

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

October 31, 2023

307375

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

ENTERED
Office of Proceedings
October 31, 2023
Part of
Public Record

Re: **Docket No. FD 36735**
3i RR Holdings GP LLC, et al. and Regional Rail, LLC –
Control Exemption – Indiana Eastern Railroad, LLC

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 October 31, 2023. 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

TJL:tl

Attachment

FILED
October 31, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 31, 2023
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36735

3i RR HOLDINGS GP LLC, ET AL. AND REGIONAL RAIL, LLC
-- CONTROL EXEMPTION --
INDIANA EASTERN RAILROAD, LLC

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

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

Dated: October 31, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36735

3i RR HOLDINGS GP LLC, ET AL. AND REGIONAL RAIL, LLC
-- CONTROL EXEMPTION --
INDIANA EASTERN RAILROAD, LLC

**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)**

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 Indiana Eastern Railroad, LLC (“IERR”) through the purchase of all of the membership interests of IERR from its current owners. IERR is a Class III rail carrier which operates a rail line in Indiana and Ohio and, doing business as Ohio South Central Railroad (“OSCR”), on a separate, non-contiguous line in Ohio. Regional Rail currently directly controls, and 3i RR indirectly controls, eleven other Class III rail carriers in the eastern United States.

The rail lines of IERR 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 IERR 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 eleven Class III rail carriers:¹

Carolina Coastal Railway, Inc. (“CLNA”)
East Penn Railroad, LLC (“ESPN”)
Effingham Railroad Company (“EFRR”)
Florida Central Railroad Company, Inc. (“FCEN”)
Florida Midland Railroad Company, Inc. (“FMID”)
Florida Northern Railroad Company, Inc. (“FNOR”)
Illinois Western Railroad Company (“ILW”)
Middletown & New Jersey Railroad, LLC (“MNJ”)
Port Manatee Railroad LLC (“PMR”)
South Point & Ohio Railroad, Inc. (“SPOR”)
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

IERR is a Class III rail carrier which operates approximately 43 miles of rail line between Richmond, Indiana and Fernald, Ohio leased from CSX Transportation, Inc. (“CSXT”).³

¹ See *3i RR Holdings GP LLC, 3i 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 – Control Exemption – Effingham Railroad Company, Illinois Western Railroad Company and South Point & Ohio Railroad, Inc.*, Docket No. FD 36650 (STB served Dec. 2, 2022).

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 *Indiana Eastern Railroad, LLC – Lease and Operation Exemption – CSX Transportation, Inc.*, Docket No. FD 34727 (STB served Aug. 19, 2005). IERR’s lease with CSXT for this rail line was extended in 2019, and now runs to 2029. *Indiana Eastern Railroad, LLC – Lease and Operation Exemption – CSX Transportation, Inc.*, Docket No. FD 36305 (STB served May 31, 2019).

Doing business as OSCR, IERR also operates approximately 60 miles of rail line in south central Ohio owned by the Ohio Rail Development Commission (“ORDC”) and not connected to the first segment.⁴ IERR is equally owned by George Andres and Terry Respondek.

Pursuant to a Membership Interest Purchase Agreement to be entered into by Regional Rail, IERR and IERR’s current owners, Regional Rail proposes to acquire all of the existing equity interest of IERR and assume direct control of that carrier. 3i RR would assume indirect control of IERR. No significant changes in the rail services currently provided by IERR are anticipated as a result of the proposed transaction.

IERR’s lines do not connect with the lines of any existing Regional Rail carrier subsidiaries. Regional Rail subsidiaries do not currently conduct rail operations in the state of Indiana. One of Regional Rail’s existing subsidiaries (SPOR) operates in far south central Ohio, but its rail line is no closer than 30 miles to the OSCR lines operated by IERR.

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
300 Park Avenue, 23rd Floor
New York, NY 10165

⁴ See *Indiana Eastern Railroad, LLC, d/b/a Ohio South Central Railroad – Change in Operators Exemption – Rail Lines of the City of Jackson, Ohio, in Jackson, Vinton, and Ross Counties, Ohio*, Docket No. FD 35758 (STB served Sep. 6, 2013). At the time IERR began operating the OSCR lines, they were owned by the City of Jackson, Ohio. ORDC acquired the lines from the City of Jackson in 2021. *Ohio Rail Development Commission – Acquisition and Operation Exemption – City of Jackson, Ohio*, Docket No. FD 36537 (STB served Sep. 30, 2021).

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, IL 60606-3208
(312) 252-1508

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 IERR on or shortly after December 1, 2023.

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 IERR. The transaction will promote Regional Rail's strategic and growth objectives, and help sustain IERR's 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. IERR operates in its own name over rail property located in Indiana and Ohio, and as OSCR over rail property 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; EFRR and ILW operate in Illinois; FCEN, FMID, FNOR and PMR operate in Florida, MNJ operates in New York; SPOR operates in Ohio; and Tyburn operates in Pennsylvania.

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

Maps showing the rail lines of IERR 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 draft proposed Membership Interest Purchase Agreement to be entered into by Regional Rail, IERR and IERR's owners is attached hereto as Exhibit 2. A non-redacted copy of that draft agreement is 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 entails the acquisition of control of a Class III rail carrier, and involves no Class I or II rail carriers. Accordingly the 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 IERR 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 Membership Interest Purchase Agreement to be executed by the parties does not itself include any provision that would limit the future interchange of traffic with a third-party connecting carrier. Terms of existing agreements between IERR 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
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

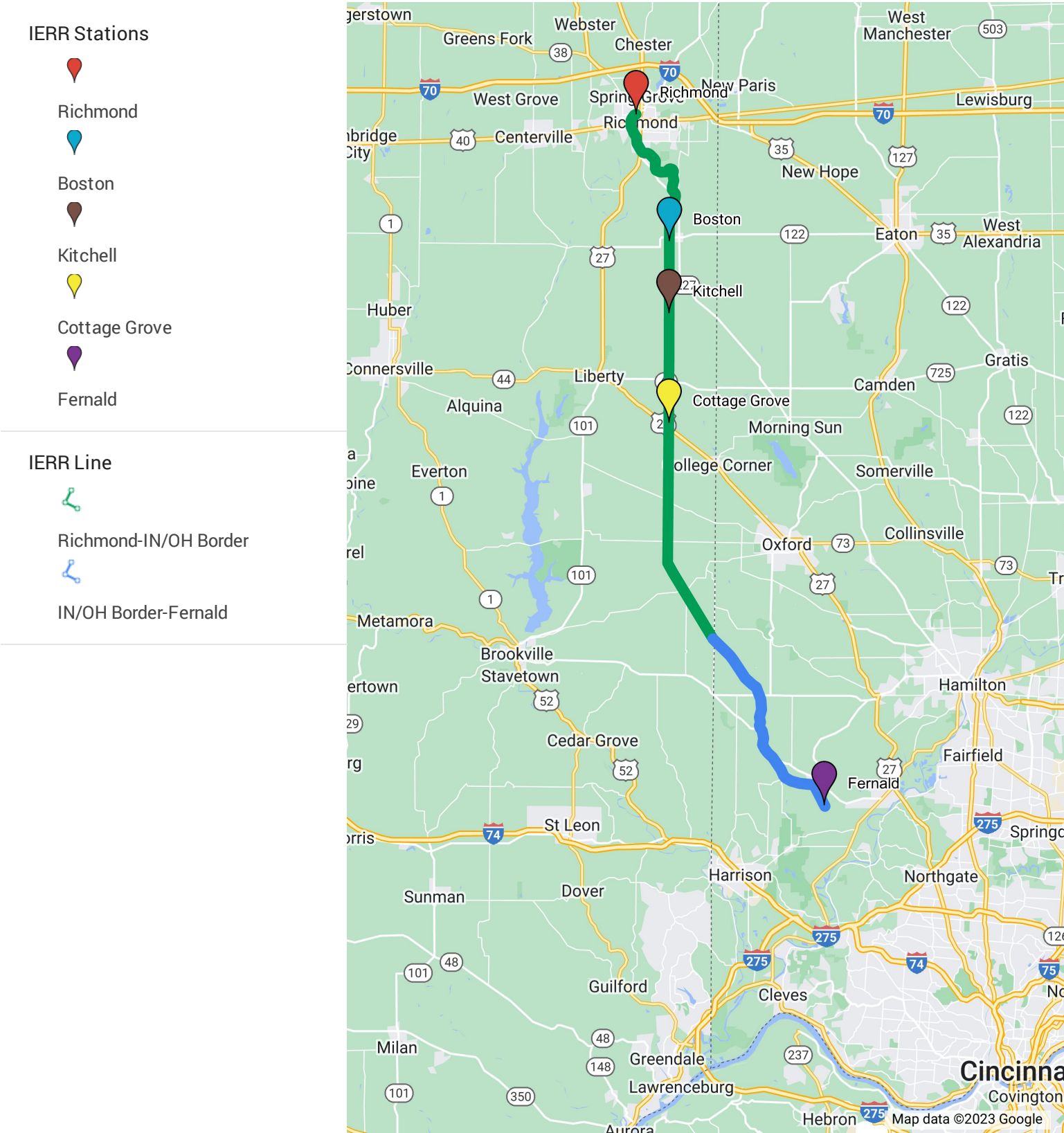
**ATTORNEY FOR
3i RR HOLDINGS GP LLC, ET AL.
AND REGIONAL RAIL, LLC**

Dated: October 31, 2023

EXHIBIT 1A

**INDIANA EASTERN RAILROAD, LLC MAPS
(IERR in INDIANA AND OHIO)
(OSCR in OHIO)**

Indiana Eastern Railroad, LLC



Ohio South Central Railroad

OSCR Stations



Richmond Dale



Hamden



McArthur



Wellston



Jackson



Oak Hill



Firebrick



MP 4.5

OSCR Lines



Richmond Dale to McArthur



Hamden to Jackson



Jackson to END



Jackson City line

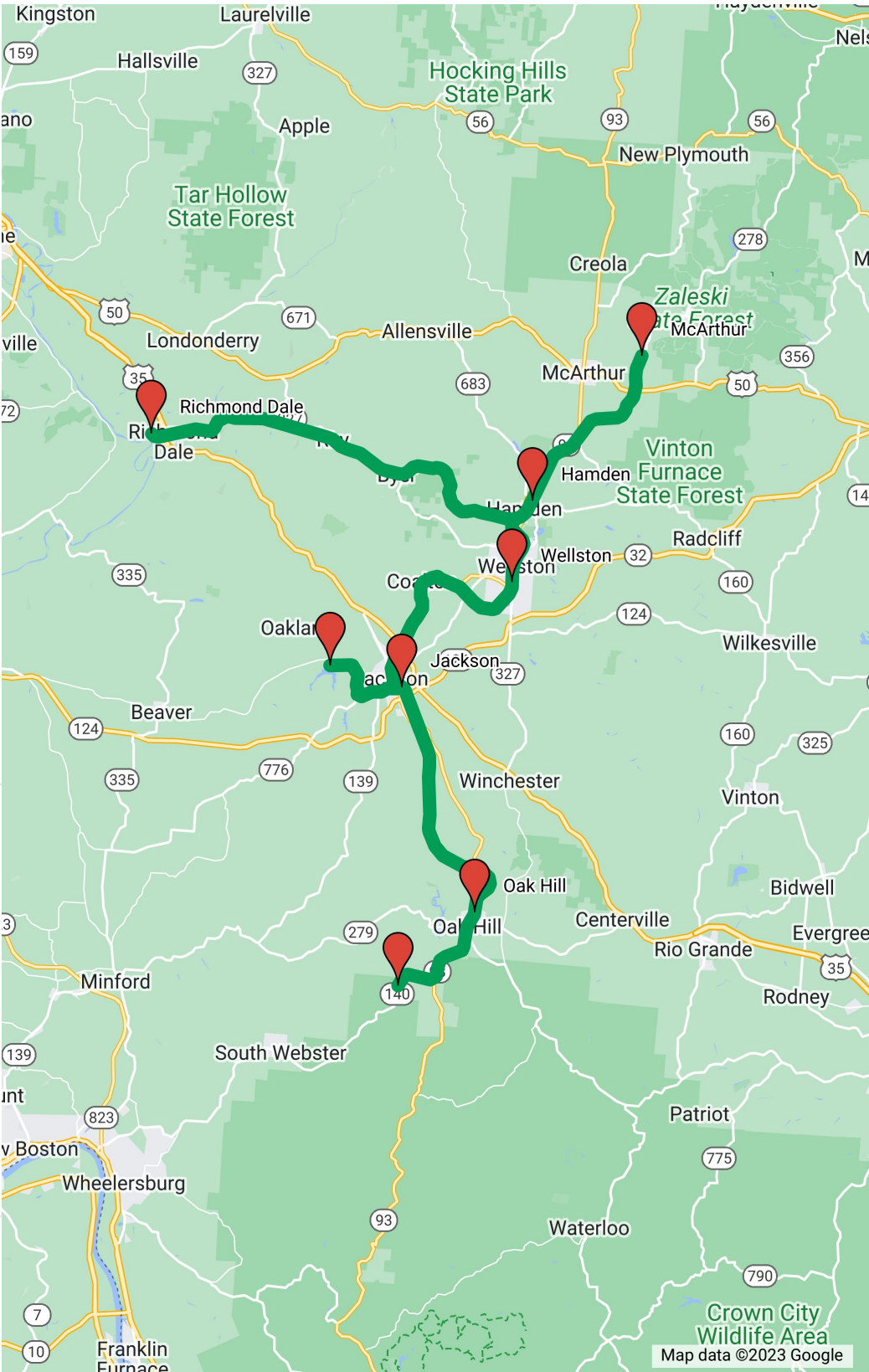
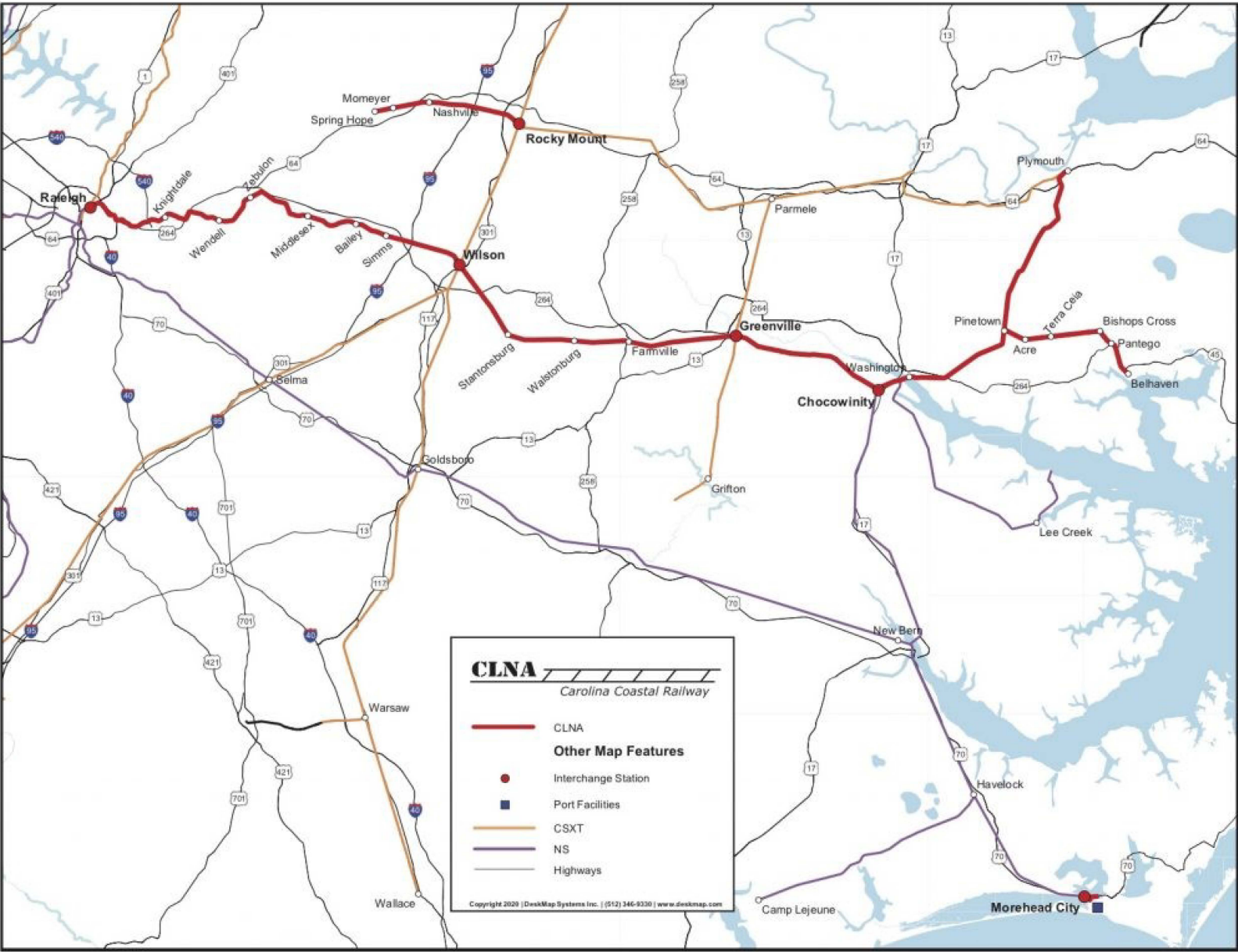
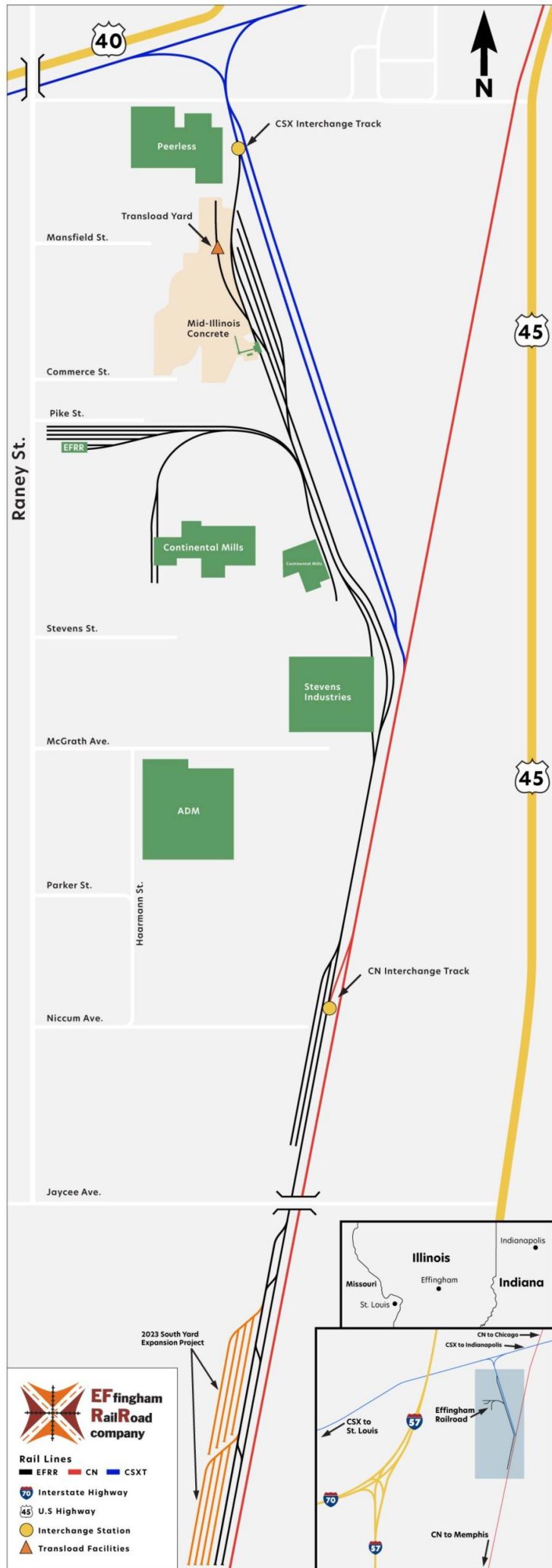


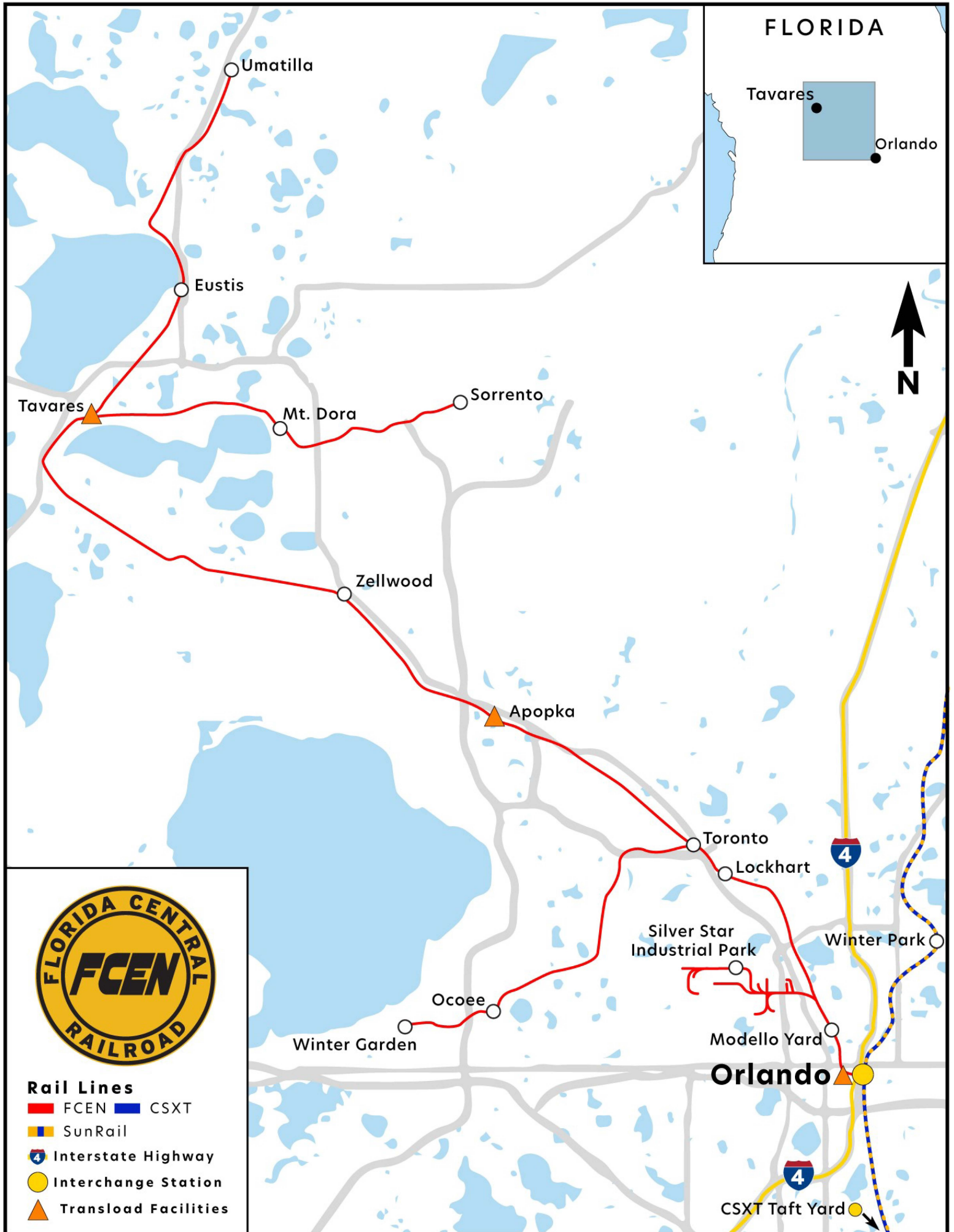
EXHIBIT 1B

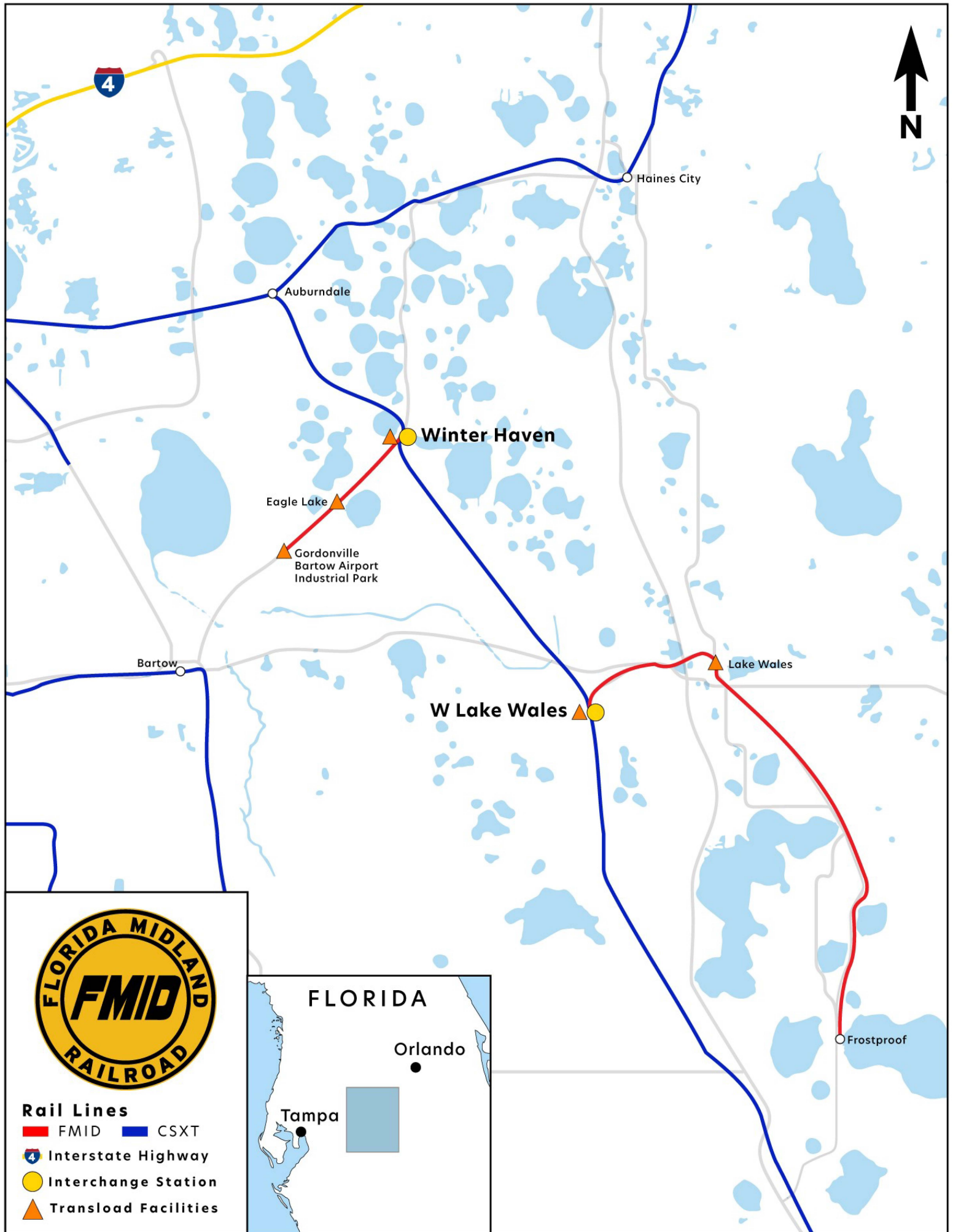
REGIONAL RAIL EXISTING SUBSIDIARY MAPS

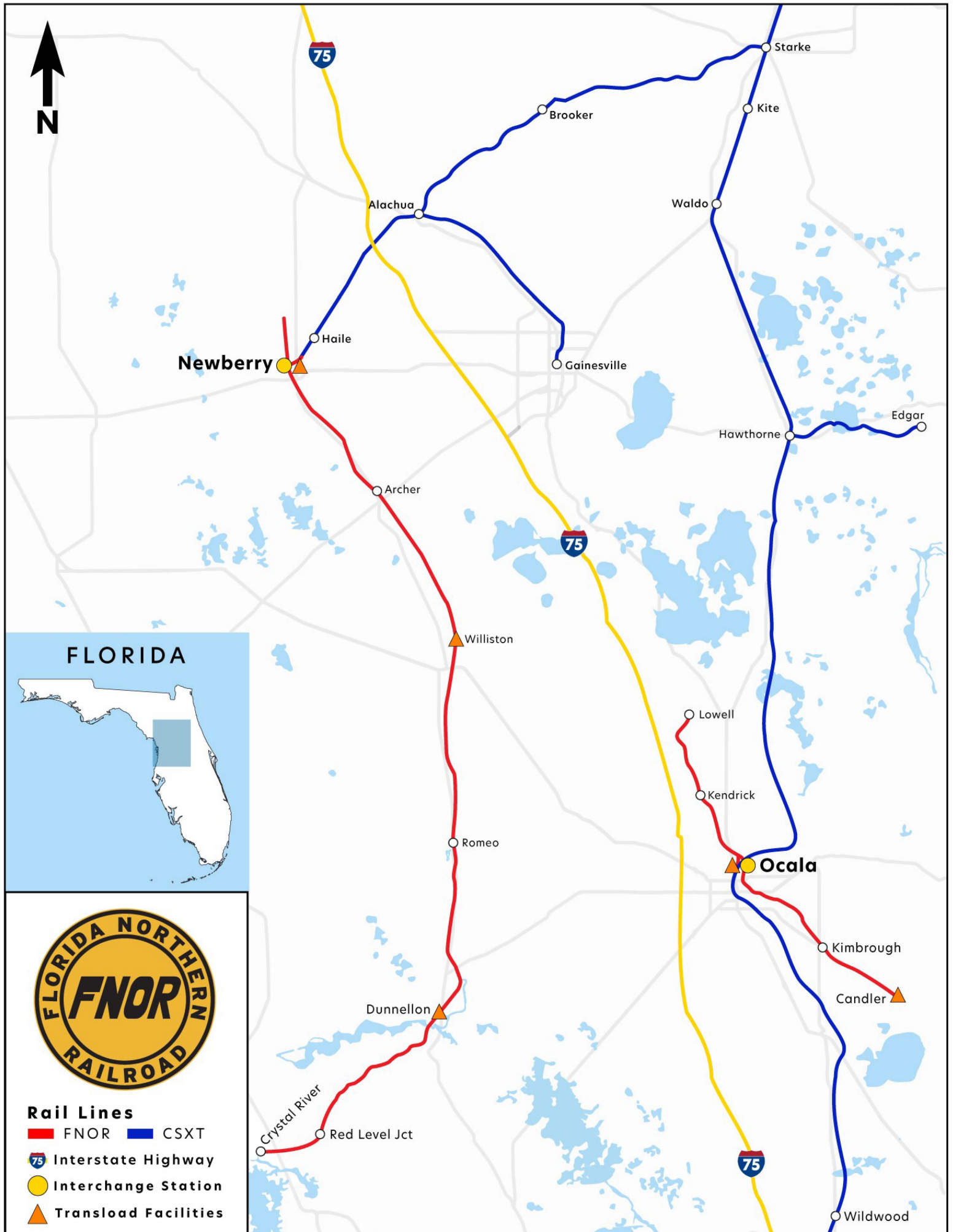




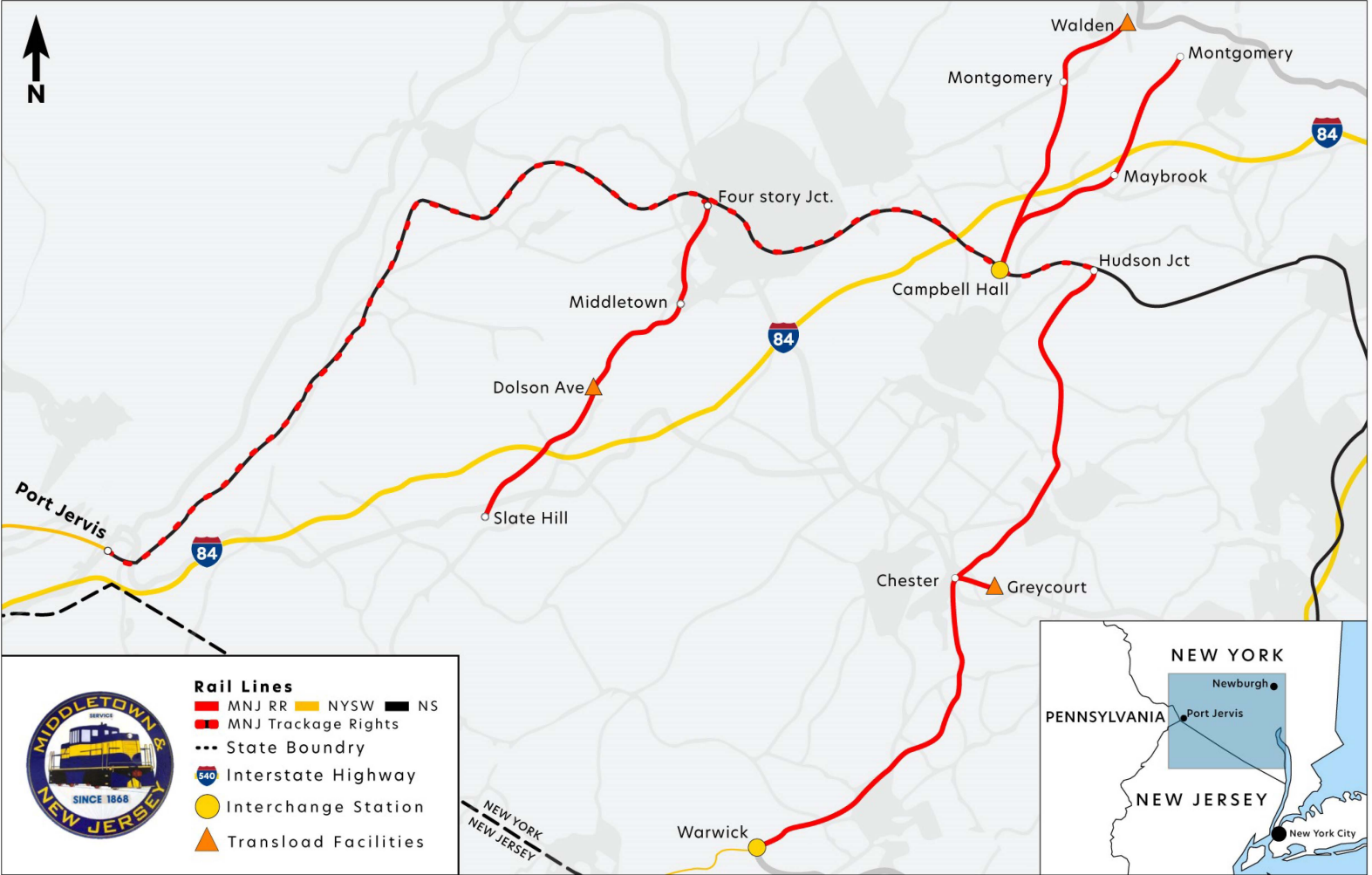


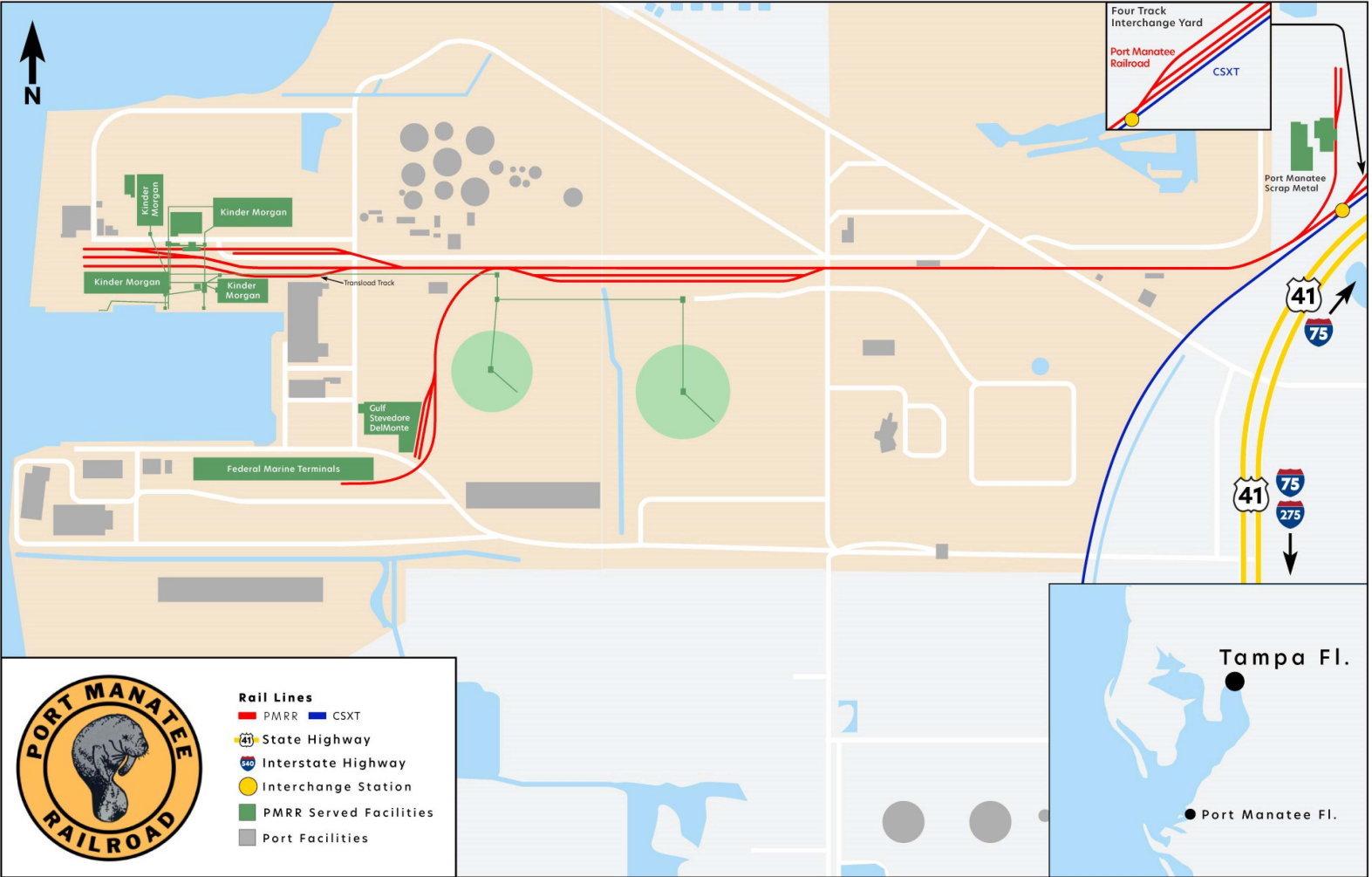
















Rail Lines

 TYBR  NS+CSX

 Interstate Highway

 Interchange Station

#8 Track Number

EXHIBIT 2

DRAFT
MEMBERSHIP INTEREST PURCHASE AGREEMENT

REDACTED

MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and among

INDIANA EASTERN RAILROAD, LLC,

GEORGE ANDRES,

TERRY RESPONDEK

and

REGIONAL RAIL, LLC

Dated as of [●], 2023

THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS AMONG THE PARTIES. IT IS NOT INTENDED TO CREATE, AND IT WILL NOT BE DEEMED TO CREATE, A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE PRIOR TO THE EXECUTION AND DELIVERY OF THIS DOCUMENT BY ALL PARTIES. THIS DOCUMENT SHALL BE KEPT CONFIDENTIAL.

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EXHIBITS

Exhibit A

Exhibit B

DISCLOSURE SCHEDULE

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT is entered into as of [●], 2023 (this “Agreement”), by and among Indiana Eastern Railroad, LLC, an Illinois limited liability company (the “Company”), George Andres, an individual (“Andres”), Terry Respondek, an individual (“Respondek”, and together with Andres, 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 collectively own, beneficially and of record, 100% of the issued and outstanding limited liability company membership interests of the Company (the “Membership Interests”), which Membership Interests constitute all of the issued and outstanding equity interests 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 Membership 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 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” – See Section 2.3(d);

“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 each agreement, document, certificate or instrument delivered pursuant to, or in connection with, this Agreement;

“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” – See Section 7.2;

“Cap” – See Section 7.4(a);

“Closing” – See Section 2.2;

“Closing Date” – See Section 2.2;

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

“Company” – See Preamble hereto.

“Company Benefit Plans” – See Section 3.17(a);

“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;

“Company LLC Agreement” means that certain Operating Agreement of the Company, dated as of August 19, 2005.

“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 Non-Disclosure Agreement entered into by and among the Buyer and Fowler Business Group, LLC dba RR Mergers & Acquisitions (on behalf of the Company and Sellers), dated as of September 11, 2023;

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

“Disclosure Schedules” – See preamble to Article 3;

“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;

“Excluded Liabilities” – See Section 2.5;

“Existing Policies” – See Section 3.18;

“FCC” – See Section 5.14;

“Financial Statements” – See Section 3.6(a);

“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” – See Section 3.26;

“Independent Accounting Firm” – See Section 2.3(c);

“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;

“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” – See Section 3.10(a);

“Leased Real Property” – See Section 3.10(a);

“Licenses and Permits” – See Section 3.13;

“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” – See Section 3.11;

“Material Contracts” – See Section 3.16(a);

“Membership Interest Sale” – See Section 2.1(a);

“Membership Interests” – See Recitals hereto.

“Owned Real Property” – See Section 3.9(a);

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

“Personal Information” – See Section 3.12(a);

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

“Plans” – See Section 3.17(a);

“Post-Signing Returns” – See Section 5.1(b);

“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;

“Real Property” – See Section 3.10(c);

“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” – See Section 5.13;

“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” – See Section 5.10;

“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” – See Section 7.3;

“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;

“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 (i) of which the first Person owns directly or indirectly 50% or more of the equity interest in the other Person; (ii) of which the first Person or any other Subsidiary of the first Person is a general partner or (iii) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions with respect to the other Person are at the time owned by the first Person and/or one or more of the first Person’s Subsidiaries;

“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;

“Third Party Claim” – See Section 7.5(a);

“Top Customers” – See Section 3.27;

“Top Suppliers” – See Section 3.27;

“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;

“Transferred IP” – See Section 5.5(a);

“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 Membership Interests, free and clear of all Liens (such transaction, the “Membership Interest Sale”);

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SECTION 2.2 Closing. Subject to the satisfaction or waiver of the terms and conditions set forth in this Agreement, the closing of the Membership Interest 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,

SECTION 2.3 Purchase Price Adjustment.

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SECTION 2.4 Net Working Capital.

SECTION 2.5 Excluded Liabilities.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLERS.

SECTION 3.1 Sellers.

(a) Validity. Each Seller has all requisite capacity and authority to enter into and deliver this Agreement and the Ancillary Agreements, 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 Ancillary Agreements 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 and the Ancillary Agreements have been duly executed and delivered by such Seller and, assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties thereto, this

Agreement and the Ancillary Agreements constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with their respective terms.

(b) Ownership of Interests. The Membership Interests comprise all of the issued and outstanding limited liability company interests or other ownership interests of the Company. The Membership 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 Company, or other Contracts, commitments of any character, or agreements providing for the issuance of or granting any Person the right to acquire any Membership Interests or other ownership interests of the Company, or any securities or other instruments convertible into or exchangeable or exercisable for any Membership Interests 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 Membership Interests. There are no proxies, voting agreements, unitholder agreements or other agreements with respect to the voting or transfer of any Membership Interests or other ownership interests of the Company. The Company does not have any outstanding or authorized any unit appreciation, phantom units or stock, profit participation or similar rights. At Closing, the Buyer shall have good and valid title to all of the Membership Interests, 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 Membership 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 the Company or contracts, commitments, understandings or arrangements by which the Company is bound, obligating the Company to redeem or otherwise acquire any Membership Interests 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 members of the Company. None of the Membership Interests or other equity interests 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 Membership Interests, assets or other equity interests of the Company or (ii) rights to have any Membership Interests or other equity interests of the Company registered for sale to the public in connection with the Laws of any jurisdiction.

SECTION 3.2 Organization, Authority and Qualification of the Company.

(a) The Company is a limited liability company, 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 limited liability company 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 Formation (or similar organizational documents). The Company has all requisite power and authority to enter into, and deliver any Ancillary Agreements to which it is a party, to consummate the transactions contemplated thereby and to carry out its obligations thereunder. The execution and delivery by the Company of the Ancillary Agreements and the performance by the Company of its obligations hereunder and thereunder have been duly authorized. Each Ancillary Agreement to which the Company is a party has been duly executed and delivered by the Company, assuming the due authorization, execution and delivery of the Ancillary Agreements by each of the parties thereto, the Ancillary Agreements constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with their respective terms.

(b) Section 3.2(b) of the Disclosure Schedules sets forth the Company's name, type of entity, the jurisdiction and date of its formation, its authorized limited liability company interests (if applicable), the number and type of its issued and outstanding Membership Interests, and the current ownership of such interests. Copies of the Company LLC Agreement and Certificate of Formation (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 Membership Interests or (ii) any actual or potential bankruptcy or insolvency of any Seller or the Company.

SECTION 3.4 Consents and Approvals. Except as set forth on Section 3.4 of the Disclosure Schedules, the execution, delivery and performance of this Agreement by each Seller and the Ancillary Agreements to which each Seller is a party or 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, except for any approvals, authorizations or exemptions required to be obtained from the STB.

SECTION 3.5 Indebtedness.

SECTION 3.6 Financial Statements; Undisclosed Liabilities.

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

(a) Except as set forth on Section 3.7(a) of the Disclosure Schedules, 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, except as set forth on Section 3.7(b) of the Disclosure Schedules, 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:

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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. 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 3.11(d) 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, and since December 31, 2021 has been, 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) Except as set forth on Section 3.14(a) of the Disclosure Schedules, the 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) Except as set forth in Section 3.14(b) of the Disclosure Schedules, 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. Except as set forth on Section 3.15 of the Disclosure Schedules, 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.

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(b)

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 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 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 managers, officers or members of 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 manager 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)

(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)

(b)

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(f)

(g)

(h)

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, 2020 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 manager 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.

SECTION 3.26 Grants.

SECTION 3.27 Customers and Suppliers.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer hereby represents and warrants to Sellers as follows:

SECTION 4.1 Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all necessary limited liability 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 and the Ancillary Agreements 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 Ancillary Agreements and the performance by the Buyer of its obligations hereunder and thereunder have been duly authorized by all necessary limited liability company action by the board of managers of the Buyer, and no other company proceedings on the part of

the Buyer are necessary to authorize such execution, delivery and performance. This Agreement and the Ancillary Agreements have been duly executed and delivered by the Buyer and, assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties thereto, this Agreement and the Ancillary Agreements 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 the Ancillary Agreements 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 Formation or limited liability company agreement 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.

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.

SECTION 4.7 Investment Representation; Independent Investigation.

(a) The Buyer is acquiring the Membership Interests 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 (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 (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)

(ii)

(iii)

(iv)

(v)

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(vii)

(viii)

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(xxiii)

(xxiv)

(xxv)

(xxvi)

(xxvii)

(xxviii)

(xxix)

(b)

SECTION 5.2 Consents and Approvals.

(a)

(b)

(c)

(d)

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 not be required to disclose any information to the Buyer or its 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"). Each Seller agrees that as of the Closing Date, such Seller and its Affiliates shall not, directly or indirectly, (i) use, register or attempt to register any of the Transferred IP or (ii) contest the ownership or validity of the Transferred IP.

(b)

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) Immediately prior to the consummation of the Closing, each Seller shall contribute, or cause to be contributed, to the capital of the Company, the difference between (i) the intercompany Indebtedness owed by the Company to each Seller and its Affiliates as of the Closing and (ii) the intercompany Indebtedness owed by each Seller and its Affiliates to the Company as of the Closing, and all such intercompany Indebtedness shall cease to exist and be of no further force or effect.

(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 the 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 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

SECTION 5.10

(b)

(c)

SECTION 5.11

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 (including any intercompany Liabilities owed to any Seller or its Affiliates, on the one hand, by the 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 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 the applicable call sign described therein. 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

SECTION 5.17

ARTICLE 6. COVENANTS OF THE BUYER.

The Buyer hereby covenants as follows:

SECTION 6.1 Consents and Approvals.

(a)

(b)

SECTION 6.2 Commercially Reasonable Efforts.

SECTION 6.3 No Benefit to Third-Party.

SECTION 6.4 Post-Closing Employment Matters.

ARTICLE 7. INDEMNIFICATION.

SECTION 7.1

SECTION 7.2

(a)

(b)

(c)

(d)

SECTION 7.3

(a)

(b)

SECTION 7.4

(a)

(b)

(c)

(d)

SECTION 7.5

(a)

(b)

(c)

SECTION 7.6

(a)

(b)

SECTION 7.7

SECTION 7.8

SECTION 7.9

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.

(i)

(ii)

(iii)

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.

SECTION 9.6 W-9.

SECTION 9.7 No Material Adverse Effect.

SECTION 9.8 Release of Liens.

SECTION 9.9 Closing Deliveries by Sellers. At the Closing, Sellers shall have delivered or caused to be delivered to the Buyer:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

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)

(b)

(c)

(d)

(e)

(f)

SECTION 10.2 Effect of 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)

(b)

(c)

(i)

(ii)

SECTION 11.2 Tax Cooperation.

employees, agents, auditors and representatives to reasonably cooperate (including by maintaining

SECTION 11.3 Transfer Taxes.

SECTION 11.4 Tax Sharing Agreement.

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 irrevocably submits to the jurisdiction of such court for the purposes of any such suit, action or other proceeding. If the matter of such suit, action or proceeding falls within the jurisdiction of the Delaware Court of Chancery, then the Parties agree and prefer that such suit, action or proceeding related to such matter shall be submitted exclusively to the Delaware Court of Chancery. 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. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in any federal court in the City of Wilmington, Delaware, or any Delaware state court and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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.

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 Andres:

[•]

If to the Buyer:

Regional Rail, LLC
c/o 3i RR LLC

With a copy to:

[•]

If to Respondek:

[•]

With a copy to:

With a copy to:

[•]

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 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.

SECTION 12.9 Entire Agreement. This Agreement (including the Disclosure Schedules and the other Schedules attached hereto) and the Ancillary Agreements 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, manager, 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 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, for a period of five (5) years following the Closing, 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.

[Remainder of page intentionally left blank]

DRAFT

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

COMPANY:

INDIANA EASTERN RAILROAD, LLC

By:_____

Name:

Title:

SELLERS:

GEORGE ANDRES

TERRY RESPONDEK

DRAFT

BUYER:

REGIONAL RAIL, LLC

By: _____

Name: Alfred Sauer

Title: President & CEO

DRAFT

EXHIBIT A

See attached.

DRAFT

EXHIBIT B

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: October 30, 2023

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: October 30, 2023