of time, would constitute a breach or default in any material respect, or permit termination, material modification or acceleration, as applicable, under such contract; and (iii) no other party is in breach or default in any material respect under such contract. Neither Company has received written or verbal notice from any other party to a Material Contract that such other party intends to terminate, not renew, or renegotiate in any material respects the terms of, any such Material Contract.

SECTION 3.17 Employee Plans.

(a) _____, none of the Sellers or any of its ERISA Affiliates or the Companies maintains, sponsors, is a party to, participates in, has a commitment to create or has any liability or contingent liability with respect to: (i) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are defined in sections 3(1) and 3(2), respectively, of ERISA), other than a "multiemployer plan" (as defined in section 3(37) of ERISA); (ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, retention plan or agreement, unemployment compensation plan, vacation pay, change in control, severance pay, bonus or benefit arrangement, insurance or hospitalization program, flexible benefit plan, cafeteria plan, dependent care plan or any fringe

benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, which does not constitute an employee benefit plan (as defined in section 3(3) of ERISA); or (iii) any employment agreement or consulting agreement (collectively referred to as the “Plans”).

(b) A true and correct copy of each of the Plans, and all contracts relating thereto, or to the funding thereof, including, without limitation, all trust agreements, insurance contracts, administration contracts, investment management agreements, subscription and participation agreements and recordkeeping agreements, each as in effect on the date hereof, has been supplied to the Buyer. In the case of any Plan which is not in written form, the Buyer has been supplied with an accurate description of such Plan as in effect on the date hereof. A true and correct copy of the most recent annual report, actuarial report, accountant’s opinion of the plan’s financial statements, summary plan description and Internal Revenue Service determination letter with respect to each Plan, to the extent applicable, and a current schedule of assets (and the fair market value thereof assuming liquidation of any asset which is not readily tradable) held with respect to any funded Plan has been supplied to the Buyer, and there have been no material changes in the financial condition in the respective plans from that stated in the annual reports and actuarial reports supplied.

(c) Each of the Plans that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is a prototype plan that is entitled to rely on an opinion letter issued by the Internal Revenue Service to the prototype plan sponsor regarding qualification of the form of the prototype plan, and no event has occurred which will or could give rise to disqualification of any such plan under such section. The Plans comply in form and in operation in all material respects with their terms and in all material respects with the requirements of the Law, including the Code and ERISA, and no event has occurred which will or could cause any such Plan to fail to comply with such requirements and no notice has been issued by any governmental authority questioning or challenging such compliance. All Plans which are subject to section 409A of the Code comply with section 409A in form and have been administered in accordance with their terms and section 409A of the Code.

(d) None of the assets of any Plan are invested in employer securities or employer real property. There have been no “prohibited transactions” (as described in section 406 of ERISA or section 4975 of the Code) with respect to any Plan and none of the Sellers or any of its ERISA Affiliates or any Company has engaged in any prohibited transaction. With respect to the Plans, all material required contributions have been made or properly accrued. No Plan is subject to Title IV of ERISA.

(e) There have been no acts or omissions by any Seller or any of its ERISA Affiliates or any Company which have given rise to or may give rise to interest, fines, penalties, taxes or related charges under section 502 of ERISA or Chapters 43, 47, 68 or 100 of the Code for which any Seller or any of its ERISA Affiliates or any Company may be liable or under Section 409A of the Code for which any Seller, any of its ERISA Affiliates or any Company or any

participant in any Plan that is a nonqualified deferred compensation plan (within the meaning of section 409A of the Code) may be liable. Each Company, and each Plan that is a “group health plan” as defined in Section 733(a)(1) of ERISA (a “Health Plan”) (I) is currently in compliance in all material respects with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“PPACA”), the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (“HCERA”), and the regulations and guidance issued thereunder (collectively, with PPACA and HCERA, the “Healthcare Reform Laws”), and (II) has been in compliance in all material respects with all applicable Healthcare Reform Laws since March 23, 2010. No event has occurred, and no conditions or circumstance exists, that would reasonably be expected to subject each Company, or any Health Plan, to material penalties or excise taxes under Sections 4980D, 4980H, or 4980I of the Code or any other provision of the Healthcare Reform Laws.

(f) Neither consummation of the transactions contemplated by this Agreement nor this Agreement (whether separately or together with any other action) will accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any current or former director, officer or employee of any Seller or any of its ERISA Affiliates or any Company. None of the payments contemplated by the Plans (including the Bonus Payments) would, in the aggregate, constitute excess parachute payments (as defined in section 280G of the Code (without regard to subsection (b)(4) thereof)) or would exceed the amount deductible pursuant to section 162(m) of the Code. None of the Sellers or any of its ERISA Affiliates or any of the Companies is a nonqualified entity within the meaning of section 457A of the Code.

(g) There are no actions, suits or claims (other than routine claims for benefits) pending or threatened involving any Plan or the assets thereof and no facts exist which could give rise to any such actions, suits or claims (other than routine claims for benefits). Each Plan which constitutes a “group health plan” (as defined in section 607(i) of ERISA or section 4980B(g)(2) of the Code), including any plans of current and former affiliates which must be taken into account under sections 4980B and 414(t) of the Code or sections 601-608 of ERISA, have been operated in compliance with applicable law, including the continuation coverage requirements of section 4980B of the Code and section 601 of ERISA and the portability and nondiscrimination requirements of sections 9801 and 9802 of the Code and sections 701-707 of ERISA, to the extent such requirements are applicable. None of the Sellers or any of its subsidiaries or any of the Companies has any liability or contingent liability for providing, under any Plan or otherwise, any post-retirement medical or life insurance benefits, other than statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and section 4980B of the Code or applicable state law. None of the Company Benefit Plans is a multiple employer pension plan or a multiple employer welfare arrangement (within the meaning of section 3(40) of ERISA). None of the Sellers nor any of its ERISA Affiliates nor any of the Companies contributes to, has contributed to, or has any liability or contingent liability with respect to a multiemployer plan.

(h) Each Plan which constitutes a “group health plan” (as defined in section 607(i) of ERISA or section 4980B(g)(2) of the Code), including any plans of current and former affiliates which must be taken into account under sections 4980B and 414(t) of the Code or sections 601-608 of ERISA, have been operated in compliance with applicable law, including the continuation coverage requirements of section 4980B of the Code and section 601 of ERISA and the portability and nondiscrimination requirements of sections 9801 and 9802 of the Code and sections 701-707 of ERISA, to the extent such requirements are applicable.

(i) Each Company is in compliance in all material respects with the requirements of the Railroad Retirement Act of 1974 and the applicable regulations of the United States Railroad Retirement Board.

SECTION 3.18 Insurance. Prior to the date hereof, Sellers have furnished to the Buyer a true, complete and accurate original or copy of each policy or other certificate of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance insuring the Business, each Company and its assets and operations (the "Existing Policies").

All the Existing Policies (i) are in full force and effect, (ii) have no outstanding premiums due thereunder that have not been paid and (iii) neither Company is in material default with respect to its obligations under any such insurance policy.

, neither Company maintains any self-insurance or co-insurance programs. , there are no claims related to the Business pending under any such insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

SECTION 3.19 Transactions with Directors, Officers and Affiliates. , neither Company is a party to any Contract, agreement or arrangement with any Seller or any of the directors, executive officers or stockholders of such Seller, each Company or any Affiliate or family member of any of the foregoing Persons. There is no Indebtedness owed to each Company by any employee, consultant, officer or director of Sellers or of each Company, other than salary advances and advances of travel expenses in the ordinary course of business consistent with past practice.

SECTION 3.20 Labor Matters.

(a) Neither Company is a party to any collective bargaining agreement, and, to the knowledge of each Seller, no union organizing efforts are underway with respect to employees of each Company. : (a) there are no material unfair labor practice charges, material unfair labor practice complaints, material labor arbitrations or material labor grievances pending, or, to the knowledge of each Seller, threatened, against each Company; (b) there is no strike, slowdown, work stoppage or lockout, or, to the knowledge of each Seller, threat thereof, by or with respect to any employees of each Company; and (c) there are no material charges, complaints, suits or proceedings, or, to the knowledge of Sellers, threat thereof, against each Company alleging breach or violation in any material respect of any labor or employment Law.

(b)

, the following information, if applicable, as of the date hereof: (a) title or position; (b) date of hire or commencement of service; (c) work location; (d) whether full-time or part-time and whether exempt or non-exempt; (e) whether covered by the terms of a collective bargaining or similar agreement or an employment or consulting agreement; (f) whether absent from active employment or service and if so, the date such absence commenced, the reason for such absence and the anticipated date of return to active employment or active service; (g) annual salary or annual consulting payments, as the case may

be, and, if applicable, target bonus and other incentive compensation, such salary and other compensation data to include current information and such information for the prior 12 month period; and (h) accrued unused vacation, sick days and other paid days off. None of such employees providing services to any Company is a leased employee.

(c) Each Company has been and is in compliance with (a) all applicable Laws respecting employment and employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, harassment, non-discrimination in employment, workers' compensation, unemployment compensation and the collection and payment of withholding or payroll Taxes and similar Taxes and (b) all obligations of each Company under any employment agreement, consulting agreement, severance agreement, collective bargaining agreement or any similar employment or labor-related agreement or understanding. All independent contractors and consultants providing personal services to each Company have been properly classified as independent contractors for purposes of all Laws, including Laws with respect to employee benefits, and all Employees have been properly classified under the Fair Labor Standards Act and similar state laws.

(d) A Form I-9 has been completed and retained with respect to each such current Employee and, where required by law, former Employees. Neither Company has been the subject of any audit or other action, suit, proceeding, claim, demand, assessment or judgments nor, to Sellers' knowledge, has either Company been the subject of an investigation, inquiry or other any audit or other action, suit, proceeding, claim, demand, assessment or judgments from the U.S. Department of Homeland Security, including the Immigration and Customs Enforcement, (or any predecessor thereto, including the U.S. Customs Service or the Immigration and Naturalization Service) or any other immigration-related enforcement proceeding.

(e)

SECTION 3.21 Environmental Matters.

:

(a) Each Company is, and for the last five (5) years has been, in compliance in all material respects with all applicable Environmental Laws.

(b) Each Company has obtained and possesses all material Environmental Permits required by Environmental Laws to operate its facilities and to conduct its business and is, and for the last five (5) years has been, in material compliance with such Environmental Permits, and all such Environmental Permits are valid and in good standing in all material respects.

(c) Neither Company has received, since January 1, 2019, any written notice of any material violation of or material liability arising under Environmental Laws, including with

respect to any material investigatory, remedial or corrective obligation, relating to such Company or its facilities and arising under Environmental Laws, or that such Company is a potentially responsible party for such obligation, the subject of which is unresolved.

(d) There are no material suits or proceedings pending or threatened against any Company, pursuant to Environmental Laws.

(e) Neither Company is subject to any material judgment, order or decree of any court or other Governmental Entity, or any material settlement or consent agreement, that is outstanding and was issued or entered pursuant to Environmental Laws.

(f) In the past five (5) years, neither Company has caused or permitted any release or stored, treated, disposed of, arranged for or permitted the disposal of, transported, handled, manufactured, or distributed any regulated substance so as to give rise to material liability arising under Environmental Laws.

(g) No property or facility currently or, to the knowledge of each Seller, formerly owned, leased, operated, or used by each Company is listed or proposed for listing on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or on any similar state list of sites actually or potentially requiring investigation, corrective action, or remediation.

(h) All environmental assessment, investigation, response and remedial action reports for any property currently or, to the knowledge of each Seller, formerly owned, leased, or operated by each Company that are in the possession or reasonable control of such Company have been made available to Buyer, including all agreements containing unexpired (or expired with claims outstanding) environmental indemnities.

SECTION 3.22 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Seller or any Company.

SECTION 3.23 International Trade Matters. Each Company is, and since January 1, 2019 has been, in compliance with and has not been in violation of all applicable International Trade Laws. Neither Company has received any written (nor, to the best of Sellers' knowledge, has either Company been threatened with any) order, notice, or other communication from any Governmental Entity of any actual or potential violation or failure to comply with any International Trade Law.

SECTION 3.24 Absence of Unlawful Payments. Neither the Companies, nor, to the best of Sellers' knowledge, any director or officer of the Companies nor any employee, agent or other Person acting on behalf of any Company: (a) has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or offers or payment of anything of

value; made any unlawful offers or expenditures relating to political activity to officials or employees of any Governmental Entity or to other Persons or established or maintained any unlawful or unrecorded funds; (b) made any direct or indirect unlawful offer or payment of anything of value to any official or employee of any Governmental entity or violated any provision of the Foreign Corrupt Practices Act or any applicable anti-corruption laws; or (c) has accepted or received any unlawful contributions, payments, gifts or expenditures, or offers or payments of anything of value.

SECTION 3.25 Condition of Track and Bridges. True and complete copies of all periodic Track and bridge inspections and exemption reports in the possession or under the control of each Company or such Company's agents describing the condition of all of the Track and bridges owned or operated by such Company have been provided to the Buyer.

All of the Track and bridges owned or operated by each Company are maintained and operated in material compliance with all applicable Laws, requirements of grants, loan documents or any other contracts,

SECTION 3.26 Grants. attached hereto contains an accurate and complete list of all Federal and state grants (the "Grants") received or to be received by each Company and includes (a) the original amount of each Grant; and (b) with respect to each such Grant: (i) the funds received to date, and (ii) remaining amounts which may be received in the future and the basis for such future payment(s).

, all conditions precedent to the receipt of funds under such Grants, including future payments, have been satisfied in full. True, correct and complete copies of each Grant and any submissions, applications, notices, and/or other correspondence related to any Grant, including all amendments thereto, have been furnished to the Buyer.

SECTION 3.27 Customers and Suppliers.

Since the date of the Balance Sheet, no Top Customer or Top Supplier has terminated its relationship with any Company, and no such customer or supplier has notified such Company in writing or, to the knowledge of each Seller, orally, that it (a) intends to terminate its relationship with such Company or (b) will otherwise materially and adversely modify its business relationship with such Company. There have been no material disputes or controversies with any Top Customer or Top Supplier.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer hereby represents and warrants to Sellers as follows:

SECTION 4.1 Corporate Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of its formation and has all necessary company power and authority to own its properties, rights and assets and to conduct its business as now conducted and is duly licensed or qualified to do business as a foreign company and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except where the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, materially impair the ability of the Buyer to perform any of its obligations under this Agreement.

SECTION 4.2 Authorization and Validity. The Buyer has the requisite power and authority to enter into and deliver this Agreement to which the Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Buyer of this Agreement and the performance by the Buyer of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action by the board of directors of the Buyer, and no other corporate proceedings on the part of the Buyer are necessary to authorize such execution, delivery and performance. This Agreement have been duly executed and delivered by the Buyer and, assuming the due authorization, execution and delivery of this Agreement by the other parties thereto, this Agreement constitute the Buyer's valid and binding obligation enforceable against the Buyer in accordance with its terms.

SECTION 4.3 No Conflict or Violation. The execution, delivery and performance by the Buyer of this Agreement to which it is a party and the transactions contemplated hereby and thereby do not and will not (i) violate or conflict with any provision of the Certificate of Incorporation or By-laws of the Buyer, (ii) violate any order, judgment or decree of any Governmental Entity applicable to the Buyer or (iii) violate, conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default, termination or right of termination under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Buyer is a party or by which it is bound or to which any of its properties, rights or assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to a right thereunder to require any payment to be made by the Buyer, or result in the creation or imposition of any Lien upon any of the assets, properties or rights of the Buyer, except in the cases of clauses (ii) and (iii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on the Buyer's ability to consummate the transactions contemplated hereby.

SECTION 4.4 Consents and Approvals. Neither the execution and delivery of this Agreement, by the Buyer nor the consummation of the transactions contemplated hereby and thereby by the Buyer require any consent, waiver, approval, license, authorization or permit of, or filing with or notification to, any Person, les.

SECTION 4.5 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or

commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer for which the Sellers would be liable.

SECTION 4.6 Financial Ability. The Buyer will have at the Closing sufficient cash to enable it to pay the Purchase Price as and when it becomes due.

, the Buyer affirms that it is not a condition to the Closing or to any of its obligations under this Agreement that it obtains financing for or related to any of the transactions contemplated by this Agreement.

SECTION 4.7 Investment Representation; Independent Investigation.

(a) The Buyer is acquiring the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws.

(b) The Buyer has conducted its own independent investigation, review and analysis of the Business, the results of operations, prospects, condition (financial and otherwise) and assets of each Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of each Company for such purpose. The Buyer acknowledges and agrees that: (i) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, the Buyer has relied solely upon its own investigation and the express representations and warranties of the Sellers set forth in Article 3 of this Agreement

; and (ii) none of Sellers, the Companies or any other Person has made any representation or warranty as to Sellers, the Companies or this Agreement, except as expressly set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedule).

ARTICLE 5. COVENANTS OF SELLERS.

Sellers hereby covenant as follows:

SECTION 5.1 Conduct of Business Before the Closing Date.

(a) During the period from the date of this Agreement to the Closing, except as otherwise expressly provided in this Agreement, Sellers shall cause each Company to conduct business only in the ordinary course consistent with past practice and in compliance in all material respects with applicable Laws. Each Seller shall use its commercially reasonable efforts to maintain and preserve intact its assets, the present organization of each Company, the Business, keep available the services of the present officers and employees of each Company and preserve relationships with customers, suppliers, vendors, licensors, licensees, contractors, distributors and others having business dealings with each Company. Without limiting the generality of the foregoing, from the date of this Agreement to the Closing, Sellers shall not permit each Company to, and neither Company shall, in each case, without the prior written consent of the Buyer:

(i) mortgage, pledge or subject to any material Lien, any material portion of its assets, except Permitted Liens;

(ii) sell, assign or transfer any of its tangible assets, other than sales in the ordinary course of business;

(iii) acquire by merger or consolidate with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(iv) adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(v) sell, assign, transfer or license any material Intellectual Property other than licenses granted to distributors in the ordinary course of business;

(vi) enter into any transactions with any Affiliate outside the ordinary course of business;

(vii) issue, sell or transfer any of its equity securities or warrants, options or other rights to acquire its equity securities or declare, set aside or pay any non-cash dividend or made any non-tax distribution with respect to its equity securities or redeemed, purchased or otherwise acquired any of its equity securities;

(viii) make any loan to, or enter into any other material transaction with, any of its Affiliates, the members of its board of Directors or its executive officers outside the ordinary course of business;

(ix) enter into any employment contract;

(x)

;

(xi) adopt, amend or terminate any Plan or agree to provide any compensation or benefits pursuant to any plan, agreement or arrangement that would constitute a Plan if adopted;

(xii) make any material capital investment in, or any material loan to, any other Person other than as set forth in capital expenditure budgets of either Company;

(xiii) make any capital expenditures (or commitments therefor), except in the ordinary course of business.

;

(xiv) effect any split, recapitalization, reclassification or similar change in the capitalization of either Company;

(xv) effect any amendments to any charter, by-laws or other organizational document of either Company; or

(xvi) fail to comply with any Law or with its obligations under any Material Contract;

(xvii) fail to maintain its books and records in accordance with past practices;

(xviii) accelerate or decelerate either Company's accounts receivables or accounts payable or otherwise operate the Business outside of the ordinary course of business as it relates to accounts receivable and accounts payable;

(xix) modify, amend, or terminate any insurance policies,
;

(xx) enter into, modify, amend or terminate any Material Contract;

(xxi) take any action that would result in the cancellation, modification, termination or suspension of any License and Permit.

(xxii) stop payment on any debt, Taxes and other obligations when due;

(xxiii) create, incur, assume or guarantee or otherwise become responsible for any Indebtedness applicable to either Company, in each case, except in the ordinary course of business;

(xxiv) make any material change in any method of accounting or accounting practice of either Company, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(xxv) change in its accounting policies or revenue recognition policies, including in applying ASC 606 – Revenue From Contracts With Customers;

(xxvi) change any Tax election or method of accounting or reporting for Tax purposes, file any amended Tax Return, enter into any closing agreement, settle any Tax claim, assessment or audit, surrender any right to claim a refund of Taxes, extend or waive the limitation period applicable to any Tax claim or assessment or changed accounting bases, practices, policies or procedures;

(xxvii)
;

(xxviii) commence or settle (i) any Action by or against any Company or (ii) any Action that relates to the transactions contemplated hereby; or

(xxix) enter into any agreement or commit to do, or resolve, authorize or approve any of the foregoing, or any action or omission that would result in any of the foregoing.

(b) During the period from the date hereof to the Closing Date, Sellers shall cause each Company to (i) prepare and timely file all Tax Returns ("Post-Signing Returns") required to be filed (taking into account any valid extensions obtained in the ordinary course of business) in a manner consistent with the past practice of the applicable Company, (ii) timely pay all Taxes due and payable, whether or not shown on such Post-Signing Returns, and (iii) promptly notify the Buyer of any written notice of Action pending against or with respect to any Company in respect of any material Tax matters (or any significant developments with respect to ongoing Actions in respect of such material Tax matters).

SECTION 5.2 Consents and Approvals.

(a) Seller shall, and Sellers shall cause each Company to, timely make any required filings with, and use reasonable efforts to obtain requisite consents and approvals of, any Governmental Entity

with respect to the transactions

contemplated hereby (including a request for early termination of the waiting period thereunder), and shall thereafter promptly respond to all requests received from such Governmental Entity for additional information or documentation; provided, that the Buyer shall not be required to commit to or effect, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such of its or its Affiliates' assets or operations, and/or of the assets or operations of any Company, as is required to be sold, divested or disposed of, including entering into any agreement required to be entered into by any Governmental Entity in connection therewith, in order to obtain any required regulatory approval or to avoid the commencement of any Action seeking, and/or to avoid entry of, and/or to effect the dissolution of, any Governmental Order that would have the effect of materially delaying or prohibiting the consummation of the transactions contemplated hereby.

(b) As soon as practicable after the execution of this Agreement, but in no event later than thirty (30) calendar days thereafter, Sellers shall, and shall cause each Company to, at the cost and expense of Sellers, (i) use reasonable best efforts to obtain all necessary consents,

waivers, exemptions, authorizations, orders and approvals of all Persons required in connection with the execution, delivery and performance by Sellers of this Agreement and the consummation of the transactions contemplated hereby including any third party consents under any Material Contract, if any, and execution of estoppel certificates by lessors under any Leased Real Property for which consent to transfer is necessary, if any, and (ii) diligently assist and cooperate with the Buyer in preparing and filing all documents required to be submitted by the Buyer to any Governmental Entity, including the STB, in connection with such transactions and in obtaining any consents, waivers, authorizations, orders or approvals of Governmental Entities that may be required to be obtained by the Buyer in connection with such transactions, which assistance and cooperation shall include timely furnishing to the Buyer all information concerning any Seller and any Company that counsel to the Buyer reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, authorization or approval.

(c) The Buyer shall cooperate and use commercially reasonable efforts to assist Sellers in giving such notices and obtaining any consents and estoppel certificates; provided, however, that the Buyer shall have no obligation to give any guarantee or other consideration of any nature in connection with any such notice, consent or estoppel certificate or to consent to any change in the terms of any agreement or arrangement that the Buyer may deem adverse to the interests of the Buyer, any Company or the Business. Sellers shall keep the Buyer reasonably informed as to the status of obtaining any consents and estoppel certificates.

(d) Sellers and the Buyer agree that, in the event that any consent, approval or authorization is necessary or desirable to preserve for the Business or the Companies, any right or benefit under any License and Permit, Contract or other arrangement to which any Seller or any Company is a party is not obtained prior to the Closing, such Seller will, subsequent to the Closing, cooperate with the Buyer and such Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, such Seller shall use its best efforts to provide the Buyer or such Company, as the case may be, with the rights and benefits of the affected License and Permit, Contract or other arrangement for the term of such License and Permit, Contract or other arrangement, and, if such Seller provides such rights and benefits, the Buyer or such Company, as the case may be, shall assume the obligations and burdens thereunder.

SECTION 5.3 Access to Properties and Records. Sellers shall, and shall cause each Company to, (a) afford to the Buyer, and to the accountants, counsel, consultants and other representatives of the Buyer, upon reasonable prior notice access during normal business hours throughout the period prior to the Closing Date to all properties, assets, books, Contracts, commitments, title insurance policies currently in effect with respect to the Owned Real Property and files and records of each Company, (b) furnish to the Buyer and its representatives such financial, operating and other data and information related to each Company as Buyer or any of its representatives may reasonably request; and (c) instruct the representatives of each Sellers and each Company to cooperate with the Buyer in its investigation of such Company, and, during such period, shall furnish promptly to the Buyer all other information concerning such Company and their respective properties and personnel as the Buyer may from time to time reasonably request; provided, however, that any such access shall be conducted at a reasonable time and in such a manner as not to interfere unreasonably with the operations of the business of such Company and

neither the Buyer nor its representatives shall perform intrusive environmental testing activities or otherwise disturb the Owned Real Property or Leased Real Property without the prior written consent of Sellers in each instance. Notwithstanding the foregoing, each Company shall be required to disclose any information to the Buyer or their authorized representatives if doing so would violate any Law to which such Company is subject.

SECTION 5.4 Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of Sellers or the Companies, Sellers shall use, and shall cause the Companies to use, their commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby on the Closing Date.

SECTION 5.5 Intellectual Property.

(a) Concurrent with or immediately after the Closing, each Seller shall, and shall cause its Affiliates to take all actions necessary to assign, transfer, convey and record in the name of each Company (or their designees) all of such Seller's or its Affiliates' right, title and interest in all Intellectual Property that is used primarily in the Business (collectively, the "Transferred IP"); provided, however, that (x)

(b) At the Buyer's request, for one-hundred eighty (180) days after the Closing, each Seller shall display on all of its and its Affiliates' websites and social media sites that reference the Business a mutually-agreed link to websites and social media sites of Buyer or its designee and a mutually-agreed statement about the transactions herein.

SECTION 5.6 Intercompany Arrangements.

(a) Prior to the Closing, Sellers shall cause any contract or arrangement that is _____, other than those Contracts or arrangements _____,

(b) Immediately prior to the consummation of the Closing, each Seller shall

(c) Prior to the Closing, all intercompany liabilities (other than those addressed in the preceding clauses (a) and (b)) owed to any Seller or its Affiliates, on the one hand, by any Company, on the other hand, shall be settled or otherwise eliminated, shall cease to exist and shall be of no further force or effect.

(d) If any Seller or any of its Affiliates receives any payment related to the Business after the Closing, such Seller agrees to promptly remit (or cause to be promptly remitted) such funds to the Buyer to the extent related to the Business. The Buyer shall have the right and authority, from and after the Closing, to collect for its own account all receivables of the Business and any of the receivables of each Company and to endorse with the name of any Seller any checks or drafts received with respect to any Closing Receivables.

SECTION 5.7 Insurance. Sellers shall not take any action or omit taking any action that would reasonably be expected to be adverse to the ability of any Company to have the benefit of the Existing Policies following the Closing.

. From and after the Closing, each Seller and its Affiliates shall cooperate with and permit each Company to seek and obtain coverage under each of the Existing Policies for occurrences that took place prior to the Closing, and each Seller and its Affiliates shall not release, commute, buy-back, or otherwise eliminate the coverage available to each Company or the Business under any such Existing Policy.

SECTION 5.8 Risk of Loss. The risk of loss or damage by fire or other casualty to any Owned Real Property, any Leased Real Property or any other assets of each Company before Closing is assumed by Sellers. In the event that any Owned Real Property, Leased Real Property or any other assets of each Company shall suffer any such loss or damage, Sellers agree to, at Buyer's election (in its reasonable discretion), (i) repair the damage at its sole cost and expense before the Closing to the extent the insurance proceeds are available for such purpose, (ii) make an appropriate reduction in the Purchase Price based on a reasonable approximation of the cost of such repair as agreed by the Parties or (iii) irrevocably assign to the Buyer the right to the proceeds of any insurances covering such fire, casualty or injury; provided, however, that in the case of (i) and (ii) in the preceding sentence, the Buyer shall assign to Sellers its rights or the rights of each Company, if any, to receive such proceeds up to the amount of costs incurred by any Seller (in the case of clause (i)) or the amount of the reduction in Purchase Price (in the case of clause (ii)).

SECTION 5.9 Resignation of Officers and Directors. Effective as of the Closing Date, Sellers shall either cause the directors and officers of the Companies to resign or remove them from such positions. Sellers shall deliver such written resignations to the Buyer.

SECTION 5.10

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(b)

(c)

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SECTION 5.11

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SECTION 5.12

SECTION 5.13 Release by the Sellers. As of the Closing, each Seller and its Affiliates, successors and assigns (in each case, solely in their capacity as such) (each, a “Releasing Person”) hereby unconditionally release and forever discharge the Buyer and the Companies, from all debts, demands, causes of action, suits, covenants, torts, damages and any and all claims, defenses, offsets, judgments, demands and liabilities whatsoever, of every name and nature, both at law and in equity, known or unknown, accrued or unaccrued that have been or could have been asserted against the Companies, which any Releasing Person has or ever had, which arises out of or in any way relates to events, circumstances or actions occurring, existing or taken prior to or as of the Closing Date in respect of matters related to any Company (including any intercompany liabilities owed to any Seller or its Affiliates, on the one hand, by any Company on the other hand); provided that Sellers and the Buyer acknowledge and agree that this Section 5.13 does not apply to and shall not constitute a release of any rights or obligations arising under this Agreement that by their terms survive the Closing.

SECTION 5.14 FCC Radio License. The Buyer and Sellers shall, and prior to the Closing Sellers shall cause each Company to, cooperate to obtain the consent of the United States Federal Communications Commission (the “FCC”) pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 for the transfer of control of the radio license authorization held by each Company under call sign WPJV611. Promptly following execution of this Agreement, Sellers shall initiate the electronic filing of FCC Form 603, “FCC Application for Assignments of Authorization or Transfers of Control,” through the FCC’s Universal Licensing System, and shall be responsible for the filing fees (in proportion to their Percentage Interests) associated with such application. The Buyer shall electronically approve and sign the FCC Form 603 application through the Universal Licensing System and shall, within thirty (30) days after the Closing Date, notify the FCC of the consummation of the transfer of control through the filing of FCC Form 603, Schedule D.

SECTION 5.15 Employee Benefits. Prior to the Closing Date, Sellers shall take, and shall cause each Company to take, all necessary actions to effect the cessation of, and withdrawal from, participation by such Company as a participating employer in all Sellers’ Benefit Plans, with such actions to be effective as of the Closing Date. Sellers shall be responsible for the provision of group health plan continuation coverage pursuant to COBRA with respect to each Person who is an “M&A qualified beneficiary,” as defined in Treasury Regulations Section 54.4980B-9, with respect to the transactions contemplated by this Agreement, who experiences a “qualifying event” as defined in Section 4980B(f)(3) of the Code. Sellers shall be responsible for all liabilities with respect to all Seller Benefit Plans.

SECTION 5.16 Cash.

SECTION 5.17 Payroll Processing. From and after the Closing through , the Sellers shall provide, or cause to be provided, payroll administration services, including preparation of and filing of year-end payroll reports with the appropriate agencies, for the Companies in such a manner as is available to the Companies as of the Closing. The Companies shall reimburse the Sellers for the reasonable and documented out-of-pocket expenses including third party fees and expenses in connection with the provision of such payroll administration services within 30 days after the Companies' receipt of a valid invoice from the Sellers for such services.

SECTION 5.18

SECTION 5.19

ARTICLE 6. COVENANTS OF THE BUYER.

The Buyer hereby covenants as follows:

SECTION 6.1 Consents and Approvals.

(a) The Buyer shall, at its cost and expense, (i) use commercially reasonable efforts to obtain all necessary consents, waivers, exemptions, authorizations, orders and approvals of all Governmental Entities required in connection with the execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby and (i) diligently assist and cooperate with Sellers in preparing and filing all documents required to be submitted by Sellers to any Governmental Entities in connection with such transactions and in obtaining any consents, waivers, exemptions authorizations, orders or approvals of Governmental Entities that may be required to be obtained by Sellers in connection with such transactions, which assistance and cooperation shall include timely furnishing to Sellers all information concerning the Buyer that counsel to Sellers reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, exemption, authorization or approval.

(b) , the Buyer shall be solely responsible, but with the cooperation of Sellers, at the Buyer's sole cost and expense, for obtaining an exemption from, the STB for the transactions contemplated by this Agreement. Within ten (10) Business Days following execution of this Agreement, Buyer shall file with the STB a Notice of Exemption

pursuant 49 C.F.R. 1180.2(d)(2) to acquire control of the Companies as required under 49 U.S.C, 11323(a). Buyer shall concurrently file with the STB a motion for protective order pursuant to 49 C.F.R. 1104.14(b) to allow Buyer to file an unredacted copy of this Agreement under seal. Sellers shall cooperate with Buyer in preparing Buyer's filings with the STB, and Buyer shall afford Sellers the opportunity to review and comment on the draft filings a reasonable time in advance of their being filed with the STB.

SECTION 6.2 Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of the Buyer, the Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby on the Closing Date.

SECTION 6.3 No Benefit to Third-Party. Nothing in this Agreement, express or implied, is intended to confer upon any current or former employee, director, officer or consultant any rights, remedies or obligations under or by reason of this Agreement, including this Article 6.

SECTION 6.4 Post-Closing Employment Matters.

ARTICLE 7. INDEMNIFICATION.

SECTION 7.1 General.

SECTION 7.2 Indemnification By Sellers.

SECTION 7.3

SECTION 7.4 Certain Limitations. The indemnification provided for in Section 7.2 and Section 7.3 shall be subject to the following limitations:

(a)

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(b)

(c)

(d)

SECTION 7.5 Indemnification Procedures. The party making a claim under this Article 7 is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article 7 is referred to as the “Indemnifying Party”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is a Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of any Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 7.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of

such counsel shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 7.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 7.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct

Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to each Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

SECTION 7.6 Payments; Indemnification Escrow Fund.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 7, the Indemnifying Party shall

(b) Any Losses payable to a Buyer Indemnatee pursuant to this Article 7 shall be satisfied: (i) from the Indemnification Escrow Fund; and (ii) to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnatee in the Indemnification Escrow Fund, from Sellers severally on a pro rata basis, in accordance with their respective Percentage Interests.

SECTION 7.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

SECTION 7.8 **Effect of Investigation.**

SECTION 7.9 Exclusive Remedies. Except as set forth herein, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement.

ARTICLE 8. CONDITIONS PRECEDENT TO PERFORMANCE BY SELLERS.

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than Section 8.3) may be waived (in writing) in whole or in part by Sellers in their sole discretion at or prior to the Closing Date:

SECTION 8.1 Representations and Warranties of the Buyer. All representations and warranties made by the Buyer in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Buyer on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date;

SECTION 8.2 Performance of the Obligations of the Buyer. The Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date.

SECTION 8.3 No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity which declares this Agreement invalid or unenforceable or which prevents the consummation of the transactions contemplated hereby shall be in effect.

SECTION 8.4 Closing Deliveries by the Buyer. At the Closing, the Buyer shall deliver (or caused to be delivered) to Sellers:

- (i) the Closing Payment Amount by wire transfer in immediately available funds ;
- (ii) a certificate of a duly authorized officer of the Buyer certifying ; and
- (iii) the Escrow Agreement, duly executed by the Buyer.

ARTICLE 9. CONDITIONS PRECEDENT TO PERFORMANCE BY THE BUYER.

The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which may be waived (in writing) in whole or in part by the Buyer in its sole discretion at or prior to the Closing Date:

SECTION 9.1 Representations and Warranties of Sellers. All representations and warranties made by Sellers (on behalf of Sellers or the Companies) in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by Sellers (on behalf of Sellers or the Companies) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by Sellers (on behalf of Sellers or the Companies) on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by Sellers (on behalf of Sellers or the Companies) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date.

SECTION 9.2 Performance of the Obligations of Sellers. Sellers shall have performed (or caused to be performed) in all material respects all obligations required under this Agreement to be performed by Sellers or Companies on or before the Closing Date.

SECTION 9.3 No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity, which declares this Agreement invalid or unenforceable or prevents the consummation of the transactions contemplated hereby shall be in effect; and no action or proceeding before any Governmental Entity shall have been instituted or threatened by any Governmental Entity or by any other Person which seeks to prevent or delay the consummation of the transactions contemplated by this Agreement or which challenges the validity or enforceability of this Agreement, and which in either such case has a reasonable likelihood of success in the reasonable opinion of counsel to the Buyer.

SECTION 9.4 STB. Any exemption, authorization or approval of the transactions contemplated by this Agreement shall have been obtained from the STB and such exemption, authorization or approval shall be in full force and effect, and neither the STB nor any other Governmental Entity shall have imposed any conditions or obligations on the transactions contemplated by this Agreement (other than any immaterial condition or obligation).

SECTION 9.5 Material Consents. Sellers shall have received, each in form and substance satisfactory to the Buyer, the third-party consents and estoppel certificates necessary or

desirable for the consummation of the transactions contemplated by this Agreement

SECTION 9.6 W-9. Each Seller shall deliver to the Buyer at the Closing a duly completed and executed certificate Internal Revenue Service Form W-9, dated as of the Closing Date.

SECTION 9.7 No Material Adverse Effect. No event or events shall have occurred which, individually or in the aggregate, have had, or could reasonably be expected to have, a Material Adverse Effect.

SECTION 9.8 Release of Liens. Sellers shall have obtained written agreements and/or instruments sufficient to fully release each of the Companies from all obligations and liabilities relating to indebtedness for borrowed money, and further to release all Liens on the Shares and each Company's property, rights and assets (including via executed and filed UCC-3s); provided that any such agreements and/or instruments shall be in form and substance reasonably satisfactory to the Buyer and shall be obtained by Sellers without the Buyer or any Company incurring any liabilities or obligations.

SECTION 9.9 Material Contract.

SECTION 9.10 Closing Deliveries by Sellers. At the Closing, Sellers shall have delivered or caused to be delivered to the Buyer:

(a) stock certificates or another appropriate instrument of transfer evidencing all of the Effingham-IW Equity Interests, duly endorsed in blank or accompanied by stock powers duly executed in blank, in a form satisfactory to the Buyer, such shares being delivered free and clear of all Liens with all required stock transfer tax stamps affixed thereto;

(b) a receipt for the Closing Payment Amount;

(c) ;

(d) a duly executed certificate certifying the non-foreign status of each Seller ;

(e) the duly executed resignations of all directors and officers of each Company;

(f) evidence satisfactory to the Buyer that each Seller shall have paid and discharged ;

(g) evidence of termination of any intercompany arrangements, as contemplated in Section 5.6(a);

(h) the Estimated Closing Working Capital Statement contemplated in Section 2.3(a);

(i) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller, certifying that attached thereto are true and complete copies of (a) the organizational documents of each Company, (b) all resolutions adopted by the board of directors of such Seller authorizing the execution, delivery and performance of this Agreement

and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(j) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller certifying the names and signatures of the officers of such Seller authorized to sign this Agreement ;

(k) the Escrow Agreement, duly executed by each Seller and the Escrow Agent; and

(l) a good standing certificate for each Company, in each case dated within five (5) Business Days prior to the Closing Date.

ARTICLE 10. TERMINATION.

SECTION 10.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by written notice at any time before the Closing:

(a) by mutual consent of Sellers and the Buyer;

(b) by the Buyer if any Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) calendar days after written notice to such Seller

provided that the Buyer is not then in material breach of the terms of this Agreement; provided, further, that no cure period shall be required for a breach that by its nature cannot be cured;

(c) by any Seller if the Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) calendar days after written notice to the Buyer

; provided that such Seller is not then in material breach of the terms of this Agreement; provided, further, that no cure period shall be required for a breach that by its nature cannot be cured;

(d) by Sellers or the Buyer if there shall be a final, non-appealable order of a court of competent jurisdiction in the United States in effect preventing, restraining, enjoining or

otherwise prohibiting consummation of the transactions contemplated hereby; provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party whose failure to perform any of its obligations under this Agreement has been the primary cause of such order;

(e) by the Buyer if the exemption, authorization or approval of the STB shall not have been granted or become effective and all reasonably available appeals of such determination shall have been taken and are unsuccessful; or

(f) by any Seller or the Buyer if the Closing shall not have been consummated ; provided that the right to terminate this Agreement under this Section 10.1(f) shall not be available to any Seller if the failure of the Closing to have occurred was primarily due to the failure of such Seller to perform any of its obligations under this Agreement.

SECTION 10.2 Effect of Termination. Except as provided herein, in the event of the termination of this Agreement as provided in Section 10.1 hereof, this Agreement shall forthwith become void and have no effect, and there shall be no liability or obligation on the part of Sellers or the Buyer, or their respective officers, directors, stockholders, members, partners or other Persons under their control (including the Companies). If this Agreement is terminated as provided herein, except as otherwise expressly set forth herein, no party to this Agreement shall have any liability hereunder to any other party, except for any willful and intentional breach by such party of the terms and provisions of this Agreement prior to such termination.

ARTICLE 11. TAX MATTERS.

The following provisions shall govern the allocation of responsibility between the Buyer and Sellers for certain tax matters following the Closing Date:

SECTION 11.1 Tax Returns.

(a) The Sellers shall, prepare or cause to be prepared and file or cause to be filed (in a manner consistent with past practices) all Tax Returns of each Company for any Pre-Closing Tax Period. The Sellers shall deliver to Buyer a copy of any such Tax Return twenty (20) calendar days prior to the due date (including extensions) for the filing of such Tax Return for review and approval (which approval shall not be unreasonably withheld, conditioned or delayed). Sellers, severally on a pro rata basis in accordance with their respective Percentage Interests, shall pay to the Buyer an amount equal to the Taxes shown as due and payable on any such Tax Return no later than three (3) Business Days prior to the due date (including extensions) for the filing such Tax Return.

(b) The Buyer shall, prepare or cause to be prepared and file or cause to be filed (in a manner consistent with past practices) all other Tax Returns of each Company, provided that the applicable Tax Returns have not been filed by any Seller or its Affiliates pursuant to Section 11.1(a). Sellers, severally on a pro rata basis in accordance with their respective Percentage Interests, shall pay to the Buyer an amount equal to the Taxes shown as due and payable on any

such other Tax Return that are allocable to the Pre-Closing Tax Period no later than three (3) Business Days prior to the due date (including extensions) for the filing such Tax Return.

(c) For purposes of Section 11.1(a) and Section 11.(b), whenever it is necessary to determine the liability for Taxes of any Company for a Straddle Period:

(i) Taxes imposed on a periodic basis (such as real, personal and intangible property Taxes) shall be prorated between the Buyer and Sellers as of the Closing by multiplying the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such taxable period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire relevant taxable period; and

(ii) all other Taxes for the Pre-Closing Tax Period (such as franchise Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)) shall be determined as if each Company had a taxable year or period that ended on and included the Closing Date. For purposes of this Section 11.1(c)(ii), to the extent permissible under applicable Law, all Transaction Expenses incurred by any Company at the direction and for the benefit of any Seller shall be included in the relevant Pre-Closing Tax Period.

SECTION 11.2 Tax Cooperation. The Buyer and Sellers shall reasonably cooperate, and shall cause their respective Affiliates (including the Companies), officers, employees, agents, auditors and representatives to reasonably cooperate (including by maintaining in accordance with the applicable record retention policies of the Buyer or Sellers, as applicable, and making available to each other all relevant records and information), in preparing and filing all Tax Returns and in resolving all disputes and audits for all taxable periods. Such cooperation shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Sellers and the Buyer agree to retain all books and records with respect to Tax matters pertinent to each Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations (and, to the extent notified by the Buyer or any Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority. The Buyer and Sellers further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated hereby). The Buyer and Sellers further agree to prepare and file all Tax Returns, as applicable, consistent with the Equity Interests Allocation unless otherwise required by applicable law.

SECTION 11.3 Transfer Taxes. If applicable, all transfer, documentary, sales, use, registration and similar Taxes (including all applicable real estate transfer Taxes and stock transfer Taxes) and related fees (including any penalties, interest and additions to Tax) incurred in connection with the transactions contemplated hereby shall be paid

and Sellers and the Buyer shall cooperate in a timely manner in preparing and filing all Tax Returns as may be required to comply with the provisions of such Tax Laws.

SECTION 11.4 Tax Sharing Agreement. Any Tax sharing or Tax indemnification agreement or similar contract or arrangement (whether written or not) and all powers of attorney with respect to or involving any Company shall be terminated as of the Closing Date and, after the Closing Date, neither Company shall be bound thereby or have any liability thereunder.

ARTICLE 12. MISCELLANEOUS.

SECTION 12.1 Successors and Assigns. Except as otherwise provided in this Agreement, no Party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that the Buyer may assign any or all of its rights and obligations hereunder to any direct or indirect Affiliate of the Buyer; provided, further, however, that no such assignment shall reduce or otherwise vitiate any of the obligations of the Buyer hereunder. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties and no assignment shall relieve any Party of any obligation or liability under this Agreement.

SECTION 12.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the 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). Each Party agrees to commence any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby in any federal court sitting in the City of Wilmington, Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in any Delaware state court.

Each Party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth below shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 12.2.

SECTION 12.3 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND COVENANTS THAT IT WILL NOT

ASSERT ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION, OR SUIT ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY ACKNOWLEDGES THIS SECTION CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT RELIES IN ENTERING THIS AGREEMENT.

SECTION 12.4 Expenses. Sellers shall pay (a) any financial advisory, investment banking, legal, accounting and other fees, expenses and costs incurred by or on behalf of Sellers or the Companies up to the Closing Date (or thereafter) in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, (b) all Transaction Bonuses or similar payments due to any employee, officer or director directly as a result of the Transaction, including the employer portion of any withholding and payroll Taxes thereon, (c)

and (d) all Excluded Liabilities (collectively, the “Transaction Expenses”). The Buyer shall pay any legal, accounting and other fees, expenses and costs incurred by the Buyer up to the Closing Date in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Except as otherwise provided in this Agreement, all of the other fees, expenses and costs incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Party hereto incurring such fees, expenses and costs.

SECTION 12.5 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

SECTION 12.6 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the Party to whom notice is to be given, (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and confirmation of delivery is generated after completion of transmission, or if sent via email (with confirmation of transmission), (iii) when received by the addressee if sent through Federal Express or similar overnight courier or the express mail service maintained by the United States Postal Service or (iv) on the fifth day after mailing, if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the Party as follows:

If to Sellers:

Agracel, Inc.
Attention: R. Dean Bingham,
Chief Executive Officer
2201 North Willenborg Street, Suite 2
PO Box 1107
Effingham, IL 62401
Telephone: (217) 342-4443
Fax: (217) 342-3299
Email: dbingham@agracel.com

Charles W. Barenfanger
129 N. Kennedy Boulevard
P.O. Box 190
Vandalia, IL 62471
Telephone 618-292-3071 (cell)
Email : cbarenfa@illwestern.com

With a copy to:

Robert G. Grierson
Craig & Craig
1807 Broadway Avenue
PO Box 689
Mattoon, IL 61938-0689
Telephone: (217) 234-6481
Fax: (217) 258-8292
e-mail: rgg@craiglaw.net

and

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
Telephone 312-252-1511 (office)
Fax 312-252-2400
Email : mbarron@fletcher-sippel.com

If to the Buyer:

Regional Rail, LLC
c/o 3i RR LLC
One Grand Central Place
60 E. 42nd Street, Suite 4100,
New York, NY 10165
Attention: Benjamin Krause
Email: Benjamin.Krause@3i.com

With a copy to:

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Attention: William R. Kucera
Email: wkucera@mayerbrown.com

Any Party may change its address for the purpose of this Section by giving the other Parties written notice of its new address in the manner set forth above.

SECTION 12.7 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of

any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

SECTION 12.8 Public Announcements. After the signing of this Agreement and prior to the Closing Date, Sellers shall not, and shall not permit any Company to make any press release or public announcement concerning this transaction without the prior approval of the Buyer unless a press release or public announcement is required by Law or the rules of any securities exchange on which such Party's securities are listed. Before any Seller makes any such announcement or other disclosure, it agrees to give the other Parties hereto prior notice and an opportunity to review and approve the proposed disclosure. For purposes of this Section 12.8, the term "public announcement" shall include communications with employees, customers and vendors of, and other parties with material commercial relationships with, any Seller and/or any Company, except as contemplated by this Agreement.

SECTION 12.9 Entire Agreement. This Agreement (including the Disclosure Schedules and the other Schedules attached hereto) contain the entire agreement and understanding among the Parties with respect to the transactions contemplated hereby and supersedes and replaces all prior agreements and understandings, oral or written with regard to such transactions. All Schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

SECTION 12.10 Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement to any Person other than the Parties and their respective successors and permitted assigns and any Person entitled to indemnity under Article 7. Nothing in this Agreement, express or implied, is intended to confer upon any current or former employee, director, officer or consultant any rights, remedies or obligations under or by reason of this Agreement, including Article 6. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Person to any Seller or the Buyer. No provision of this Agreement shall give any third parties any right of subrogation or action over or against any Seller or the Buyer.

SECTION 12.11 Scheduled Disclosures. Disclosure of any matter, fact or circumstance in a schedule to this Agreement shall be deemed to have been disclosed on all applicable Sections of the Disclosure Schedules to which such disclosure could relate or apply.

SECTION 12.12 Section and Paragraph Headings; Neutral Construction.

(a) The Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall

arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”.

SECTION 12.13 Knowledge. References in this Agreement to the “knowledge of each Seller” shall refer to the actual knowledge, after due inquiry of their direct reports, of each Seller.

SECTION 12.14 Access to Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by any Seller prior to the Closing, or for any other reasonable purpose, , the Buyer shall: (A) retain the books and records (including personnel files) of the Companies relating to periods prior to the Closing in a manner consistent with the historical practices of the Companies; and (B) upon reasonable notice, afford each Seller and its agents reasonable access (including the right to make, at each Seller’s expense, photocopies), during normal business hours, to such books and records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by the Buyer or any Company after the Closing, or for any other reasonable purpose, , each Seller shall: (A) retain the books and records (including personnel files) of such Seller which relate to the Companies in a manner consistent with the historical practices of such Seller and its operations for periods prior to the Closing; and (B) upon reasonable notice, afford the Buyer or the Companies and their agents reasonable access (including the right to make, at the Buyer’s expense, photocopies), during normal business hours, to such books and records.

(c) Neither the Buyer nor any Seller shall be obligated to provide the other Party with access to any books or records (including personnel files) pursuant to this Section 12.14 where such access would violate any Law.

SECTION 12.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

SECTION 12.16 Specific Performance. The Parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

SELLERS:

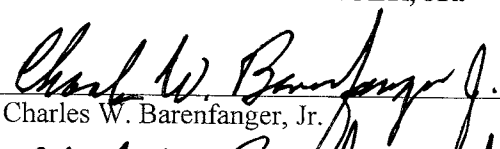
AGRACEL, INC., an Illinois corporation,

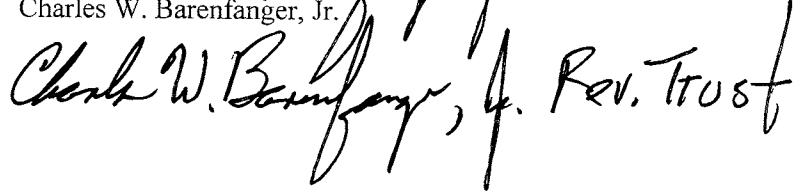
By: 

Name: R. Dean Bingham

Title: Chief Executive Officer

CHARLES W. BARENFANGER, JR.


Charles W. Barenfanger, Jr.


Charles W. Barenfanger, Jr. Rev. Trust

BUYER:

REGIONAL RAIL, LLC

By: Alfred Sauer

Name: Al Sauer

Title: President & CEO

EXHIBIT A
SELLERS AND PERCENTAGE INTERESTS

Effingham Railroad Company

NAME OF SELLER	PERCENTAGE INTEREST
Agracel, Inc.	
Charles W. Barenfanger, Jr.	

Illinois Western Railroad Company

NAME OF SELLER	PERCENTAGE INTEREST
Agracel, Inc.	
Charles W. Barenfanger, Jr.	

EXHIBIT B
FORM OF THE ESCROW AGREEMENT

See attached.

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (this “Agreement”) is made and entered into as of [●], 2022, by and among Agracel Inc., an Illinois corporation (“Agracel”), Charles W. Barenfanger, Jr., an individual (“Barenfanger”, together with Agracel, each a “Seller” and collectively, “Sellers”), Regional Rail, LLC, a Delaware limited liability company (“Buyer”), and Citibank, N.A., as escrow agent (the “Escrow Agent”). Buyer and Sellers are each sometimes referred to in this Agreement as a “Party”, and collectively as the “Parties”. Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Parties have entered into that certain Stock Purchase Agreement, dated as of November 10, 2022 (as amended, modified, restated or otherwise supplemented from time to time, the “Purchase Agreement”), by and among Buyer and Sellers; and

WHEREAS,

such amount, the “Adjustment Escrow Deposit” and, together with any interest, dividends, gains and other income earned thereon, the “Adjustment Escrow Funds”) into an escrow account (the “Adjustment Escrow Account”) and (ii)

into an escrow account (the “Indemnification Escrow Account” and together with the Adjustment Escrow Account, the “Escrow Accounts”).

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Appointment. The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds.

(a) Simultaneous with the execution and delivery of this Agreement, Buyer is depositing with the Escrow Agent (i) the Adjustment Escrow Deposit and (ii) the Indemnification Escrow Deposit, in each case in immediately available funds. The Escrow Agent hereby acknowledges receipt of each of the Adjustment Escrow Deposit and the Indemnification Escrow Deposit and agrees to place each of the Adjustment Escrow Deposit and the Indemnification Escrow Deposit into separate and distinct accounts, subject to the terms and conditions of this Agreement.

(b) All earnings on and proceeds of the Adjustment Escrow Deposit and the Indemnification Escrow Deposit, in each case including all interest, dividends, gains and other income, shall be retained by the Escrow Agent and reinvested in the Adjustment Escrow Deposit and the Indemnification Escrow Deposit, as applicable (together, the “Escrow Funds”), shall

become part of the Escrow Funds, and shall be disbursed as part of the Escrow Funds in accordance with the terms and conditions of this Agreement.

(c) Subject to Section 14 below, the Escrow Funds shall be held as escrow funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor or any party hereto. The Escrow Agent shall not distribute or release any Escrow Funds except in accordance with the express terms and conditions of this Agreement.

3. Investment of Escrow Funds.

(a) Unless otherwise instructed jointly in writing by the Parties, the Escrow Agent shall hold the Escrow Funds in an interest-bearing deposit obligation of Citibank N.A. with an initial rate of _____ The deposits held in such deposit accounts are insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below.

(b) The Escrow Agent shall send an account statement to each of the Parties on a monthly basis reflecting activity in each of the Adjustment Escrow Account and the Indemnification Escrow Account for the preceding month.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds as provided in this Section 4(a) as follows:

(i) Upon receipt of a Joint Release Instruction (as defined herein) with respect to the Escrow Funds, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Joint Release Instruction, disburse all or part of the Escrow Funds in accordance with such Joint Release Instruction.

(ii) If at any time either of the Parties receives a Final Determination (as defined herein), then upon receipt by the Escrow Agent of a copy of such Final Determination from any Party, which shall be simultaneously provided to the non-prevailing Party, the Escrow Agent shall promptly, but in any event within two (2) Business Days following receipt of such Final Determination, disburse as directed, part or all, as the case may be, of the Escrow Funds (but only to the extent funds are available in the Escrow Funds) in accordance with such Final Determination. Subject to the terms of this Section 4(a), the Escrow Agent will act on such Final Determination without further inquiry.

(iii) All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds to a Party's account or accounts as set forth in the Joint Release Instruction or Final Determination, as applicable.

(iv) Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in any Escrow Account under the terms of this Agreement must be in writing, executed by the appropriate Party or Parties as evidenced by the signatures of the person or persons set forth on Exhibit A-1 and Exhibit A-2 and delivered to the Escrow Agent attached to an e-mail received on a Business Day from an e-mail address set forth in Section 11 below. In the event a Joint Release Instruction or Final Determination is delivered to the Escrow Agent, whether in writing, by electronic mail or otherwise, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated in Exhibit A-1 or Exhibit A-2, as applicable, annexed hereto (the "Call Back Authorized Individuals"), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by an authorized signer of the applicable Party set forth on Exhibit A-1 or Exhibit A-2, actually received and acknowledged by the Escrow Agent.

(b) Adjustment Escrow Funds. Promptly following the Determination Date, and in any event within three (3) Business Days of the Determination Date, Buyer and Sellers shall promptly deliver a Joint Release Instruction to the Escrow Agent to release the Adjustment Escrow Funds in accordance with Section 2.3(e) of the Purchase Agreement.

(c) Indemnification Escrow Funds. Subject to the provisions of Article VII of the Purchase Agreement, within three (3) Business Days following the date that is the eighteen (18) month anniversary of the date hereof (such eighteen (18) month anniversary, the "Indemnification Escrow Claim Deadline"), Buyer and Sellers shall deliver to the Escrow Agent a Joint Release Instruction instructing the Escrow Agent to deliver to the account or accounts specified in such Joint Release Instruction the Indemnification Escrow Funds then remaining in the Indemnification Escrow Account

; provided that, in the event, any claim asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from an Indemnified Party to an Indemnifying Party on or prior to the expiration of the Indemnification Escrow Claim Deadline shall not be barred by such expiration and such claim shall survive until finally resolved (and an amount equal to the estimated Losses sustained by the Indemnified Party shall remain in the Indemnification Escrow Account until such claim is finally resolved).

(d) Certain Definitions.

(i) "Business Day" means any day, other than a Saturday or Sunday, that is not a day on which banks located in New York, New York are required or authorized by law to be closed.

(ii) “Final Determination” means the entry of a final and non-appealable order, judgment or award of any court of competent jurisdiction which may be issued, together with (A) a certificate of the prevailing Party to the effect that such order is final and non-appealable and from a court of competent jurisdiction having proper authority and (B) the written payment instructions of the prevailing Party to effectuate such order, judgment or award.

(iii) “Joint Release Instruction” means any joint written instruction executed by an authorized signer of each of Buyer and Sellers directing the Escrow Agent to invest, transfer or disburse all or a portion of the Escrow Funds, as applicable.

(iv) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity or any department, agency or political subdivision thereof.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no other duties, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, in connection herewith, if any, including without limitation the Purchase Agreement, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of the Escrow Agent. The Escrow Agent may reasonably rely upon and shall not be liable for acting or refraining from acting upon any Joint Release Instruction or Final Determination furnished to it hereunder and reasonably believed by it to be genuine and to have been signed and presented by an authorized signer of the proper Party or Parties. Concurrently with the execution of this Agreement, the Parties shall deliver to the Escrow Agent authorized signers’ forms in the form of Exhibit A-1 and Exhibit A-2 attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due to it or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in a Joint Release Instruction or a Final Determination. The Escrow Agent may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent’s fraud,

willful misconduct or gross negligence was the cause of any direct loss to either Party. To the extent practicable, the Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

6. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days' advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by Buyer and Sellers acting jointly at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow agent pursuant to a joint written designation from the Parties, (ii) as set forth in a Joint Release Instruction or (iii) in accordance with the directions of a Final Determination, and, at the time of such delivery, the Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

7. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and shall be paid one-half by Buyer and one-half by Sellers. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement.

8. Indemnity. Each of the Parties shall jointly and severally indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses (including the reasonable fees and expenses of one outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by

the fraud, gross negligence or willful misconduct of the Escrow Agent or such Indemnatee, or (b) its following joint instructions from Buyer and Sellers or a Final Determination, except to the extent that its following of any such instruction or direction is expressly forbidden by the terms hereof. The Escrow Agent is expressly authorized and directed, but shall not be obligated, upon prior written notice to the Parties, to charge against and withdraw from the Escrow Funds for its own account or for the account of an Indemnatee any amounts due to the Escrow Agent or to an Indemnatee under this Section 8. Notwithstanding anything to the contrary herein, Buyer and Sellers agree, solely as between themselves, that any obligation for indemnification under this Section 8 (or for reasonable fees and expenses of the Escrow Agent described in Section 7) shall be borne by the Party or Parties finally determined by a court of competent jurisdiction to be responsible for causing the loss, damage, liability, cost or expense against which the Escrow Agent is entitled to indemnification or, if no such Final Determination is made, then one-half by Buyer and one-half by Sellers. The provisions of this Section 8 shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

9. Tax Matters.

(a) Any interest or income earned on the Escrow Funds shall be treated as income of Sellers and Sellers shall be responsible for and the taxpayer on all taxes due on the interest or income earned, if any, on the Escrow Funds for the calendar year in which such interest or income is earned. The Escrow Agent shall report any interest or income earned on the Escrow Funds to the Internal Revenue Service (“IRS”) or other taxing authority on IRS Form 1099. Prior to the date hereof, the Parties shall provide the Escrow Agent with appropriate completed and executed IRS Forms W-9 or W-8, as applicable, and such other forms and documents that the Escrow Agent may reasonably request that are required to be provided under applicable law in connection with the Escrow Agent’s tax reporting obligations.

(b) The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Funds. The Escrow Agent shall withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the event any Party fails to provide an IRS Form W-9 or W-8 or other form or document described in paragraph (a), above, and shall timely remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Agreement and any amendment or attachment hereto are not intended or written to be used, and may not be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer’s particular circumstances from an independent tax advisor.

10. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with Buyer and Sellers that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

11. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (a) personally, (b) on the day of transmission if sent by electronic mail (“e-mail”) with a PDF attachment executed by an authorized signer of the Party/ Parties to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of the transmission, (c) by overnight delivery with a reputable national overnight delivery service, or (d) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five (5) Business Days after the date such notice is deposited with the United States Postal Service. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

if to Buyer, then to:

Regional Rail, LLC
c/o 3i RR LLC
One Grand Central Place
60 E. 42nd Street, Suite 4100,
New York, NY 10165
Attention: Benjamin Krause
Email: Benjamin.Krause@3i.com

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

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Telephone No.: (312) 782-0600
Attention: William R. Kucera
Email: wkucera@mayerbrown.com

or, if to Sellers, then to:

Agracel, Inc.
Attention: R. Dean Bingham,
Chief Executive Officer
2201 North Willenborg Street, Suite 2
PO Box 1107
Effingham, IL 62401
Telephone: (217) 342-4443
Fax: (217) 342-3299
Email: dbingham@agracel.com

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

Robert G. Grierson
Craig & Craig
1807 Broadway Avenue
PO Box 689
Mattoon, IL 61938-0689
Telephone: (217) 234-6481
Fax: (217) 258-8292
e-mail: rgg@craiglaw.net

Charles W. Barenfanger
129 N. Kennedy Boulevard
P.O. Box 190
Vandalia, IL 62471
Telephone 618-292-3071 (cell)
Email : cbarenfa@illwestern.com

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
Telephone 312-252-1511 (office)
Fax 312-252-2400
Email : mbarron@fletcher-sippel.com

or, if to the Escrow Agent, then to:

Citibank, N.A.
Citi Private Bank
227 W. Monroe Street, Suite 200
Chicago, IL 60606
Telephone: (312) 876-8547
Attention: Sonny Lui
E-mail: sonny.lui@citi.com

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clauses (a) through (d) of this Section 11, such communication shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

12. Termination. This Agreement shall terminate on the first to occur of (a) the distribution of all of the amounts in the Escrow Funds in accordance with this Agreement or (b) delivery to the Escrow Agent of a written notice of termination executed jointly by Buyer and Sellers after which this Agreement shall be of no further force and effect except that the provisions of Section 8 hereof shall survive termination.

13. Miscellaneous.

(a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Except as provided in Section 6 and Section 16, neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any party without the prior consent of the other parties.

(b) This Agreement and any dispute or controversy related to this Agreement or the transactions contemplated hereby are to be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its rules of conflict of laws or choice of law.

Service of process with respect thereto may be made upon Buyer, Sellers or the Escrow Agent by mailing a copy thereof by registered or certified mail, postage prepaid, to such party at its address as provided in Section 11 hereof, such service being hereby acknowledged by the parties hereto to be effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by Law. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES

ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BASED UPON, ARISING OUT OF OR OTHERWISE IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) This Agreement and any amendments hereto may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to any agreement or instrument by electronic mail (e.g., .pdf format) shall be effective as delivery of a manually executed counterpart to such agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party to any such agreement or instrument will raise the use of delivery by electronic mail as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

(d) If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable under any applicable law 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 hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(e) The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Section 7 and Section 8, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

14. Compliance with Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

15. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to

consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

16. Assignment. No assignment of the interest of any of the Parties shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and consented to by the Escrow Agent (such consent not to be unreasonably withheld or delayed). Notwithstanding the foregoing, Buyer may (a) without prior written consent of the Escrow Agent or Sellers, assign all or a portion of its rights, interests or obligations hereunder to one or more of its affiliates or one or more entities managed by one of its affiliates, provided that no such assignment shall relieve Buyer of any obligation or liability hereunder except to the extent actually performed or satisfied by the assignee, and Buyer shall be required to notify the Escrow Agent and Sellers of such assignment, and (b) assign this Agreement to any subsidiary of Buyer or to any lender to Buyer or any subsidiary or affiliate thereof as security for obligations to such lender in respect of the financing arrangements entered into in connection with the transactions contemplated by the Purchase Agreement and any refinancings, extensions, refundings or renewals thereof, provided that no assignment to any such subsidiary or lender will in any way affect Buyer's obligations or liabilities under this Agreement and provided that Buyer and such assignee shall, within two (2) Business Days, notify the Escrow Agent and Sellers of the assignment and assignee shall use commercially reasonable efforts to (i) complete any and all paperwork requested by Escrow Agent and (ii) become a Party to this Agreement. Any transfer or assignment of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect. To comply with federal law including USA Patriot Act requirements, assignees shall provide to the Escrow Agent the appropriate form W-9 or W-8 as applicable and such other forms and documentation that the Escrow Agent may request to verify identification and authorization to act. In no event shall the Escrow Agent be obligated hereunder to obey any written instructions delivered pursuant hereto from any assignee of any rights under this Agreement, unless such assignee has become a Party to this Agreement.

17. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

18. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with Federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Parties agree to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Parties depositing funds at Citibank pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

19. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions “Citibank” by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party’s behalf, without the prior written consent of the Escrow Agent.

20. Use of Electronic Records and Signatures. As used in this Agreement, the terms “writing” and “written” include electronic records, and the terms “execute,” “signed” and “signature” include the use of electronic signatures. Notwithstanding any other provision of this Agreement or the attached Exhibits and Schedules, any electronic signature that is presented as the signature of the purported signer, regardless of the appearance or form of such electronic signature, may be deemed genuine by Escrow Agent in Escrow Agent’s sole discretion, and such electronic signature shall be of the same legal effect, validity and enforceability as a manually executed, original, wet-ink signature; provided, however, that any such electronic signature must be an actual and not a typed signature. In accordance with Section 8 of this Agreement, Escrow Agent shall be indemnified and held harmless from any Escrow Agent Losses it incurs as a result of its acceptance of and reliance on electronic signatures that it deems to be genuine. Any electronically signed agreement, instruction or other document shall be an “electronic record” established in the ordinary course of business and any copy shall constitute an original for all purposes. The terms “electronic signature” and “electronic record” shall have the meaning ascribed to them in 15 USC § 7006. This Agreement and any instruction or other document furnished hereunder may be transmitted by facsimile or as a PDF file attached to an email.

21. Return of Funds. If the Escrow Agent releases any funds, including but not limited to the Escrow Amount or any portion of it, to a Party and subsequently determines, in its sole discretion, that the payment or any portion of it was made in error, the Party shall, upon notice, promptly refund the erroneous payment. Any such erroneous payment by the Escrow Agent, and the Party’s return thereof to the Escrow Agent, shall not affect any obligation or right of either the Escrow Agent or the Parties. Each of the Parties agrees not to assert discharge for value, bona fide payee, or any similar doctrine as a defense to the Escrow Agent’s recovery of any erroneous payment.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

BUYER:

REGIONAL RAIL, LLC

By: _____
Name: _____
Its: _____

SELLERS:

AGRACEL, INC.

By: _____
Name: _____
Its: _____

Charles W. Barenfanger, Jr.

ESCROW AGENT:

CITIBANK, N.A.

By: _____
Name: _____
Its: _____

Signature Page to Escrow Agreement

Schedule 1

ESCROW AGENT FEE SCHEDULE Citibank, N.A., Escrow Agent

Acceptance Fee

To cover the acceptance of the Escrow Agency appointment, the study of the Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

Fee:

Administration Fee

The annual administration fee covers maintenance of the Escrow Accounts including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Agreement. Fee is based on Escrow Deposits being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits.

Fee:

Tax Preparation Fee

To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

Fee:

Transaction Fees

To oversee all required disbursements or release of property from the escrow account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Agreement:

Fee:

Other Fees

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

7507625964823-7669-9623.2

TERMS AND CONDITIONS: The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that Citibank or its legal counsel may be called upon from time to time to perform. Fees are also subject to satisfactory review of the documentation, and Citibank reserves the right to modify them should the characteristics of the transaction change. Citibank's participation in this program is subject to internal approval of the third party depositing monies into the escrow account to be established hereunder. The Acceptance Fee, if any, is payable upon execution of the Agreement. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full.

EXHIBIT A-1

Certificate as to Buyer's Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Buyer and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of Buyer. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

Name / Title /Telephone #

Specimen Signature

Name

Signature

Title

Telephone #

Name

Signature

Title

Telephone #

Name

Signature

Title

Telephone #

EXHIBIT A-2

Certificate as to Sellers' Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Sellers and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of Sellers. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

Name / Title / Telephone

Specimen Signature

Name

Signature

Title

Phone

Mobile Phone

Name

Signature

Title

Phone

Mobile Phone

Name

Signature

Title

Telephone

Mobile Phone

EXHIBIT C

NET WORKING CAPITAL METHODOLOGY (Illustrative Example as of September 30, 2022)

See attached.

DISCLOSURE SCHEDULE

to the

STOCK PURCHASE AGREEMENT

by and among

AGRACEL, INC,

CHARLES W. BARENFANGER, JR.

and

REGIONAL RAIL LLC

Dated as of November 10, 2022

INTRODUCTION

This disclosure schedule (this “Disclosure Schedule”) has been prepared in connection with the Stock Purchase Agreement (the “Agreement”), dated as of November 10, 2022, by and among Agracel Inc, an Illinois corporation (“Agracel”), Charles W. Barenfanger, Jr., an individual (“Barenfanger”, together with Agracel, each a “Seller” and collectively, “Sellers”), and Regional Rail, LLC, a Delaware limited liability company (the “Buyer”). Buyer and Sellers are each sometimes referred to in this Agreement as a “Party” and, collectively, as the “Parties”. Any capitalized term used but not otherwise defined herein shall have the meaning given to such term in the Agreement.

Section 1.1(a)

Bonus Payments

Assuming that closing occurs on or around December 31st, the following bonuses will be:

Section 3.2

Corporate Organization; Ownership

(b)

Effingham Railroad Company

Illinois Western Railroad Company

Section 3.3(a)

No Conflict

Section 3.4

Consents and Approvals

Section 3.5

Indebtedness

Section 3.6(a)

Financial Statements

Attached

Section 3.6(d)

No Undisclosed Liabilities

Section 3.7

Conduct in the Ordinary Course; Absence of Certain Changes

Section 3.8

Tax Matters

Section 3.9

Owned Real Property

See attached list.

Section 3.10

Leased Real Property

Section 3.11

Intellectual Property

Section 3.12(c)

Privacy and Security

Section 3.13

Licenses and Permits

Section 3.14

Compliance with Law

3.15

Litigation

Section 3.16(a)

Material Contracts

Section 3.17(a)

Employee Plans

Section 3.18

Insurance

Section 3.19

Affiliate Transactions

Section 3.20

Labor Matters

Section 3.21

Environmental Matters

Section 3.22

Brokers

Section 3.25

Condition of Track and Bridges

Attached

Section 3.26

Grants

Section 3.27

Customers and Suppliers

Section 5.1(a)

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Section 5.6

Intercompany Arrangements

Section 9.5

Material Consents

EXHIBIT 2B

**DRAFT STOCK PURCHASE AGREEMENT
[SPOR]**

REDACTED

STOCK PURCHASE AGREEMENT

by and among

SOUTHERN POINT & OHIO RAILROAD, INC.,

AS THE COMPANY,

THE SHAREHOLDERS OF SOUTHERN POINT & OHIO RAILROAD, INC. LISTED ON
EXHIBIT A HERETO,

AS THE SELLERS,

[AGRACEL, INC.,

AS SELLERS' REPRESENTATIVE]

and

REGIONAL RAIL, LLC,

AS BUYER

Dated as of November [●], 2022

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STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is entered into as of November [●], 2022 (this “Agreement”), by and among Southern Point & Ohio Railroad, Inc., an Illinois corporation (the “Company”), the shareholders of the Company listed on Exhibit A attached hereto (each a “Seller” and collectively, “Sellers”), Regional Rail, LLC, a Delaware limited liability company (the “Buyer”) and Agracel Inc., an Illinois corporation, as representative of the Sellers (“Agracel” or the “Sellers’ Representative”). Buyer and Sellers are each sometimes referred to in this Agreement as a “Party”, and collectively as the “Parties”.

W I T N E S S E T H:

WHEREAS, Sellers collectively own 1,000 shares of common stock of the Company (the “Shares”), which Shares constitute all of the issued and outstanding capital stock of the Company;

WHEREAS, the Company is engaged in the business of operating short line railroads and distribution and transportation services (the “Business”);

WHEREAS, the Buyer desires to purchase from Sellers, and Sellers desire to sell to the Buyer (or its designee), 100% of the Shares, all in accordance with and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, a portion of the purchase price payable by Buyer to Sellers shall be placed in escrow by Buyer, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements hereinafter contained, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following meanings:

“Action” shall mean any claim, action, cause of action, suit, demand, citation, summons, subpoena, complaint, proceeding, labor dispute, inquiry, audit, notice of violation, arbitration, investigation of any nature or audit by or before any court, tribunal or other Governmental Entity or arbitral body;

“Adjustment Amount” – ;

“Affiliate” shall mean any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another Person with the term “control” meaning, for this purpose, the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities or partnership, membership or other ownership interests, or by contract or otherwise;

“Agracel” – See Preamble hereto.

“Agreement” – See Preamble hereto;

“Ancillary Agreements” means ;

“Balance Sheet” shall mean ;

“Basket” – ;

“Bonus Payments” shall mean

;

“Business” – See Recitals hereto;

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York, New York, are closed generally;

“Buyer” – See Preamble hereto;

“Buyer Indemnities” – ;

“Cap” – ;

“Cash” means, with respect to the Company, all cash, cash equivalents and marketable securities held by the Company as of the Determination Time, determined in accordance with GAAP. For the avoidance of doubt, Cash shall (i) be calculated net of issued but uncleared checks and drafts and (ii) include checks and drafts deposited for the account of the Company but not yet reflected as available proceeds in the Company’s bank account;

“Closing” – ;

“Closing Date” – ;

“Closing Date Net Working Capital” means the Net Working Capital as of the Determination Time;

“Closing Payment Amount” – ;

“Closing Working Capital Report” – ;

“Closing Working Capital Statement” – ;

“Code” shall mean the Internal Revenue Code of 1986, as amended;

“Company” – See Preamble hereto.

“Company Benefit Plans” – ;

“Company EBITDA” means, with respect to any applicable Earnout Period, the earnings of the Company before interest, income Taxes, depreciation and amortization, in each case determined in good faith by Buyer and calculated in a manner consistent with GAAP.

“Company Intellectual Property” means all Intellectual Property that is owned or purported to be owned by the Company;

“Company IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other contracts, whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound;

“Company IP Registrations” means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Entity or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing;

“Confidential Information” shall include confidential and proprietary information, including any such information relating to technology, products, services, finances, business plans, marketing plans, legal affairs, suppliers or customers, but shall not include information that (i) can be demonstrated in writing was already known by the recipient when received, (ii) is or after the date of this Agreement becomes obtainable from other sources other than pursuant to a violation of Law or breach of any Contract, (iii) is required to be disclosed to a Governmental Entity, or (iv) can be demonstrated in writing that it was independently developed by the receiving Person;

“Confidentiality Agreement” shall mean

“Contracts” shall mean any written or oral legally binding contract, agreement, subcontract, lease, license or purchase order;

“Current Assets” shall mean accounts receivable, net, materials and supplies and prepaid expenses and other current assets of the Company, but excluding (a) Cash, (b) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (c) deferred tax assets (e.g., refunds or credits) and (d) receivables from any of the Sellers or their Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, all as determined in accordance with GAAP. Current Assets shall be calculated in accordance with the Net Working Capital Methodology;

“Current Liabilities” shall mean accounts payable, accrued Taxes and accrued expenses, but excluding (a) payables to or accruals with respect to any of the Sellers or their Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (b) current or deferred income Tax liabilities, (c) the current portion of any Indebtedness of the

Company, and (d) Transaction Expense, all as determined in accordance with GAAP. Current Liabilities shall be calculated in accordance with the Net Working Capital Methodology;

“Deficit Amount” – ;

“Determination Date” – ;

“Determination Time” means 12:01 a.m. Eastern time on the Closing Date;

“Direct Claim” – ;

“Disclosure Schedules” – See preamble to Article 3;

“Earnout Dispute Notice”).

“Earnout Payment” means

“Earnout Period” means

“Earnout Report”

“Employees” shall mean all employees of the Company that are employed by the Company as of the date of this Agreement and as updated as of the Closing;

“Environmental Laws” shall mean any and all Laws regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or natural resource damages, including Laws relating to the manufacture, processing, distribution, use, handling, generation, labeling, transportation, storage, treatment, disposal, emission, discharge, presence, release, or threatened release of, or exposure to, any harmful or deleterious substance, chemical, petroleum, pollutant, contaminant, or hazardous or toxic material, substance or waste;

“Environmental Permits” shall mean any and all Licenses and Permits pursuant to or required under any Environmental Law;

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder;

“ERISA Affiliate” means with respect to any entity, any other entity which, together with such first entity, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code;

“Escrow Agent” means Citibank, N.A.;

“Escrow Agreement” means the Escrow Agreement to be entered into by Buyer, the Sellers’ Representative and Escrow Agent at the Closing, substantially in the form of Exhibit B;

“Estimated Cash” – ;

“Estimated Closing Date Net Working Capital” – ;

“Estimated Closing Working Capital Statement” – ;

“Estimated Indebtedness” – ;

“Estimated Net Working Capital Adjustment Amount

;

“Estimated Sellers’ Transaction Expenses” – ;

“Excluded Liabilities” – ;

“Existing Policies” – ;

“FCC” – ;

“Final Cash” – ;

“Final Closing Date Net Working Capital” – ;

“Final Indebtedness” – ;

“Final Sellers’ Transaction Expenses” – ;

“Financial Statements” – ;

“First Earnout Period” means

.

“Free Cash Flow”

“GAAP” shall mean U.S. generally accepted accounting principles as in effect from time to time;

“Governmental Entity” shall mean any national, federal, state, provincial, local or international governmental or public body, political subdivision thereof, arbitrator, court, tribunal of competent jurisdiction, agency or regulatory authority or commission, or other governmental authority or instrumentality or quasi-governmental authority or any self-regulated organization or

other non-governmental regulatory authority or any arbitrator, including the Federal Railroad Administration, the STB and the Railroad Retirement Board;

“Governmental Order” shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity;

“Grants” – ;

“Increase Amount” – ;

“Indebtedness” shall mean, with respect to any Person, without duplication (a) the unpaid principal amount of and accrued interest on: (i) all indebtedness for borrowed money or with respect to deposits or advances of any kind; (ii) all indebtedness or obligations evidenced by any bonds, debentures, notes or similar instruments, including, in the case of each of clauses (i) and (ii), any prepayment penalties or premium, make-whole payments, indemnities, breakage costs (including breakage fees payable on termination of the arrangements), fees and other costs and expenses associated with the repayment of any indebtedness in connection with the transactions contemplated hereby; (b) all obligations upon which interest charges are customarily paid; (c) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services; (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed by such Person; (f) all guarantees by such Person of Indebtedness of others; (g) all capital lease obligations of such Person required to be capitalized under GAAP; (h) all net liabilities or obligations of such Person in respect of interest rate protection agreements, future and forward contracts, foreign currency exchange agreements, principal only trades, treasury trades or other interest or exchange rate hedging arrangements; (i) all reimbursement obligations under letters of credit or similar facilities, to the extent such letters of credit have been drawn; and (j) all Taxes of the Company that (i) are accrued and unpaid as of the Closing Date; (ii) arise from adjustments pursuant to Section 481(a) of the Code (or any analogous or similar provision of state or local law) as a result of a change in accounting method ending on or prior to the Closing Date or as a result of the transactions contemplated in this Agreement; and (iii) are attributable to the difference between the cash receipts and disbursements method and the accrual method of accounting (including as such difference relates to prepayments and to a taxpayer’s basis in account receivables). The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or member. Notwithstanding the foregoing, “Indebtedness” shall not include: (A) operating or lease obligations (other than as set forth in (g), above); (B) deferred grant revenue; and (C) letters of credit, performance bonds, bankers’ acceptances or similar obligations, to the extent undrawn;

“Indemnification Escrow Amount” means ;

“Indemnification Escrow Fund” .

“Indemnified Party” – ;

“Indemnified Taxes” means

“Indemnifying Party” – ;

“Independent Accounting Firm” – ;

“Information Laws” means all applicable Laws concerning or relating to privacy, electronic communications, electronic marketing, data protection and/or data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), use, processing, disclosure, breach notification, unauthorized access, destruction, encryption, confidentiality, security, safeguarding, and loss of Personal Information (including Personal Information of employees, contractors, customers, patients, and third parties), and telephone, email and mobile communications, including any approvals or notices required in connection therewith. Information Laws include any rules, rulings, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and official releases of or by any government, or any authority, department or agency thereof. Information Laws include, to the extent applicable to the Company or the information it collects, HIPAA, the GDPR, the American Recovery and Reinvestment Act of 2009, state data breach notification Laws, state social security number protection Laws, the FTC Act, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act and state consumer protection Laws, and as such Information Laws may be amended, replaced or superseded from time to time;

“Intellectual Property” shall mean all of the following owned or licensed by the Company, as licensee or licensor, or used in the Business: (i) registered and material unregistered trademarks and service marks and trade names, and all goodwill associated therewith; (ii) patents, patentable inventions and computer programs (including password unprotected interpretive code or source code); (iii) trade secrets and other confidential and proprietary information; (iv) registered and material unregistered copyrights, database rights, and works of authorship (whether or not copyrightable) in all works, including software programs; (v) websites and domain names, and all related content and data; (vi) all rights in mask works; and (vii) all computer software;

“IT Assets” means Software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and all other information technology equipment, in each case, used in the operation of the businesses of the Company, but shall in no event include any such IT Assets of Agracel, Inc.;

“Law” shall mean any law, common law, constitution, statute, treaty, ordinance, rule, regulation, order, writ, judgment, injunction, settlement agreement, guideline, code, decree, edict or other legally enforceable requirement of any Governmental Entity, and includes rules and regulations of any regulatory or self-regulatory authority;

“Lease” and “Leases” – ;

“Leased Real Property” – ;

“Liability” means any liability, debt, claim or obligation of any nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether direct or indirect, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due);

“Licenses and Permits” – ;

“Lien” shall mean any mortgage, pledge, security interest, adverse ownership claim, encumbrance, lien (statutory or other), deed of trust, conditional sale agreement, claim, charge, lease, license (other than a grade crossing or utility installation affecting any portion of the Company’s Owned Real Property or Leased Real Property whether or not memorialized by a written agreement), easement, restrictive covenant, limitation, restriction, assessment or defect in title;

“Listed Intellectual Property” – ;

“Losses” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers;

“Material Adverse Effect” shall mean any event, development, circumstance, effect or change that either (a) has had a material adverse effect on the Business, operations, rights, properties, assets, liabilities, condition (financial or otherwise), or results of operations of the Company, or (b) would materially impair the ability of the Sellers to perform any of their obligations under, and to consummate the transactions contemplated by, this Agreement or any other related agreements, except any of the foregoing attributable to: (i) the negotiation, execution or announcement of the Stock Sale and its pendency, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with any Seller or the Company; (ii) any condition affecting any industry or market in which the Company participates including the short-line railroad industry, the United States or world economy, or the United States or global capital, banking, securities or financial markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iii) compliance with, or taking action required by, this Agreement; (iv) any action

(A) taken at the request of the Buyer, (B) taken by the Buyer, (C) or required by Law; (v) any matter disclosed in any schedule to this Agreement; (vi) any change or absence of anticipated change in (A) applicable Law or the enforcement, implementation or interpretation thereof, (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (C) terms or availability of Buyer's financing; (vii) national or international political or social conditions, such as (A) the commencement, continuation or escalation of war (in each case, whether or not declared), (B) calamities, or (C) acts of terrorism; (viii) any action taken (or omitted to be taken) with the written consent of the Buyer; (ix) any matter of which the Buyer is aware on the date hereof; (x) any natural or manmade disasters or acts of God; or (x) any failure of the Company to meet financial forecasts, projections or estimates (provided that the underlying causes of such failures (subject to other provisions of this definition) shall not be excluded). Notwithstanding the foregoing, in each case of clauses (ii), (iv)(C), (vi)(A)(B) and (vii) above, such event, development, circumstance, effect or change shall be considered in determining whether a Material Adverse Effect has occurred if such event, development, circumstance, effect or change, individually or in the aggregate, has or would reasonably be expected to have an adverse impact on the Company, that is disproportionate to the adverse impact on other Persons operating in the same industry as the Company;

"Material Contracts" – ;

"Net Working Capital" – ;

"Net Working Capital Methodology"

;

"Owned Real Property" – ;

"Percentage Interests" means, with respect to any Seller, the percentage set forth opposite such Seller's name on Exhibit A.

"Permitted Liens" shall mean (i) Liens for Taxes not yet due and payable, (ii) Liens imposed by Law and incurred in the ordinary course of business for obligations not yet due to carriers, warehousemen, laborers, materialmen and the like, it being understood that such Liens do not include Liens arising under any applicable Environmental Law and (iii) Liens in respect of pledges or deposits under workers' compensation Laws;

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or Governmental Entity;

"Personal Information" – ;

"Personal Property" means all furniture, fixtures, equipment and machinery and other items of tangible personal property;

"Plans" – ;

“Post-Signing Returns” – ;

“Pre-Closing Period” shall mean any period (or portion of a period) ending on or before the Closing Date;

“Pre-Closing Tax Period” shall mean any taxable period (or portion of a taxable period) ending on or before the Closing Date, including the portion of any Straddle Period ending on and including the Closing Date;

“Privacy Contracts” means past and present internal or external policies of the Company, and all contracts between the Company and any person that are applicable to the creation, collection, obtaining, tracking, retention, storage, processing, sharing, transmission, security, confidentiality protection, use and/or disclosure of Personal Information, trade secrets or Confidential Information, including, without limitation, all such contracts used in the provision of any deliverables or services to third parties;

“Privacy Laws” means any Laws that relate to and/or address privacy, security, data use, consumer tracking, consumer targeting, data protection and destruction, data breach notification or data transfer issues, including, without limitation, HIPAA, the CAN-SPAM Act and all current and former implementing Laws, rules, regulations, and all guidelines and industry standards applicable to the Company and the businesses of the Company;

“Privacy Policies” means all written policies applicable to the Company relating to the collection, use, storage, processing, transfer, disclosure, and protection of Personal Information, including all website and mobile application privacy policies;

“Purchase Price” – ;

“Purchase Price Adjustment Escrow Amount” ;

“Purchase Price Adjustment Escrow Fund” ;

“Real Property” – ;

“Regulations” shall mean the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes;

“Releasing Person” – ;

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Restricted Business” – ;

“Second Earnout Period” means

“Securities Act” shall mean the United States Securities Act of 1933, as amended, and all rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;

“Security Breach” means breach, security breach, breach of personal information and all similar terms as defined under any relevant Laws, including without limitation Privacy Laws;

“Security Incident” means any material unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of IT Assets;

“Seller” – See Preamble hereto;

“Seller Benefit Plans” means all of the Plans other than the Company Benefit Plans;

“Seller Indemnitees” – ;

“Shareholders Agreement” ;

“Shares” – See Recitals hereto;

“Software” means any and all (i) computer programs, including any and all software implementation of algorithms, models and methodologies, development tools, user interfaces and application programming interfaces, whether in source code or object code, (ii) databases and computations, including any and all data and collections of data, whether machine readable or otherwise, (iii) documentation, including user manuals, training materials, design notes and programmers’ notes relating to any of the foregoing and (iv) the content and information contained in any web site;

“STB” shall mean the United States Surface Transportation Board;

“Stock Sale” – ;

“Straddle Period”
;

“Subsidiary”

;

“Tax Return” shall mean any report, return, declaration, statement, information return, filing, election, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied in connection with Taxes;

“Taxes” shall mean all United States federal, state, local and foreign taxes, including net income, gross income, gross receipts, production, excise, employment, sales, use, transfer, ad valorem, profits, license, capital stock, capital gains, franchise, severance, stamp, withholding, Social Security, railroad retirement, employment, unemployment, disability, worker’s compensation, payroll, utility, windfall profits, Personal Property, real property, intangible property, value added, escheat, unclaimed property, registration, alternative or add-on minimum, estimated and other taxes, customs, duties, governmental fees or like charges of any kind whatsoever, including any interest, penalties, fines, related liabilities or additions thereto, and “Tax” shall mean any one of them;

“Third Earnout Period”

.

“Third Party Claim” – ;

“Top Customers” – ;

“Top Suppliers” – ;

“Track” means any railroad track and any other track materials (OTM) including all rails, ties, tie plates, spikes, angle bars, bolts, fasteners, switches, switch control devices, ballast, signals and other support structures used in the operation of a railroad;

“Transaction Bonuses”

“Transaction Expenses” – ;

“Transferred IP” – ;

“Unauthorized Code” means any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, hardware or data;

ARTICLE 2. PURCHASE AND SALE.

SECTION 2.1 Purchase Price. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Sellers set forth below, at the Closing:

(a) The Buyer shall purchase from Sellers, and Sellers shall sell, transfer, convey and deliver to the Buyer (or the Buyer's designee), the Shares, free and clear of all Liens (such transaction, the "Stock Sale");

(b) The aggregate purchase price for the Shares shall be

;

(c) The Stock Sale shall be effected at the Closing by Sellers delivering to the Buyer (or the Buyer's designee) stock certificates or another appropriate delivery evidencing all of the Shares, duly endorsed in blank or accompanied by stock powers duly executed in blank, in each case, in a form satisfactory to the Buyer, such shares being delivered free and clear of all Liens, and accompanied by any assignments, authorizations, endorsements or any other instruments and documents as shall be effective (or as required by any provision of the Certificate of Incorporation or By-laws to vest in the Buyer (or the Buyer's designee)), at the Closing, good and marketable title to the Shares, free and clear of all Liens other than such as may be created by or on behalf of the Buyer, in exchange for which the Buyer shall deliver (or cause to be delivered) to each Seller at the Closing an amount equal to such Seller's Percentage Interest of an amount in cash equal to the Purchase Price minus the Purchase Price Adjustment Escrow Amount minus the Indemnification Escrow Amount (the "Closing Payment Amount"). Payment of the Closing Payment Amount shall be made by wire transfer of immediately available funds to such account as each Seller shall designate in writing to the Buyer at least three Business Days prior to the Closing Date. At the Closing, Buyer shall deliver the (i) the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "Purchase Price Adjustment Escrow Fund") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the obligations of Sellers in Section 2.3 and (ii) the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "Indemnification Escrow Fund") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the indemnification obligations of Seller set forth in Article 7 and Section 2.3; and

(d) The Buyer and the Company, as applicable, shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amount as the Buyer or the Company is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable Tax Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for purposes of this Agreement as having been paid to the applicable Person in respect of which such deduction or withholding was made.

SECTION 2.2 Closing. Subject to the satisfaction or waiver of the terms and conditions set forth in this Agreement, the closing of the Stock Sale and the consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Mayer Brown LLP, 71 S Wacker Dr., Chicago, IL 60606, which the Parties may participate in

electronically and/or telephonically, at 10:00 a.m. Eastern time on the tenth (10th) Business Day following the satisfaction or waiver of the conditions set forth in Articles 8 and 9 (other than those conditions that by their terms cannot be satisfied until the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as may be mutually agreed to by the Parties hereto (the “Closing Date”).

SECTION 2.3 Purchase Price Adjustment.

(a) At least five (5) Business Days prior to the Closing Date, the Sellers’ Representative shall prepare and deliver to the Buyer a written statement (the “Estimated Closing Working Capital Statement”) setting forth its good faith estimate of (i) the Closing Date Net Working Capital as of the Determination Time (the “Estimated Closing Date Net Working Capital”), (ii)

, (iii) the amount of Indebtedness of the Company as of the close of business on the Closing Date (the “Estimated Indebtedness”), and (iv) the Sellers’ Transaction Expenses that remain unpaid as of the Closing with respect to the Company (the “Estimated Sellers’ Transaction Expenses”), in each case for the foregoing clauses (i)-(iv), for the Company on a combined and consolidated basis, together with reasonable supporting materials used in the preparation of the Estimated Closing Working Capital Statement, and any additional information that Buyer reasonable requests to verify the amounts reflected in the Estimated Closing Working Capital Statement. The Estimated Closing Working Capital Statement (x) shall be prepared in accordance with the Net Working Capital Methodology and (y) shall not give effect to the consummation of the transactions contemplated by this Agreement, including any payments of cash in respect of the Purchase Price. During the period immediately following Buyer’s receipt of the Estimated Closing Working Capital Statement until the Closing, Sellers and Sellers’ Representative agree to provide, or cause the Company to provide, Buyer and its employees, agents and representatives with reasonable access to the working papers and books and records of the Company and the respective employees, agents and representatives of the members of the Company, in each case, related to the preparation of the Estimated Closing Working Capital Statement. Sellers shall cause the Company to consider in good faith any potential adjustments to the Estimated Closing Working Capital Statement raised by Buyer and shall, if Sellers’ Representative agrees with any such adjustments after good faith determination by Sellers’ Representative (after consultation with its advisors), reflect such adjustments in an updated version of the Estimated Closing Working Capital Statement.

(b) As soon as reasonably practicable following the Closing Date, , the Buyer shall prepare and deliver to Sellers’ Representative a written statement (the “Closing Working Capital Statement”) setting forth a calculation of (i) the Closing Date Net Working Capital, (ii)

, (iii) the amount of Indebtedness of the Company as of the close of business on the Closing Date, and (iv) Sellers’ Transaction Expenses that remain unpaid as of the Closing, in each case for the foregoing clauses (i)-(iv), for the Company on a combined and consolidated basis. The Closing Working Capital Statement (x) shall be prepared in accordance with the Net Working Capital Methodology and (y) shall not give effect to the consummation of the transactions contemplated by this Agreement, including any payments of cash in respect of the Purchase Price.

(c) During the Buyer's preparation of the Closing Working Capital Statement and any subsequent period of dispute with respect to the calculations required by this Section 2.3, Sellers and Sellers' Representative shall cooperate in good faith with the Buyer to the extent reasonably requested by the Buyer to prepare the Closing Working Capital Statement or to investigate the basis for any dispute. The Closing Working Capital Statement shall be examined by Sellers' Representative, and Sellers' Representative shall, not later than thirty (30) calendar days after receipt of the Closing Working Capital Statement, render and deliver to the Buyer a written report thereon (the "Closing Working Capital Report"). During the preparation of the Closing Working Capital Report and any subsequent period of dispute with respect thereto, the Buyer shall provide Sellers' Representative with reasonable access during normal business hours on reasonable advance notice to the books, records (including work papers, schedules, memoranda and other documents) and employees of the Company, which materials and communications shall be subject to customary confidentiality agreements and access letters entered into by Sellers' Representative prior to receiving access to such materials. The Closing Working Capital Report shall list with specificity those items, if any, from the Closing Working Capital Statement to which Sellers' Representative take exception and shall explain Sellers' Representative's proposed adjustment and be accompanied by appropriate information and documentation in reasonable detail supporting Sellers' Representative calculations. If Sellers' Representative fails to deliver to the Buyer a Closing Working Capital Report within thirty (30) calendar days following receipt of the Closing Working Capital Statement, Sellers and Sellers' Representative shall be deemed to have accepted the Closing Working Capital Statement for the purposes of any adjustment to the Purchase Price under this Article 2. If Sellers' Representative deliver to the Buyer a Closing Working Capital Report listing Sellers' Representative's objections and otherwise complying with the requirements of this Section 2.3 within thirty (30) calendar days following receipt of the Closing Working Capital Statement, the Buyer shall examine the Closing Working Capital Report and shall have thirty (30) calendar days from receipt of such Closing Working Capital Report to notify Sellers' Representative of the Buyer's objections to the Closing Working Capital Report. If the Buyer fails to notify Sellers' Representative of its objections to the Closing Working Capital Report within such thirty (30) calendar day period, the Buyer shall be deemed to have accepted the Closing Working Capital Report for the purposes of any adjustment to the Purchase Price under this Article 2. If the Buyer gives Sellers' Representative notice of its objections to the Closing Working Capital Report, and if in good faith Sellers' Representative and the Buyer are unable, within fifteen (15) calendar days after receipt by Sellers' Representative of the notice from the Buyer of such objections, to resolve the disputed exceptions, such disputed exceptions will be referred to Grant Thornton LLP or, if such firm is providing accounting or other services to either the Buyer or Sellers' Representative or any of their respective Affiliates at the time of such dispute, another firm of independent certified public accountants ("Independent Accounting Firm") mutually acceptable to Sellers' Representative and the Buyer. The Buyer and Sellers' Representative shall cooperate with the Independent Accounting Firm to the extent reasonably requested by the Independent Accounting Firm to prepare a written report. The Independent Accounting Firm shall, within thirty (30) calendar days following its selection, deliver to Sellers' Representative and the Buyer a written report (accompanied by appropriate information and documentation in reasonable detail supporting the Independent Accounting Firm's calculations) determining only such disputed exceptions, and its determinations will be final and binding upon the Parties hereto for the purposes of any adjustment to the Purchase Price under this Article 2. The determination by the Independent Accounting Firm with respect to any disputed exception

shall not be higher than the higher amount, or lower than the lower amount, proposed by the Parties. The fees and disbursements of the Independent Accounting Firm acting under this Section 2.3 shall be evidenced by a detailed and itemized statement and shall be borne by the Buyer, on the one hand, and Sellers' Representative, on the other hand, in the same proportion as the aggregate amount of the disputed items submitted to the Independent Accounting Firm based upon the percentage which the portion of the contested amount not awarded to each Party bears to the amount actually contested by such Party.

The Buyer agrees that following the Closing until such time as the Adjustment Amount is determined, it will not take any action, and each Seller agrees that prior to the Closing it will not take any action, with respect to the accounting, books, records, policies and procedures of the Company that would obstruct or prevent the preparation of the Closing Working Capital Statement, the Closing Working Capital Report or the report of the Independent Accounting Firm as provided in this Section 2.3.

The date on which the Final Cash, Final Indebtedness, Closing Date Net Working Capital and Final Sellers' Transaction Expenses are finally determined in accordance with this Section 2.3(c) is hereinafter referred to as the "Determination Date".

(d) The "Adjustment Amount," which may be positive or negative, shall mean (i) the Final Closing Date Net Working Capital *minus* (ii) the Estimated Closing Date Net Working Capital. In addition, the Adjustment Amount will include aggregate differences between the Estimated Cash and Final Cash, the Estimated Indebtedness and the Final Indebtedness, and the Estimated Sellers' Transaction Expenses and the Final Sellers' Transaction Expenses. If the Adjustment Amount is a positive, then the Purchase Price shall be increased by the Adjustment Amount, and if the Adjustment Amount is a negative number, the Purchase Price shall be decreased by the absolute value of the Adjustment Amount. The Adjustment Amount shall be paid in accordance with Section 2.3(e).

(e) If the Adjustment Amount is a positive number (such amount, the "Increase Amount"), then, promptly following the Determination Date, and in any event within three (3) Business Days of the Determination Date, the Buyer shall pay to each Seller an amount in cash equal to such Seller's Percentage Interests of the Increase Amount, less any applicable withholding (subject to Section 2.1(d)) and the Parties shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release the Purchase Price Adjustment Escrow Fund to Sellers. If the Adjustment Amount is a negative number (the absolute value of such amount, the "Deficit Amount"), then, promptly following the Determination Date, and in any event within three (3) Business Days of the Determination Date, Sellers, on a several basis in proportion to their respective Percentage Interests, shall pay to the Buyer an amount equal to the Deficit Amount.

Any payment of the Deficit Amount owed by Sellers to Buyer shall be paid by the Escrow Agent pursuant to the terms of this Agreement and the Escrow Agreement: (i) from the Purchase Price Adjustment Escrow Fund (and the Parties shall deliver joint written instructions to the Escrow Agent) and (ii) to the extent the amount of the post-Closing Adjustment exceeds the amount available in the Purchase Price Adjustment Escrow Fund, at the option of Buyer, either from the Indemnification Escrow Fund, from Sellers directly, on a several basis in proportion to their respective Percentage Interests, or by set-off against obligations owed to each Seller.

SECTION 2.4 Net Working Capital. For purposes of this Article 2, “Net Working Capital” as of any date means the amount equal to Current Assets *less* Current Liabilities, of the Company (on a consolidated basis), each determined in accordance with the Net Working Capital Methodology.

SECTION 2.5 Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, (i) any and all payables of the Company owed to Sellers or any of its Affiliates, (ii) any liability under or relating to any Plan as a result of the execution of this Agreement, shareholder approval of this Agreement or the transactions contemplated by this Agreement, including the Bonus Payments, (iii) any Liabilities arising or relating to a Pre-Closing Period, (iv) any Indemnified Taxes and (v) the Sellers’ Transaction Expenses (collectively, the “Excluded Liabilities”), in each case, shall not be liabilities or obligations of the Buyer or the Company at or after the Closing.

SECTION 2.6 Earnout Consideration.

(a)

(b) Buyer shall pay, or cause to be paid, to Sellers' Representative by wire transfer or delivery of immediately available funds to the account designated by Sellers' Representative (for further distribution to Sellers), within five (5) Business Days

(c) From and after the Closing, Buyer shall have the ultimate discretion with regard to all matters relating to the operation of Company's business and nothing in this Agreement shall impair or restrict Buyer's ability to conduct its and Company's business as it deems fit in its sole discretion in accordance with its internal processes and business practices and Buyer and Company may in their sole discretion make such business decisions and take such actions, as Buyer and Company shall determine are necessary or desirable in their sole discretion.

(d) Any amounts which become payable pursuant to this Section 2.6 will constitute an adjustment to the Purchase Price for all purposes.

(e) The right of Sellers to receive any Earnout Payment: (i) is solely a contractual right and shall not be evidenced by any form of certificate or instrument; (ii) may not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part except by will, applicable Laws of intestacy or other operation of applicable Law, without Buyer's prior written consent and none of Buyer, the Company or Sellers shall give effect to any purported assignment or transfer made in contravention of this sentence; (iii) does not represent any equity or ownership interest in Buyer, the Company or any of its Affiliates; and (iv) does not give or convey to any such Person the right to receive payment of any interest on or in respect of such Earnout Payment.

(f) Notwithstanding any provision in this Agreement to the contrary, and without limiting any other remedies available to Buyer hereunder, Buyer shall have the right to withhold and set off against any amount otherwise required to be paid by Buyer pursuant to this Section 2.6 any amount owed to it or its Affiliates under this Agreement or otherwise, including (A) any Deficit Amount owed to it pursuant to Section 2.3 and (B) any Losses to which any Buyer Indemnitee may be entitled under this Agreement or any other Ancillary Agreement.

(g) Notwithstanding anything to the contrary contained herein,

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLERS.

Each Seller, severally but not jointly, and solely with respect to such Seller, hereby represents and warrants to the Buyer, as of the date hereof and as of the Closing Date or, if a representation or warranty is made as of a specific date, as of such date, subject to such information as is disclosed in the corresponding section of the disclosure schedules to this Agreement (the “Disclosure Schedules”), as follows:

SECTION 3.1 Sellers.

(a) Validity. Each Seller has all requisite capacity and authority to enter into and deliver this Agreement , to consummate the transactions contemplated hereby and thereby and to carry out its obligations hereunder and thereunder. The execution and delivery by such Seller of this Agreement and the performance by such Seller of its obligations hereunder and thereunder have been duly authorized by all necessary action of such Seller. This Agreement have been duly executed and delivered by such Seller and, assuming the due authorization, execution and delivery of this Agreement by the other parties thereto, this Agreement constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with their respective terms.

(b) Ownership of Interests. The Shares comprise all of the issued and outstanding capital stock or other ownership interests of the Company. The Shares are owned, beneficially and of record, by Sellers, free and clear of any Liens other than such as may be created by or on behalf of the Buyer, and has been duly authorized and validly issued and is fully paid, nonassessable and was not issued in violation of any preemptive rights, rights of first refusal or any similar rights. There are no outstanding or authorized obligations, warrants, convertible or exchangeable securities, subscriptions, equity appreciation rights, options or other rights (including preemptive rights), to subscribe for or purchase from the Company, or other Contracts, commitments of any character, or agreements providing for the issuance of or granting any Person the right to acquire any shares of any class of capital stock or other ownership interests of the Company, or any securities or other instruments convertible into or exchangeable or exercisable for any shares of any class of capital stock or other ownership interests of the Company, and the Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any shares of its capital stock. There are no proxies, voting agreements, stockholder agreements or other agreements with respect to the voting or transfer of any shares of capital stock or other ownership interests of the Company. The Company does not have any outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. At Closing, the Buyer shall have good and valid title to all of the capital stock and other ownership interests of the Company, free and clear of any Liens, other than such Liens as may be created by or on behalf of the Buyer. Other than this Agreement, Sellers are not bound by any Contract restricting their right to transfer the Shares. Other than this Agreement, Sellers are not bound by any Contracts except as set forth on Section 3.16(a) of the Disclosure Schedule.

(c) There are no securities or rights of the Company or contracts, commitments, understandings or arrangements by which the Company is bound, obligating the Company to redeem or otherwise acquire any Shares or other equity interests of the Company. The Company does not have any outstanding bonds, debentures, notes or other similar obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of the Company. None of the issued and outstanding shares, capital stock, equity interests or other equity securities of the Company was issued, sold or transferred in violation of the Securities Act of 1933, as amended, or any other applicable securities Law.

(d) There are no (i) preemptive rights, rights of first refusal, options, put or call rights or obligations or anti-dilution rights related by or to which the Company is subject with respect to the issuance, sale or redemption of any shares, capital stock, equity interests, assets or other equity securities of the Company or (ii) rights to have any shares, capital stock, equity interests or other equity securities of the Company registered for sale to the public in connection with the Laws of any jurisdiction.

SECTION 3.2 Corporate Organization, Authority and Qualification of the Company.

(a) The Company is a corporation, duly organized, validly existing and in good standing under the Laws of the state of Illinois and has all requisite power and authority to own, operate or lease the assets, rights or properties now owned, licensed or leased by it, and to conduct its business as now conducted, and is duly licensed or qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except that the failure to be so licensed or qualified and in good standing would not reasonably be expected to have a Material Adverse Effect. All corporate actions taken by the Company have been duly authorized, and the Company has not taken any action that in any respect conflicts with, constitutes a default under, or results in a violation of, any provision of its Certificate of Incorporation (or similar organizational documents). The Company has all requisite power and authority to enter into, , to consummate the transactions contemplated thereby and to carry out its obligations thereunder. The execution and delivery by the Company

been duly authorized.

(b) Section 3.2(b) of the Disclosure Schedules sets forth the Company's name, type of entity, the jurisdiction and date of its incorporation, its authorized capital stock, the number and type of its issued and outstanding shares of capital stock, and the current ownership of such shares. Copies of the Certificate of Incorporation (or comparable organizational documents, as applicable) of the Company, each as amended to date and currently in full force and effect, have

been furnished to the Buyer and its representatives, and such copies are accurate and complete and no other organizational or governing documents are applicable to, or binding on the Company.

(c) There are no corporations, partnerships, joint ventures, associations or other entities in which the Company owns, of record or beneficially, any direct or indirect equity interest or any right (contingent or otherwise) to acquire the same, except as set forth in Section 3.2(c) of the Disclosure Schedules. Except as set forth in Section 3.2(c) of the Disclosure Schedules, the Company is not a member of (nor is any part of the Business conducted through) any partnership nor a participant in any joint venture or similar arrangement.

SECTION 3.3 No Conflict or Violation.

(a) The execution, delivery and performance by each Seller of this Agreement, the Ancillary Agreements to which it is a party and the transactions contemplated hereby and thereby do not and will not (i) violate or breach any Law, order, judgment or decree of any Governmental Entity applicable to such Seller or the Company or any of their respective assets or business, or (ii) except as set forth on Section 3.3(a) of the Disclosure Schedules, violate, conflict with or result in a breach of or constitute (with or without due notice or lapse of time or both) a default, require consent or notice under, or give to others any rights of termination, acceleration, amendment, vesting, suspension, modification, revocation or cancellation of, or result in the creation or imposition of any Lien upon the Company's assets, properties or rights of the Company under any Contract to which the Company is a party or by which the Company is bound or to which any of its assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to (or accelerate) a right thereunder to require any payment to be made by the Company.

(b) There is no pending Action or, to the knowledge of each Seller, threatened Action before any Governmental Entity by or against each Seller or the Company relating to (i) each Seller's ownership of the Shares or (ii) any actual or potential bankruptcy or insolvency of each Seller or the Company.

SECTION 3.4 Consents and Approvals.

, the execution, delivery and performance of this Agreement by each Seller

do not and will not require any consent, waiver, approval, license, authorization or permit of, or order of, action by, filing with or notification to, any Governmental Entity or Person, except for any approvals, authorizations or exemptions required to be obtained from the STB.

SECTION 3.5 Indebtedness. Except as set forth on Section 3.5 of the Disclosure Schedules, the Company does not have any Indebtedness.

SECTION 3.6 Financial Statements; Undisclosed Liabilities.

(a) Section 3.6(a) of the Disclosure Schedules consists of the following financial statements (the "Financial Statements"): (i) the Balance Sheet and related statement of income for the period then ended; and (ii) the unaudited balance sheet of the Company as of December 31, 2020 and December 31, 2021 and the related statements of income for the fiscal

years then ended. The Financial Statements referred to in the foregoing clause (ii) have been based upon the information contained in the Company's books and records, have been prepared on a cash basis on a consistent basis throughout the period involved, and present fairly in all material respects the financial condition, results of operations and income of the Company as of the times and for the periods referred to therein.

(b) The Company maintains books and records accurately reflecting, in all material respects, its assets and liabilities and maintain proper and adequate internal accounting controls that provide assurance that (i) transactions are executed with the Company management's authorization; (ii) transactions are recorded as necessary to permit preparation of the Financial Statements and to maintain accountability for the Company's assets, as applicable; (iii) access to the Company's assets is permitted only in accordance with the Company's management's authorization; (iv) the reporting of the Company assets is compared with existing assets at regular intervals; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(c) The accounts receivable reflected on the Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute valid claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice and (c) is fully collectable.

(d) The Company does not have any Liabilities, except

SECTION 3.7 Conduct in the Ordinary Course; Absence of Certain Changes, Events and Conditions.

(a) _____, since the date of the Balance Sheet, the Company has not suffered any effects, changes, events or developments which have had or would reasonably be expected to have a Material Adverse Effect.

(b) Since the date of the Balance Sheet, the Company has operated and conducted the Business in the ordinary course of business consistent with past practice and, _____, has not taken any action that if taken after the date hereof would be prohibited by Section 5.1.

SECTION 3.8 Tax Matters. Except as set forth on Section 3.8 of the Disclosure Schedules:

(a) The Company has filed all Tax Returns required to have been filed by it (taking into account any extensions of time to file) and such Tax Returns are true, complete and

correct in all respects. The Company has paid or properly accrued all Taxes (whether or not shown as due on such Tax Returns) except those that are being contested in good faith and that have been provided for in accordance with GAAP. All Taxes that the Company is obligated to withhold from amounts owing to any employee, creditor or third party have been fully paid or properly accrued.

(b) No Tax audits or administrative or judicial Tax proceedings are presently being conducted with respect to the Company. The Company has not received any written notice of deficiency or proposed adjustment for any amount of Tax that has not been fully paid or settled from any taxing authority. The Company has not waived any statute of limitations in respect of Taxes beyond the date hereof or agreed to any extension of time beyond the date hereof with respect to a Tax assessment or deficiency, which waiver or extension is still outstanding.

(c) The Company (i) has not been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which is the Seller) or (ii) does not have any liability for the Taxes of any Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract or pursuant to any Law (other than ordinary course agreements, such as leases or loans, the primary focus of which is not Taxes).

(d) The Company has not distributed stock of another Person, or has had its stock distributed by another Person, in a transaction within the two (2)-year period ending on the date of this Agreement that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(e) There are no Liens for material Taxes (other than Permitted Liens) upon any of the assets of the Company.

(f) The Company is not a party to, or is bound by, any Tax sharing, allocation or indemnity agreement, arrangement or similar Contract.

(g) The Company has properly collected and remitted sales, use, property, value-added, goods and services and similar Taxes with respect to sales, services and similar transactions.

(h) No claim or assertion has been made, or has been threatened, by any Governmental Entity against the Company in any jurisdiction where the Company does not currently file a Tax Return that it is or may be subject to Tax by such jurisdiction.

(i) The Company has not been a party to any “reportable transaction,” as defined in Code Section 6707A(c)(1) and Treasury Regulations Section 1.6011-4(b).

(j) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting made prior to the Closing Date for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Code Section 7121 (or any corresponding or similar provision of state, local, or non-U.S. tax Law) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in the Treasury Regulations under Code Section

1502 (or any corresponding or similar provision of state, local or non-U.S. income tax Law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) prepaid amount received on or prior to the Closing Date; or (vi) election under Code Section 108(i).

(k) Each Seller is a “United States person” as such term is used in Section 1445 of the Code, and the Company is not, and has not been, a “U.S. real property holding corporation” within the meaning of Section 897 of the Code.

(l) As of the Closing, the Company is, and has been since its formation, taxed as a C corporation for U.S. federal income Tax purposes.

SECTION 3.9 Owned Real Property.

(a) Section 3.9(a) of the Disclosure Schedules sets forth a list, which is complete and accurate, of all real property (including the fee title holder) owned by the Company (the “Owned Real Property”). The Company has good and marketable fee title to the Owned Real Property owned by it free and clear of all Liens except for (i) Permitted Liens or (ii) minor title defects, recorded easements or Liens that do not, individually or in the aggregate, impair the continued use, occupancy, value or marketability of title. Each Seller has made available to Buyer true and correct copies of (A) all deeds and other instruments (as recorded) by which the Company acquired its respective interests in the Owned Real Property and (B) all surveys with respect to the Owned Real Property, in the case of clauses (A) and (B), to the extent in the Company’s possession or control. There are no outstanding options, rights of first offer or rights of first refusal to purchase or lease any Owned Real Property or any portion thereof or interest therein.

(b) None of the Sellers or the Company has knowledge of or received any written notice of, any pending or contemplated rezoning, eminent domain or condemnation proceeding affecting the Owned Real Property.

SECTION 3.10 Leased Real Property.

(a) Section 3.10(a) of the Disclosure Schedules sets forth a list of all material leases, subleases, licenses, easements, rights of way, trackage rights, or similar agreements, together with all amendments and supplements thereto, with respect the use or occupancy of real properties in which the Company is a party (each, a “Lease” and collectively, the “Leases”; the property covered by Leases is referred to herein as the “Leased Real Property”). Complete and accurate copies of each Lease have been made available to Buyer prior to the date hereof, together with all amendments and supplements thereto.

(b) Each Lease is in full force and effect and valid and binding on the Company, and the Company holds a valid and enforceable leasehold interest in the Leased Real Property to which each Lease relates, subject to proper authorization and execution of such Lease by any other party thereto and the application of any bankruptcy Laws, other similar Laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies. The Company is not, and to the Seller’s knowledge, no other party is, in material default under any Lease. The Company, and, to the knowledge of each Seller, each of the other parties thereto, has performed in all material respects all material obligations required to be performed by it under each Lease. The Company has not collaterally assigned or granted any

security interest in any Leased Real Property or any interest therein. With respect to each Leased Real Property, the Company does not have knowledge of or has not received any written notice of, any pending or contemplated rezoning, eminent domain or condemnation proceeding affecting any Leased Real Property.

(c) The Leased Real Property and the Owned Real Property (collectively, the “Real Property”) constitute all of the real property used in or necessary to conduct the Business and all railroad rights-of-way are contiguous and continuous. The Company has such consents, easements, rights-of-way, permits and licenses as are necessary and sufficient to conduct the Business. There are no violations or alleged violations of any Law with respect to the Real Property, including zoning Law, which would, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect. There are no material inquiries, complaints, proceedings or investigations (excluding routine, periodic inspections) pending (or, to the best of Sellers’ knowledge, threatened) regarding compliance of the Real Property with any such Law. All material improvements located on, under, over or within the Real Property (i) are in good operating condition and repair and are structurally sound and free of any material defects and are sufficient for purposes of running a railroad and substantially in compliance with applicable Law and (ii) are in material compliance with building, zoning and other applicable land use Law for their current use, except where the failure to be so, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect.

SECTION 3.11 Intellectual Property.

(a) If applicable, Section 3.11(a) of the Disclosure Schedules sets forth a complete, correct and current list of all (i) Company IP Registrations, and (ii) any material unregistered trademarks included in the Company Intellectual Property, and (iii) all other Company Intellectual Property material to the Company’s business as currently conducted (the “Listed Intellectual Property”). If applicable, all Listed Intellectual Property is in compliance with all Laws, and, to the extent issued, are valid, enforceable, and in good standing.

(b) If applicable and to the best of Sellers’ knowledge, the Company has taken all reasonable and necessary steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all trade secrets included in the Company Intellectual Property.

(c) If applicable, the Company owns or has a valid and enforceable license or otherwise has the right to use all of its Listed Intellectual Property used in the Business as currently conducted and such use and the conduct of the Business have not, to the best of Sellers’ knowledge, infringed, violated or conflicted with, or misappropriated the rights of any third party. To the knowledge of each Seller, no third party is infringing, violating or misappropriating any Listed Intellectual Property in any material respect. The Company has taken commercially reasonable steps to maintain the confidentiality of its Confidential Information in connection with the Business. If applicable, all Listed Intellectual Property of the Company (and as of the Closing the Transferred IP) is owned solely and exclusively by the Company, free and clear of all Liens, other than Permitted Liens, and free and clear of any rights of each Seller or its other Affiliates (other than the Company). There has not been communicated to any Seller or its Affiliates the threat of any claim that the holder of such Listed Intellectual Property or the Company is violating or

infringing any Intellectual Property right of any third-party, or challenging the Company's ownership or use of, or the validity or enforceability of, any of the Listed Intellectual Property.

(d) Section 3.11(d) of the Disclosure Schedules contains a correct, current and complete list of all Company IP Agreements which are material to the Business, including those agreements under which: (i) the Company is a licensee or has licensed or otherwise has been granted any rights, immunity from suit or covenant not to sue with respect to any Intellectual Property by any Person (other than shrink-wrap, click-wrap, and similar licenses for commercially available off-the shelf software); and (ii) any Person is a licensee or has licensed or otherwise has been granted any rights, immunity from suit or covenant not to sue with respect to any Intellectual Property by the Company. If applicable, the Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

SECTION 3.12 Information Technology; Privacy and Security.

(a) In connection with its collection, storage, transfer (including, without limitation, any transfer across national borders) and/or use of any personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees and/or other third parties (collectively "Personal Information"), the Company is and has been, in compliance with all applicable laws in all relevant jurisdictions, the Company's privacy policies and the requirements of any contract or codes of conduct to which the Company is a party. The Company has commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use and/or disclosure. The Company is and has been in compliance in all material respects with all laws relating to data loss, theft and breach of security notification obligations.

(b) The IT Assets (A) are in operating order and are fulfilling the purposes for which they were acquired, licensed or established in an efficient manner without material downtime or errors, (B) have not, in the past five (5) years, experienced any material errors and/or breakdowns, (C) to the Sellers' knowledge, do not contain Unauthorized Code, (D) have not experienced any Security Incidents or Security Breaches, and (E) are considered by the Company to effectively perform all information technology operations necessary to conduct the Business as it is currently conducted. The Company has commercially reasonable disaster recovery plans, technologies, procedures and facilities for the IT Assets and have taken reasonable steps to maintain and safeguard the IT Assets from Security Incidents or Security Breaches. In the past five (5) years, the IT Assets or disaster recovery plans, technologies, procedures or facilities have not experienced a shutdown for a continuous period of twenty-four (24) hours or more.

(c) The Company has not experienced any material Security Breaches or material Security Incidents affecting Personal Information, and the Company is not aware of any written notices or complaints from any Person regarding such a Security Breach or material Security Incident. The Company has not received (nor, to the best of Sellers' knowledge, has the Company been threatened with) any written complaints, claims, demands, inquiries or other

notices, including a notice of investigation, or any other written notices from any Person (including any Governmental Entity or self-regulatory authority or entity) (A) regarding the Company's collection, processing, use, storage, transfer or disclosure of Personal Information, (B) alleging that the Company's collection, processing, use storage, security, transfer of disclosure of Personal Information is in violation of any applicable Privacy Laws, Privacy Policies or Privacy Contracts or otherwise constitutes an unfair, deceptive, or misleading trade practice, or (C) regarding the Company's failure to comply in any material respect with any applicable Privacy Laws.

(d) The Company has always been in material compliance with (i) all applicable Privacy Laws, (ii) all applicable Privacy Policies, and (iii) all applicable Privacy Contracts, and, have collected, processed, stored, maintained, secured, shared, and otherwise used Personal Information in compliance with all Privacy Laws and with appropriate disclosures and consents as required to provide the Personal Information to third parties in the course of the businesses of the Company and its Subsidiaries. The Company has delivered to the Buyer true, correct and complete copies of the effective Privacy Policy included in the Human Resources manual. The Company has a valid and legal right (whether contractually or otherwise) to access or use all Personal Information that is accessed and used by or on behalf of the Company in connection with the use and/or operation of any of its products, services or businesses.

(e) The Company has implemented reasonable physical, technical and administrative safeguards designed to protect Personal Information in its possession or control from material unauthorized access by any Person, including the Company's employees, contractors, and vendors, and to ensure material compliance in all respects with all applicable Privacy Laws, Privacy Contracts and Privacy Policies.

(f) The Company has a valid and legal right (whether contractually, by applicable Law or otherwise) to access or use all Personal Information and any other information of any Person that is accessed and used by or on behalf of the Company in connection with the sale, use and/or operation of its products, services and businesses. Neither the execution, delivery or performance of this Agreement, nor the consummation of any of the transactions contemplated by this Agreement (including any transfer of any Personal Information from the Company to the Sellers), will violate in any material respect any Privacy Policies, Privacy Contracts or any applicable Law (including any Information Laws) governing the Company's collection, use, access to, transmission, disclosure, alteration or handling of Personal Information, or result in or give rise to any right of termination or other right to impair or limit the Company's rights to own or use any Personal Information used in or necessary for the conduct of its businesses.

(g) The Company has not received any, nor to the best of Sellers' knowledge are there any pending, written complaints, claims, demands, inquiries, proceedings, or other notices, including any notices of any investigation or other legal proceedings, regarding the Company, initiated by (i) any Person; (ii) any Governmental Entity including the FTC, a state attorney general, data protection authority or similar state official, or a supervisory authority; or (iii) any self-regulatory authority or entity, alleging that any activity of the Company: (A) is in violation of any applicable Information Laws, (B) is in violation of any Privacy Contracts, (C) is in violation of any Privacy Policies, (D) is otherwise in violation of any Person's privacy, personal or confidentiality rights, or (E) otherwise constitutes an unfair, deceptive, or misleading trade practice.

SECTION 3.13 Licenses and Permits. Except as set forth on Section 3.13 of the Disclosure Schedule, the Company holds all licenses, permits, variances, certifications, exemptions, franchises, authorizations and approvals (the “Licenses and Permits”) of all Governmental Entities necessary to own, lease or operate its properties and to permit the continued lawful conduct of the Business in the manner now conducted and all Licenses and Permits are valid and in full force and effect. The operations of the Company is being, _____, conducted in a manner that complies with the terms or conditions of the Licenses and Permits. The consummation of the transactions contemplated by this Agreement will not result in the cancellation, modification, termination or suspension of any License and Permit.

SECTION 3.14 Compliance with Law.

(a) _____, the Company is and for the past _____ has been in compliance in all material respects with all applicable Laws of all applicable Governmental Entities.

(b) _____, the Company (x) has not received (i) any citations, complaints, compliance schedules, or other similar enforcement orders, (ii) notice of a requirement to pay or paid any fines or penalties to, or (iii) any other notice from, any Governmental Entity, and (y) is not in default under, and no condition exists (whether covered by insurance or not) that with or without notice or lapse of time or both would constitute a default under, or breach or violation of, any Law or permit applicable to the Company. The Company is not subject to any order, injunction, judgment, award, decree, ruling, writ, or assessment from any arbitrator or any Governmental Entity.

SECTION 3.15 Litigation.

_____, there are no Actions pending or, to the knowledge of each Seller, threatened, of any nature, brought by or against any Seller (to the extent related to the Business) or the Company, the assets, properties or rights of the Company or the transactions contemplated by this Agreement, and there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

SECTION 3.16 Contracts.

(a) _____ the Company is not a party to any written:

(i) _____ bonus, pension, profit sharing, retirement or other form of deferred compensation plan, labor or collective bargaining agreement or other Contract with any union or other employee representative body, other than the Company Benefit Plans described in Section 3.17 of the Disclosure Schedules relating thereto;

(ii)

(iii) agreement or indenture relating to Indebtedness, mortgaging, pledging or otherwise placing a Lien (other than Permitted Liens) on any assets of the Company;

(iv)

;

(v)

(vi)

;

(vii)

(viii)

;

(ix) Contract or group of related contracts with the same party or customer, that cannot be cancelled by the Company without penalty or without more than ninety (90) days' notice;

(x) agreement relating to any business acquisition or disposition by the Company, related to the sale or purchase of stock, assets or any real property
;

(xi) agreements or Contracts that relate to any acquisition of a business by the Company pursuant to which the Company has any material continuing "earn out" or other contingent or fixed payment obligations;

(xii) Contract which

;

(xiii)

;

(xiv) agreements between or among the Company on the one hand and any Seller or any Affiliate of any Seller (other than the Company) on the other hand;

(xv)

(xvi) Contracts with any Governmental Entity;

(xvii) any Contract that prohibits the pledging of the equity interests of the Company or prohibits the issuance of guarantees by the Company;

(xviii) any Contract that grants any right of first refusal or right of first offer or similar right with respect to the Company to third parties or that limits or purports to limit the ability of the Company to pledge, sell, transfer or otherwise dispose of any material amounts of assets other than in the ordinary course of business; and

(xix) any other Contracts, agreements or understandings of the Company that is material to or critical to the Business.

(b) : (i) such contract is a valid and binding agreement of the Company, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies; (ii) the Company is not in breach or default in any material respect, nor has the Company taken any action which, with notice or lapse of time, would constitute a breach or default in any material respect, or permit termination, material modification or acceleration, as applicable, under such contract; and (iii) no other party is in breach or default in any material respect under such contract.

ct.

SECTION 3.17 Employee Plans.

(a) Except as set forth on Section 3.17(a) of the Disclosure Schedules, none of the Sellers or any of its ERISA Affiliates or the Company maintains, sponsors, is a party to, participates in, has a commitment to create or has any liability or contingent liability with respect to: (i) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are defined in sections 3(1) and 3(2), respectively, of ERISA), other than a "multiemployer plan" (as defined in section 3(37) of ERISA); (ii) any retirement or deferred compensation plan, incentive

compensation plan, stock plan, retention plan or agreement, unemployment compensation plan, vacation pay, change in control, severance pay, bonus or benefit arrangement, insurance or hospitalization program, flexible benefit plan, cafeteria plan, dependent care plan or any fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, which does not constitute an employee benefit plan (as defined in section 3(3) of ERISA); or (iii) any employment agreement or consulting agreement (collectively referred to as the “Plans”). Section 3.16(a) of the Disclosure Schedules separately indicates each Plan that is sponsored or maintained by the Company solely for the benefit of Employees (or their dependents and beneficiaries) (each such Plan a “Company Benefit Plan”).

(b) A true and correct copy of each of the Plans, and all contracts relating thereto, or to the funding thereof, including, without limitation, all trust agreements, insurance contracts, administration contracts, investment management agreements, subscription and participation agreements and recordkeeping agreements, each as in effect on the date hereof, has been supplied to the Buyer. In the case of any Plan which is not in written form, the Buyer has been supplied with an accurate description of such Plan as in effect on the date hereof. A true and correct copy of the most recent annual report, actuarial report, accountant’s opinion of the plan’s financial statements, summary plan description and Internal Revenue Service determination letter with respect to each Plan, to the extent applicable, and a current schedule of assets (and the fair market value thereof assuming liquidation of any asset which is not readily tradable) held with respect to any funded Plan has been supplied to the Buyer, and there have been no material changes in the financial condition in the respective plans from that stated in the annual reports and actuarial reports supplied.

(c) Each of the Plans that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is a prototype plan that is entitled to rely on an opinion letter issued by the Internal Revenue Service to the prototype plan sponsor regarding qualification of the form of the prototype plan, and no event has occurred which will or could give rise to disqualification of any such plan under such section. The Plans comply in form and in operation in all material respects with their terms and in all material respects with the requirements of the Law, including the Code and ERISA, and no event has occurred which will or could cause any such Plan to fail to comply with such requirements and no notice has been issued by any governmental authority questioning or challenging such compliance. All Plans which are subject to section 409A of the Code comply with section 409A in form and have been administered in accordance with their terms and section 409A of the Code.

(d) None of the assets of any Plan are invested in employer securities or employer real property. There have been no “prohibited transactions” (as described in section 406 of ERISA or section 4975 of the Code) with respect to any Plan and none of the Sellers or any of its ERISA Affiliates or the Company has engaged in any prohibited transaction. With respect to the Plans, all material required contributions have been made or properly accrued. No Plan is subject to Title IV of ERISA.

(e) There have been no acts or omissions by any Seller or any of its ERISA Affiliates or the Company which have given rise to or may give rise to interest, fines, penalties,

taxes or related charges under section 502 of ERISA or Chapters 43, 47, 68 or 100 of the Code for which any Seller or any of its ERISA Affiliates or the Company may be liable or under Section 409A of the Code for which any Seller, any of its ERISA Affiliates or the Company or any participant in any Plan that is a nonqualified deferred compensation plan (within the meaning of section 409A of the Code) may be liable. The Company, and each Plan that is a “group health plan” as defined in Section 733(a)(1) of ERISA (a “Health Plan”) (I) is currently in compliance in all material respects with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“PPACA”), the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (“HCERA”), and the regulations and guidance issued thereunder (collectively, with PPACA and HCERA, the “Healthcare Reform Laws”), and (II) has been in compliance in all material respects with all applicable Healthcare Reform Laws since March 23, 2010. No event has occurred, and no conditions or circumstance exists, that would reasonably be expected to subject the Company, or any Health Plan, to material penalties or excise taxes under Sections 4980D, 4980H, or 4980I of the Code or any other provision of the Healthcare Reform Laws.

(f) Neither consummation of the transactions contemplated by this Agreement nor this Agreement (whether separately or together with any other action) will accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any current or former director, officer or employee of any Seller or any of its ERISA Affiliates or the Company. None of the payments contemplated by the Plans (including the Bonus Payments) would, in the aggregate, constitute excess parachute payments (as defined in section 280G of the Code (without regard to subsection (b)(4) thereof)) or would exceed the amount deductible pursuant to section 162(m) of the Code. None of the Sellers or any of its ERISA Affiliates or any of the Company is a nonqualified entity within the meaning of section 457A of the Code.

(g) There are no actions, suits or claims (other than routine claims for benefits) pending or threatened involving any Plan or the assets thereof and no facts exist which could give rise to any such actions, suits or claims (other than routine claims for benefits). Each Plan which constitutes a “group health plan” (as defined in section 607(i) of ERISA or section 4980B(g)(2) of the Code), including any plans of current and former affiliates which must be taken into account under sections 4980B and 414(t) of the Code or sections 601-608 of ERISA, have been operated in compliance with applicable law, including the continuation coverage requirements of section 4980B of the Code and section 601 of ERISA and the portability and nondiscrimination requirements of sections 9801 and 9802 of the Code and sections 701-707 of ERISA, to the extent such requirements are applicable. None of the Sellers or any of its subsidiaries or any of the Company has any liability or contingent liability for providing, under any Plan or otherwise, any post-retirement medical or life insurance benefits, other than statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and section 4980B of the Code or applicable state law. None of the Company Benefit Plans is a multiple employer pension plan or a multiple employer welfare arrangement (within the meaning of section 3(40) of ERISA). None of the Sellers nor any of its ERISA Affiliates nor any of the Company contributes to, has contributed to, or has any liability or contingent liability with respect to a multiemployer plan.

(h) Each Plan which constitutes a “group health plan” (as defined in section 607(i) of ERISA or section 4980B(g)(2) of the Code), including any plans of current and former affiliates which must be taken into account under sections 4980B and 414(t) of the Code or sections 601-608 of ERISA, have been operated in compliance with applicable law, including the

continuation coverage requirements of section 4980B of the Code and section 601 of ERISA and the portability and nondiscrimination requirements of sections 9801 and 9802 of the Code and sections 701-707 of ERISA, to the extent such requirements are applicable.

(i) The Company is in compliance in all material respects with the requirements of the Railroad Retirement Act of 1974 and the applicable regulations of the United States Railroad Retirement Board.

SECTION 3.18 Insurance. Prior to the date hereof, Sellers have furnished to the Buyer a true, complete and accurate original or copy of each policy or other certificate of title, liability, fire, casualty, business interruption, workers' compensation and other forms of insurance insuring the Business, the Company and its assets and operations (the "Existing Policies"). Section 3.18 of the Disclosure Schedules sets forth a list, as of the date hereof, of all such Existing Policies. All the Existing Policies (i) are in full force and effect, (ii) have no outstanding premiums due thereunder that have not been paid and (iii) the Company is not in material default with respect to its obligations under any such insurance policy. Except as set forth on Section 3.18 of the Disclosure Schedules, the Company does not maintain any self-insurance or co-insurance programs. Except as set forth in Section 3.18 of the Disclosure Schedules, there are no claims related to the Business pending under any such insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

SECTION 3.19 Transactions with Directors, Officers and Affiliates. Except as set forth on Section 3.19 of the Disclosure Schedules, the Company is not a party to any Contract, agreement or arrangement with any Seller or any of the directors, executive officers or stockholders of such Seller, the Company or any Affiliate or family member of any of the foregoing Persons. There is no Indebtedness owed to the Company by any employee, consultant, officer or director of Sellers or of the Company, other than salary advances and advances of travel expenses in the ordinary course of business consistent with past practice.

SECTION 3.20 Labor Matters.

(a) The Company is not a party to any collective bargaining agreement, and, to the knowledge of each Seller, no union organizing efforts are underway with respect to employees of the Company. Except as set forth on Section 3.20(a) of the Disclosure Schedules: (a) there are no material unfair labor practice charges, material unfair labor practice complaints, material labor arbitrations or material labor grievances pending, or, to the knowledge of each Seller, threatened, against the Company; (b) there is no strike, slowdown, work stoppage or lockout, or, to the knowledge of each Seller, threat thereof, by or with respect to any employees of the Company; and (c) there are no material charges, complaints, suits or proceedings, or, to the knowledge of Sellers, threat thereof, against the Company alleging breach or violation in any material respect of any labor or employment Law.

(b) Section 3.20(b) of the Disclosure Schedules sets forth a true, correct and complete list of each Employee of, and independent contractor providing services to, the Company and in the case of each such employee and contractor, the following information, if applicable, as of the date hereof: (a) title or position; (b) date of hire or commencement of service; (c) work location; (d) whether full-time or part-time and whether exempt or non-exempt; (e) whether

covered by the terms of a collective bargaining or similar agreement or an employment or consulting agreement; (f) whether absent from active employment or service and if so, the date such absence commenced, the reason for such absence and the anticipated date of return to active employment or active service; (g) annual salary or annual consulting payments, as the case may be, and, if applicable, target bonus and other incentive compensation, such salary and other compensation data to include current information and such information for the prior 12 month period; and (h) accrued unused vacation, sick days and other paid days off. None of such employees providing services to the Company is a leased employee.

(c) The Company has been and is in compliance with (a) all applicable Laws respecting employment and employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, harassment, non-discrimination in employment, workers' compensation, unemployment compensation and the collection and payment of withholding or payroll Taxes and similar Taxes and (b) all obligations of the Company under any employment agreement, consulting agreement, severance agreement, collective bargaining agreement or any similar employment or labor-related agreement or understanding. All independent contractors and consultants providing personal services to the Company have been properly classified as independent contractors for purposes of all Laws, including Laws with respect to employee benefits, and all Employees have been properly classified under the Fair Labor Standards Act and similar state laws.

(d) A Form I-9 has been completed and retained with respect to each such current Employee and, where required by law, former Employees. The Company has not been the subject of any audit or other action, suit, proceeding, claim, demand, assessment or judgments nor, to Sellers' knowledge, has the Company been the subject of an investigation, inquiry or other any audit or other action, suit, proceeding, claim, demand, assessment or judgments from the U.S. Department of Homeland Security, including the Immigration and Customs Enforcement, (or any predecessor thereto, including the U.S. Customs Service or the Immigration and Naturalization Service) or any other immigration-related enforcement proceeding.

(e) (i) There is not currently pending, and to the knowledge of each Seller, in the last five (5) years, there have not been any allegations of sexual harassment or other sexual misconduct made against any officer or executive of the Company, (ii) in the past five (5) years, the Company has not entered into a settlement agreement to resolve any allegations of sexual harassment or other sexual misconduct by any of its officers or executives, and (iii) Sellers are not aware of any circumstances or conduct by any officer or executive of the Company that would lead to material liability related to allegations of sexual harassment or other sexual misconduct.

SECTION 3.21 Environmental Matters. Except as set forth on Section 3.21 of the Disclosure Schedules:

(a) The Company is, and for the last five (5) years has been, in compliance in all material respects with all applicable Environmental Laws.

(b) The Company has obtained and possesses all material Environmental Permits required by Environmental Laws to operate its facilities and to conduct its business and

is, and for the last five (5) years has been, in material compliance with such Environmental Permits, and all such Environmental Permits are valid and in good standing in all material respects.

(c) The Company has not received, since January 1, 2019, any written notice of any material violation of or material liability arising under Environmental Laws, including with respect to any material investigatory, remedial or corrective obligation, relating to the Company or its facilities and arising under Environmental Laws, or that the Company is a potentially responsible party for such obligation, the subject of which is unresolved.

(d) There are no material suits or proceedings pending or threatened against the Company, pursuant to Environmental Laws.

(e) The Company is not subject to any material judgment, order or decree of any court or other Governmental Entity, or any material settlement or consent agreement, that is outstanding and was issued or entered pursuant to Environmental Laws.

(f) In the past five (5) years, the Company has not caused or permitted any release or stored, treated, disposed of, arranged for or permitted the disposal of, transported, handled, manufactured, or distributed any regulated substance so as to give rise to material liability arising under Environmental Laws.

(g) No property or facility currently or, to the knowledge of each Seller, formerly owned, leased, operated, or used by the Company is listed or proposed for listing on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or on any similar state list of sites actually or potentially requiring investigation, corrective action, or remediation.

(h) All environmental assessment, investigation, response and remedial action reports for any property currently or, to the knowledge of each Seller, formerly owned, leased, or operated by the Company that are in the possession or reasonable control of the Company have been made available to Buyer, including all agreements containing unexpired (or expired with claims outstanding) environmental indemnities. To the knowledge of each Seller, all material issues identified by any environmental assessment, investigation, response and remedial action reports for any property currently or, to the knowledge of each Seller, formerly owned, leased, or operated by the Company that was prepared during the last five (5) years are set forth on Section 3.21 of the Disclosure Schedules.

SECTION 3.22 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Seller or the Company.

SECTION 3.23 International Trade Matters. The Company is, and since January 1, 2019 has been, in compliance with and has not been in violation of all applicable International Trade Laws. The Company has not received any written (nor, to the best of Sellers' knowledge, has the Company been threatened with any) order, notice, or other communication from any Governmental Entity of any actual or potential violation or failure to comply with any International Trade Law.

SECTION 3.24 Absence of Unlawful Payments. Neither the Company, nor, to the best of Sellers' knowledge, any director or officer of the Company nor any employee, agent or other Person acting on behalf of the Company: (a) has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or offers or payment of anything of value; made any unlawful offers or expenditures relating to political activity to officials or employees of any Governmental Entity or to other Persons or established or maintained any unlawful or unrecorded funds; (b) made any direct or indirect unlawful offer or payment of anything of value to any official or employee of any Governmental entity or violated any provision of the Foreign Corrupt Practices Act or any applicable anti-corruption laws; or (c) has accepted or received any unlawful contributions, payments, gifts or expenditures, or offers or payments of anything of value.

SECTION 3.25 Condition of Track and Bridges. True and complete copies of all periodic Track and bridge inspections and exemption reports in the possession or under the control of the Company or the Company's agents describing the condition of all of the Track and bridges owned or operated by the Company have been provided to the Buyer.

. All of the Track and bridges owned or operated by the Company are maintained and operated in material compliance with all applicable Laws, requirements of grants, loan documents or any other contracts, except as otherwise indicated on Section 3.25 of the Disclosure Schedule.

SECTION 3.26 Grants. Section 3.26 of the Disclosure Schedules attached hereto contains an accurate and complete list of all Federal and state grants (the "Grants") received or to be received by the Company and includes (a) the original amount of each Grant; and (b) with respect to each such Grant: (i) the funds received to date, and (ii) remaining amounts which may be received in the future and the basis for such future payment(s). Except as set forth on Section 3.26 of the Disclosure Schedules, all conditions precedent to the receipt of funds under such Grants, including future payments, have been satisfied in full. True, correct and complete copies of each Grant and any submissions, applications, notices, and/or other correspondence related to any Grant, including all amendments thereto, have been furnished to the Buyer.

SECTION 3.27 Customers and Suppliers. Section 3.27 of the Disclosure Schedules sets forth a list of the ten (10) largest customers (the "Top Customers") as measured by the annual carloads as of December 31, 2021 and the ten (10) largest suppliers of the Company (the "Top Suppliers"), as measured by the dollar amount of payments to suppliers or purchases therefrom, during the twelve (12) month period ended December 31, 2021, in each case showing the applicable carloads and purchases by and payments to the Company from and to each such supplier and customer during such periods. Since the date of the Balance Sheet, no Top Customer or Top Supplier has terminated its relationship with the Company, and no such customer or supplier has notified the Company in writing or, to the knowledge of each Seller, orally, that it (a) intends to terminate its relationship with the Company or (b) will otherwise materially and adversely modify its business relationship with the Company. There have been no material disputes or controversies with any Top Customer or Top Supplier.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer hereby represents and warrants to Sellers as follows:

SECTION 4.1 Corporate Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of its formation and has all necessary company power and authority to own its properties, rights and assets and to conduct its business as now conducted and is duly licensed or qualified to do business as a foreign company and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except where the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, materially impair the ability of the Buyer to perform any of its obligations under this Agreement.

SECTION 4.2 Authorization and Validity. The Buyer has the requisite power and authority to enter into and deliver this Agreement to which the Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Buyer of this Agreement and the performance by the Buyer of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action by the board of directors of the Buyer, and no other corporate proceedings on the part of the Buyer are necessary to authorize such execution, delivery and performance. This Agreement have been duly executed and delivered by the Buyer and, assuming the due authorization, execution and delivery of this Agreement by the other parties thereto, this Agreement constitute the Buyer's valid and binding obligation enforceable against the Buyer in accordance with its terms.

SECTION 4.3 No Conflict or Violation. The execution, delivery and performance by the Buyer of this Agreement to which it is a party and the transactions contemplated hereby and thereby do not and will not (i) violate or conflict with any provision of the Certificate of Incorporation or By-laws of the Buyer, (ii) violate any order, judgment or decree of any Governmental Entity applicable to the Buyer or (iii) violate, conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default, termination or right of termination under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Buyer is a party or by which it is bound or to which any of its properties, rights or assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to a right thereunder to require any payment to be made by the Buyer, or result in the creation or imposition of any Lien upon any of the assets, properties or rights of the Buyer, except in the cases of clauses (ii) and (iii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on the Buyer's ability to consummate the transactions contemplated hereby.

SECTION 4.4 Consents and Approvals. Neither the execution and delivery of this Agreement to which the Buyer is a party, by the Buyer nor the consummation of the transactions contemplated hereby and thereby by the Buyer require any consent, waiver, approval, license, authorization or permit of, or filing with or notification to, any Person, except as set forth on Section 4.4 of the Disclosure Schedules.

SECTION 4.5 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer for which the Sellers would be liable.

SECTION 4.6 Financial Ability. The Buyer will have at the Closing sufficient cash to enable it to pay the Purchase Price as and when it becomes due. Notwithstanding anything in this Section 4.6 or elsewhere in this Agreement to the contrary, the Buyer affirms that it is not a condition to the Closing or to any of its obligations under this Agreement that it obtains financing for or related to any of the transactions contemplated by this Agreement.

SECTION 4.7 Investment Representation; Independent Investigation.

(a) The Buyer is acquiring the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws.

(b) The Buyer has conducted its own independent investigation, review and analysis of the Business, the results of operations, prospects, condition (financial and otherwise) and assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company for such purpose. The Buyer acknowledges and agrees that: (i) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, the Buyer has relied solely upon its own investigation and the express representations and warranties of the Sellers set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedule); and (ii) none of Sellers, the Company or any other Person has made any representation or warranty as to Sellers, the Company or this Agreement, except as expressly set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedule).

ARTICLE 5. COVENANTS OF SELLERS.

Sellers hereby covenant as follows:

SECTION 5.1 Conduct of Business Before the Closing Date.

(a) During the period from the date of this Agreement to the Closing, except as otherwise expressly provided in this Agreement, Sellers shall cause the Company to conduct business only in the ordinary course consistent with past practice and in compliance in all material respects with applicable Laws. Each Seller shall use its commercially reasonable efforts to maintain and preserve intact its assets, the present organization of the Company, the Business, keep available the services of the present officers and employees of the Company and preserve relationships with customers, suppliers, vendors, licensors, licensees, contractors, distributors and others having business dealings with the Company. Without limiting the generality of the foregoing and except as set forth on Section 5.1(a) of the Disclosure Schedules, from the date of this Agreement to the Closing, Sellers shall not permit the Company to, and the Company shall not, in each case, without the prior written consent of the Buyer:

- (i) mortgage, pledge or subject to any material Lien, any material portion of its assets, except Permitted Liens;
- (ii) sell, assign or transfer any of its tangible assets, other than sales in the ordinary course of business;
- (iii) acquire by merger or consolidate with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;
- (iv) adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (v) sell, assign, transfer or license any material Intellectual Property other than licenses granted to distributors in the ordinary course of business;
- (vi) enter into any transactions with any Affiliate outside the ordinary course of business;
- (vii) issue, sell or transfer any of its equity securities or warrants, options or other rights to acquire its equity securities or declare, set aside or pay any non-cash dividend or made any non-tax distribution with respect to its equity securities or redeemed, purchased or otherwise acquired any of its equity securities;
- (viii) make any loan to, or enter into any other material transaction with, any of its Affiliates, the members of its board of Directors or its executive officers outside the ordinary course of business;
- (ix) enter into any employment contract;
- (x) make any material change in employment terms (including compensation) for any of its directors or executive officers or for any employees;
- (xi) adopt, amend or terminate any Plan or agree to provide any compensation or benefits pursuant to any plan, agreement or arrangement that would constitute a Plan if adopted;
- (xii) make any material capital investment in, or any material loan to, any other Person other than as set forth in capital expenditure budgets of the Company;
- (xiii) make any capital expenditures (or commitments therefor), except in the ordinary course of business;
- (xiv) effect any split, recapitalization, reclassification or similar change in the capitalization of the Company;

(xv) effect any amendments to any charter, by-laws or other organizational document of the Company; or

(xvi) fail to comply with any Law or with its obligations under any Material Contract;

(xvii) fail to maintain its books and records in accordance with past practices;

(xviii) accelerate or decelerate the Company's accounts receivables or accounts payable or otherwise operate the Business outside of the ordinary course of business as it relates to accounts receivable and accounts payable;

(xix) modify, amend, or terminate any insurance policies,
;

(xx) enter into, modify, amend or terminate any Material Contract;

(xxi) take any action that would result in the cancellation, modification, termination or suspension of any License and Permit.

(xxii) stop payment on any debt, Taxes and other obligations when due;

(xxiii) create, incur, assume or guarantee or otherwise become responsible for any Indebtedness applicable to the Company, in each case, except in the ordinary course of business;

(xxiv) make any material change in any method of accounting or accounting practice of the Company, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(xxv) change in its accounting policies or revenue recognition policies, including in applying ASC 606 – Revenue From Contracts With Customers;

(xxvi) change any Tax election or method of accounting or reporting for Tax purposes, file any amended Tax Return, enter into any closing agreement, settle any Tax claim, assessment or audit, surrender any right to claim a refund of Taxes, extend or waive the limitation period applicable to any Tax claim or assessment or changed accounting bases, practices, policies or procedures;

(xxvii) terminate operations on a rail line that may result in a liability to refund grant receipts;

(xxviii) commence or settle (i) any Action by or against the Company or (ii) any Action that relates to the transactions contemplated hereby; or

(xxix) enter into any agreement or commit to do, or resolve, authorize or approve any of the foregoing, or any action or omission that would result in any of the foregoing.

(b) During the period from the date hereof to the Closing Date, Sellers shall cause the Company to (i) prepare and timely file all Tax Returns (“Post-Signing Returns”) required to be filed (taking into account any valid extensions obtained in the ordinary course of business) in a manner consistent with the past practice of the Company, (ii) timely pay all Taxes due and payable, whether or not shown on such Post-Signing Returns, and (iii) promptly notify the Buyer of any written notice of Action pending against or with respect to the Company in respect of any material Tax matters (or any significant developments with respect to ongoing Actions in respect of such material Tax matters).

SECTION 5.2 Consents and Approvals.

(a) Sellers shall, and Sellers shall cause the Company to, timely make any required filings with, and use reasonable efforts to obtain requisite consents and approvals of, any Governmental Entity (

with respect to the transactions contemplated hereby (including a request for early termination of the waiting period thereunder), and shall thereafter promptly respond to all requests received from such Governmental Entity for additional information or documentation; provided, that the Buyer shall not be required to commit to or effect, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such of its or its Affiliates’ assets or operations, and/or of the assets or operations of the Company, as is required to be sold, divested or disposed of, including entering into any agreement required to be entered into by any Governmental Entity in connection therewith, in order to obtain any required regulatory approval or to avoid the commencement of any Action seeking, and/or to avoid entry of, and/or to effect the dissolution of, any Governmental Order that would have the effect of materially delaying or prohibiting the consummation of the transactions contemplated hereby.

(b) As soon as practicable after the execution of this Agreement, _____, Sellers shall, and shall cause the Company to, at the cost and expense of Sellers, (i) use reasonable best efforts to obtain all necessary consents, waivers, exemptions, authorizations, orders and approvals of all Persons required in connection with the execution, delivery and performance by Sellers of this Agreement and the consummation of the transactions contemplated hereby including any third party consents under any Material Contract, if any, and execution of estoppel certificates by lessors under any Leased Real Property for which consent to transfer is necessary, if any, and (ii) diligently assist and cooperate with the Buyer in preparing and filing all documents required to be submitted by the Buyer to any Governmental Entity, including the STB, in connection with such transactions and in obtaining any consents, waivers, authorizations, orders or approvals of Governmental Entities that may be required to be obtained by the Buyer in connection with such transactions, which assistance and cooperation shall include timely furnishing to the Buyer all information concerning any Seller and the Company that counsel to the Buyer reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, authorization or approval.

(c) The Buyer shall cooperate and use commercially reasonable efforts to assist Sellers in giving such notices and obtaining any consents and estoppel certificates; provided, however, that the Buyer shall have no obligation to give any guarantee or other consideration of any nature in connection with any such notice, consent or estoppel certificate or to consent to any change in the terms of any agreement or arrangement that the Buyer may deem adverse to the interests of the Buyer, the Company or the Business. Sellers shall keep the Buyer reasonably informed as to the status of obtaining any consents and estoppel certificates.

(d) Sellers and the Buyer agree that, in the event that any consent, approval or authorization is necessary or desirable to preserve for the Business or the Company, any right or benefit under any License and Permit, Contract or other arrangement to which any Seller or the Company is a party is not obtained prior to the Closing, such Seller will, subsequent to the Closing, cooperate with the Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, such Seller shall use its best efforts to provide the Buyer or the Company, as the case may be, with the rights and benefits of the affected License and Permit, Contract or other arrangement for the term of such License and Permit, Contract or other arrangement, and, if such Seller provides such rights and benefits, the Buyer or the Company, as the case may be, shall assume the obligations and burdens thereunder.

SECTION 5.3 Access to Properties and Records. Sellers shall, and shall cause the Company to, (a) afford to the Buyer, and to the accountants, counsel, consultants and other representatives of the Buyer, upon reasonable prior notice access during normal business hours throughout the period prior to the Closing Date to all properties, assets, books, Contracts, commitments, title insurance policies currently in effect with respect to the Owned Real Property and files and records of the Company, (b) furnish to the Buyer and its representatives such financial, operating and other data and information related to the Company as Buyer or any of its representatives may reasonably request; and (c) instruct the representatives of each Sellers and the Company to cooperate with the Buyer in its investigation of the Company, and, during such period, shall furnish promptly to the Buyer all other information concerning the Company and its properties and personnel as the Buyer may from time to time reasonably request; provided, however, that any such access shall be conducted at a reasonable time and in such a manner as not to interfere unreasonably with the operations of the business of the Company and neither the Buyer nor its representatives shall perform intrusive environmental testing activities or otherwise disturb the Owned Real Property or Leased Real Property without the prior written consent of Sellers in each instance. Notwithstanding the foregoing, the Company shall be required to disclose any information to the Buyer or their authorized representatives if doing so would violate any Law to which the Company is subject.

SECTION 5.4 Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of Sellers or the Company, Sellers shall use, and shall cause the Company to use, their commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby on the Closing Date.

SECTION 5.5 Intellectual Property.

(a) Concurrent with or immediately after the Closing, each Seller shall, and shall cause its Affiliates to take all actions necessary to assign, transfer, convey and record in the name of the Company (or their designees) all of such Seller's or its Affiliates' right, title and interest in all Intellectual Property that is used primarily in the Business (collectively, the "Transferred IP"); provided, however, that (x)

(b) At the Buyer's request, for one-hundred eighty (180) days after the Closing, each Seller shall display on all of its and its Affiliates' websites and social media sites that reference the Business a mutually-agreed link to websites and social media sites of Buyer or its designee and a mutually-agreed statement about the transactions herein.

SECTION 5.6 Intercompany Arrangements.

(a) Prior to the Closing, Sellers shall cause any contract or arrangement that is disclosed in Section 3.19 of the Disclosure Schedules, other than those Contracts or arrangements set forth in Section 5.6 of the Disclosure Schedules, to be terminated or otherwise amended to exclude the Company as a party thereto.

(b)

(c)

(d) If any Seller or any of its Affiliates receives any payment related to the Business after the Closing, such Seller agrees to promptly remit (or cause to be promptly remitted) such funds to the Buyer to the extent related to the Business. The Buyer shall have the right and authority, from and after the Closing, to collect for its own account all receivables of the Business and any of the receivables of the Company and to endorse with the name of any Seller any checks or drafts received with respect to any Closing Receivables.

SECTION 5.7 Insurance. Sellers shall not take any action or omit taking any action that would reasonably be expected to be adverse to the ability of the Company to have the benefit of the Existing Policies following the Closing. In addition, Sellers shall or shall cause the Company to notify the carriers under the Existing Policies of all matters of which Sellers have or obtain knowledge at or prior to Closing that would give rise to claims covered under the Existing Policies (with such notice to be given as soon as reasonably practicable upon obtaining such knowledge). From and after the Closing, each Seller and its Affiliates shall cooperate with and permit the Company to seek and obtain coverage under each of the Existing Policies for occurrences that took place prior to the Closing, and each Seller and its Affiliates shall not release, commute, buy-back, or otherwise eliminate the coverage available to the Company or the Business under any such Existing Policy.

SECTION 5.8 Risk of Loss. The risk of loss or damage by fire or other casualty to any Owned Real Property, any Leased Real Property or any other assets of the Company before Closing is assumed by Sellers. In the event that any Owned Real Property, Leased Real Property or any other assets of the Company shall suffer any such loss or damage, Sellers agree to, at Buyer's election (in its reasonable discretion), (i) repair the damage at its sole cost and expense before the Closing to the extent the insurance proceeds are available for such purpose, (ii) make an appropriate reduction in the Purchase Price based on a reasonable approximation of the cost of such repair as agreed by the Parties or (iii) irrevocably assign to the Buyer the right to the proceeds of any insurances covering such fire, casualty or injury; provided, however, that in the case of (i) and (ii) in the preceding sentence, the Buyer shall assign to Sellers its rights or the rights of the Company, if any, to receive such proceeds up to the amount of costs incurred by any Seller (in the case of clause (i)) or the amount of the reduction in Purchase Price (in the case of clause (ii)).

SECTION 5.9 Resignation of Officers and Directors. Effective as of the Closing Date, Sellers shall either cause the directors and officers of the Company to resign or remove them from such positions. Sellers shall deliver such written resignations to the Buyer.

SECTION 5.10 Non-Competition. (a) Each Seller hereby agrees that such Seller shall not and shall not permit any of its Affiliates or any of their respective representatives to: (i)

; (ii)

; (iii) call upon, contact or communicate with, solicit, contract with, or enter into any Contract with, divert or attract, or attempt to do so, or do or accept business with, any Top Customer or, to the actual knowledge of such Seller, any prospective customer of the Company as of the Closing Date; (iv) cause, induce or encourage any Top Customer, Top Supplier or railroad partner, or any other Person who has a material business relationship with the Company as of the Closing Date, to terminate or modify any such

relationship; and (v)

(b) The Parties hereto recognize that the laws and public policies of the various states of the United States may differ as to the validity and enforceability of covenants similar to those set forth in this Section 5.10. It is the intention of the Parties that the provisions of this Section 5.10 be enforced to the fullest extent permissible under the laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modification to conform to such laws or policies) of any provisions of this Section 5.10 shall not render unenforceable, or impair, the remainder of the provisions of this Section 5.10. Accordingly, if any provision of this Section 5.10 shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall be deemed to apply only with respect to the operation of such provision in the particular jurisdiction in which such determination is made and not with respect to any other provision or jurisdiction.

(c) The Parties to this Agreement acknowledge and agree that any remedy at law for any breach of the provisions of this Section 5.10 would be inadequate, and each Seller hereby consents to, without intending to limit any additional remedies that may be available, the granting by any court of an injunction or other equitable relief, without the necessity of actual monetary loss or inadequacy of legal remedy being proved, in order that the breach or threatened breach of such provisions may be effectively restrained.

SECTION 5.11 Bonus Payments.

SECTION 5.12 Further Assurances; Personal Items. From time to time after the Closing, without additional consideration, each of the Parties hereto will (or, if appropriate, cause their Affiliates to) execute and deliver such further instruments and take such other action as may be necessary to make effective the transactions contemplated by this Agreement. If any Party to this Agreement shall following the Closing have in its possession any asset or right that under this Agreement should have been delivered to the other, such Party shall promptly deliver such asset or right to the other. The Buyer agrees Sellers shall be entitled to remove from the offices of the Company photographs, plaques, and personal items (not related to the operation of the Business) solely to the extent the value is *de minimis* and is not reflected on the Balance Sheet.

SECTION 5.13 Release by the Sellers. As of the Closing, each Seller and its Affiliates, successors and assigns (in each case, solely in their capacity as such) (each, a “Releasing Person”) hereby unconditionally release and forever discharge the Buyer and the Company, from all debts, demands, causes of action, suits, covenants, torts, damages and any and all claims, defenses, offsets, judgments, demands and liabilities whatsoever, of every name and nature, both at law and in equity, known or unknown, accrued or unaccrued that have been or could have been asserted against the Company, which any Releasing Person has or ever had, which arises out of or

in any way relates to events, circumstances or actions occurring, existing or taken prior to or as of the Closing Date in respect of matters related to the Company

);
provided that Sellers and the Buyer acknowledge and agree that this Section 5.13 does not apply to and shall not constitute a release of any rights or obligations arising under this Agreement that by their terms survive the Closing.

SECTION 5.14 FCC Radio License. The Buyer and Sellers shall, and prior to the Closing Sellers shall cause the Company to, cooperate to obtain the consent of the United States Federal Communications Commission (the “FCC”) pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 for the transfer of control of the radio license authorization held by the Company under call sign [●]. Promptly following execution of this Agreement, Sellers shall initiate the electronic filing of FCC Form 603, “FCC Application for Assignments of Authorization or Transfers of Control,” through the FCC’s Universal Licensing System, and shall be responsible for the filing fees (in proportion to their Percentage Interests) associated with such application. The Buyer shall electronically approve and sign the FCC Form 603 application through the Universal Licensing System and shall, within thirty (30) days after the Closing Date, notify the FCC of the consummation of the transfer of control through the filing of FCC Form 603, Schedule D.

SECTION 5.15 Employee Benefits. Prior to the Closing Date, Sellers shall take, and shall cause the Company to take, all necessary actions to effect the cessation of, and withdrawal from, participation by the Company as a participating employer in all Sellers’ Benefit Plans, with such actions to be effective as of the Closing Date. Sellers shall be responsible for the provision of group health plan continuation coverage pursuant to COBRA with respect to each Person who is an “M&A qualified beneficiary,” as defined in Treasury Regulations Section 54.4980B-9, with respect to the transactions contemplated by this Agreement, who experiences a “qualifying event” as defined in Section 4980B(f)(3) of the Code. Sellers shall be responsible for all liabilities with respect to all Seller Benefit Plans.

SECTION 5.16 Cash.

SECTION 5.17 Payroll Processing. From and after the Closing through December 31, 2022, the Sellers shall provide, or cause to be provided, payroll administration services, including preparation of and filing of year-end payroll reports with the appropriate agencies, for the Company in such a manner as is available to the Company as of the Closing. The Company shall reimburse the Sellers for the reasonable and documented out-of-pocket expenses including third party fees and expenses in connection with the provision of such payroll administration services within 30 days after the Company’ receipt of a valid invoice from the Sellers for such services.

SECTION 5.18 Supermajority Vote; Waiver of Right of First Refusal.

SECTION 5.19 Section 280G.

ARTICLE 6. COVENANTS OF THE BUYER.

The Buyer hereby covenants as follows:

SECTION 6.1 Consents and Approvals.

(a) The Buyer shall, at its cost and expense, (i) use commercially reasonable efforts to obtain all necessary consents, waivers, exemptions, authorizations, orders and approvals of all Governmental Entities required in connection with the execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby and (i) diligently assist and cooperate with Sellers' Representative in preparing and filing all documents required to be submitted by Sellers to any Governmental Entities in connection with such transactions and in obtaining any consents, waivers, exemptions authorizations, orders or approvals of Governmental Entities that may be required to be obtained by Sellers in connection with such transactions, which assistance and cooperation shall include timely furnishing to Sellers' Representative all information concerning the Buyer that counsel to Sellers' Representative reasonably determines is required to be included in such documents or would be helpful in obtaining any such required consent, waiver, exemption, authorization or approval.

(b) , the Buyer shall be solely responsible, but with the cooperation of Sellers, at the Buyer's sole cost and expense, for obtaining an exemption from, the STB for the transactions contemplated by this Agreement. Within ten (10) Business Days following execution of this Agreement, Buyer shall file with the STB a Notice of Exemption pursuant 49 C.F.R. 1180.2(d)(2) to acquire control of the Company as required under 49 U.S.C, 11323(a). Buyer shall concurrently file with the STB a motion for protective order pursuant to 49 C.F.R. 1104.14(b) to allow Buyer to file an unredacted copy of this Agreement under seal. Sellers shall cooperate with Buyer in preparing Buyer's filings with the STB, and Buyer shall afford Sellers' Representative the opportunity to review and comment on the draft filings a reasonable time in advance of their being filed with the STB.

SECTION 6.2 Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement insofar as such matters are within the control of the Buyer, the Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to

do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby on the Closing Date.

SECTION 6.3 No Benefit to Third-Party. Nothing in this Agreement, express or implied, is intended to confer upon any current or former employee, director, officer or consultant any rights, remedies or obligations under or by reason of this Agreement, including this Article 6.

SECTION 6.4 Post-Closing Employment Matters.

ARTICLE 7. INDEMNIFICATION.

SECTION 7.1 General.

SECTION 7.2 Indemnification By Sellers.

(a)

;

(b)

; or

(c)

.

SECTION 7.3 Indemnification By The Buyer.

:

(a)

; or

(b)

.

SECTION 7.4 Certain Limitations. The indemnification provided for in Section 7.2 and Section 7.3 shall be subject to the following limitations:

(a)

(b)

(c)

(d)

SECTION 7.5 Indemnification Procedures. The party making a claim under this Article 7 is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article 7 is referred to as the “Indemnifying Party”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is a Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 7.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 7.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third

Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 7.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Company’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

SECTION 7.6 Payments; Indemnification Escrow Fund.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 7, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding the date such payment has been made at a rate per annum equal to five percent (5%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

(b) Any Losses payable to a Buyer Indemnitee pursuant to this Article 7 shall be satisfied: (i) from the Indemnification Escrow Fund; and (ii) to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnitee in the Indemnification Escrow Fund, from Sellers severally on a pro rata basis, in accordance with their respective Percentage Interests.

SECTION 7.7 Tax Treatment of Indemnification Payments.

SECTION 7.8 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its representatives) or by reason of the fact that the Indemnified Party or any of its representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Article 8 or Article 9 as the case may be.

SECTION 7.9 Exclusive Remedies.

, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 7. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article 7. Nothing in this Section 7.9 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

ARTICLE 8. CONDITIONS PRECEDENT TO PERFORMANCE BY SELLERS.

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than Section 8.3) may be waived (in writing) in whole or in part by Sellers in their sole discretion at or prior to the Closing Date:

SECTION 8.1 Representations and Warranties of the Buyer. All representations and warranties made by the Buyer in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Buyer on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date;

SECTION 8.2 Performance of the Obligations of the Buyer. The Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date.

SECTION 8.3 No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity which declares this Agreement invalid or unenforceable or which prevents the consummation of the transactions contemplated hereby shall be in effect.

SECTION 8.4 Closing Deliveries by the Buyer. At the Closing, the Buyer shall deliver (or caused to be delivered) to Sellers:

- (i) the Closing Payment Amount by wire transfer in immediately available funds as provided in Section 2.1(c);
- (ii) a certificate of a duly authorized officer of the Buyer certifying as to the matters set forth in Section 8.1 and Section 8.2; and
- (iii) the Escrow Agreement, duly executed by the Buyer.

ARTICLE 9. CONDITIONS PRECEDENT TO PERFORMANCE BY THE BUYER.

The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which may be waived (in writing) in whole or in part by the Buyer in its sole discretion at or prior to the Closing Date:

SECTION 9.1 Representations and Warranties of Sellers. All representations and warranties made by Sellers (on behalf of Sellers or the Company) in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by Sellers (on behalf of Sellers or the Company) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by Sellers (on behalf of Sellers or the Company) on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by Sellers (on behalf of Sellers or the Company) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date.

SECTION 9.2 Performance of the Obligations of Sellers. Sellers shall have performed (or caused to be performed) in all material respects all obligations required under this Agreement to be performed by Sellers or the Company on or before the Closing Date.

SECTION 9.3 No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity, which declares this Agreement invalid or unenforceable or prevents the consummation of the transactions contemplated hereby shall be in effect; and no action or proceeding before any Governmental Entity shall have been instituted or threatened by any Governmental Entity or by any other Person which seeks to prevent or delay the consummation of the transactions contemplated by this Agreement or which challenges the validity or enforceability of this Agreement, and which in either such case has a reasonable likelihood of success in the reasonable opinion of counsel to the Buyer.

SECTION 9.4 STB. Any exemption, authorization or approval of the transactions contemplated by this Agreement shall have been obtained from the STB and such exemption, authorization or approval shall be in full force and effect, and neither the STB nor any other Governmental Entity shall have imposed any conditions or obligations on the transactions contemplated by this Agreement (other than any immaterial condition or obligation).

SECTION 9.5 Material Consents. Sellers shall have received, each in form and substance satisfactory to the Buyer, the third-party consents and estoppel certificates necessary or desirable for the consummation of the transactions contemplated by this Agreement as set forth in Section 9.5 of the Disclosure Schedules, if any.

SECTION 9.6 W-9. Each Seller shall deliver to the Buyer at the Closing a duly completed and executed certificate Internal Revenue Service Form W-9, dated as of the Closing Date.

SECTION 9.7 No Material Adverse Effect. No event or events shall have occurred which, individually or in the aggregate, have had, or could reasonably be expected to have, a Material Adverse Effect.

SECTION 9.8 Release of Liens. Sellers shall have obtained written agreements and/or instruments sufficient to fully release each of the Company from all obligations and liabilities relating to indebtedness for borrowed money, and further to release all Liens on the Shares and the Company's property, rights and assets (including via executed and filed UCC-3s); provided that any such agreements and/or instruments shall be in form and substance reasonably satisfactory to the Buyer and shall be obtained by Sellers without the Buyer or the Company incurring any liabilities or obligations.

SECTION 9.9 Material Contract. No event or events shall have occurred which, individually or in the aggregate, have resulted in, or could reasonably be expected to result in, the cancellation, modification, termination or suspension of

SECTION 9.10 Closing Deliveries by Sellers. At the Closing, Sellers shall have delivered or caused to be delivered to the Buyer:

(a) stock certificates or another appropriate instrument of transfer evidencing all of the Shares, duly endorsed in blank or accompanied by stock powers duly executed in blank, in a form satisfactory to the Buyer, such shares being delivered free and clear of all Liens with all required stock transfer tax stamps affixed thereto;

(b) a receipt for the Closing Payment Amount;

(c) a duly executed certificate of each Seller certifying as to the matters set forth in Section 9.1 and Section 9.2;

(d) a duly executed certificate certifying the non-foreign status of each Seller as set forth in Section 9.6;

(e) the duly executed resignations of all directors and officers of the Company;

(f) evidence satisfactory to the Buyer that each Seller shall have paid and discharged the Excluded Liabilities, including the Bonus Payments;

(g) evidence of termination of any intercompany arrangements, as contemplated in Section 5.6(a);

(h) the Estimated Closing Working Capital Statement contemplated in Section 2.3(a);

(i) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller, certifying that attached thereto are true and complete copies of (a) the organizational documents of the Company, (b) all resolutions adopted by the board of directors of such Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that

all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(j) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller certifying the names and signatures of the officers of such Seller authorized to sign this Agreement and the Ancillary Agreements;

(k) the Escrow Agreement, duly executed by the Sellers' Representative and the Escrow Agent; and

(l) a good standing certificate for the Company, in each case dated within five (5) Business Days prior to the Closing Date.

ARTICLE 10. TERMINATION.

SECTION 10.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by written notice at any time before the Closing:

(a) by mutual consent of Sellers' Representative and the Buyer;

(b) by the Buyer if any Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) calendar days after written notice to such Seller such that the conditions set forth in Section 9.1 or Section 9.2 hereof, as the case may be, will not be satisfied; provided that the Buyer is not then in material breach of the terms of this Agreement; provided, further, that no cure period shall be required for a breach that by its nature cannot be cured;

(c) by Sellers' Representative if the Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within thirty (30) calendar days after written notice to the Buyer such that the conditions set forth in Section 8.1 or Section 8.2 hereof, as the case may be, will not be satisfied; provided that each Seller is not then in material breach of the terms of this Agreement; provided, further, that no cure period shall be required for a breach that by its nature cannot be cured;

(d) by Sellers' Representative or the Buyer if there shall be a final, non-appealable order of a court of competent jurisdiction in the United States in effect preventing, restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated hereby; provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party whose failure to perform any of its obligations under this Agreement has been the primary cause of such order;

(e) by the Buyer if the exemption, authorization or approval of the STB shall not have been granted or become effective and all reasonably available appeals of such determination shall have been taken and are unsuccessful; or

(f) by Sellers' Representative or the Buyer if the Closing shall not have been consummated prior to three (3) months after the date hereof; provided that the right to terminate

this Agreement under this Section 10.1(f) shall not be available to Sellers' Representative if the failure of the Closing to have occurred was primarily due to the failure of any Seller to perform any of its obligations under this Agreement.

SECTION 10.2 Effect of Termination. Except as provided herein, in the event of the termination of this Agreement as provided in Section 10.1 hereof, this Agreement shall forthwith become void and have no effect, and there shall be no liability or obligation on the part of Sellers or the Buyer, or their respective officers, directors, stockholders, members, partners or other Persons under their control (including the Company). If this Agreement is terminated as provided herein, except as otherwise expressly set forth herein, no party to this Agreement shall have any liability hereunder to any other party, except for any willful and intentional breach by such party of the terms and provisions of this Agreement prior to such termination. The provisions of Article 12 shall survive any termination hereof pursuant to Section 10.1.

ARTICLE 11. TAX MATTERS.

The following provisions shall govern the allocation of responsibility between the Buyer and Sellers for certain tax matters following the Closing Date:

SECTION 11.1 Tax Returns.

(a) The Sellers shall, prepare or cause to be prepared and file or cause to be filed (in a manner consistent with past practices) all Tax Returns of the Company for any Pre-Closing Tax Period. The Sellers shall deliver to Buyer a copy of any such Tax Return twenty (20) calendar days prior to the due date (including extensions) for the filing of such Tax Return for review and approval (which approval shall not be unreasonably withheld, conditioned or delayed). Sellers, severally on a pro rata basis in accordance with their respective Percentage Interests, shall pay to the Buyer an amount equal to the Taxes shown as due and payable on any such Tax Return no later than three (3) Business Days prior to the due date (including extensions) for the filing such Tax Return.

(b) The Buyer shall, prepare or cause to be prepared and file or cause to be filed (in a manner consistent with past practices) all other Tax Returns of the Company, provided that the applicable Tax Returns have not been filed by any Seller or its Affiliates pursuant to Section 11.1(a). Sellers, severally on a pro rata basis in accordance with their respective Percentage Interests, shall pay to the Buyer an amount equal to the Taxes shown as due and payable on any such other Tax Return that are allocable to the Pre-Closing Tax Period no later than three (3) Business Days prior to the due date (including extensions) for the filing such Tax Return.

(c) For purposes of Section 11.1(a) and Section 11.(b), whenever it is necessary to determine the liability for Taxes of the Company for a Straddle Period:

(i) Taxes imposed on a periodic basis (such as real, personal and intangible property Taxes) shall be prorated between the Buyer and Sellers as of the Closing by multiplying the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such taxable period ending on and including the Closing

Date and the denominator of which is the number of calendar days in the entire relevant taxable period; and

(ii) all other Taxes for the Pre-Closing Tax Period (such as franchise Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)) shall be determined as if the Company had a taxable year or period that ended on and included the Closing Date. For purposes of this Section 11.1(c)(ii), to the extent permissible under applicable Law, all Transaction Expenses incurred by the Company at the direction and for the benefit of any Seller shall be included in the relevant Pre-Closing Tax Period.

SECTION 11.2 Tax Cooperation. The Buyer and Sellers shall reasonably cooperate, and shall cause their respective Affiliates (including the Company), officers, employees, agents, auditors and representatives to reasonably cooperate (including by maintaining in accordance with the applicable record retention policies of the Buyer or Sellers, as applicable, and making available to each other all relevant records and information), in preparing and filing all Tax Returns and in resolving all disputes and audits for all taxable periods. Such cooperation shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Sellers and the Buyer agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations (and, to the extent notified by the Buyer or any Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority. The Buyer and Sellers further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated hereby).

SECTION 11.3 Transfer Taxes. If applicable, all transfer, documentary, sales, use, registration and similar Taxes (including all applicable real estate transfer Taxes and stock transfer Taxes) and related fees (including any penalties, interest and additions to Tax) incurred in connection with the transactions contemplated hereby shall be paid

and Sellers and the Buyer shall cooperate in a timely manner in preparing and filing all Tax Returns as may be required to comply with the provisions of such Tax Laws.

SECTION 11.4 Tax Sharing Agreement. Any Tax sharing or Tax indemnification agreement or similar contract or arrangement (whether written or not) and all powers of attorney with respect to or involving the Company shall be terminated as of the Closing Date and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

ARTICLE 12. MISCELLANEOUS.

SECTION 12.1 Successors and Assigns. Except as otherwise provided in this Agreement, no Party hereto shall assign this Agreement or any rights or obligations hereunder

without the prior written consent of the other Parties hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that the Buyer may assign any or all of its rights and obligations hereunder to any direct or indirect Affiliate of the Buyer; provided, further, however, that no such assignment shall reduce or otherwise vitiate any of the obligations of the Buyer hereunder. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties and no assignment shall relieve any Party of any obligation or liability under this Agreement.

SECTION 12.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the 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). Each Party agrees to commence any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby in any federal court sitting in the City of Wilmington, Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in any Delaware state court.

Each Party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth below shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 12.2.

SECTION 12.3 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND COVENANTS THAT IT WILL NOT ASSERT ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION, OR SUIT ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY ACKNOWLEDGES THIS SECTION CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT RELIES IN ENTERING THIS AGREEMENT.

SECTION 12.4 Expenses. Sellers shall pay (a) any financial advisory, investment banking, legal, accounting and other fees, expenses and costs incurred by or on behalf of Sellers or the Company up to the Closing Date (or thereafter) in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, (b)

(c) the aggregate accruals for fiscal year 2022 annual incentive, bonus and commission

compensation, in each case, together with all payroll, employment and other Taxes thereon (it being understood and agreed that if there are no accruals for such amounts, the parties shall use a pro rata amount (based on calendar days elapsed) of the Bonus Payments from 2021) and (d) all Excluded Liabilities (collectively, the “Transaction Expenses”). The Buyer shall pay any legal, accounting and other fees, expenses and costs incurred by the Buyer up to the Closing Date in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Except as otherwise provided in this Agreement, all of the other fees, expenses and costs incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Party hereto incurring such fees, expenses and costs.

SECTION 12.5 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

SECTION 12.6 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the Party to whom notice is to be given, (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and confirmation of delivery is generated after completion of transmission, or if sent via email (with confirmation of transmission), (iii) when received by the addressee if sent through Federal Express or similar overnight courier or the express mail service maintained by the United States Postal Service or (iv) on the fifth day after mailing, if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the Party as follows:

If to Sellers' Representative:

Agracel, Inc.
Attention: R. Dean Bingham,
Chief Executive Officer
2201 North Willenborg Street, Suite 2
PO Box 1107
Effingham, IL 62401
Telephone: (217) 342-4443
Fax: (217) 342-3299
Email: dbingham@agracel.com

With a copy to:

Robert G. Grierson
Craig & Craig
1807 Broadway Avenue
PO Box 689
Mattoon, IL 61938-0689
Telephone: (217) 234-6481
Fax: (217) 258-8292
e-mail: rgg@craiglawn.net

If to the Buyer:

Regional Rail, LLC
c/o 3i RR LLC
One Grand Central Place
60 E. 42nd Street, Suite 4100,
New York, NY 10165
Attention: Benjamin Krause
Email: Benjamin.Krause@3i.com

With a copy to:

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Attention: William R. Kucera
Email: wkucera@mayerbrown.com

If to a Seller: As set forth on Exhibit A

Any Party may change its address for the purpose of this Section by giving the other Parties written notice of its new address in the manner set forth above.

SECTION 12.7 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Sellers' Representative and the Buyer hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

SECTION 12.8 Public Announcements. After the signing of this Agreement and prior to the Closing Date, Sellers shall not, and shall not permit the Company to make any press release or public announcement concerning this transaction without the prior approval of the Buyer unless a press release or public announcement is required by Law or the rules of any securities exchange on which such Party's securities are listed. Before any Seller makes any such announcement or other disclosure, it agrees to give the other Parties hereto prior notice and an opportunity to review and approve the proposed disclosure. For purposes of this Section 12.8, the term "public announcement" shall include communications with employees, customers and vendors of, and other parties with material commercial relationships with, any Seller and/or the Company, except as contemplated by this Agreement.

SECTION 12.9 Entire Agreement. This Agreement (including the Disclosure Schedules and the other Schedules attached hereto) contain the entire agreement and understanding among the Parties with respect to the transactions contemplated hereby and supersedes and replaces all prior agreements and understandings, oral or written with regard to such transactions. All Schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

SECTION 12.10 Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement to any Person other than the Parties and their respective successors and permitted assigns and any Person entitled to indemnity under Article 7. Nothing in this Agreement, express or implied, is intended to confer upon any current or former employee, director, officer or consultant any rights, remedies or obligations under or by reason of this Agreement, including Article 6. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Person to any Seller or the Buyer. No provision of this Agreement shall give any third parties any right of subrogation or action over or against any Seller or the Buyer.

SECTION 12.11 Scheduled Disclosures. Disclosure of any matter, fact or circumstance in a schedule to this Agreement shall be deemed to have been disclosed on all applicable Sections of the Disclosure Schedules to which such disclosure could relate or apply.

SECTION 12.12 Section and Paragraph Headings; Neutral Construction.

(a) The Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”.

SECTION 12.13 Knowledge. References in this Agreement to the “knowledge of each Seller” shall refer to the actual knowledge, after due inquiry of their direct reports, of each Seller.

SECTION 12.14 Access to Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by any Seller prior to the Closing, or for any other reasonable purpose,
, the Buyer shall: (A) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner consistent with the historical practices of the Company; and (B) upon reasonable notice, afford each Seller and its

agents reasonable access (including the right to make, at each Seller's expense, photocopies), during normal business hours, to such books and records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by the Buyer or the Company after the Closing, or for any other reasonable purpose, , each Seller shall: (A) retain the books and records (including personnel files) of such Seller which relate to the Company in a manner consistent with the historical practices of such Seller and its operations for periods prior to the Closing; and (B) upon reasonable notice, afford the Buyer or the Company and their agents reasonable access (including the right to make, at the Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither the Buyer nor any Seller shall be obligated to provide the other Party with access to any books or records (including personnel files) pursuant to this Section 12.14 where such access would violate any Law.

SECTION 12.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

SECTION 12.16 Specific Performance. The Parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

SECTION 12.17 Sellers' Representative.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

SELLERS:

AGRACEL, INC.

By: _____
Name: R. Dean Bingham
Title: Chief Executive Officer

R. DEAN BINGHAM

R. Dean Bingham

**FRANK & COMPANY CUSTODIAN F/B/O
JOHN M. SCHULTZ SELF DIRECTED ROTH
IRA**

By: _____
Name:
Title:

SHOAL CREEK LOGISTICS, LLC

By: _____
Name: Scott Lurkins
Title: Sole Member and Manager

JNJ, LLC

By: _____
Name:
Title:

DRAFT

CBK INVESTMENTS, LLC

By: _____

Name:

Title:

DRAFT

BUYER:

REGIONAL RAIL, LLC

By: _____

Name:

Title:

EXHIBIT A

SELLERS AND PERCENTAGE INTERESTS

Name of Seller	Notice Information	Number of Shares	Percentage Interest
Total	1,000	1,000	100.00%

EXHIBIT B
FORM OF THE ESCROW AGREEMENT

See attached.

EXHIBIT C

NET WORKING CAPITAL METHODOLOGY
(Illustrative Example as of September 30, 2022)

See attached.

VERIFICATION

I, Alfred M. Sauer, hereby verify under penalty of perjury that I am President and Chief Executive Officer of Regional Rail, LLC, that I have read the foregoing Notice of Exemption and know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information and belief.

/s/ *Alfred M. Sauer*

Alfred M. Sauer

Dated: November 18, 2022

VERIFICATION

I, Benjamin Krause, hereby verify under penalty of perjury that I am a partner of 3i RR LLC, that I have read the foregoing Notice of Exemption and know the facts asserted therein with respect to 3i RR LLC and its affiliates, and that the same are true as stated to the best of my knowledge, information and belief.

/s/ *Benjamin Krause*

Benjamin Krause

Dated: November 18, 2022